



HERBERT SMITH
FREEHILLS
KRAMER

DISPUTE RESOLUTION IN AFRICA

A MULTIJURISDICTIONAL GUIDE

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Contents

Preface	05	Gabon	142
Our Africa Dispute Resolution Practice	05	Gambia	149
Overview	06	Ghana	154
Algeria	16	Guinea	162
Angola	22	Guinea-Bissau	169
Benin	28	Kenya	175
Botswana	35	Lesotho	182
Burundi	40	Liberia	186
Cabo Verde	46	Libya	191
Cameroon	53	Madagascar	197
Central African Republic	63	Malawi	205
Chad	69	Mali	212
Comoros	75	Mauritania	218
Côte d’Ivoire	81	Mauritius	224
Democratic Republic of Congo	89	Morocco	230
Djibouti	97	Mozambique	236
Egypt	104	Namibia	243
Equatorial Guinea	112	Niger	254
Eritrea	117	Nigeria	262
Eswatini		Republic of Congo	273
(Formerly Swaziland)	122	Rwanda	281
Ethiopia	129	São Tomé and Príncipe	285
Burkina Faso	135	Senegal	289
		Seychelles	295

Sierra Leone	298
Somalia	303
South Africa	312
South Sudan	321
Sudan	325
Tanzania	329
Togo	336
Tunisia	344
Uganda	351
Zambia	358
Zimbabwe	365
Key dispute resolution contacts for Africa	372

Preface

Welcome to the fourth edition (2025) of Herbert Smith Freehills Kramer's Guide to Dispute Resolution in Africa. We are delighted to present this updated publication, which continues to offer a comprehensive overview of dispute resolution frameworks and trends across all 54 African jurisdictions. This guide remains unmatched in its breadth and depth, serving as an essential resource for clients navigating the continent's dynamic legal landscape.

Since the release of our previous editions in 2013, 2016, and 2022, this Guide has become a trusted resource for clients navigating Africa's diverse and evolving legal landscape. Whether facing disputes or exploring investment opportunities, our Guide serves as a first port of call for understanding the legal and regulatory terrain in unfamiliar jurisdictions.

In this edition, readers will find jurisdiction-specific insights into:

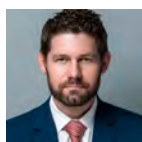
- The structure and fundamentals of each legal system
- Litigation and arbitration procedures
- The role and uptake of Alternative Dispute Resolution (ADR)
- Applicable limitation periods and privilege rules
- A comparative analysis of arbitral rules across leading African arbitral institutions

This Guide reflects the collective expertise of our Africa practice, which spans over four decades of advising clients on investment, risk, and dispute resolution across the continent. For this edition, we have drawn on the knowledge of our lawyers based in London, Paris, and Johannesburg, as well as our extensive network of local counsel whom we would like to warmly thank for their contributions. Contact details are provided at the end of each chapter, with full Herbert Smith Freehills Kramer global contacts listed at the back of the Guide.

As Africa's investment profile continues to rise, so too does the need for robust and effective dispute resolution mechanisms. We hope this Guide proves both timely and valuable, and we welcome your feedback and engagement.



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Our Africa Dispute Resolution Practice

Herbert Smith Freehills Kramer has an unrivalled understanding of the African market derived from a deep track record acting on matters in Africa for over 40 years across all practice groups and industry sectors. Our offering in Africa is serviced by more than 190 partners from across our global network of offices, including from our 50-lawyer Johannesburg office. We have worked on dispute matters specifically across the whole continent of Africa.

A market-leading dispute resolution in Africa

Our disputes experience in Africa includes advising and representing parties to large, complex and high-value disputes whether arbitration and/or litigation across a range of industry sectors, including energy, natural resources, infrastructure and telecommunications. We also spend a significant amount of time behind the scenes advising clients on how to minimize their exposure to contentious risk.

Whether the goal is to achieve a settlement or assist you in a full proceedings, we will put our many years' experience to help you navigate your negotiations, developing persuasive lines of argument while preserving existing rights, and when necessary talking to officials on the ground. Should negotiation prove unsuccessful, we can then help you craft the best dispute resolution strategy, including arbitration, litigation and ADR procedures.

The combination of our full-service multi-industry expertise, deep Africa experience and know-how ensures we can provide a real value-added service to our clients in Africa, for both new entrants to these exciting markets and established operators alike.

Global vision, African insight

As well as drawing on our deep global expertise when serving our clients in Africa, we can also drill down into specific local in-country issues, which is often where a deal or project can become unstuck. Our Africa practice group includes a core team of African specialists who dedicate all or a large portion of their time to work in Africa. These lawyers have built significant experience in specific regions and countries and offer a comprehensive understanding of the laws of the OHADA zone and other regional initiatives (CEMAC-EMCCA, CEDEAO-ECOWAS, UEMOA-WAEMU etc).

Whether you are entering a new market or expanding an existing footprint, our integrated approach ensures that we deliver strategic, commercially focused advice tailored to the realities of doing business in Africa.

Overview

Introduction

Spanning nearly 12 million square miles and home to approximately 1.5 billion people, Africa accounts for over 20% of the world's landmass and nearly 18% of its population. Long mischaracterised and underrepresented in global investment narratives, the continent is now increasingly recognised as a dynamic and promising frontier for growth. With the African Continental Free Trade Area (**AfCFTA**) now operational across 54 countries, Africa hosts the world's largest free trade area by number of participating states – an initiative that continues to drive intra-African trade and catalyse structural reforms aimed at long-term economic integration.

As of 2025, Africa's economic outlook is cautiously optimistic. The UN's *World Economic Situation and Prospects* report projects growth to rise from 3.4% in 2024 to 3.7% in 2025, with further acceleration to 4.0% in 2026. This momentum is supported by recoveries in major economies such as Nigeria, Egypt and South Africa, and bolstered by regional collaboration under AfCFTA. Nonetheless, challenges persist. Inflation remains elevated in several jurisdictions, food insecurity is exacerbated by climate volatility, and debt servicing consumes an average of 27% of government revenues across the continent. These macroeconomic pressures often intersect with legal and regulatory risk, making robust dispute resolution frameworks more critical than ever.

Despite these headwinds, investor interest in Africa continues to grow. The continent's youthful demographic – projected to reach over 850 million people under the age of 35 by 2050 – offers immense potential for innovation, entrepreneurship and expansion. Rapid urbanisation and population growth are fuelling demand for large-scale infrastructure, with major projects underway in transport, energy and digital connectivity. Investment in resilient infrastructure and energy access is a central priority, with initiatives such as Mission 300 – a joint effort by the World Bank and African Development Bank which aims to connect 300 million Africans to electricity by 2030 – underscoring this focus.

Digital transformation is also reshaping Africa's development landscape. The rapid expansion of mobile connectivity, digital public infrastructure, and fintech platforms is improving access to services, enhancing transparency, and enabling new forms of economic participation. According to the World Bank, digitalisation is increasingly central to inclusive growth and regional integration, with governments and private actors investing in connectivity, digital ID systems, and e-commerce ecosystems.

Africa's vast reserves of critical minerals, including cobalt, copper and lithium, position the continent as a strategic player in the global energy transition. These resources are essential for clean energy technologies and are attracting significant international investment. Africa's mineral wealth is central to the global shift toward low-carbon energy and digital transformation.

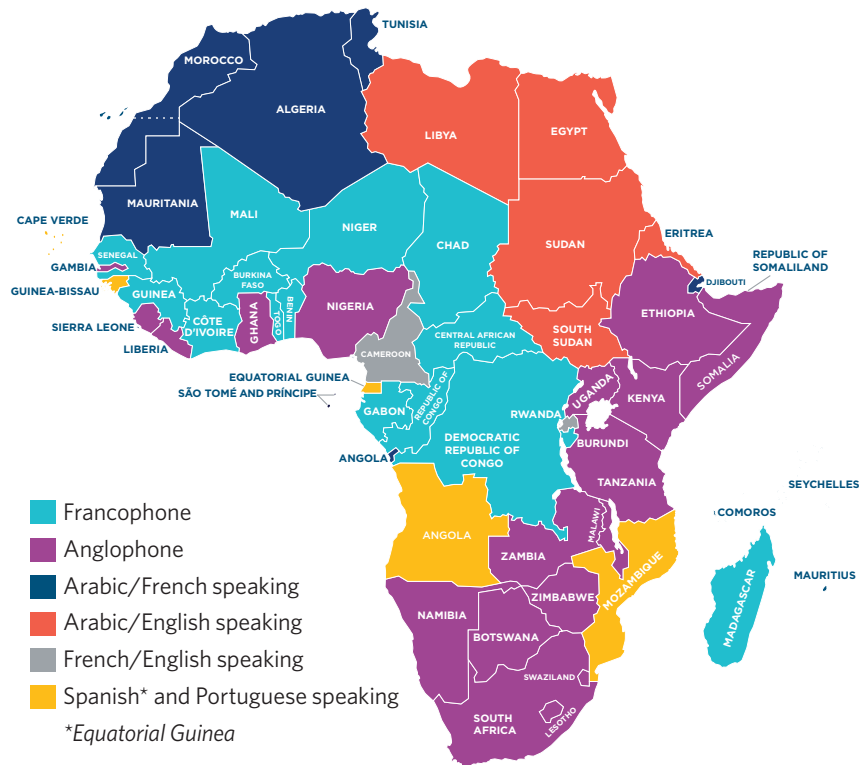
Political and governance dynamics across the continent remain complex and varied. While many countries have held peaceful elections and made progress in strengthening democratic institutions, others continue to grapple with political instability, contested elections, and conflict. Ongoing security challenges in regions such as the Sahel, the Horn of Africa, and parts of Central and West Africa continue to affect the business environment and require careful risk assessment. Nevertheless, Africa's status as a dynamic and diverse investment frontier continues to attract interest, with the continent's long-term prospects underpinned by its youthful population, expanding markets, and ongoing reforms. But as long as those risks exist, the chance of being involved in a complex dispute remains real. We hope that this Guide will be a useful tool in identifying, managing and mitigating those risks – particularly where disputes arise – and in answering questions that arise along the way.

The maps below summaries the languages and legal systems underpinning this continent.

A continent of cultural and legal diversity

Africa's legal systems reflect its colonial history, religious traditions, and indigenous customs. The continent is home to:

- 54 sovereign nations (and two independent states with limited or no recognition – Western Sahara and Somaliland),
- 4/5 sub-regions
- 1.2 billion inhabitants
- Multiple legal traditions, including:
 - Common law (primarily Anglophone countries),
 - Civil law (primarily Francophone countries),
 - Islamic law (influential in North and parts of West and East Africa),
 - Customary law (present in all jurisdictions to varying degrees).



Legal systems

This legal mosaic is shaped by the legacy of European settlement (France, the UK, Belgium, Germany, Portugal, Spain, and Italy), as well as Arabic and indigenous influences. The result is a complex but rich legal environment that requires careful navigation.

The maps below summaries the languages and legal systems underpinning this continent.

How this guide was prepared

This fourth edition of the Guide builds on the foundation of previous editions, with updated content reflecting legal, institutional, and economic developments since 2022. Our teams in Paris, London, and Johannesburg collaborated with trusted local counsel across the continent¹ to answer a standardised set of around 32 questions per jurisdiction, covering:

- Legal frameworks and court systems,
- Civil procedure and litigation rules,
- Arbitration and ADR mechanisms,
- Recent reforms and institutional developments.

For the 2025 edition, we have introduced a new chapter on arbitral institutions in Africa, including a comparative analysis of key arbitration rules across the continent. This addition aims to provide readers with practical insights into the evolving landscape of arbitration in Africa.

As we have not addressed investment protection in the body of the chapters, we deal with this important topic in this introduction below.

Dispute resolution in africa

Historically, the majority of disputes in Africa have been solved through commercial settlement, with companies and States alike preferring negotiation over the uncertainties of litigation or arbitration.

However, with the sharp increase in foreign investment across an array of sectors and regions across the continent, the scope for formal dispute resolution in Africa has significantly increased and will likely continue to do so. Over the past decades, the bargaining power of international companies has led to many disputes involving investment in Africa being resolved “offshore” through foreign litigation or through arbitration under a set of international arbitral rules (for example of the ICC or LCIA) with an “offshore” seat (such as London or Paris). This trend, however, is evolving. Increasingly, African counterparties and contracting African State entities are requiring that any disputes be resolved through their local courts applying local law, or via arbitration seated “onshore” or administered by African arbitral institution.

The development and strengthening of African arbitral institutions – such as the Arbitration Foundation of Southern Africa (**AFSA**), Cairo Regional Centre for International Commercial Arbitration (**CRCICA**), Lagos Chamber of Commerce International Arbitration Centre (**LACIAC**), Nairobi Centre for International Arbitration (**NCIA**), Kigali International Arbitration Centre (**KIAC**), Common Court of Justice and Arbitration (**CCJA**) and Mauritius International Arbitration Centre (**MIAC**) – is enhancing the credibility and accessibility of arbitration within the continent. These institutions are adopting modern rules and practices.

Even where litigation or arbitration takes place outside Africa, onshore litigation may still be required when seeking to enforce an international judgment or arbitral award against assets held in an African jurisdiction, or when dealing with local regulators. As such, a sound understanding of the legal systems pervading Africa and the specific laws governing the resolution of disputes within its jurisdictions is essential and this is the purpose of this guide.

Litigation

Litigation procedures in African States still derive in the large part from applicable pre-independence legal systems. Broadly speaking, these are either based on codified civil law or common law traditions. Those familiar with either French or English litigation will observe many similarities both in terms of procedure and substantive law. There is also influence from local customary laws (in Benin, Cameroon, Chad, Gabon, Guinea-Bissau, Mali and Liberia for example) as well as Shari’ah law (such as in Algeria, Comoros, Egypt, Ethiopia, Gambia, Kenya, Libya, Mauritania, Morocco, Nigeria, Senegal, Somalia, and Sudan).

In all jurisdictions, a framework for civil litigation exists, with often well-identified procedures. However, in many jurisdictions, litigation can be hampered by delays and issues with enforcing resulting judgments.

Where a judgment is obtained abroad, either from another African country or outside Africa, the enforcement process is often not straightforward, and success will largely depend on reciprocal agreements being in place between the country of enforcement and the country in which the judgment was made. These sorts of reciprocal arrangements are fairly limited, meaning enforcement of foreign judgments against assets in Africa can often be complex and uncertain, particularly if your counterparty is a State entity.

Commercial arbitration

Though varying in their degrees of development and practical use, all 54 states in Africa have established a commercial arbitration framework to govern the resolution of commercial disputes. In some countries, such as Egypt and South Africa, arbitration is a well-established practice with the legislative frameworks and institutional infrastructure to match; while in others, arbitration remains in its early stages. A growing number of African states have taken steps to align their arbitration regimes with international standards. Notably, thirteen African jurisdictions have now adopted the UNCITRAL Model Law on International Commercial Arbitration (UNCITRAL), including since our last edition, Sierra Leone (2022), Nigeria (2023), and Malawi (2024). In parallel, 42 of Africa’s 54 states have acceded to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention), reinforcing the continent’s commitment to cross-border enforceability of arbitral awards.

1. With special thanks to Lisa Stefani, senior associate in Paris and SooBin Park, a junior associate in Johannesburg for their invaluable contribution to this edition.

Several jurisdictions have also taken legislative steps to reflect their growing appetite to arbitrate. Nigeria and Malawi enacted the International Arbitration Bill and the Arbitration and Mediation Act 2023, respectively, to domesticate the UNCITRAL Model Law and align domestic arbitral practices with international standards. Institutionally, key capacity building developments have been reported with the launch of the Malawi International Arbitration Centre in March 2025 and the introduction of the CRCICA 2024 Arbitration Rules. Although the coming into effect of the Arbitration and Conciliation (Amendment Act) in Uganda lead to the dissolution of the Centre for Arbitration and Dispute Resolution (CADER), it is reported that the move to absorb the CADER's functions into the Ministry of Justice will improve the efficiency of arbitration in Uganda by ensuring greater oversight of the funding and management of arbitrations. On an international scale, Africa accounts for the largest increase in the number of parties represented in LCIA arbitrations between 2023 and 2024 (from 8% to 17%), with Kenyan parties recorded as being the second highest nationality represented by parties (and the only African jurisdiction in the top five nationalities outside the United Kingdom).

Investment protection

Investment protections are legal frameworks that safeguard investors when they engage in cross-border investments and help mitigate the risks and uncertainties associated with operating in foreign “host” states. Host states offer these protections to attract foreign investment – which is particularly important in Africa, with African state often perceived as bearing a high risk profile. Despite these perceptions, investor confidence has grown, as evidenced by a 75% increase in foreign direct investment inflows in 2024 alone. This growth underscores the importance of clear and reliable investment protection mechanisms, which broadly fall into four categories: (1) domestic investment legislation enacted by the host state; (2) bilateral investment treaties concluded between the governments of the foreign investor’s home state and the host state (BITs); (3) investment contracts between the investor and the host government; and (4) multilateral investment treaties (MITs) involving multiple states. This chapter will focus primarily on treaty-based mechanisms, which continue to shape the investment landscape across Africa. Africa accounts for a large increase in the number of parties represented in ICSID arbitrations between 2023 and 2025 (from 18% to 29%),

BITs

BITs provide legal protection to qualifying investments (per the prescribed definition) that are made by qualifying foreign investors from one signatory state into the territory of another signatory state. While the specific provisions that apply will vary across treaties depending on the signatory states, BITs generally guarantee certain substantive protections, which often include both absolute and comparative guarantees. Common substantive protections in BITs include:

- (i) A guarantee of fair and equitable treatment (FET)
- (ii) A guarantee of national treatment no less favourable than that given to nationals of the host state in like circumstances

- (iii) A guarantee of treatment no less favourable than that given to investors from a third state (“most-favoured nation treatment”)
- (iv) Protection from expropriation without compensation
- (v) Promises that the host state will comply with all obligations or commitments it has accepted in relation to investments made by investors from the other signatory state
- (vi) A guarantee of full physical protection and security

To reap the benefits of these protections, potential investors will want to:

- (i) Evaluate the scope of protections offered
- (ii) Structure their transactions with the particular BITs in mind, to ensure adherence with the qualifying criteria prescribed under the respective BITs.
- (iii) Consider potential jurisdictional issues which may affect their ability to claim the protections afforded under the BITs
- (iv) Stay abreast of shifting attitudes towards BIT’s.

As reported in the 2022 edition of this Guide, African states have expressed a shift in approach to maintaining existing BIT’s and signing and ratifying new BITs amidst concerns around regulatory sovereignty, transparency, human rights, environmental protections and fairness. As such, some governments have reassessed their commitment to treaties that include investor-state dispute settlement (ISDS) mechanisms, with Kenya and Burkina Faso terminating their BIT’s with the Netherlands in 2024. Others introduced model BIT template including sections to investor obligations and responsibilities, notably on the fields of environment, labour, and human rights such as the Southern African Development Community (SADC) in 2012, Morocco in 2019 and the African Arbitration Academy in July 2022 with its Model BIT for African States. Nonetheless, the existing network of treaties continues to offer meaningful protections for foreign investors. For information on the BITs that are currently in force, see the International Centre for Settlement of Investment Disputes (ICSID) website or the UNCTAD investment policy website.

ICSID

The ICSID is an international institution which facilitates the arbitration and conciliation of international investment disputes between investors and the host states in which they invest. Since its formation by the 1965 Washington Convention on the Settlement of Investment Disputes between States and Nationals of Other States (the Convention), the ICSID has evolved into a leading forum for resolving global investor-state disputes. ICSID proceedings and awards are independent of domestic courts, owing to the institution’s supranational jurisdiction, and awards are both directly enforceable and equivalent to judgements delivered in signatory states’ domestic courts.

As of 2025, 155 countries have ratified the Convention. Among Africa’s 54 states, Ethiopia, Guinea-Bissau, and Namibia have signed but not yet ratified the Convention while Equatorial Guinea, Libya, and South Africa have not signed the Convention at all.

Investor-state disputes involving African states

As of December 2024, 32 African states were recorded as having cases before ICSID as either a respondent state or as the homes state of the claimant. The States that have appeared most frequently as Respondents are Egypt, Libya, Tanzania, and Algeria. However, it is worth noting that, due to the confidential nature of arbitrations, some arbitrations would not be reflected in these figures.

MITs

Following the recent enactment of the African Continental Free Trade Area (AfCFTA) and the importance of the Organisation pour l’Harmonisation en Afrique du Droit des Affaires – Organisation for the Harmonisation of Business Law in Africa (OHADA) within Francophone Africa:

The AfCTA, which aims to increase intra-African trade, has been signed by 54 countries and ratified by 28. Protocol to the Agreement Establishing the African Continental Free Trade Area on Investment (Investment Protocol) was passed in 2023 to promote the flow of African investment and provide a framework for the prevention, management and settlement of investment disputes within the continent. In an effort to position the Investment Protocol as the default investment agreement, the Investment Protocol terminates BITs concluded between State Parties within 5 years of the coming into effect of the protocol (2023) and prohibits State Parties from entering into new BITs. Instead, State Parties are encouraged to rely on the single continental standard the Investment Protocol, and AfCFTA by extension, seek to achieve.

Seventeen African countries have signed the OHADA treaty, making it one of the most prominent examples of regional legal integration on the continent. The OHADA framework primarily serves Francophone, civil law jurisdictions in Sub-Saharan West Africa, though it also includes some non-Francophone nations, and is directly applicable in all member states, ensuring legal consistency across borders. OHADA’s Uniform Act on Arbitration imposes strict timelines for enforcing arbitral awards, as a measure aimed at improving efficiency and legal certainty. For arbitrations conducted within OHADA jurisdictions, it may offer an effective enforcement mechanism – particularly where it presents the only viable route of countries who are not parties to the New York Convention. The OHADA revised the Uniform Act on Arbitration in 2018 (Uniform Act on Arbitration). The Uniform Act on Arbitration sets out rules on arbitrations seated in OHADA countries and also sets out rules on enforcement. The CCJA (seated in Abidjan, Ivory Coast) is a supranational Supreme (or *Cassation*) Court which is responsible for ensuring the common interpretation and application of the OHADA law including the Uniform Act on Arbitration and its decisions are published on the Internet. It also acts as an arbitral institution administering its own Arbitration Rules. The CCJA adopted new

Internal Rules in 2023 to address long-standing concerns about its dual role as both an arbitral institution and a supreme court. Accordingly, the Internal Rule establish a supervisory committee to maintain procedural integrity and separate the General Secretariat’s role from the judicial functions of the CCJA. More recently, the last OHADA Uniform Act, issued in 2023, on Simplified recovery procedures and Enforcement measures has a direct impact on local enforcement procedures.

The Draft Pan-African Code on Investment (PAIC) continues to serve as a non-binding model for the investment chapter and is drafted from the perspective of developing countries with a view to promoting sustainable development.

Other intergovernmental and regional economic communities include:

NAME	NUMBER OF MEMBER STATE SIGNATORIES	
SADC	Southern African Development Community	16
COMESA	Common Market for Eastern and Southern Africa	21
ECOWAS	Economic Community of West African States	15
ECCAS	Economic Community of Central African States	11
CEN-SAD	Community of Sahel-Saharan States	25

Alternative dispute resolution (ADR)

ADR mechanisms, such as mediation, conciliation and arbitration, are particular suited for the resolution of disputes on the African continent due to the emphasis on flexibility, restorative justice, and informality over strict legal rights and obligations. Despite this, ADR remains generally unregulated in the commercial sphere. Although many African jurisdictions still treat ADR as voluntary, unless contractually agreed, it is widely used within the continent.

Since the 2022 edition of this Guide, some strides have been made to establish and institutionalise ADR, especially mediation and or conciliation, within African civil justice systems. In particular, South Africa adopted mandatory mediation for all civil matter in Johannesburg and Algeria adopted mandatory conciliation prior to any proceedings before its specialised courts (having jurisdiction on commercial matters) Although the reform has been met with varied responses, with some criticising the move as potentially contributing to the marginalisation of indigent parties, the changes to improve the efficiency of disputes through time and cost savings, reduced court backlogs and increased litigant satisfaction. While it is too soon to tell, the success (or not) of mandatory mediation or

conciliation will be observed over the years to come as more cases filter through the process in South Africa.

It is arguable that more progress has been observed from an arbitration perspective. Several arbitral institutions continue to advance ADR as a viable alternative to commercial litigation and develop robust procedural frameworks to support this and are increasingly referred to in recent contracts. In particular, the:

- (i) Arbitration Foundation of Southern Africa (AFSA)
- (ii) Cairo Regional Centre for International Commercial Arbitration (CRCICA)
- (iii) Lagos Chamber of Commerce International Arbitration Centre (LACIAC)
- (iv) Nairobi Centre for International Arbitration (NCIA)
- (v) Kigali International Arbitration Centre (KIAC)
- (vi) Mauritius International Arbitration Centre (MIAC)
- (vii) Common Court of Justice and Arbitration (CCJA)

primarily administer arbitration and mediation proceedings and offer structured processes and resources for resolving commercial, investment, and cross-border disputes. These processes are conducted according to and regulated by the arbitration legislation enacted in each respective jurisdiction as well as by the various institutional rules that are drafted to align with international standards. In this, these rules provide for key aspects such as (a) the formation of the arbitral tribunals, (b) interim measures, (c) advance on costs, (d) confidentiality, (e) the legal effect of awards, (f) the appealability of the award, and (g) emergency or expedited proceedings where the tribunal is asked to dispense with ordinary timelines, as well as special provisions such as the use of technology to facilitate virtual hearings.

As previously discussed, the New York Convention and UNCITRAL are pivotal instruments in guiding international arbitration. The UNCITRAL Model Law provides a standardized legal framework for countries to incorporate into their national laws, ensuring fair and efficient arbitration procedures with minimal court interference. In contrast, the New York Convention is a binding international treaty that requires courts in its member states to recognize and enforce foreign arbitral awards, subject to limited exceptions. Together, they promote legal certainty and enforceability in cross-border commercial disputes, to make arbitration an effective and efficient mechanism for resolving international business conflicts. Currently, the New York Convention has 42 African signatories while the UNCITRAL Model Law has been adopted by thirteen African States.

Recent Cross-Jurisdictional Trends in Dispute Resolution

Across African jurisdictions, a growing trend is the integration of electronic tools into court processes, reflecting a continent-wide push toward modernising dispute resolution. Countries such as Kenya, Nigeria, South Africa, Morocco, Tanzania, Algeria, Libya and Uganda have made notable progress, introducing systems for e-filing, virtual hearings, and digital case management. Angola is about to introduce similar reforms. These reforms aim to improve access to justice, reduce delays, and enhance procedural efficiency.

Progress is uneven, however, with some jurisdictions still in the early stages of digital adoption. Despite infrastructure and resource challenges, the trajectory is clear: digitalisation is reshaping how disputes are resolved across the continent. As these tools become more embedded in judicial systems, stakeholders must adapt to evolving procedural norms and leverage technology to navigate disputes more effectively.

	Arbitration Foundation of Southern Africa (AFSA)	Cairo Regional Centre for International Commercial Arbitration (CRCICA)	Lagos Chamber of Commerce International Arbitration Centre (LACIAC)	Nairobi Centre for International Arbitration (NCIA)	Kigali International Arbitration Centre (KIAC)	Mauritius International Arbitration Centre (MIAC)	Common Court of Justice and Arbitration (CCJA)
Advance on Costs	Article 32 of the International Rules empowers the Secretariat to require parties to make payments to AFSA toward arbitration costs, in proportions and at times it deems appropriate, based on the Schedule of Costs. If a Counterclaim is submitted, the Secretariat may set separate cost advances for the claim and the Counterclaim, with each party responsible for paying the advance related to its own claims, unless the Secretariat decides otherwise.	CRCICA requires, as outlined in Article 46, a full advance of fees in equal shares from both parties, unless otherwise agreed upon, within 15 days after the receipt of the request of payment. The amount is subject to the fees table set out in Annex 1 of the Rules.	Article 22 outlines that on its establishment, the tribunal may request the parties to deposit an equal share of an advance on costs.	Rule 26 provides that the NCIA may require that the parties provide one or several deposits for the interim payment of costs.	Article 41 provides that the KIAC may require a claimant to provide a provisional advance for the costs of the arbitration until the terms of reference are prepared. The tribunal may suspend its work for a specified period if the requested deposits are not complied with.	Under Article 43, the MIAC may request an advance of costs for the tribunal's fees, reasonable travel and other expenses incurred by the arbitrators, and the reasonable costs of expert advice and other assistance required by the tribunal.	Under Articles 8 and 11, the CCJA requests an advance of costs to cover arbitration expenses. The advance must be paid before the matter is handed over to the Tribunal. The tribunal may suspend its work if the required deposits are not paid.
Formation of Arbitral Tribunal	Articles 6-9 set out the general rules on the formation of the tribunal, generally the tribunal is constituted based on party agreement or, failing that, by appointment through AFSA mechanisms. Typically, a sole arbitrator or a panel of three is appointed.	The rules on the formation of the Tribunal are transversed in Articles 7-16 of the Rules. By and large, the arbitral tribunal is in the first instance predicated on the agreement between parties, failing which CRCICA will appoint three arbitrators and or one (should the matter dictate the need for such).	Articles 10-19 of the rules allow for the parties to agree on the number of arbitrators, typically one or three, failing which the LACIAC will determine the number of arbitrators and appoint them accordingly – with consideration of the complexity of the dispute.	According to Rule 7, unless the parties agree otherwise, a sole arbitrator will be appointed by either the parties themselves, or in the absence of agreement, the NCIA.	According to Articles 13 and 14, the tribunal is comprised of a sole arbitrator or panel of three arbitrators appointed by agreement between the parties or by the KIAC.	In terms of Articles 7 and 8, the tribunal is constituted either by agreement between the parties or, failing that, by appointment through the MIAC, and typically comprises of one or three arbitrators.	Article 3 sets out the general rules on the formation of the tribunal. The tribunal is comprised of a sole arbitrator or panel of three arbitrators appointed by agreement between the parties or by the CCJA.
Default number of arbitrators	Sole arbitrator (Article 6.1).	Three arbitrators (Article 7).	Three arbitrators (Article 10(1)).	Sole arbitrator (Rule 7(1)).	Sole arbitrator (Article 12)	Three arbitrators (Article 7(1))	No default number of arbitrators.

	Arbitration Foundation of Southern Africa (AFSA)	Cairo Regional Centre for International Commercial Arbitration (CRCICA)	Lagos Chamber of Commerce International Arbitration Centre (LACIAC)	Nairobi Centre for International Arbitration (NCIA)	Kigali International Arbitration Centre (KIAC)	Mauritius International Arbitration Centre (MIAC)	Common Court of Justice and Arbitration (CCJA)
Procedural Rules	As set out in Article 15, the tribunal has discretion to conduct proceedings in a manner it considers appropriate, subject to the Rules and party agreement. This includes timelines, evidence, and hearings.	Section 3 of the Rules dictates that the tribunal holds discretion to conduct proceedings in a manner deemed appropriate, subject to the rules, including remote hearings, multiple contracts and third-party funding	Article 23 of the Rules outlines that the arbitral tribunal holds a broad discretion of power over procedural matters, including but not limited to the conduct of proceedings, case management, hearings and interim measures and the like.	Rule 14 enables the tribunal to conduct the proceedings at its discretion, subject to the law and the parties' written agreement.	In terms of Article 28, the tribunal may direct the proceedings and determine the relevance, materiality and admissibility of all evidence, as well as the confidentiality of the proceedings.	According to Article 16, the tribunal has discretion to conduct the proceedings in a manner it deems appropriate, provided that the parties are treated with equality and afforded a reasonable opportunity to present their case.	According to Article 16, the procedure is subject to the CCJA Arbitration Rules, in case of silence, the parties or the tribunal establish them. The parties are treated with equality and afforded a reasonable opportunity to present their case. The parties must conduct the proceedings in an efficient and loyal manner.
Interim Measures	The tribunal may grant interim measures (as transversed in article 24) to preserve assets, evidence, or maintain the status quo pending determination of the dispute. Parties may also seek such measures from competent courts.	The tribunal may grant interim measures and at the request of parties this can be done by a specifically appointed emergency arbitrator. All interim relief will be granted in accordance with the rules, more specifically Article 26.	The tribunal may grant interim measures at the request of the parties, if they meet the conditions for granting such an award set out in article 32(3).	In terms of Rule 26, the tribunal may order any interim measures such as the disposition of property or payment of money, subject to final determination of the award.	Article 22 provides that the tribunal may grant interim measures and do so subject to the provision of security. Parties may also seek such measures from competent courts. Interim relief may also be sought on an urgent basis from an emergency arbitrator.	Article 26 provides that the tribunal may grant interim measures if the requesting party has satisfied the tribunal of the reasonable prospects of success on the merits of the claim and the requisite harm that will arise in the absence of such an order.	The tribunal may grant interim measures pursuant to Article 10.1. Parties may seek such measures from competent courts for urgency reasons.
Award (incl. award on costs)	The tribunal must issue a reasoned award in writing. It may allocate costs (legal and arbitration) as it deems appropriate, considering the circumstances and conduct of the parties. This is detailed in Article 33 and 34.	Awards are governed by Section four of the Rules. The tribunal shall provide reasons for the final award and such an award is final and binding on all parties. Unless otherwise specified (including costs awards), a time limit on the rendering of the award will be at the discretion of the tribunal.	Article 42 dictates that the tribunal ought to issue an award in writing, signed by all the arbitrators on the matter. The tribunal ought to also issue reasons as to why such an award was rendered, this is of course unless the parties agree otherwise. These awards include an award on costs.	Rules 29 and 31 provide that the tribunal's award must be reasoned and provided in writing and may include an order for costs on the general principle that the costs reflect the parties' relative success and failure.	According to Article 38, the tribunal's award must state the reasons on which the award is based. On delivery of the award, the tribunal will also provide the total amount of costs in the arbitration.	Article 34 provides that the award must be reasoned and issued in writing. In addition, the tribunal may determine the allocation of costs to be included in the final award.	Pursuant to Articles 22 and 24, the tribunal must issue a reasoned award in writing which also includes a decision on the total amount of costs in the arbitration and their allocation between the parties.

	Arbitration Foundation of Southern Africa (AFSA)	Cairo Regional Centre for International Commercial Arbitration (CRCICA)	Lagos Chamber of Commerce International Arbitration Centre (LACIAC)	Nairobi Centre for International Arbitration (NCIA)	Kigali International Arbitration Centre (KIAC)	Mauritius International Arbitration Centre (MIAC)	Common Court of Justice and Arbitration (CCJA)
Appealability	As dictated in Article 33(9), awards are final and binding. By submitting the dispute to arbitration under the International Rules, the parties undertake to carry out an award without delay and shall be deemed to have waived their right to any form of recourse insofar as such waiver can validly be made.	Awards are final and binding and as per Article 34(2) and (5) of the rules a draft of the award is sent to the Centre for review as to its form to avoid being set aside from the courts on the procedural aspects.	As outlined in Article 42(2), once issued the awards are final and binding and the rules do not provide for appeal mechanisms. The parties can, however, request clerical corrections an additional award on issues presented but not decided in the final award.	According to Rule 29, the NCIA awards are conclusive and binding and may be appealed under the provisions of the relevant domestic and international legislation.	Article 39 provides that KIAC awards are final and binding and parties waive their right to any form of appeal, review or recourse to any other judicial authority by submitting the dispute to arbitration under the KIAC rules.	In terms of Article 34, MCIA awards are final and binding and the Rules do not provide for appeal mechanisms.	Article 27 provides that the awards are final and binding and the Rules do not provide for appeal mechanisms. The drafts of the partial and final awards are reviewed by the Court of the Centre.
Costs and Fees	Article 35 sets out all the costs involved in such a process, which may include tribunal fees, administrative fees, and other expenses. A Schedule of Costs is annexed to the Rules. The tribunal may apportion costs between parties.	The total costs and fees are dispute dependent the CRCICA Arbitration Costs Calculator is available on the CRCICA website, and the full fees breakdown is accessible in Annex 1	Section V details the provision pertaining to costs. The cost of arbitration shall be borne by the unsuccessful party unless otherwise determined by the parties, the tribunal may also decide to apportion costs to parties if it deems it appropriate in the circumstances	In terms of Rule 31, the parties are jointly and severally liable for the arbitration costs which are comprised of administrative fees and other expenses to be calculated in accordance with Part 3 and Part 4 of Schedule 1 of the Rules.	In terms of Article 42, costs include administrative expenses and arbitrator's fees, which are determined according to the sum in dispute. Unless the parties agree otherwise, the tribunal may apportion the costs between parties.	According to Article 40, costs in the final award are fixed by the tribunal and include fees and expenses incurred by the arbitrators and by the parties in relation to the proceedings. The tribunal may apportion the costs if considered to be reasonable.	Article 24 sets out all the Costs involved in such a process, which may include tribunal fees, administrative fees of the CCJA, and other expenses.
Confidentiality	As per Article 36, proceedings are confidential. AFSA, the tribunal, and parties must not disclose information unless required by law or agreed otherwise.	As per Article 54 of the Rules, proceedings are confidential unless otherwise agreed by the parties.	Article 42(7) generally provides that the arbitral proceedings and the resulting award shall remain confidential, except where disclosure is mandated by applicable law or expressly authorised by both parties.	Rule 34 provides that the proceedings and award are confidential unless otherwise required by law or where the parties' consent in writing to disclosure of the award.	Article 48 provides that the proceedings and award are confidential and may not be disclosed without written consent from all parties or where required by law.	Article 34 provides that the award may be publicly disclosed if required by a legal duty, to protect or pursue a legal right, or in relation to proceedings before another competent authority or court.	As per Article 14, proceedings are confidential. CCJA, the tribunal, the parties and their counsel, and any other person involved in the proceedings must not disclose any information.

	Arbitration Foundation of Southern Africa (AFSA)	Cairo Regional Centre for International Commercial Arbitration (CRCICA)	Lagos Chamber of Commerce International Arbitration Centre (LACIAC)	Nairobi Centre for International Arbitration (NCIA)	Kigali International Arbitration Centre (KIAC)	Mauritius International Arbitration Centre (MIAC)	Common Court of Justice and Arbitration (CCJA)
Expedited Arbitration	Article 10 of the International Rules allow for expedited procedures in cases of lower value or urgency, with shorter timelines and simplified processes.	Expediated arbitrations are available usually for disputes with a relatively low quantum and or unless otherwise agreed to by parties. The entire process is outlined and gov-erned by Annex 3.	The LACIAC makes provision for the Fast Track Procedure, which is a streamlined arbitration process designed to resolve disputes more quickly and cost-effectively. It is de-tailed in Annex III of the Rules.	In terms of Rule 28, emergency proceedings may be conducted with expedited timelines and processes on application and written request.	Articles 5 and 34 of the Rules allow for expedited proceedings – following a request for interim measures – which may be conducted as the arbitrator deems fit, considering the urgency of the appli-cation.	Under Article 17, the tribunal may shorten any prescribed time periods on agreement between the parties.	The CCJA Arbi-tration Rules do not provide for an Expedited Arbitration. Under Article 15, the tribunal and the parties agree on a procedural calendar.
Special Provisions	AFSA's special provisions Includes provisions for • Joinder, consolidation (Articles 29 and 30) • Emergency arbitration, and the role of the AFSA Court and Secretariat in supervising proceedings (Article 11) • Early dismissal (Article 12) • Third party funding (Article 27)	A few special provisions include: • Emergency Arbitrator Provisions (Annex 2) • Joinder and Consolidation (Articles 17 and 50) • Confidentiality Clauses (Article 54) • Virtual hearings (Article 5(2) and 28(2)) • Early dismissal of claims (Article 52) • Third-party Funding disclosures (Article 53)	The special provision are as follows: • Emergency arbitrator provisions (Article 33 read with Annex V) • Expanded provisions for interim relief (Article 32) • Fast track arbitration rules (Annex III) • Guidance for online dispute resolution (Protocol for the Management of Virtual Proceedings [2020])	NCIA provides for the following special provisions: • Joinder and consolidation Rule 16 and 17)	KIAC provides for several special provisions including: • Joinder (Article 8) • Consolidation (Article 11)	Article 17 allows for the joinder of third persons in arbitration proceedings.	CCJA Arbitration Rules provides for the following special provisions: • compulsory or voluntary intervention by a party to proceedings (Articles 8-1 and 8-2) • Multiple parties and multiple contracts involved (Articles 8-3 and 8-4) • Annulment and revision proceedings against CCJA awards are brought before the Court of the CCJA (Chapter 3)

*Disclaimer: The above is a compilation of the most regarded and used arbitral institutions on the continent and summarise the main features of these different rules, without any specific recommendation to use them

Algeria



Introduction

Algeria's legal system is derived from the Constitution of 28 November 1996 amended on 30 December 2020, and from Organic Law No. 22-10 of 09 June 2022 on judicial organisation.

The Algerian legal system is widely viewed as a civil law system based on codified laws. Islamic law plays a role in specific areas including personal status, family and inheritance matters.

Litigation

1. How are the legal professions organised?

The practice of law in Algeria is governed by Law No. 13-07 of 29 October 2013 on the organisation of the legal profession.

Candidates for the legal profession must be registered with the Algerian Bar and meet certain requirements, including:

- having Algerian nationality (subject to mutual recognition agreements with other countries);
- holding a law degree (*licence en droit*) or a recognised equivalent diploma;
- holding a certificate of capacity to practise law (CAPA)
- not being deprived of their citizens' rights (to vote, stand for election, etc.);
- not having been convicted of any criminal offence against honour and good morals;
- meeting the physical and psychological requirements for practicing law.

The profession is organised by the Bar Association (*Conseil de l'Ordre*), which makes sure that members abide by the rules governing the profession and takes any necessary disciplinary action.

No one can claim status as a lawyer unless registered on the list of lawyers admitted to the Bar. Any breach of this rule is punishable under the Algerian Criminal Code.

The practice of the law is incompatible, for instance, with holding any administrative or judicial office, as well as with any role involving the management or administration of a company

or enterprise, whether public or private. It is also incompatible with all commercial or industrial activities..

Lawyers admitted to the Bar may appear before any court. They may practise either individually or as part of an organisation.

There is no distinction between solicitors (*avocat conseil*) and barristers (*avocat plaidant*).

Foreign lawyers can appear before the Algerian courts with permission from the President of the Bar (*bâtonnier*) for the relevant court. A reciprocity rule also applies under certain agreements entered into between the Bar Associations of each country.

2. How is the court system structured?

Algeria's judicial system comprises **ordinary courts** and **administrative courts**.

The Algerian judicial system is organized in three hierarchical tiers:

• Courts of First Instance (Courts of Original Jurisdiction)

- In the civil judicial system there are:
 - **Civil Courts** with jurisdiction to hear all civil law matters.
 - **Specialized Commercial Courts** (*Tribunal de commerce spécialisé*) with jurisdiction to hear commercial matters.
- **Administrative Courts** with jurisdiction to hear disputes involving public administration and administrative law.

• Courts of Appeal

- **Ordinary Courts of Appeal** which review decisions handed down by the Civil and Specialized Commercial courts.
- **Administrative Courts of Appeal** which review decisions from the lower administrative courts.

• Supreme Judicial Bodies

- **Supreme Court (Cour suprême)**: the highest court for all ordinary (non-administrative) matters. Its jurisdiction is limited to examining the correct application of legal rules by lower courts; it does not reconsider any questions of fact.
- **Council of State (Conseil d'État)**: the highest administrative court. It reviews both the legal and factual findings in decisions issued by the administrative courts.

Conflicts of Jurisdiction

Given the dual structure of the judiciary system, disputes may arise over which court has jurisdiction to hear a particular case. This is especially likely to occur in cases involving both civil and administrative elements. Conflicts are settled by the **Conflicts Tribunal (*Tribunal de Conflits*)**, a specialized court tasked with resolving jurisdictional disputes between the ordinary and administrative courts.

In accordance with Organic Law No. 22-10 on judicial organisation, Law No. 22-13, enacted in 2022, made substantial amendments to Law No. 08-09 which governs civil and administrative procedures in Algeria. This reform aims to modernize the judicial system by:

- **Simplifying procedural rules** to improve accessibility and reduce delays;
- **Recalibrating the powers and jurisdiction** of both ordinary and administrative courts;
- **Enhancing digital communication** within judicial institutions to promote transparency and efficiency;
- **Accelerating case resolution** through mechanisms such as conciliation, mediation, and streamlined enforcement procedures.

The major changes to the judicial system can be summarized as follows:

- Six (6) new administrative courts of appeal and ten (10) new first-instance administrative courts in major provinces to restructure administrative justice and reduce congestion.
- New specialized commercial courts which began operating in 2023 in key economic zones (eg Algiers, Oran). These courts only hear business and commercial disputes, improving the speed and quality of commercial litigation.

In addition, Decree No. 20-04 of 30 August 2020, which amended and supplemented the Criminal Procedure Code, established an Economic and Financial Criminal Division. The division handles complex economic and financial crimes, including corruption, money laundering, foreign exchange violations, and is located at the premises of the Algiers Court of Appeal.

3. What are the time limits for bringing civil claims?

In principle, the limitation period for bringing a civil claim (be it contractual, commercial or tort-based) is 15 years from the date on which the related obligation arises. Specific limitation periods apply to certain types of claims, such as:

- periodic and renewable claims (rent, arrears, salaries, wages and pensions): five years
- claims involving taxes and duties owed to the State: four years
- claims relating to debts owed to doctors, surgeons, dentists, midwives, pharmacists, lawyers, engineers, architects, experts, trustees, brokers, professors or teachers as part of their work: two years

Parties cannot alter the limitation period by private agreement.

The limitation period stops running with the filing of a claim (even in a court that does not have jurisdiction), with a formal

notice to pay (*commandement de payer*), attachment (*saisie*), or the debtor's express or implied acknowledgement of the creditor's right.

A decision definitively settling the dispute or settling any procedural objection that terminates the related proceedings becomes final two (2) years after the date that decision is issued, even if it has not been formally served.

4. Are lawyer-client communications privileged (ie protected from disclosure to a court/tribunal and opposing parties)?

Communications between lawyer and client are legally confidential and privileged.

The principle of confidentiality applies to all communications with clients.

Any breach of the duty of confidentiality may expose the lawyer to disciplinary measures and/or civil liability.

5. How are civil proceedings commenced, and what are the typical procedural phases?

Civil actions are brought by filing a summons with the court registrar. The summons should be signed and dated by the claimant or by the claimant's representative or lawyer. The court registrar will state the first hearing date on all copies of the summons. A copy of the summons is served on the defendant by a bailiff.

At least 20 days must elapse between the date on which the summons is served on the defendant and the date on which the defendant must appear in court, unless provided otherwise by law. This time frame is extended by three months for defendants who live abroad.

In practice, defendants must submit a statement of defence within one to three weeks.

These time limits do not apply to urgent proceedings (*référé*). In cases of extreme urgency, the first court hearing may even take place on the same day the action is filed. The judge will suggest mediation to the parties at the beginning of any trial and before any exchange of arguments. The parties may also ask the judge to officially facilitate their conciliation.

In accordance with Law No. 22-13, a mandatory conciliation process must be undertaken before any legal action before the Specialized Commercial Court can be filed. The request for conciliation is initiated by one of the parties and submitted to the President of the Specialized Commercial Court.

Within five (5) days, the President appoints a judge responsible for conducting the conciliation within no more than three (3) months.

If conciliation is successful, the court issues minutes of conciliation which has the same status as a final judgment (*resjudicata*).

If the conciliation process fails, the court issues minutes of non-conciliation and the case is then brought before the judge on the merits.

6. What is the extent of pre-trial exchange of evidence, and how is evidence presented at trial?

Written and oral evidence (eg contracts, witness statements, etc.) may be submitted depending on the subject of the dispute and the amount at issue. There is no equivalent to the English law concept of “disclosure” in Algerian law.

Evidence is submitted to the court at the same time as written submissions. Evidence may only be presented in the first instance and before the Court of Appeal, and the opposing party must be able to respond to any evidence presented. New evidence cannot be produced before the Supreme Court.

The court may order the production of any evidence a party refuses to disclose. If necessary, this order could include a regular penalty payment for the party’s non-compliance with the time limit and terms for producing evidence. The court may also order the production of evidence by third parties.

The court may appoint one or more experts (*ex officio* or at the request of the parties). Although courts are not bound by the expert report, they may base their decision on its findings. In addition, they must justify any rejection of the expert’s findings. Experts’ fees are determined by the President of the Court based, in particular, on the work carried out, compliance with deadlines, and work quality.

7. What control do parties have over the procedure and timetable? How long do proceedings last?

In principle, the parties do not control the procedure, and the procedural timetable is set at the court’s discretion depending on its caseload and the type of case. Parties can only seek time extensions, which are granted at the court’s discretion. The length of proceedings depends on various factors such as the complexity of the case, the subject matter of the dispute, the court’s workload, and the amount at stake.

In practice, proceedings in a court of first instance normally take approximately two to three months. Proceedings in higher courts (ie, appellate or supreme courts) take approximately three to five months.

The parties can terminate proceedings by mutual agreement (*conciliation*). Claimants may also withdraw their claim (*désistement d’instance*). Depending on the status of the proceedings, a defendant’s approval may be required for a claim to be withdrawn.

8. What interim remedies are available to preserve the parties’ interests pending judgment?

The courts have the power to freeze a party’s assets pending judgment where there is *prima facie* evidence of a good arguable case against the owner of the assets and a credible risk that they may be dissipated to defeat a judgment.

Where appropriate, the court may also issue orders or grant other prohibitory or mandatory injunctions in order to preserve the *status quo* until the trial.

Interim orders can be issued (if appropriate, without notice to defendants) to enable a party to trace the flow of funds through financial institutions, or to enter a defendant’s premises to search for and seize evidence.

In criminal cases, the courts also have jurisdiction to prohibit a defendant or a debtor under a judgment from leaving Algeria.

9. What means of enforcement are available?

Unless immediate enforcement is automatic or has been ordered by the court, a decision is enforceable once it becomes final and *res judicata* (ie once it can no longer be challenged by a third party to the proceedings (*opposition*) or appealed). Judgments issued by administrative courts are immediately enforceable, but enforcement is suspended if an appeal is filed with the Administrative Court of Appeal.

In all cases, an enforcement order is necessary before the judgment can be enforced.

Courts may stay the enforcement of a judgment. A stay should not exceed six months in general, but can be extended to a maximum of one year for seizures of real property.

Enforcement measures available under Algerian law include but are not limited to:

- an auction sale of assets to satisfy the judgment,
- issuance of an order for the debtor (or a corporate debtor’s directors) to disclose all assets; failure to do so results in criminal sanctions.

Enforcement proceedings depend on the type of assets at stake (seizures of moveable assets or of real property).

For prohibitory or mandatory injunctions, there are few practical means of enforcement in cases of non-compliance. The only means of enforcement is through court-ordered penalties. There is no “contempt of court” in Algeria, so the courts use monetary penalties to indirectly compel the judgment debtor’s compliance.

10. Does the court have the power to order costs? Are foreign claimants required to provide security for costs?

The unsuccessful party bears the court costs unless the court decides otherwise. However, each party covers its own lawyer’s fees. In practice, the courts tend to award very limited amounts to the successful party, which rarely cover the actual costs.

No security for costs can be ordered.

11. On what grounds can parties appeal, and what restrictions apply? Is there a right of further appeal? To what extent is enforcement suspended pending an appeal?

Judgments rendered by courts of first instance may be appealed to the Courts of Appeal within one month from the date on which the judgment is served in person on the unsuccessful party, and within two months if the judgment is not served in person. Orders and interim orders may be appealed within 15 days.

Legal representation before courts of appeal and supreme courts (in both civil and administrative systems) is mandatory.

An appeal suspends enforcement of the judgment. However the courts must order immediate enforcement – when requested to do so – in all cases involving an official instrument, an acknowledged obligation, or a previous decision against a party in a *res judicata* decision.

Appeals to the Supreme Court (*pourvoi*) must be filed no more than two months from the day on which the appellate decision is served in person on the unsuccessful party, or three months if not served in person. Only the Supreme Court may determine whether the rules of law have been correctly applied by the Court of Appeal (appeals to the Supreme Court cannot be based on questions of fact). When ruling, the Supreme Court may either quash the appealed decision (in which case the matter will be remanded to another Court of Appeal), or dismiss the appeal. An appeal before the Supreme Court does not suspend enforcement of the judgment unless it concerns the status or the capacity of an individual, or if it is related to fraud.

12. To what extent can domestic and/or foreign state entities claim immunity from civil proceedings?

Algerian state entities are not entitled to immunity from civil proceedings. Although only the administrative courts have jurisdiction over the official actions (*actes administratifs*) of state entities, disputes involving such entities that are purely matters of civil law may be submitted to the ordinary judicial courts. The assets of State entities cannot, however, be seized for enforcement purposes.

Foreign state entities can only claim immunity under diplomatic immunity rules applicable to diplomats of foreign States, subject to the principle of reciprocity.

13. What are the procedures for having foreign judgments recognised and enforced?

A foreign judgment can be recognised and enforced in Algeria by leave of the Court of First Instance (or the Court of Appeal) with jurisdiction over the defendant's place of residence or, where applicable, the place of enforcement.

An enforcement order (*exequatur*) is granted when the conditions below are fulfilled:

- the foreign judgment was rendered by a competent court in the relevant jurisdiction;
- the judgment is enforceable under the law in which it was rendered and has become final;
- the parties were properly represented;
- the decision is not contrary to Algerian public policy.

In addition, *exequatur* is subject to a condition of reciprocity. Foreign judgments are enforced in Algeria under the same conditions applied by foreign courts when enforcing Algerian judgments.

In practice, *exequatur* is easily obtained if the judgment does not conflict with public policy.

Arbitration

14. Is arbitration law based on the UNCITRAL Model Law? If so, are there any key modifications? If not, what type of arbitration does the law provide for?

The Code of Civil and Administrative Procedure established by Law No. 08/09 of 25 February 2008 entered into force in April 2009, superseding previous regulations on arbitration. The law is not based on the UNCITRAL Model Law.

The law provides for:

- **Domestic arbitration** for disputes between parties domiciled in Algeria. Domestic arbitration is appropriate for disputes involving disposable rights, excluding questions of public policy, and the status and capacity of individuals.
- **International commercial arbitration** when the disputes involve the economic interests of at least two different states.

15. What are the main national arbitration institutions?

The Mediation and Arbitration Centre of the Algerian Chamber of Commerce and Industry is the main national arbitration institution.

16. Are there any restrictions on who may represent the parties to arbitration?

No.

17. What are the formal requirements for an enforceable arbitration agreement?

For domestic arbitrations, the arbitration agreement must be in writing.

For international arbitrations, the arbitration agreement must be in writing "or in any other form of which evidence in writing may be established".

The arbitration agreement can be included either in the contract itself or in a separate document.

The content of the arbitration agreement must meet the requirements set forth in the law selected by the parties, the law governing the dispute, or the law deemed appropriate by the arbitrator(s).

18. Will the courts stay litigation if there is a valid arbitration clause covering the dispute? Does this depend on whether the seat of arbitration is inside or outside the jurisdiction?

If a dispute has already been submitted to arbitration under an arbitration agreement and is subsequently brought before a national court, the court must, if the defendant so requests before a ruling has been made on the merits, hold the proceedings to be inadmissible until the arbitration has ended or the arbitration agreement has expired.

If no request for arbitration has been submitted, the court must also declare the proceedings inadmissible (if the defendant so requests) unless the arbitration agreement is obviously invalid.

19. If the arbitration agreement and any other relevant rules are silent, how many arbitrators are appointed, and who is the appointing authority?

In domestic arbitration, if the parties have not agreed on the number of arbitrators, the arbitral tribunal is made up of a single arbitrator or an odd number of arbitrators.

In international arbitrations, there are no specific rules on the number of arbitrators.

If the parties fail to appoint the arbitrator or arbitrators, any party may apply:

- if the seat of arbitration is in Algeria, to the presiding judge of the court with jurisdiction over the seat of arbitration, or
- if the seat of arbitration is outside Algeria and if the parties have decided to apply Algerian procedural rules, to the presiding judge of the Court of Algiers.

If the arbitration agreement does not mention the appointing authority, the court with jurisdiction over the place where the agreement was concluded or is performed should be consulted.

20. In what circumstances can parties challenge the appointment of an arbitrator?

Arbitrators may be challenged by a party if:

- they does not possess the qualifications required by the parties;
- the circumstances raise legitimate doubts about the their independence, particularly due to direct or indirect economic or family ties to one of the parties;
- one of the grounds for recusal set out in the rules of arbitration adopted by the parties is met.

A party may only challenge an arbitrator whom the party has appointed (or to whose appointment it contributed) for reasons that arose or were discovered after the appointment.

The arbitral tribunal and the opposing party must be informed of the reason for the challenge at the earliest opportunity. If there is any dispute (and if the parties or the rules of arbitration make no provision for the procedure to follow in these circumstances), the appropriate court will issue an order accepting or refusing the recusal at the request of any party; these orders are not subject to appeal.

21. Does domestic law contain substantive requirements for arbitration proceedings?

The arbitration agreement can establish requirements for the procedure to be followed, either directly or by reference to rules of arbitration. The agreement may also select the procedural rules that will apply to the proceedings.

If the arbitration agreement does not contain any relevant provisions, the arbitral tribunal will establish rules of procedure as needed, either directly or by reference to a law or to rules of arbitration.

22. On what grounds can the court intervene in arbitrations seated inside the jurisdiction?

Local courts can intervene in arbitrator appointments, challenges, and in relation to conservatory measures ordered by an arbitral tribunal (see question 24 below).

23. On what grounds can the court intervene in arbitrations seated outside the jurisdiction?

Please refer to question 22 above.

24. Do arbitrators have powers to grant interim or conservatory relief?

Unless the parties have agreed otherwise, the arbitral tribunal, acting at a party's request, may order any interim or conservatory measures that it deems necessary.

If that party fails to comply with the tribunal's order, the tribunal may seek assistance from the relevant court. The court will then rule on the matter, applying Algerian law and Algerian procedural principles.

The arbitral tribunal or the court may order the requesting party to provide appropriate security when granting interim or conservatory measures.

25. When and in what form must the award be delivered?

If the arbitration agreement or the applicable arbitration rules do not set a time frame for issuing the award, the arbitral tribunal has four months from the date on which the last arbitrator was appointed, or four months from the date on which the case was referred to the tribunal.

The award must be handed down in writing, signed by the arbitrator or arbitrators, and include a brief summary of the parties' claims and arguments. It must provide reasons for the decision and include the following information:

- the arbitrators' first and last names
- the date
- the seat of arbitration
- the parties' first and last names, addresses, the company name of any legal entities and the address of their registered offices
- the first and last names of lawyers or other persons who represented or assisted the parties (if applicable).

26. Can a successful party recover its costs?

The Code of Civil and Administrative Procedure does not state whether costs are borne by the unsuccessful party or by all the parties. In practice, the allocation of costs is settled by the arbitrators.

27. On what grounds can an award from an arbitration seated in the jurisdiction be appealed to the court?

Appeals can be filed against domestic arbitral awards if the parties have not waived their right to appeal in their arbitration agreement. A domestic award may be appealed to the relevant court (based on the seat of arbitration) within one month of being handed down.

An international arbitral award rendered in Algeria can be challenged within one month of its issuance.

As per articles 1058 and 1056 of the Code of Civil Procedure, an international award seated in Algeria can be set aside by the relevant local court under limited circumstances:

- if the tribunal ruled in the absence of an arbitration agreement or under a void or expired arbitration agreement;
- if the tribunal was improperly composed or the sole arbitrator improperly appointed;
- if the tribunal did not comply with its terms of reference;
- if the parties' right to respond was violated;
- if the Tribunal did not give reasons or gave contradictory reasons for its award;
- if the award is contrary to international public policy.

If the parties have waived their right to appeal, they have no remedy other than an application to have the arbitral award set aside.

28. Can a foreign arbitration award be appealed in the local courts?

A foreign arbitration award cannot be appealed in the local courts. An enforcement order (*exequatur*) for an international arbitration award can be appealed, however, on the grounds of article 1056 of the Code of Civil Procedure (see question 27).

29. What are the procedures for the enforcement of: (i) awards rendered in other jurisdictions and (ii) domestic awards?

For international arbitration, the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the New York Convention) was ratified by Algeria in 1989.

It is possible to enforce a foreign arbitral award in Algeria by leave of the President of the Court. The President of the Court can refuse to enforce an award on the grounds of article V of the New York Convention.

For domestic arbitration, awards are made enforceable by order of the presiding judge of the court with jurisdiction over the seat of arbitration. An original copy of the award must be registered by one of the parties with the appropriate court clerk.

30. Are foreign awards readily enforceable in practice?

Domestic courts do not have the power to review foreign arbitral awards. They can only refuse to enforce such awards in accordance with the conditions set out in the New York Convention.

Alternative dispute resolution

31. Are the parties to litigation or arbitration required to consider or submit to any alternative dispute resolution before or during proceedings?

The Code of Civil and Administrative Procedure contains provisions on alternative dispute resolution procedures (mediation and conciliation).

Algerian law requires the court to offer mediation to the parties in all matters except for family and employer-employee cases, and in cases that may infringe public policy.

In addition, the court may act as conciliator at any time during the proceedings with the agreement of the parties.

Reforms

32. Are there likely to be any significant procedural reforms in the near future?

To the best of our knowledge, there are currently no plans to introduce any reforms of civil procedure in the near future.

In line with government policy on digital transformation and the implementation of e-justice, the Algerian Ministry of Justice has recently undertaken significant reforms aimed at modernizing the judicial system.

Algeria has launched a comprehensive modernization initiative to enhance the efficiency, transparency, and accessibility of the justice system. Referred to as the "*modernisation de la justice*," this effort reflects a strategic commitment to adapting judicial institutions to contemporary needs.

As part of this process, the Ministry of Justice has implemented a range of technological measures, including:

- The introduction of remote hearings via videoconference.
- The development of digital platforms to facilitate the electronic filing of documents and provide secure access to case-related information online.

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Angola



Introduction

The Angolan legal framework is based on the Constitution of 2010 and on the Civil Code, which is derived from Portuguese law.

The Angolan legal system is Roman Germanic, largely codified, and supplemented by harmonising decisions of the Government and Parliament, known as “resolutions” which are incorporated into law and are binding. Angolan procedural law is influenced by pre-independence Portuguese legislation.

The courts are independent of political authorities and have a pyramid structure, with the Supreme Court at the apex.

Litigation

1. How is the legal profession organised?

Lawyers in Angola practise as both barristers and solicitors, providing legal services directly to their clients and conducting proceedings in court. There is no split profession.

To be a lawyer and member of the Angolan Bar Association, an individual must:

- be an Angolan citizen,
- hold a degree in law,
- be in full enjoyment of his/her civic rights,
- not have any record of criminal convictions or dishonourable behaviour

A foreign citizen with a law degree from an Angolan University may also become a member of the Bar if Angolan graduates in that foreigner’s country of origin would also be admitted under equal circumstances. In addition, foreigners who have resided in Angola for more than 15 years and were previously members of the Bar under the terms of the preceding regime may become members of the Angolan Bar Association.

2. How is the court system structured?

There are superior courts and lower courts. The superior courts consist of the Constitutional Court (which has exclusive jurisdiction to enforce or interpret the Constitution), the Supreme Court, the Supreme Military Court and the Court of Auditors.

The lower courts consist of Courts of Appeal (with Luanda and Benguela having fully implemented and operational Courts of Appeals since 2021) and County Courts. Courts of Appeal have jurisdiction over County Courts.

Courts of Appeal, County Courts and the Supreme Court are divided according to their speciality.

The Supreme Court hears appeals:

- from Courts of Appeal (if possible, according to the law) and from the lower Courts, where applicable;
- against judges and prosecutors relating to the performance of their duties;
- concerning conflicts of competence and jurisdiction between courts (including divisions of the same court).

3. What are the time limits for bringing civil claims?

Under the Angolan Civil Code, the general limitation period is 20 years. However, certain actions are barred after a period of five years (claims concerning rent or interest and other periodically renewable payment obligations), two years (credits for services rendered by someone practicing one of the liberal professions), or six months (credits from establishments offering accommodation).

For tort claims, the limitation period is three years as from the date on which the injured party became aware of their right to compensation (without prejudice to the general limitation period of 20 years, if it has elapsed from the date of the harmful event).

Parties can agree time limits contractually between themselves, but this does not supersede the provisions of the Civil Code.

4. Are lawyer-client communications privileged (ie, protected from disclosure to a court/tribunal and opposing parties)?

Yes, there is an absolute obligation of confidentiality between lawyer and client.

This obligation only ceases where it is necessary to disclose communications to defend the rights, interests or dignity of the client or the lawyer.

5. How are civil proceedings commenced, and what are the typical procedural phases?

Civil proceedings begin with the filing of summons by the plaintiff.

Once the summons has been submitted, the court clerk reviews it to ensure compliance with all formal requirements. The defendant is then formally summoned. Service is generally performed in person rather than by post, and it is carried out exclusively by court clerks or judicial officers.

The defendant may file a statement of defence within 20 days of the date of the summons. Counterclaims may be introduced at this point, as long as those claims are based on the same facts and legal issues raised in the plaintiff's initial pleading.

If the defendant fails to reply, a default judgment may be entered.

The pleadings should set out the facts and legal grounds upon which the parties rely and key documents should be appended.

In certain cases, depending on the value of the claim, the parties may have a right of rebuttal within only 8 days, and/or a second reply within the same time limit.

6. What is the extent of pre-trial exchange of evidence, and how is evidence presented at trial?

Any documents a party intends to rely on should be submitted either with the summons or the statement of defence. If they are not submitted with the pleadings, documents can be submitted until the close of the trial with the court's permission, which in practice is never withheld. However, the party will be fined unless it can prove that it could not have submitted the evidence along with the pleadings.

The common procedure with witnesses is that they give oral evidence at trial, not written witness statements. Such evidence, together with any documents submitted, is recorded as evidence-in-chief. The other party can cross-examine the witness. At the court's discretion, re-examination may be directed on matters referred to in cross-examination. Judges are allowed to question witnesses directly. A witness cannot be recalled without leave of the court.

The court's permission is required to adduce expert evidence. Such evidence is provided by an industry expert in the form of a written report. Experts may be summoned to the trial in order to provide clarifications.

7. What control do parties have over the procedure and the timetable? How long do proceedings last?

Procedural rules govern certain steps (for example the Angolan Civil Procedure Code contains deadlines for presenting the plaintiff's complaint, the defendant's answer or the plaintiff's reply). However, the courts have ultimate power to control the timetable.

Where procedural deadlines are not complied with, penalties include admission of facts, or sometimes even discontinuance/dismissal of the claim.

Litigation can be a drawn-out process, taking one to two years from initiation to trial.

The government has been taking steps to speed up the justice system. The opening ceremony of the 2025 Judicial Year was held under the motto "For a swift and efficient justice system, let us modernize the courts and value legal professionals," and focused on measures to reduce court congestion, recruit more judges and judicial staff, and invest in qualification and digitization. Despite these efforts, delays and slow proceedings continue to be a challenge for the judicial system.

8. What interim remedies are available to preserve the parties' interests pending judgment?

There are two types of interim remedy that may be sought: specified temporary injunctions and unspecified provisional remedies.

Specified temporary injunctions include requests for attachments, provisional alimony, temporary restitution of possession, and suspension of corporate resolutions.

Unspecified provisional remedies include orders to perform certain actions, a summons ordering the defendant to refrain from certain conduct, or the delivery of movable or immovable assets which are the subject of the action.

9. What means of enforcement are available?

To enforce judgments or orders, a party must commence further proceedings called enforcement proceedings.

The main methods for enforcing judgments are:

- enforcement orders allowing the debtor's assets be located and sold to pay a sum of money delivery of assets
- performing or refraining from engaging in a specific act

10. Does the court have power to order costs? Are foreign claimants required to provide security for costs?

The Judicial Costs Code establishes the amounts due for court fees and related procedural costs.

The courts award costs and determines who will pay those costs and to what extent. Generally, the costs of the legal proceedings are charged to the unsuccessful party. The prevailing party is entitled to reimbursement of the amounts it advanced to the court, including some of its legal fees. However, in cases where each side prevails in part, costs and fees are allocated proportionally to reflect the degree of success.

The parties or their lawyers may briefly address the court on the question of costs before any such award is made. After the parties have been notified of a costs award, they can file a complaint.

Foreign claimants are not required to provide security for costs, and defendants cannot request that the foreign plaintiff pay security.

11. On what grounds can the parties appeal, and what restrictions apply? Is there a right of further appeal? To what extent is enforcement suspended pending an appeal?

There is a general right of appeal against first instance decisions.

The Civil Procedure Code also provides for ordinary and extraordinary appeals:

- ordinary appeals consist of first appeals, review appeals, interlocutory appeals and full court appeals
- extraordinary appeals consist of further appeals and third-party interventions

Generally, an appeal does operate as a stay of the lower court decision unless expressly provided otherwise in the Civil Procedure Code (article 692 of the Angolan Civil Procedure Code).

12. To what extent can domestic and/or foreign state entities claim immunity from civil proceedings?

Domestic and foreign state entities do not have immunity from civil proceedings.

Some domestic state bodies such as public institutions, the Government, ministries, and public agencies are subject to the jurisdiction of the administrative courts, rather than ordinary civilian courts.

13. What are the procedures for having foreign judgments recognised and enforced?

The Angolan Civil Procedure Code states that foreign court judgments and arbitral awards are enforceable in Angola subject to a recognition procedure.

In order to grant recognition:

- there must be no doubt as to the authenticity of the decision;
- the decision must be final and not amenable to appeal under the law of the country where it was rendered;
- the decision must be recognised under Angolan conflict rules;
- the decision must not be contrary to Angolan public policy;
- the defences of *lis pendens* or *res judicata* must be unavailable;
- the defendant must have been duly served, unless Angolan Law has dispensed with service of process or a judgment in default was obtained;
- if the judgment was against an Angolan citizen, it must not contravene the provisions of Angolan private law, where the matter should be settled by such law in accordance with conflict of laws rules in Angola.

Once the judgment has been recognised, the interested party may initiate enforcement proceedings under ordinary civil procedure rules.

Arbitration

14. Is arbitration law based on the UNCITRAL Model Law? If so, are there any key modifications? If not, what type of arbitration does the law provide for?

The Angolan Arbitration Law (Law 16/2003 of 25 July) (the Arbitration Law) is largely based on the old Portuguese Arbitration Law (Law 31/1986 of 29 August), but is also influenced by the UNCITRAL Model Law, without perfectly mirroring it. Notably, contrary to the Model Law, the default rule under the Arbitration Law is that arbitral awards issued in domestic arbitration are subject to appeals on the merits to the

judicial State Courts, unless this right was previously waived by the Parties.

In general terms, the Arbitration Law provides that the procedure should rest on the principles of fair and equal treatment, adversarial process, and a hearing of the parties (article 18). The parties can freely determine what procedural rules will apply to their dispute, including institutional rules (article 16). The parties can also agree that the tribunal will rule according to equity or according to certain institutionalised customs (either domestic or international) (article 24, § 1).

The most innovative features of the Arbitration Law are that it makes specific provision for domestic and institutional arbitration, and for international arbitration.

The law clearly distinguishes “domestic arbitration” from “international arbitration” and makes specific provision for each. An “international arbitration” (articles 40 to 44) is defined as one that covers the settlement of disputes in which international trade interests are at play. The Arbitration Law gives a description of several examples (article 40, § 1). The definition is intended to cover all arbitration proceedings relating to the cross-border movement of goods, services and capital. In an international arbitration, the parties can also choose the language applicable to the procedure. If there is no agreement, the arbitral tribunal will determine the language to be used.

Regarding the production of evidence, the Arbitration Law provides that all kinds of evidence that are legally admissible under general civil law in Angola may be admitted in an arbitration (either by request of the parties, or at the tribunal's initiative (article 21, § 1)).

It should also be noted that the Arbitration Law embodies the general principle that arbitration procedures are independent from the national courts. The principle of “*Kompetenz-Kompetenz*” is embodied in article 31. Nevertheless, the national courts can provide assistance in matters such as the appointment of arbitrators (article 14), document production (article 21), interim measures/preliminary orders (article 22, § 2), deposit of the arbitration award (article 30), setting aside of awards (article 34), appeals (article 36), and enforcement of the award (article 37).

Also, article 4, § 2 institutes the “principle of severability”, under which the invalidity of the contract does not necessarily result in the invalidity of the arbitration agreement.

The Arbitration Law is also supplemented by other important laws on arbitration. For instance, Decree No 04/2006 of 27 February authorises the creation of institutionalised arbitration centres. The Securities Law No 22/15 of 31 August also allows disputes arising between the participants in the securities market to be submitted to arbitration. The Law of Petroleum Activities (Law No. 10/2004 of 12 November) provides in article 89 that arbitration is mandatory in disputes that arise from contractual relations between the Ministry and licensed companies. In such cases, the seat of the arbitration is in Angola, the tribunal must apply Angolan law, and the procedure should be conducted in Portuguese.

Although there is a legal framework for arbitration, actual arbitration practice in Angola is still in its infancy. Angola only became a party to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the New York

Convention) on 6 March 2017 (with its membership entering into force on 4 June 2017), and it only joined the 1965 Washington Convention on the Settlement of Investment Disputes between States and Nationals of other States (ICSID Convention) effective in late 2022.

Nevertheless, given the constant flow of foreign investment into the country and Angola having joined the aforementioned conventions, the use of arbitration to resolve disputes in Angola is growing.

15. What are the formal requirements for an enforceable arbitration agreement?

Under the Angolan Civil Procedure Code and the Arbitration Law, the parties must execute a written agreement (*Convenção de Arbitragem*) that present or future disputes will be submitted to arbitration (articles 1, 2 and 3).

Article 3, § 2 defines a written agreement as one that appears in any document signed by the parties or in any correspondence between them of which there is proof in writing, namely by means of telecommunication, where the arbitration agreement is directly embedded in such documents or correspondence, or if these refer to another written document containing an arbitration agreement.

The agreement must accurately define the scope of the disputes to be addressed and should also clearly express the will and agreement of the parties to refer disputes for arbitration. It should also specify the number of arbitrators (either a sole arbitrator or three arbitrators). Under the Arbitration Law, a tribunal of three arbitrators is the default position, in the absence of an agreement (article 6, § 2). The seat of the arbitration should be specified. If no seat is determined in the agreement or afterwards, the seat will be determined by the arbitrators (who may have a natural tendency to choose Angola as the seat).

16. Will the courts stay litigation if there is a valid arbitration clause covering the dispute? Does depend on whether the seat of the arbitration is inside or outside the jurisdiction?

The courts will stay litigation if there is a valid arbitration clause signed by both parties and if this issue is raised by one of the parties (article 288, §1(e) and article 494, §1(h) of the Civil Procedure Code). Now that Angola has joined the New York Convention, this principle should apply whether the seat of arbitration is inside or outside the jurisdiction.

17. On what grounds can the court intervene in arbitrations seated outside the jurisdiction?

At the request of the parties, the Angolan national courts can support an arbitration with a seat outside Angola, for example, by granting an injunction for the preservation of documents or assets. Otherwise, their intervention is limited to the recognition and enforcement phases.

By contrast, the powers of the court to assist arbitrations seated in Angola are set out in the Angolan Arbitration Law (see question 14 above).

18. Can a foreign arbitration award be appealed in the local courts? If so, on what grounds?

An award rendered outside Angola is not subject to an appeal on the merits before the Angolan courts. The only way to challenge awards in the Angolan courts is to resist their recognition or enforcement, alleging one of the grounds for refusal set out in Article V of the New York Convention.

19. On what grounds can an award from an arbitration seated in the jurisdiction be appealed?

As to arbitral awards rendered in Angola, the Angolan Arbitration Law lays down two different ways to challenge an award: either by appeal (article 36), or by having it set aside (articles 34 and 35).

In domestic arbitrations, contrary to most voluntary arbitration laws and the UNCITRAL Model Law, arbitral awards are subject to appeal on the merits where the parties have not expressly waived this right (waivers may result when reference is had to institutional arbitration rules that exclude the possibility of appeal). Under article 36 of the Arbitration Law, it is possible to use all the forms of appeal that are available for the decisions issued by judicial courts, although applications to appeal a domestic award should be filed at the Supreme Court. However, it should be emphasised that if the parties agree that the tribunal may decide the dispute according to principles of equity, this will necessarily mean that the parties have waived the possibility to appeal.

Domestic awards may also be annulled by the Angolan courts for any of the following reasons (which are found in articles 34 and 35 of the Angolan Arbitration Law):

- the dispute is not able to be settled by arbitration
- the award was rendered by a tribunal with no jurisdiction to hear and decide the case (and if such matter was duly raised during the procedure, the tribunal declared itself as competent or did not rule on the subject)
- the tribunal was improperly constituted (where such irregularity had a decisive influence on the final award)
- expiry of the arbitration agreement
- failure to provide reasons/grounds for the award
- violation of the principles of equality, adversarial process and the principle according to which the parties must be heard where such violation decisively influenced the dispute resolution process (for example, one party was not given a fair hearing)
- the tribunal ruled on matters not within the reference or failed to rule on all matters of dispute put to it
- the tribunal, whenever ruling according to equity, usages, and customs, did not respect the public order principles of the Angolan legal system

Unlike the right to appeal, the right to proceed with an action to set aside is unwaivable by the parties.

The action for annulment must be filed before the Supreme Court within 20 days from the notification of the arbitral award

(article 35, n 1). Depending on the grounds for annulment, the court may remit the award to the tribunal for reconsideration. The right to request annulment of the decision cannot be waived by the parties (article 34, n 6).

If the arbitral award is “international” (in the sense of article 40, as described above), it will not be subject to an appeal, unless the parties have previously agreed this, and, if they have settled the specific terms for the appeal regime (article 44).

20. What are the procedures for enforcing awards rendered in arbitrations seated outside the jurisdiction?

As Angola has been a party to the New York Convention since 2017, the recognition and enforcement procedure should follow the framework set out in the Convention.

It is important to note that Angola acceded subject to the reciprocity reservation, ie that it will apply the Convention only to arbitral awards made in the territory of another State that is both a party to the Convention and a State recognized by Angola.

Where the Convention applies, the enforcement of an award may only be refused in very limited cases:

- The parties to the arbitration agreement were under some incapacity or the agreement is not valid;
- The unsuccessful party was not given proper notice of the appointment of the arbitrator or of the arbitration proceedings, or was otherwise unable to present its case; or
- 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 or, failing such agreement, with the law of the country of arbitration; or
- The award has not yet become 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, that award was made; or
- The subject matter of the dispute is not capable of settlement by arbitration under Angolan law; or
- The recognition or enforcement of the award would be contrary to the public policy of Angola.

The party applying for recognition and enforcement must first provide a copy of the award and of the arbitration agreement (or originals of each) to the court, together with a translation of the referred documents into an official language, where applicable.

The counterparty may file its opposition within ten days of notice of the application.

The competent court for this procedure is the Civil, Administrative, Tax and Customs Chamber of the Supreme Court.

The time it takes to enforce a foreign award depends on the circumstances (court schedule, counterparty opposition, etc.), but as a general rule is unlikely to take less than a year. It should

also be noted that because Angola is a recent member of the New York Convention, Angolan statutes have not yet been fully adapted to ensure that domestic proceedings are consistent with the Convention, which may cause some disarray in applying the Convention in Angola.

21. Are foreign awards readily enforceable in practice?

Before Angola joined the New York Convention, the enforcement of arbitral awards was generally complicated and exclusively dependent on internal contingencies. Depending on the seat of arbitration, certain procedures would have to be followed before a foreign arbitral award could be recognised in Angola, generally by the Angolan courts pursuant to rules from the Angolan Civil Procedure Code. However, if the seat of arbitration was in Portugal, the procedure was more efficient, since the 1995 Treaty between Portugal and Angola on Civil Procedure would apply. The Treaty contains specific provisions on the recognition of foreign judgments and arbitral awards and applies to Angolan recognition of arbitral awards seated in Portugal. Although the Treaty does not make Portuguese arbitral awards enforceable in Angola without recognition, it does make the recognition process easier, clearer and quicker.

Today, with Angola’s accession to the New York Convention, the process is presumably easier although in practice, it has not yet been widely tested. The approximate timescale for recognition and enforcement proceedings is at least one year.

Alternative dispute resolution

22. Are the parties to litigation or arbitration required to consider or submit to any alternative dispute resolution before or during proceedings?

There is no legal requirement to submit to any alternative dispute resolution before or during court or arbitral proceedings unless the parties have an express agreement to that effect.

Reforms

23. Are there likely to be any significant procedural reforms in the near future?

A reform of both the Civil Code and the Civil Procedure Code is currently underway. The proposed reform of the Civil Procedure Code is expected to establish just two types of ordinary appeals. The proposal also places emphasis on the electronic processing of procedural acts, aiming to streamline and modernize judicial proceedings.

The Angolan government is investing in expanding the capacity of the courts, notably through the establishment and operation of new Courts of Appeal.

In June 2025, the Angolan Bar Association (OAA) set up a Working Group for the Implementation of the OAA Arbitration Centre. In a resolution of the National Council dated 24 June 2025, a group of experienced arbitration lawyers was tasked with swiftly and effectively creating the centre and ensuring it is operational.

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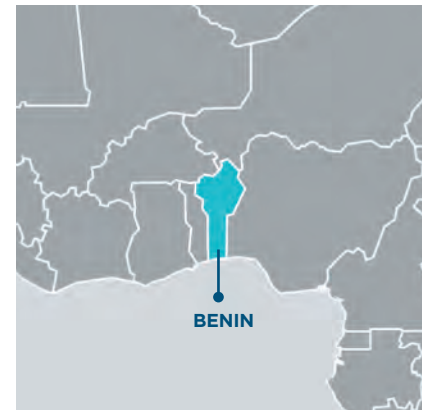
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Benin



Introduction

The legal system of Benin is derived from the Constitution of 11 December 1990, as amended by Law No. 2019-40 of 07 November 2019, and Law No. 2001-37 of 27 August 2002 organising the judicial system of the Republic of Benin, as amended and supplemented by Law No. 2016-15 of 28 July 2016, Law No. 2018-13 of 02 July 2018 and Law No. 2020-08 of 23 April 2020 modernizing the justice system. Benin is also a member of Organization for the Harmonization of Business Law in Africa (OHADA), the West African Monetary and Economic Union (UEMOA) and the Economic Community of West African States (ECOWAS). Any matters not governed by the laws of these inter-governmental bodies are ultimately under the jurisdiction of the Benin Supreme Court (*Cour suprême*).

Litigation

1. How is the legal profession organised?

The legal profession in UEMOA member states – including Benin – is governed by Regulation No. 05/CM/UEMOA of 25 September 2014 harmonising the rules governing the legal profession in the UEMOA area.

In order to practice as a lawyer (*avocat*) in Benin, individuals must be registered on the official roster of legal practitioners or on the internship roster of a UEMOA bar association.

In order to be admitted to practice, individuals must also be:

- a national of a UEMOA Member State;
- of sound moral character;
- holders of a Masters II in Law recognised by the African and Malagache Higher Education Council (*Conseil Africain et Malagache de l'Enseignement Supérieur*);
- holders of a Certificate of Aptitude for the Profession of Lawyer (CAPA);
- at least 21 years of age (for interns);
- at least 24 years of age (for legal practitioners)
- in possession of an end-of-internship certificate (legal practitioners)

Judges with at least ten years of judicial practice (provided they have resigned from their seat) and full professors (*agrégés*) of faculties of law do not need a CAPA.

The profession is organised by the Bar Association (*Conseil de l'Ordre*), which ensures that members abide by the rules governing the profession and takes any necessary disciplinary action. Lawyers registered with the Bar (*Barreau*) can appear before any court and assist clients. They can practise either individually or as part of an organisation.

No distinction is made between transactional lawyers (solicitors) and litigators (barristers).

Foreign lawyers can plead before the Beninese courts on an occasional basis provided that Beninese lawyers have reciprocal rights in their home country, and provided the Chairman of the Bar Association (*bâtonnier*) is notified of their intention to do so. They make a courtesy visit to the presiding judge of the relevant court and the Public Prosecutor's representative, if appropriate.

2. How is the court system structured?

The court system is organised into three tiers:

• Courts of original jurisdiction

- The Conciliation Courts (*tribunaux de conciliation*) may hear any claims except as provided by law, particularly matters of civil and criminal law, employment, and personal status. Applications to the Conciliation Court are optional. If the conciliation is successful, the decision is submitted to the General Courts for authentication.
- The General Courts (*tribunaux de première instance*) have ordinary jurisdiction over civil, criminal, employment and public law matters.
- Three Commercial Courts were created by Law No. 2016-15 of 28 July 2016. Only the Cotonou Commercial Court has been established to date.

The 2020 reform created a small claims chamber within the general and commercial courts; they have jurisdiction over monetary claims in which no more than XOF 5,000,000 is at stake. The small claims chamber cannot hear cases pertaining to personal status or the capacity of natural persons, or infringements of privacy or human rights.

• Courts of Appeal

There are six courts of appeal, including three commercial courts of appeal, in the Beninese judicial system.

Ordinary courts of appeal are competent to hear all appeals of lower court decisions within the appellate jurisdiction, provided the appeal is filed within the time limits and according to the procedure required by law.

Three commercial courts of appeal were created by Law No. 2016-15 of 28 July 2016, but they have yet to be effectively set up. Commercial courts of appeal have jurisdiction over all decisions handed down by lower commercial courts that are appealed within the time limits and according to the procedure required by law.

• Supreme Court

This is the highest court of the land for ordinary judicial matters, administrative law, and Government accounts.

The Common Court of Justice and Arbitration (CCJA) is the highest court to hear matters involving the application of OHADA law.

3. What are the time limits for bringing civil claims?

Limitation periods vary depending on the type of action and the parties involved:

- the ordinary limitation period for bringing an action for damages in contract is 30 years (pre-1960 French Civil Code)
- the ordinary limitation period for bringing a non-contractual action for damages is 30 years (pre-1960 French Civil Code)
- the limitation period for commercial actions is five years (Art. 16 of the OHADA Uniform Act on General Commercial Law)

Limitation periods are a matter of public policy. Specific limitation periods apply to certain types of actions. For example, the time limit is two years for commercial sales, while the limitation period for transport cases is one year as from the date of delivery or, if no delivery was made, from the scheduled date of delivery.

A limitation period is generally suspended by the commencement of legal proceedings, even if these are brought before a court without jurisdiction, by agreement, or by an acknowledgment of debt.

4. Are lawyer-client communications privileged?

Communications between lawyers and clients are confidential. Lawyers found to have breached their duty of confidentiality face disciplinary action from the Bar Association. However, clients can release their lawyers from their duty of confidentiality.

Lawyers can reveal certain communications in their own defence. This is true, for example, if the lawyer has been informed of the client's intent to commit a criminal offense or in cases of money laundering.

5. How are civil proceedings commenced, and what is the typical procedure which is then followed?

Civil or commercial proceedings are filed with the court by written petition to the presiding judge for claims involving real and personal property (when the amount in dispute does not exceed XOF 500,000), by joint petition, or for small claims, by summons or a standard form in which the claimant calls the defendant to appear before the competent court.

The intervals to be observed between the issue date of the notice or summons to appear in court and the hearing date are as follows: eight days if the party receiving the notice is domiciled within the jurisdiction of the court; 15 days if they are domiciled in an adjoining jurisdiction, one month for other areas in Benin, and two months for parties domiciled outside Benin. These limits do not apply to urgent matters.

There is no particular timeframe for defendants to submit their arguments under Beninese law.

In matters of employment, small claims, personal status, bankruptcy, wage garnishment, and orders to pay, a pre-trial conciliation effort is mandatory.

6. What is the extent of the pre-trial exchange of evidence, and how is evidence presented at trial?

As a general rule, all ordinary legal forms of evidence (notarised agreements, testimony, private instruments, sworn statements, etc.) are permitted. It is possible to ask the judge to order a litigant or a third party to produce evidence, subject to penalty payments.

There is no equivalent to the English concept of "disclosure" under Beninese law.

Evidence must be disclosed along with the party's claims. Accordingly, the case management judge can take any necessary steps to fully prepare the case. An expert investigation is ordered where findings or opinions from the parties are not sufficiently informative for the court to make a decision. New evidence may be produced on appeal prior to deliberations.

The Supreme Court, however, only rules on issues of law already raised before the Court of Appeal; producing new evidence at this stage is generally not advisable, but it is not prohibited by law.

7. To what extent are the parties able to control the procedure and the timetable? How long do proceedings last?

The parties do not control the procedure. Once proceedings have commenced, the timetable is set at the court's discretion. In practice it depends on various factors, such as the complexity of the case, the degree of urgency and the court's caseload. Nevertheless, the parties may end the proceedings at any time by mutual agreement. If conciliation has failed to resolve small claims, enforcement, or employment matters, the parties and the judge agree on the timetable for proceedings.

8. What interim remedies are available to preserve the parties' interests pending judgment?

Interim remedies are available in Benin to protect parties' interests pending a judgment on the merits:

- **Interim proceedings** (*référé*) allow a party to obtain an urgent interim ruling without prejudice to the court's decision on the merits of the case. Interim applications are considered at a hearing held by the presiding judge of the court further to a summons.

An interlocutory order can be issued in any urgent matter that cannot seriously be contested, or to put an end to a clearly unlawful disturbance or prevent imminent harm even in cases that are seriously contested.

- **Conservatory measures** can be ordered based on a *prima facie* claim in circumstances where recovery is in jeopardy (Art. 54 of the OHADA Uniform Act on Simplified Recovery Procedures and Enforcement Measures).
- **Ex parte orders** (*ordonnances sur requête*) can be issued by the presiding judge of the court to protect the parties' rights and interests without giving all parties an opportunity to respond if circumstances so require. Ex parte orders are immediately enforceable.

9. What means of enforcement are available?

Judgments are only enforceable once they are *res judicata* and can no longer be appealed with suspensive effect, unless there is an automatic right to or a specific order for immediate enforcement. Unsuccessful parties may be able to obtain a grace period.

The enforcement measures available under Beninese law are those provided for in the OHADA Uniform Act Organising Simplified Recovery Procedures and Measures of Execution. There is a new OHADA Uniform Act on Simplified Recovery Procedures and Enforcement Measures (17 October 2023) that simplifies and streamlines certain enforcement procedures in all OHADA Member States:

- **Seizure for sale** (*saisie-vente*): any creditor in possession of an enforcement order showing a debt due for immediate payment may have the debtor's tangible, moveable property seized and sold in order to recover the debt from the sale price.
- **Seizure of unharvested crops** (*saisie des récoltes sur pied*): a creditor in possession of an enforcement right may have unharvested crops seized and sold to recover the debt.
- **Wage garnishment** (*saisie des rémunérations*): a creditor may have a defined portion of the debtor's salary seized.
- **Third party debt order** (*saisie-attribution de créances*): any creditor in possession of an enforcement order showing a debt due for immediate payment may have receivables owed to the relevant debtor by a third party seized from that third party.
- **Seizure of moveable property** (*saisie apprehension*): a creditor in possession of an enforcement right may have moveable property delivered or returned.
- **Seizure and sale of shareholding rights and securities** (*saisie vente des droits d'associés et valeurs mobilières*): a creditor with an enforceable right to recover a debt due for immediate payment may have securities seized from the Company or issuer, or from any agent entrusted with storing or managing those securities.

- **Penalty payment** (*astreinte*): creditors who obtain an injunction from a court ordering their debtors to either perform or cease and desist from a particular action may ask the court to combine the injunction with a penalty payable for each day/week/month of delay or non-compliance. The penalty is now be paid to the State.
- **Property foreclosure** (*saisie immobilière*) a creditor with an enforcement right may have the debtor's real property seized and sold.
- **Seizure of business assets**: any creditor with an enforceable title establishing a due debt may have business assets belonging to their debtor seized and sold in order to obtain payment, after serving a payment order.

10. Does the court have power to order costs? Are foreign claimants required to provide security for costs?

Yes, the courts may order the unsuccessful party to bear the court costs, or divide the costs between the parties. In principle, each party pays its own legal fees. However if the court finds there has been an abuse of process, it may order one party to cover the other's legal fees.

Anyone wishing to appeal to the Supreme Court must deposit sufficient funds to cover the court costs. Save as provided otherwise by international agreement, foreign claimants may be asked, at the defendant's request, to pay a deposit to cover any damages or other expenses the foreign party may later be ordered to pay. Security cannot be required for interim matters, or when a foreign claimant challenges a seizure or owns real property of sufficient worth to cover any amounts awarded.

11. On what grounds can the parties appeal, and what restrictions apply? To what extent is enforcement suspended pending an appeal? Is there a right of further appeal?

Parties have 15 days to appeal first instance judgments in non-contentious matters or in commercial litigation, and one month for ordinary litigation. Appeals must be filed by way of a summons or a petition addressed to the court registrar. New claims cannot be made on appeal, except to offset related claims or where the new claim is an argument in defence against the main claim. If filed in due time, appeals suspend the enforcement of the lower court judgment unless the court has ordered immediate enforcement. Petitioners must have been party to the original proceedings to lodge an appeal.

When appeals are made to the Supreme Court, they do not suspend the appellate judgement unless the case involves personal status, forgery, real property, or a criminal conviction. The Supreme Court only rules on issues of law, not fact. If an appeal to the Supreme Court is successful, the case is remanded to a new court for a second judgment. Although in principle, the court of remand is not required to abide by the Supreme Court's decision, in practice it generally does so.

12. To what extent can domestic and/or foreign State entities claim immunity from civil proceedings?

Proceedings can be brought against the Government or public authorities in ordinary and administrative courts, although the Government has immunity from enforcement. State-owned companies also have immunity from enforcement, but not from jurisdiction.

They can rely on immunity derived from international agreements on diplomatic or consular relationships.

13. What are the procedures for having foreign judgments recognised and enforced?

In Benin, foreign judgments are automatically deemed final and binding if they meet the following conditions:

- the dispute is plainly connected to the country in which the case was brought and the forum was selected in good faith;
- the decision is final, binding and enforceable under the laws of that country;
- the parties were served, represented, or found in default with due process of law;
- the decision is not contrary to public policy rules in Benin.

However if a dispute between the same parties over the same subject matter is pending in Beninese court, foreign judgments will not be considered *res judicata* (Art. 1160 of the Code of Civil, Commercial, Employment, Administrative and Accounting Procedure (“CPCCSAC”).

Enforcement decisions are made by the presiding judge of the General Court or the Commercial Court in the jurisdiction where the judgment is to be enforced, regardless of the amount in dispute. The presiding judge simply verifies that the judgment meets the above conditions.

Arbitration

14. Is the arbitration law based on the UNCITRAL Model Law? If so, does it include any key modifications? If not, what type of arbitration does the law provide for?

Benin is a Member State of OHADA (*Organisation pour l'Harmonisation en Afrique du Droit des Affaires* – Organisation for the Harmonisation of Business Law in Africa). The OHADA Treaty was first signed on 17 October 1993 and amended on 17 October 2008. Under the Treaty, the Council of Ministers adopt “uniform acts” that are directly applicable and enforceable in all Member States. Arbitration is therefore governed by the Uniform Act on Arbitration (the “UAA”) adopted on 23 November 2017, replacing the Uniform Act of 11 March 1999.

The UAA is not based on the UNCITRAL Model Law. It was drafted separately but is nevertheless consistent with the fundamental principles of international commercial arbitration and the main features of the UNCITRAL Model Law.

The UAA applies to both national and international arbitration and governs all arbitration proceedings with a seat in a Member State.

One of the most important features of OHADA arbitration is the Common Court of Justice and Arbitration (**CCJA**), which acts as both a permanent arbitration institution and a supreme court of arbitration for OHADA Member States.

Prior to the adoption of the UAA, arbitration law was governed by French arbitration laws from the 1960s, namely articles 1003 to 1028 of the French Civil Procedure Code of 1806, and the law of 31 December 1925 on the legality of an arbitration clause in commercial matters and case law. These rules are no longer applicable, and the UAA is now the source for the general body of law governing arbitration.

15. What are the main national arbitration institutions?

The main arbitration institution in Benin is the *Centre d'arbitrage et de médiation et de conciliation* (**CAMEC**) of the Chamber of Commerce and Industry in Cotonou. A second arbitration institution, the *Chambre de conciliation et d'arbitrage* of the *Association interprofessionnelle du coton* (**AIC**), also located in Cotonou, caters for the cotton industry.

At the supranational level, the CCJA created by the OHADA Treaty is based in Abidjan, in Ivory Coast. The CCJA acts as an arbitration centre and administers proceedings governed by the CCJA Rules of Arbitration. The CCJA is different from other arbitration centres as it is not a private institution but was created and organised by OHADA.

Arbitration clauses, especially clauses providing for CCJA arbitration, are increasingly common in Benin.

16. Are there any restrictions on who may represent the parties to arbitration?

The UAA does not set any restrictions on who can represent parties in an arbitration. Parties are entitled but not required to instruct counsel (Art. 20 of the UAA), and they may be represented by foreign counsel in arbitration with its seat in Benin.

17. What are the formal requirements for an enforceable arbitration agreement?

Article 3-1 of the UAA states that the arbitration agreement must be made in writing or by any other means whereby its existence can be demonstrated. No particular format is required. The UAA also provides that contracts can include an arbitration agreement by reference to a separate document.

The courts generally construe this requirement broadly.

18. Will the courts stay litigation if there is a valid arbitration clause covering the dispute? Does this depend on whether the seat of arbitration is inside or outside the jurisdiction?

Article 13 of the UAA provides that national courts must decline jurisdiction where there is an arbitration agreement and where the arbitral tribunal has not yet been composed, unless the arbitration agreement is “manifestly void”. Courts cannot decline jurisdiction of their own motion.

If the arbitral tribunal has already been composed, the national court must decline jurisdiction at the request of a party. This is true whether the seat of arbitration is located inside or outside the jurisdiction of the court.

The Cotonou Supreme Court and even the Benin Supreme Court have had occasion to apply article 13 of the UAA.

Parties governed by an arbitration agreement do have the option to apply to a national court to obtain interim or conservatory measures that do not require a review of the case on the merits, in circumstances that are “clearly shown” to be urgent.

National courts can also intervene in very limited circumstances with a view to assisting the arbitration process (see questions 22 and 23 below).

If the seat of arbitration is outside the OHADA area, ordinary arbitration law applies, rather than the UAA. In such cases, the Beninese court will decline jurisdiction provided there is an arbitration agreement and the dispute is amenable to arbitration.

19. If the arbitration agreement is silent, how many arbitrators are appointed, and who is the appointing authority?

Article 5 of the UAA, amended in 2017, provides that an arbitral tribunal must have a sole arbitrator or three arbitrators, and if the arbitration agreement is silent on this point, the tribunal will consist of a sole arbitrator.

If the parties have agreed that two arbitrators will be appointed, they must select a third by mutual agreement (Art. 6 of the UAA). If the arbitrator or arbitrators have not been appointed by the parties, the task falls to the competent court in the Member State of the seat, which must issue a decision within fifteen days of receiving an application from one of the parties (Art. 6 of the UAA).

20. In what circumstances can parties challenge the appointment of an arbitrator?

Articles 7 and 8 of the UAA set the rules for recusal. An arbitrator must disclose “any circumstance that could create a legitimate doubt in the mind of the parties about the arbitrator’s independence and impartiality”.

Any grounds for recusal must be raised within no more than thirty days from discovery of the material fact relied on by the party seeking recusal.

Arbitrators may only be challenged for reasons that come to light after their appointment.

If no other choice has been made, the competent court in the Member State issues a decision within thirty days of receiving a request for recusal. If it fails to do so within that time frame, the court relinquishes jurisdiction and the most diligent party may submit the challenge to the CCJA.

Decisions by a domestic competent court dismissing a challenge can be appealed to the CCJA.

21. Does domestic law contain public policy requirements for the procedure to be followed?

Under the UAA, parties must receive equal treatment and have an opportunity to exercise their rights (Art. 9). Arbitrators may not base decisions on grounds raised of their own motion without first giving the parties an opportunity to submit observations (Art. 14).

Article 18 of the UAA provides that deliberations are confidential.

The UAA also provides that arbitration cannot last more than six months from the date on which the last arbitrator accepts the terms of reference, unless that period is extended by agreement of the parties or by the competent court (Art. 12).

22. On what grounds can the court intervene in arbitrations seated inside the jurisdiction?

In principle, if there is an arbitration agreement between the parties, national courts cannot intervene in a dispute until after the award has been issued.

Nevertheless, parties may petition the competent court in Benin in the following circumstances:

- to resolve difficulties encountered with composing the arbitral tribunal, to appoint the sole arbitrator or the third arbitrator (Art. 5 and 8)
- to rule on challenges against arbitrators where the parties have not provided for a different procedure (Art. 8)
- to extend the deadline for the conclusion of the arbitration where there is no agreement between the parties to do so, at the request of a party or the arbitral tribunal (Art. 12)
- to order interim or conservatory measures when urgently necessary (in recognised and reasoned circumstances), provided the measures do not require a review of the case on the merits (Art. 13)
- to assist the arbitral tribunal, at its request, with the collection of evidence (Art. 14)

For provisions of law that pre-date OHADA and/or arbitrations seated outside the OHADA area, reference may be had to the provisions of French law prior to 1960 and to any bilateral agreements.

23. On what grounds can the court intervene in arbitrations seated outside the jurisdiction?

As a general principle, national courts cannot intervene where there is an arbitration agreement. Moreover, any and all issues relating to the composition of the arbitral tribunal and conduct of arbitral proceedings fall under the jurisdiction of the courts of the State of the seat.

24. Do arbitrators have powers to grant interim or conservatory relief?

Article 14 of the UAA authorises the arbitral tribunal to act at the request of either party to order interim or conservatory relief, excluding interim attachment and court-ordered security which are matters for the national courts.

25. When and in what form must the award be delivered?

Save as agreed otherwise by the parties, arbitral awards must be issued within six months from the date on which all of the arbitrators have accepted the terms of reference. This period can be extended by agreement between the parties or by the competent court of the Member State either at the request of a party or the arbitral tribunal (Art. 12 of the UAA).

Parties can set special procedural and formal requirements for awards. If they do not, awards are issued by majority decision (for tribunals with three arbitrators), and the grounds must be stated. Awards must be signed by at least two of the three arbitrators (Art. 19 of the UAA).

26. Can a successful party recover its costs?

The UAA makes no provision for cost recovery.

Where arbitration is conducted under the aegis of the CCJA, arbitrators are empowered to award costs.

27. On what grounds can an award from an arbitration seated in the jurisdiction be appealed to the court?

The only remedy against an arbitral award is an application to set aside brought before the court of appeal for the seat of arbitration (Art. 1170 CPCCSAC and 25 UAA). The application must be filed within one month from the date of service of the award once it has been rendered enforceable (Art. 25 and 27 of the UAA).

The circumstances in which an application to set aside can be brought are as follows:

- the arbitral tribunal ruled without an arbitration agreement or with respect to an invalid or expired agreement;
- the arbitral tribunal was not properly composed;
- the arbitral tribunal did not rule in compliance with the terms of arbitration;
- the right to be heard was not observed;
- the arbitral tribunal breached a public policy rule of the OHADA Member States;
- no reasons were given for the award.

Bringing an application to set aside an arbitral award suspends enforcement of the award, unless the tribunal ordered immediate enforcement. The competent court for such applications in Benin is the Court of Appeal for the seat of arbitration. Its decision can only be appealed to the CCJA.

Set aside applications are the only remedy available to parties in national court. Other remedies – third party opposition and applications for revision of the award – must be submitted to the arbitral tribunal itself (Art. 25).

28. Can a foreign arbitration award be appealed in the local courts? If so, on what grounds?

No. Arbitral awards are not subject to opposition or appeals to a Court of Appeal or Supreme Court (Art. 25 of the UAA).

29. What are the procedures for the enforcement of: (i) awards rendered in other jurisdictions and (ii) domestic awards?

To enforce awards issued in an OHADA Member State, the UAA requires parties to obtain an enforcement order, or exequatur, from the competent Member State court.

In Benin, petitions for enforcement orders are submitted to the presiding judge of the court in the jurisdiction where enforcement is sought (Art. 1168 and 1169 CPCCSAC). A hearing of all parties is not required for exequatur proceedings under OHADA rules (Art. 31 UAA).

In Benin, the presiding judge of the competent court to which an application for recognition or exequatur is presented must rule no more than fifteen days after receiving the application. If no ruling is issued in that time frame, exequatur is deemed to have been granted (Art. 31 UAA).

For exequatur proceedings, the original arbitral award must be produced, together with the arbitration agreement or copies of these documents meeting authentication requirements and, where relevant, a certified translation into French (Art. 31 UAA).

Decisions refusing to recognise an arbitral award can be appealed to the CCJA, but decisions granting recognition are not subject to appeal (Art. 32 UAA).

Awards issued in a one OHADA Member State are recognised in other Member States under the conditions set out in the applicable international agreements or if not, under the conditions stated in the UAA.¹

Benin is party to the New York Convention on Recognition and Enforcement of Foreign Arbitral Awards (the New York Convention), which facilitates the enforcement of foreign arbitration awards. For awards issued in a non-OHADA State, there are no special requirements regarding the documents to be produced, type of proceedings (adversarial or ex parte), scope of review, available appeals, or suspensive effect of appeals. Accordingly, the rules of international private law apply, and in particular international and bilateral conventions on the recognition of foreign awards and/or judgments. The potential conditions for seeking enforcement must therefore be considered on a case-by-case basis, having regard to the seat of arbitration.

30. Are foreign awards readily enforceable in practice?

In practice, foreign awards are readily enforceable in Benin, although there are not many concrete examples.

Alternative dispute resolution

31. Are the parties to litigation or arbitration required to consider or submit to any alternative dispute resolution before or during proceedings?

Subject to specific provisions applicable in certain areas of law (eg in employment disputes or small claims for which parties must always undertake preliminary conciliation), parties are not obliged to undertake conciliation or mediation proceedings prior to legal action.

However, either party may request conciliation or mediation for the dispute when the proceedings are first filed and before any arguments have been submitted on the merits (Art. 494, CPCCSAC). The parties may also go to conciliation or mediation at any time during the proceedings, either of their own accord or at the court's initiative (Art. 495, CPCCSAC).

1. Article 34 of the UAA does not expressly refer to foreign awards. Nevertheless, legal authors agree that it does apply to foreign awards. It may be advisable to verify this point with local counsel.

Reforms

32. Are there likely to be any significant procedural reforms in the near future?

To the best of our knowledge, there are currently no plans for any significant reforms of civil or commercial procedure in the near future.

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Botswana



Introduction

The Botswana legal system combines elements of English common law, Roman-Dutch law and Customary law, which is the indigenous law of the land. There is a Constitution and a substantial number of the laws are codified in statutes.

Litigation

1. What is the structure of the legal profession?

Lawyers in Botswana practise as attorneys and advocates; there is no split profession. All lawyers have rights of audience before all trial courts except the Customary Courts.

Training as a lawyer in Botswana typically involves an academic stage and a pupillage stage.

During the academic stage one must first obtain a Bachelor of Laws (LLB) degree from the University of Botswana. The duration of the programme is five years. After completing this, the graduate qualifies to be admitted as a legal practitioner provided, he or she fulfils the requirements under the Legal Practitioners Act, namely that he or she is a fit and proper person to practise, has obtained an LLB degree and passed such practical examinations as may be prescribed.

After admission and enrolment, a legal practitioner who intends to practise must undergo a pupillage of at least 12 months under a pupil master of not less than seven years' standing. On completion, the pupil obtains a certificate of pupillage which will enable him or her to acquire a practising certificate. Students graduating from the University of Botswana need not complete Bar examinations, whilst students studying at prescribed universities outside Botswana are required to sit them.

Foreign lawyers are permitted to practise in Botswana if they satisfy the High Court that:

- they are a fit and proper person
- they have complied with the education requirements, namely passed the LLB programme and any other exams as may be prescribed
- they have passed the Bar Examination

Foreign lawyers may be exempted from these provisions if they satisfy the court that they are qualified to practise in a prescribed Commonwealth country having a sufficiently analogous system of law.

The Law Society of Botswana is the controlling body of legal practitioners which was set up under the Legal Practitioners Act and deals with complaints against lawyers.

2. What is the structure of the court system?

The judiciary sits in the superior courts and the lower courts. The superior courts consist of the:

- Court of Appeal
- High Court
- Industrial Court

The lower courts consist of the:

- Magistrates' Courts
- Customary Courts
- Land Tribunal

The highest court is the Court of Appeal, which hears appeals from the High Court, Industrial Court and the Customary Court of Appeal. Decisions of the Court of Appeal are binding on all lower courts. The High Court is vested with original unlimited jurisdiction in both criminal and civil matters under section 95 of the Constitution. The High Court also has powers of appeal from lower courts. The Industrial Court is tasked with settling trade disputes and securing and maintaining good industrial relations in the country.

Magistrates have both civil and criminal jurisdiction. Each magistrate grade operates within the limits set out in their warrant schedule. The Customary Courts have civil jurisdiction and criminal jurisdiction. Appeals from the Customary Courts are made to a higher court or the Customary Court of Appeal. The Land Tribunal adjudicates on appeals against the enforcement of Land Boards decisions on the use of tribal land.

3. What are the time limits for bringing civil claims?

Statutory limitation periods for bringing civil claims are set out in the Prescriptions Act (Cap 13:01). The limitation periods vary depending on the cause of action.

A limitation period of 30 years applies in respect of mortgage bonds and court judgments.

A limitation period of six years applies in respect of written contracts including bills of exchange but excluding mortgage bonds.

A three-year limitation period applies in respect of:

- any oral contract
- any remuneration or disbursement due for services rendered or work done
- the price of movables sold and delivered, materials provided or board or lodging supplied
- rent due upon any contract
- interest due upon any contract including a mortgage bond
- actions for damages other than those for which another period is laid down in the Act
- fraud/deceit claims

A one-year limitation period applies in respect of defamation claims and in respect of claims for the reduction/return of the price of defective sold goods (*iactio rebitoria and actio quanti minoris*).

4. Are communications between a lawyer and his/her client privileged (ie protected from disclosure to a court/tribunal and opposing parties)?

Communications between a client and lawyer are privileged and confidential. The client can choose to waive privilege.

5. How are civil proceedings commenced, and what is the typical procedure which is then followed?

Generally, civil proceedings are commenced by filing a writ of summons if proceedings are commenced by way of action, and by filing a notice of motion if proceedings are commenced by way of application. In action proceedings, after being served with the writ of summons, the defendant has 14 days to enter an appearance to defend if the place of service is within 100km of the High Court. If the place of service is more than 100km from the High Court, the defendant has 21 days to respond and enter an appearance to defend.

6. What is the extent of pre-trial exchange of evidence, and how is evidence presented at trial?

The main objective of pre-trial procedures is to facilitate an orderly and speedy trial, which in turn saves costs and reduces attempts to adduce unexpected evidence at trial. In addition, pre-trial procedures may bring to light evidence which may enhance and promote settlement.

The process of discovery of documents in Botswana operates in three successive stages:

- the disclosure of relevant documents including any claims to privilege
- court applications for production of the documents disclosed either for inspection by the opposite party or the court and
- the inspection of documents disclosed, other than those for which privilege or other objection to production is properly claimed

Discovery will not be ordered if the court considers that it is not necessary for the fair disposal of the matter. In addition, there are grounds upon which discovery can be resisted as of right, including if it is incriminatory or penal (privilege against self-incrimination), if it is privileged, or if it is injurious to public interest (public interest immunity).

If any party fails to comply with any order for discovery or inspection of documents, he or she may be subject to committal, or may have his or her case dismissed or struck out.

The usual method of placing evidence before a trial court is by a witness giving *viva voce* evidence in open court (including cross-examination). If a witness cannot give evidence in person, subject to requirements being present, he may be allowed to give evidence by way of interrogatories, or by way of affidavit. There is also provision for video conferencing.

Expert evidence may be admitted, but notice must be given that an expert will be called, including details of what the expert will be called to testify.

The plaintiff will present his or her evidence and close his or her case. Thereafter the defendant will present his or her evidence and close his or her case. The plaintiff has the right to adduce rebuttal evidence in certain circumstances.

7. To what extent are the parties able to control the procedure and the timetable? How quick is the process?

Each claim is allocated a judge once it is filed with the High Court Registry. The judge is responsible for case management and draws up a timetable which both parties must adhere to. The judge is responsible for setting a date for the commencement of the trial. The dates which the judge allocates are subject to change.

The length of the process will depend on the allocation of the case to a judge and what the parties have agreed at the pre-trial conference. Order 42 rule 1(1) deals with pre-trial conferences. The rule provides that an attorney desirous of setting an action down for trial or of obtaining a date for the hearing must request as soon as possible after the close of the pleadings a pre-trial conference with his opposing attorney, with a view to reaching agreement on ways of curtailing the duration of the trial. At the conclusion of the conference, the attorneys must draw up and sign a minute of the matters upon which they are agreed.

At the commencement of the trial, counsel for the respective parties must report whether such conference has been held and if so, provide to the court the signed minute.

Before the trial proceeds, the judge may call into his or her chambers counsel for the parties with a view to securing agreement on any matters likely to curtail the duration of the trial.

8. What interim remedies are available to preserve the parties' interests pending judgment?

The court may, at any time, preserve a party's interest in a case upon that party's application for the relevant interim remedy pending judgment. The available interim remedies include an order for an interlocutory or interim injunction, and custody or preservation of any property which is the subject matter of the suit and is within the court's jurisdiction. An application for an interlocutory or interim injunction or interdict may be made before or after trial.

9. What means of enforcement are available?

Judgments or orders may be enforced by a variety of methods.

Judgments in which the debtor is ordered to pay a sum of money are enforceable against the property of the defendant whether movable, immovable or *incorporeal*, by means of a writ of execution.

Other auxiliary methods of enforcement include attachment of debts or garnishee proceedings and enforcement against the debtor's person, known as civil imprisonment.

Judgments in which a person is ordered to perform, or refrain from performing certain acts are enforceable against the debtor's person by way of committal for contempt.

There are other methods available in respect of maintenance orders and enforcement of foreign civil judgments.

10. Does the Court have power to order costs? Are foreign claimants required to provide security for costs?

The court has discretion to award costs. The loser pays the winner's costs taxed on a "party to party" costs basis, which covers only essential costs of the litigation.

Rule 57 of the High Court provides that foreign claimants may be required to provide security for costs at the request of the defendant if they are not resident within Botswana. The defendant must apply to the court on notice for security for costs.

11. On what ground can the parties appeal, and what restrictions apply? Is there a right of further appeal? To what extent is enforcement suspended pending an appeal?

A party who is not satisfied with a final decision of a court of first instance may, subject to certain instances where leave is required, appeal such decision to a higher court. An appellant can appeal on a point of law or a point of fact. No appeal lies except with the leave of the High Court or Magistrates' Courts from an order made *ex parte*, or by consent, or as to costs only, which by law are left to the discretion of the court.

Enforcement may be suspended pending an appeal. In civil matters, an appeal does not operate as a stay of execution or proceedings under a judgment unless the High Court, Magistrates' Courts or Customary Court so orders, and no intermediate act or proceeding is invalid, except insofar as the court directs.

12. To what extent can domestic and/or foreign State entities claim immunity from civil proceedings?

Generally, domestic State entities cannot claim immunity from civil proceedings. However, the judicial and legislative bodies enjoy a certain degree of immunity. A claim cannot be brought against a judicial officer who acts during proceedings. The National Assembly (Powers and Privileges) Act provides immunity to members of Parliament who act within the precincts of Parliament.

The Diplomatic and Privileges Act grants foreign entities immunity from civil proceedings in the exercise of their diplomatic and consular activities, but they cannot claim immunity in respect of commercial transactions.

13. What procedures exist for recognition and enforcement of foreign judgments?

There is no single regime. Foreign judgments may be directly enforced by registration under Part 1 of the Judgments (International Enforcement) Act or by registration (maintenance orders) under Part 3 of the said Act. Foreign judgments may also be enforced at common law by action on the judgment. The Commonwealth and Foreign Acts of State and Judgments Act (Cap 10.03) states that judgments of courts of foreign States may be proved by the production of authenticated copies of the judgment purporting to be sealed with the seal of the foreign court.

Every foreign judgment sought to be enforced in Botswana must be registered within six years from the date of the judgment.

The judgment must be final and conclusive between the parties and, for this purpose, it is deemed final, notwithstanding that the judgment is subject to an appeal in the courts of the country of the original court.

Arbitration

14. Is the arbitration law based on the UNCITRAL Model Law? If yes, are there any key modifications? If no, what form does the arbitration law take?

Arbitration is governed by the Arbitration Act (Cap 6:01). The arbitration law in Botswana is not based on the UNCITRAL Model Law. Currently, the Alternative Dispute Resolution Bill has been placed before Parliament, but this has not yet been passed. It contains sections that are based on the UNCITRAL Model Law.

15. What are the main national arbitration institutions?

The Botswana Institute of Arbitrators is the only arbitration institute in the country. The Institute publishes its own set of arbitral rules.

16. Are there any restrictions on who may represent the parties to an arbitration?

The Arbitration Act does not make any provision in relation to who may represent a party in arbitration proceedings and there are therefore no restrictions.

17. What are the formal requirements for an enforceable arbitration agreement?

Under the Arbitration Act, there must be a written agreement by the parties to submit or present future disputes to arbitration. This is known as a "submission". There is persuasive authority to the effect that if there is a document which the parties have accepted or have confirmed, even if orally, that any disputes should be referred to arbitration, then that document will be deemed a valid arbitration agreement. Parties who have contracted to refer their disputes to arbitration must, unless good cause is shown, act in accordance with the terms of that agreement.

Under the High Court Rules the parties in a pending action in court may also apply to the court to refer the matter to arbitration.

18. Will the court stay litigation if there is a valid arbitration clause covering the dispute? Does the approach differ in this regard if the seat of the arbitration is inside or outside of the jurisdiction?

The Arbitration Act makes provision for persons who have previously agreed to arbitrate to elect to litigate when a dispute arises.

Under section 6(1) of the Arbitration Act, if a party to a submission to arbitration commences legal proceedings in a court against any other party to the submission in respect of any matter agreed to be referred to arbitration, the other party may, at any time before delivering pleadings or taking any other step in the proceedings, apply to the court to stay the proceedings. If the court is satisfied that there is no sufficient reason why the dispute should not be referred to arbitration, it may stay the court action and refer the parties to arbitration. Once the *prima facie* existence of a submission has been proven, the burden of establishing a reason why the proceedings should not be stayed passes to the party pursuing litigation. However, since the provision supplies the court with a discretion to stay proceedings, it appears that the courts are at liberty to continue to hear the action notwithstanding the submission agreement. The court should satisfy itself that the dispute falls within the ambit of the arbitration agreement.

The Arbitration Act does not distinguish between arbitrations seated inside and outside Botswana.

19. If the arbitration agreement and any relevant rules are silent, how many arbitrators will be appointed, and who is the appointing authority?

The submission usually provides for the parties to the arbitration to appoint an arbitrator each. If the submission is silent then the reference is to a sole arbitrator.

Unless the parties agree otherwise, where a submission refers to two arbitrators, it is deemed to include a provision that the two arbitrators immediately appoint an umpire. Any time after appointment of an umpire, and notwithstanding anything to the contrary in the submission, either party to the reference may apply to the court for an order that the umpire enter upon the reference in lieu of the arbitrators as if he or she were sole arbitrator.

Where a submission provides that the reference shall be determined by three arbitrators, one appointed by each of the parties and the third appointed by the two parties together, the submission shall have effect as if it provided for the appointment of an umpire by the two arbitrators appointed by the parties. Where a submission provides for three arbitrators appointed otherwise than as described above, an award of the majority will be binding.

The court may in certain instances appoint an arbitrator or arbitrators. Such instances include cases where the parties have failed to agree on the appointment of the arbitrator, where an appointed arbitrator refuses to act, and where the appointed arbitrator dies or is incapable of acting.

20. What rights are there to challenge the appointment of an arbitrator?

The right to challenge an appointment can be exercised only by an application to the court.

Where the arbitrator is appointed by the court then the order appointing him or her, being a ruling of the High Court, is subject to the normal review and appeal jurisdiction of the courts.

Where the agreement provides for two arbitrators, one to be provided by each party and a party's failure to appoint results in only one arbitrator entering on the reference, the defaulting party can challenge such appointment by an application to the court.

Where the arbitrator is appointed by agreement, the party seeking to challenge the appointment is required to apply to the court for leave to revoke the authority of the arbitrator.

21. Does the domestic law contain substantive requirements for the procedure to be followed?

The domestic law contains substantive requirements for the procedure to be followed in the form of the Arbitration Act. Be that as it may, the parties are mainly guided by the arbitration agreement or submission into which they have entered.

22/23. On what grounds can the court intervene during arbitrations?

The court may generally only intervene with regard to the appointment or removal of an arbitrator.

In addition, the Arbitration Act grants the court certain interlocutory powers, which the court may exercise in support of the arbitration, on application of one of the parties.

The court may grant an order for the examination of a witness, for the discovery of documents, for evidence to be given by affidavit in the same circumstances as litigation, for an interim injunction or similar relief, for directing an issue by way of interpleader between two parties to a submission for the relief of a third party desiring to so interplead, and for another party to give security for costs.

24. Do arbitrators have powers to grant interim or conservatory relief?

Subject to contrary agreement by the parties, the tribunal or umpire may, if he/she thinks fit, make an interim award.

25. When and in what form must the award be delivered?

The Arbitration Act provides that arbitrators have powers to make an award at any time. The time for making an award may be extended by the court or a judge. The award should be made within a reasonable time. An arbitrator who fails to use all reasonable dispatch in entering and/or proceeding with and making an award may be removed by the court where such application is made by one of the parties.

With regards to the form of award, although the Arbitration Act does not prescribe any particular form that an award should take, awards are usually in writing, signed by the arbitrator and contain a summary of the facts of the case, the positions of the parties and the arbitrator's reasons for making the award, similar to a judgment in a court of law.

26. Can a successful party recover its costs?

The costs of the reference and award are within the discretion of the tribunal. It may direct which party and what portion of the costs shall be paid, tax or settle the amount of costs to be paid, and award costs to be paid as between lawyer and client.

27/28. On what grounds can an award be appealed to the court?

Arbitral awards are deemed to be final and binding on all parties. The Arbitration Act is silent on the issue of appeals. However, there is case law which points to the fact that arbitration awards may be reviewed by the High Court if the arbitrator acted in bad faith.

In dealing with matters on review, the court is not concerned with the decision under review but rather with the process by which the decision was arrived at, as well as the legality of the decision rather than the merits.

29. What procedures exist for enforcement of: (i) awards rendered in arbitrations seated outside of the jurisdiction and (ii) domestic awards?

Both domestic and foreign awards may be enforced, by leave of the High Court, in the same manner as a judgment or order of the court. Botswana is a party to the New York Convention on the Recognition and Enforcement of Foreign Awards (the New York Convention).

Enforcement of foreign and domestic awards is governed by the Recognition and Enforcement of Foreign Arbitral Awards Act. Foreign awards may also be enforced under the Judgments (International Enforcement) Act. The main requirement is that there should have been a valid submission to the arbitration. A foreign award may be recognised and enforced in Botswana, provided that the country in which the award was made is a designated country where substantial reciprocity of treatment is extended to judgments of the High Court of Botswana, and the award has been registered with the High Court.

Alternative dispute resolution

30. Are the parties to litigation or arbitration required to consider or submit to any alternative dispute resolution before or during proceedings?

Parties to arbitration are generally not required by law to consider or submit to ADR before or during proceedings unless the underlying agreement requires it of the parties. However, with respect to labour disputes, parties are required by the Trade Disputes and Employment Act first to attempt mediation before proceeding to arbitration.

As regards litigation, parties are not required to mediate before issuing proceedings, unless the underlying agreement requires it. The courts encourage the parties to settle during the case management process but do not compel them to mediate. However, the Chief Justice recently made reference to ADR/mediation procedures to be introduced.

Reforms

31. Are there likely to be any significant procedural reforms in the near future?

As stated above, there have been calls for reform of the arbitration framework. It has been suggested that Botswana should adopt the UNCITRAL Model Law for the purpose of international commercial arbitration. This would, it is hoped, attract direct foreign investment, and make Botswana a more attractive venue for international arbitration.

The question remains whether the UNCITRAL Model Law should be extended to domestic arbitration. The country requires well-established and tested arbitration practices, which the UNCITRAL Model Law could provide. The Arbitration Act is antiquated, and a complete overhaul is called for. It is also anticipated that new procedures in relation to ADR will be introduced. However, it is unclear at this stage when the Alternative Dispute Resolution Bill will be passed.

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Burundi



Introduction

Burundi's legal system is based on the Constitution of 07 June 2018, Law No. 1/26 of 26 December 2023 modifying the law No.0/08 of 17 March 2005 on Court Organization and Jurisdiction, Law No. 1/27 of 28 december 2023 modifying civil procedure civil and Law No. 1/21 of 03 August 2019 modifying the law No.1/07 of 25 February which governs Burundi's Supreme Court.

Litigation

1. How is the legal profession organised?

The profession of lawyer (*avocat*) in Burundi is governed by Law No.1/17 of 24 July 2023 modifying Law No. 1/014 of 29 November 2002, which reformed the legal profession. Before prospective lawyers can begin to practice, they must complete at least two years as a trainee, have passed the test organized at the end of two years of training and satisfy the conditions required trainee lawyers. This requirement is waived for judges with at least six years' experience, Doctor of Law, university professors and lawyers who have practiced for at least two years as government counsel (*avocat du gouvernement*) or as Burundi Revenue Authority.

In order to become a trainee, a person must:

- have Burundian nationality
- hold a bachelor's degree in law from a Burundian university, or a recognized diploma from a foreign university ;
Have completed six months of initial professional training organized jointly by the Ministry of Justice and the National Bar Committee;
- have no criminal record for infringements of honour, probity, or character
- not have been removed from the judiciary, the civil service or the armed forces, state institutions with specific statuses.
- not have been declared personally insolvent or guilty of professional misconduct
- not have previously been admitted to and subsequently struck from a Bar (*Barreau*)
- satisfy a background check of the candidate's good character carried out by the Bar Association

The profession is organised by the Bar Association (*Conseil de l'Ordre*), which makes sure members abide by the rules governing the profession and takes any necessary disciplinary action. Lawyers (including trainees) may appear before any court and assist their clients. However, trainees can't appear before the Supreme court without support from lawyers. Lawyers may practice either individually or in a practice structure.

Foreigners may be admitted as lawyers under international conventions or reciprocity.

2. How is the court system structured?

The court system includes ordinary and specialized courts and tribunals.

The Burundian court system is organized as follows:

A. Ordinary courts

- Courts of **original jurisdiction**
 - the local courts (*tribunaux de residence*), which hear civil claims for no more than BIF 10 million between private individuals, and suits involving land, inheritance (under BIF 10 million), and personal and family matters not referred to a different court, suits relating to the eviction of the defaulting tenant as well as all those who occupy premises without title or right. Referral to the courts of residence is conditional upon the presentation of a report by the hill notables who must first reconcile the litigants. Local courts may also hear cases involving minor criminal offenses.
 - the Regional Courts (*tribunaux de grande instance*), which hear all civil cases over which no other court has specific substance matter or territorial competence, and appeals against decisions made by the local courts within the Regional Court's jurisdiction.
- the **Courts of Appeal** (*Cours d'appel*), of which there are seven: Bujumbura Mairie, Ntahangwa, Muha Gitega, Ngozi, Bururi and Makamba. They hear appeals of Regional Court judgments.

B. Specialised courts

The **Supreme Court** (*Cour suprême*) hears appeals of final judgments handed down by courts of appeal. When ruling on an appeal, the Supreme Court does not address the merits of the case; it only makes sure that the lower court has correctly applied the law.

There are also two **Employment Tribunals** (in Gitega and Bujumbura), one **Commercial Court** (in Bujumbura), **Administrative Courts** (in Gitega and Bujumbura) and **anti-bribery court**.

3. What are the time limits for bringing civil claims?

The time limit under ordinary law is 30 years.

However, there are specially defined limitation periods for certain types of claims: an action in contract is time-barred after 30 years, claims between merchants, after five years; the limitation period for tort claims is three years, but for administrative disputes, just three months, employment disputes just two years.

Limitation periods are tolled primarily by the filing of a claim or taking steps to have a foreign judgment enforced. Time limits are matters of public policy and cannot be modified by contract.

4. Are communications between a lawyer and his/her client privileged?

Yes, all communications between a lawyer and a client are confidential.

Criminal penalties set out in the Burundian Criminal Code may apply to breaches of this duty. Civil fines may also apply as set out in the law on the legal profession, and disciplinary action may be taken pursuant to the Burundian Bar Association's Code of Professional Conduct.

A client can waive the lawyer's duty of confidentiality, subject to certain public policy exceptions (for example, such confidentiality can be waived in certain circumstances in a criminal investigation).

5. How are civil proceedings commenced, and what is the typical procedure which is then followed?

Civil cases are referred to the court by a summons or by entering a voluntary appearance.

To initiate proceedings by filing a summons, the claimant submits a complaint to the registrar of the competent court, identifying the parties and setting out a brief statement of the claim and the supporting arguments to be raised. A complaint may also be presented orally, in which case the registrar drafts it and has it signed by the claimant.

The registrar asks the claimant to pay a sum into court to cover court fees and gives the claimant a receipt with the case number. The case is not listed on the docket until the payment into court has been made. The case is struck out if any additional sum subsequently requested is not paid. Public authorities are exempt from making this payment, as are public entities that operate with State subsidies.

The petition or summons prepared by the registrar is served on the defendant, who must appear regardless of their place of residence. The defendant must appear within eight days if their residence is within the court's territorial jurisdiction. If the defendant resides abroad in a country with airline service to and/or from Bujumbura, the time limit for appearing is extended to one month. For other individuals residing outside of Burundi, this time limit is two months. For interlocutory proceedings, the judge may reduce these time frames.

N.B:

- Referral to the courts of residence is conditional upon the presentation of a report by the hill notables who must first reconcile the litigants.
- For disputes relating to the various periods of civil war that Burundi has experienced, the Truth and Reconciliation Commission has jurisdiction.

6. What is the extent of pre-trial exchange of evidence, and how is evidence presented at trial?

Each party must prove the facts underlying his or her case. The usual types of evidence under ordinary law are admissible (written arguments, notarised documents, witness statements, etc.).

Documents

The party intending to rely on an exhibit must disclose it in advance to every other party. If this is not done, the court may be asked to order production. The court sets the time limit for disclosure and, if necessary, the method or medium.

Claimants must disclose all exhibits at the first hearing. Defendants must disclose all their exhibits before the first hearing and certainly no later than at the second hearing; if they don't, the court may either order the production of the exhibits, or order the parties to present their case orally without the exhibits (and the Defendant won't be able to submit them then).

If a party wishes to refer to a document (contract, deed, correspondence...) to which it is not a party, or to a document held by a third party which it cannot obtain, it may ask the court to order production. If the court finds the request is justified, it may order the disclosure or production of the document or exhibit (whether an original, copy or extract), if necessary with a daily fine for non-compliance.

The case preparation procedure must be completed within 60 days and it is during this procedure that the documents relied on by the parties must be produced. Afterwards, the parties are not entitled to communicate them.

Experts

The court may order an expert opinion. In practice, however, such opinions are rarely requested in Burundi given the lack of technical resources. If an opinion is sought, the court may ask the parties to appoint between one and three experts. The expert or experts cannot issue an opinion on the merits of the case, but must abide by their terms of reference set by the court. However if an understanding of the issues in dispute requires technical skills which are unfamiliar to the court, it may appoint from one to three experts at its own discretion.

The requested opinion may only be disregarded insofar as the request was deceptive, provided the court has a factual basis for substituting its own technical knowledge for that of the expert.

Experts may decline to continue with an appointment on any grounds. The court will then appoint a new expert. The expert can also ask the court to appoint an additional expert. Experts take an oath either orally or in writing to carry out the assignment in good faith. Experts have access to all procedural documents and are bound by a professional duty of confidentiality.

The court is not bound by the expert's assessment. However, all or part of the expert opinion may be validated by the court; if so, the court does not need to give its reasoning for the resulting grounds. However the judgment must expressly refer to the expert assessment underlying the court's ruling.

7. To what extent are the parties able to control the proceedings and the timetable? How long do proceedings last?

The parties do not control the procedure. The procedural timetable is fixed by the court and depends factors such as case complexity, the need (or not) for an expert opinion, the availability of judges (depending on strikes, transfers, etc.). The parties can apply to the presiding judge of the court to speed up or defer the procedure.

In practice, the length of proceedings is heavily influenced by any case backlog in the courts and also by any delaying tactics employed by either party.

According to the law, the number of public hearing postponements cannot exceed two, and a case taken under advisement must be decided within one month. But in practice, these deadlines are widely exceeded.

8. What interim remedies are available to preserve the parties' interests pending judgment?

In urgent cases, the court may make an interim order of any measures not open to a serious challenge or that are justified by the existence of a dispute. The court has this power for any type of case for which there is no specific emergency procedure. Moreover, the judge may order any measure deemed necessary to protect the parties' rights between the filing of the claim and the first hearing date.

In an emergency or if the recovery of a debt appears at risk, the judge may authorise the seizure of all or part of the debtor's recoverable goods, at the creditor's request.

Conservatory measures are within the jurisdiction of the presiding judge of the court, who rules alone.

9. What means of enforcement are available?

Decisions only become enforceable once they are final, unless immediate enforcement is automatic or has been ordered. The debtor may benefit from a grace period, however. The defendant must formally present a proposal for deferred enforcement which requires the court's approval and the consent of the successful party. No grace period is available to defendants once the judgment is *res judicata*.

The main enforcement measures available under Burundian law are as follows:

- **Seizure and sale** (*saisie-exécution*): first an order to pay is delivered to the debtor personally or to the debtor's residence; the order must set out the details of the claim, if this has not already been done. After at least 24 hours have elapsed, a bailiff may carry out the seizure whether the creditor is present or absent.

- **Third party debt orders** (*saisie-arrêt*): a creditor with an enforceable claim may request an order against a third party for any monies or assets belonging to the debtor. If there is no enforceable claim, the court with territorial jurisdiction over the third party's place of residence may authorise a third party debt order on the basis of a petition. Authorisation is given by the court that has jurisdiction for the relevant amount of the debt
- **Seizure pending judgment** (*saisie-revendication*): a party with "droit de suite" rights attached to one or more assets held by a third party may apply to the presiding judge of the competent court, depending on the value of the assets, seeking an immediately enforceable order to have the goods in question placed in the court's custody until a final decision has been made.
- **Penalty payment** (*astreinte*): the court may impose a penalty payment (including of its own motion) to ensure compliance with its decision, especially to support an order for specific performance.
- **N.B:** Execution in movable matters must take place within two years and in immovable matters within five years.

10. Does the court have power to order costs?

In principle, the court orders the unsuccessful party to pay the costs, including court fees, witness expenses, expert fees and other procedural costs.

The Court may issue a special, reasoned decision assigning all or part of these costs to the other party. In practice, the successful party cannot recover legal fees.

11. On what grounds can the parties appeal, and what restrictions apply? To what extent is enforcement suspended pending an appeal? Is there a right of further appeal?

Except in labor disputes (10 working days), the deadline for appealing a first instance decision is one month from the date of service of the decision. An appeal is lodged either by a notice duly received and stamped by the court clerk, or by registered letter with acknowledgment of receipt sent to the court clerk of the relevant court.

No new claims may be raised on appeal, but parties may submit additional arguments, exhibits or evidence to further support their claims raised before the lower courts.

An appeal filed before the deadline suspends the original decision unless the court ordered immediate enforcement.

An appeal may be filed by the unsuccessful party or by a successful party who believes it was not fully compensated.

Appeals are brought by filing pleadings and paying all applicable court fees.

After an appeal, it is possible to bring a final appeal to the Supreme Court (**it depends on the nature of disputes, e.g, no appeal before supreme court in land disputes**). The Supreme Court hears only points of law and not of fact. Appeals to the Supreme Court do not suspend the contested decision. If the Supreme Court appeal is successful, the case is remanded to a new court for another hearing. In principle, the Supreme Court's ruling on a point of law is binding on the court of remand.

Another Supreme Court appeal may still be possible after the first Supreme Court ruling followed by a Court of Appeal ruling on remand. If the second appeal is admissible, the Supreme Court hears the case *en banc* and rules de novo, issuing a final decision on the merits and the law.

12. To what extent can domestic and/or foreign state entities claim immunity from civil proceedings?

There is no principle whereby public entities (the State, administrative entities with legal personality, state-owned enterprises, etc.) are immune from proceedings. Claims may be brought against the State or public authorities before both the judicial and administrative courts.

For foreign State entities, any immunity they may have is derived from international agreements on diplomatic and consular relations.

13. What are the procedures for having foreign judgments recognised and enforced?

Unless there is a bilateral agreement to the contrary, decisions handed down abroad in civil matters are only enforceable in Burundi if they meet the following conditions:

- the decision contains nothing that is contrary to public policy in Burundi
- the decision is considered *res judicata* under the laws of the State where it was handed down
- according to those laws, the copy produced meets the necessary conditions for being considered authentic
- the rights of defence have been respected
- the foreign court's jurisdiction was not founded exclusively on the claimant's nationality

Requests for recognition and enforcement of foreign judgments are submitted to the Regional Court, which verifies whether the above requirements are satisfied. If so, the foreign judgment is enforced exactly as it would be if issued by a domestic court.

Arbitration

14. Is the arbitration law based on the UNCITRAL model law on international commercial arbitration? If so, does it include any key modifications? If not, what type of arbitration does the law provide for?

Arbitration in Burundi is governed by Law No. 1/27 of 28 December 2023 modifying civil procedure civil enacting articles 447 to 483 of the Burundi Civil Procedure Code (*Code de procédure civile*). Although these articles set out a few basic principles of arbitration, their content is rather cursory as concerns the various types and aspects of arbitration. As a result, in commercial arbitration the choice of arbitration type is left to the parties' discretion.

15. What are the main arbitration institutions at the national level?

The Burundi Centre for Arbitration and Conciliation (*Centre Burundais d'Arbitrage et de Conciliation* or CEBAC) was set up in 2004. It is the only national arbitration institution.

The CEBAC list of arbitrators includes lawyers or other specialists from various sectors (university professors, bankers, insurance experts, architects, construction engineers, etc.).

If a party decides to appoint an arbitrator who is not on the list, the arbitrator must be approved in advance by CEBAC.

16. Are there any restrictions on who may represent the parties to an arbitration?

The parties may be represented by a lawyer of their choice, and there are no restrictions on who may represent the parties to arbitration.

17. What are the formal requirements for an enforceable arbitration agreement?

The compromise must designate the objects in dispute and the name of the arbitrators, under penalty of nullity. It determines and limits the mission of the arbitrators (article 451).

18. Will the courts stay litigation if there is a valid arbitration clause covering the dispute? Does their approach differ according to whether the seat of arbitration is inside or outside the jurisdiction?

The national courts have no jurisdiction over a dispute if there is an arbitration agreement between the parties, unless the parties voluntarily waive arbitration.

The seat of arbitration is a decisive factor if there is any difficulty enforcing an award, as the presiding judge of the Regional Court with jurisdiction over the seat of arbitration is competent to hear such cases.

19. If the arbitration agreement is silent, how many arbitrators will be appointed, and who is the appointing authority?

The arbitral tribunal may have either one or three arbitrators. For *ad hoc* or institutional arbitration, if there is more than one arbitrator, the first two are appointed by the parties, and the third is appointed either by mutual agreement between the parties or if none, by the arbitration institution.

20. What rights are there to challenge the appointment of an arbitrator?

An arbitrator does not represent the parties and must fulfil his/her mission independently (article 463 of the Civil Procedure Code). The Civil Procedure Code specifies that parties may challenge arbitrators for reasons that either pre-date the arbitration agreement or arise afterwards, if not known at the time the arbitration agreement was signed.

21. Does domestic law contain public policy requirements for the procedure to be followed?

The arbitral tribunal follows the procedural rules laid down for judicial courts.

However, the parties may decide what arbitration procedure will be followed, either by directly designating the procedure or by reference to a set of rules of arbitration. They may also choose the procedural law to govern the arbitration (article 468 of the Civil Procedure Code). Arbitration procedure must be set down in writing (article 469 of the Civil Procedure Code).

The arbitrators must abide by the parties' agreement when conducting an arbitration. They issue the award based on the rules of law chosen by the parties, or if none were chosen, the arbitrators themselves will decide on the most appropriate rules, taking international legal practice into account where appropriate (article 470 of civil procedure code).

22. On what grounds can the court intervene in arbitrations seated inside the jurisdiction?

If the parties have opted for arbitration to resolve any dispute, a national court cannot intervene in the arbitration proceedings.

23. On what grounds can the court intervene in arbitrations seated outside the jurisdiction?

The same answer as for question 22 applies.

24. Do arbitrators have powers to grant interim or conservatory relief?

Article 467 of the Civil Procedure Code allows the arbitral tribunal to grant interim measures to protect the rights of the parties when required by circumstances.

25. When and in what form must the award be delivered?

The time limit for issuing the award is generally set out in the arbitration agreement. The arbitral tribunal usually complies with the chosen procedural rules, and the length of the procedure may therefore vary, depending on case complexity and the rate of progress.

If the arbitration agreement does not set a time limit, the award should be made no more than six months from the date of the agreement, unless otherwise agreed by the parties (article 448 of the Code of Civil Procedure).

The type of award is governed by the same formal conditions as in the ordinary domestic courts.

The award is issued by a majority decision of the arbitral tribunal. It must be reasoned and signed by each arbitrator. If one arbitrator refuses to sign, the others mention this and the award then has the same effect as if it had been signed by all arbitrators. Any tribunal member can attach a concurring or dissenting opinion (article 473 of Code of civil procedure).

26. Can a successful party recover its costs?

Since the choice of arbitration proceedings is voluntary and optional, there is no legal provision for the recovery of costs by successful parties. However, it is possible for the tribunal to award costs to the successful party, depending on the case, and in particular if this is stipulated in the arbitration agreement.

27. On what grounds can an award from an arbitration seated in the jurisdiction be appealed to the court?

The Civil Procedure Code rules out any possibility of an appeal against arbitration awards. According to article 450 of Civil Procedure Code, the arbitration award is final and cannot be appealed, and the parties, *"by submitting their dispute to arbitration, waive any other right of recourse to which they may be entitled"*.

However, an appeal for interpretation may be submitted in writing to the *ad hoc* tribunal which made the award, or to the authorised bodies in the case of institutional arbitration, for any disagreement between the parties as to the meaning or scope of the arbitration award itself (article 476 of Civil Procedure Code).

28. Can a foreign arbitration award be appealed in the local courts?

Burundian law does not provide for the possibility of appealing a foreign arbitration award in the local courts.

29. What are the procedures for the enforcement of: (i) awards rendered in other jurisdictions and (ii) domestic awards?

- (i) Arbitral awards shall be recognized or enforced in Burundi if their existence is established by the party relying on them and if such recognition or enforcement is not contrary to public policy.

An arbitral award rendered abroad or in international arbitration matters may only be enforced by virtue of an exequatur order issued by the commercial court or the high court in whose jurisdiction it is to be enforced.

- (ii) Failing amicable enforcement, the arbitral award shall be enforceable by order of the presiding judge of the high court of the place of enforcement, seized at the request of the most diligent party.

Enforcement shall not be granted if the award is contrary to public policy. Refusal of enforcement must be justified.

30. Are foreign awards readily enforceable in practice?

Adhesion to the New York Convention and the promulgation of new Civil procedure code are likely to facilitate the enforcement of foreign awards.

Alternative dispute resolution

31. Are the parties to litigation or arbitration required to consider or submit to any alternative dispute resolution before or during proceedings?

Generally, the use of alternative dispute resolution methods before or during a trial or arbitration is optional. However, ADR mechanisms may be made compulsory by agreement between parties. We remind that before bringing a case before tribunal of residence, the litigants have to go before hills notables for reconciliation.

Reforms

32. Are there likely to be any significant procedural reforms in the near future?

No reforms are pending as far as we are aware.

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*2025 edition is based on previous editions drafted and updated by **Augustin Mabushi** from **Mabushi Chambers**

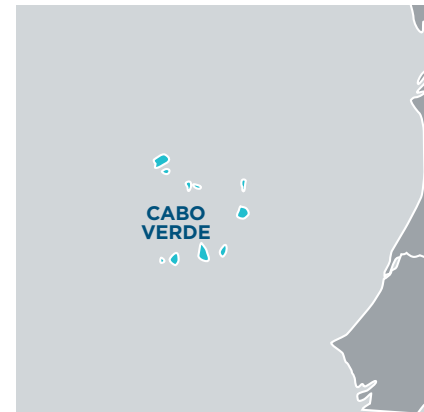
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Cabo Verde



Introduction

Cabo Verde is a civil law jurisdiction.

The Cabo Verde legal system includes the Constitution of the Republic and constitutional laws, which are at the top of the hierarchy of norms. The Constitution as approved by Constitutional Law n.º1/IV/92, dated from September 25, 1992 (last amended by Constitutional Law no. 1/VII/2010, of May 3, 2010). Moreover, it comprises rules and principles of international law (*jus cogens*), rules set out in duly ratified or approved international agreements and issued by the competent bodies of international organisations to which Cabo Verde belongs.

As for the Cabo Verde ordinary laws, they include Laws (*Leis*) enacted by the National Assembly, and Decree Laws (*Decretos-Lei*) issued by the Government. Instruments with effect equivalent to that of laws, such as acts approving international conventions, treaties or agreements, generally binding decisions of the Constitutional Court declaring the unconstitutionality or illegality of norms, collective labour agreements and other collective instruments regulating labour relations, are also regarded as sources of law.

Additionally, the national legal system includes regulations or legislative instruments of lower status than laws, whose purpose is to supplement laws and fill out the details in order to be applied or implemented (eg, regulatory decrees, regulations, ministerial orders, executive rulings, and municipal orders and regulations).

According to the Constitution, the courts are entities that exercise sovereignty with the competence to administer justice in the name of the people. The courts are also responsible for ensuring the defense of those citizen's rights and interests that are protected by law, repressing breaches of democracy legality and deciding conflicts between interests, public and private. The Constitution establishes that courts are independent and subject only to the law.

Court decisions are binding on all public and private entities and prevail over the decisions of any other authorities.

Moreover, court hearings are held in public, save when, in order to safeguard personal dignity or public morals or to ensure its own proper functioning, the court decides otherwise by way of a written order setting out the grounds for its decision.

Litigation

1. What is the structure of the legal profession?

To practice as a lawyer in Cabo Verde (providing legal advice and representing clients before the courts) and have the title of lawyer, the person must be member of the Cabo Verdean Bar Association (Ordem dos Advogados de Cabo Verde).

There is no distinction between practicing lawyers similar to the distinction between barristers and solicitors in some common law countries. The Cabo Verdean Bar Association regulates the profession and takes disciplinary action against the lawyers.

To be a member of Cabo Verdean Bar Association, the person must meet certain legal conditions, in particular:

- be of Cabo Verde nationality. Foreigners may become lawyers in Cabo Verde on conditions of reciprocity, or under international conventions;
- hold a degree in law;
- not have been convicted for actions infringing good faith, or the integrity of accepted principles of morality, unless they have been pardoned or rehabilitated in respect of such convictions;
- not have been the perpetrator of offences where these have resulted in disciplinary or administrative sanctions, removal from office, or withdrawal of license or authorization;
- prove their good conduct record by producing a criminal certificate issued by the administrative authorities of their place of residence of the past five years.

Lawyers may exercise their profession individually or as a group, in the form of an association.

Foreign lawyers are authorised to exercise the profession of lawyer in Cabo Verde, subject to compliance with the above obligations and must have permanent residence in Cabo Verde.

Legal Agents (or *Solicitadores*) provide legal advice and legal representation in court within the limits imposed by their statute and procedural legislation. They may represent the parties in court whenever legal representation by a lawyer is not legally mandatory and they may also provide legal representation outside of court (eg, before tax administration, notary offices, registrar offices and public administration bodies).

2. What is the structure of the court system?

As established by the Constitution there are several categories of courts as follows:

- The **Constitutional Court** whose main task consists in assessing the constitutionality or legality of law and norms.
- The **ordinary Judicial Courts** with civil and criminal jurisdiction are organised in three instances: the **Supreme Court of Justice** with nationwide jurisdiction, the second instance courts (two **Courts of appeal** -*Tribunais da Relação*: Sotavento and Barlavento) and the courts of first instance (**district courts** - *Tribunais de Comarca*, with specialised competence in different subjects, criminal law, family and juvenile law, labour law, and enforcement of penalties).
- The **Judicial District Courts** issues initial judgments on the cases brought before it, after determining the findings of fact and rulings of law. Parties may appeal to the appropriate Appellate Court, which may review the findings of fact and rulings of law. Decisions rendered by the Appellate Court are final with respect to the findings of fact. However, should there still be dispute about the rulings of law, parties may file a final appeal before the Supreme Court of Justice, and any judgment issued by the Supreme Court of Justice is final and non-appealable.
- The **Court of Small Cases** (*Tribunais de Pequenas Causas*) to solve claims of which value is not more than 500.000\$00 (five hundred thousand escudos).
- The **Tax and Customs Courts** (*Tribunal Fiscal e aduaneiro*) whose function is to settle disputes arising out of tax and customs relations.
- The **Court of Auditors** (*Tribunal de Contas*) is the highest body with the authority to scrutinize the legality of public expenditure and to review the accounts that the law requires to be submitted to it.

3. What are the time limits for bringing civil claims?

Limitation periods vary depending on the type of action. The ordinary limitation period for bringing an action for damages in a contractual situation is 20 years.

The limitation period applicable to commercial actions is five years, although there are some shorter limitation periods.

Specific limitation periods apply to certain types of actions. For example, arrears in maintenance payments, house rentals and in general everything payable annually, or at shorter regular time intervals, have a time limit of five years.

Lawsuits arising from an employment contract are time-barred one year after the term of the contract. occurrence of the act from which the lawsuit arises.

The causes for interruption of the limitation period are “natural” (an interruption of fact) or “civil”. A summons, notice or order sent to the party one wishes to sue is a case of civil interruption. The period of limitation is also interrupted by recognition that the debtor or owner has rights to the thing he is being sued for.

Time limits do not run in respect of a debt that depends on a condition until that condition is fulfilled, for example, in reference to a debt due by a fixed date until that day arrives.

Parties can agree time limits contractually between themselves; this does not supersede the provisions of the Civil Code.

4. Are communications between a lawyer and his/her client privileged (ie, protected from disclosure to a court/tribunal and opposing parties)?

Lawyers are forbidden from disclosing secrets entrusted to them by virtue of their profession, or from taking advantage of such privilege in any way. The facts covered by professional confidentiality are all those which, in general, the lawyer learns in the course of exercising his/her profession, including from third parties. Anything said confidentially in the lawyer's offices, letters from the client to his/her counsel, facts learned during the investigative stage, and even facts accidentally learned by the lawyer while acting professionally are therefore confidential.

The lawyer's professional confidentiality obligation is a matter of strict public policy. It is therefore not possible for a client to remove such an obligation from his/her lawyer. This obligation only ceases where it is necessary to disclose such communications to defend the rights, interests or dignity of the client or the lawyer, with previous authorisation from President of Bar Association.

Breaching professional confidentiality is punishable by law. The law does, however, waive the ban on disclosing professional secrets when the discloser of the secret is called to give witness evidence in court, and when a provision in law obliges the lawyer to disclose this secret. For example, the Law on combating money laundering and the financing of terrorism states that lawyers may be asked to waive their professional confidentiality obligations in certain cases without this making them criminally liable.

5. How are civil proceedings commenced, and what is the typical procedure which is then followed?

Initial pleading. During this stage, one party files papers (called a “plaintiff”) to start the court action, and the other party files some type of response (an “answer” or a “motion”).

After the plaintiff files the pleading, the court notifies the defendant to a conciliation audience.

Failing conciliation, the defendant has 20 business days to present his response.

The plaintiff, within 8 business days, may reply to the defendant's response if the defendant has deducted any exception, made a counterclaim or the action is a simple negative assessment. In some cases, it is also possible for the defendant to reply after this.

Trial. During this stage, the case is heard by the judge or a jury (which could last for a couple of hours or a couple of months, depending on the complexity of the case), witnesses are examined, evidence is presented, and the case is eventually decided, and a judgment entered.

Post-trial. During the post-trial stage, one or both of the parties might appeal the judgment that was entered at trial, or the winning party might try to collect the judgment that was entered.

6. What is the extent of pre-trial exchange of evidence, and how is evidence presented at trial?

Means of evidence are listed both in the Civil Code (CC) and Code of Civil Procedure (CPC), in the Cabo Verdean legal System as follows: presumptions, admission, documentary evidence, expert evidence, inspection, testimonial evidence and presentation of movable or immovable objects.

Despite this list of means of evidence a “numerous clauses” principle does not apply, since any evidence deemed suitable to demonstrate the truth of the alleged facts (generally) be admitted.

Evidence is submitted to the court at the same time as the claims and conclusions, and before debate is closed.

The rule on the burden of proof is concerned with establishing the truth of the alleged facts. With regards to the distribution of the burden of proof, ie, on which party should bear the burden of proof, the one who relies on a right must prove the facts constituting the alleged right, and the proof of facts impeding, amending or extinguishing is on the party against whom the invocation is made.

Concerning Documents, the party using a document as evidence in proceedings is obliged to submit it either with the application or the statement of defence. If they are not submitted with the pleadings, documents can be submitted until the close of the trial with the court’s permission, which is never withheld. However, the party will be fined unless it can prove that it could not have submitted the documents with the pleadings.

There is a procedure for enforced production of a piece of evidence (an *ad exhibendum* motion). Thus, if there are serious, specific, and corroborative reasons to presume that one party or a third party holds a document containing the proof of a pertinent fact, the judge may order this document to be lodged in the file for proceedings, even against the party such document could harm. The judge may draw inferences if a party refuses to produce the document

As to witnesses, the common procedure is that they give oral evidence at trial, not written witness statements. Such evidence, together with any documents tendered, is recorded as evidence-in-chief. The other party can cross-examine the witness. Subject to the court’s discretion, re-examination may be directed on matters referred to in cross-examination. Judges are allowed to question witnesses directly.

If an expert report is required, it is ordered through a ruling that names the experts, and the precise mission entrusted to them and gives them a deadline by which they must lodge their report. Only one expert is appointed unless the judge deems it necessary to appoint three. The parties may bring an expert with them to the hearing.

An expert who fails to carry out his/her task may be sentenced by the court that appointed him/her to pay all the costs unreasonably incurred, and even to pay damages. If the judges do not find sufficient clarification in the report, they may order a new expert report.

7. To what extent are the parties able to control the procedure and the timetable? How quick is the process?

Procedural rules govern certain steps (for example, the Cabo Verdean Civil Procedure Code contains deadlines for presenting the plaintiff’s complaint, the defendant’s answer or the plaintiff’s reply). However, the judge has ultimate power to control the timetable, so it cannot be predicted with certainty.

An extension of the procedural time limits for the submission of the statements of case up to twice the original period may be granted by the court at the party’s request. The parties may also agree on the suspension of the proceedings up to a period of six months.

Where procedural deadlines are not complied with, penalties include admission of facts or, sometimes, discontinuance/dismissal of the claim.

Usually, the time period from issue of proceedings to conclusion at trial is around more than a year. High value claims may take longer.

The Code of Civil Procedure established that no case may last longer than thirty-six months in district courts and twenty-four months in higher courts, from the date of the commencement of proceedings or the filing of the appeal.

However, failure to meet these deadlines has no consequences other than disciplinary action against magistrates.

Under the terms of the CPC, the parties can request that proceedings be accelerated by submitting a request to the judge in the case and informing the judiciary’s management body.

8. What interim remedies are available to preserve the parties’ interests pending judgment?

The Cabo Verdean Civil Procedure Code provides for two types of interim reliefs: general and specific interim reliefs.

The purpose of general interim relief is to prevent irreparable damage to the plaintiff by waiting for the court judgment.

The prerequisite for interim relief, in addition to the existence of a right and urgency as a temporal element, is that the right at risk can be effectively protected by an interim measure and that there is no other procedure besides it that is provided for the protection of the right.

Specific provisional legal protection is expressly regulated by law and concerns various matters specified in the Civil Procedure Code, such as provisional restitution of property, seizures or provisional compensation.

When the elements necessary for the final judgment of the case have been brought to the interim relief procedure, the court may, at the request of the parties or ex officio, anticipate the judgment on the main cause.

9. What means of enforcement are available?

Cabo Verdean court orders are immediately enforceable unless the respective court decision is challenged by appeal to a higher court and the appellant guarantees (by adequate collateral) the remedies granted.

To enforce judgments/orders, a party must commence further proceedings called executive proceedings.

Enforcement proceedings can be intended to:

- seize and sell the debtor's goods to obtain payment of the monetary debt and costs of enforcement;
- obtain the delivery of certain goods or objects; or
- obtain the performance of a conduct by a third party in replacement for the debtor.

From the moment the court order becomes *res judicata*, interest at the rate of 4 per cent per year will accrue to the number of damages fixed by the court, irrespective of the interest due for late payment.

The non-compliance with any court order constitutes a criminal offence.

10. Does the court have power to order costs? Are foreign claimants required to provide security for costs?

The parties are required to pay the respective court fees (determined in accordance with the nature and value of the claim) with the submission of the statement of case and the statement of defence.

The minimum and maximum amounts of court fees and taxes are established by a Code of Court Costs.

In its final decision the court will rule on the allocation of costs incurred in the proceedings. The costs in the proceedings will be borne by the losing party in the proportion of its loss (ie, if only 50 per cent of the claim is successful then the claimant will bear 50 per cent of all court costs).

The ruling on the court costs will include the court fees paid in advance by the parties, the expenses supported by the parties with the presentation of evidence (experts' fees, etc) and an amount granted to compensate the winning party for expenses incurred with legal fees (lawyer's fees and enforcement agent's fees), limited to half of the amount of court fees to be paid by both parties.

Within five days from the court's final decision becoming *res judicata*, the winning party must serve on the losing party with a detailed account specifying all amounts due in the terms mentioned above.

The court may also award costs incurred with lawyers' fees without limitation if it rules that a party acted with procedural bad faith.

Foreign claimants are not required to provide security for costs.

11. On what grounds can the parties appeal, and what restrictions apply? Is there a right of further appeal? To what extent is enforcement suspended pending an appeal?

There is a general right of appeal against first instance decisions.

For an appeal to be possible it is necessary that the appellant has been defeated in proceedings where the decision concerned an amount of at least CVE 250.000, and that the claim value is in excess of CVE 500.000.

The court of appeal may decide both on points of fact and on points of law. In certain circumstances, the court of appeal may also decide appeals regardless of the value of the claim (eg, claims involving the termination of residential lease agreements).

If the value of the claim is higher than CVE 3.000.000, and the decision against the appellant is worth at least CVE 1.500.000, an appeal to the Supreme Court of Justice is also admissible, unless the court of appeal has unanimously confirmed the decision of the first-instance court. Nevertheless, an appeal to the Supreme Court of Justice will be possible if deemed necessary to obtain case law uniformity.

As a rule, the Supreme Court of Justice only rules on points of law and its decisions are final except in cases of non-compliance with the Cabo Verdean Constitution, in which case the parties may appeal to the Constitutional Court.

Unless it is expressly provided for in the Civil Procedure Code, the appeal does not suspend the enforcement.

1Euro (€) = CVE 110,265

12. To what extent can domestic and/or foreign State entities claim immunity from civil proceedings?

Domestic and foreign States do not have immunity from civil proceedings.

In civil cases, proceedings can be brought against the Government or public authorities. However, the property of the State used for public utility cannot be seized.

State-owned companies do not have jurisdictional immunity, and proceedings can be brought against them in the same way as against ordinary legal entities.

Under the Vienna Convention on Diplomatic Relations, the diplomats and the Legal Representations of foreign States have immunity, and their assets cannot be seized.

13. What procedures exist for recognition and enforcement of foreign judgments?

The Cabo Verdean Civil Procedure Code states that foreign final court judgments and arbitral awards are enforceable in Cabo Verde, subject to "foreign decision recognition". To establish "foreign decision recognition":

- there must be no doubt as to the authenticity of the decision;
- the decision must be final and unappealable under the law of the country in which it was made;

- the decision must be recognised under Cabo Verdean conflicts rules and must not be contrary to Cabo Verdean public policy;
- the defences of *lis pendens* or *res judicata* must be unavailable;
- the defendant must have been duly served unless Cabo Verdean Law has dispensed with service of process or judgment in default was obtained.

Arbitration

14. Is the arbitration law based on the UNCITRAL Model Law? If yes, are there any key modifications? If no, what form does the arbitration law take?

The Cabo Verdean Arbitration Law (Law 76/VI/2005 of 16 August) (the Arbitration Law) is largely influenced by the UNCITRAL Model Law.

In general terms, the Arbitration Law provides that the procedure should rest on the principles of fair and equal treatment, adversarial process, and hearing of the parties (article 24). The parties can freely determine the procedure they wish to apply to their dispute, including which institutional rules should apply (article 23). The parties can also agree that the tribunal will rule according to equity or according to certain institutionalised customs (article 31).

The most innovative feature of the Arbitration Law is the fact that it makes specific provision for domestic and institutional arbitration, and for international arbitration.

Arbitration Law specifically distinguishes “internal (or domestic) arbitration” from “international arbitration” and provides specific parts for each. An “international arbitration” (articles 40 to 44) is defined under two different formulas: (a) when, at the time of entering the arbitration agreement, the parties have domiciles in two different States; or (b) when the legal relationship that gives rise to the dispute affects international trade interests (article 40). The Arbitration Law specifically provides that, if the parties have so agreed, in the cases of international arbitration the tribunal may decide the dispute as “*amiable compositeur*” weighing the balance of the interests at stake, but only if the parties have agreed to it (article 43).

It should also be noted that the law embodies a general principle of independence of the arbitration procedure from the national courts. The principle of “*Kompetenz-Kompetenz*” is embodied in article 30. Nevertheless, the national courts can provide assistance in several matters such as interim measures/preliminary orders, appointment of arbitrators, gathering of evidence, annulment of awards and enforcement.

Also, article 7 of the Arbitration Law institutes the “principle of separability”, providing that the invalidity of the contract does not necessarily result in the invalidity of the arbitration agreement.

In relation to the production of evidence, the Arbitration Law provides that all kinds of evidence that are legally admitted by the general civil law in Cabo Verde may be admitted in an arbitration (article 26, n 1).

The Arbitration Law is complemented by other separate legal provisions like Decree 8/2005 of 10 October, which regulates the creation of arbitration centres. The first arbitration centre

was inaugurated in July 2011 aiming to provide alternative dispute solutions and support the process of membership to the World Trade Organisation, contributing, therefore, to a better business framework in the country.

Also, Decree 30/2005 of 9 May, altered by Decree 62/2014, regulates the creation of mediation centres. Decree No 62/2005 of 10 October creates the “Houses of Law” designed to promote the access to justice for Cabo Verde citizens, promote a culture of peace, citizenship and respect for human rights, and also, operate as mediation centres.

Since 2017, Cabo Verde is party to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the New York Convention) and the country has been a member of the 1965 Washington Convention on the Settlement of Investment Disputes between States and Nationals of other States (ICSID Convention) since January 2011.

In recent years, arbitration has been flourishing in Cabo Verde. Parties have progressively added arbitral clauses to contracts and almost all new legislation on investment has provisions of arbitration as means dispute resolution.

The possibility for a foreign investor to sue the State, and in case the State sues the investor, is considered as a guarantee for the foreign investor that, in the case of a dispute, it will have access to independent and qualified arbitrators who will solve the dispute and render an enforceable award. This allows the foreign investors to bypass national jurisdictions that might be biased or not fully independent.

15. What are the formal requirements for an enforceable arbitration agreement?

Definition

The Cabo Verdean Arbitration Law defines the arbitration agreement as the means by which a dispute may be submitted to an arbitral tribunal (provided that the dispute does not concern inalienable rights or illegal transactions).

This broad definition is then divided into two different types of arbitration agreements, by reference to the objective of the arbitration agreement. Hence, it is possible to have arbitration contracts which submit a specific and existing dispute to arbitration, and arbitration clauses which specify that certain future and potential types of disputes may be resolved by arbitration.

This dual classification is relevant in defining the minimum content of the arbitration agreement: the arbitration agreement must precisely determine the object of the dispute submitted to arbitration and must be sufficiently certain regarding those elements of the contract in relation to which a dispute can be settled by the arbitral tribunal.

It is also possible for the parties to agree to submit to arbitration other issues that may require the intervention of an impartial decision maker – for example, issues concerning the need to clarify, supplement and vary long-term contracts to adapt to new circumstances.

Formal requirements

The arbitration agreement must be in writing. This formal requirement is fulfilled whenever the agreement to arbitrate is

included in a written document signed by both parties, or in an exchange of letters, telexes, telegrams or other means of communication of which there is a written record.

This requirement is also satisfied if a contract refers to a separate document that contains an arbitration clause, provided that the reference is such as to incorporate that clause as part of the contract.

The document must accurately define the scope of the disputes covered by the arbitration agreement and should also clearly demonstrate the will and agreement of the parties to refer disputes to arbitration.

An arbitration agreement which does not comply with the formalities required by law will be null and void.

Special tests and requirements of the jurisdiction

Not every dispute may be submitted to arbitration. All disputes that do not concern economic interests or alienable rights, or which must be submitted legally to the state courts or mandatory arbitral tribunals, are excluded from voluntary arbitration.

16. Will the courts stay litigation if there is a valid arbitration clause covering the dispute? Does the approach differ in this regard if the seat of the arbitration is inside or outside of the jurisdiction?

The Cabo Verdean Arbitration Law provides for a mandatory stay of legal proceedings in favour of arbitration where the action is the subject of (i) an arbitration agreement (ii) which is not null and void and there is (iii) a dispute/difference between the parties (iv) that is within the ambit of the arbitration agreement.

Although there is not yet much jurisprudence on this subject, and it would depend on the specific circumstances of each case, there is no reason for the court to adopt a different approach in relation to foreign-seated arbitrations, given that the Cabo Verdean legal framework specifically recognises international arbitration. But in our opinion this rule can be set apart if the arbitration agreement is incapable of being performed due to special circumstances that do not allow a party to go outside the country. Think about the pandemic situation due to COVID-19.

17. On what grounds can the court intervene in arbitrations seated outside the jurisdiction?

The Arbitration Law is generally aimed at domestic arbitrations as opposed to international arbitrations. This extends to the assistance the courts will give to support arbitration.

However, this does not mean that the Cabo Verdean courts cannot provide assistance to foreign-seated arbitrations. Article 6 of the Arbitration Law states that although the parties have agreed to enter an arbitration agreement, that fact does not exclude the possibility of the courts ordering interim measures before or during the arbitration procedure, as long as they are compatible with national laws. Based on this article, it is possible that a Cabo Verdean court could issue an interim measure in the context of a foreign-seated arbitration (for example, granting an injunction for the preservation of documents/assets located in Cabo Verde). Of course, this will always depend on the specific circumstances of each case.

Other means of assistance by the courts (eg, the appointment of arbitrators) will generally be more appropriately determined by the courts that provides assistance to the foreign-seated arbitration, rather than the Cabo Verdean court.

The courts support domestic arbitrations by granting interim measures/ preliminary orders (article 6, n. 2), appointing arbitrators where the parties have failed to do so (article 19), gathering of evidence (article 26, n. 2), annulment (article 36), and enforcement of the award (article 38).

18. Can a foreign arbitration award be appealed in the local courts? If so, on what grounds?

Cabo Verdean Arbitration Law states that if an arbitration is “international” (in the sense of article 40), it will not be subject to an appeal unless the parties have previously agreed on the same, and further, if they have settled the specific terms for the appeal regime (article 42).

Moreover, although it is not an “appeal” in the strict sense of the word, the recognition of a foreign arbitral award may be refused if the party against whom the decision was made is able to demonstrate that (article 45, n. 1):

- the arbitration agreement is not valid under the law that the parties have subjected it to, or if such law was not previously designated, under the law of the State where the arbitral award was issued;
- the party was not duly informed of the designation/nomination of an arbitrator or the arbitration procedure; or that it was impossible to uphold its own rights due to another reason;
- the arbitral award is related to a dispute that is not within the scope of the arbitration agreement or contains decisions that exceed the terms of the agreement (however, it should be noted that matters within the scope of the arbitration agreement may be dissociated from the those not submitted to the agreement. As such, only the part of the decision which is not within the scope of the arbitration agreement will not be recognised or enforced);
- the constitution of the arbitral tribunal or of the arbitration procedure is not in accordance with the agreement of the parties, or if such agreement is lacking, not in accordance with the law of the State where the arbitration was seated;
- the arbitral award is not yet final, or it was annulled/ suspended by a competent court of the State where the decision was issued, or of the State under which law the award was delivered.

The recognition of the award may also be refused if the court finds that:

- the object of the dispute is not arbitrable (under article 4 of the Arbitration Law);
- the recognition of the award is against the public order of the State of Cabo Verde;
- the State in which the arbitral award was issued would deny the recognition of such decision if it was delivered in Cabo Verde.

Finally, it should also be noted that if a request for annulment or suspension of an arbitral award has been presented to a competent court of the State where the decision was issued, or of the State under which law it was delivered, the Cabo Verde

court can delay its decision to recognise/enforce, if it considers appropriate. If the party which files for the recognition/enforcement of the award so requests, the court may also demand that the other party provide security.

Finally, regarding domestic arbitrations, the law foresees that the awards may also be annulled by the Cabo Verdean courts for any of the following reasons (which are found in article 36 of the Arbitration Law):

- the dispute is not able to be settled by arbitration;
- the award was rendered by a tribunal that was not competent to proceed with the case, or which was improperly constituted;
- there was a breach of the principles of fair and equal treatment, adversarial process, and hearing of the parties (article 24) with a decisive influence in the outcome of the dispute;
- the arbitral award lacked reasons/grounds or did not contain the signature of the arbitrator(s);
- the tribunal ruled on matters which were not within the scope of the arbitration agreement or failed to rule on matters that it was supposed to do so.

19. What procedures exist for enforcement of awards rendered in arbitrations seated outside of the jurisdiction?

Cabo Verde is a party to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the New York Convention) and, therefore, Cabo Verde recognize arbitral awards as binding and enforce them in accordance with the rules of procedure of Cabo Verde.

Both article 53, n 3 of the Cabo Verdean Civil Process Code and article 44, n 1 of the Arbitration Law state that a foreign arbitration award has the same force as a decision of a national court. Therefore, if a party directs a written request to the competent court, the arbitral award should be enforced as long as it fulfils all necessary requirements.

As a matter of procedure, the party should present the original of the arbitration award and of the arbitration agreement (or an authenticated copy). If the decision is not written in the Portuguese language, the party should provide a duly authenticated translation (article 44, n. 2).

The Arbitration Law provides several grounds for refusal of enforcement of a foreign arbitral award. These grounds are exactly the same as the ones providing for refusal of recognition of court judgments (see question 13 above).

20. Are foreign awards readily enforceable in practice?

Since Cabo Verde is party to the New York Convention, it is our opinion that the award is recognised by the local court at the moment of enforcement. So, it is not necessary to have a two-step process, with a first procedure to recognise and a second one to enforce. However, this is not clear yet and there is no judicial decision about this.

So, we have to describe the old system too, under which a party who wishes to enforce a foreign-seated award must apply to the local court to have the award recognised pursuant to the rules of the Cabo Verdean Civil Procedure Code applicable for the recognition of foreign judgments and the process of enforcement

and articles 44 and 45 of the Arbitration Law. The procedure takes around one to two years, depending on several factors, such as the volume of lawsuits in the court, and also, whether it is opposed.

Alternative dispute resolution

21. Are the parties to litigation or arbitration required to consider or submit to any alternative dispute resolution before or during proceedings?

There is no legal requirement to submit to any alternative dispute resolution before or during court or arbitral proceedings unless the parties enter into an express agreement.

Decree No 30/2005 of 9 May 2005 (altered by Decree 62/2014) created mediation centres and Decree No 31/2005 (also altered by Decree 62/2014) introduced rules regulating the mediation procedure. These decrees seek to facilitate the use of mediation as an alternative dispute resolution forum, but mediation is not commonly used in Cabo Verde.

Reforms

22. Are there likely to be any significant procedural reforms in the near future?

During the last two years important reforms have been done:

- Amendments to Civil Procedure Code (Lei nº 129/IX/2021, 26 de maio)
- Amendments to Penal Procedure Code (Lei nº 122/IX/2021, de 1 de abril)
- Amendments to Penal Code (Lei nº 117/IX/2021, de 11 de fevereiro)
- Commercial Code (Decreto-legislativo nº 1/2019, de 23 de julho)
- Companies Code (Decreto-legislativo nº 2/2019, de 23 de julho)
- Commercial Register Code (Decreto-Lei nº 20/2020, de 6 de março)

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Cameroon



Introduction

Cameroon's legal system is unique due to its dualistic nature, stemming from its colonial past as a former French and British territory. It combines elements of both the French civil law and English common law. In the Francophone regions (Adamawa, Centre, East, Far North, Littoral, North, West, and South), the legal framework is largely based on French civil law, influenced by the Napoleonic Code. In the Anglophone regions (North-West and South-West), the system follows English common law, which emphasises case law, precedent, and legal tradition.

The Constitution is the supreme law of Cameroon. As a member of international communities, Cameroon is also bound by international treaties, agreements, and conventions ratified by the State. These instruments shape national legal standards and influence domestic legislation. The body of Cameroonian law consists of statutes enacted by the parliament as well as ordinances, decrees, orders and other instruments passed by the executive organ which are granted powers to legislate by the Constitution. In addition, judicial precedent plays a significant role in Cameroon followed by customary law.

Cameroon judicial system is organised under Law No. 2006/015 of December 29, 2006, amended by Law No. 2011/027 of December 14, 2011; Law No. 2006/016 of December 29, 2006, on the organisation and operation of the Supreme Court and other specific instruments.

Litigation

1. How is the legal profession organised?

The legal profession is governed by Law No. 90/059 of November 19, 1990 organising the legal profession (the "**Law organising the Legal Profession**") and Order No. 41/DPJ/SG/MJ of April 12, 2005 on the homologation and the publication of the internal regulations of the Cameroon Bar (the "**Internal Rules and Regulations of the Cameroon Bar**").

There exist specific requirements to practice law in Cameroon:

- Be a Cameroon national with full civic rights;
- Be at least 23 years old;
- Hold a "*Licence en Droit*" or the Bachelor of law degree (LLB); or an equivalent qualification;
- Be of good character;
- Hold a certificate of proficiency to practice law;
- Take an oath before the competent court;
- Show proof of professional liability insurance;
- Have decent premises approved by the Bar Council;
- Be enrolled on the Bar roll.

The Cameroon Bar is a professional organisation which is placed under the supervisory authority of the minister of justice. It comprises of a general assembly and a bar council, each organ having different prerogatives.

The Cameroon bar council presently comprises of 15 members. It administers the Cameroon Bar association through its President. The President of the bar council is elected from among members of the Bar Council by the general assembly of lawyers. The members alongside the president of the bar council shall be elected for a period of 2 years.

On its part, the general assembly comprises of all lawyers registered on the bar roll and who are authorised to practice as such. Such organ is governed by the President of the General Assembly assisted by the Vice President of the General Assembly.

In Cameroon, lawyers are prohibited from having more than one chamber in the whole country. The location of this chamber is fixed by an instrument of the Bar Council in a place chosen by the lawyer.

The legal profession is liberal, and lawyers have the exclusive right to represent parties before courts. While legal representation is optional before most courts, it is mandatory before the Supreme Court.

In areas with fewer than 4 law chambers, parties to a lawsuit may be represented by any person holding a duly certified power of attorney not necessarily a lawyer.

2. How is the court system structured?

The court system in Cameroon comprises of the trial courts (courts of original jurisdiction), appellate courts and courts with special jurisdiction.

1. The trial courts in Cameroon:

- **Customary courts:** within the French speaking part of the country, we have *Tribunal de Premier Degré* and the *Tribunal Coutumier*. In the English-speaking part of the country one can cite the Alkali Courts (for Muslims) and Customary Courts for others. These courts have competence in civil matters, customary marriages, divorce, and succession. Customary courts apply the custom of the parties. It is worth noting that customary law courts have no competence in criminal matters and that where the law has reserved a particular area exclusively to other courts, such courts do not have competence. Lastly customary courts may only assume jurisdiction with the prior consent of all parties to the dispute. If any party objects, the customary court loses competence, and the matter must be brought before modern courts.
- **Courts of First Instance:** these courts are required to be present in all sub-divisions of the country. However, depending on service needs, the jurisdiction of a given court of first instance may be extended to cover multiple sub-divisions by decree of the President of the Republic. In civil, commercial and labour matters such courts are competent to entertain matters where the amount claimed does not exceed XAF 10,000,000 (approximately EUR 15,245). In criminal matters, all offences classified as misdemeanours and simple offences are brought before these courts.
- **High Courts:** such courts are required to be created in all divisions but exceptionally, the jurisdiction of a given high court may be extended to cover multiple divisions by a presidential decree. In civil, commercial and labour matters such courts are competent to entertain matters where the amount claimed exceeds XAF 10,000,000 (approximately EUR 15,245). In criminal matters, these courts are competent to try felonies and related offences.
- **Military courts:** these are criminal courts which are competent to entertain matters of theft committed by the use of fire arms; offences committed by military men in a military establishment or in the exercise of their duties; offences committed by civilians in a military establishment which causes damage to military equipment or to the physical integrity of a military man; offences relating to the purchase, sale, production or keeping of military apparels. Such courts are not competent to judge minors below 18 years.

2. Courts of appellate jurisdiction:

- **Courts of Appeal:** Courts of Appeal are found in all regional headquarters of the country. They are competent to entertain appeals against judgments and decisions of customary courts, courts of first instance, high courts and the military courts.
- **The Supreme Court:** the seat of the of the Supreme Court is in Yaoundé. Its function is to ensure that judgments of lower courts are in consonance with the law. It receives appeals from the various Courts of Appeal, Administrative Courts, Special Criminal courts and Regional Audit Courts. The Supreme Court is made up of the Judicial Bench, the Administrative Bench and the Audit Bench. This court is competent to entertain all such matters except commercial matters which are to be brought before a different jurisdiction.

- **The Common Court of Justice and Arbitration:** Cameroon is a member of OHADA (Organisation for the Harmonization of Business Law in Africa) and thus accepts the jurisdiction of the Common Court of Justice and Arbitration (CCJA). The CCJA, headquartered in Abidjan, in Ivory Coast is the key judicial institution of OHADA, responsible for ensuring the uniform application and interpretation of OHADA uniform acts, including those related to arbitration. Cameroon's judicial system, while having its own structure with the Supreme Court as the highest instance, also recognizes and enforces CCJA rulings on commercial matters and arbitral awards. This court has a final jurisdiction when it comes to commercial matters.

3. Courts with special jurisdiction:

- **Administrative courts:** these courts are competent to handle disputes between individuals and the administration, as well as those between different administrative bodies. They play a crucial role in ensuring accountability and legality within the administrative framework of the country.
- **Regional Audit Courts:** competent to control public accounts.
- **Special Criminal Court:** it is a specialised court established to handle cases of public fund misappropriation, specifically those involving at least XAF 50,000,000 (approximately EUR 76,225).

3. What are the time limits for bringing civil claims?

In Cameroon, there is no single time limit for all civil claims. The applicable duration intrinsically depends on the specific nature of the claim and the circumstances surrounding the legal action. This complexity requires not only mastering ordinary limitation periods, but also adjournment periods and those for means of appeal, as their non-observance can be fatal to the procedure.

Service of process deadlines (Art 14 and 15 Civil and Commercial Procedure Code)

Services deadlines:

The deadline for service of process is 8 days for persons domiciled in the locality where the competent court is located. For those domiciled in other parts of Cameroon, the deadline is thirty (30) days.

Outside the Cameroonian territory:

If the person to be served resides outside the territory, the deadlines vary:

- 2 months for residents in mainland France, Europe, Africa, Madagascar, and Reunion.
- 3 months for residents in America.
- 4 months for residents in other countries.

These deadlines are doubled in case of war.

Extension of deadline:

The deadline in Article 14 is extended by 15 days if the service of process is performed by the administrative authority.

Means of Appeal

Opposition deadlines (Article 66 Civil and Commercial Procedure Code)

Any person condemned by default has 15 days from the notification or service of the judgment to file an opposition.

Appeal deadlines (Articles 192 and 193 Civil Procedure Code)

The deadline to file an appeal is 3 months. In divorce matters, it is 2 months, and in local law, 1 month.

Starting point:

- For adversarial judgments, the deadline runs from the day of personal or domicile service.
- For default judgments, it runs from the day on which opposition is no longer admissible.

Deadlines for civil petition (Articles 226, 227, 229 and 231 Civil and Commercial Procedure Code)

The deadline is 2 months for adults, starting from the day of service of the contested judgment. For minors, the deadline does not run against minors until the day the judgment is served after they reach majority.

Residents outside Cameroon: they benefit from the 2-month deadline, to which the adjournment period from Article 15 is added.

Forgery, fraud, or discovery of new documents: in these cases, the deadline only runs from the day these facts are recognized or the documents discovered, provided there is written proof of the date.

Other means of appeal:

Generally, the rules of the Civil and Commercial Procedure Code apply: for example, third-party opposition (for a third party harmed by a judgment) must be filed within 1 month after the publication of the judgment (Article 436 of the Civil and Commercial Procedure Code), and appeal before the Supreme Court does not have a specific deadline beyond those for appeal.

Injunction to pay procedure (OHADA Uniform Act):

In the case of an injunction to pay (simplified recovery procedure), the debtor has 10 days from the service of the injunction order to file an opposition (deadline possibly extended by distance delays). The decision rendered on opposition is subject to appeal. The OHADA Uniform Act sets an appeal deadline of 15 days from the date of the decision rendered on opposition.

General statute of limitations (Article 2262 Civil Code)

The Civil Code sets a common law limitation period of 30 years for *"all actions, both real and personal."* This applies to actions for contractual or tortious liability, as well as to personal actions in general.

Special prescriptions:

Certain actions have shorter deadlines. For example, the 10-year warranty for architects and contractors is acquired after 10 years (Article 2270 of the Civil Code). Daily wages, hotel bills, and monthly remunerations are prescribed by 6 months, and fees for doctors, pharmacists, bailiffs, or tenant rents by 1 year. Lawyers' (formerly *"avoués"*) actions for their fees are prescribed by 2 years (Article 2273 of the Civil Code).

Debt recovery:

Recovery actions (payment of a debt) are in principle subject to the general deadline of 30 years.

Real estate prescription by 10 or 20 years (Article 2265 of the Civil Code).

Acquisitive prescription: in case of possession of real estate, the acquisition of ownership by prescription occurs in 10 years in good faith or 20 years in the absence of good faith, depending on whether the real owner is domiciled within the jurisdiction of the Court of Appeal.

- He who acquires real estate property in good faith and with a just title can prescribe ownership by 10 years, if the true owner lives within the jurisdiction of the Court of Appeal where the property is located.
- This deadline is extended to 20 years if the true owner is domiciled outside said jurisdiction.

Prescription of debts (Article 2271 of the Civil Code)

- The claims of lawyers, for the costs and emoluments owed to them, are prescribed by 2 years from the judgment.
- The claims of doctors, surgeons, pharmacists for their visits, operations, and medications, are prescribed by 2 years.

Prescription of rents, wages, and arrears (Article 2277 of the Civil Code)

- Arrears of annuities, rents, interest on loaned sums and, in general, anything payable annually or at shorter periodic terms are prescribed by 5 years.
- Likewise, actions for the payment of wages of a worker, artisan, or domestic servant, are prescribed by 5 years.

4. Are communications between a lawyer and his/her client privileged?

Communications between a lawyer and his/her client are privileged in Cameroon, as in most legal systems. This is rooted in principle of professional secrecy and confidentiality enshrined under Articles 60 and 61 of the Law organising the Legal Profession. The professional secrecy of an advocate is a fundamental and primordial right and duty. This helps to protect the confidentiality of all information exchanged between a lawyer and their client in the course of legal representation.

The following are considered privileged and is therefore protected by the principle of professional secrecy:

- Legal opinions or consultations provided by a lawyer to their client;
- Correspondence exchanged between the lawyer and their client, and between the lawyer and other lawyers;
- Interview notes and, more generally, all documents and exhibits in the client's file;
- All information and confidences received by the lawyer in the course of their professional activity;
- The identity of clients and the lawyer's appointment schedule;
- Financial transactions and the handling of funds;
- Information requested by auditors or third parties, which may only be communicated to the client, and not to external parties.

The obligations of professional secrecy and confidentiality are not limited to the lawyer but extends to the members of his chambers and any persons who cooperates with him in his professional activity.

Disclosure of such privileged information is prohibited, except with the express consent of the client or as otherwise provided by law. Violating the principles of professional secrecy and confidentiality can lead to disciplinary sanctions by the Bar Council notwithstanding any other action in remedy to be initiated by the client.

However, certain information is not confidential and are therefore not covered by professional secrecy: correspondence intended solely to transmit a procedural document (also known as a “procedural letter”); correspondence marked “official”; and agreements between lawyers that are marked “official”.

5. How are civil proceedings commenced, and what is the typical procedure which is then followed?

A distinction should be made between the modes of commencement of civil actions before courts in the common law jurisdiction and those in the civil law jurisdiction.

In the common law jurisdiction, the appropriate mode of commencement depends on the matter and is usually determined by the applicable legislation. These mode of commencement include the following:

- **Petitions:** A petition is the appropriate method for initiating proceedings in certain matters such as matrimonial causes, divorce, and similar cases. Some administrative matters, such as election disputes, are also commenced by petition. It contains the petitioner’s statement of claim.
- **Motion on notice:** This is a type of application where all parties who may be directly affected by the orders being sought are given notice and an opportunity to appear and oppose the application if they so wish.
- **Motion ex parte:** This is a method of initiating proceedings without notifying the opposing party. It is typically used to obtain immediate and urgent orders.
- **Originating motion:** This is a method of commencing proceedings in the High Court, used where the law specifically provides for it. It is always supported by an affidavit.
- **Originating summons:** This mode of commencement is used when a party seeks the court’s interpretation of statutes, laws, wills, contracts, judgments, or similar documents.
- **Writ of summons:** This is the primary mode of commencing actions before the High Courts in the North-West and South-West regions of Cameroon. It is a formal document that briefly outlines the nature of the plaintiff’s claim against the defendant.

Every motion paper, regardless of its type, must be supported by an affidavit.

Within the civil law jurisdiction, civil actions are brought by way of:

- **Requête (application):** actions are initiated through this mode when expressly provided by the law. Such are generally addressed to the president of the court before which the matter is filed. Upon drafting the *requête*, it is necessary to insert an order which will be signed by the President of the court or the judge delegated by him fixing the date of the

hearing. Such order will have to be served on the defendant through a bailiff at the initiative of the plaintiff or his counsel.

- **Assignment (summons):** in all other civil cases except where a specific mode of commencement is provided by the law, civil actions are brought by way of *assignment*. The Civil and Commercial Procedure Code under its Article 6 outlines the information to be provided on the assignment: the date (day, month, and year), as well as the name, profession, and address of the claimant; the name, address, and registration number of the bailiff or enforcement officer, along with the name and address of the defendant, and an indication of the person to whom a copy of the document will be delivered; the subject of the claim and a summary statement of the grounds; the name of the court with jurisdiction over the claim, and the date and time of the hearing.

Lawsuits process in Cameroon begins with drafting and filing the appropriate legal document with the competent court. In the course of the filing, consignment fees are paid where required by the law. Following that there is service of court processes which is followed by an initial response (statement of defence) by the adverse party.

6. What is the extent of pre-trial exchange of evidence, and how is evidence presented at trial?

The concept of pre-trial applies primarily in common law jurisdictions. This phase encompasses all procedural steps that occur before the opening statements are made before the competent court. During this stage, parties are permitted to adduce evidence.

For example, the statement of claim is included in the originating process (such as a writ of summons) and served on the opposing party along with all relevant and supporting documents. Upon receipt, the defendant is required to file a statement of defence and attach relevant evidence.

Instead of filing a statement of defence, the defendant may opt to submit a preliminary objection, accompanied by supporting documents. The defendant may also file a counterclaim. In response to any of these procedural actions, the plaintiff may equally submit additional evidence.

Only after these preliminary steps are completed does the case move to the trial phase. At trial, both parties may present evidence during opening statements; presentation of the plaintiff’s case; presentation of the defendant’s case; submission of legal arguments, and other permissible stages.

In civil law jurisdictions, parties may present evidence at any point during the proceedings. However, certain procedural objections must be raised *in limine litis* (at the beginning of the trial), before addressing the substance of the case.

All evidence must generally be submitted before the matter is placed under advisement (that is, when the court adjourns for deliberations). Under specific circumstances, the court may suspend deliberations to allow for the production of additional evidence (provided the requesting party demonstrates its relevance and necessity).

If the case has been placed under advisement and the court denies a request to suspend deliberations, no further evidence can be admitted. However, the aggrieved party may adduce

such evidence on appeal, where new evidence may be introduced depending on the context.

Specific types of evidence are admissible in court. They include:

- **Documentary evidence:** Courts prefer primary evidence (original documents). However, secondary evidence such as certified copies may be admitted when originals are unavailable or held by the opposing party. To avoid losing original documents, parties often file certified copies and present the originals for verification.
- **Oral evidence:** usually provided by witnesses who personally observed or witnessed the facts in question.
- **Real evidence:** refers to physical items or material objects directly related to the case.

7. To what extent are the parties able to control the procedure and the timetable? How long do proceedings last?

The parties to a lawsuit have limited control over the course of the proceedings. Their primary liberty lies in the ability to terminate the case, either unilaterally by the initiating party or by mutual agreement. However, such termination must occur before the court delivers its judgment.

Beyond this, the procedure and timeline are governed by court officials, including judges, registrars, or the legal department, particularly when legal submissions or arguments are required.

The duration of proceedings largely depends on the efficiency of the court officials handling the case. However, it is important to note that some parties may engage in delaying tactics, which can significantly prolong the timeline of the case.

8. What interim remedies are available to preserve the parties' interests pending judgment?

The interim remedies available to the parties to preserve their interests are diverse and depends on the type of procedure initiated. Consider the following remedies:

- **Référé proceedings:** 2 types exist in Cameroon: *référés d'heure à heure* and *référés ordinaires*. These are interim proceedings. These are emergency legal procedure that allows an aggrieved party to request from the judge a quick and temporary relief in a situation that cannot wait for a full court trial on the merits.

Référé is a contentious (adversarial) procedure, meaning all parties must be present or duly represented, and are expected to present evidence and legal arguments. It is particularly suitable where a rapid decision is necessary to prevent irreparable harm or stop unlawful actions.

These proceedings are initiated before the President of the competent court, who may either handle the matter directly or delegate it to another judge.

Référé proceedings serve as interim remedies. They are typically used where a party, faced with an urgent situation, cannot wait for the outcome of a full trial and seeks temporary judicial protection to safeguard their interests until a final decision is rendered on the merits.

- Applications for conservatory seizures (attachments): A conservatory seizure is a legal remedy available under Cameroonian law to secure assets in anticipation of a

judgment. It enables the seizure or freezing of various categories of property, including: tangible movable property, livestock, business assets, electronic money holdings, movable property in the possession of third parties, negotiable debt instruments. Once under conservatory seizure, the assets become unavailable for disposal, they cannot be sold, transferred, or encumbered by the debtor.

This measure serves to protect the interests of a prospective judgment creditor, particularly in situations where there is a real risk that the debtor, fearing an adverse ruling, may dissipate or conceal assets to evade enforcement.

In such circumstances, the law allows the creditor to apply to the competent court for an order of conservatory seizure. The applicant must demonstrate a legitimate concern that enforcement of the future judgment would be frustrated if the assets are not immediately preserved.

9. What means of enforcement are available?

Enforcement measures become available upon failure of voluntary execution. In such cases, creditors regardless of the nature of their claim may attach the property of a defaulting debtor to compel performance of obligations or to secure their rights through protective means.

The exercise of such measures is subject to the existence of a writ of execution, which may include:

- Court decisions bearing the executory formula;
- Decisions that are immediately enforceable;
- Foreign judgments and arbitral awards that have been granted exequatur by a final ruling in the State where enforcement is sought;
- Conciliation reports signed by the judge, the court registrar, and the parties;
- Notarial acts bearing the executory formula;
- Mediation agreements that include the executory formula in accordance with the Uniform Act on Mediation;
- Other decisions recognised as enforceable court decisions under the national law of each OHADA Member State.

The means of enforcement available in Cameroon are enshrined in the Uniform Act organizing Simplified Recovery Procedures and Enforcement Measures (UASRPME). Such enforcement measures include:

- **Attachment and sale (*Saisie-vente* - Article 91 of the UASRPME):** any creditor in possession of a writ of execution in proof of a debt, certain and liquid, shall after the service of a summons to pay, proceed with the attachment and sale of any tangible and movable property belonging to his debtor in order to recover the debt from the proceeds of the sale whether or not the said property is in the hands of the debtor.
- **Garnishee Proceedings (*saisie-attribution de créances* - Article 153 of the UASRPME):** any creditor in possession of a writ of execution in proof of a debt certain, and due and owing may, in order to secure payment, without prior summons, attach any sum of money owed the debtor by a third party, subject to the special provisions relating to the attachment of earnings. These claims may consist of electronic money that the debtor can access by means of a withdrawal, payment or transfer.

- **Real property attachment (saisie immobilière – Article 246 of the UASRPME):** this is an enforcement measure through which a creditor holding an enforceable title that establishes a liquid and due claim causes one or more immovable properties belonging to the debtor to be seized under judicial authority by means of a registered summons to pay (commandement). The ultimate aim is to proceed with the public auction sale of the property, allowing the creditor to be paid from the proceeds of the sale.

According to Article 30 of the UASRPME, no compulsory enforcement measures may be taken against legal persons governed by public law, including: The State; local authorities; public establishment. However, if a debt owed by a public legal entity is certain, due, and payable, it may give rise to set-off against debts of the same nature owed to that entity, subject to a reciprocity agreement.

Article 30-3 of the UASRPME further states that no compulsory execution or protective measure may be carried out against foreign legal persons governed by public law or international organizations that enjoy immunity from execution under: diplomatic or consular conventions; headquarters or establishment agreements, unless there is an express waiver of immunity.

10. Does the court have power to order costs? Are foreign claimants required to provide security for costs?

The courts have the powers to order costs in the judgments they render. As a general rule, the unsuccessful party bears the court costs, unless the court orders that the costs be shared between the parties to the lawsuits.

Foreign claimants are required to provide a caution *judicatum solvi*. This is enshrined under Article 73 of the Civil and Commercial Procedure Code which states that subject to guardianship agreements and international conventions, all foreign nationals, whether main claimants or intervening parties, shall be required if the defendant so requests before raising any other procedural objections to provide security for the costs and damages to which they may be liable.

11. On what grounds can the parties appeal, and what restrictions apply? To what extent is enforcement suspended pending an appeal? Is there a right of further appeal?

Parties may appeal against a decision if it is unsatisfactory to them. Such an appeal must be lodged within the time limits set by the applicable legal provisions, depending on the subject matter of the dispute.

The enforcement of a trial court decision may be suspended through the procedure for provisional enforcement, as provided by Law No. 92/008 of August 14, 1992, establishing certain provisions relating to the enforcement of court decisions, as amended by Law No. 97/018 of August 7, 1997.

At the end of the appeal proceedings, the losing party may lodge an appeal before the Supreme Court against the decision rendered.

12. To what extent can domestic and/or foreign state entities claim immunity from civil proceedings?

It is appropriate to distinguish between 2 types of immunities: jurisdictional immunity (preventing proceedings) and execution immunity (protecting assets from seizure).

Immunity of national public entities in Cameroon

In Cameroon, national public entities (the State, local authorities, public institutions) enjoy the inalienability of their assets to ensure continuity of public services. Although they may be sued in court (Article 13 of the Civil and Commercial Procedure Code), their assets generally remain protected.

The jurisprudence of the CCJA marked a turning point for public enterprises and mixed-economy companies. Initially, they enjoyed broad immunity if they performed a public service mission and held public capital. However, since a 2018 decision, the CCJA treats them as private-law entities subject to ordinary enforcement measures for their commercial activities, even where a public-service mission exists.

National public institutions may waive execution immunity by voluntary agreement, but this usually requires specific authorization from the competent authority (for example, “express royal authorization” for municipalities and public institutions, per Article 2045 of the Civil Code).

Immunity of foreign public entities in civil proceedings

Historically absolute, doctrine has evolved toward a restrictive theory, limiting immunity to sovereign acts and excluding it for commercial activities.

Cameroon maintains absolute immunity for the sovereign acts of foreign States, in contrast with the international trend (eg, the United Nations Convention) favouring restrictive immunity.

Execution immunity is distinct and more difficult to lift, requiring express, specific consent to any waiver. Diplomatic assets receive the highest protection.

High-ranking State representatives enjoy personal immunity (*ratione personae*) absolutely during their term of office, while other officials enjoy functional immunity (*ratione materiae*) for their official acts.

Immunity does not apply to serious international crimes. International organizations may also invoke jurisdictional immunity under certain conditions.

Recognition and enforcement of foreign judgments in Cameroon against public entities

In Cameroon, foreign judgments and arbitral awards require an exequatur procedure to be enforced, under the jurisdiction of the “judge in charge of enforcement proceedings”. However, even after exequatur, enforcement against a foreign public entity remains subject to execution immunity rules, requiring identification of unprotected assets or an express waiver.

Conclusion:

Cameroonian national public entities benefit from asset inalienability, although OHADA case law limits this protection for commercial activities. Cameroon upholds absolute immunity for sovereign acts of foreign States, diverging from the global

shift toward restrictive immunity. Execution immunity especially for diplomatic assets poses a significant barrier. Enforcement of foreign judgments in Cameroon depends both on exequatur and strict compliance with immunity rules.

13. What are the procedures for having foreign judgments recognized and enforced?

The procedure for the recognition and enforcement of foreign judgments in Cameroon is the exequatur procedure, as provided for in Articles 5 and following of Law No. 2007/001 of 19 April 2007, which establishes the judge responsible for enforcement proceedings and sets the conditions for the enforcement in Cameroon of foreign judicial decisions, public instruments, and foreign arbitral awards (the “**Law No. 2007**”).

Indeed, the exequatur of a foreign decision falls under the jurisdiction of the President of the Court of First Instance of the place where enforcement is sought, or a magistrate delegated by him. The decision for which exequatur is requested must not be contrary to domestic public policy, otherwise the request will be rejected.

Arbitration

14. Is the arbitration law based on the UNCITRAL Model Law? If so, does it include any key modifications? If not, what type of arbitration does the law provide for?

Cameroon applies the OHADA Uniform Act on Arbitration Law, published on November 23, 2017. This Uniform Act governs arbitration law applicable in all OHADA member states, including Cameroon. It is an autonomous legal instrument and is not based on the UNCITRAL Model Law.

The OHADA Uniform Act on Arbitration (the “**UAA**”) is intended to apply to any arbitration whether domestic or international when the seat of the arbitral Court is located in one of the member states.

The UAA provides for ad hoc arbitration, the conditions of which are determined by the arbitration agreement drawn up by the parties.

15. What are the main arbitration institutions at the national level?

Apart from the CCJA in Abidjan, Côte d’Ivoire, the main national arbitration institutions in Cameroon are:

- The Mediation and Arbitration Centre of the Cameroon Business Group (CMAG);
- The Court of Arbitration and Mediation of the Chamber of Commerce, Industry, Mines and Handicrafts of Cameroon (CAM-CCIMA);
- The Permanent Arbitration and Mediation Center of the African Center for Law and Development (CPAM-CADEV);
- The Cameroonian Permanent Center for Conciliation, Arbitration and Mediation (CPCAM);
- The Arbitration and Mediation Center of the African Intellectual Property Organisation (CAM-OAPI).

Parties wishing to use the services of any of the above-mentioned centers must first comply with their respective procedural rules.

16. Are there any restrictions on who may represent the parties to an arbitration?

The UAA does not impose any restrictions on who may represent the parties in arbitration.

This means that the parties to arbitration may be represented by counsel of their choice, without any particular distinction.

17. What are the formal requirements for an enforceable arbitration agreement?

In accordance with the provisions of Article 3-1 of the UAA, the arbitration agreement must be in writing and may take the form of either an arbitration clause or a agreement to arbitrate.

The arbitration clause is an agreement by which the parties undertake to submit to arbitration any disputes that may arise from or result from a contractual relationship.

The agreement to arbitrate is an agreement by which the parties to an existing dispute agree to resolve it through arbitration.

18. Will the courts stay litigation if there is a valid arbitration clause covering the dispute? Does their approach differ according to whether the seat of the arbitration is inside or outside the jurisdiction?

In accordance with the provisions of Article 13 of the UAA, state courts must decline jurisdiction when the dispute brought before them falls within the competence of an arbitral tribunal. However, this lack of jurisdiction must be invoked by one of the parties.

If an arbitral tribunal has not yet been seized or if no request for arbitration has been filed, state courts must still decline jurisdiction, unless the arbitration agreement is manifestly null or inapplicable in the particular case. In such a situation, the state court must rule definitively on its jurisdiction within 15 days. The decision rendered may only be challenged by an appeal before the CCJA, in accordance with its Rules of Procedure.

In any case, state courts may not raise their lack of jurisdiction ex officio to refuse to hear a dispute that falls under the competence of an arbitral tribunal pursuant to an arbitration agreement.

Nevertheless, despite the existence of an arbitration agreement, one of the parties may, in cases of urgency, apply to the state courts for interim or conservatory measures, provided that such measures do not affect the merits of the dispute, which fall exclusively within the jurisdiction of the arbitral tribunal.

The provisions of Article 13 mentioned above have no impact on the seat of the arbitration.

19. If the arbitration agreement is silent, how many arbitrators will be appointed, and who is the appointing authority?

According to Article 8 of the UAA an arbitral tribunal shall consist of either 1 or 3 arbitrators.

If the parties appoint an even number of arbitrators, the tribunal must be completed by an additional arbitrator, who is either appointed by mutual agreement of the arbitrators already chosen, or in the absence of agreement, designated by the competent judge in the relevant State Party. Each party appoints

one arbitrator, and the two arbitrators so appointed shall jointly select the third arbitrator, who acts as presiding arbitrator.

In case a party fails to appoint its arbitrator within 30 days of receiving a request to do so, or the two appointed arbitrators fail to agree on the third arbitrator within 30 days of their appointment, then, upon request of a party, the competent judge in the State Party shall make the appointment.

In cases where the parties have agreed to a sole arbitrator but fail to reach consensus on the appointment, the arbitrator shall be appointed by the competent judge in the State Party upon the request of either party.

20. What rights are there to challenge the appointment of an arbitrator?

The appointment, recusal, or replacement of an arbitrator is governed by the arbitration agreement, the compromissory clause, or the rules of the arbitral institution administering the arbitration.

Pursuant to Article 6 of the UAA, an arbitrator must have full legal capacity to exercise his or her civil rights and remain independent and impartial in relation to the parties throughout the proceedings.

If an arbitrator is aware of any circumstances that may give rise to a conflict of interest or grounds for recusal, he/she is required to disclose such information to the parties. The arbitrator may only accept the appointment if both parties provide written consent following such disclosure.

Should these requirements be violated, a recusal of the arbitrator may be requested. A request for recusal is only admissible on grounds that arise after the arbitrator's appointment.

The procedure for recusal may be agreed upon by the parties in the arbitration agreement or applicable rules, or in the absence of such agreement, submitted to the competent judge in the State Party. In the latter case, the judge's decision is final and not subject to appeal.

21. Does the domestic law contain public policy requirements for arbitration proceedings?

Article 26 of the UAA provides that an arbitral award may be annulled where the arbitral tribunal has violated a rule of international public policy. Furthermore, if such a violation is established, an application for the recognition and enforcement (exequatur) of the award must be refused.

Public policy principles referenced in the UAA include the following requirements:

- Equality in the treatment of parties: Under Article 9, all parties must be treated equally and granted a full and fair opportunity to present their case.
- Respect of the rule of adversarial proceedings: Article 14 emphasizes that the entire arbitral process must adhere to the principle of adversarial (due process) proceedings, which requires that all parties be given a fair opportunity to be heard. The arbitration must be conducted in compliance with the principles of adversarial (due process) proceedings, ensuring fairness and impartiality.
- Celerity in the treatment of the arbitration file: Article 12 establishes a time limit for the arbitral tribunal to render its award, thereby promoting procedural efficiency and avoiding

unnecessary delay. This reflects the objective of arbitration as a swift and effective means of dispute resolution.

- Confidentiality of the arbitral deliberations: Article 18 provides that deliberations of the arbitral tribunal must remain confidential, reinforcing the principle of secrecy in arbitration. This safeguards the privacy of the parties and maintains the integrity of the arbitral process.

22. On what grounds can the court intervene in arbitrations seated inside the jurisdiction?

The UAA clearly sets out the limited circumstances under which national courts may intervene in arbitrations seated within their jurisdiction. These instances include the following:

• Appointment of a sole arbitrator (Article 5(b)):

In arbitrations involving a sole arbitrator, if the parties fail to agree on the appointment, either party may request the competent judge in the State Party to make the appointment.

• Challenge or recusal of arbitrators (Article 7):

Where the parties have not agreed on a procedure for recusal, and a dispute arises concerning the impartiality or independence of an arbitrator, the matter may be referred to the competent judge in the State Party. The decision of the judge on this issue is final and not subject to appeal.

• Extension of time limits (Article 12):

The time limit for rendering an arbitral award may be extended by an agreement of the parties, a decision of the competent judge, upon the request of one of the parties or the arbitral tribunal itself.

• Interim or conservatory measures (Article 13):

While the existence of an arbitration agreement ordinarily excludes court jurisdiction over the merits, a national court may, upon request of a party: order interim or conservatory measures in cases of recognized urgency, or where such measures are to be executed in a State that is not a party to OHADA.

These interventions are limited to preserving rights and must not touch on the substance of the dispute, which remains within the exclusive jurisdiction of the arbitral tribunal.

• Judicial assistance in taking evidence (Article 14):

Where necessary, the arbitral tribunal may, either on its own initiative or upon a party's request, seek the assistance of the competent judge in obtaining evidence.

23. On what grounds can the court intervene in arbitrations seated outside the jurisdiction?

In principle, national courts in Cameroon cannot intervene in arbitrations seated outside their jurisdiction where there is a valid arbitration agreement.

Article 13 of the UAA provides that where a dispute, properly submitted to an arbitral tribunal pursuant to an arbitration agreement, is brought before a national court, the court must, upon request by one of the parties, decline jurisdiction in favour of arbitration.

Furthermore, the UAA reserves to the courts of the seat of arbitration the authority to decide on matters such as the composition of the arbitral tribunal and other procedural issues. These are therefore outside the scope of Cameroonian court intervention when the arbitration is seated abroad.

That said, Cameroonian courts may intervene in post-award proceedings, particularly with respect to matters of recognition and enforcement of foreign arbitral awards.

24. Do arbitrators have powers to grant interim or conservatory relief?

Under the UAA, arbitrators have powers to grant interim or conservatory measures when such have been requested by the parties.

Specifically, Article 24 of the UAA provides that, the arbitrators may order provisional enforcement of the arbitral award if such enforcement has been requested. They may also deny the request but must do so by means of a reasoned decision.

25. When and in what form must the award be delivered?

The time limit for rendering an arbitral award is freely determined by the parties in the arbitration agreement or compromissory clause. In the absence of such specification, Article 12 of the UAA provides that the arbitral tribunal's mandate shall not exceed six months from the date the last arbitrator accepted his appointment.

With respect to the form in which the arbitral award is to be delivered, a reading of the provisions of the UAA illustrates that the award must be in writing. However, under Article 19, the award must be rendered in accordance with the procedure and form agreed upon by the parties. Failing such agreement, the award must be issued by a majority of the arbitrators where the tribunal is composed of three members.

Article 20 of the UAA further sets out the mandatory contents of the award, which must include: the full names of the arbitrator(s) who made the award; the date of the award; the seat of the arbitral tribunal; the full names or company name of the parties as well as, their residence or registered office; where applicable, the full names of counsel or any person who represented or assisted the parties; a summary of the respective claims and defences of the parties, their submissions as well as the stages of the proceedings.

Finally, the arbitral award must include the reasons upon which it is based.

26. Can a successful party recover its costs?

The rules of the arbitral tribunal allow the tribunal to decide on the allocation of costs. For instance, under Article 35 of the CMAG Arbitration Rules (2019), the final award of the arbitral tribunal not only determines the merits of the dispute but also rules on the arbitration costs (as defined in Article 12 and Annex III), specifying which party shall bear the costs, or how such costs are to be apportioned between the parties.

When allocating costs, the tribunal may take into account the conduct of the parties, particularly where such conduct has influenced the overall cost of the proceedings. With regard to legal fees and expenses incurred by counsel, the tribunal must assess whether these were reasonable and justified before determining whether, and to what extent, they are recoverable.

On its part, Article 24.1 of the Arbitration Rules of the Common Court of Justice and Arbitration outlines that the final award of the arbitrator, other than the decision on the merits, shall fix the

costs of the arbitration and decide which of the parties shall bear them or in what proportion they shall be borne by the parties.

27. On what grounds can an award from an arbitration seated in the jurisdiction be appealed to the court?

Arbitral awards are not subject to appeal under local law. Only annulment under circumstances or review is permitted.

An application for annulment is admissible only in the following cases:

- Where the arbitral tribunal has ruled without an arbitration agreement or on the basis of a void or expired agreement;
- Where the arbitral tribunal was improperly constituted or the sole arbitrator was irregularly appointed;
- Where the arbitral tribunal failed to comply with its assigned mission;
- Where the principle of adversary proceeding has not been respected;
- Where the arbitral tribunal has violated a rule of international public policy of the States signatories of the Treaty;
- Where the award does not state the reasons on which it is based.

As for review, it is only available in the event of the discovery of new facts that could decisively affect the award, provided those facts were unknown to both the arbitral tribunal and the party seeking revision at the time the award was issued.

28. Can a foreign arbitration award be appealed in local courts?

It is the international convention applicable to a particular arbitral award that provides the rules applicable to its recognition and enforcement or in default case, the UAA (Article 11 of the Law No. 2007).

Under Article 25 of the UAA, an arbitral award cannot not be subject to opposition, or appeal in a Court of Appeal or to the Highest Appellate Court.

However, such awards may be challenged by way of an application for annulment under certain conditions, which must be filed before the competent judge in the relevant OHADA Member State. Additionally, the award may be subject to a request for review before the arbitral tribunal itself where new facts are discovered that could have materially influenced the outcome, and which were unknown to both the tribunal and the requesting party at the time the award was rendered.

29. What are the procedures for the enforcement of: (i) awards in other jurisdictions and (ii) domestic awards?

(i) Enforcement of arbitral awards rendered in foreign jurisdictions:

Law No. 2007, provides that the procedure for the enforcement of foreign arbitral awards is governed primarily by applicable international conventions. In the absence of such conventions, the enforcement process is governed by the UAA and Law No. 2003/009 of 10 July 2003, which designates the competent jurisdictions referred to in the Uniform Act and sets out the applicable procedure (the "Law No. 2003").

This enforcement process is termed the *exequatur* proceeding.

The competent judge to hear an application for enforcement is the President of the Court of First Instance in the jurisdiction where enforcement is sought, or, where applicable, the court of the defendant's domicile. In either case, the President may delegate this authority to another judge of the same court (Article 4(2) of the Law No. 2003).

The application for *exequatur* (recognition and enforcement) must be filed either by formal application or by *motion ex parte* and must be accompanied by documents establishing the existence of the arbitral award (Article 5(2) of the Law No. 2003).

Under Article 31 of the UAA, the existence of the award is established by submitting the original arbitral award along with the arbitration agreement, or copies thereof with proof of authenticity. If these documents are not in French, a certified translation must be provided by a court-registered translator.

The application for *exequatur* may be rejected if the arbitral award is manifestly contrary to a rule of international public policy of the OHADA Member States. A decision rejecting *exequatur* is subject to appeal before the CCJA sitting as a final appellate court.

In contrast, a decision granting *exequatur* is final and not subject to appeal.

Where enforcement is sought based on an arbitral award rendered under an international arbitration framework, the terms of the applicable convention or institutional rules will govern the enforcement procedure, to the extent they are recognized.

(ii) Enforcement of domestic arbitral awards

By domestic arbitral awards we understand awards rendered by arbitral tribunals seated in Cameroon.

In order for such awards to be enforced in Cameroon, they must bear the executory formula ("*formule exécutoire*") and be considered as a writ of execution. In Cameroon, only the judiciary is authorized to affix this formula.

Accordingly, the procedure to render an arbitral award enforceable involves obtaining judicial endorsement through the affixing of the executory formula. This requires following the same procedural steps as those applicable to the enforcement of foreign arbitral awards, including a request for *exequatur* before the President of the competent Court of First Instance.

30. Are foreign awards readily enforceable in practice

Pursuant to Article 11 of Law No. 2007, foreign arbitral awards have the authority of *res judicata* and may be recognized and enforced in Cameroon by the enforcement judge, responsible for enforcement proceedings, under certain conditions.

These conditions are those laid down in applicable international conventions. In the absence of such conventions, recognition and enforcement are governed by the provisions of the UAA.

In practice, the enforcement judge typically verifies the validity of the arbitral award; the jurisdiction of the arbitral tribunal; compliance with adversarial procedure; the enforceability of the

award in its country of origin; and its consistency with Cameroonian public policy.

Alternative dispute resolution

31. Are the parties to litigation or arbitration required to consider or submit to any alternative dispute resolution before or during proceedings?

Parties to a litigation or arbitration are not legally compelled to engage in an alternative dispute resolution before or during proceedings. However, such a requirement may arise contractually, particularly where the contract contains a compromissory clause mandating prior ADR.

In that case, the parties are bound to comply, in line with the principle that a contract is the law between the parties and must first attempt to resolve their dispute through the agreed ADR mechanism before initiating court or arbitral proceedings.

Moreover, Article 1 of the Uniform Act on Mediation provides that mediation may be initiated by the parties themselves (conventional mediation), at the request or invitation of a state court (judicial mediation), an arbitral tribunal, or a competent public authority.

Based on the foregoing, while ADR is not generally compulsory under OHADA law, it may become mandatory where contractually agreed and may also be encouraged or facilitated by judicial or arbitral bodies as part of the dispute resolution process.

Reforms

32. Are there likely to be any significant procedural reforms in the near future?

Following its successful adoption on October 17, 2023, in Kinshasa, the UASRPME was published on November 15, 2023, and entered into force on February 16, 2024. This new Uniform Act replaces the previous version dated April 10, 1998.

At this stage, no significant procedural reforms are anticipated in the near future.

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Central African Republic



Introduction

The Central African Republic (CAR) is a civil law country. The legal system is based on the Constitution of 30 August 2023, and other laws and implementing decrees.

The Central African Republic is a member of OHADA and CEMAC; final jurisdiction over matters not within the scope of these inter-governmental organisations falls to the CAR Supreme Court.

Litigation

1. How is the legal profession organised?

In order to practise as a lawyer in the CAR, a person must satisfy certain conditions, and in particular be:

- a national of the CAR or a State with which the CAR has a bilateral establishment or reciprocity agreement;
- the holder of a bachelor's (*licence*) or master's (*maîtrise*) degree in law;
- the holder of a Certificate of Aptitude for the Profession of Lawyer (*Certificat d'Aptitude à la Profession d'Avocat* or CAPA);
- registered with the Bar;
- of evident good moral character;
- sworn in as a lawyer.

They may practise either individually or in a practice structure.

Lawyers practising in a country that has a reciprocity agreement with the CAR may plead before the CAR courts but must have any official procedural steps carried out by a CAR lawyer.

Lawyers who wish to rely on reciprocity to plead in court must contact the Chair of the Bar Association (or Chair's delegate) for an introduction to the presiding judge of the court before which they wish to appear.

There is no distinction between lawyers doing advisory work (solicitor or *avocat conseil*) and those in advocacy (barrister or *avocat plaidant*).

2. How is the court system structured?

The CAR court system is organised as a three-tier pyramid:

- Courts of original jurisdiction:
 - **small claims courts** (*tribunaux d'instance*) have first instance jurisdiction over all civil and commercial matters involving individuals and moveable property for amounts up to XAF 100,000. They also hear landlord and tenant disputes over oral or written rental arrangements worth up to a maximum of XAF 100,000 per month, and claims for maintenance payments up to a maximum of XAF 100,000;
 - **regional courts** (*tribunaux de grande instance*) which hear all civil matters at first instance;
 - special courts (commercial court, employment courts, children's courts, etc).
- **Courts of Appeal** (Bangui, Bambari and Bouar)
- the **Supreme Court** (*Cour de cassation*)

3. What are the time limits for bringing civil claims?

The limitations period under the ordinary rule of law for bringing an action for damages in contract is 30 years. The limitations period under the ordinary rule of law for bringing an action in non-contractual matters is three years.

CAR law does not set down any particular time limit for disputes between traders. However, the Revised Uniform Act on General Commercial Law provides that "obligations arising in connection with trade between traders or between traders and non-traders are time-barred after five years if they are not subject to shorter requirements" (article 16).

Special limitation periods apply to certain types of action.

The parties to a contract can adjust the limitations period by agreement.

4. Are lawyer-client communications privileged?

All information given to a lawyer by a client as part of a procedure or case is considered confidential.

A lawyer who breaches this duty of confidentiality may incur civil, professional or criminal liability. The client cannot release the lawyer from this obligation.

The duty of confidentiality survives the end of the lawyer/client relationship, including where the lawyer stops practising law.

5. How are civil proceedings commenced, and what is the typical procedure which is then followed?

Subject to any rules specific to each court, civil proceedings are filed:

- By written petition (*requête*) submitted to the Court registrar, after which the presiding judge (or other judge with delegated authority) issues an order giving the claimant leave to summon the defendant to a hearing at a date and time fixed by the court. In civil cases, a copy of the summons should be filed with the Court at least three days before the hearing date. If the summons has been properly served on the defendant and if the claimant fails to appear without good reason, the defendant may request a default judgment;
- by written or oral statements: in employment courts, proceedings are commenced by an oral or written statement made to the registrar.

Standard practice in civil matters is to have two types of hearing that alternate each week (every Tuesday): a status conference and a hearing for oral arguments. This means the defendant is generally given 15 days to prepare.

6. What is the extent of pre-trial exchange of evidence, and how is evidence presented at trial?

Evidence can be produced by any means. In civil and commercial matters, evidence is presented in the form of written documents (whether private, notarised, or publicly available), confessions, and witness testimony.

The court may accept statements made by third parties about facts of which they have personal knowledge.

If a party intends to rely, during proceedings, on a notarised instrument or a private agreement to which it is not a party or on evidence held by a third party, it may ask the court to order the production of that instrument or evidence.

On appeal, the parties may raise new grounds, produce new exhibits, or offer new evidence.

There is no equivalent to the English law concept of "disclosure" in the CAR legal system.

The court may order the appointment of an expert, either at its own initiative or at the request of the parties.

7. To what extent are the parties able to control the procedure and the timetable? How long do proceedings last?

In principle, the parties do not control the procedure. Once proceedings have commenced, the timetable is set at the discretion of the court. In practice, this depends on various factors, such as the complexity of the case, the degree of urgency and the caseload of the court. Nevertheless, the parties may end the proceedings at any time by mutual agreement.

Proceedings before the regional courts last an average of two years, and half that amount in specialist courts.

8. What interim remedies are available to preserve the parties' interests pending judgment?

- **Interim proceedings** (*référé*) allow a party to obtain an urgent interim ruling without prejudice to the court's decision on the merits of the case. The claimant must show the urgency of the requested measure, and the application must not relate to the merits of the claim.
- **Ex parte orders** (*ordonnance sur requête*) can be issued by the presiding judge, after hearing a petition without input from the other party, when circumstances so require.
- **Interim attachment** (*saisie conservatoire*) can be ordered to prevent the disposal of tangible or intangible assets by another party, thereby frustrating enforcement of a future award against that party. Interim attachment is possible where the petitioner can demonstrate it has a *prima facie* claim and that recovery of the debt is in jeopardy.

9. What means of enforcement are available?

Decisions only become enforceable once they can no longer be suspended by an appeal and become final, unless immediate enforcement is automatic or has been ordered. The unsuccessful party may, however, benefit from a grace period.

Enforcement measures available under CAR law are those provided for in the OHADA Uniform Act Organising Simplified Recovery Procedures and Measures of Execution. The principal measures are as follows:

- **Seizure and sale** (*saisie-vente*): any creditor in possession of an enforcement order showing a debt due for immediate payment may have the debtor's tangible, moveable property seized and sold in order to recover the debt from the sale price.
- **Third party debt order** (*saisie-attribution de créances*): any creditor in possession of an enforcement order showing a debt due for immediate payment may have receivables owed by a third party to the relevant debtor seized from that third party.
- **Penalty payment** (*astreinte*): creditors who obtain an injunction from a court ordering their debtors to either perform or cease and desist from a particular action may ask the court to combine the injunction with a penalty payable for each day/week/month of delay or non-compliance
- **Property foreclosure** (*saisie immobilière*): this is a procedure of last resort when the seizure of personal property or of receivables has been unsuccessful or insufficient. The failure to recover the debt must be authenticated by a bailiff (*huissier de justice*); only then may the creditor initiate foreclosure.

The new OHADA Uniform Act Organizing Simplified Recovery Procedures and Enforcement Measures (17 October 2023) simplifies and streamlines certain enforcement procedures in all OHADA Member States. The court or presiding judge may grant a grace period to the unsuccessful party.

10. Does the court have power to order costs? Are foreign claimants required to provide security for costs?

The unsuccessful party only bears the costs and fees of the other party if that other party succeeds in having costs awarded by the court.

Foreign claimants are not required to provide security for costs under CAR law.

11. On what grounds can the parties appeal, and what restrictions apply? To what extent is enforcement suspended pending an appeal? Is there a right of further appeal?

Any interested party may lodge an appeal if it has not waived the right to do so. The court of appeals re-examines the case on points of law and of fact.

Parties have two months to appeal first instance decisions (and one month in non-contentious matters).

New claims cannot be made on appeal, unless they seek to offset related claims or where the new claim is an argument in defence against the main claim. After an appellate decision, it is possible to apply to the Supreme Court (or the CCJA for cases that come under OHADA law). The Supreme Court rules on questions of law only, not fact.

12. To what extent can domestic and/or foreign State entities claim immunity from civil proceedings?

Proceedings can be brought against the CAR Government or public authorities in connection with their interactions with individuals, either in the ordinary courts for civil law matters or in administrative court for administrative matters. State-owned companies do not benefit from immunity.

For foreign entities, any jurisdictional rights of immunity that may apply derive from international agreements on diplomatic or consular relationships.

13. What are the procedures for having foreign judgments recognised and enforced?

In the CAR, decisions handed down by foreign courts are enforceable, subject to the provisions of international agreements, once they have been declared enforceable by the presiding judge of the regional court following a petition for an enforcement order (exequatur).

An enforcement order for a foreign court decision will be issued under the following conditions:

- the decision is final in its country of origin;
- the court issuing the decision had jurisdiction to do so;
- the decision was lawfully obtained and due process was respected;

- the decision does not breach CAR public policy.

In practice, it is easy to obtain an enforcement order.

Arbitration

14. Is the arbitration law based on the UNCITRAL Model Law on International Commercial Arbitration? If so, does it include any key modifications? If not, what type of arbitration does the law provide for?

The CAR is a Member State of OHADA (*Organisation pour l'Harmonisation en Afrique du Droit des Affaires* – Organisation for the Harmonisation of Business Law in Africa). The OHADA Treaty was first signed on 17 October 1993 and amended on 17 October 2008. Under the Treaty, the Council of Ministers adopt “uniform acts” that are directly applicable and enforceable in each of the Member States. Arbitration is governed by the Uniform Act on Arbitration (the “UAA”) adopted on 23 November 2017, replacing the Uniform Act of 11 March 1999.

The UAA is not based on the UNCITRAL Model Law. It was drafted separately but is nevertheless consistent with the fundamental principles of international commercial arbitration and the essential characteristics of the UNCITRAL Model Law.

The UAA applies to both national and international arbitration and governs all arbitration proceedings with a seat in a Member State.

Before adoption of the UAA, there was no law governing arbitration in the CAR. Moreover, CAR law has no provisions on arbitrations that take place in a non-OHADA Member State.

One of the most important features of OHADA arbitration is the Common Court of Justice and Arbitration (*Cour commune de justice et d'arbitrage* or CCJA), which acts as both a permanent arbitral tribunal and the supreme court of arbitration for all OHADA Member States.

15. What are the main arbitration institutions at the national level?

There is no arbitration institution in the CAR at national level; the main institution is the CCJA, which was created by the OHADA Treaty and is based in Abidjan, Côte d'Ivoire. The CCJA, which also has a judicial function, acts as an arbitration centre and administers proceedings governed by the CCJA Rules of Arbitration. The CCJA is different from other arbitration centres in that it is not a private institution but was created and organised by OHADA.

For the CCJA Rules to be applicable, article 21 of the OHADA Treaty stipulates that all or part of the contract must be performed in the territory of one or more Member States, or that at least one of the parties must be domiciled or habitually resident in a Member State. According to legal scholars, it should also be possible to go to arbitration under the CCJA Rules even if these conditions are not met, if the parties have provided for this possibility in their arbitration agreement.

In practice, arbitration clauses are more and more frequently included in contracts entered into by CAR companies, as well as by certain public institutions.

An arbitration centre was created in June 2012 following a decision made by the CAR Chamber of Commerce.

In April 2025, the *Cabinet d'Ingénierie Juridique et d'Arbitrage* (CIJARC) was launched in Bangui to promote OHADA arbitration procedures amongst the general public, but there is limited information available on whether they are able to hear and decide on disputes.

16. Are there any restrictions on who may represent the parties to an arbitration?

The UAA does not set any restrictions on who can represent parties in an arbitration matter. They are entitled but not required to instruct a lawyer (article 20, UAA).

The parties may also be assisted by a foreign lawyer.

17. What are the formal requirements for an enforceable arbitration agreement?

Article 3-1 of the UAA states that the arbitration agreement must be made in writing or by any other means whereby its existence can be demonstrated. No particular format is required. The UAA also provides that contracts can include an arbitration agreement by reference to a separate document.

18. Will the courts stay litigation if there is a valid arbitration clause covering the dispute? Does their approach differ according to whether the seat of the arbitration is inside or outside the jurisdiction?

Article 13 of the UAA provides that national courts must decline jurisdiction if a dispute that is already in arbitration pursuant to an arbitration agreement is brought before national courts.

If no arbitral tribunal has yet been formed, national courts must nevertheless decline jurisdiction at the request of a party unless the arbitration agreement is manifestly void or inapplicable. Courts cannot decline jurisdiction of their own motion.

In principle, the location of the seat of arbitration has no effect on this issue.

In practice, the CAR courts tend to decline jurisdiction when there is an arbitration clause in the contract between the parties.

Even if the parties have a valid arbitration agreement, however, they can apply to a national court for interim or protective orders where the circumstances are "clearly shown" to be urgent, if this does not require a review of the case on the merits.

National courts can also intervene in very limited circumstances to assist the arbitration process (see questions 22 and 23 below).

19. If the arbitration agreement is silent, how many arbitrators are appointed, and who is the appointing authority?

The UAA does not stipulate a specific number of arbitrators if the arbitration agreement is silent on this point. It does provide that an arbitral tribunal must have a sole arbitrator or three arbitrators.

If the parties do not agree on the appointment procedure or if their agreement is not sufficiently detailed, the UAA provides that:

- in an arbitration with three arbitrators, each party appoints one arbitrator and these two arbitrators choose the third arbitrator; if a party fails to appoint an arbitrator within thirty days of the receipt of a request to do so from the other party, or if the two arbitrators fail to agree on the third arbitrator within thirty days of their appointment, the appointment is made, at the request of a party, by the competent court in the Member State;
- in an arbitration with a sole arbitrator, if the parties fail to agree on the appointment, the arbitrator is appointed, at the request of a party, by the competent court in the Member State.

20. What rights are there to challenge the appointment of an arbitrator?

Articles 7 and 8 of the UAA set the rules for recusal. An arbitrator must be independent and impartial with regard to the parties, and must disclose "any circumstance that could create a legitimate doubt in the mind of the parties about the arbitrator's independence and impartiality".

The competent court in the Member State rules on any challenges, unless the parties resolve the challenge otherwise.

Arbitrators may only be challenged for reasons that come to light after their appointment.

21. Does domestic law contain public policy requirements for the procedure to be followed?

Under the UAA, parties must receive equal treatment and have an opportunity to exercise their rights (Art. 9, UAA). Arbitrators may not base decisions on grounds raised of their own motion without first giving the parties an opportunity to submit observations (Art. 14, UAA).

Article 18 of the UAA provides that deliberations are confidential.

The UAA also provides that arbitration cannot last more than six months from the date on which the last arbitrator accepts the terms of reference, unless that period is extended by agreement of the parties or by the competent court.

22. On what grounds can the court intervene in arbitrations seated inside the jurisdiction?

In principle, where there is an arbitration agreement, the national courts cannot intervene in a dispute until the award has been made.

Nevertheless, parties may petition the competent court in the CAR in the following circumstances;

- to resolve difficulties encountered with composing the arbitral tribunal, to appoint the sole arbitrator or the third arbitrator (Art. 5 and 8, UAA)
- to rule on challenges against arbitrators where the parties have not provided for a different procedure (Art. 7, UAA)
- to extend the deadline for completing the arbitration, at the request of a party or the arbitral tribunal, where there is no agreement between the parties to do so (Art. 12, UAA)
- to order interim or conservatory measures in cases of recognised and demonstrated urgency, provided the measures do not require a review of the case on the merits (Art. 13, UAA)

- to assist the arbitral tribunal, at its request, with the collection of evidence (Art. 14, UAA)
- to interpret the award or correct clerical errors or omissions affecting the award in cases where the arbitral tribunal cannot be re-seated (Art. 22, UAA).

23. On what grounds can the court intervene in arbitrations seated outside the jurisdiction?

As a general principle, national courts cannot intervene where there is an arbitration agreement. Moreover, any and all issues relating to the composition of the arbitral tribunal and conduct of arbitral proceedings fall under the jurisdiction of the courts of the State of the seat.

However, it is possible for national courts other than the competent court of the country in which the arbitration is seated to intervene to order conservatory or interim relief under the conditions defined above in question 18 (Art. 13, UAA).

24. Do arbitrators have powers to grant interim or conservatory relief?

Article 14 of the UAA authorises the arbitral tribunal to act at the request of either party to order interim or conservatory relief, excluding interim attachment and court-ordered security which are matters for the national courts.

25. When and in what form must the award be delivered?

Unless otherwise agreed by the parties, arbitral awards must be issued no more than six months after the date on which the last arbitrator accepted the terms of reference. This period can be extended by agreement between the parties, or by order of the competent court of the Member State at the request of a party or the arbitral tribunal (Art. 12, UAA).

Parties can establish special requirements for awards. If they do not, awards are issued by majority decision (for tribunals with three arbitrators), and the grounds must be stated. Awards must be signed by at least two of the three arbitrators.

26. Can a successful party recover its costs?

The UAA makes no provision for cost recovery.

Where arbitration is conducted under the aegis of the CCJA, the arbitrator is empowered to award costs.

27. On what grounds can an award from an arbitration seated in the jurisdiction be appealed to the court?

An application to set aside is the only remedy against an arbitral award. Applications must be brought before the competent court in the Member State where the award was issued, within one month from the date of service of an enforceable award (Art. 25 and 27, UAA). The parties can agree to waive applications to set aside the award, on the condition the award is not contrary to international public policy provisions.

The circumstances in which an application to set aside can be brought are as follows (article 26, UAA):

- the arbitral tribunal ruled despite the lack of an arbitration agreement or in reliance on an invalid or expired agreement;
- the arbitral tribunal was not properly constituted;
- the arbitral tribunal did not rule in compliance with its terms of reference;
- the right to be heard (*contradictoire*) was not observed;
- the award breaches an international public policy provision;
- no reasons are given for the award.

An application to set aside an arbitral award suspends its enforcement, unless the tribunal ordered immediate enforcement. The court's decision can only be appealed to the CCJA (Art. 25 and 28, UAA).

28. Can a foreign arbitration award be appealed in the local courts?

There are no provisions allowing an appeal to the local courts.

29. What are the procedures for the enforcement of: (i) awards rendered in other jurisdictions and (ii) domestic awards?

To enforce awards issued in an OHADA Member State, the UAA requires parties to obtain an order for enforcement, or exequatur, from the competent Member State court (Art. 30). In the CAR, this is the presiding judge of the regional court.

To do this, the requesting party must produce the original arbitral award together with the original arbitration agreement or copies of these documents meeting the authentication requirements and, where relevant, a certified translation into French (Art. 31, UAA).

Decisions refusing to recognise an arbitral award can be appealed to the CCJA, but decisions granting recognition are not subject to appeal (Art. 32, UAA).

Under Article 34 of the UAA, "arbitral awards rendered on the basis of rules different from those provided for in this Uniform Act are recognized in the States Parties under the conditions provided for by international conventions possibly applicable and, in the absence thereof, under the same conditions as those provided in this Uniform Act". Accordingly, the recognition and enforcement of awards issued in a country outside of the OHADA region will be governed by any applicable conventions (such as the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards). When there is no applicable international convention, the recognition and enforcement of such awards will be governed by the UAA. The CAR is a party to the New York Convention.

Alternative dispute resolution

30. Are the parties to litigation or arbitration required to consider or submit to any alternative dispute resolution before or during proceedings?

While alternative dispute resolution is not compulsory in CAR, conciliation may be instigated by the judge in litigation proceedings with the consent of the parties.

Reforms

31. Are there likely to be any significant procedural reforms in the near future?

Not that we are aware of.

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Chad



Introduction

The legal system of Chad is based on both civil and customary law. Its foundational and essential texts include the Constitution of 17 December 2023, and Law No. 011/PR/2013 of 17 June 2013 creating the Code on the organisation of the judicial system, amended by Law No. 008/PR/2020 of 9 June 2020. Chad is a member of CEMAC and OHADA; its Supreme Court has ultimate jurisdiction for matters that do not fall within the scope of these inter-governmental organisations.

Litigation

1. How is the legal profession organised?

The legal profession is governed by Law No. 033/PR/96 of 5 November 1996. In order to practise as a lawyer in Chad, one must be registered with the Chad Bar Association (*Ordre des avocats*), and:

- have Chadian nationality (or coverage under a reciprocity agreement)
- be over 18 years of age
- be in possession of all necessary citizen's rights (to vote, stand for election, etc.)
- have a law degree
- have completed an internship

The profession is organised by the Bar Association, which makes sure members comply with the rules governing the profession and takes any necessary administrative and disciplinary action. Lawyers (*avocats*) admitted to the Bar (*Barreau*) may appear before any court. They may practise either individually or in a practice structure.

Foreign lawyers may appear before the Chadian courts if they are admitted to the Bar of a State with which Chad has a legal cooperation agreement or a reciprocity agreement. They must inform the Justice Minister, the Public Prosecutor, the relevant Chair of the Bar Association (*Bâtonnier*) and counsel for the other party before doing so.

2. How is the court system structured?

The Chadian court system is structured as a three-tiered pyramid:

- Courts of original jurisdiction:
 - Justices of the peace (*Justices de paix*) can be found in all districts of N'Djamena and in any sub-prefecture where there is no General Court (*Tribunal de grande instance*). Justices of the peace have jurisdiction to rule in (i) the first and last instance on all civil cases involving no more than XAF 100,000, and (ii) in the first instance over all civil cases involving no more XAF 500,000 million.
 - General Courts (*Tribunaux de grande instance*) hear all civil and administrative cases over which jurisdiction is not assigned to another court due to the subject matter or amount of the claim. They have jurisdiction to hear appeals on civil matters exceeding XAF 500,000.

There are also courts with special jurisdiction (Employment and Social Security Courts, Commercial Courts)

- Courts of Appeal (N'Djamena, Moundou, Abéché Sarh, Mongo, Moussoro, Faya and Amdjarass)
- The Supreme Court (*Cour suprême*).

3. What are the time limits for bringing civil claims?

Time limits vary depending on the type of action and the parties involved:

- the ordinary limitation period for bringing an action for damages, whether or not based in contract, is 30 years;
- the limitation period between traders or between traders and non-traders is five years.

Special periods apply to certain types of action; for example cases involving real estate are time-barred after 10 or 20 years. Cases involving labour rights are time-barred after 5 years.

The parties can adjust limitation periods by contract within the confines of a minimum of one year and a maximum of 10 years. Traders can also add clauses to suspend or interrupt the limitation period.

The limitation period is suspended when a claim is brought or an action for recognition of a foreign judgment is filed.

4. Are lawyer-client communications privileged?

In principle, lawyers cannot disclose confidential information they possess through the exercise of their profession. However, there are no provisions of law defining what type of communication is considered legally privileged or confidential.

Lawyers are subject to professional ethical rules that govern the consequences tied to confidentiality.

Any violation of the duty of confidentiality may expose a lawyer to disciplinary sanctions and to civil and criminal liability. Clients can release their lawyers from the duty of confidentiality.

5. How are civil proceedings commenced, and what is the typical procedure which is then followed?

Civil actions are filed with the court:

- By written petition (*requête*) filed with the court registrar by the claimant or his/her representative
- by summons to appear (*assignation*), stating the court and the date of the hearing
- by submitting a verbal statement to the registrar or electronically

An interval of at least 15 days must be allowed between the date of delivery or service of the summons and the date on which the defendant must appear if the defendant lives in the district (*sous-prefecture*) of the court. The interval is increased by 15 days for defendants residing outside the district of the court, and by 2 months for defendants residing abroad.

These time limits may be reduced in urgent cases, by order of the presiding judge of the court.

6. What is the extent of pre-trial exchange of evidence, and how is evidence presented at trial?

Each party bears the burden of proving the facts necessary to support a claim. Parties citing evidence must volunteer that evidence to all other parties to the proceeding. If they do not, the court may be asked to order its production and a regular penalty payment for failure to comply. Under the principle of allowing a hearing of all parties (*contradictoire*), each party is entitled to respond to evidence produced by the opposing party.

Parties may also ask the court to order the production of documents held by third parties (provided there is no legitimate impediment to such production), along with a regular penalty payment for non-compliance.

The court may order the appointment of an expert, either at its own initiative or at the request of the parties.

In the absence of a legal title or evidence, a sworn witness statement may be ordered by a judgment setting out the facts on which it will be taken.

7. To what extent are the parties able to control the procedure and the timetable? How long do proceedings last?

The parties do not control the procedure. Once the proceedings have commenced, the timetable is set at the court's discretion and in practice depends on various factors, such as case

complexity, degree of urgency and caseload. Nevertheless, the parties may end the proceedings at any time by mutual agreement. Civil or commercial cases that are not overly complicated last between nine and 15 months.

8. What interim remedies are available to preserve the parties' interests pending judgment?

There are interim procedures in Chad to protect the interests of the parties whilst waiting for a decision on the merits of the case:

- **Interim proceedings** (*référé*) allow a party to obtain an urgent interim ruling without prejudice to the court's decision on the merits of the case.
- **Ex parte orders** (*ordonnances sur requête*) can be issued without giving all parties an opportunity to respond if circumstances so require to protect the parties' rights and interests. Ex parte orders are immediately enforceable.
- **Interim attachment** (*saisie conservatoire*) can be ordered to prevent the disposal of tangible or intangible assets by another party, thereby frustrating enforcement of a future award against that party. Interim attachment is possible where the petitioner can demonstrate it has a prima facie claim and that recovery of the debt is in jeopardy

9. What means of enforcement are available?

Enforcement measures available under Chadian law are those provided for in the OHADA Uniform Act Organising Simplified Recovery Procedures and Measures of Execution. The principal measures are:

- **Seizure and sale** (*saisie-vente*): any creditor in possession of an enforcement order showing a debt due for immediate payment may have the debtor's tangible, moveable property seized and sold in order to recover the debt from the sale price
- **Third party debt order** (*saisie-attribution de créances*): any creditor in possession of an enforcement order showing a debt due for immediate payment may seize the debtor's receivables held by a third party
- **Penalty payment** (*astreinte*): creditors who obtain an injunction from a court ordering their debtors to either perform or cease and desist from a particular action may ask the court to combine the injunction with a penalty payable for each day/week/month of delay or non-compliance
- **Property foreclosure** (*saisie immobilière*): this is a procedure of last resort when the seizure of personal property or of receivables has been unsuccessful or insufficient. Previous failure to recover the debt must be authenticated by a bailiff (*huissier de justice*); only then may the creditor initiate foreclosure.

The new OHADA Uniform Act Organizing Simplified Recovery Procedures and Enforcement Measures (17 October 2023) simplifies and streamlines certain enforcement procedures in all OHADA Member States.

10. Does the court have power to order costs? Are foreign claimants required to provide security for costs?

The unsuccessful party bears the costs. However, if the court's decision is not clearly in favour of one party only, some costs may be shared between the parties.

Reimbursement of legal fees is not included in costs, and each party is responsible for its own lawyers' fees.

At the defendant's request, foreign claimants (whose countries are not bound by a judicial cooperation agreement with Chad) can be required to pay sufficient funds into court to cover any costs and damages that may be ordered (*cautio judicatum solvi*), unless they are able to show that they own sufficient real property in Chad to cover any such costs and damages.

11. On what grounds can the parties appeal, and what restrictions apply? To what extent is enforcement suspended pending an appeal? Is there a right of further appeal?

In principle, parties have one month to appeal a first instance judgment. The deadline is calculated from the date the judgment is handed down for *inter partes* proceedings, or from the date a challenge is no longer admissible for a default judgment.

Appeals are filed by way of a notice of appeal stating the grounds of appeal. The notice is served on the parties and submitted to the court registrar.

New claims cannot be made on appeal, unless they seek to offset related claims or where the new claim is an argument in defence against the main claim. Appeals suspend enforcement of the original judgment unless immediate enforcement is of right, or was ordered by the lower court.

In the event of an appeal, immediate or temporary enforcement ordered by the lower court may be suspended by the president of the Court of Appeal ruling in an expedited proceedings. Suspension is granted in limited cases: if enforcement is prohibited by law and has been ordered outside the cases provided for by law, if it is likely to have manifestly excessive consequences and is not sufficiently justified.

After an appellate decision, it is possible to apply to the Supreme Court (or the CCJA for cases that come under OHADA law). The Supreme Court rules on questions of law, not fact. If the appeal to the Supreme Court is successful, the decision is overturned and the case is remanded to a new Court of Appeal or a different seating of the original Court of Appeal for a second appellate judgment. In principle, the remand Court of Appeal is not required to abide by the Supreme Court's decision. In practice, however, the Court of Appeal follows the Supreme Court's decision.

If there is an appeal to the Supreme Court and enforcement of the decision would cause irreparable harm, or in matters of property registration, the President of the Supreme Court may order a stay of enforcement.

12. To what extent can domestic and/or foreign State entities claim immunity from civil proceedings?

Proceedings can be brought in the General Court (*Tribunal de grande instance*) against the Government or public authorities. These proceedings are valid in all cases, whether civil, administrative or criminal. State-owned companies do not have jurisdictional immunity but do have immunity from enforcement measures. Assets belonging to public institutions and publicly-owned commercial companies performing a public service mission are exempt from seizure.

For foreign entities, any jurisdictional immunity rights that may apply are derived from international agreements on diplomatic or consular relationships, or where relevant, from headquarters agreements between such foreign entities and the Government of Chad.

13. What are the procedures for having foreign judgments recognised and enforced?

Unless otherwise provided in international conventions, enforcement orders for foreign court decisions are requested from the presiding judge of the General Court (*Tribunal de grande instance*) for the place where enforcement is sought. An *ex parte* petition is submitted to the presiding judge. The party over which enforcement is sought is summoned to appear by the court registrar, and the presiding judge issues a decision after a hearing of all parties conducted under the rules for interim proceedings.

Where no international convention applies, a foreign court decision can be recognised in Chad on the following conditions:

- the decision was made by a court with jurisdiction;
- the decision applies the law that governs the dispute under the rules for conflicts of law;
- the decision is final, binding and enforceable under the laws of the country where it was handed down;
- the parties were served due notice of the legal proceedings and entered an appearance in court or were found in default;
- the decision is not contrary to public policy rules in Chad and does not conflict with any *res judicata* judicial decision issued in Chad.

Arbitration

14. Is the arbitration law based on the UNCITRAL Model Law on International Commercial Arbitration? If so, does it include any key modifications? If not, what type of arbitration does the law provide for?

Chad is a Member State of OHADA (*Organisation pour l'Harmonisation en Afrique du Droit des Affaires* - Organisation for the Harmonisation of Business Law in Africa). The OHADA Treaty was signed on 17 October 1993 and amended on 17 October 2008. Under the Treaty, the OHADA Council of Ministers adopt "uniform acts" that are directly applicable and enforceable in all Member States. Arbitration is therefore governed by the Uniform Act on Arbitration (the "UAA") adopted on 23 November 2017, replacing the Uniform Act of 11 March 1999. The UAA is not based on the UNCITRAL Model Law. It was drafted separately but is nevertheless in line with the fundamental principles of international commercial arbitration and key features of the UNCITRAL Model Law.

The UAA applies to both national and international arbitration and governs all arbitration proceedings with a seat in an OHADA Member State.

One of the most important features of OHADA arbitration is the Common Court of Justice and Arbitration (*Cour commune de justice et d'arbitrage* or the CCJA), which acts as both a permanent arbitral tribunal and the supreme court of arbitration for all OHADA Member States.

Before the adoption of the UAA, there was no specific arbitration law, and domestic arbitrations were governed by just a few provisions of the Chad Civil Procedure Code. These provisions were repealed and replaced with the UAA.

15. What are the main arbitration institutions at the national level?

The *Centre d'Arbitrage, de Médiation et de Conciliation de N'Djamena*, created in 2017, is the main national arbitration institution.

16. Are there any restrictions on who may represent the parties to an arbitration?

The UAA does not set any restrictions on who can represent parties in arbitration. They are entitled but not required to instruct counsel (Art. 20, UAA).

17. What are the formal requirements for an enforceable arbitration agreement?

Article 3-1 of the UAA states that the arbitration agreement must be made in writing or by any other means whereby its existence can be demonstrated. No particular format is required. The UAA also provides that contracts can include an arbitration agreement by reference to a separate document.

18. Will the courts stay litigation if there is a valid arbitration clause covering the dispute? Does their approach differ according to whether the seat of the arbitration is inside or outside the jurisdiction?

Article 13 of the UAA provides that national courts must decline jurisdiction if a dispute that is already in arbitration pursuant to an arbitration agreement is brought before national courts.

If no arbitral tribunal has yet been formed, national courts must nevertheless decline jurisdiction at the request of a party unless the arbitration agreement is manifestly void or inapplicable. Courts cannot decline jurisdiction of their own motion.

In principle, the location of the seat of arbitration has no effect on this issue.

Even where the parties have a valid arbitration agreement, however, they can apply to a national court for interim or protective orders where the circumstances are “clearly shown” to be urgent, if this does not require a review of the case on the merits.

National courts can also intervene in very limited circumstances to assist the arbitration process (see questions 22 and 23 below).

19. If the arbitration agreement is silent, how many arbitrators will be appointed, and who is the appointing authority?

While the UAA does not mandate a specific number of arbitrators for cases where the arbitration agreement is silent on this point, it does provide that tribunals must have either a sole arbitrator or three arbitrators. In the absence of an agreement between the parties, the case is adjudicated by a sole arbitrator.

If the parties do not agree on the appointment procedure or if their agreement is not sufficiently detailed, the UAA provides that:

- in an arbitration with three arbitrators, each party appoints one arbitrator and these two arbitrators choose the third arbitrator; if a party fails to appoint an arbitrator within thirty days of the receipt of a request to do so from the other party, or if the two arbitrators fail to agree on the third arbitrator within thirty days of their appointment, the appointment is made, at the request of a party, by the competent court in the Member State;
- in an arbitration with a sole arbitrator, if the parties fail to agree on the appointment, the arbitrator is appointed, at the request of a party, by the competent court in the Member State.

20. What rights are there to challenge the appointment of an arbitrator?

Articles 7 and 8 of the UAA set the rules for recusal. An arbitrator must be independent and impartial with regard to the parties, and must disclose “any circumstance that could create a legitimate doubt in the mind of the parties about the arbitrator’s independence and impartiality”.

The competent court in the Member State rules on any challenges within 30 days, unless the parties resolve the challenge otherwise. If the local court fails to hear the challenge within that deadline, jurisdiction is transferred to the CCJA.

Decisions by a competent court dismissing a challenge can only be appealed to the CCJA.

Any grounds for recusal must be raised within thirty days from the discovery of the material fact relied on by the party seeking recusal.

Arbitrators may only be challenged on grounds that come to light after their appointment.

21. Does domestic law contain public policy requirements for the procedure to be followed?

Under the UAA, parties must receive equal treatment and have an opportunity to exercise their rights (Art. 9, UAA). Arbitrators may not base decisions on grounds raised of their own motion without first giving the parties an opportunity to submit observations (Art. 14, UAA).

Article 18 of the UAA provides that deliberations are confidential.

The UAA also provides that arbitration cannot last more than six months from the date on which the last arbitrator accepts the terms of reference, unless that period is extended by agreement of the parties or by the competent court.

22. On what grounds can the court intervene in arbitrations seated inside the jurisdiction?

In principle, where there is an arbitration agreement, the national courts cannot intervene in a dispute until the award has been issued.

Nevertheless, parties may petition the competent court in Chad in the following circumstances:

- to resolve difficulties encountered while constituting the arbitral tribunal, to appoint the sole arbitrator or the third arbitrator (Art. 5 and 8 of the UAA)
- to rule on challenges against arbitrators where the parties have not agreed on a different procedure (Art. 7 of the UAA)
- to extend the deadline for the conclusion of the arbitration, at the request of a party or the arbitral tribunal, where there is no agreement between the parties to do so (Art. 12)
- to order interim or protective measures of recognised and demonstrated urgency, or where the measure must be enforced in a non-OHADA State, provided no review of the case on the merits is necessary (Art. 13 of the UAA)
- to assist the arbitral tribunal, at its request, with the collection of evidence (Art. 14 of the UAA)
- to interpret the award or correct clerical errors or omissions affecting the award in cases where the arbitral tribunal cannot be re-seated (Art. 22 of the UAA).

23. On what grounds can the court intervene in arbitrations seated outside the jurisdiction?

As a general principle, national courts cannot intervene where there is an arbitration agreement. Moreover, any and all issues relating to the composition of the arbitral tribunal and conduct of arbitral proceedings fall under the jurisdiction of the courts of the State of the seat.

However, it is possible for national courts other than the competent court of the Member State in which the arbitration is seated to intervene by ordering conservatory or interim relief under the conditions defined above in question 18 (Art. 13 of the UAA).

24. Do arbitrators have powers to grant interim or conservatory relief?

Article 14 of the UAA authorises the arbitral tribunal to act at the request of either party to order interim or conservatory relief, excluding interim attachment and court-ordered security which are matters for the national courts.

25. When and in what form must the award be delivered?

Unless otherwise agreed by the parties, arbitral awards must be issued no more than six months after the date on which the last arbitrator accepted the terms of reference. This period can be extended by agreement between the parties, or by order of the competent court of the Member State.

Parties can establish special requirements for awards. If they do not, awards are issued by majority decision (for tribunals with three arbitrators), and the grounds must be stated. Awards must be signed by at least two of the three arbitrators.

26. Can a successful party recover its costs?

The UAA makes no provision for cost recovery.

Where arbitration is conducted under the aegis of the CCJA, the arbitrator is empowered to award costs.

27. On what grounds can an award from an arbitration seated in the jurisdiction be appealed to the court?

The only remedy against an arbitral award is an application to set aside that award, brought before the competent court in the Member State in which it was issued within one month from the date of service of an enforceable award (Art. 25 and 27 of the UAA). In Chad, the competent court is the N'Djamena Court of Appeal.

An application to set aside can only be brought in the following circumstances (Art. 26 of the UAA):

- the arbitral tribunal ruled despite the lack of an arbitration agreement or in reliance on an invalid or expired agreement;
- the arbitral tribunal was not properly constituted;
- the arbitral tribunal did not rule in compliance with its terms of reference;
- the right to be heard (*contradictoire*) was not observed;
- the award breaches an international public policy provision;
- no reasons are given for the award.

An application to set aside an arbitral award suspends its enforcement, unless the tribunal ordered immediate enforcement. The court's decision can only be appealed to the CCJA (Art. 25 and 28 of the UAA).

28. Can a foreign arbitration award be appealed in the local courts?

No.

29. What are the procedures for the enforcement of: (i) awards rendered in other jurisdictions and (ii) domestic awards?

To enforce awards issued in an OHADA Member State, the UAA requires parties to obtain the recognition of the award from the competent court in that Member State (Art. 30). In Chad, this is the presiding judge of the N'Djamena General Court (*Tribunal de grande instance*), with exclusive jurisdiction for the enforcement of arbitral awards.

The original arbitral award must be produced, together with the arbitration agreement or copies of these documents meeting the necessary authentication conditions and, where necessary, a sworn translation into French (Art. 31 of the UAA).

A national court to which a request for recognition or exequatur has been submitted must rule within no more than fifteen days of the referral. If the court has not issued a decision by the end of this period, exequatur is deemed to have been granted. If exequatur is granted or if the court receiving the application has not responded within fifteen days as described above, the most diligent party applies to the chief registrar or competent authority in the Member State to have the enforcement order imprinted on the official original copy of the award. The procedure for requesting exequatur is not adversarial.

Decisions refusing to recognise an arbitral award can be appealed to the CCJA, but decisions granting recognition are not subject to appeal (Art. 32 of the UAA).

Under Article 34 of the UAA, “arbitral awards rendered on the basis of rules different from those provided for in this Uniform Act are recognized in the States Parties under the conditions provided for by international conventions possibly applicable and, in the absence thereof, under the same conditions as those provided in this Uniform Act”. Accordingly, the recognition and enforcement of awards issued in a country outside of the OHADA region will be governed by any applicable conventions (such as the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards). When there is no applicable international convention, the recognition and enforcement of such awards will be governed by the UAA. Chad is not a party to the New York Convention.

30. Are foreign awards readily enforceable in practice?

Yes, if they meet the criteria for recognition of foreign judgments.

Alternative dispute resolution

31. Are the parties to litigation or arbitration required to consider or submit to any alternative dispute resolution before or during proceedings?

Alternative dispute resolution is not compulsory in Chad but, with the parties’ consent, the court may reconcile the parties or appoint a third party as mediator at their request in the context of litigation proceedings.

An initial conciliation phase is mandatory in civil matters brought before a Justice of the Peace.

Reforms

32. Are there likely to be any significant procedural reforms in the near future?

A new Employment Code is under review, along with its implementing decrees, to replace the old one in force since 1996.

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Comoros



Introduction

The Comoros is a civil law country. Its court structure is derived from the Constitution of 23 December 2001, amended by the referendum of 17 May 2009, and its implementing decrees and laws. The Comoros ratified the OHADA treaty in 1995; OHADA law is therefore directly applicable in the Comoros.

Litigation

1. How are the legal professions organised?

The legal profession is governed by the law of 23 June 2008 regulating the legal profession in the Union of the Comoros. To practise law in the Comoros, potential lawyers must be registered with the Comoros Bar Association (*Ordre des avocats*) and meet certain requirements, including:

- holding the Certificate of Aptitude for the Profession of Lawyer (*Certificat d'aptitude à la profession d'avocat* or CAPA)
- having Comorian nationality or being registered in an OHADA Member State or a State granting reciprocity in such matters to Comorian nationals

The profession is organised by the Bar Association (*Conseil de l'Ordre*), which ensures that members abide by the rules of professional conduct and takes any necessary disciplinary measures. Lawyers registered with the Bar (*Barreau*) can appear before any court. They can practise either individually or as part of a practice structure.

Foreign lawyers registered with the Bar of an OHADA Member State or a State granting reciprocity to Comorian nationals can plead before Comorian courts provided that (i) they appoint the offices of a lawyer practising within the jurisdiction of the court in the Union of the Comoros as their address for service, and (ii) they inform the Bar Association, the opposing party and the Prosecutor General that they will appear in court. All other lawyers must be expressly authorised to appear by a special decision of the Chairman of the Bar Association or the *Conseil de l'Ordre*.

2. How is the court system structured?

The Comorian court system is structured as a three-tiered pyramid:

- The General Courts (*tribunaux de première instance*), present on each island, which have original jurisdiction in all matters, save where jurisdiction has been granted to other courts by law.

There are specialist courts of original jurisdiction, such as the Employment Court and the Commercial Court. There are also Cadi Courts (Muslim justice) with jurisdiction over questions of personal status (marriage, divorce and inheritance). They are headed by a Cadi assisted by a registrar.

- Three Courts of Appeal (present on each island) which rule on appeals filed against decisions handed down by the first level courts;
- The Supreme Court, which hears appeals against rulings handed down by the court of last instance.

3. What are the time limits for bringing civil claims?

Limitation periods vary depending on the type of action and the parties involved:

- The general limitation period for bringing a contract-based action for damages or a criminal complaint is 30 years.
- Between traders and in commercial sales, the limitation period is subject to OHADA rules.

Specific limitation periods apply to certain types of action. For example, all actions disputing legal costs and fees are limited to two years after the client's payment.

4. Are lawyer-client communications privileged?

Communications between lawyers and clients are confidential. However, the law does not specify what types of communication are covered by the duty of confidentiality.

Clients can release their lawyers from their duty of confidentiality.

5. How are civil proceedings commenced, and what is the typical procedure which is then followed?

Civil proceedings are filed:

- by joint petition, where the parties submit their respective claims to the court

- by declaration to the court registrar
- by summons, where the claimant calls the defendant to appear before the competent court

There is no specified time frame within which defendants must submit their arguments; timing is at the discretion of the judge presiding over the hearing.

In employment disputes, parties must always undertake preliminary conciliation. If the conciliation procedure fails, the judge refers the case for trial.

6. What is the extent of pre-trial exchange of evidence, and how is evidence presented at trial?

In civil proceedings, all forms of evidence are permitted. In practice, there is no pre-trial hearing. The evidence is submitted to the court at the same time as the claims and pleadings. A party citing an exhibit is required to send it to every other party to the proceedings. The judge may order a party to produce evidence, subject to a penalty payment if necessary, at the request of the other party. The judge has the power to order, at his/her own initiative, all legally accepted investigative measures.

In principle, after the pleading phase is over and the case is submitted for deliberation, it is not possible to submit new evidence. In practice, however, the judge may authorise the parties to submit post-hearing evidence, often accompanied by exhibits, provided the other party can respond to the post-hearing submissions via further post-hearing submissions, or request that deliberations be adjourned and the pleading phase reopened.

7. To what extent are the parties able to control the procedure and the timetable? How long do proceedings last?

The parties do not control the procedure. Once the proceedings have commenced, the timetable is set at the discretion of the court and in practice depends on various factors, such as the complexity of the case, the degree of urgency and the court's caseload. The parties may end the proceedings at any time by mutual agreement.

In practice, the average duration of proceedings, be they at first instance or at appeal, is one and a half years. A major problem for Comorian judges is the drafting of rulings; once deliberations have ended, parties may have to wait more than six months before obtaining a written decision.

Proceedings are also often delayed by adjournments between hearings. In the first instance and on appeal, it is common for there to be seven hearings in all, at a rate of one hearing per month.

8. What interim remedies are available to preserve the parties' interests pending judgment?

There are three types of interim proceedings in the Comoros:

- **Interim proceedings** (*référé*) are held in the presence of all parties. In all urgent cases, the presiding judge of the General Court can order any measures that are not seriously contested or that are justified in the context of an existing dispute. Even if they are contested, the judge can order any interim remedies necessary to stop a manifestly unlawful act or prevent imminent harm. If an obligation is not open to a

bona fide challenge, a provisional payment may be awarded to the creditor, or enforcement of the obligation ordered, which can include mandatory injunctions. In practice, it is rare for presiding judges to grant provisional payments.

- **Ex parte orders** (*ordonnances sur requête*) are issued by the presiding judge of the court without giving all parties an opportunity to respond if dictated by circumstances to protect the parties' rights and interests. *Ex parte* orders are thus immediately enforceable but can be contested by the other party before the judge
- **Interim attachment** (*saisie conservatoire*) is governed by OHADA rules. A debtor can apply to the judge for interim proceedings seeking the release of seized assets. To do so, his/her claim must simply appear founded in principle.

9. What means of enforcement are available?

Judgments are only enforceable to the extent that they are no longer subject to an appeal that suspends enforcement (eg *res judicata*), unless the judgment or order of first instance is immediately enforceable provided by law or by the judge. A grace period may be granted under some circumstances.

The enforcement measures available under Comorian law are those provided for in the OHADA Uniform Act Organising Simplified Recovery Procedures and Measures of Execution. The principal measures are:

- **Seizure and sale** (*saisie-vente*): any creditor in possession of an enforcement order showing a debt due for immediate payment may have the debtor's tangible, moveable property seized and sold in order to recover the debt from the sale price.
- **Third party debt order** (*saisie-attribution de créances*): any creditor in possession of an enforcement order showing a debt due for immediate payment may have receivables owed to the relevant debtor by a third party seized from that third party.
- **Penalty payment** (*astreinte*): creditors who obtain an injunction from a court ordering their debtors to either perform or cease and desist from a particular action may ask the court to combine the injunction with a penalty payable for each day/week/month of delay or non-compliance.
- **Property foreclosure** (*saisie immobilière*): this is a procedure of last resort when the seizure of personal property or of receivables has been unsuccessful or insufficient. The failure to recover the debt must be authenticated by a bailiff (*huissier de justice*); only then may the creditor initiate foreclosure.

The new OHADA Uniform Act Organizing Simplified Recovery Procedures and Enforcement Measures (17 October 2023) simplifies and streamlines certain enforcement procedures in all OHADA Member States.

10. Does the court have power to order costs? Are foreign claimants required to provide security for costs?

The unsuccessful party bears the court costs, unless the court decides to order a different party to bear all or part of them. It is rare, however, for unsuccessful parties to bear the other party's legal fees. Legal fees are evaluated at the court's discretion; fees actually paid by the client are generally far higher than those granted by the court.

Some specific rules apply to court costs for appeals to the Supreme Court (article 36 of the Constitutional Law on the Supreme Court of 19 October 2019):

- The appellant, whether Comorian or foreign, must pay a filing fee of KMF 20,000 to the Supreme Court clerk when submitting a petition, otherwise the appeal will not be registered. This sum is non-refundable, whatever the outcome of the case.
- In addition, the party appealing to the Supreme Court must deposit a provision sufficient to guarantee payment of stamp duty and registration fees, which are calculated by the Supreme Court clerk.

11. On what grounds can the parties appeal, and what restrictions apply? To what extent is enforcement suspended pending an appeal? Is there a right of further appeal?

An appeal is based on law and no leave to appeal is required. Appeals are filed by notice of appeal with the Registrar of the General Court after service of the original decision.

The default time limit to appeal is one month, with a few exceptions for interim and *ex parte* orders, and non-contentious matters, where the time limit for appeals is reduced to 15 days. New claims are inadmissible on appeal, unless they are made to offset related claims or in defence against the main claim. If filed in due time, appeals suspend enforcement of the judgment, save where the court has ordered immediate enforcement.

After a Court of Appeal decision, it is possible to file a further appeal with the Supreme Court. As the Supreme Court of the Comoros was only established in 2012, it has handed down very few decisions to date.

The Supreme Court can only rule on issues of law, not fact. An appeal to the Supreme Court does not suspend enforcement of the appellate judgment. If successful, the case is remanded to a new court for a second judgment. In principle, the court of remand is not required to abide by the Supreme Court's interpretation but in practice, it generally does so.

12. To what extent can domestic and/or foreign State entities claim immunity from civil proceedings?

Proceedings can be brought against the State in General Court or in administrative courts. The State and local authorities do not benefit from jurisdictional immunity.

For foreign entities, any jurisdictional immunity they may enjoy derives from international agreements on diplomatic or consular relationships.

13. What are the procedures for having foreign judgments recognised and enforced?

In the Comoros, the Code of Civil Procedure does not stipulate an enforcement procedure. However, in practice, the courts verify the foreign judgment meets the following conditions:

- It is not contrary to public policy rules in the Comoros and does not infringe a final and binding Comorian legal decision;
- The parties were served, represented or found in default in accordance with the law.

In practice, the enforcement of foreign judgments is very rarely admitted. The courts will usually overturn the foreign judgment when asked for an enforcement order.

Arbitration

14. Is arbitration law based on the UNCITRAL Model Law on International Commercial Arbitration? If so, does it include any key modifications? If not, what type of arbitration does the law provide for?

The Comoros is a member of OHADA (*Organisation pour l'Harmonisation en Afrique du Droit des Affaires* – Organisation for the Harmonisation of Business Law in Africa). The OHADA Treaty was first signed on 17 October 1993. Under the OHADA Treaty, the Council of Ministers of Justice and Finance adopts uniform acts that are directly applicable and enforceable in each of the Member States. Arbitration in the OHADA Member States is governed by the Uniform Act on Arbitration (the "UAA"), adopted on 23 November 2017, replacing the Uniform Act of 11 March 1999.

The UAA is not based on the UNCITRAL Model Law. It was drafted separately, but is nevertheless consistent with the fundamental principles of international commercial arbitration and the main features of the UNCITRAL Model Law.

The UAA applies to both national and international arbitration and governs all arbitration proceedings with a seat in a Member State.

One of the most important characteristics of OHADA arbitration is the Common Court of Justice and Arbitration (*Cour Commune de justice et d'arbitrage* or the CCJA), which acts as both a permanent arbitration institution and a supreme court of arbitration for OHADA Member States.

15. What are the main arbitration institutions at the national level?

Since December 2011, the main arbitration institution in the Comoros has been the Court of Arbitration of the Comoros (CACOM) seated at the Comores Chamber of Commerce (*Union des chambres de commerce d'industrie et d'Agriculture des Comores* (UCCIA)). The CACOM is the result of a joint initiative of UCCIA and the national employers' federation, the OPACO.

At the supranational level, the CCJA based in Abidjan, Côte d'Ivoire, can also hear arbitration matters. The CCJA serves as an arbitration centre and administers proceedings governed by the CCJA Rules of Arbitration. The CCJA is different from other arbitration centres as it is not a private institution but was created and organised by OHADA.

In practice, few contracts in the Comores contain clauses referring to CCJA arbitration.

To the best of our knowledge, the CACOM has not dealt with any cases. Usually it would handle commercial cases, and it is currently training arbitrators and mediators locally. Professional judges who sit on conventional courts do not have a very favourable view of the CACOM.

16. Are there any restrictions on who may represent the parties to an arbitration?

The UAA does not set any restrictions on who can represent parties in arbitration. They are entitled but not required to instruct counsel (Art. 20 of the UAA).

Parties may be assisted by a foreign lawyer without restrictions.

17. What are the formal requirements for an enforceable arbitration agreement?

Article 3 of the UAA states that the arbitration agreement must be made in writing or by any other means whereby its existence can be demonstrated. No particular format is required. The UAA also provides that contracts can include an arbitration agreement by reference to a separate document.

18. Will the courts stay litigation if there is a valid arbitration clause covering the dispute? Does their approach differ according to whether the seat of arbitration is inside or outside the jurisdiction?

Article 13 of the UAA provides that national courts must decline jurisdiction if a dispute that is already in arbitration pursuant to an arbitration agreement is brought before national courts.

If no arbitral tribunal has yet been formed, national courts must nevertheless decline jurisdiction at the request of a party unless the arbitration agreement is manifestly void or inapplicable. Courts cannot decline jurisdiction of their own motion.

Even where the parties have a valid arbitration agreement, however, they can apply to a national court for interim or protective orders if this does not require a review of the case on the merits, provided the circumstances are “clearly shown” to be urgent.

National courts can also intervene in very limited circumstances with a view to assisting the arbitration process (see questions 22 and 23 below).

19. If the arbitration agreement is silent, how many arbitrators are appointed, and who is the appointing authority?

While the UAA does not stipulate a specific number of arbitrators if the arbitration agreement is silent on this point, it does provide that an arbitral tribunal must have either a sole arbitrator or three arbitrators.

If the parties are unable to appoint an arbitrator or arbitrators, the task falls to the competent court in the Member State in which the seat of arbitration is located.

If the request for arbitration is filed with the CCJA and the parties have not agreed on the number of arbitrators, the Court appoints a sole arbitrator unless the dispute seems to justify the appointment of three arbitrators.

In the latter case, the parties have fifteen days to appoint the arbitrators (Art. 3.1 of the UAA).

20. What rights are there to challenge the appointment of an arbitrator?

Articles 7 and 8 of the UAA set the rules for recusal. An arbitrator must disclose “any circumstance that could create a

legitimate doubt in the mind of the parties about the arbitrator’s independence and impartiality”. Arbitrators may accept their mission only with the written consent of the parties.

Once formally appointed, arbitrators may only be challenged if there is a doubt about their impartiality and independence, on grounds or facts that come to light after the appointment.

Any cause for the recusal of an arbitrator must be raised within thirty days from the discovery of the basis for the challenge.

Unless the parties have provided for a different recusal procedure, challenges will be settled by the competent court of the Member State within 30 days. If the local court fails to hear the challenge within that deadline, jurisdiction is transferred to the CCJA. Decisions issued by local courts rejecting the challenge can only be appealed to the CCJA, and decisions in favour of the challenge are not subject to appeal.

21. Does domestic law contain public policy requirements for arbitration proceedings?

The UAA contains imperative provisions that cannot be waived by the parties. Parties must receive equal treatment and have an opportunity to exercise their rights (Art. 9). Arbitrators may not base their decisions on grounds raised of their own motion without first allowing parties to submit observations (Art. 14).

Article 18 of the UAA provides that deliberations must be kept confidential.

The UAA also provides that arbitration cannot last more than six months from the date on which the last arbitrator accepts the terms of reference, unless that period is extended by agreement of the parties or by the competent court at the seat of arbitration.

22. On what grounds can the court intervene in arbitrations seated inside the jurisdiction?

In principle, where there is an arbitration agreement, the national courts cannot intervene in a dispute until the award has been issued.

Nevertheless, parties may petition the competent court in the Comoros in the following circumstances:

- to resolve difficulties encountered with composing the arbitral tribunal, to appoint the sole arbitrator or the third arbitrator
- to rule on challenges against arbitrators where the parties have not provided for a different procedure
- to extend the deadline for the conclusion of the arbitration where there is no agreement between the parties to do so, at the request of a party or the arbitral tribunal
- to order interim or protective measures when urgently necessary (recognised and reasoned circumstances), provided the measures do not require a review of the case on the merits
- to assist the arbitral tribunal, at its request, with the collection of evidence

23. On what grounds can the court intervene in arbitrations seated outside the jurisdiction?

As indicated above (question 22), national courts cannot intervene in an arbitration where there is an arbitration agreement. Moreover, if the arbitration is seated in another jurisdiction, any and all issues relating to the composition of the arbitral tribunal and conduct of arbitral proceedings fall under the jurisdiction of the courts in the State of the seat.

24. Do arbitrators have powers to grant interim or conservatory relief?

The arbitral tribunal may act at the request of either party to order interim or conservatory measures, excluding interim attachments and court-ordered security which are matters within the sole jurisdiction of the national courts (Art. 14 of the UAA).

25. When and in what form must the award be delivered?

Save as agreed otherwise by the parties, arbitral awards must be issued within six months from the date on which all of the arbitrators have accepted the terms of reference. This period can be extended by agreement between the parties, or by order of the competent court of the Member State at the request of a party or the arbitral tribunal (Art. 12).

Parties can establish special requirements for awards. Failing this, awards are issued by majority decision (for tribunals with three arbitrators), and the grounds must be stated. Awards must be signed by at least two of the three arbitrators.

26. Can a successful party recover its costs?

The UAA contains no provisions on cost recovery.

Where arbitration is conducted under the aegis of the CCJA, the arbitrator is empowered to award costs.

27. On what grounds can an award from an arbitration seated in the jurisdiction be appealed to the court?

An application to set aside is the only remedy against an arbitral award. Applications must be brought before the competent court in the Member State where the award was issued, within one month from the date of service of the award once rendered enforceable (Art. 25 and 27).

The circumstances in which an application to set aside can be brought are as follows (article 26, UAA):

- the arbitral tribunal ruled without an arbitration agreement or with respect to an invalid or expired agreement;
- the arbitral tribunal was not properly composed;
- the arbitral tribunal did not rule in compliance with the terms of arbitration;
- the right to be heard (*contradictoire*) was not observed;
- the arbitral tribunal breaches a public policy rule of the OHADA Member States;
- no reasons are given for the award.

Bringing an application to set aside an arbitral award suspends enforcement, unless the tribunal ordered immediate enforcement. The decision can only be appealed to the CCJA.

Applications to set aside are the only possible remedy that can be sought in national courts. Other remedies – third party challenges and applications for revision of the award – must be submitted to the arbitral tribunal itself.

28. Can a foreign arbitration award be appealed in the local courts?

No. See question 27 above.

29. What are the procedures for the enforcement of: (i) awards rendered in other jurisdictions and (ii) domestic awards?

To enforce awards issued in an OHADA Member State, the UAA requires parties to obtain the recognition of the award from the competent court in that Member State. The Comoros' civil procedure laws do not specify which jurisdiction is competent in this regard.

When seeking enforcement, the original arbitral award must be produced, together with the arbitration agreement or copies of these documents meeting the necessary authentication conditions and, where necessary, a sworn translation into French.

Decisions refusing to recognise an arbitral award can be appealed to the CCJA but decisions granting recognition are not subject to appeal.

The Comoros joined the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards ("the New York Convention") in April 2015. The New York Convention facilitates recognition and enforcement of foreign arbitral awards. There are no known decisions on the basis of the New York Convention in the Comoros to date.

Alternative dispute resolution

30. Are the parties to litigation or arbitration required to consider or submit to any alternative dispute resolution before or during proceedings?

In the Comoros, it is within the judge's remit to order conciliation between the parties. The parties therefore have the option of conciliation at their own initiative or that of the judge. Extracts from the record of conciliation may be issued and used as valid instruments for enforcement.

In employment disputes, parties must always undertake preliminary conciliation. If the conciliation procedure fails, the judge refers the case for trial.

Reforms

31. Are there likely to be any significant procedural reforms in the near future?

To the best of our knowledge, there are currently no plans to make any significant reforms of civil or commercial procedure in the near future.

The law of the Comoros has been reformed together with OHADA law; the most recent amendments include revised Uniform Acts on commercial companies (March 2014), on insolvency proceedings (September 2015), and on accountancy law and financial information (January 2017) and recently the new OHADA Uniform Act Organizing Simplified Recovery Procedures and Enforcement Measures (17 October 2023).

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Côte d'Ivoire



Introduction

Côte d'Ivoire has a civil law-based legal system founded on the Constitution of 8 November 2016, as amended by the parliament on 19 March 2020, on duly ratified/approved treaties and agreements, and any other relevant laws and regulations. Côte d'Ivoire is also a member of regional economic unions: ECOWAS, UEMOA and OHADA.

Litigation

1. How are the legal professions organised?

The legal profession is governed by UEMOA Regulation 05/CM/UEMOA harmonising the rules governing the legal profession in the West African Economic and Monetary Union (UEMOA) area, as well as by the provisions of Law No. 81/588 of 27 July 1981. The latter are consistent with the relevant provisions of UEMOA Regulations.

The legal profession is organised into a Bar Association (*Conseil de l'Ordre des avocats*) which ensures that members abide by the rules governing the profession and takes any necessary disciplinary action.

To practise law in Côte d'Ivoire, one must be a lawyer or trainee lawyer, a recognised university associate professor, or a resigned judge.

Legal practitioners must be registered with the Bar Association of an UEMOA Member State as either a lawyer or a trainee.

To register as trainee lawyers, potential trainees must:

- be at least 21 years of age
- hold a master's degree recognised by the African and Madagascar Council for Superior Education (CAMES) or any diploma recognised as equivalent
- hold a Certificate of Aptitude for the Profession of Advocate (CAPA) in a UEMOA Member State
- be of good moral character
- be a citizen of a UEMOA Member State.

To register as lawyers, candidates must:

- have satisfied the requirement of practising as a trainee in a registered legal practice
- hold a training completion certificate
- be at least 24 years of age
- be a citizen of a UEMOA Member State
- hold a training certificate
- be of good moral character
- be in good financial standing, neither insolvent, nor bankrupt

Judges and university associate professors benefit from a CAPA waiver, ie they do not need to take a Bar exam. However, they must satisfy the following requirements before being admitted as trainee lawyers:

- taking an oath before the Court of Appeal upon presentation by the Chairman of the Bar Association
- before taking the oath, attending 6 months of training on the rules of conduct and practice in the legal profession, as defined by the Chairman of the Bar Association
- for judges, having a minimum of 10 years of experience; they must have resigned from the judiciary at the time they take the oath.

In UEMOA jurisdictions, lawyers act both as barristers and litigators, they can give advice and draft pleadings/appear in court.

Foreign lawyers can appear before the Côte d'Ivoire courts on an occasional basis, provided that Côte d'Ivoire lawyers have reciprocal rights in the foreign lawyer's home country.

In order to appear before the courts, foreign lawyers must have a local law firm as a place of residence for their proceedings. They must give the address of that law firm as their address for service of process in Côte d'Ivoire, and notify the Chairman of the Bar Association (*bâtonnier*).

2. How is the court system structured?

Despite the Constitution providing for a dual system of jurisdictions, the judicial system of Côte d'Ivoire had long operated under a model of jurisdictional unity, structured in a threeter pyramid hierarchy.

On March 28, 2019, Law No. 2019219 on the organization of courts was enacted, thereby enshrining the principle of dual jurisdiction set forth in the Constitution and establishing new courts.

The new courts established by this law are as follows:

- **First Instance Jurisdictions:**

- Alongside the ordinary courts of first instance, Administrative Tribunals and Regional Chambers of Accounts have also been established.

- **Appellate Jurisdictions:**

- In addition to the existing civil and commercial Courts of Appeal, Administrative Courts of Appeal have been instituted.

- **Superior Jurisdictions**

- At the apex of the system, in addition to the Court of Cassation, the following institutions have been established:
 - the Council of State
 - the Court of Auditors
 - the Tribunal of Conflicts

Henceforth, this new judicial system shall be structured as follows.

LEVEL	ORDER	TYPE OF COURT
First Instance Courts	Judicial	Courts of First Instance: They have general jurisdiction over all civil, commercial, administrative, and tax matters not expressly assigned to another court by virtue of the nature of the case. Commercial Courts: They have jurisdiction over: • disputes arising from undertakings and transactions between traders, within the meaning of the OHADA Uniform Act on General Commercial Law; • disputes between partners of a commercial company or members of an economic interest group; • disputes between any persons concerning commercial transactions, within the meaning of the Uniform Act on General Commercial Law; provided, however, that in actions between traders and non-traders, the non-trader claimant may seize the ordinary civil courts; • insolvency and debt-restructuring proceedings; • more generally, all disputes relating to acts of commerce carried out by traders in the course of their business, including those involving civil elements. Employment Courts: They hear individual disputes arising out of employment or apprenticeship contracts, including disputes relating to occupational accidents and diseases, between employees or apprentices and their employers or masters. They also have jurisdiction over disputes relating to the validity and enforcement of collective agreements and related regulations. Their competence extends to disputes between workers or apprentices arising from employment or apprenticeship relationships.
	Administrative	Administrative Courts: They adjudicate disputes between individuals and the administration and review the legality of administrative acts. They are courts of general jurisdiction for administrative litigation at first instance, subject to the jurisdiction of the Council of State, the Administrative Courts of Appeal, and specialised administrative courts. <i>(Note: Administrative courts are not yet operational; administrative matters are currently handled by the Courts of First Instance sitting in administrative matters.)</i>

Second Instance Courts	Judicial	Courts of Appeal: They hear appeals against judgments delivered at first instance by the Courts of First Instance. Commercial Courts of Appeal: They review decisions rendered at first instance by the Commercial Courts.
	Administrative	Administrative Courts of Appeal: Their role is to exercise judicial review over decisions rendered by the administrative tribunals. <i>(Note: Administrative Courts of Appeal are not yet operational; administrative matters are currently handled by the Courts of Appeal sitting in administrative matters.)</i>
Superior courts	Community	Common Court of Justice and Arbitration (CCJA): Seized through cassation proceedings, it adjudicates on decisions rendered by the appellate courts of the OHADA Member States in all cases raising issues relating to the interpretation or application of the OHADA Uniform Acts and Regulations adopted under the OHADA Treaty, excluding criminal sanctions. It also rules, under the same conditions, on final decisions rendered by any court of the Member States in such matters.
	Judicial	Court of Cassation (Supreme court): Subject to matters falling within the jurisdiction of other courts within the judicial order, the Court of Cassation has final authority over appeals in cassation lodged against judgments and rulings rendered in last resort by lower courts in civil, commercial, labour, and criminal matters.
	Administrative	Council of State: It ensures the proper application of the law by administrative courts, reviews the legality of administrative acts, and determines the liability of public entities and public services. It exercises both judicial and advisory functions.
	First instance	Chambre régionale des comptes (<i>non fonctionnelle</i>)
Special Courts	Superior level	Audit Courts: It exercises judicial, oversight, and advisory functions. It audits and adjudicates the accounts of public accountants, sanctions financial mismanagement, oversees the management of State services, local authorities, and public bodies, ensures the sound use of public resources, and examines entities with State participation. It also issues opinions and reports in connection with its audit and supervisory mandate.
		Tribunal of Conflicts: It resolves jurisdictional conflicts between the administrative and judicial orders when: 1. a court of either order refers a question of jurisdiction arising in a pending case; 2. the Minister, Prefect, or the representative of the relevant local authority raises a conflict; 3. courts of both orders have declared themselves incompetent to hear a case involving the same subject matter; or 4. final decisions have been rendered by both administrative and judicial courts in proceedings concerning the same dispute, and such contradictory decisions amount to a denial of justice.

3. What are the time limits for bringing civil claims?

Limitation periods vary depending on the type of action and the parties involved:

- The ordinary limitation period for bringing an action for damages in contract is 30 years for actions to recover personal or real property (Art. 2262 of the Civil Code)

- The ordinary limitation period for bringing a non-contractual action for damages is 30 years
- The limitation period for commercial actions is five years, and two years for commercial sales and employment litigation.
- Specific limitation periods apply to certain types of action. For example, the limitation period for actions by physicians in connection with examinations, operations and medicines is two years.

Limitation periods are matters of public policy and therefore mandatory. The party benefiting from a limitation period may waive it. Limitation periods are primarily interrupted by the issuance of a summons for legal proceedings, or by a court order for payment or attachment of assets.

4. Are lawyer-client communications privileged?

Communications between lawyers and clients are confidential and cannot be disclosed to any third party or to the court or tribunal.

5. How are civil proceedings commenced, and what is the typical procedure which is then followed?

Civil claims are filed before the courts:

- by summons, in which the claimant calls on the defendant to appear before the competent court;
- by written or oral petition filed with the registrar of the competent court for actions involving personal property or movable assets in which the pecuniary interest does not exceed CFA 500,000;
- by voluntary appearance of the parties before the judge, and by joint petition, with the parties submitting their respective claims to the judge along with the points on which they disagree and their supporting evidence.

Unless the parties have consented to a shorter time limit or the time limit has been reduced by the court, there must be a minimum of eight days between the issue date of the notice or summons to appear in court and the hearing date. This is increased to 15 days if the party is domiciled in an area adjoining the jurisdiction, and to two months for parties domiciled outside Côte d'Ivoire.

These limits do not apply to urgent matters such as interim proceedings, for which the judge will set the time frame.

In employment disputes, the Employment Code requires the presiding judge of the court to propose conciliation. If full conciliation is achieved, an excerpt from the conciliation report signed by the clerk and issued to the parties is deemed equivalent to an enforceable ruling. If conciliation fails, the presiding judge refers the matter for a public hearing.

6. What is the extent of pre-trial exchange of evidence, and how is evidence presented at trial?

In civil proceedings, evidence is given in written form. In general, this means all types of documents: hard copies, emails, etc.

Evidence is produced in good faith at the same time as formal pleadings. It may happen, however, that a defendant refuses to produce evidence in his/her possession, even if it could contribute to establishing the truth.

There is no equivalent to the common law concept of 'disclosure' under Côte d'Ivoire law, and in principle, no one may be compelled to give evidence against him or herself. However, the law does admit a petition to require parties to produce evidence in their possession where they refuse to disclose it.

On appeal, it is always possible to produce new evidence, but this must not involve a new claim unless the purpose is to offset related claims. In principle, the Court of Cassation cannot hear new evidence in appeals on points of law. However, by exercising its discretion, in practice the Court of Cassation may hear new evidence disclosed on appeal.

For expert assessments, appointed experts are selected from a national list prepared by the Keeper of the Seals (*garde des Sceaux*). Exceptionally, the judge may select an expert who is not on that list by reasoned decision. The party seeking the appointment of an expert witness must pay the costs in advance. The expert files a report with the registrar, including the supplied documents. The court must inform the parties accordingly within 24 hours by registered letter.

7. To what extent are the parties able to control the procedure and the timetable? How long do proceedings last?

The parties do not control the procedure before the regular courts. Once proceedings have commenced, the timetable is set at the discretion of the court and in practice depends on various factors, such as case complexity, degree of urgency, and the court's caseload. Nevertheless, the parties may end the proceedings at any time by mutual agreement.

In commercial court proceedings, the law requires that decisions be made no more than three months from the beginning of the case. This period may exceptionally be extended for one month by order of the President of the court.

However, parties do have some control over the procedure at the time the lawsuit is filed. Depending on circumstances, the party filing the lawsuit may be able to request a specific day and time for the case to be heard.

8. What interim remedies are available to preserve the parties' interests pending judgment?

Interim proceedings can be brought in Côte d'Ivoire to protect parties' interests pending a judgment on the merits:

- **Interim proceedings** (*référé*) allow a party to obtain an urgent interim ruling without affecting the court's decision on the merits of the case. The claim is reviewed at a hearing held by the presiding judge of the court. A *référé* judgment is possible in all urgent situations and can include various measures, for example, penalty payments, confiscation, payment of security etc. Interim rulings are issued after a hearing of all parties.
- **Ex parte orders** are issued by the presiding judge of the court in the absence of a party to protect the rights and interests of the other party if circumstances so require. Ex parte orders are immediately enforceable.
- **Interim attachment** (*saisie conservatoire*) can be ordered to seize a debtor's movable assets and prevent the debtor from dissipating the assets to defeat a creditor's attempt at recovery. The presiding judge of the court with jurisdiction over the debtor's place of residence hears the petition, and orders interim attachment when circumstances indicate that recovery of the debt is in jeopardy, when the creditor has an enforceable instrument, and when the debt appears founded in principle.

9. What means of enforcement are available?

Enforcement under Côte d'Ivoire law is possible only if the order for enforcement is affixed to the judgment. The enforcement measures available under Côte d'Ivoire law are those provided for in the OHADA Uniform Act Organising Simplified Recovery Procedures and Measures of Execution, and include:

- **Seizure for sale** (*saisie-vente*): any creditor in possession of an enforcement order showing a debt due for immediate payment may have the debtor's tangible, moveable property seized and sold in order to recover the debt from the sale price
- **Third party debt order** (*saisie-attribution de créances*): any creditor in possession of an enforcement order showing a debt due for immediate payment may have receivables owed by a third party to the relevant debtor seized from that third party
- **Penalty payment** (*astreinte*): creditors who obtain an injunction from a court ordering their debtors to either perform or cease and desist from a particular action can ask the court to combine the injunction with a penalty payable for each day/week/month of delay or non-compliance
- **Property foreclosure** (*saisie immobilière*): this enforcement mechanism is applied as a last resort when the seizure of personal property or receivables has been unsuccessful or insufficient. Previous failure to recover the debt must be authenticated by a bailiff (*huissier de justice*); only then can the creditor initiate foreclosure. The same procedure is followed for mortgage foreclosure

The enforcement judge may grant a grace period. Any debtor can request an extension, granted at the judge's sole discretion, in the event of personal, family or financial difficulties. The judge will take the applicant's good faith into consideration.

10. Does the court have power to order costs? Are foreign claimants required to provide security for costs?

In principle, the unsuccessful party bears the court costs,¹ save where the court orders a party to bear all or part of them – the decision should then be specifically motivated.

Unless otherwise provided by diplomatic agreement, foreign claimants or their representatives or agents must deposit sufficient funds to cover the court costs when filing a claim with the registrar, if requested to do so by the adverse party, unless they are able to show that the value of their real property in Côte d'Ivoire is sufficient to cover any amounts they may ultimately be ordered to pay.

11. On what grounds can the parties appeal, and what restrictions apply? To what extent is enforcement suspended pending an appeal? Is there a right of further appeal?

- **Appeals of judgments:**
 - The parties can appeal judgments issued in the first instance by lower courts (please refer to question 2 above, including for the different jurisdictional levels applying in commercial disputes)
 - Judgments issued by Employment Tribunals can be appealed when the amount at stake exceeds 10 times the monthly minimum wage

• Appeals of interim orders:

- Interim orders can be appealed within 15 days after notice of the order

• Interim enforcement despite pending appeals:

- A judgment is enforceable, whether or not it has been appealed, when coupled with an immediate enforcement action. Immediate enforcement is of right and must be ordered *ex officio* by the court if it is presented with a genuine, uncontested deed, a private confession, or a recognised promise.

Immediate enforcement can be ordered at the request of the parties for all or part of the following types of ruling:

- in disputes between travellers and hotel owners or carriers
- judgments appointing an escrow agent or ordering child support
- escrow judgments awarding a provision for damages
- in all other cases of extreme emergency

• Available post-appeal remedies:

- All Court of Appeal judgments can be appealed either to the Common Court of Justice and Arbitration (CCJA), if the case involves the application of a provision of a Uniform Act, or to the Supreme Court of Côte d'Ivoire in all other cases

12. To what extent can domestic and/or foreign State entities claim immunity from civil proceedings?

In administrative litigation or litigation that does not come within the jurisdiction of any specialised courts, the General Courts and related entities are competent, including over all domestic legal entities of public law, state-owned companies, and majority public companies. However, the OHADA Uniform Act on enforcement proceedings prevents any enforcement measure from being directly implemented with regard to a judgment handed down against such entities. Public entities or legal persons can therefore assert their immunity from enforcement when it is directed against them.

In respect of foreign entities, any jurisdictional immunity is derived from international agreements on diplomatic or consular relationships.

13. What are the procedures for having foreign judgments recognised and enforced?

Contentious and non-contentious decisions handed down by a foreign court can only be enforced or published in Côte d'Ivoire once they have been declared enforceable following enforcement proceedings (*exequatur*), subject to any special provisions set out in international conventions.

In Côte d'Ivoire, enforcement of a foreign decision is only possible if the following conditions are met:

- the judgment was made by a competent court in the relevant jurisdiction;
- the judgment is final, binding and enforceable under the laws of the country where it was rendered;

1. In civil law countries, recoverable legal costs do not necessarily include lawyers' fees.

- the defendant duly appeared before the court that handed down the judgment and was given the opportunity to present a defence;
- the dispute adjudicated by the foreign court does not, according to Côte d'Ivoire law, fall within the exclusive jurisdiction of the Côte d'Ivoire courts;
- there is no conflict between the foreign judgment and a final, binding judgment issued by a Côte d'Ivoire court in the same proceedings, on the same subject matter and between the same parties;
- the decision is not contrary to public policy provisions in Côte d'Ivoire.

In addition, judgments handed down in a foreign country may not be deemed final and binding unless Côte d'Ivoire judgments can also be deemed final and binding in that country.

In practice, there is no particular difficulty with having judgments deemed final and binding once the above conditions are satisfied.

Arbitration

14. Is the arbitration law based on the UNCITRAL Model Law? If so, does it include any key modifications? If not, what type of arbitration does the law provide for?

Côte d'Ivoire is a Member State of OHADA (*Organisation pour l'Harmonisation en Afrique du Droit des Affaires en Afrique* – Organisation for the Harmonisation of Business Law in Africa). The OHADA Treaty was signed on 17 October 1993 and amended on 17 October 2008. Under the Treaty, the OHADA Council of Ministers of Justice and Finance adopt “uniform acts” that are directly applicable and enforceable in each of the Member States. Arbitration in the OHADA Member States is governed by the Uniform Act on Arbitration (the “UAA”) adopted on 23 November 2017.

The UAA is not based on the UNCITRAL Model Law. It was drafted separately, but is nevertheless consistent with the fundamental principles of international commercial arbitration and main features of the UNCITRAL Model Law.

The UAA applies to both national and international arbitration and governs all arbitration proceedings with a seat in a Member State.

For arbitrations not governed by the Uniform Act, certain provisions set out in Law No 93-671 of 9 August 1993 on arbitration survive the entry into force of the Uniform Act (ie the *exequatur procedure*), and certain bilateral conventions may be applicable.

One of the most important characteristics of OHADA arbitration is the Common Court of Justice and Arbitration (*Cour commune de justice et d'arbitrage* or CCJA), which acts as both a permanent arbitration institution and a supreme court of arbitration for OHADA Member States.

15. What are the main arbitration institutions at the national level?

The main arbitration institution in Côte d'Ivoire is the Arbitration Court of Côte d'Ivoire (*Cour d'arbitrage de Côte d'Ivoire* or CACI),

which was established in 1997. The CACI is located in Abidjan and is an independent branch of the Chamber of Commerce and Industry. The CACI has its own rules of arbitration for commercial disputes where the arbitration agreement concluded by the contracting parties provides for CACI jurisdiction.

At the international level, the CCJA administers proceedings governed by the CCJA Rules of Arbitration. Like the CACI, it is based in Abidjan. Unlike the CACI however, the CCJA acts as an arbitration centre, supporting judge (*juge d'appui*), enforcement judge and appeal jurisdiction for arbitral awards. In addition, it has the authority to enforce awards throughout the OHADA area. The CCJA is different from other arbitration centres because it is not private, having been created and organised by OHADA.

Under article 21 of the OHADA Treaty, access to the CCJA centre of arbitration is contingent on all or part of the contract in issue having been performed in the territory of one or more Member States, or at least one of the parties being domiciled or habitually resident in a Member State. According to legal scholars, it should also be possible to go to arbitration under the CCJA Rules even if these conditions are not met, if such is the expressed will of the parties in their arbitration agreement.

16. Are there any restrictions on who may represent the parties to an arbitration?

The UAA does not set any restrictions on who can represent parties in arbitration. They are entitled but not required to instruct a lawyer.

17. What are the formal requirements for an enforceable arbitration agreement?

Article 3 of the UAA states that the arbitration agreement must be made in writing, or any other means whereby its existence can be demonstrated. No particular format is required. The UAA also provides that contracts can include an arbitration agreement by reference to a separate document.

18. Will the courts stay litigation if there is a valid arbitration clause covering the dispute? Does this depend on whether the seat of the arbitration is inside or outside the jurisdiction?

Article 13 of the UAA provides that national courts must decline jurisdiction if a dispute that is already in arbitration pursuant to an arbitration agreement is brought before national courts.

If no arbitral tribunal has yet been formed, national courts must, nevertheless, decline jurisdiction at the request of a party, unless the arbitration agreement is manifestly void or inapplicable. Courts cannot decline jurisdiction of their own motion.

Even where the parties have a valid arbitration agreement, however, they can apply to a national court for interim or protective orders if this does not require a review of the case on the merits, provided the circumstances are “clearly shown” to be urgent or where the measure must be performed in a non-OHADA Member State.

National courts can also intervene in very limited circumstances with a view to assisting the arbitration process (see questions 22 and 23 below).

19. If the arbitration agreement is silent, how many arbitrators will be appointed, and who is the appointing authority?

Although the UAA does not mandate a specific number of arbitrators if the arbitration agreement is silent on this point, it does provide that an arbitral tribunal must have either a sole arbitrator or three arbitrators.

If the parties are unable to appoint the arbitrator(s), the task falls to the competent court in the Member State of the seat of the arbitration. In Côte d'Ivoire, this is the presiding judge of the General Court.

If the request for arbitration is brought before the CCJA and the parties have not agreed on the number of arbitrators, the Court appoints a sole arbitrator, unless the dispute seems to justify the appointment of three arbitrators.

In the latter case, the parties have fifteen days to appoint the arbitrators (Article 3.1 of the CCJA Arbitration Rules).

20. What rights are there to challenge the appointment of an arbitrator?

Article 7 of the UAA sets out the rules for the recusal of arbitrators. Arbitrators must disclose "any circumstance" based on which they could be challenged. Disputes are settled by the competent court of the Member State, unless the parties have agreed a different procedure for challenging arbitrators. Decisions on recusal are not subject to appeal.

Arbitrators can only be challenged for reasons that come to light after their appointment.

21. Does domestic law contain public policy requirements for arbitration proceedings?

Under the UAA, parties must receive equal treatment and have an opportunity to exercise their rights (Art. 9). Arbitrators cannot base decisions on grounds raised of their own motion without first giving the parties an opportunity to submit observations (Art. 14).

Article 18 of the UAA provides that deliberations are confidential.

The UAA also provides that arbitration cannot last more than six months from the date on which the last arbitrator accepts the terms of reference, unless that period is extended by agreement of the parties or by the competent court (Art. 12).

22. On what grounds can the court intervene in arbitrations seated inside the jurisdiction?

In principle, if there is an arbitration agreement between the parties, national courts cannot intervene in a dispute until after the award has been issued.

Nevertheless, parties may petition the competent court in Côte d'Ivoire in the following circumstances:

- to resolve difficulties encountered with constituting the arbitral tribunal, to appoint the sole arbitrator or the third arbitrator (Art. 5 and 8)
- to rule on challenges against arbitrators where the parties have not provided for a different procedure (Art. 7)

- to extend the deadline for the conclusion of the arbitration where there is no agreement between the parties to do so, at the request of a party or the arbitral tribunal (Art. 12)
- to order interim or conservatory measures recognised as urgent and where reasons have been given, provided the measures do not require a review of the case on the merits (Art. 13)
- to assist the arbitral tribunal, at its request, with the collection of evidence (Art. 14)

23. On what grounds can the court intervene in arbitrations seated outside the jurisdiction?

As a general principle, national courts cannot intervene in a dispute where there is an arbitration agreement. Moreover, any issues relating to the composition of the arbitral tribunal and the conduct of the proceedings fall within the jurisdiction of the courts of the country in which the arbitration is seated.

24. Do arbitrators have powers to grant interim or conservatory relief?

The arbitral tribunal can order interim or conservatory measures at the request of either party, excluding interim attachments and court-ordered securities, which are matters for national courts (Art. 14 UAA).

The CACI Rules of Arbitration allow interim or conservatory measures to be ordered before the arbitral tribunal has been composed. Interim proceedings can also be brought before the arbitral tribunal to defend rights that require immediate protection or in urgent or high-risk situations. In such cases, the CACI Secretary General appoints an arbitrator who must rule within 72 hours of the first hearing.

25. When and in what form must the award be delivered?

Save as otherwise agreed by the parties, arbitral awards must be issued within six months from the date on which all of the arbitrators have accepted the terms of reference. This period can be extended by agreement between the parties or by order of the competent court of the Member State at the request of a party or the arbitral tribunal (Art. 12).

Parties can establish special requirements for awards. If they do not, awards are issued by majority decision (for tribunals with three arbitrators), and the reasons must be stated. Awards must be signed by at least two of the three arbitrators.

For arbitrations governed by the CACI Rules of Arbitration, awards must be issued within the interval set in the report drawn up under the arbitration procedure.

26. Can a successful party recover its costs?

The UAA contains no provisions on cost recovery.

If arbitration is conducted under the aegis of the CCJA, the arbitrator is empowered to award costs.

27. On what grounds can an award from an arbitration seated in the jurisdiction be appealed to the court?

An application to set aside is the only remedy against an arbitral award. Applications must be brought before the competent court in the Member State where the award was issued within one month from the service of the award once *exequatur* has been granted (Art. 25 and 27).

The circumstances in which an application to set aside can be brought are as follows (article 26):

- the arbitral tribunal ruled despite the lack of an arbitration agreement or in reliance on an invalid or expired agreement;
- the arbitral tribunal was not properly constituted;
- the arbitral tribunal did not rule in compliance with its terms of reference;
- the adversarial principle (*contradictoire*) was not observed;
- the award breaches a public policy provision of the OHADA Member States;
- no reasons are given for the award.

Bringing an application to set aside an arbitral award suspends enforcement, unless the tribunal ordered immediate enforcement. The decision can only be appealed to the CCJA (Art. 25 and 28 of the UAA).

Applications to set aside are the only possible remedy that can be sought in national courts. Other remedies, namely, third party challenges and applications for revision of the award must be submitted to the arbitral tribunal itself (Art. 25).

28. Can a foreign arbitration award be appealed to the local courts?

An arbitral award issued abroad cannot be appealed before local courts.

29. What are the procedures for the enforcement of: (i) awards rendered in other jurisdictions and (ii) domestic awards?

To enforce awards issued in an OHADA Member State, the UAA requires parties to obtain an order for enforcement, or *exequatur*, from the competent court in that Member State (Art. 30). In Côte d'Ivoire, this is the President of the General Court.

To do so, the requesting party must produce the original arbitral award, together with the original arbitration agreement, or copies of these documents meeting necessary authentication conditions and, where relevant, a certified French translation (Art. 31).

Decisions refusing to recognise an arbitral award can be appealed to the CCJA. However, decisions granting recognition cannot be appealed (Art. 32).

Awards issued in one OHADA Member State are recognised in other Member States under the conditions set out in any

applicable international agreements or, failing any such agreement, under the conditions stated in the UAA.²

Côte d'Ivoire is a party to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the New York Convention), which facilitates the recognition of foreign arbitral awards between Contracting States. Awards issued in other territories are enforced by applying to the court for *exequatur*.

30. Are foreign awards readily enforceable in practice?

Foreign awards can be enforced in Côte d'Ivoire as soon as they obtain *exequatur*.

Alternative dispute resolution

31. Are the parties to litigation or arbitration required to consider or submit to any alternative dispute resolution before or during proceedings?

Proceedings are not subject to any mandatory prior conciliation, unless the law provides otherwise (Art. 133 of Côte d'Ivoire Code of Civil, Commercial and Administrative Procedure). However, at any time during the proceedings, the parties can decide to enter into conciliation of their own motion or at the court's initiative (Art. 134 of the Code).

The Employment Code requires the presiding judge of the court to suggest conciliation in employment disputes. If full conciliation is achieved, an excerpt from the conciliation report signed by the clerk and issued to the parties is deemed equivalent to an enforceable ruling. If conciliation fails, the presiding judge refers the matter for a public hearing.

Reforms

32. Are there likely to be any significant procedural reforms in the near future?

To the best of our knowledge, there are no plans for any major reform of civil or commercial procedure in the near future.

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2. Article 34 UAA does not refer to foreign awards directly. However, legal scholars agree that this provision does apply to foreign awards, although it is advisable to verify this point with a local practitioner.

Democratic Republic of Congo



Introduction

The Democratic Republic of Congo is a civil law jurisdiction. The justice system principally derives from the Constitution of 18 February 2006, as amended by Law No 11-022 of 20 January 2011 (and from legislation predating the 2006 Constitution on the administration of justice). The Constitution is the highest source of laws. The Democratic Republic of Congo is a member of OHADA (Organisation for the Harmonisation of Business Law in Africa - *Organisation pour l'Harmonisation en Afrique du Droit des Affaires*).

Litigation

1. How are the legal professions organised?

The legal profession is governed, in particular, by Legislative Ordinance No 79-028 of 28 September 1979 and by the internal regulations of the Bar of the Democratic Republic of Congo.

Before practicing as a lawyer in the Democratic Republic of Congo and holding the title of lawyer, the candidate must be registered with the Bar and meet certain legal requirements, including:

- they must be of Congolese nationality. Foreigners may become lawyers in the Democratic Republic of Congo on conditions of reciprocity, or in accordance with international conventions;
- they must hold a doctorate or postgraduate degree in law, or an equivalent qualification from a foreign university, which must establish their knowledge of Congolese law;
- they must not have been convicted of any offence involving a breach of good faith or of the recognised principles of public decency;
- they must not have committed the aforementioned offences, which have led to disciplinary or administrative sanctions, removal from office, or withdrawal of their licence or authorisation, unless expressly authorised by the Public Prosecutor's Office;

- they must prove their good behaviour by producing a certificate of good behaviour issued by the administrative authorities of their area of residence during the last five years and;
- they must hold a certificate of professional competency.

The legal profession is organised by the National Bar Council, which ensures that each Bar complies with the rules governing the profession and takes the necessary disciplinary measures. Lawyers registered with the Bar may appear before any court, except for the Supreme Court of Appeal, which, in matters of second instance appeals and judicial review, is reserved exclusively for lawyers admitted to practice before that court.

Lawyers may exercise their profession individually or as a group, in the form of an association, or as the associate of another lawyer or group of lawyers.

2. How is the court system structured?

The court system in the Democratic Republic of Congo is structured as follows:

There are the courts of the judicial system on the one hand, and the courts of the administrative system on the other. In addition, there is a Constitutional Court.

A. Courts of the judicial system:

- Magistrates' courts:
 - Magistrates' courts (*Tribunaux de paix*) handle any dispute relating to family law, inheritance, donations and collective or individual land disputes governed by custom. They also handle the enforcement of deeds.
 - High courts (*Tribunaux de grande instance*) handle all disputes that do not fall within the jurisdiction of magistrates' courts and the enforcement of all court decisions, except for decisions handed down by magistrates' courts. They handle the enforcement of other deeds. High courts also handle appeals against judgments handed down in the first instance by magistrates' courts.
- Courts of Appeal:
 - Courts of Appeal, which are located within the jurisdiction of each province, handle appeals against judgments handed down at first instance by the High Courts, Commercial Courts and Labour Courts.

- The following are specialised courts, which form an integral part of the court system:
 - Commercial Courts: they handle all disputes relating specifically to commercial undertakings and transactions; commitments between partners; disputes between any persons relating to commercial transactions, including deeds relating to commercial companies; non-commercial companies with a commercial purpose; stock market transactions or economic or commercial legislation; disputes relating to collective proceedings for clearing of debts; bankruptcies; unfair competition; and infringements of economic and trade legislation.
 - Labour courts: these courts have jurisdiction over individual disputes between employees and their employers or arising from employment contracts, collective agreements or labour and social welfare legislation and regulations, as well as collective labour disputes.
- The Supreme Court of Appeal (*Cour de Cassation*) handles appeals lodged against final decisions handed down by non-administrative courts, except for cases governed by OHADA law and therefore falling within the exclusive jurisdiction of the Common Court of Justice and Arbitration (the "CCJA").

B. Administrative courts

The administrative court system comprises ordinary courts and specialised courts. The ordinary courts are the Council of State (*Conseil d'État*), the administrative Courts of Appeal and the Administrative Tribunals. They are governed by this Institutional Law. The specialised Administrative Courts not covered by this Institutional Law are established and organised pursuant to the provisions of Article 149(6) of the Constitution.

- Administrative Courts: These are named after the location of their seats.
- Administrative Courts of Appeal: These are also named after the location of their seats.

To date, the Administrative Courts and Tribunals have not yet been established. The duties assigned to these courts are carried out by the High Courts and Courts of Appeal.

The Council of State:

- Is the highest administrative court in the Democratic Republic of Congo. As such, it has overall authority to manage, oversee, monitor, inspect and report on all administrative courts.
- Is free to organise its internal structures and services as it sees fit. It ensures the proper functioning of all administrative courts.
- The powers of the Council of State derive from the provisions of Articles 149 and 155 of the Constitution, and Articles 45 to 51 and 75 to 93 of Institutional Act No. 16-027 of 15 October 2016 pertaining to the organisation, jurisdiction and functioning of the administrative courts.
- These powers are advisory and contentious in nature. The bodies of the Council of State also possess certain administrative powers over all administrative courts.

C. The Constitutional Court:

It is the highest court in the Democratic Republic of Congo, responsible for handling constitutional disputes, referendums,

electoral disputes and criminal cases, as well as non-contentious or *ex gratia* matters.

It handles conflicts of jurisdiction between the executive and legislative branches, as well as between the State and the provinces.

The powers of the Constitutional Court are derived from the provisions of Articles 74, 76, 99, 128, 139, 145, 160, 161, 162, 163, 164, 167(1) and 216 of the Constitution, as reiterated under Article 42 of Institutional Act No. 13-026 of 15 October 2013.

3. What are the time limits for bringing civil claims?

The limitation periods vary depending on the type of action and the parties involved:

- The ordinary limitation period for bringing an action for damages in a contractual relationship is 30 years.
- The limitation period applicable to commercial claims is five years, although there are some shorter limitation periods.

Specific limitation periods apply to certain types of actions.

Parties cannot waive or vary the limitation periods by way of private agreement.

A writ of summons, notice or order served on a party effectively interrupts the limitation period.

4. Are lawyer-client communications privileged (ie protected from disclosure to a court/tribunal and opposing parties)?

Lawyers are forbidden from disclosing secrets entrusted to them by virtue of their profession, or from taking advantage themselves of such privilege in any way.

Breaching professional confidentiality is punishable by law. The law does, however, waive the ban on disclosing professional secrets when the discloser of the secret is called to give witness evidence in court, and when a provision in law requires the lawyer to disclose this secret.

For example, Act No. 04/016 of 19 July 2004, relating to combating money laundering and the financing of terrorism, provides that lawyers may be required to waive their professional confidentiality obligations in certain cases without incurring criminal liability.

Article 118 of Act No. 22/ 068 of 27 December 2022, relating to combating money laundering and the financing of terrorism and the proliferation of weapons of mass destruction, also provides that taxpayers may not invoke professional secrecy to refuse to provide information to the supervisory authorities and the National Financial Intelligence Unit or to make the disclosures required by the said law. The same applies to information required in the context of an investigation into money laundering and the financing of terrorism and proliferation, whether ordered by the Public Prosecutor's Office or carried out under its oversight by State agents responsible for detecting and prosecuting such offences.

The lawyer's professional confidentiality obligation is a matter of strict public policy. It is, therefore, not possible for a client to

remove such obligation from his/her lawyer. The facts covered by professional confidentiality are all those which, in general, the lawyer learns in the course of exercising his/her profession, including from third parties. Anything said confidentially in the lawyer's offices, letters from the client to his/her counsel, facts learned during the investigative stage, and even facts accidentally learned by the lawyer while acting professionally are, therefore, confidential.

5. How are civil proceedings commenced, and what is the typical procedure, which is then followed?

Civil proceedings are brought before the court by means of a writ of summons, in which the claimant orders the defendant to appear before the court of competent jurisdiction to handle the matter. The writ of summons is drawn up by the court Registrar (although in practice it is drafted by the claimant's counsel who hands it to the court Registrar) and then served on the defendant by the bailiff or the Court Registrar. The parties may also always choose to appear voluntarily before the court.

The summons period is eight clear days between the time of service of the summons and the appearance before the court, plus one day for every 100 kilometres of distance between the court and the defendant's place of residence. The period specified in a writ of summons in the case of persons not domiciled or residing in the Democratic Republic of Congo is three months.

In urgent cases, the presiding judge of the court of competent jurisdiction may, by means of an order issued on application, allow service of a writ of summons at short notice.

Where, after appearing, the defendant fails to appear again or fails to make representations, the plaintiff may pursue the proceedings after notice has been sent to the defendant. After 15 clear days the plaintiff may demand that a ruling is given on his/her claim; the ruling is then deemed to have been rendered in the presence of both sides.

6. What is the scope of the exchange of evidence before the trial and how is the evidence presented at the trial?

Evidence is submitted to the court at the same time as the claims and written submissions. The trial judge may take any measures they deem necessary to ensure that the matter undergoes thorough investigation. They shall set the time limits they deem necessary for the carrying out of each of the measures they order.

Under the Civil Procedure Code, evidence may be admitted either in writing or in the form of documentation, as witness testimony, or as presumptive evidence by admission or oath. The Civil Procedure Code admits evidence in the form of expert testimony, site visits, and the personal appearance of the parties and questioning of them. Witnesses are heard separately, in the presence of the parties, if they are present. The judge conducts the questioning procedure.

Documents (exhibits)

The party using a document as evidence in proceedings is obliged to submit it to every other party to the proceedings. If the party fails to submit such evidence, the aggrieved party may raise the delaying objection of failure to communicate

documents, the aim of which is to ensure that the documents used by the opposing party as the basis of its claim or its defence are communicated to the party that raised the objection.

Under Congolese law, there is no "disclosure" procedure. On the other hand, there is a procedure for enforced production of a piece of evidence (an *ad exhibendum* motion). Thus, if there are serious, specific, and corroborative grounds for presuming that one party or a third party holds a document containing the proof of a relevant fact, the judge may order this document to be lodged in the file for proceedings, even against the party to whom such document could be detrimental. The judge may draw inferences if a party refuses to produce the document.

Experts

Where an expert report is required, it is ordered through a ruling that names the experts and specifies the task entrusted to them and sets a deadline for submitting the report. Only one expert is appointed, unless the judge deems it necessary to appoint three.

7. To what extent are the parties able to control the proceedings and the time frame? How expeditious are the proceedings?

In civil matters, the parties have control over the proceedings, with the judge playing a passive role. Nevertheless, the parties must comply with public policy provisions in the area of calculating of time limits, in particular periods of notice for summonses and communicating documents. The parties compile the case file to be submitted to court and propose the dates for hearings. However, the speed of the proceedings depends on various factors, such as the subject matter of the dispute, the amount at stake and the judge's workload. The parties are free to end the proceedings by mutual agreement.

The time limit laid down by law for delivering a judgment, following deliberations, is 30 days for civil matters, 15 days for labour related matters, 10 days for criminal matters and 8 days for commercial matters. In general, judgments are delivered considerably later than the deadline laid down by law.

Should the judge fail to deliver a judgment, they may be prosecuted for refusal to decide a case.

8. What interim remedies are available to preserve the parties' interest spending judgment?

In civil matters, Articles 80 and 84 of the Congolese Civil Procedure Code allow any party filing a third-party appeal against a decision to request provisional measures before the Court of Appeal prior to any decision on the merits.

In commercial matters, Act No. 002 -2001 of 3 July 2001, pertaining to the creation, organisation and functioning of commercial courts, as amended and supplemented by Act No. 23-061 of 10 December 2023, established an interim commercial judge with the power to consider any application brought by a party seeking an interim decision without prejudice to the decision on the merits of the case.

Similarly, Institutional Act No. 16-027, pertaining to the organisation, jurisdiction and functioning of administrative courts, provides for the establishment of an interim judge who may take interim measures before a court can rule on the main application.

9. What enforcement measures are available?

Enforcement measures available are those provided for in the OHADA Uniform Act of 17 October 2023 relating to Simplified Recovery Procedures and Enforcement Measures. The most common of these include:

- Seizure and sale (*saisie-vente*): any creditor in possession of an enforcement order showing a debt due for immediate payment may have the debtor's tangible, moveable property seized and sold in order to recover the debt from the sale price.
- Third party debt order (*saisie-attribution de créances*): any creditor in possession of an enforcement order showing a debt due for immediate payment may have receivables owed by a third party to the relevant debtor seized from that third party.
- Penalty payment (*astreinte*): creditors who obtain an injunction from a court ordering their debtors to either perform or cease and desist from a particular action may ask the court to combine the injunction with a penalty payable for each day/week/month of delay or non-compliance
- Property foreclosure (*saisie immobilière*): this is a procedure of last resort when the seizure of personal property or of receivables has been unsuccessful or insufficient. The failure to recover the debt must be authenticated by a bailiff; only then may the creditor initiate foreclosure. It is defined as an enforcement measure whereby a creditor sells the debtor's property by enforced expropriation in order to obtain payment from the sale price.

10. Does the court have the power to order the payment of costs? Are foreign claimants required to provide security for costs?

The unsuccessful party bears the court costs. These costs cover all expenses itemised by the court for the duration of proceedings. In practice, courts tend to be restrained in terms of the amounts they cover, and the real expenses of a case are rarely covered in full.

Lawyers' fees are not assessed by the judge. In principle, they are freely agreed between the lawyer and his/her client, according to a tariff of fees fixed by the National Bar Council.

There are no specific legal provisions applicable to foreign claimants in relation to court fees, as in civil matters foreign nationals have the same rights as nationals.

11. On what grounds can the parties appeal and what restrictions apply? Is there a right of appeal to the supreme court of appeal? to what extent is enforcement suspended pending an appeal?

The parties have 30 days to appeal judgments handed down at first instance. However, in commercial matters, the period given is eight days. These deadlines are calculated from the date of service of the judgment in *inter partes* proceedings, or from the date a challenge is no longer admissible for default judgement. The grounds for appeal are generally based on misjudgement, which is argued before the appeal court.

Appeals are lodged either by way of a declaration received and authenticated by the Registrar of the Court of Appeal, or by registered letter sent by post to the Registrar of the court.

New claims cannot be made on appeal, unless they seek to offset related claims or where the new claim is an argument in defence against the main claim.

An appeal suspends enforcement of the judgment, save where the court has ordered immediate enforcement. If immediate enforcement has been ordered by the judgment being appealed when it should not have been, the appellant may, at the hearing, obtain a prohibition against enforcement, with a summons at short notice.

Appeal judgments may be brought before the Supreme Court of Appeal (or the CCJA for cases falling under OHADA law). The Supreme Court of Appeal may only rule on issues of law and not on fact. Appeal judgments are not suspended while the Supreme Court of Appeal's review is pending. In the event of an appeal to the Supreme Court of Appeal, the Court may order a dismissal with referral. In this case, if the appeal is successful, the case is referred to another chamber of the Court of Appeal for a second ruling. Alternatively, the Supreme Court of Appeal may overturn the appeal decision with referral. In this case, the Court rules on the dispute by examining the merits of the case.

12. To what extent can domestic and/or foreign state entities claim immunity from civil proceedings?

In civil cases, proceedings can be brought against the Government or public authorities. However, the property of the State is in the public domain and cannot be seized.

State-owned companies do not have jurisdictional immunity, and proceedings can be brought against them in the same way as against ordinary legal entities.

13. What procedures exist for recognition and enforcement of foreign judgments?

Before a foreign judgment can be enforced in the Democratic Republic of Congo, the claimant must obtain an exequatur order from the competent High Court (*Tribunal de grande instance*).

An exequatur order will be issued if the following conditions are met:

- the foreign judgment does not infringe public policy of the Democratic Republic of Congo;
- the foreign judgment is final in its country of origin;
- according to the law of the country in which it was rendered, the copy of the original judgment meets all legal conditions for authenticity;
- due process was upheld before the foreign courts; and
- the foreign court had jurisdiction to hear the case (this would not be the case if the jurisdiction of the foreign court was solely based on the claimant's nationality).

Enforcement (*exequatur*) is granted whatever the value of the dispute by the Presiding judge of the High Court (*Tribunal de grande instance*) in the place where enforcement is being sought. Once enforceability has been granted, the claimant may take the enforcement measures described above.

Arbitration

14. Is the arbitration law based on the UNCITRAL Model Law? If yes, are there any key modifications? If no, what form does the arbitration law take?

The Democratic Republic of Congo is a Member State of OHADA (*Organisation pour l'Harmonisation en Afrique du Droit des Affaires* – Organisation for the Harmonisation of Business Law in Africa). The OHADA Treaty was first signed on 17 October 1993. Under the OHADA Treaty, the Council of Ministers of Justice and Finance adopt 'uniform acts' that are directly applicable and enforceable in each of the Member States.

Arbitration in the OHADA Member States is governed by the Uniform Act on Arbitration (the 'UAA') adopted on 23 November 2017. In addition to the UAA, there are also the arbitration rules of the OHADA Common Court of Justice and Arbitration of 23 November 2017.

The UAA is not based on the UNCITRAL Model Law. It was drafted separately, but is nevertheless consistent with the fundamental principles of international commercial arbitration and the main features of the UNCITRAL Model Law.

The UAA applies to both national and international arbitration and governs all arbitration proceedings with a seat in a Member State of OHADA.

One of the most important characteristics of OHADA arbitration is the CCJA, which acts as both a permanent arbitration institution and a supreme court of arbitration for OHADA Member States.

Prior to the adoption of the UAA, arbitration law was governed by Decree of 7 March 1960, namely Articles 159 to 194 of the Civil Procedure Code (*Code de procédure civile*).

15. What are the main national arbitration institutions?

There are two national arbitration institutions in the Democratic Republic of Congo: the *Centre d'Arbitrage du Congo* (CAC – the Arbitration Centre of Congo) and the *Centre national d'arbitrage, de conciliation et de médiation* (CENACOM – the National Centre for Arbitration, Conciliation and Mediation). They are mostly concerned with domestic commercial disputes.

The CAC, which was created in 2003, is an institutional centre organised as a non-profit association. The main aim of the CAC is to promote the practice of arbitration and mediation as an alternative dispute resolution process. As a secondary function, the CAC hopes to reduce systematic recourse to the courts and higher courts in relation to specific types of disputes by proposing an effective solution to the parties.

The CENACOM, an initiative of the Congo Business Federation (the CBF), was created in December 2004, in the form of a public benefit organisation. Its aim is to promote the use of alternative methods of settling commercial disputes, specifically arbitration and mediation. To this end, CENACOM publishes an approved list of arbitrators and mediators, and creates rules to govern arbitration and mediation. CENACOM is not designed to rule on the merits of disputes. This competence is reserved

solely for the arbitral tribunal formed at the wish of the parties, and in accordance with the rules of arbitration or mediation.

The main arbitration institution in the Democratic Republic of Congo is not, however, to be found at national level. It is the CCJA, created by the OHADA Treaty, and located in Abidjan, Côte d'Ivoire. This court, which also has a judicial function, fulfils the role of a centre for arbitration and administers procedures governed by the CCJA Rules of Arbitration. It may be distinguished from a classic centre for arbitration in the sense that it is not a private institution, rather an institution created and organised by OHADA. In order to have recourse to the CCJA as a centre for arbitration, Article 21 of the OHADA Treaty states that the contract must be executed either partially or wholly within one or more Member States, or that one of the parties must have his/her domicile or habitual place of residence in a Member State. According to legal authors, it should also be possible to have recourse to arbitration conducted by the CCJA if these conditions are not fulfilled, but only if the parties have expressed their wish to this effect in their arbitration agreement.

16. Are there any restrictions on who may represent the parties to an arbitration?

The UAA does not set any restrictions on persons who can represent parties in a case of arbitration. They are entitled but not required to instruct counsel (Article 20, UAA).

17. What are the formal requirements for an enforceable arbitration agreement?

Article 3-1 of the UAA states that the arbitration agreement must be made in writing or by any other means of which evidence can be produced, in particular by reference to a document stipulating it. No particular format is required. The UAA also provides that contracts may contain an arbitration agreement by reference to a clause contained in a different document. An arbitration agreement may also be in the form of a standalone separate agreement.

18. Will the courts stay litigation if there is a valid arbitration clause covering the dispute? Does the approach differ in this regard if the seat of the arbitration is inside or outside of the jurisdiction?

Article 13 of the UAA provides that national courts must decline jurisdiction if a dispute that is already in arbitration pursuant to an arbitration agreement is brought before national courts.

If no arbitral tribunal has yet been formed, national courts must nevertheless decline jurisdiction at the request of a party unless the arbitration agreement is manifestly void or inapplicable. Courts cannot decline jurisdiction of their own motion.

In principle, the location of the seat of the arbitral tribunal has no effect on this issue.

The existence of an arbitration agreement does not prevent the parties from applying to a national court for interim or protective orders where the circumstances are 'clearly shown' to be urgent, if this does not require a review of the case on the merits.

National courts can also intervene in very limited circumstances to assist the arbitration process.

19. If the arbitration agreement and any relevant rules are silent, how many arbitrators will be appointed, and who is the appointing authority?

The UAA does not stipulate a specific number of arbitrators if the arbitration agreement is silent on this point. It does, however, provide that an arbitral tribunal must have a sole arbitrator or three arbitrators. In the absence of an agreement between the parties, the case is adjudicated by a sole arbitrator.

If the parties do not agree on the appointment procedure or if their agreement is not sufficiently detailed, the UAA provides that:

- in an arbitration with three arbitrators, each party appoints one arbitrator and these two arbitrators choose the third arbitrator. If a party fails to appoint an arbitrator within 30 days of the receipt of a request to do so from the other party, or if the two arbitrators fail to agree on the third within 30 days of their appointment, the appointment is made, at the request of a party, by the competent court in the State Party; and
- in an arbitration with a sole arbitrator, if the parties fail to agree on the appointment, the arbitrator is appointed, at the request of a party, by the competent court in the State Party.

Each time it is necessary for a court to appoint arbitrators, the request is sent to the presiding judge of the court of competent jurisdiction. The decision of the presiding judge is not subject to appeal.

Settlement of the matter by arbitration in the CAC assumes that, if the parties have not established the number of arbitrators by mutual agreement, the CAC will appoint a sole arbitrator, unless the dispute, in its opinion, justifies appointing three, and in the latter case the parties have a period of 30 days in which to appoint the arbitrators.

The arbitration rules of CENACOM indicate that the decision taken by the parties on the number of arbitrators is subject to the approval of CENACOM's management committee, or its President. The latter may also, in certain cases (disagreement between the parties, refusal of approval, failure of the parties to appoint arbitrators) determine the number of arbitrators, either *ex officio* or at the request of the parties.

20. What rights are there to challenge the appointment of an arbitrator?

Articles 7 and 8 of the UAA set the rules for recusal. An arbitrator must disclose "any circumstance that could create a legitimate doubt in the mind of the parties about the arbitrator's independence and impartiality". The competent court in the State Party (in Mali, the presiding judge of the high court (*Tribunal de première instance*)) rules on any challenges, unless the parties resolve the challenge otherwise.

If the court of competent jurisdiction rejects the request for recusal, it can only be appealed to the CCJA.

Any cause for recusal must be raised within no more than 30 days after discovery of the grounds for recusal by the requesting party.

Arbitrators may only be challenged for grounds that come to light after their appointment.

Arbitration rules of the CAC or CENACOM contain provisions dealing with the challenges of arbitrators.

21. Does the domestic law contain substantive requirements for the procedure to be followed?

Under the UAA, parties must receive equal treatment and have an opportunity to exercise their rights. The arbitral tribunal must abide by and enforce the right to be heard. Arguments, explanations or documents cited or produced by the parties can only be relied on in its decision if the parties were able to engage in adversarial debate over such arguments, explanations or documents. Arbitrators cannot base their decisions on grounds raised of their own motion without first giving the parties an opportunity to submit observations.

The arbitral tribunal rules on the substance of the dispute in accordance with the legal rules chosen by the parties. If the parties made no such choice, the tribunal must apply the legal rules it deems most appropriate, taking international trade practices into account where relevant.

The tribunal's deliberations are confidential.

The UAA also provides that arbitration cannot last more than six months from the date on which the last arbitrator accepts the terms of reference, unless that period is extended by agreement of the parties or by the competent arbitral court.

Unless otherwise agreed by the parties, the arbitration award should be issued by majority vote when the tribunal is composed of three arbitrators and signed by the arbitrator(s). If a minority refuses to sign the award, this should be mentioned, and the award will have the same effect as if it had been signed by all arbitrators.

22. On what grounds can the court intervene in arbitrations seated inside the jurisdiction?

According to the UAA, an arbitration agreement should exclude any intervention by the national courts during arbitration until an award has been handed down.

Nevertheless, parties may petition the competent court in the Democratic Republic of Congo in the following circumstances under the UAA:

- to resolve difficulties encountered with constituting the arbitral tribunal, or to appoint the sole arbitrator or the third arbitrator (Art. 5 and 8, UAA);
- to rule on arbitrator recusals if the parties have not agreed on a different procedure (Art. 8, UAA);
- to extend the arbitration period at the request of a party or the arbitral tribunal if there is no agreement between the parties to do so (Art. 12 of the UAA);
- to order interim or protective measures of recognised, demonstrated urgency, provided no review of the case on the merits is necessary (Art. 13 of the UAA);
- to assist the arbitral tribunal, at its request, with the collection of evidence (Art. 14 of the UAA); or
- to interpret the award or correct clerical errors or omissions affecting the award in cases where the arbitral tribunal cannot be re-seated (Art. 22 of the UAA).

23. On what grounds can the court intervene in arbitrations seated outside the jurisdiction?

As a matter of principle, national courts cannot intervene where there is an arbitration agreement. All issues relating to the composition of the arbitral tribunal and the conduct of arbitral proceedings would in principle be under the jurisdiction of the courts in the State of the seat. However, it is possible for national courts other than the competent court of the Member State of the seat to intervene to order protective or interim relief in accordance with the conditions defined above in question 18 (Article 13).

24. Do arbitrators have powers to grant interim or conservatory relief?

Article 14 of the UAA authorises the arbitral tribunal to act at the request of either party to order interim or protective relief, excluding interim attachment and court-ordered security, which are matters for the national courts.

25. When and in what form must the award be delivered?

Save as agreed otherwise by the parties, arbitral awards must be issued within six months from the date on which all of the arbitrators have accepted their arbitrating functions. This term can be extended by agreement between the parties or by order of the higher court (*tribunal de grande instance*) or Commercial Court, at the request of a party or the arbitral tribunal (Article 12).

Parties can set special requirements for awards. Failing this, awards are issued by majority, where the tribunal comprises three arbitrators, and must state the grounds for the award. They must be signed by at least two of the three arbitrators.

26. Can a successful party recover its costs?

The UAA contains no provisions on this point.

Where arbitration is conducted under the auspices of the CCJA, the arbitrator is empowered to award costs. However, nothing prohibits the parties from inserting into the arbitration clause or agreement a provision to the effect that the successful party should be entitled to this reimbursement.

27. On what grounds can an award from an arbitration seated in the jurisdiction be appealed to the court?

The only remedy against an arbitral award is an application to set aside that award, brought before the competent court in the Member State in which it was issued, within one month as from the date of service of the award once rendered enforceable.

The circumstances in which an application to set aside can be brought are limited to the following (Article 26, UAA):

- the arbitral tribunal ruled without an arbitration agreement or with respect to an invalid or expired agreement;
- the arbitral tribunal was not properly composed or the sole arbitrator has been irregularly appointed;
- the arbitral tribunal did not rule in compliance with the terms of reference entrusted to it;
- due process was not complied with;

- the arbitral award breached international public policy; or
- the arbitral award is devoid of any reasoning.

Bringing an application to set aside an arbitral award suspends enforcement, unless the tribunal ordered immediate enforcement. The decision can only be appealed to the CCJA (Articles 25 and 28).

This is the only remedy available to parties before a national court. The other remedies are third party opposition and the application for a review of the award, which must be submitted to the arbitral tribunal.

28. Can a foreign arbitration award be appealed in the local courts? if so, on what grounds?

No.

29. What procedures exist for enforcement of: (i) awards rendered in arbitrations seated outside of the jurisdiction and (ii) domestic awards?

To enforce awards issued in an OHADA Member State, the UAA requires parties to obtain an order for enforcement, or exequatur, from the competent Member State court (Article 30).

To do so, the requesting party must produce the original arbitral award together with the original arbitration agreement, or copies of these documents meeting the authentication requirements and, where relevant, a certified translation into French (Article 31 of the UAA).

A national court to which a request for recognition or exequatur has been submitted must rule within no more than 15 days of the referral. If the court has not issued a decision by the end of this period, exequatur is deemed to have been granted.

If exequatur is granted or if the court receiving the application has not responded within 15 days as described above, the most diligent party applies to the chief court clerk or competent authority in the State Party to have the writ of execution imprinted on the official original copy of the award. The procedure for requesting exequatur is not adversarial.

Decisions refusing to recognise an arbitral award can be appealed to the CCJA, but decisions granting recognition are not subject to appeal (Article 32 of the UAA). In general, recognition and exequatur are only denied if the award clearly conflicts with a rule of international public policy.

Under Article 34 of the UAA, 'arbitral awards rendered on the basis of rules different from those provided for in this Uniform Act are recognized in the States Parties under the conditions provided for by international conventions possibly applicable and, in the absence thereof, under the same conditions as those provided in this Uniform Act'.

Accordingly, the recognition and enforcement of awards issued in a country outside of the OHADA region will in principle be governed by any applicable conventions (such as the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards). When there is no applicable international convention, the recognition and enforcement of such awards will be governed by the UAA.

The Democratic Republic of Congo is a party to the New York Convention. However, Act No. 13/023 of 26 June 2013, which authorised the accession of the Democratic Republic of Congo to the New York Convention, makes the following reservations:

- arbitral awards issued before the accession of the Democratic Republic of Congo to the New York Convention cannot be enforced under this international legal instrument;
- arbitral awards meant to be enforced in the national courts must focus solely on matters considered as commercial by national legislation;
- arbitral awards issued in states which have not ratified or adhered to the New York Convention are not eligible for enforcement in the Democratic Republic of Congo; and
- the New York Convention does not apply to disputes bearing on real property located in the designated State or on a right derived from this property.

30. Are foreign awards readily enforceable in practice?

Following the accession of the Democratic Republic of Congo to the New York Convention, arbitral awards issued abroad are now easily enforceable (subject to the requirements set out in question 29 above).

Alternative dispute resolution

31. Are the parties to litigation or arbitration required to consider or submit to any alternative dispute resolution before or during proceedings?

When a case is referred to a tribunal, the parties may have recourse to an alternative dispute resolution procedure. This is the case when the parties to a dispute agree to an out-of-court agreement which will resolve the dispute. This may, for example, take the form of a settlement agreement, and the parties are then obligated to inform the tribunal hearing the case of the existence of this settlement in order to obtain the dismissal of the case.

However, this is only possible in civil and commercial matters.

There are also some mandatory conciliation procedures before any court action in certain cases (e.g. in relation to employment law disputes).

Reforms

32. Are there likely to be any significant procedural reforms in the near future?

To the best of our knowledge, there are currently no plans to make any significant reforms of civil or commercial procedure in the near future. However, it is worth noting the introduction of Act No. 23-061 amending and supplementing Act No. 002-2001 of 3 July 2021, pertaining to the creation, organisation and functioning of commercial courts of 10 December 2023, which establishes new procedures for the handling of commercial disputes. Also, the publication of a new OHADA Uniform Act organizing simplified recovery procedures and enforcement measures dated 17 October 2023.

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Djibouti



Introduction

Djibouti has a civil law system based on the Constitution of 4 September 1992 as amended in 2010, the Djibouti 2018 Civil Code and Civil Procedure Code, and on various laws establishing and organising the judicial system.

Litigation

1. How are the legal professions organised?

The profession of lawyer (*avocat*) is governed by the Law of 25 January 1987. There are certain pre-requisites to be satisfied by anyone wishing to practise law, including:

- having Djiboutian nationality;
- obtaining a master's degree (*maîtrise*) in law (there is no equivalent to the CAPA, or *certificat d'aptitude à la profession d'avocat*);
- having no criminal convictions or disciplinary sanctions;
- being solvent (no history of personal bankruptcy).

Lawyers are members of the Bar as administered by a Bar Association (*Conseil de l'Ordre*) and presided over by a Bar Chairman (the *Bâtonnier*). The Bar Association makes sure that practitioners abide by the ethical rules governing the profession and takes any appropriate disciplinary action.

Lawyers registered with the Djibouti Bar can make submissions, represent clients and plead before any court or other adjudicative or disciplinary bodies, and assist or represent others before public authorities.

Foreign lawyers may plead before the courts in Djibouti if authorised to do so by the Minister of Justice; a lack of response from the Minister within three days counts as *de facto* authorisation.

2. How is the court system structured?

The courts of ordinary law are structured as a three-tiered pyramid:

- the General Courts (*Tribunaux de première instance*) issue final judgments in civil cases involving DJF 500,000 or less, and in commercial cases involving DJF 1,000,000 or less. It also

hears employment and criminal cases. The only permanent district is Djibouti City. New regional courts have been officially created in Balbala, Dikhil and Obock, but they have still not been installed.

- the Court of Appeal
- the Supreme Court

There are also courts with specific subject matter jurisdiction: traditional courts for purely local disputes, the Administrative Court, Personal Status Courts (*Tribunaux de statut personnel*) and the Criminal Court.

3. What are the time limits for bringing civil claims?

Time limits vary depending on the type of claim:

- for civil matters, the default limitations period is 3 years for personal or property actions, and 30 years for real estate actions (Civil Code, Art. 2399)
- for commercial matters, the default limitations period is 5 years for obligations arising after 1 August 2012 (Commercial Code, Art. L.1120-3)
- specific time limits apply to certain types of action (one year for land-based or maritime transport, or employment contracts; two years for commercial sales to individuals or other merchants)

No law specifically allows changes to be made to these time limits by contract, and doing so seems a likely breach of the public policy underpinning statutory limitation periods. At best, the courts may accept (i) adjustments of time limits between merchants, provided such contractual agreement do not, in effect, deprive creditors from the possibility to pursue the recovery of the debts, or (ii) adjustments made after the obligation was created and while the statutory time limit was still in effect.

A limitations period can be tolled by the debtor's acknowledgment of a debt, legal proceedings, and enforcement.

4. Are lawyer-client communications privileged (ie, protected from disclosure to a court/tribunal and opposing parties)?

Lawyers have an obligation to maintain confidentiality. All written and oral communications between lawyers are confidential unless they are specifically marked

“non-confidential” or “I hereby declare that the present [document, information, etc.] may be treated as public”. If an agreement between parties has taken concrete form in correspondence between lawyers, that correspondence can be submitted in court, under the supervision of the Bar President if necessary. According to the most recent case law, conversations between a lawyer and client are also confidential, but not letters written by that lawyer to an opposing party.

Lawyers who infringe these rules are subject to criminal penalties (imprisonment of one year and a fine of DJF 200,000), although there is an exception disclosing abuse or deprivations affecting a minor or vulnerable person to judicial authorities.

Clients can release their lawyers from the duty of confidentiality.

5. How are civil proceedings commenced, and what is the typical procedure which is then followed?

Civil and commercial actions are brought in the General Court:

- By **summons** served on the opposing party by a bailiff at least five days before the hearing if the party resides in Djibouti City, 15 days before the hearing if the party resides anywhere else than in Djibouti City, two months before if the party resides in a State that borders Djibouti or in Europe, and three months if the party resides anywhere else.

For urgent interlocutory hearings, claimants can submit a petition to have a summons served without meeting the above deadlines, including on the very same day as the petition itself.

Urgent authorisation is granted in an *ex-parte* order from the presiding judge of the General Court.

- Further to an **ex parte petition** to the presiding judge of the General Court. The claimant submits the petition together with exhibits and a draft order; the judge can sign the order, or reject it without summoning the opposing party. If signed, the order must always be served on the opposing party by bailiff.
- In certain specific instances, applications may be made to the Court through **statements** (*mémoires*) (for commercial rent increases) or **technical submissions** (*incident de saisie immobilière*) (for real property seizures) that are filed with the court clerk's office.

In cases brought by summons, claimants submit their exhibits to the court and the opposing party at the initial hearing, and thereafter the parties exchange submissions and other exhibits before the court (there is no case management judge).

There is no strict deadline for the end of proceedings, but if there are several adjournments specifically to allow a party to file pleadings and it fails to do so, the judge may either strike the matter off the docket (for claimant default) or rule on the case as it stands.

That being said, the time between the start of proceedings and the final hearing cannot exceed 8 months (the number of adjournments to exchange pleadings and exhibits is limited to 6) and the time between the oral arguments pleading and the judgment cannot exceed 2 months (with the number of postponements for deliberations being limited to 3).

Mandatory conciliation has been abolished (except in employment matters presided over by the Labour Inspector).

6. What is the extent of pre-trial exchange of evidence, and how is evidence presented at trial?

In civil cases, an obligation must be fully or partially substantiated in writing (notarised documents, private instruments, acknowledgements of debt, correspondence, etc.). For commercial cases and disputes between merchants, all types of evidence are admissible and may include written or oral testimony, presumptions, ledgers, correspondence, invoices, etc.

Evidence in all types of cases may also be obtained through admissions, statutory or other presumptions, and by statements given under oath requested by the other party (*délation de serment*). The court may also order an expert report.

There is no process whereby a party may ask the court to order the other party to produce a piece of evidence, or any obligation equivalent to “disclosure” under English law. However, the parties must present all the exhibits referred to in their written pleadings, and the court will draw all appropriate inferences from any party's refusal to present the court with any piece of evidence requested by the other party.

Exhibits are submitted alongside pleadings; new pieces of evidence may be added to the case file until the hearing for oral arguments takes place (provided new evidence is first disclosed to the opposing party and that said party does not exercise its right to request postponement to allow itself time to reply to new evidence).

7. To what extent are the parties able to control the procedure and the timetable? How long do proceedings last?

The parties can request up to 6 adjournments to file new submissions, but the court is the sole arbiter of the number of adjournments and their length (although limits may only be exceeded in unforeseen and exceptional circumstances).

In practice, the length of proceedings depends on several factors such as case complexity, degree of urgency, and the procedural motions raised by the opposing party. Decisions on urgent interim petitions (*référé*) may be obtained between one day and one month after applying to the court, depending on the degree of urgency.

For an ordinary case, proceedings last an average of one year in the first instance, one year on appeal, and one to three years before the Supreme Court.

The parties may put an end to proceedings at any stage if they reach a settlement.

8. What interim remedies are available to preserve the parties' interests pending judgment?

Several types of interim remedy are available under the laws of Djibouti:

- **Conservatory measures:** in urgent circumstances where the collection of a debt is in jeopardy, the presiding judge of the General Court can authorise any creditor with a *prima facie* claim to make an interim attachment (*saisie conservatoire*), or register an interim charge over the debtor's business (*nantissement*) or real property (*hypothèque*).

Creditors submit their petitions along with proof of their claim to obtain an order from the presiding judge (on an *ex parte*

basis). Then they implement the interim measure and lastly, have the order served on the debtor together with a summons to proceedings on the merits.

- **Third party debt orders** (*saisie-arrêt*): any creditor can request authorisation from the court to secure a definite claim by seizing funds or assets belonging to a debtor that are in the possession of a third party.

If the creditor holds an enforceable instrument (judgment, notarised deed, etc.), the third party debt order can be implemented directly through a bailiff, with the debtor and third party being served a summons to proceedings on the merits.

If the creditor does not hold an enforceable instrument, the presiding judge of the General Court must be petitioned for an ex parte order authorising the seizure, to be served on the debtor.

- **Interim proceedings** (*référé*): in all cases of urgency or where an interim decision on problems with enforcing an instrument or judgment is needed, the claimant can have the other party summonsed before the judge for interim matters without observing the usual time frame.

Judges in interim matters can order an expert review, issue a cease and desist order for manifestly unlawful acts subject to a daily penalty, evict a tenant, order monies or anything else placed in escrow, appoint a provisional or special receiver for a company, etc. However, they cannot order a provisional payment be made to one of the parties. Interim orders are immediately enforceable.

9. What means of enforcement are available?

The primary enforcement measures are:

- **Seizure** (*saisie-exécution*): creditors with an enforceable title can have a bailiff seize the debtor's tangible property 48 hours after a simple order to pay, after which the property can be sold at auction.

Under the Civil Procedure Code, seizure and sale may take the form of (i) a seizure of monies (*saisie-arrêt execution*) held by a third party, (ii) seizure of moveable property (*saisie appréhension*), (iii) seizure and sale of the contents of a safe, (iv) seizure and sale of vehicles, (v) seizure and sale of ships, (vi) seizure and sale of aircraft, (vii) seizure and sale of intangible property.

(i) Third party debt order (*saisie-arrêt execution*)

This mode of enforcement enables creditors to seize funds belonging to the debtor but held by a third party. Eight days after an order to pay, the third party can request that seized amounts be paid to an escrow account or designated recipient

(ii) Seizure of moveable property (*saisie appréhension*)

Tangible property belonging to the debtor is seized from the third party holding it on the debtor's behalf; the property must be surrendered upon presentation of an order to do so.

(iii) Seizure from a safe or vault

The safe can only be opened 8 days after the date of the order to pay, or earlier if the debtor agrees. An inventory is made, and after the date of the seizure, access to the safe reverts back to the debtor.

(iv) Seizure and sale of vehicles

Seizures can be made by declaration to the administrative authority or by immobilising the vehicle.

If by declaration, the bailiff handling the enforcement order makes the declaration of seizure to the competent authority, a copy of which must be served on the debtor within the next 8 days.

The bailiff can also seize the debtor's vehicle by immobilizing it, wherever it may be, using any method that does not damage the vehicle. If the vehicle was immobilized in the debtor's absence in order to obtain payment of a sum of money, to be returned to its owner, or to be delivered to a secured creditor, the bailiff must have an instrument containing the information required under the Civil Procedure Code served no more than 8 days after the immobilization.

(v) Seizure of ships

A seizure and sale of a ship may only be carried out 24 hours after an order to pay is notified to the owner of the ship (the said order to pay is only valid for 10 days).

For the seizure to be valid, the seizing party must request a bailiff to establish a report on the seizure. A copy of the seizure report must then be served on the ship owner within 3 days and have the owner summoned to the General Court so that the sale can proceed. The sale is published in the local newspaper.

(v) Seizure of intangible property

The creditor has the seizure carried out by a bailiff. Within the next 8 days, the seizure is notified to the debtor by a bailiff. The sale is publicised in a local newspaper at least 8 days and no more than 1 month before the date of the sale.

- **Penalty payment** (*astreinte*): creditors obtain an injunction from a court ordering their debtors to pay a sum, or to perform a particular action paired with a penalty for every day/week/month of non-compliance. The court can grant debtors grace periods for making these payments, and enforcement procedures may be stayed for a maximum of one year.

10. Does the court have power to order costs? Are foreign claimants required to provide security for costs?

In principle, the court orders the unsuccessful party to pay the costs, including any fees for bailiffs, experts and for the registration of judgments, totalling 2% of the sums awarded. The court cannot order the unsuccessful party to pay the other party's legal fees, only damages for abuse of process and unrecoverable costs, if that party has abused its right to take legal action.

Foreign claimants may be ordered to make a payment into court as security for any damages that may be awarded against them, if the Djiboutian defendant so requests at the start of the proceedings. The amount is set by the court and may be sizeable in practice.

Some foreign parties are exempted from the need to provide security for damages under international agreements (France, Ethiopia, Arab League countries). The insertion of a clause

exempting foreign parties from providing security for damages is recommended in any international contracts.

11. On what grounds can the parties appeal, and what restrictions apply? To what extent is enforcement suspended pending an appeal? Is there a right of further appeal?

The deadline for appealing a civil or commercial judgment is one month from the date of judgment if it is handed down after a hearing with all the parties, or one month from service of the judgment if it is only deemed to be handed down after a full hearing (*réputé contradictoire*) or handed down by default. The time limit is extended by (i) 10 days if the cited party resides anywhere in Djibouti other than Djibouti City, (ii) 2 months if the party lives abroad. All first instance judgments may be appealed unless the court's ruling is final. Appeals are brought by way of a summons to a hearing before the Court of Appeal.

The Court of Appeal re-hears the entire case on the facts and on points of law. New claims are not admissible, but new grounds and evidence can be presented. Appellate decisions may be enforced immediately, notwithstanding any appeals to the Supreme Court.

Appeals to the Supreme Court may be made within 15 days of the date of the appellate decision (if handed down after a hearing in the presence of all parties or 15 days from service of the appellate decision if it is only deemed to be handed down after a full hearing (*réputé contradictoire*) or handed down by default.

New grounds and evidence are inadmissible in Supreme Court proceedings, unless they are solely on issues of law or if they arise further to the decision which is appealed.

The Supreme Court rules on points of law only. If a judgment is overturned, the court must remand the case to a new panel of the appellate court.

12. To what extent can domestic and/or foreign State entities claim immunity from civil proceedings?

Claims may be brought against the Government, public bodies, or state-owned companies in Administrative Court.

The Government, public bodies and state-owned companies enjoy immunity from enforcement under the Civil Procedure Code (Art. L-222-15 & seq).

Foreign entities may rely on immunity (from jurisdiction or enforcement) they may enjoy pursuant to international agreements or standard international practices. These entities may validly waive their immunity under international business contracts.

13. What are the procedures for having foreign judgments recognised and enforced?

Administrative or court decisions handed down abroad in civil, commercial, employment and administrative matters are only enforceable in Djibouti if they meet the following conditions:

- the decision was issued by a body that has jurisdiction according to the relevant law for conflicts of jurisdiction that applies in the State where the decision was issued;

- the decision applied the law applicable to the dispute according to the rules on conflicts of law in the State where the decision was issued;
- the parties were duly summoned, represented, or failed to appear;
- the decision is not contrary to public policy;
- the decision is *res judicata* and enforceable under the laws of the State where it was handed down;
- there is no *lis pendens* situation before a court in the State where the enforcement is sought, the courts of this State have not been seized in first, there is no other enforceable decision in the same matter that would be contradictory with the foreign judgment at stake.

With the exception of issues of personal status, enforceability orders (*exequatur*) must be issued by the Djibouti court pursuant to an ordinary summons.

In practice, obtaining an *exequatur* judgment is a lengthy process, given the possibility of appeals to the Court of Appeal and to the Supreme Court and the variety of pleas that can be raised by defendants (eg requests for payments into court as security).

Arbitration

14. Is the arbitration law based on the UNCITRAL Model Law? If so, does it include any key modifications? If not, what type of arbitration does the law provide for?

The laws covering arbitration come from three different sources:

- The 2018 Djibouti Civil Procedure Code: articles L.710-1 to L.710-5 (general principles), articles L.721-1 to L.726-13 (domestic arbitration), articles L.730-1 to L.733-13 (international arbitration);
- Articles L.2311-1 to L.2316-4 of the Djibouti Commercial Code on arbitration "*between merchants*" (*commerçants*), whether domestic or international, when the seat of arbitration is in the Republic of Djibouti.
- The Djibouti International Code of Arbitration (*Code de l'Arbitrage International*), Law 79/AN/84/1e L of 13 February 1984, governing only arbitration "*involving international commercial interests*" (the "Code").

The Code, the first of its type in post-independence Africa, preceded the UNCITRAL Model Law of 1985, and so the UNCITRAL Model Law was not adopted in Djibouti. The Code is applicable where parties have selected it as governing law in their arbitration clause, and to disputes in the Free Trade Zone (under Art. L730-2 of the Civil Procedure Code) pursuant to Law No. 53/AN/04 of 17 May 2004 on the Free Trade Zone.

The Code is still in effect (having been incorporated into the Djibouti Commercial Code and the Civil Procedure Code), but it is unclear whether the institutions referred to in the Code have been created and are active.

Although the Civil Procedure Code repealed all previous incompatible laws and legal provisions, difficulties may arise from the coexistence of certain provisions from the Commercial Code and the Civil Procedure Code – especially for foreign parties with a local branch or regular commercial activities in Djibouti.

15. What are the main arbitration institutions at the national level?

There are no arbitration institutions at the national level. The parties appoint ad hoc arbitrators (eg the President of the Port Authority and the Free Trade Zone, the Chair of the Chamber of Commerce, the President of the Bar Association (*Bâtonnier de l'Ordre des Avocats*), etc.).

While the Code included provisions for an arbitration centre and training, it is unclear whether the relevant institutions were actually created.

16. Are there any restrictions on who may represent the parties to an arbitration?

There are no restrictions.

17. What are the formal requirements for an enforceable arbitration agreement?

For civil arbitrations, an arbitration agreement is invalid if it is not in writing or does not refer to the subject matter of the dispute (articles L.721-1 and L.721-3 of the Djibouti Civil Procedure Code).

For commercial arbitrations, the agreement may be made in writing or by any other means that can be proved, including by reference to a document that stipulates arbitration.

Conversely, there are no formal requirements for an arbitration agreement on international arbitration.

18. Will the courts stay litigation if there is a valid arbitration clause covering the dispute? Does their approach differ according to whether the seat of the arbitration is inside or outside the jurisdiction?

National courts will decline jurisdiction if the dispute before them is covered by a valid arbitration agreement between the parties, even if the seat of arbitration is not within the territorial jurisdiction of the Djibouti courts. As an exception to the foregoing, the court will hear the case if it is submitted while (i) the matter has not yet been referred for arbitration and (ii) the arbitration agreement is clearly invalid. The courts will not, however, decline jurisdiction of their own motion.

Supreme Court case law along the above lines is well established, but occasionally the General Courts and Courts of Appeal refuse to implement arbitration agreements if they are not signed by all parties (eg bills of lading).

19. If the arbitration agreement is silent, how many arbitrators will be appointed, and who is the appointing authority?

An arbitral tribunal is made up of either a single arbitrator or three arbitrators (for commercial arbitrations) or "multiple arbitrators of an uneven number" (for civil arbitrations). If not otherwise specified in the arbitration agreement, the third arbitrator or the single arbitrator is appointed by the presiding judge of the General Court.

20. What rights are there to challenge the appointment of an arbitrator?

Challenges must be raised immediately to be valid.

The Civil Procedure Code (art. L722-7) provides that challenges must be raised before the tribunal without any undue delay. The challenge must then be presented to the arbitration centre administering the arbitration proceedings, or, as relevant, to the presiding judge of the General Court, no more than one month from the date of disclosure or discovery of the fact(s) giving rise to concern.

The Commercial Code (applicable to commercial arbitrations between merchants with a seat in Djibouti) provides an even shorter timeframe of 15 days from the arbitrator's appointment or from the date when the circumstances giving rise to the challenge came to light. After this interval the challenge is inadmissible.

Justifications for a challenge are the same as for judges. Arbitrators (and their spouses) must not have any personal interest in the contested issues; financial relationships (lending, borrowing, inheriting, donating), relationships by blood or marriage (up to the fourth degree of proximity), or disputes with one of the parties; and they must not have given counsel or advice on the dispute.

Any challenge must be filed with the presiding judge of the General Court ruling in an interim capacity.

21. Does domestic law contain public policy requirements for arbitration proceedings?

Arbitral tribunals are not bound by rules established for the domestic courts when making their determination on cases, although the general principles applicable to civil trials must be followed: judicial bodies must be independent and impartial; the right to be heard (*contradictoire*) must be respected; the parties must be given equal treatment; and judges or arbitrators cannot raise grounds of their own motion without first inviting the parties to submit observations.

The parties can agree on their own set of procedural rules or chose an existing body of procedural law. If they do not make a choice, the arbitral tribunal may establish its own rules within the confines of the general principles described above.

22. On what grounds can the court intervene in arbitrations seated inside the jurisdiction?

The parties to an arbitration agreement or to arbitration proceedings can petition the courts for interlocutory rulings in support of arbitration. These rulings may pertain to the composition of the arbitral tribunal; arbitrator recusals; the incapacity, death, resignation or removal of arbitrators; or they may interpret and revise mistakes or omissions in arbitral awards.

The court with jurisdiction is:

- By default, the presiding judge of the Djibouti General Court pursuant to article L730-2 of the Civil Procedure Code;
- for arbitration between merchants with its seat in Djibouti pursuant to the Commercial Code, the presiding judge of the Commercial Court;

- if the parties chose to apply the 1984 Arbitration Code in their arbitration agreement, the the President of the *Commission des Recours Arbitraux* (it is still unclear whether this institution had been created and/or whether it is active).

23. On what grounds can the court intervene in arbitrations seated outside the jurisdiction?

Even if there is an arbitration agreement, interim and conservatory measures remain under the jurisdiction of the courts if the arbitral tribunal fails to order them in a timely manner or if a party does not comply with the arbitral tribunal's order. Urgent measures such as expert appointments go before the interlocutory judge, while interim attachments are handled by the presiding judge of the General Court (*saisie arrêt, saisie conservatoire, nantissement or hypothèque conservatoire*).

Arbitrators may seek the assistance of the courts for their own motion or at the request of a party if necessary for the taking of evidence. Parties may also petition domestic courts for conservatory or investigative measures, although the arbitral tribunal has primary responsibility for the latter.

24. Do arbitrators have powers to grant interim or conservatory relief?

Arbitrators have the power to take any investigative measures that may be necessary. They can also order a party to disclose evidence or pay a regular penalty until the party has complied.

25. When and in what form must the award be delivered?

The parties can set a time limit within which the tribunal must issue the award. If they do not, in commercial matters the award must be issued no more than six months after the date the last arbitrator accepts the terms of reference.

Pursuant to the relevant articles of the Civil Procedure Code and the Commercial Code, the award must:

1. be in writing;
2. be issued by majority vote;
3. be signed by all the arbitrators (if a minority refuses to sign, the award mentions this fact and has the same weight as an award signed by all arbitrators)
4. state the names of the arbitrators;
5. identify the parties (names and addresses);
6. identify counsel or anyone else who represented the parties;
7. state the date on which the award is rendered;
8. state the place of issue (the wording of the Civil Procedure Code is ambiguous as to whether this means the seat of arbitration or the place where the award is rendered. For commercial arbitration in Djibouti, the Commercial Code more clearly states that the Award must specify the seat of arbitration);
9. summarize the parties' claims and legal arguments;
10. give reasons for the award.

The Award may be null and void if these requirements are not met (article L724-6 of the Civil Procedure Code).

26. Can a successful party recover its costs?

The successful party can claim its costs and legal fees. The decision to grant and/or apportion the costs is largely at the tribunal's discretion. The tribunal may also impose a civil penalty if the claim was made in bad faith, intended to harm the other party or a stalling tactic (ie where there was an abuse of right).

27. On what grounds can an award from an arbitration seated in the jurisdiction be appealed to the court?

Arbitration awards handed down in commercial cases in Djibouti cannot be challenged in a court of original jurisdiction (*opposition*), nor can an appeal be lodged with the Court of Appeal.

Applications to set aside the award can be submitted to the Supreme Court in the following circumstances only:

- there is no arbitration agreement or the agreement is invalid;
- arbitrator appointments were improperly made;
- the arbitrators did not comply with the terms of reference;
- the right to be heard (*contradictoire*) or rights of defence were not observed;
- the award conflicts with international public policy;
- no reasons are given for the award.

Applications to set aside the award must be filed within 2 months of formal service of the award on the parties.

The application to set aside suspends enforcement of the award unless immediate enforcement has been ordered. If the application is dismissed, the arbitral award is automatically confirmed as valid and enforceable.

By contrast, awards issued in arbitrations conducted under the rules of the Civil Procedure Code, can be appealed if the parties expressly reserved this right in their arbitration agreement. Appeals can seek to have the award revised or set aside. Applications to set aside are submitted to the chamber of the Court of Appeal that would have had jurisdiction in the absence of an arbitration agreement.

In addition to the above, parties can seek to have the award set aside by the Supreme Court in the following cases:

- the tribunal has wrongfully assumed or declined jurisdiction;
- the tribunal was improperly constituted;
- the arbitrators did not comply with their terms of reference;
- the right to be heard (*contradictoire*) or rights of defence were not observed;
- the award conflicts with public policy requirements;
- no reasons are given for the award; the award does not include the date of issue, names of the arbitrators, or required signature(s); the award was not issued by majority decision.

28. Can a foreign arbitration award be appealed in the local courts?

Foreign awards and international arbitration awards rendered in Djibouti cannot be appealed before a court in Djibouti, but an application to set aside can be filed with the Supreme Court no more than one month after the award has been served on the

Parties for international arbitration awards rendered in Djibouti (see previous question).

29. What are the procedures for the enforcement of: (i) awards rendered in other jurisdictions and (ii) domestic awards?

Djibouti is a party to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the New York Convention), which facilitates the enforcement of foreign arbitral awards.

Enforcement orders, or *exequatur*, are granted by the presiding judge of the General Court ruling on an *ex parte* petition. Whether the award in question is foreign or domestic, the original award must be produced along with the arbitration agreement or certified copies thereof (with translations into French if necessary for foreign awards), and (ii) the award must not be manifestly contrary to public international policy.

A refusal to grant *exequatur* can be appealed to the presiding judge of the Court of Appeal within 15 days of service of the decision, while orders granting *exequatur* cannot be appealed.

For awards subject to the Civil Procedure Code, an order recognising and enforcing the award in Djibouti cannot be appealed, but an application can be filed to set the award aside. If the petition for *exequatur* was rejected, an order denying enforcement can only be upheld on appeal if:

- the arbitral tribunal wrongly assumed jurisdiction when there was no arbitration agreement or the agreement was invalid or expired;
- the tribunal was improperly constituted;
- the tribunal did not comply with its terms of reference (for civil cases only);
- the right to be heard (*contradictoire*) or rights of defence were not satisfied;
- the award is contrary to Djiboutian public policy;
- no reasons are given for the award; the award does not include the date of issue or required signature(s); the award was not issued by majority decision (civil cases only)

For awards subject to the Commercial Code (ie commercial arbitration between merchants, with its seat in Djibouti), orders granting or denying *exequatur* may be appealed to the presiding judge of the Court of Appeal within 2 months of service of the award on the following grounds:

- there was no arbitration agreement or it was expired;
- the tribunal was improperly appointed;
- the right to be heard or rights of defence were violated;
- the award is contrary to international public policy.

30. Are foreign awards readily enforceable in practice?

In practice, the enforcement of foreign arbitration awards against a Djiboutian party is lengthy and fraught with difficulty, not least because *exequatur* proceedings can be drawn out (first instance, appeal, Supreme Court, Court of Appeal after remand); however, enforcement orders have actually been

handed down in the past. Enforcement against the State/State entities remains difficult; the State and State entities have immunity from enforcement (Art. L222-15 to L222-17 of the Civil Procedure Code).

Alternative dispute resolution

31. Are the parties to litigation or arbitration required to consider or submit to any alternative dispute resolution before or during proceedings?

If the agreement between the parties provides for mandatory alternative dispute resolution prior to proceedings, they must comply with those contractual provisions. However no alternative dispute resolution methods are mandated by law (except in employment matters, where a conciliation attempt overseen by the Labour Inspector is required).

Reforms

32. Are there likely to be any significant procedural reforms in the near future?

None that we are aware of.

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Egypt



Introduction

The Egyptian legal system is a civil law country which is based upon a well-established system of codified laws. It is built on the combination of Islamic Sharia'a and the French Napoleon Civil Code. Egypt's supreme law is the 2014 Constitution as amended in 2019 which states in Article (2) thereof that the principles of Islamic Sharia'a constitute the main source of legislation.

With respect to transactions between natural persons or legal entities, the most important legislations are the Egyptian Civil Code No. 131 of 1948 (ECC), which remains the main source of legal rules applicable to contracts, the Egyptian Commercial Code No. 17 of 1999 (ECOMC), which regulates relationships between traders, the Code of Civil and Commercial Procedures No. 13 of 1968 (CCCP), and the Evidence Law in Civil and Commercial Matters No. 25 of 1968 (Evidence Law). For the incorporation of companies and trading of shares on the Egyptian Stock Exchange, the relevant codes are the Companies Law No. 159 of 1981 and the Capital Markets Law No. 95 of 1992 alongside the supervising authorities for all companies in Egypt, including publicly traded companies. These are respectively the General Authority for Investments and Free Zones (GAFI) and the Financial Regulatory Authority (FRA).

Litigation

1. What is the structure of the legal profession?

The legal profession in Egypt is a liberal profession where practicing lawyers are admitted to the Egyptian Bar Association and subject to the provisions of Advocacy Law No. 17 of 1983 (Advocacy Law).

Practicing lawyers are considered independent practitioners whether practicing individually or within a law firm.

Law firms are established through partnerships and the name of the firm can include the name of one or more founding partner(s).

There is no split profession, lawyers in Egypt practise as both solicitors and barristers.

To become a member of the Egyptian Bar Association, lawyers must satisfy the following requirements (Article (13) of the Advocacy Law):

- be an Egyptian national and permanently resident in Egypt;
- have full civil capacity;
- hold a high school diploma or equivalent foreign diploma recognized in Egypt and a Bachelor of Law degree from a faculty of law in any of the Egyptian universities or a Bachelor of Law degree from any foreign university that is recognised in Egypt as a degree equivalent to its Egyptian counterpart;
- not have been previously convicted by virtue of a final judgment for a misdemeanour affecting their honour or trustworthiness, or for a felony, unless they have been legally rehabilitated;
- have a good reputation, be respectful, and not have been the subject of any disciplinary action, nor should their previous job or profession have ended for reasons affecting their qualifications for the position held;
- pass the medical examination at one of the hospitals designated by the Council of the Egyptian Bar Association;
- pay the registration and annual subscription fees; and
- not have any position which cannot be combined with advocacy as set out under Article 14 of the Advocacy Law.

Further to the above, two additional requirements for admission to the Egyptian Bar Association were recently introduced in Law No. 147 of 2019 amending the Advocacy Law. Firstly, a lawyer is required to study and obtain a certificate from an academy called the Advocacy and Legal Studies Academy, established by Law No. 147 of 2019 amending the Advocacy Law and affiliated with the Egyptian Bar Association (Articles (13 bis) and (230) of the Advocacy Law). Secondly, a lawyer is required to pass a written exam set by a committee formed by the Council of the Egyptian Bar Association (Article (13 bis) of the Advocacy Law).

The Minister of Justice may authorise a foreign lawyer to appear in a specific case or work on a specific matter subject to the principle of reciprocity with their country of origin (Article (13) of the Advocacy Law).

Article (3) of the Advocacy Law expressly stipulates that advocacy work is exclusively reserved to lawyers, such that non-lawyers cannot exercise any advocacy work which includes the following:

- representing parties and appearing before courts, arbitral tribunals, investigation authorities (administrative and criminal), police stations, defending and pleading in cases brought by or against their representatives and pursuing any related judicial proceedings;
- opining on legal matters; and
- drafting and notarising contracts.

2. What is the structure of the court system?

The court system is divided into two separate orders: the ordinary judicial branch and the administrative judicial branch derived from the classic dichotomy between public and private law.

The Egyptian court system of the ordinary judicial branch is composed of three tiers:

- The Courts of First Instance: these are first degree courts divided into Primary Courts and District Courts which are geographically located in cities and districts all over the Egyptian Territory and their rulings are generally subject to appeal. The cases are mainly divided between both Courts on the basis of the amount at stake, leaving cases of a value less than EGP 200,000 (equivalent to approximately USD 4000, based on the current exchange rate declared by the Central Bank of Egypt to be decided by the District Courts (Articles (42) and (47) of the CCCP as amended by Law No. 157 of 2024). Judgments of the Courts of First Instance are generally subject to appeal, but they are final when the value of the case does not exceed EGP 200,000 (equivalent to approximately USD 4000) (Article (47) of the CCCP as amended by Law No. 157 of 2024). However, judgments of the District Courts are final when the value of the case is less than EGP 30,000 (equivalent to approximately USD 600 based on the current exchange rate declared by the Central Bank of Egypt (Article (42) of the CCCP as amended by Law No. 157 of 2024). Appeals of District Courts judgments are brought before a Primary Court with an appellate body, which has the same standing as the Court of Appeal (Article (47) of the CCCP as amended by Law No. 157 of 2024).
- The Courts of Appeal: These are second degree courts which review the judgments of the Courts of First Instance on questions of fact and law. The judgments of the Court of Appeal are final. They are only open to challenge before the Court of Cassation which reviews the application of the law or the lack/inconsistency of reasoning by the Court of Appeal, if the value of the case exceeds EGP 500,000 (equivalent to approximately USD 9,870 based on the current exchange rate declared by the Central Bank of Egypt) (Article (248) of the CCCP as amended by Law No. 157 of 2024). There exist around eight Courts of Appeal in Egypt, located in major cities.
- The Court of Cassation which sits at the apex of the judiciary issues exclusive and uniform interpretations and applications of the law and is located in Cairo.

As for the administrative judicial branch, the State Council (*Conseil d'État*) consists of administrative courts vested with the power to determine administrative disputes pertaining to administrative contracts and administrative decrees issued by government officials or public law entities. Administrative

courts have a separate structure, where the Supreme Administrative Court sits at the apex of such structure. Furthermore, there are departments within the State Council for opinions and legislation which advise public entities on various aspects of public law such as administrative contracts, tenders, ministerial decrees, etc.

There are also specialised courts, such as personal status and family courts, economic courts, labour courts, national security courts (no new cases can be referred since the lifting of the state of emergency in Egypt in October 2021) and military courts.

Finally, there is the Supreme Constitutional Court, which is the highest judicial power in Egypt. It has exclusive jurisdiction to decide questions on the constitutionality of laws and regulations, and negative and positive conflicts of jurisdiction.

3. What are the time limits for bringing civil claims?

In principle, the ECC sets the limitation periods for bringing civil claims, which vary depending on the subject matter of the dispute. Article (374) of the ECC provides that the general limitation period for a right to expire is 15 years from the date such right has arisen or obligation become due, except for cases where a specific provision in the ECC or in another law stipulates a different time limit.

Accordingly, there are shorter time limits for specific types of action as an exception to the general limitation provided under the ECC or in relation to specific provisions in other laws, which by way of example include the following:

- The time limit for bringing claims in relation to recurring periodic rights, such as rent (for buildings or agricultural lands), interest, periodical payments, salaries, wages and pensions is five years, even if the debtor acknowledges the debt (Article 375(1) of the ECC). However, the limitation period for revenue owed by a bad faith possessor is 15 years (Article 375(2) of the ECC).
- The time limit for claims for sums due to doctors, pharmacists, lawyers, engineers, experts, trustees in bankruptcy, brokers, professors or teachers is five years, provided that the sums due are for professional work conducted or expenses incurred by them (Article (376) of the ECC).
- The time limit for bringing claims in relation to taxes and duties owed to the State or to any public legal entity is five years, unless a longer period is prescribed by law (Article 377(1) of the ECC). The time limit for taxes and annual duties starts to run from the end of the year for which such amounts are due. For claims relating to fees on legal documents, the five-year limitation period starts to run from the end of the hearing of the case where such documents were produced, or in absence of a hearing, from the date of the document in question (Article 377(1) of the ECC). However, the time limit for bringing a claim seeking reimbursement of unduly paid taxes and duties is five years and starts to run from the date of payment (Article 377(2) of the ECC). These limitations apply subject to provisions in special laws (Article 377(3) of the ECC).
- The ECC provides for a one-year time limit for the following rights: traders' and manufacturers' claims for goods supplied to persons who do not trade in these goods; hotel and restaurant owners' claims for the cost for accommodation, meals, and expenses incurred by them on behalf of their customers; workers', servants' and wage earners' claims for

wages, daily or otherwise, and the cost of supplies provided by them (Article (378) of the ECC).

- The time limit for the right to claim avoidance of a contract is three years. In cases of legal incapacity, the limitation period starts running from the date the incapacity ceases; in cases of mistake or fraudulent misrepresentation, from the date the mistake or misrepresentation is discovered; in cases of duress, from the date it has ceased. In any event, avoidance of the contract cannot be claimed based on mistake, misrepresentation or duress if a period of 15 years has elapsed from the date of conclusion of the contract (Article (140) of the ECC).
- The time limit for a buyer's right to request a price reduction or rescission of the contract, and for a seller's right to ask the buyer to pay the remainder of the price in case of deficiency or excess in the purchased goods, is one year from the date of actual delivery of the goods (Article (434) of the ECC).
- The time limit for claims relying on sellers' warranties is one year from the date of delivery of the goods, even if the buyer discovers the defect after the one-year period has lapsed, unless the seller agrees to warrant the goods for a longer period. However, the one-year period does not apply if it is proven that the seller intentionally and fraudulently concealed the defect (Article (452) of the ECC).
- In construction contracts, the time limit for claims based on the ten-year liability of contractors for collapse or serious defects affecting the safety of the structure following completion of construction is three years from the date of the collapse or from the date the defect becomes apparent. (Article (654) of the ECC)
- The limitation period for tort liability claims is three years from the date the aggrieved party becomes aware of the damage and the identity of the person responsible. In any event, an action cannot be brought is a period of 15 years has elapsed since the occurrence of the unlawful act (Article (172) of the ECC).

4. Are lawyer-client communications privileged (ie, protected from disclosure to a court/tribunal and opposing parties)?

Yes, in principle, lawyer-client communications are privileged and confidential unless the lawyer is asked to reveal the communications before a court to defend the client's interest as provided under Article (79) of The Advocacy Law. Furthermore, Article (65) of the Advocacy Law and Article (66) of the Evidence Law both confirm the lawyer's duty of non-disclosure of information obtained while performing their work, even after the termination of their mandate, unless non-disclosure would result in committing a felony or a misdemeanour.

5. How are civil proceedings commenced, and what is the typical procedure which is then followed?

Civil proceedings are commenced by filing a statement of claim before the competent court and submitting the statement of claim to the court registrar. Article (63) of the CCCP provides that the statement of claim must include the following information:

- Plaintiffs' and their representatives' first and last names, their profession, and domicile/place of residence;
- Defendants' first and last names, profession, domicile/place of residence, and if unknown, the last known domicile/place of residence;

- The submission date of the statement of claim;
- The court before which the action is brought;
- The plaintiff's elected domicile in the district where the court is located, if the plaintiff is not a resident of that district; and
- The facts of the case, the plaintiff's claims or requests, and supporting evidentiary documents.

To register the case, the court registrar verifies that the submitted statement of claim is accompanied by the following (Article (65) of the CCCP):

- Proof of payment of the legally prescribed registration fees or proof of the plaintiff's exemption from such payment;
- Copies of the statement of claim equal to the number of defendants, in addition to two copies for the court registrar;
- Originals of the evidentiary documents or copies thereof under the responsibility of the plaintiff; and
- An explanatory memorandum of the case or an acknowledgment that the statement of claim contains a full explanation of the case along with copies thereof equal to the number of defendants.

If the court registrar finds that any of the above accompanying documents are missing, the matter is submitted to the interim relief judge. After hearing the plaintiff and the court registrar's opinion, the judge orders registration of the case or asks the plaintiff to submit the missing document(s). In such situations, the case will be considered registered from the date of its submission.

The court registrar records the case on the day of submission of the statement of claim, in the presence of the plaintiff or plaintiff's representative, and schedules the date of the first hearing. On the following day, the court registrar transmits the original and copies of the statement of claim to the court bailiff for service of a copy on the defendant, with the original being returned to the court registrar (Article (67) of the CCCP). Accordingly, the court bailiff serves the copy of the statement of claim to the defendant within 30 days from the date of receipt, provided that the hearing date is not scheduled before the end of that 30-day period, in which case the court bailiff must notify the defendant before the hearing date (Article (68) of the CCCP).

The defendant must submit statement of defence to the court registrar along with any evidentiary documents or copies thereof, at least three days before the scheduled hearing date (Article (65) of the CCCP).

If a defendant does not attend the first scheduled hearing because they were not duly notified, the court postpones the hearing until notification has been effected (Article (84) of the CCCP).

Usually, the case progresses with adjournments that vary from few weeks to months, depending on the complexity of the dispute and requests of the parties addressed to the court throughout the proceedings to submit their memoranda and evidentiary documents.

6. What is the extent of pre-trial exchange of evidence, and how is evidence presented at trial?

As a matter of principle, there is no system of pre-trial exchange of evidence in Egypt. The common law practice of discovery is neither recognised nor applicable in Egypt. Documentary evidence is normally adduced by each party in support of its claims or defences.

However, Article (20) of the Evidence Law provides for limited requests for production in specific exceptional cases which consist of the following:

- If the law allows a party to be asked to submit said document;
- If the document in question is a joint document between the parties, in the interest of both or that demonstrates their reciprocal obligations and rights; and
- If the opposing party relies on the requested document at any stage of the proceedings.

Under Article (21) of the Evidence Law, a request for production must include the following:

- the specifics and characteristics of the requested document;
- the document's content, to the extent possible;
- the document's materiality and relevance to the disputed fact;
- the circumstances and indications showing that the document is in the opposing party's possession; and
- the basis for ordering the production thereof.

Documentary evidence is submitted together with the parties' memoranda. Oral evidence is presented at trial (Article (102) of the CCCP), where witnesses are called to be heard under oath and are examined by the judge and cross-examined by the opposing party (Articles (86) and (87) of the Evidence Law).

The court may, at the request of a party or *ex officio*, order an inspection (Article (131) of the Evidence Law).

The court may also order the appointment of an expert or three experts, at its discretion, and clearly determines the expert's scope of work, the amount of security deposited to cover the expert's costs, which party is to deposit security and the deadline for doing so, the deadline for submission of the expert report, and the date of the hearing (Article (135) of the Evidence Law).

7. To what extent are the parties able to control the procedure and the timetable? How long do proceedings last?

Control of the procedure and timetable lies with the court. The parties may seek an extension of time subject to the court's discretion. The length of the process, including any appeals, varies depending on the subject matter, complexity, amount in dispute, the parties' responsiveness to attend hearings and submit memoranda, extensions of time limits, and any delaying tactics used. Proceedings may range from several months for simple disputes involving small amounts to several years for more complex disputes.

However, since the establishment of economic courts by Law No. 120 of 2008, the process has been accelerated for disputes falling under the economic courts' jurisdiction, *ie*, disputes related to economic matters in criminal and civil proceedings.

The economic courts have their own procedural rules that are quicker than ordinary courts. Furthermore, since the enactment of Law No. 146 of 2019 amending Law No. 120 of 2008, proceedings before economic courts can be conducted electronically, *ie* for the submission of briefs, documents, defences, and claims, and hearings can be conducted remotely. To further accelerate the dispute resolution process, the new Law No. 156 of 2024 amending Law No. 120 of 2008 further expands the jurisdiction of the economic courts, and provides that the judgments of the first instance circuits in the economic courts are final if the value of the case does not exceed EGP 750,000 (equivalent to approximately USD 14,800 based on the current exchange rate declared by the Central Bank of Egypt) (Articles (4) and (6) of Law No. 120 of 2008).

8. What interim remedies are available to preserve the parties' interests pending judgment?

A party may seek interim relief before a final judgment either by submitting the matter to the competent primary or district court or to the court examining the merits of the case (Article (45) of the CCCP), or by submitting an *ex parte* petition to the interim judge or the President of the court examining the case (Article (194) of the CCCP). Interim remedies are ordered on the basis of *prima facie* evidence.

Any request for interim relief must satisfy the following requirements: the presumable existence of a right, urgency, intent to avoid harm without affecting the final judgment (Article (45) of the CCCP).

An *ex parte* petition must include the factual background for relief and the documentary evidence, and be submitted in two identical copies (Article (194) of the CCCP).

The types of interim remedies available to preserve the parties' interests include preservation orders to prevent the parties' interests from being destroyed, damaged or lost; orders to maintain or restore the *status quo*; protective seizure of the opposing party's assets; preservation of significant evidence; and/or orders appointing a legal guardian.

9. What means of enforcement are available?

A judgment can only be enforced when it is final, which is generally the case for judgments rendered by the Court of Appeal and some judgments rendered by the Court of First Instance as an appellate body, or judgments determined by the parties to be final.

Articles (274) to (279) of the CCCP stipulate the general provisions for the enforcement of judgments. Enforcement takes place under the supervision of an execution department and all matters related to enforcement are heard by the execution judge.

If compliance with the judgment is not voluntary, compulsory enforcement takes place. Article (280) of the CCCP provides that for compulsory enforcement, a right must be certain, determined and due for performance (payment). Creditors may also induce voluntary compliance with judgments by threatening to institute bankruptcy or liquidation proceedings against the debtor.

Enforcement of a judgment may entail the seizure of property or assets as follows:

- conservatory seizure of movable or immovable property (this is an interim measure that may be ordered by the court to protect the interests of creditors);
- seizure for sale of the seized property or assets (applicable to both movable and immovable property); and
- garnishment of amounts held by third parties and of wages.

However, pursuant to Egyptian law, certain rights, assets or property may not be seized: industrial property rights, supplementary rights *in rem* such as mortgages and concessions etc., easements, current accounts, funds or assets needed for public utilities, savings, and investment certificates.

10. Does the court have power to order costs? Are foreign claimants required to provide security for costs?

The court has the power to order costs. The general principle is that the unsuccessful party bears all costs (*ie*, court fees and legal fees) (Article (184) of the CCCP). The legal fees that are awarded are symbolic fees that are paid to the Egyptian Bar Association, they do not correspond to the legal fees actually paid to the lawyer by the client for counsel work.

However, there are exceptions under the CCCP where the court may allocate costs between the parties or even order the successful party to bear all or part of the costs, if the unsuccessful party has not disputed the successful party's claim during the proceedings or if the successful party caused unnecessary expenses to be incurred or concealed material documentary evidence in that party's possession (Article (185) of the CCCP).

There is no requirement for foreign claimants to provide security for costs.

11. On what grounds can the parties appeal, and what restrictions apply? Is there a right of further appeal? To what extent is enforcement suspended pending an appeal?

Only the unsuccessful party has a right of appeal (Article (211) of the CCCP).

As explained above in Q (2), the Egyptian court system is composed of three tiers, such that judgments of first degree courts may be appealed to second degree courts and second degree judgments may be challenged before the Court of Cassation, which sits at the apex of the judiciary, on matters relating to the application of the law without an examination of the facts of the case.

Judgments of the Court of First Instance may be appealed to the Court of Appeal, provided that the prescribed interval, usually 40 days, is observed, and unless otherwise specifically provided (Article (227) of the CCCP). Appeals of District Courts judgments (cases involving less than EGP 200,000) are brought before a Primary Court with an appellate body, which has the same standing as the Court of Appeal (Article (42) and (47) of the CCCP as amended by Law No. 157 of 2024). However, judgments rendered by District Courts in disputes involving less than EGP 30,000 are final and are not subject to appeal (Article (42) of the CCCP as amended by Law No. 157 of 2024).

The Court of Appeal exercises *de novo* review of judgments rendered by the Court of First Instance on questions of law and fact. The parties can submit new evidence but not new claims. The Court of Appeal judgment may be challenged before the Court of Cassation within 60 days on points of application of law or for a lack or inconsistency of reasoning, if the value of the case exceeds EGP 500,000 (Articles (248) and (252) of the CCCP).

Generally, the enforcement of Court of First Instance judgments is suspended until the Court of Appeal renders its judgment on appeal (Article (287) of the CCCP). However, a challenge of Court of Appeal judgments before the Court of Cassation does not stay enforcement unless a party requests suspension and enforcement would cause substantial damage. In such circumstances the Court of Cassation will temporarily stay enforcement of the judgment (Article (251) of the CCCP).

12. To what extent can domestic and/or foreign State entities claim immunity from civil proceedings?

There is no legislation on State sovereign immunity. State entities do not enjoy sovereign immunity from civil proceedings.

The Egyptian Constitution provides for a universal right to litigate, and prohibits the granting of any administrative act or decision immunity from judicial review (Article (97) of the 2014 Constitution).

Any party has the right to bring a legal action against a State entity and enforce a final judgment rendered by a competent Egyptian court or a final award rendered by an arbitral tribunal.

In principle, the Egyptian government's assets are divided into public and private assets. Public assets are any fixtures or movables owned by the government or public entities allotted for the public interest, such as water or electric utilities. Public assets are immune from seizure orders. However, private assets are assets owned by the government but not allotted for the public interest. Hence, private assets can be subject to seizure orders; however in practice, court officials generally refuse to take enforcement procedures against these assets.

13. What are the procedures for having foreign judgments recognised and enforced?

Articles (296) to (299) of the CCCP govern the procedures for the recognition and enforcement of foreign judgments, which are subject to reciprocal treatment in the respective foreign country. Article (301) of the CCCP provides nonetheless that the aforementioned provisions apply without prejudice to provisions of treaties entered into or to be concluded between Egypt and other foreign States in this regard (*ie*, in relation to the recognition and enforcement of foreign judgments).

Egyptian courts will generally recognise and enforce foreign judgments if the following conditions are satisfied:

- Egyptian courts do not have jurisdiction over the dispute, and the foreign court which rendered the judgment has jurisdiction pursuant to its rules on international jurisdiction;
- the parties have been notified of the proceedings and were validly represented before the competent court;
- the judgment is final and binding pursuant to the rules prevailing under the law of the foreign court; and

- the foreign judgment is not in conflict with a prior order or judgment rendered by Egyptian courts and of with prevailing public policy considerations (Article (298) of the CCCP).

If the foreign judgment satisfies these conditions, a request for enforcement is submitted to the court whose jurisdiction encompasses the place of enforcement. The request is submitted in accordance with the general rules for filing cases, and the competent Egyptian court will then render its *exequatur* decision without reviewing the foreign judgment on the merits.

Arbitration

14. Is the arbitration law based on the UNCITRAL Model Law? If so, are there any key modifications? If not, what type of arbitration does the law provide for?

Yes, the Egyptian Arbitration Law No. 27 of 1994 (EAL) was enacted on 18 April 1994 and is based on the UNCITRAL Model Law (1985), with various modifications:

- The EAL is applicable to both domestic and international arbitrations (Article (1) of the EAL).
- The EAL can have extraterritorial application to proceedings seated abroad only if the parties have agreed thereto (Article (1) of the EAL).
- An arbitration agreement in an administrative contract must be approved by the competent minister or whoever assumes the minister's authority with respect to public entities, and delegation in this regard is prohibited (Article (1) of the EAL).
- Arbitration is deemed international if its subject matter involves a dispute related to international trade, which applies in the following cases: if the arbitration is institutional; if it involves parties whose principal places of business are in different States; if the subject matter of the dispute covered by the arbitration agreement is connected to more than one State; or alternatively if the place of the arbitration determined by the arbitration agreement, the place of performance of the obligations or the place with the closest connection to the dispute is abroad (Article (3) of the EAL).
- The EAL does not expressly include the possibility of entering into an arbitration agreement electronically, nor does it expressly exclude it. Therefore nothing prohibits arbitration agreements from being concluded electronically and insofar as electronic communication fulfils the requirement of a written agreement, the arbitration agreement is valid. In brief, the writing requirement under the EAL is a condition for a valid arbitration agreement, not a mere evidentiary requirement. Under the EAL, an agreement is in writing if it appears in a document signed by the parties or in an exchange of letters, telegrams or other communications. The lack of a written arbitration agreement results an invalid arbitration agreement. The writing requirement under the EAL is stricter than the one under the UNCITRAL Model Law (Article (12) of the EAL).
- In the case of incorporation by reference, the reference to the arbitration agreement must be explicit in order for the arbitration agreement to form an integral part of the main contract (Article (10) of the EAL).
- The EAL does not provide for a 'referral exception' whereby a State court may agree to decide on jurisdiction if it finds that the arbitration agreement is null and void, inoperative, or incapable of being performed (Article (13) of the EAL).

However in practice, some Egyptian courts have considered the validity and operability of an arbitration agreement before an arbitral tribunal rendered its award.

- The EAL requires an odd number of arbitrators when constituting the arbitral tribunal; the violation of this requirement results in the award being invalid (Article (15) of the EAL).
- A preliminary arbitral award on jurisdiction cannot be given a review in court before the tribunal renders the final award on the dispute as a whole (Article (22) of the EAL).
- The arbitral tribunal may only order interim relief if the parties bestow this power upon it (Article (24) of the EAL).
- If the language(s) of the arbitration is not agreed upon by the parties or decided by the arbitral tribunal, the arbitration is conducted in Arabic (Article (29) of the EAL).
- If the parties do not agree on the applicable law, the arbitral tribunal may apply the law having the closest connection to the dispute (Article (39) of the EAL).
- The threshold used by the EAL for challenging arbitrators is relatively higher than its Model Law counterpart; doubts as to the arbitrator's impartiality and independence must be serious (Article (18) of the EAL).
- The EAL adds a ground for setting aside based on the non-application by the arbitral tribunal of the *lex causae* chosen by the parties (Article (53) of the EAL).
- The EAL introduces a further condition for *exequatur* that is not listed in the Model Law: the award must not contradict a prior judgment rendered by the Egyptian courts on the merits of the dispute (Article (58) of the EAL).

15. What are the formal requirements for an enforceable arbitration agreement?

The formal requirements for an enforceable arbitration agreement, whether an arbitration clause (*clause compromissoire*) or a submission agreement (*compromis*), are the following:

- The parties must have capacity to enter into the arbitration agreement (Article (11) of the EAL) and their consent to arbitrate must not be tainted by any defects in consent, *ie*, error, duress or misrepresentation.
- The subject matter of the arbitration must be arbitrable (Article (11) of the EAL).
- The subject of the dispute to be resolved by arbitration must be specified in the submission agreement, or in the statement of claim in case of a prior agreement to arbitrate (Article 10(2) of the EAL).
- The arbitration agreement must be in writing or else it is null and void. The writing requirement includes a document signed by the parties, an agreement by exchange of letters or telegrams, or other means of communication (Article (12) of the EAL), and/or when the parties subject their legal relationship to the provisions of a model contract, an international convention or another document containing provisions related to arbitration (Article (6) of the EAL), and/or through incorporation into the contract by reference to a document containing an arbitration agreement, on condition the reference is explicit in considering the arbitration agreement part of the parties' contract (Article 10(3) of the EAL).

Administrative contracts, as stated above, must be approved by the competent minister or whoever assumes the minister's authority with respect to public entities, and delegation of this power is prohibited. The State Council ruled that an arbitration agreement is void when the competent minister, or whoever assumes that authority with respect to public entities, has not approved the agreement, and that the approval requirement is a matter of public policy. It has also ruled that the arbitration agreement must deal only with matters that are arbitrable, and that in cases involving a submission agreement, the parties must identify the dispute to be referred for arbitration or the agreement is null and void (State Council, Challenge No. 8256 of JY 56, Hearing Session dated 5 March 2016).

Furthermore, additional approval must be obtained by State entities before concluding an arbitration agreement. Article (6) of the Prime Ministerial Decree No. 2592 of 2020 prohibits State entities, which include any administrative body, ministry, public entity, governmental body and their affiliated bodies, company affiliated to the State or in which the State is a shareholder, to enter into or sign any contract with a foreign investor that includes an arbitration agreement, or even to make any amendment to such contract, unless it has addressed the matter to and has taken the opinion of the ministerial committee in charge of examining all arbitration disputes involving any State entity, *ie* the High Committee for Arbitration and International Disputes.

16. On what grounds can the court intervene in arbitrations seated outside the jurisdiction?

The application of the EAL extends to international arbitrations seated outside of Egypt if the parties agree to apply it to their arbitration (Article (1) of the EAL). This extends the jurisdiction of Egyptian courts to all matters where the EAL refers to the competent court. These include appointing arbitrators in the event of default, recusal of arbitrators, sanctioning defaulting witnesses as prescribed by the Evidence Law, extending the time limit for the rendering of the arbitral award based on a party's request, and all matters pertaining to the enforcement and setting aside of arbitral awards.

17. Can a foreign arbitration award be appealed in the local courts? If so, on what grounds?

Foreign arbitral awards cannot be appealed in Egypt.

18. What are the procedures for the enforcement of awards rendered in arbitrations seated outside of the jurisdiction?

Egypt is a signatory of the New York Convention on Recognition and Enforcement of Foreign Arbitral Awards (1958) (New York Convention), with no reservations. 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, the 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 rely on local conditions or grounds for enforcement if these are more favourable.

Initially, the enforcement of foreign arbitral awards was governed by Articles (296) to (299) of the CCCP, without prejudice to any provisions of treaties between Egypt and other foreign States, as explained above in relation to enforcement procedures for

foreign judgments in Q (13). However, the Egyptian courts tend to apply EAL provisions when enforcing foreign arbitral awards (Articles (47), (56) and (58) of the EAL) and these offer more favourable conditions than those of the CCCP.

For the enforcement of foreign arbitral awards under the EAL, a request for enforcement must be submitted to the competent court. In international commercial arbitration, it is the Cairo Court of Appeal unless the parties have agreed on another appellate court (Articles (9) and (47) of the EAL). The request must be accompanied by:

- the original text of the award or a signed copy thereof;
- a copy of the arbitration agreement;
- an Arabic translation of the award ratified by an authorised entity if the award is rendered in a foreign language; and
- a copy of the minutes verifying submission of the award in the registry of the competent court (Article (56) of the EAL).

As a requirement of enforcement, the award creditor must file an application to submit the award to the registry of the competent court. That application will be sent to the Arbitration Technical Bureau within the Ministry of Justice to render its opinion on the application. The Technical Bureau's opinion 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).

Once the award has been submitted to the registry of the competent court, the Chief Judge of the court issues a decision on whether to accept or reject the request for enforcement.

The request for enforcement of an arbitral award will not be accepted unless the period for filing a set-aside application has lapsed, *ie*, 90 days from the date of notification of the award to the party against whom it was rendered (Article 58(1) of the EAL). However, for foreign arbitral awards seated outside Egypt and not governed by the EAL, the applicant must submit evidence of the status of any application to set aside brought in the country where the award was rendered, as Egyptian courts do not generally have jurisdiction to entertain a setting aside action.

Article 58(2) of the EAL sets out the conditions to be verified collectively before issuing an *exequatur* decision:

- the award is not contrary to a prior judgment rendered by Egyptian courts on the subject matter of the dispute;
- the award has been duly served to the unsuccessful party against which it was rendered; and
- the award does not conflict with Egyptian public policy. (when rendering its advisory opinion on the application to register the award, the Technical Bureau must test the arbitrability of the dispute which was referred to the arbitration by verifying that the award does not violate public policy in Egypt, and that the arbitration did not involve a matter not amenable to arbitration under Egyptian Law)

Orders refusing *exequatur* may be challenged before the competent court within 30 days of their date of issuance (Article 58(3) of the EAL). Article 58(3) of the EAL provides that orders granting *exequatur* cannot be challenged. However, this provision has been declared unconstitutional by the Egyptian Supreme Constitutional Court (Supreme

Constitutional Court, Challenge No. 92 of JY 21, Hearing Session dated 6 January 2001).

19. Are foreign awards readily enforceable in practice?

As stated above, Egypt is a signatory of the New York Convention, and Egyptian courts are favourable to enforcement despite the lengthy procedure applicable to the enforcement of foreign awards pursuant to the New York Convention's Article (III). Generally, recent practice shows a supportive position for the enforcement of foreign awards in Egypt.

Alternative dispute resolution

20. Are the parties to litigation or arbitration required to consider or submit to any alternative dispute resolution before or during proceedings?

Generally, the parties to litigation or arbitration are free to agree on submitting their dispute for any alternative dispute resolution before or during the proceedings.

However, in some specific cases conciliation may be required before bringing legal action, such as in disputes in the economic courts where the preparation committee must attempt to conciliate the parties as stipulated under Article (8) of Law No. 120 of 2008 establishing economic courts. Plaintiffs in family court actions involving personal status matters which cannot be subject to compromise must submit a request for settlement of the dispute addressed to the dispute settlement division within the family court (Article (6) of Law No. 10 of 2004 establishing family courts). Furthermore, Law No. 7 of 2000 establishing conciliation panels in relation to some disputes to which ministries and public legal persons are a party contains additional conciliation requirements for disputes involving public entities. A conciliation panel must be established in each ministry, or governorate or public entity in order to seek the amicable settlement of civil, commercial and administrative disputes (Article (1) of Law No. 7 of 2000).

Reforms

21. Are there likely to be any significant procedural reforms in the near future?

There are ongoing discussions for possible reform involving the digitisation of judicial proceedings in Egypt.

In January 2025, GAFI expressed its intent to present draft legislation in the next few months to replace the current Egyptian Companies Law, with the aim of modernizing the legal framework and particularly, accommodating the rising reliance of electronic documentation and simplifying the process of establishing and registering companies.

There are also ongoing discussions and serious proposals to amend the current Egyptian Arbitration Law (EAL). In May 2025, the Egyptian House of Senates referred a study/proposal for the amendment of the EAL to the Egyptian President.

The proposed changes include amending Article (3) of the EAL to further clarify the criteria for establishing that an arbitration is international in nature, and excluding the current general requirement that the dispute be related to international trade. This suggestion aims to avoid the inconsistency of Egyptian court decisions as to whether an arbitration is deemed domestic or international.

It has also been suggested to amend Article (9) of the EAL to confer exclusive jurisdiction on the Cairo Court of Appeal over arbitration matters that the EAL refers to Egyptian courts, irrespective of whether the arbitration is domestic or international. This proposal aims to avoid conflicts between Egyptian courts over jurisdiction in arbitration matters, and to unify the court's interpretations and decisions.

In the same vein, it is proposed to amend Article (56) of the EAL to confer jurisdiction on the Cairo Court of Appeal itself (instead of the Cairo Court of Appeal President or judge(s) appointed by the President) to issue orders granting *exequatur* to arbitral awards.

Amending Article (54) of the EAL to ensure expeditious rulings on setting aside applications has also been proposed. This would involve (i) reducing the time limit for filing an application to set aside to 60 days rather than 90; and (ii) conferring jurisdiction on the Court of Cassation to rule on set aside applications, irrespective of whether the arbitration is domestic or international.

As mentioned above in Q (18), the part of Article 58(3) of the EAL stating that orders granting *exequatur* to an arbitral award cannot be challenged was declared unconstitutional by the Egyptian Supreme Constitutional Court. Accordingly, the amendment of the EAL to regulate the submission of challenges against the *exequatur* orders has been proposed.

Lastly, the repeal of Article 58(1) of the EAL, providing that requests for enforcement of an arbitral award are not admissible unless the period for filing a set aside application has lapsed, has been suggested.

The above are still draft amendments that could be subject to further changes in the coming months depending on the outcome of parliamentary discussions.

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Equatorial Guinea



Introduction

Equatorial Guinea is a civil law-based legal system. The court system is based on the 1991 Constitution and its implementing laws and decrees. Equatorial Guinea is a member of CEMAC and OHADA. The final jurisdiction of its Supreme Court (*Cour suprême*) holds solely over matters not governed by the laws introduced by these inter-governmental organisations.

Litigation

1. How are the legal professions organised?

The legal profession is governed by the Basic Rules of the Bar Association (*Illustre Collège des Avocats de Guinée Equatoriale*, or ICAGE).

To practise law in Equatorial Guinea, potential lawyers must be registered with the Bar Association and:

- be nationals of Equatorial Guinea
- be of legal age
- hold a bachelor's degree (*licence*), master's, or doctorate in law accepted in Equatorial Guinea
- have no criminal record preventing them from practising as a lawyer
- be free from all restrictions or other impediments to practising as a lawyer.

The profession is organised by the Bar Association, which makes sure that members abide by the ethical rules governing the profession, and takes any necessary disciplinary measures. Lawyers (*avocats*) registered with the Bar Association can appear before any court and can practise individually or as part of a law firm.

Foreign lawyers can appear before the courts in Equatorial Guinea where this is allowed under the rules of the relevant Bar.

2. How is the court system structured?

The court system is structured as a three-tiered pyramid:

• Courts of original jurisdiction:

- the **General Courts** (*Tribunaux de première instance*), present in all capital cities of every province, have jurisdiction to hear any civil matters not allocated to other courts and hear appeals against decisions issued by the small claims courts.
- the **Traditional Courts** (*Tribunaux traditionnels*), present in all capital cities of every municipal, have jurisdiction to hear civil matters relating to marriage annulments or divorce, custody of children and inheritance. They apply the customary law of each ethnic group involved in the case but cannot issue judgments that do not comply with the laws of Equatorial Guinea.
- the **Small Claims Courts** (*Tribunaux de paix*), present in all municipalities, have jurisdiction to hear financial claims and complaints where the amount in dispute does not exceed XAF 300,000, and offer civil conciliation and mediation proceedings.

There are also a number of special first instance courts such as the *Tribunaux de vigilance pénitentiaire*, the *Magistratures de travail* [labour tribunals], the *Tribunaux de la famille et de la tutelle des mineurs* [family court] and the *Tribunaux d'instruction* [investigative jurisdiction].

- the **Provincial Courts**, present in all capital cities of every provincial, hear appeals against all first instance decisions.
- the **Supreme Court of Justice** (*Cour suprême de justice*) is located in Malabo.

3. What are the time limits for bringing civil claims?

Limitation periods vary depending on the type of action and the parties involved.

The ordinary limitation period for bringing an action for contractual liability is 4 years.

4. Are lawyer-client communications privileged (ie, protected from disclosure to a court/tribunal and opposing parties)?

According to the ICAGE Basic Rules, all communications between lawyers and their clients are confidential.

Lawyers who fail to meet their confidentiality obligations are liable under civil and criminal laws and ethical rules.

To the best of our knowledge, there is no specific rule on whether clients can release counsel from these confidentiality obligations.

5. How are civil proceedings commenced, and what is the typical procedure which is then followed?

All parties bringing civil actions before the courts may first undertake conciliation proceedings before the competent court.

The amount in dispute must be specified at the time civil proceedings are commenced.

6. What is the extent of pre-trial exchange of evidence, and how is evidence presented at trial?

Judicial confession, public and official documents, private documents, correspondence and commercial documents may all be admitted as evidence. Testimony is admissible as evidence when made both in writing and under oath.

The preparatory stage of proceedings is divided in two phases:

- an initial phase of 20 days (inalterable), during which the parties may produce their evidence
- a second phase of 30 days (inalterable), during which the parties may examine each other's evidence (in the presence of all parties).

The court may, exceptionally, allow a preparatory phase of 4 months in cases where evidence is located abroad.

At the request of one party or on its own motion, the court can also order the other party or a third party to produce evidence, in particular in cases of tax audits in the oil & gas industry. The law provides that the taxpayer's books and registers must be available on demand.

7. To what extent are the parties able to control the procedure and the timetable? How long do proceedings last?

The parties do not control the procedure. Once the proceedings have commenced, the timetable is set at the discretion of the court and in practice this depends on various factors, such as the level of complexity of the case, the degree of urgency and the caseload of the court.

8. What interim remedies are available to preserve the parties' interests pending judgment?

Interim proceedings can be brought to protect parties' interests pending a judgment on the merits. Protective attachment (*saisie conservatoire*) proceedings involve the seizure of the movable or immovable assets of a defaulting party (non-payment, non-appearance in court, etc.) at the request of the opposing party. However, if the default is justified by force majeure, the court may lift the protective attachment.

9. What means of enforcement are available?

The enforcement measures available in Equatorial Guinea are those provided for in the OHADA Uniform Act Organising Simplified Recovery Procedures and Enforcement Measures.

The principal measures are:

- **Seizure for sale** (*saisie-vente*): any creditor in possession of an enforcement order showing a debt due for immediate payment may have the debtor's tangible, moveable property seized and sold in order to recover the debt from the sale price.
- **Third party debt order** (*saisie-attribution de créances*): any creditor in possession of an enforcement order showing a debt due for immediate payment may have receivables owed by a third party to the relevant debtor seized from that third party.
- **Penalty payment** (*astreinte*): creditors who obtain an injunction from a court ordering their debtors to either perform or cease and desist from a particular action may ask the court to combine the injunction with a penalty payable for each day/week/month of delay or non-compliance.
- **Property foreclosure** (*saisie immobilière*): this enforcement mechanism is applied as a last resort when the seizure of personal property or receivables has been unsuccessful or insufficient. Previous failure to recover the debt must be authenticated by a bailiff (*huissier de justice*); only then may the creditor initiate foreclosure.

The court may grant grace periods to the unsuccessful party, save for maintenance payments (*dette d'aliments*) or debts tied to negotiable instruments (*dettes cambiales*).

The new OHADA Uniform Act Organizing Simplified Recovery Procedures and Enforcement Measures (17 October 2023) simplifies and streamlines certain enforcement procedures in all OHADA Member States. The court or presiding judge may grant a grace period to the unsuccessful party.

10. Does the court have power to order costs? Are foreign claimants required to provide security for costs?

The courts always order one party to cover legal costs – in principle, the unsuccessful party.

Foreign claimants cannot be forced to provide security for the payment of court costs. In practice this depends on the procedure at issue. The court will only specify who must assume the burden of costs when it hands down a final decision.

11. On what grounds can the parties appeal, and what restrictions apply? To what extent is enforcement suspended pending an appeal? Is there a right of further appeal?

The right of appeal is automatic. In the first instance, the time limit for appeals is six (6) days from the third day after the date of the General Court's decision.

It is possible to produce new evidence on appeal. Parties disputing the evidence must do so in writing within three (3) days. However, since the Supreme Court of Justice rules on matters of law alone and not on the facts, no additional evidence may be produced at this stage of a case.

Judgments issued by the Provincial Courts (courts of appeal) suspend the enforcement of the lower court's decision. Reversal of such judgments can be sought from the Supreme Court of Justice. Enforcement of an appellate decision is not suspended while this final appeal is pending. Decisions issued by the Supreme Court are directly enforceable with no possibility of remand.

12. To what extent can domestic and/or foreign State entities claim immunity from civil proceedings?

In terms of foreign entities, any jurisdictional immunity rights that can be applied derive from international agreements on diplomatic or consular relationships.

13. What are the procedures for having foreign judgments recognised and enforced?

Law No. 5/2009 of 18 May 2009 reforming Law No 10/1984 on judicial authority (the LOPJ) provides that applications for the enforcement of foreign judgments must be submitted to the Supreme Court.

Arbitration

14. Is the arbitration law based on the UNCITRAL Model Law? If so, does it include any major modifications? If not, what type of arbitration does the law provide for?

Equatorial Guinea is a Member State of OHADA (*Organisation pour l'Harmonisation en Afrique du Droit des Affaires* – Organisation for the Harmonisation of Business Law in Africa). The OHADA Treaty was first signed on 17 October 1993 and amended on 17 October 2008. Under the Treaty, the Council of Ministers of Justice adopt “uniform acts” that are directly applicable and enforceable in each of the Member States. Arbitration in the OHADA Member States is governed by the revised Uniform Act on Arbitration (the “**UAA**”) adopted on 23 November 2017, replacing the Uniform Act of 11 March 1999.

The UAA is not based on the UNCITRAL Model Law. It was drafted separately, but is nevertheless aligned with the fundamental principles of international commercial arbitration and key features of the UNCITRAL Model Law.

The UAA applies to both national and international arbitration and governs all arbitration proceedings with a seat in a Member State.

One of the most important characteristics of OHADA arbitration is the Common Court of Justice and Arbitration (the “**CCJA**”), which serves as both a permanent arbitration institution and as a supreme court of arbitration for all OHADA Member States.

For all matters not governed by the UAA, the applicable law in Equatorial Guinea is the Law introducing the Civil Procedure Code (*Code de procédure civile*) adopted by Royal Decree of 3 February 1881 (Title VIII). This law now only applies in the alternative, where the UAA does not.

15. What are the main arbitration institutions at the national level?

The main arbitration institution in Equatorial Guinea is not at the national level – it is at the supranational level, the CCJA created by the OHADA Treaty and based in Abidjan, Ivory Coast. The CCJA has an adjudicative function; it also includes an arbitration centre and administers proceedings governed by the CCJA Rules of Arbitration. The CCJA is different from other arbitration centres because it is not private, having been created and organised by OHADA.

Under article 21 of the OHADA Treaty, access to the CCJA centre of arbitration is contingent on all or part of the contract at issue having been performed in the territory of one or more Member States, or at least one of the parties being domiciled or habitually resident in a Member State. According to legal scholars, it should also be possible to go to arbitration under the CCJA Rules even if these conditions are not met, if such is the expressed will of the parties in their arbitration agreement.

16. Are there any restrictions on who may represent the parties to an arbitration?

The UAA does not set any restrictions on persons who can represent parties in an arbitration. They are entitled but not required to instruct a lawyer (Art. 20 of the UAA).

In Equatorial Guinea, parties to an arbitration may be assisted by a foreign lawyer under the same conditions as parties to litigation.

17. What are the formal requirements for an enforceable arbitration agreement?

Article 3-1 of the UAA states that the arbitration agreement must be made in writing or by any other means whereby its existence can be demonstrated. No particular format is required. The UAA also provides that contracts can include an arbitration agreement by reference to a separate document.

In practice, local courts favour a narrow interpretation of these conditions.

18. Will the courts stay litigation if there is a valid arbitration clause covering the dispute? Does this depend on whether the seat of the arbitration is inside or outside the jurisdiction?

Article 13 of the UAA provides that national courts must decline jurisdiction if a dispute that is already in arbitration pursuant to an arbitration agreement is brought before national courts.

If no arbitral tribunal has yet been constituted, national courts must nevertheless decline jurisdiction at the request of a party unless the arbitration agreement is manifestly void or inapplicable. Courts cannot decline jurisdiction of their own motion.

Even where the parties have a valid arbitration agreement, however, they can apply to a national court for interim or protective orders if this does not require a review of the case on the merits, provided the circumstances are “clearly shown” to be urgent.

National courts can also intervene in very limited circumstances with a view to assisting the arbitration process (see questions 22 and 23 below).

There are no local laws providing for circumstances in which parties can seek conservatory or interim relief against an Equatorial Guinean national in the country’s courts.

19. If the arbitration agreement is silent, how many arbitrators will be appointed, and who is the appointing authority?

While the UAA does not mandate a specific number of arbitrators for cases where the arbitration agreement is silent on this point, it does provide that tribunals must have either a

sole arbitrator or three arbitrators. In the absence of an agreement between the parties, the case is adjudicated by a sole arbitrator.

If the parties do not agree on the appointment procedure or if their agreement is not sufficiently detailed, the UAA provides that:

- in an arbitration with three arbitrators, each party appoints one arbitrator and these two arbitrators choose the third arbitrator; if a party fails to appoint an arbitrator within thirty days of the receipt of a request to do so from the other party, or if the two arbitrators fail to agree on the third arbitrator within thirty days of their appointment, the appointment is made, at the request of a party, by the competent court in the Member State;
- in an arbitration with a sole arbitrator, if the parties fail to agree on the appointment, the arbitrator is appointed, at the request of a party, by the competent court in the Member State.

Pursuant to the Equatorial Guinean Civil Procedure Code, if the parties cannot agree on arbitrator appointments, the arbitration will not go ahead. Local law provides for a maximum of five arbitrators. There must be an odd number of arbitrators and any sole arbitrator must have been appointed with the consent of both parties.

20. What rights are there to challenge the appointment of an arbitrator?

Articles 7 and 8 of the UAA set the rules for recusal of an arbitrator. An arbitrator must disclose “any circumstance that could create a legitimate doubt in the mind of the parties about the arbitrator’s independence and impartiality”. Disputes over recusal are settled by the competent court of the Member State; in Equatorial Guinea this is the judge of the General Court (*Tribunal de Première Instance*), unless the parties resolve the challenge otherwise.

Decisions by a competent court dismissing a challenge can only be appealed to the CCJA.

Any grounds for recusal must be raised within no more than thirty days from discovery of the material fact relied on by the party seeking recusal.

Arbitrators may only be challenged for reasons that come to light after their appointment.

21. Does domestic law contain public policy requirements for arbitration proceedings?

Under the UAA, parties must receive equal treatment and have an opportunity to exercise their rights (Art. 9). Arbitrators may not base decisions on grounds raised of their own motion without first giving the parties an opportunity to submit observations (Art. 14).

Article 18 of the UAA provides that deliberations are confidential.

The UAA also provides that arbitration cannot last more than six months from the date on which the last arbitrator accepts the terms of reference, unless that period is extended by agreement of the parties or by the competent court (Art. 12).

The Civil Procedure Code allows parties to seek damages from arbitrators who have not fulfilled their obligations.

22. On what grounds can the court intervene in arbitrations seated inside the jurisdiction?

In principle, where an arbitration agreement has been formed, national courts cannot intervene in a dispute until after the award has been issued.

Nevertheless, parties may petition the competent court in Equatorial Guinea in the following circumstances:

- to resolve difficulties encountered with composing the arbitral tribunal, to appoint the sole arbitrator or the third arbitrator (Art. 6 and 8)
- to rule on challenges against arbitrators where the parties have not provided for a different procedure (Art. 8)
- to extend the deadline for the conclusion of the arbitration where there is no agreement between the parties to do so, at the request of a party or the arbitral tribunal (Art. 12)
- to order interim or conservatory measures when urgently necessary (in recognised and reasoned circumstances), provided the measures do not require a review of the case on the merits (Art. 13)
- to assist the arbitral tribunal, at its request, with the collection of evidence (Art. 14)
- To interpret the award or correct clerical errors or omissions affecting the award in cases where the arbitral tribunal cannot be re-seated (Art. 22)

23. On what grounds can the court intervene in arbitrations seated outside the jurisdiction?

As a general principle, national courts cannot intervene where there is an arbitration agreement. Moreover, if the arbitration is seated in another jurisdiction, any and all issues relating to the composition of the arbitral tribunal and conduct of arbitral proceedings fall under the jurisdiction of the courts of the State of the seat.

However, it is possible for national courts (other than the competent court of the Member State of the seat) to intervene to order conservatory or interim relief, under the conditions defined above in question 18 (Art. 13, UAA).

24. Do arbitrators have powers to grant interim or conservatory relief?

Article 14 of the UAA authorises the arbitral tribunal to act at the request of either party to order interim or conservatory relief, excluding interim attachment and court-ordered security, which are matters for the national courts.

25. When and in what form must the award be delivered?

Save as agreed otherwise by the parties, arbitral awards must be issued within six months from the date on which all of the arbitrators have accepted the terms of reference. This period can be extended by agreement between the parties, or by order of the competent court of the Member State at the request of a party or the arbitral tribunal (Art. 12).

Parties can establish special requirements for awards. Failing this, awards are issued by majority decision (for tribunals with three arbitrators), and the grounds must be stated. Awards must be signed by at least two of the three arbitrators.

Where local law is applicable, arbitral awards are issued by absolute majority before a notary (*notaire*).

26. Can a successful party recover its costs?

The UAA contains no provisions on cost recovery.

If arbitration is conducted under the aegis of the CCJA, the arbitrator is empowered to award costs.

27. On what grounds can an award from an arbitration seated in the jurisdiction be appealed to the court?

An application to set aside is the only remedy against an arbitral award. Applications must be brought before the competent court in the Member State where the award was issued.

The circumstances in which an application to set aside can be brought are as follows (Art. 26, UAA):

- the arbitral tribunal ruled despite the lack of an arbitration agreement or in reliance on an invalid or expired agreement
- the arbitral tribunal was not properly constituted
- the arbitral tribunal did not rule in compliance with its terms of reference
- the adversarial principle (*contradictoire*) was not observed
- the award breaches an international public policy provision
- no reasons are given for the award

Applications to set aside are admissible as soon as the award is issued and until one month after service of the award together with an order of enforcement (*exequatur*). The court's decision can only be appealed to the CCJA (Art. 25 and 28).

Bringing an application to set aside an arbitral award suspends enforcement, unless the tribunal has ordered immediate enforcement.

In principle, applications to set aside are the only possible remedy that can be sought in national courts. If the award is harmful to a third party's rights, that party can challenge an arbitral award before the Member State court that would have had jurisdiction absent arbitration (Art. 25, paragraph 4). Revision of the award can also be sought from the tribunal itself or, if the tribunal cannot be re-seated, the Member State court that would have had jurisdiction absent arbitration (Art. 25).

28. Can a foreign arbitration award be appealed in a local court?

Local law makes no provisions in this respect. It is not possible to appeal a foreign arbitration award.

29. What are the procedures for the enforcement of: (i) awards rendered in other jurisdictions and (ii) domestic awards?

To enforce awards issued within an OHADA Member State, the Uniform Act requires parties to obtain an order for enforcement, or *exequatur*, from the competent Member State court (Art. 30). In Equatorial Guinea, the competent court is always the Supreme Court.

To do so, the requesting party must produce the original arbitral award together with the original arbitration agreement, or copies of these documents meeting authentication

requirements and, where relevant, a certified translation into French (Art. 31, UAA).

Decisions refusing to recognise an arbitral award can be appealed to the CCJA, but decisions granting recognition are not subject to appeal (Art. 32, UAA).

Under Article 34 of the UAA, "arbitral awards rendered on the basis of rules different from those provided for in this Uniform Act are recognized in the States Parties under the conditions provided for by international conventions possibly applicable and, in the absence thereof, under the same conditions as those provided in this Uniform Act". Accordingly, the recognition and enforcement of awards issued in a country outside of the OHADA region will be governed by any applicable conventions (such as the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards). When there is no applicable international convention, the recognition and enforcement of such awards should in principle be governed by the UAA. Equatorial Guinea is not party to the New York Convention.

30. Are foreign awards readily enforceable in practice?

Foreign awards will only be enforced in Equatorial Guinea where permitted by treaty. If there is no treaty with the country of the seat of arbitration, enforcement will depend on reciprocity.

Alternative dispute resolution

31. Are the parties to litigation or arbitration required to consider or submit to any alternative dispute resolution before or during proceedings?

All parties must undertake conciliation proceedings before initiating litigation. The Small Claims Courts offer conciliation and mediation services.

Reforms

32. Are there likely to be any significant procedural reforms in the near future?

To the best of our knowledge, there are no plans for any major reform of civil or commercial procedure, or arbitration, in the near future.

In 2024, 116 courts have been automated across the country making e-filing of cases possible and the court system more efficient.

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Eritrea



Introduction

Eritrea has a mixed legal system comprising substantive laws based on the civil system and predominantly adversarial procedural laws.

Litigation

1. What is the structure of the legal profession?

The key legal professionals in Eritrea are judges, public prosecutors, legal advisors to government institutions and advocates.

There are no specific regulations specifying the requirements for someone to be appointed a judge or a public prosecutor. These days, people are usually appointed as judges or prosecutors after earning their undergraduate degree in law (LL.B.). There is no specialized training or internship process that they must go through before they are appointed as judges or prosecutors. Years of experience and further educational training (LL.M. or above) are, in practice, some of the elements considered for promotion in the judiciary or the public prosecution.

The Ministry of Justice assigns those selected to be public prosecutors to the Office of the Attorney General and the Attorney General in turn assigns (reassigns) them to their specific posts in the various regions of the country.

The Ministry of Justice assigns (reassigns) those selected to be judges to their specific posts in the different hierarchies of Eritrean courts throughout the regions of the country. The judges serve under the supervision of the Office of the President of Eritrean Courts.

Legal advisors to various government institutions are assigned either directly by the Government after their graduation or, often, transferred to these institutions upon request to the Ministry of Justice.

Advocates, however, have a specific law regulating their profession: Proclamation No. 88/1996, the Advocates Proclamation. Advocates in Eritrea act in a manner similar to that of solicitors and barristers; there is no split of their profession. One must fulfil the requirements provided for in Proclamation No 88/96 in order to practise as an advocate in Eritrea, namely:

- be formally admitted as an advocate on the Register and have a valid practising certificate and licence (Article 3);
- be at least 21 years old and a permanent resident or citizen of Eritrea (Article 4);
- have served for at least two years in a legal capacity in a government ministry, authority, agency, department, commission, office or regional division or sub-division of the State, local authority or university or in a private organisation (Article 4); and
- be of good character and have no convictions for offences involving moral turpitude, dishonesty or treason (Article 4).

In addition to the above, to practise in the Regional and High Courts, one must:

- hold a law degree from a recognised university or organisation approved by the Legal Committee of the Ministry of Justice (the Legal Committee); and
- have passed such examination as may be prescribed by the Legal Committee.

The Legal Committee may opt to exempt the advocate in question from the above requirements on account of his/her previous experience as a judge, registrar or prosecutor of the High Court or a higher court (Article 5).

To practise in other courts, one must:

- hold a diploma or certificate in law from a recognised university or institution approved by the Legal Committee; and
- have passed such examination as may be prescribed by the Legal Committee.

Again, the Legal Committee, in its judgment, may opt to exempt the advocate from the requirements prescribed above on account of his/her previous experience as a judge, registrar or prosecutor, provided that he/she does not act as an advocate in courts higher than his/her previous level of experience (Article 5).

2. What is the structure of the court system?

On 4 August 2023, the Government of Eritrea issued Proclamation No. 184/2023, A Proclamation to Amend the Establishment and Powers of Courts. This Proclamation establishes four levels of courts in the following ascending order

of their powers: the First Instance Courts, Regional Courts, Appellate Courts, and the High Court (Article 3).

First Instance Courts

First Instance Courts are the lowest layer of courts in Eritrea. They are constituted by single judge who preside over the following civil and criminal disputes placed under the jurisdiction of the Court (Article 4).

First Instance Courts have jurisdiction on the following civil matters (Article 9):

- monetary claims not assigned to the jurisdiction of other courts;
- civil disputes involving an amount not exceeding 500,000 Nakfas (1 USD = 15 Nakfas); and
- all house-rent related disputes emanating from Proclamation No. 27/1992 issued to determine and regulate the relationship between lessors and lessees.

First Instance Courts have jurisdiction on the following criminal matters (Article 10):

- all criminal cases previously under the jurisdiction of Community Courts; and
- all criminal cases hitherto under the jurisdiction of the formerly Regional Courts as provided in the Transitional Criminal Procedure of Eritrea and proclamations that amended it.

Regional Courts

Regional Courts lie above First Instance Courts in the hierarchy of Courts. They are constituted by panels of three judges who preside over the following civil and criminal disputes brought to it on first instance basis as well as appeals against judgments of First Instance Courts (Article 5).

Regional Courts have jurisdiction on (Article 11):

- civil disputes involving monetary claims of amount exceeding 500,000 Nakfas;
- the following specific civil matters;
 - the formation, dissolution and liquidation of bodies corporate established under the Transitional Commercial Code of Eritrea;
 - negotiable instruments;
 - bankruptcy
 - issues arising under maritime law;
 - trademarks, patents and copyright;
 - expropriation of property;
 - the liability of public servants for acts done in the discharge of official duties; and
 - nationality.

Regional Courts have jurisdiction on the following criminal matters (Article 12):

- all criminal cases hitherto under the jurisdiction of the formerly High Court as provided in the Transitional Criminal Procedure of Eritrea and proclamations that amended it; and
- *habeas corpus* applications.

Appellate Courts

Appellate Courts lie above Regional Courts in the hierarchy of Courts. They are constituted by panels of three judges who preside over appeals against judgments of Regional Courts (Article 6).

Regional Courts have appellate jurisdiction on the following matters (Article 13):

- cases over which Regional Courts have passed judgments on first instance basis;
- cases over which Regional Courts have passed appellate judgments following an appeal to them against judgments of First Instance Courts; and
- appeals against decisions of administrative organs which had hitherto been made to the formerly High Court.

High Courts

High Courts are the highest level of courts. They are constituted by panels of three judges who preside over appeals against judgments of Appellate Courts (Article 7). There is also one Review Bench established as part of the High Courts. The Review Bench has five judges.

High Courts have appellate jurisdiction on cases over which Appellate Courts have passed appellate judgments.

The Review Bench has the following powers:

- to review final judgments of the four layers of courts which have fundamental legal error or defect and confirm, correct, modify, rescind or give any other necessary order against that final judgement;
- unless it has subsequently revised and changed it, to give a binding interpretation for contentious words, phrases, articles or any other parts of Eritrean laws when such request is made by parties who approached the Bench under the previous paragraph or directly by the President of Eritrean Courts or by the Attorney General;
- upon request by the Minister of Justice, to give advisory opinion on matters relating to Eritrean laws; and
- if it so believes, to make request to the Minister of Justice for the modification or revision of laws.

3. What are the time limits for bringing civil claims?

Time limits depend on the type of claim. By way of example, claims based on contract must be brought within 10 years of the accrual of the cause of action. Claims based on tort must be brought within two years from when the victim suffered damage. Where the damage arises from the commission of a criminal offence in respect of which the Transitional Penal Code of Eritrea (Proclamation No. 4/1991) prescribes a longer period of limitation, the latter period applies to the initiation of an action for damages.

4. Are communications between a lawyer and his/her client privileged (ie, protected from disclosure to a court/tribunal and opposing parties)?

Yes. Communications between a lawyer and his client are privileged in accordance with Article 30(7) of Proclamation No. 88/1996. Under this provision, subject to authorised disclosure

under the law and subject to the consent of the client, an advocate must maintain professional attorney-client confidentiality of information, even after the expiry of his or her retainer.

Breach of confidentiality by an advocate may entail:

- criminal responsibility which is chargeable in accordance with the Transitional Penal and Criminal Procedure Codes; and
- suspension or revocation of their practising licence in accordance with Proclamation No. 88/1996.

5. How are civil proceedings commenced, and what is the typical procedure which is then followed?

To commence a suit, the claimant is required to prepare his/her statement of claim in accordance with the provisions of the Transitional Civil Procedure Code of Eritrea (Proclamation No. 3/1991).

The plaintiff must then submit the statement of claim to the registrar of the court who verifies the technical sufficiency of the statement of claim, opens a file and gives it a file number before transferring the case to a division of the court.

The court then examines the legal sufficiency of the statement of claim before issuing a summons to the defendant requiring him/her to appear before it, on a date set by the judge(s), with his/her statement of defence (which may include preliminary objections). At the appointed date, if the defendant produces a statement of defence, the first thing the court does is examine the technical and legal sufficiency of the statement of defence.

6. What is the extent of pre-trial exchange of evidence, and how is evidence presented at trial?

Each party must produce, to the opposing party and the court, at the first hearing, all documentary, and a list of other, evidence supporting its arguments.

Subject to certain exceptions, documents may be produced at a later stage in the suit.

7. To what extent are the parties able to control the procedure and the timetable? How quick is the process?

The court controls the procedure and timetable. The Transitional Civil Procedure Code of Eritrea provides: *"the period of time for the doing of anything which need or may be done in relation to proceedings in court shall, if not fixed by law, be fixed by the court having regard to all the circumstances of the case"*.

The time frame from initiation of the case to the end of the trial varies widely (from months to years) depending on the caseload of the court and the nature of the case.

8. What interim remedies are available to preserve the parties' interests pending judgment?

The court may, amongst other things, make an order for:

- a temporary injunction to restrain the repetition or continuance of a breach of contract or other act prejudicial to the plaintiff;

- arrest before judgment;
- attachment before judgment;
- interlocutory orders for an interim sale, detention and inspection;
- the appointment of receivers; and
- affixing of seals and making of inventories.

9. What means of enforcement are available?

The Transitional Civil Procedure Code of Eritrea, depending on the nature of the decree or decision, provides for various means of enforcement.

A decree for payment of money may be executed by the attachment and sale of the judgment debtor's property.

A decree for any specific movable property or any part of it may be executed by its seizure and delivery to the decree holder or to such person as the decree holder may appoint to receive delivery on his/her behalf.

Where the party against whom a decree for the specific performance of a contract or for an injunction has been passed has had an opportunity to comply with the decree and has wilfully failed to do so, the decree may be executed by the attachment and sale of his/her property. The court may, out of the proceeds, award to the decree holder such compensation as it thinks fit.

Where a decree is for the execution of a document or for the endorsement of a negotiable instrument and the judgment debtor neglects or refuses to obey the decree, the decree holder may prepare a draft of the document or endorsement in accordance with the terms of the decree. He/she should deliver the same to the court, and in the absence of any objections, the court may cause the document to be registered and may make such order as it thinks fit as to the payment of the expenses of the registration.

Where a decree is for the delivery of any immovable property, possession shall be delivered to the decree holder, or to such person as he/she may appoint to receive delivery on his/her behalf, and, if necessary, by removing any person bound by the decree who refuses to vacate the property.

10. Does the court have power to order costs? Are foreign claimants required to provide security for costs?

Unless otherwise expressly provided, the costs of and incidental to proceedings are at the discretion of the court. The court has full power to decide by whom or out of what property and to what extent such costs are to be paid and to give all necessary directions to this effect. Foreign claimants may be required to provide security for costs whenever it appears to the court that a sole plaintiff is, or if there is more than one plaintiff, that all the plaintiffs are residing out of Eritrea and that that such plaintiff(s) do not possess sufficient immovable property within the country other than the property in the suit.

11. On what grounds can the parties appeal, and what restrictions apply? Is there a right of further appeal? To what extent is enforcement suspended pending an appeal?

The plaintiff or the defendant may appeal against any final judgment of a civil court except:

- where an appeal lies from a judgment or order but remedy under the Transitional Civil Procedure Code of Eritrea is available in the court which gave such judgment or made such order unless such remedy has been exhausted;
- in a decision or order on any interlocutory matters, notwithstanding that any such decision or order may be raised as a ground of appeal when an appeal is made against the final judgment.

If a first instance court's decision is varied by the first appellate court, there may be an appeal to the second appellate court.

The Transitional Civil Procedure Code of Eritrea provides for stay of proceedings pending an appeal where:

- the president of the court which gave the decision, or which has the power to hear the appeal, has the power to order a stay of enforcement for a limited time;
- an application is made for a stay of enforcement of an appealable decision before the expiration of the time allowed for appealing it. The court which rendered the decision has the power to stay the enforcement of the decision; and
- pending appeal, the appellate court has the power to grant a stay of execution of the decision.

12. To what extent can domestic and/or foreign State entities claim immunity from civil proceedings?

There are no express provisions addressing the issue of immunity of domestic and/or foreign State entities in civil proceedings.

13. What procedures exist for recognition and enforcement of foreign judgments?

Foreign judgments may be recognised and enforced, provided that:

- the execution of Eritrean judgments is allowed in the country where the judgment was rendered (principle of reciprocity);
- the judgment was given by a court duly established and constituted;
- the judgment debtor was given the opportunity to appear and present his/her defence;
- the judgment to be executed is final and enforceable; and
- execution is not contrary to public order or morals.

Arbitration

14. Is the arbitration law based on the UNCITRAL Model Law? If yes, are there any key modifications? If no, what form does the arbitration law take?

The arbitration law is not based on the UNCITRAL Model Law. The provisions of arbitration law are provided in the Transitional Civil Code of Eritrea (Proclamation No. 2/1991) and the

Transitional Civil Procedure Code of Eritrea. Both Codes contain provisions relating to arbitration.

15. What are the formal requirements for an enforceable arbitration agreement?

There should be an arbitral submission. The Transitional Civil Procedure Code of Eritrea defines the term as *"the contract whereby the parties to a dispute (existing or future) entrust its solution to a third party, the arbitrator, who undertakes to settle the dispute in accordance with the principles of law."*

Accordingly, an arbitral submission is governed by the basic principles of contract law and must fulfil the conditions of contract set out in the Transitional Civil Procedure Code of Eritrea.

16. Will the courts stay litigation if there is a valid arbitration clause covering the dispute? Does the approach differ in this regard if the seat of the arbitration is inside or outside of the jurisdiction?

Yes. Courts should stay litigation if there is a valid arbitration clause covering the dispute. Where a suit is instituted in a court where there is a valid arbitration clause, the other party is entitled to raise a preliminary objection under the provisions of the Transitional Civil Procedure Code of Eritrea.

The courts will normally not hear a dispute where parties have agreed to have their disputes resolved by way of arbitration. This applies whether or not the arbitration is to be heard inside or outside of Eritrea.

17. On what grounds can the court intervene in arbitrations seated outside the jurisdiction?

There is no clear provision on this point. We have no experience of interim relief being sought in such circumstances and do not believe the court would intervene in a foreign-seated arbitration.

18. Can a foreign arbitration award be appealed in the local courts? If so, on what grounds?

We are not aware of any case of such nature. However, based on our practice, we do not believe that an Eritrean court would entertain an appeal against a foreign arbitration award.

19. What procedures exist for enforcement of awards rendered in arbitrations seated outside of the jurisdiction?

Eritrea is not a party to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the New York Convention). The preconditions listed in our reply to Question No. 13 also apply to foreign arbitral awards. If these elements are not present, the only possibility is if the parties agreed in the document establishing their arbitration that Eritrean courts can enforce arbitrations seated outside of Eritrea.

I am not aware of any case in which a foreign arbitral award has been enforced in Eritrea. I believe a foreign award would be enforced in the same way as a foreign judgment (see question 13 above).

20. Are foreign awards readily enforceable in practice?

Please refer to our replt to Question No. 19 above.

Alternative dispute resolution

21. Are the parties to litigation or arbitration required to consider or submit to any alternative dispute resolution before or during proceedings?

There is no such requirement under the laws of Eritrea.

Reforms

22. Are there likely to be any significant procedural reforms in the near future?

We are yet to see if, or when, the Draft Civil, Penal, Civil Procedure and Criminal Procedure Codes circulated in 2015 are to come to force.

We are also aware that there is a Draft Commercial Code, but its final draft version has not been circulated.

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Eswatini (Formerly Swaziland)



Introduction

Eswatini (formerly known as the Kingdom of Swaziland) is eminently known for what is termed a dual legal system consisting of the Roman Dutch common law as well as Eswatini law and custom. The Roman Dutch common law has evolved over the years and has been amended by statutes. Eswatini law and custom is still applicable and has legal force and effect. In fact, the Preamble of the Supreme Law of the Land (being the Constitution of 2005) provides the necessity to blend the good institutions of Tradition Law and Custom with those of an open democratic society. However, the applicability and enforceability of these Customary principles ought not to conflate with Constitution, the rules of natural justice and statutory enactments. It applies mainly among indigenous Emaswati.

Eswatini's first Constitution of 1968 was later amended by the 1973 Decree which subsisted until a new Constitution came into effect in February 2006. The Constitution does not specifically provide for the abrogation of the 1973 Decree, but asserts its own supremacy and further provides that any law that is inconsistent with the Constitution is null and void. This also includes Eswatini Law and Custom.

The Constitution is supplemented by legislation enacted by Parliament and the King's Orders in Council. Such legislation is made under the power conferred by the Constitution, the rules of Roman Dutch common law, Eswatini law and custom, and doctrines of equity.

Litigation

1. What is the structure of the legal profession?

In principle, every litigant is entitled to appear personally before a court to plead a cause or to raise a defence. However, because the conduct of litigation is so specialised, litigants normally instruct Attorneys, and in rare and serious cases Advocates, to

conduct litigation on their behalf in the superior courts (being the Industrial Court, the Industrial Court of Appeal, the High Court and the Supreme Court). The exception is in the Small Claims Court and Swazi National Courts, where legal representation is prohibited.

Attorneys in Eswatini provide legal services directly to clients and conduct proceedings in court. They have rights of audience before all trial courts and tribunals. There is no split profession.

To be admitted and enrolled as an Attorney in Eswatini, an applicant must be at least 21, be a citizen of Eswatini or ordinarily resident there, and be a proper person to be so admitted.

In addition to the above, the applicant must be suitably qualified. Training as an Attorney in Eswatini involves an academic stage and a pupillage stage.

The academic stage involves obtaining an LLB degree or Bachelor's degree from a recognised university (being universities in Botswana, England, Ireland, Lesotho, Eswatini, Zimbabwe, Scotland, South Africa and Namibia) (refer to section 6(c) of Eswatini's Legal Practitioners Act 1964). The degree holder must then undertake articles of clerkship at a recognised law firm for a period of one year. He/she then qualifies to sit for Bar examinations within six months of serving articles of clerkship.

Foreign qualified Attorneys are permitted to practise in Eswatini provided that:

- they have an LLB degree from their home jurisdiction;
- they have passed their Bar examination and have a certificate confirming the same;
- they have petitioned the Eswatini High Court to be admitted as an attorney and have all qualifications from the foreign jurisdiction attached to their petition.

2. What is the structure of the court system?

Pursuant to Section 139 of the Constitution of 2005, the Judiciary of the Kingdom of Eswatini consists of the Superior and Subordinate courts.

Subordinate Courts include:

- Eswatini National Courts (these are courts where only minor disputes between Emaswati nationals are heard eg, theft of

chickens in the village. Attorneys are prohibited from appearing in such courts);

- Magistrates' Courts (Magistrate Court Act No 66 of 1938) where both civil and criminal matters below the threshold of SZL 30,000 are heard. Litigants can appear for themselves, but legal representation is allowed;
- Industrial Court (section 151(1)(b) of the Constitution of Swaziland confers on the Industrial Court exclusive jurisdiction in relation to employment matters) Attorneys and advocates are allowed to appear in the Court. The litigants also appear themselves although the Court frequently advises that a litigant should have legal representation due to the technical nature of the law;
- The Industrial Court of Appeal which only deals with appeals only on question of law from the Industrial Court. Attorneys and advocates are allowed to appear in the Court. The litigants also appear themselves although the Court frequently advises that a litigant should have legal representation due to the technical nature of the law;
- Small Claims Court where claims for small amounts of money among Emaswati are dealt with swiftly and decisively by Commissioners who are qualified Attorneys. Attorneys are not allowed to appear in such courts as the litigants represent themselves.

Superior Courts consist of:

- the Supreme Court (Court of Appeal Act No 7 of 1954);
- High Court (High Court Act No 20 of 1954)

The High Court has original jurisdiction, inherent jurisdiction and appellate jurisdiction. The High Court also has review powers over matters decided by various other tribunals and administrative bodies. It hears matters where more than SZL 30,000 is in dispute, as well as matters appearing on Schedule 5 to the Criminal Procedure Evidence Act 1938. In the High Court, after judgment has been granted, a person may apply to appeal to the Supreme Court. In civil matters an appeal can be made only on issues relating to law and not fact.

3. What are the time limits for bringing civil claims?

Generally, there are no time limits for bringing civil claims, although there is a common law prescription period. Recently, the Supreme Court has confirmed that the famous 4th October 1540 Placaat by Emperor Charles V is applicable in Eswatini and regulates prescription in Eswatini. The Placaat provides that payment of sums borrowed must be claimed within two years. It further provides that where there is a bond or written acknowledgement of debt, such debts must be enforced at last within ten (10) years.

In relation to claims against the Government, section 2 of the Limitation of Legal Proceedings Against the Government Act 1972 requires that a written demand be lodged within 90 days of the alleged debt arising. Following this, a claim must be brought within two years of the alleged debt arising.

With labour matters, the Conciliation Mediation and Arbitration Commission (CMAC) offers quicker dispute resolution mechanisms and is considered by many before proceeding to the Industrial Court. A dispute or claim before CMAC should be brought within 18 months from the date on which the dispute

arose. If it is unresolved, a certificate will be issued, and a claim should be brought within three years.

There are also other matters where the Industrial Court has no original jurisdiction regardless of them being labour related in nature. They go to specialized Courts and tribunals. Such as matters involving the members of the Royal Eswatini Police, the Umbutfo Eswatini Defence Force and members of His Majesty's Correctional Services.

4. Are communications between an Attorney and his/her client privileged (ie, protected from disclosure to a court/tribunal and opposing parties)?

Communications between an Attorney and a client are legally privileged in Eswatini under the rules of ethics governing the legal profession.

5. How are civil proceedings commenced, and what is the typical procedure which is then followed?

It is apposite to mention, from the onset, that civil proceedings are highly governed and regulated through the Rules of Court (either Magistrate's Court Rules or the High Court Rules or the Industrial Court Rules). Civil proceedings are commenced either by application proceedings or action proceedings. Application proceedings should be used where there is no dispute of fact.

Application proceedings

Application proceedings are commenced by notice of motion and are sometimes also called motion proceedings. No oral evidence is heard, and witnesses are not called to give *viva voce* evidence unless directed by the Court. Three documents are exchanged. These are:

- founding affidavit;
- answering affidavit;
- replying/confirmatory affidavit.

Section 6 of the High Court Rules 1969 details the procedure to be followed when commencing civil proceedings. The applicant must appoint an address at which he/she will accept service. The applicant must propose a day, not less than five days after service on the respondent, where the latter is required to notify the applicant in writing whether he/she intends to oppose the application. If unopposed, the application is set down for hearing not less than seven days after service on the respondent of the notice.

If the respondent opposes, he/she should appoint an address within five kilometres of the office of the Registrar at which he/she will accept notice and service of all documents. Within 14 days of service of the notice of motion he/she should deliver an answering affidavit with any other relevant documents. Within seven days of service on him/her the applicant may deliver a replying affidavit.

If no answering affidavit is delivered the applicant may within four days apply to the Registrar to allocate a date for the hearing of the application. If an answering affidavit is delivered the applicant may apply for such allocation within four days of the delivery of his/her replying affidavit. The judge determines the matter on the papers in application proceedings.

Under this procedure, the courts may also hear urgent applications under Rule 6(25) of the High Court Rules, which allows the normal rules of procedure to be dispensed with. The applicant is prohibited from creating his own urgency; for example, by waiting too long to act so that the ordinary rules can no longer be applied.

Action proceedings

Action proceedings are commenced by way of summons. These may be in the form of simple summons, combined summons, and provisional summons. There is a necessity for oral evidence *viva voce* (section 17 of the High Court Rules). In the Magistrates' Court a party has three days to respond to the summons, whereas in the High Court he/she has 10 days. A notice to defend must be served within seven days in the Magistrates' Court and 21 days in the High Court. A trial is held in action proceedings.

Prior to the trial stage, a plaintiff may obtain default judgment if the defendant has not timeously filed a notice of intention to defend or a plea, as the case may be. If the plaintiff fails to timeously file his/her declaration, the defendant may apply to the court to grant absolution from the instance.

6. What is the extent of the pre-trial exchange of evidence and how is evidence presented at trial?

Under Rule 37 of the High Court Rules, at a pre-trial exchange of evidence conference, the parties gather with the object of reaching agreement as to possible ways of curtailing the duration of any trial. They may discuss:

- obtaining admissions of fact and documents;
- discovery of documents which need not necessarily be relevant documents but also documents of any nature which the parties seek to rely on;
- holding an inspection of all relevant documents;
- exchange between parties of expert reports;
- providing plans, diagrams, photographs, models;
- consolidation of trials;
- quantum of damages;
- preparation of a trial bundle.

Any list of documents will most likely include a notice of inspection stating a time and venue for the other party to inspect the documents. Copies of the relevant documents may be attached to the list with an affidavit verifying the list. If a party fails to fulfil his/her obligation to make automatic discovery, the other party may apply to the court to make an order for discovery.

On any application in any cause or matter, evidence may be given by affidavit. The court may in civil proceedings order the attendance for cross-examination of the person making the affidavit where a dispute over facts has arisen. The person's affidavit is not used in court as evidence without leave of the court.

7. To what extent are the parties able to control the procedure and the timetable? How quick is the process?

Each court manages its own case list. A court roll is issued by each court under each judge. The parties apply to the Registrar for an

allocation date for trial. On average a civil action can take up to two - three years because of the backlog of cases in Eswatini.

However, the Rules of the different Courts also provides for time frames within which Court pleadings must be filed just to ensure the harmonious movement of pending court matters.

8. What interim remedies are available to preserve the parties' interests pending judgment?

The court may preserve a party's interests pending judgment through an order for an interlocutory or interim injunction, or preservation of any property which is the subject matter of the suit.

An application for an interlocutory or interim injunction may be made at any time irrespective of whether the claim for an injunction is included in the summons issued. The court may order an early trial to finally determine the matters in dispute.

In practice, an order is usually issued to prevent the parties from dealing with the property in question pending the finalisation of the matter and the handing down of judgment.

9. What means of enforcement are available?

A judgment for the payment of money may be enforced by:

- garnishee proceedings;
- charging orders;
- writ of execution;
- insolvency proceedings against the individual or winding up proceedings against a debtor company.

A judgment for the delivery of goods or payment of the assessed value may be enforced by:

- writ of delivery to recover goods or their assessed value;
- writ of specific delivery with leave of the court;
- writ of execution.

A judgment ordering a person to do or abstain from doing an act may be enforced (subject to personal service of the judgment/order on the person in default) by:

- writ of execution against the property of the person with leave of the court;
- writ of execution against the property of the directors or other officers, if the person involved is a corporate body;
- committal against the person or director or other officer of the corporate body, as the case may be.

10. Does the court have power to order costs? Are foreign claimants required to provide security for costs?

The court has a wide discretion when awarding costs and may award costs of and incidental to proceedings. It has full power to determine by whom and to what extent the costs are to be paid. The court considers what costs order would be correct and equitable in the circumstances.

The court takes into consideration a wide number of factors, including the expenses incurred by the parties, the court fees paid by the parties, the length and complexity of the

proceedings, the conduct of the parties before and during the proceedings, and any previous orders as to costs made in the proceedings before making any award for costs.

The High Court Rules do not distinguish between costs that have to be provided by local claimants and foreign claimants. Any respondent may apply for costs and justify the amount requested. Foreign claimants may therefore be required to provide security for costs. The court will determine this using its discretion.

Foreign Claimants, in terms of Rule 47 of the High Court Rules, may be ordered to furnish Security for Costs.

11. On what grounds can the parties appeal and what restrictions apply? Is there a right of further appeal? To what extent is enforcement suspended pending an appeal?

In Eswatini, the right to appeal is constitutionally guaranteed (under section 147 of the Constitution) and there is a general right of appeal against a decision of a court of first instance. Permission to appeal (leave to appeal) is required only under specific circumstances (for example leave of the High Court is required in relation to appeals from lower courts). In civil matters, an appeal may only be made on issues relating to law, not fact.

Usually, permission to appeal is granted where the Supreme Court is satisfied that the case involves a substantial question of law, or it is in the public interest to grant permission to appeal, or that the appeal has a real chance of success.

When dissatisfied with the decision of the Supreme Court, a party may apply for a review of the matter under section 148 (2) of the Constitution. The power of the Supreme Court to review its decision is limited to exceptional circumstances which have resulted in a miscarriage of justice, or if there has been discovery of new and important evidence which, after the exercise of due diligence, was not within the applicant's knowledge or could not be produced by him/ her during the trial or hearing of the case.

Generally, an appeal does not operate as a stay of the decision of the lower court unless the court stays the execution of the judgment.

12. To what extent can domestic and/or foreign State entities claim immunity from civil proceedings?

Generally, domestic State entities do not have immunity from civil proceedings. One may, however, not sue the State for anything done or omitted to be done by a person while discharging or purporting to discharge responsibilities of a judicial nature vested in that person. The Diplomatic Privileges Act, 18, 1968 cites the Vienna Convention on Diplomatic Relations.

There are other statutory provisions expressly granting both civil and criminal immunity to foreign diplomats (foreign diplomatic agents). However, there is no express stipulation to the effect that foreign State entities have immunity from civil proceedings.

However, it is a general rule of international law that a State is immune from the jurisdiction of another State unless the foreign State has waived its immunity either explicitly or by implication.

13. What procedures exist for recognition and enforcement of foreign judgments?

Enforcement of foreign judgments in Eswatini is governed by the Reciprocal Enforcement of Judgments Act 1922. This only refers to three countries (England, Ireland and Scotland). The judgment should be one given by a superior court and should not have been heard by the superior court on appeal from a court which is not a superior court. Enforcement may be possible in respect of judgments from other Commonwealth countries, although there is no statutory basis for this.

Where the judgment of a foreign court is not enforceable on the basis of reciprocity, fresh proceedings may be instituted in Eswatini and the foreign judgment relied upon in evidence.

Arbitration

14. Is the arbitration law based on the UNCITRAL Model Law? If yes, are there any key modifications? If no, what form does the arbitration law take?

The main arbitration process in Eswatini is one between an employer and an employee which is governed by the Industrial Relations Act 2000, as amended (the IRA). The Conciliation, Mediation and Arbitration Commission (CMAC) is the most accessible arbitration commission in Eswatini established by section 62 of the IRA.

Although not prevalent in Eswatini, private parties can contractually agree to resolve their conflicts by way of arbitration (including contracts of sale, lease agreements, etc). Such arbitrations are governed by the Arbitration Act, No 24 of 1904 (the Arbitration Act). The Arbitration Act is not based on the UNCITRAL Model Law.

With commercial arbitration in Eswatini, usually a letter is first written by a party to the President of the Law Society of Eswatini and/or the President of the Institute of Accountants requesting him/her to appoint an independent arbitrator to hear and determine the dispute between the parties. The letter must set out in detail and chronologically the circumstances and events which have unfolded since the contract was concluded and which have led to the dispute. Over the years, it has been common practice, where the dispute is of a legal nature, for the Law Society of Eswatini to endorse an attorney or advocate of the High Court of Eswatini to act as arbitrator. If it is a matter primarily of an accounting or financial nature, an independent chartered accountant is chosen and his appointment is endorsed by the President of the Eswatini Institute of Accountants. This procedure is not provided in the Arbitration Act, but it is what happens in practice.

There are a number of cases on arbitration in Swaziland; two recent authorities based on the Arbitration Act are *Swazi MTN Limited v Swaziland Posts and Telecommunications* and *Another Case No 19/ 2011 and A G Thomas (Pty) Limited v Salgaocar Swaziland (Pty) Limited Case No 1499/ 2012*.

In the former case, the court application was withdrawn so that the parties could resolve their outstanding disputes by arbitration pursuant to the joint venture agreement.

In the latter case, the parties concluded a transport agreement which was to last for five years. This contract was allegedly cancelled by one party without any reason. The court upheld the

parties' arbitration clause, there being no good reason under section 6.2 of the Arbitration Act as to why the dispute concerning cancellation of the transport agreement could not be determined by arbitration in accordance with the transport agreement.

15. What are the main national arbitration institutions?

Eswatini has one public arbitration institution. This is the above-mentioned CMAC. There are attorneys who deal with arbitration matters in Eswatini. The Law Society welcomes suggestions from the parties regarding who they would like to have as their arbitrator if the Law Society route has been agreed upon by the parties. If not, the parties reserve the right to appoint an arbitrator or arbitrators in accordance with the Arbitration Act. The appointed tribunal then handles the matter.

Parties in Eswatini usually agree to use the Rules for the Conduct of Arbitrations of the Association of Arbitrators in South Africa.

16. Are there any restrictions on who may represent the parties to arbitration?

There are none. Usually, the parties are always represented by Attorneys or Advocates.

17. What are the formal requirements for an enforceable arbitration agreement?

In the private context under the Arbitration Act, "submission" means a written agreement to submit present or future disputes to arbitration (section 2 of the Arbitration Act). There is no requirement to name the arbitrator in a submission. The submission must be an irrevocable agreement to arbitrate disputes, except by leave of the High Court or by consent of all the parties. A submission has the same effect as if it had been an order of the High Court or by consent of all the parties (section 3 of the Arbitration Act).

18. Will the courts stay litigation if there is a valid arbitration clause covering the dispute? Does the approach differ in this regard if the seat of the arbitration is inside or outside of the jurisdiction?

Sections 6(1) and (2) of the Arbitration Act govern this and state:

"If any party to a submission (meaning an agreement) or any person claiming through or under him commences any legal proceedings in any Court against any other party to the submission or any person claiming through or under him in respect of any matter agreed to be referred to arbitration, any party to such legal proceedings may at any time after appearance and before delivering any pleadings or taking any other steps in the proceedings apply to such Court to stay proceedings. In Swaziland the court will refuse to stay litigation if it is satisfied that the arbitration agreement is inoperative or incapable of being performed.

Such Court or a judge may, if satisfied that there is no sufficient reason why the matter should not be referred in accordance with the submission and that the applicant was at the time when the proceedings were commenced and still remains ready and willing to do all things necessary to the proper conduct of the arbitration, make an order staying the proceedings."

See also question 14 above regarding recent Eswatini case law where the courts have upheld the parties' arbitration clause.

Sections 6(1) and (2) do not differentiate between the seat of the arbitration.

19. If the arbitration agreement and any relevant rules are silent, how many arbitrators will be appointed, and who is the appointing authority?

Under section 4 of the Arbitration Act, unless a contrary intention is expressed in the submission, the submission is deemed to include the provisions of the Schedule to the Act. The Schedule provides that: *"If no other mode of reference is provided, the reference shall be to a single arbitrator"*. Section 8 of the Arbitration Act provides default procedures for the appointment of arbitrators.

20. What rights are there to challenge the appointment of an arbitrator?

Section 10 of the Arbitration Act provides that: *"every arbitrator shall be and continue throughout the reference to be disinterested with reference to the matters referred"*. An arbitrator can be required to make a sworn declaration that he/she has no (direct or indirect) interest in the matters referred or in the parties to the reference and knows of nothing disqualifying him/her from being impartial and disinterested in the discharge of his/her duties. The right to challenge an appointment can be exercised only by an application to the court (section 11 of the Arbitration Act).

Where the arbitrator is appointed by the court, then the order appointing him/her, being the ruling of the High Court, is subject to the normal review and appeal jurisdictions of the courts.

21. Does the domestic law contain substantive requirements for the procedure to be followed?

Where the arbitration agreement is silent on procedure, and unless the contrary intention is expressed, certain procedural steps laid down in the Schedule to section 4 to the Arbitration Act are deemed to be included in the submission agreement. For example, the arbitrator can decide whether to examine witnesses under oath, whether oral evidence must be recorded, and the costs shall be within the discretion of the arbitrators. The arbitrator further regulates all aspects not expressly provided for in the agreement.

22. On what grounds can the court intervene in arbitrations seated inside the jurisdiction?

In addition to the court interventions described in questions 18 and 20 above, a party may seek the court's intervention on other grounds, although this is very rare. This would be a civil procedure in court proceedings. Approaching the court for relief is entirely dependent on the aggrieved party, who may decide to refer the matter to the court before an award is issued. He/she may apply to the arbitrator to refer the matter to the court for a legal determination. The court can grant any relief it deems fit to parties within its jurisdiction.

If for any reason the arbitrator commits an act of misconduct, the court may set aside an award issued by the arbitrator (section 16 of the Arbitration Act).

23. On what grounds can the court intervene in arbitrations seated outside the jurisdiction?

The court must have the authority to hear the matter, and this requires the presence of some jurisdictional connecting factor (nexus) between the court and the parties or the cause of action. The link may be in the form of domicile or residence, commission of the act that now has to be arbitrated upon, breach of contract or even the location of property where such property is the subject of the dispute. If the link is present, the court can intervene in an arbitration seated outside the jurisdiction.

The intervention by the court would take the form of normal court proceedings.

24. Do arbitrators have powers to grant interim or conservatory relief?

Yes. The Arbitration Act does not deal with this expressly but section 4, number 14 states that where the majority of the arbitrators cannot agree on any matter of procedure or an interlocutory question, they may refer it to the umpire to decide. In our view this would include the power to grant interim relief.

25. When and in what form must the award be delivered?

Unless otherwise agreed by the parties, the arbitrators must make their award within three months of entering on the reference or having been called on to act by notice in writing from any party (whichever is earlier) or on or before any later day to which the arbitrators may in writing extend the time for making the award, provided that such further period does not exceed four months (provision 4 of the Schedule to the Arbitration Act). According to section 17 of the Arbitration Act, an award which has been made an order of court may be enforced in the same manner as a judgment or order to the same effect.

26. Can a successful party recover its costs?

Unless the parties expressly provide otherwise in their arbitration agreement, the agreement is deemed to include a provision that the costs of the reference and award are at the discretion of the arbitrator or umpire, who may direct to whom and by whom, and in what manner, costs are to be paid.

A provision in an agreement that the parties will pay the respective costs of the reference or award or a part of the costs is void, unless the dispute in question preceded the agreement.

Where the arbitrator fails to make an award with respect to the costs of the reference, a party may apply within one month of the publication of the award or a further time (as extended by the High Court) to the arbitrator, for an order for the payment of costs. Upon hearing the application, the arbitrator should amend the award by adding to it appropriate directions for the payment of the costs of the reference.

27. On what grounds can an award from an arbitration seated in the jurisdiction be appealed to the court?

Arbitration awards are deemed to be final and binding on all parties. The Industrial Relations Act, however, allows parties to apply to the High Court to set aside awards where there is a certificate of an unresolved dispute.

28. Can a foreign arbitration award be appealed in the local courts? If so, on what grounds?

Notwithstanding that arbitral awards are deemed to be final and binding, an award can be appealed in the local courts if one of the parties to the arbitration is domiciled in the local courts' jurisdiction or the dispute arose in the local courts' jurisdiction, but a different place was chosen by the parties for the arbitration. An appeal can therefore be lodged in the local courts provided there is as a link between the court and the parties or one of the parties is present in the jurisdiction. This is governed by the laws of civil procedure.

29. What procedures exist for enforcement of: (i) awards rendered in arbitrations seated outside of the jurisdiction and (ii) domestic awards?

Eswatini is not a party to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the New York Convention). Both domestic and foreign awards may be enforced, by leave of the High Court, in the same manner as a judgment or order of the court.

A foreign award will, however, only be recognised if made in a country declared as a reciprocating State by the Head of State through a legislative instrument, currently the Arbitration (Foreign Awards) Instrument. A foreign award made in a country listed in the instrument can be enforced in Eswatini by obtaining the leave of the High Court. Where the seat of the arbitration is in a non-reciprocating State, the successful party may seek to enforce the award in Eswatini by instituting a fresh action and relying on the award as evidence.

30. Are foreign awards readily enforceable in practice?

This is very rare in Eswatini, but through leave of the court, foreign awards may in theory be enforced.

Alternative dispute resolution

31. Are the parties to litigation or arbitration required to consider or submit to any alternative dispute resolution before or during proceedings?

Parties to arbitration and litigation are not required by law to consider or submit to ADR before or during proceedings, unless the agreement requires that of the parties. This goes for both cases heard by CMAC and other cases of a private nature (contracts).

Reforms

32. Are there likely to be any significant procedural reforms in the near future?

Yes, a number of significant procedural reforms in civil procedure are likely.

These include the revision of the Rules of the High Court and Supreme Court. A panel of senior judges and practitioners has been appointed to consider and review the Rules, with a report which was expected in August 2016. The report has still not been delivered.

The Small Claims Court in Eswatini has been established. Commissioners who will preside in the cases were appointed last month or so and they are already working on the cases. The Court deals with small claims relating to consumer matters,

neighbourhood disputes and other minor disputes that are not worth the cost of litigating in a higher court.

In addition to that, there is also an office of the Ombudsman. In most cases, where there is possible claim against a financial institution for unlawful charges, they are referred to the office of the Ombudsman for adjudication.

There is also the Consumer Department which offers services for Consumer Protection. This is under the Competition Commission.

All superior courts judgments are now reported on www.eswatiniilii.org

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Ethiopia



Introduction

Since 1995, Ethiopia adopted the federal forms of government. The Federal State consists of twelve regional states and two self-governing cities, Addis Ababa city and Dire Dawa city, accountable to the Federal Government.

Before the introduction of precedents via the binding authority of legal interpretations declared in judgments of the Federal Supreme Court Cassation Division, the Ethiopia legal system had been a typical classic civil law system as it essentially contained codified laws and courts applied and interpreted the provisions of these codes and none of their decisions were binding on lower courts. Ethiopia has four codes on substantive laws: the Civil Code, the Criminal Code, the Commercial Code and the Maritime Code. It has also two codes on procedural laws: the Civil Procedure Code and the Criminal Procedure Code. It is important to note that there are also numerous non-codified laws that are enacted by Ethiopia's parliament and council of ministers in the forms of proclamations and regulations respectively. A tertiary level of laws known as directives issued by government agencies also form an important part of the law.

On top of these Codes, based on the Constitution, Ethiopian legal system has room for the application of customary laws and religious laws, though the applicability of religious and customary laws are limited to family and personal laws. It is also important to note that all international agreements ratified by Ethiopia are an integral part of the law of the land.

Litigation

1. What is the structure of the legal profession?

To practise as a lawyer in Ethiopia, one should obtain a practising licence in accordance with the provisions of the Federal Advocacy Service Licensing and Administration Proclamation, Proclamation No. 1249/ 2021.

Any Ethiopian person or a foreign national of Ethiopia origin can have an advocacy license if they fulfill the mandatory requirements prescribed by the law.

There are three classes of advocacy licenses: the Federal First Instance Court Advocacy Licence, all Federal Courts Advocacy Licence and the Federal Special Advocacy Licence.

A Federal First Instance Court Licence is an entry level licence that enables lawyers to practise in the Federal First Instance Courts provided the applicant complied with the following:

- is an Ethiopian citizen or a foreigner with Ethiopian origin;
- has graduated with a first degree in law from a legally recognised educational institution, knows the basic laws of Ethiopia and has a minimum of five years' relevant experience; or has a degree in law, knows the basic laws of Ethiopia and has a minimum of five years relevant professional experience;
- has passed the advocacy entrance examination set for the licence applied for;
- has not been convicted and sentenced of any offence of improper conduct; and
- produced a certificate of good conduct from his immediate past employer.

A Federal Courts Advocacy Licence is a mid-level licence which is granted if the applicant satisfies the above criteria and has passed the entrance qualification examination set for the particular type of advocacy licence. Moreover, the establishment and operation of law firms is now permitted.

Regional states also have their own requirements to grant advocacy licences to practise in regional courts.

2. What is the structure of the court system?

Articles 78 to 84 of the Constitution deals with the structure and powers of the courts at federal and state levels.

At the federal level, the court system is comprised of:

- Federal Supreme Court;
- Federal High Courts; and
- Federal First Instance Courts.

At the state level, the court system is comprised of:

- State Supreme Court;
- State High Courts (Zonal Courts); and
- State First Instance Courts (Woreda Courts).

Article 80 of the Constitution vests supreme federal judicial authority in the Federal Supreme Court, while State Supreme Courts have the highest and final judicial power over State matters. However, the Federal Supreme Court cassation division can review and overturn decisions issued by lower federal courts and State Supreme Courts containing fundamental errors of law (article 25 of the Federal Courts Proclamation No.1234/2021). One of the changes that this Proclamation has introduced is the definition of what constitutes fundamental errors of law (article 2(4)).

The Cassation Division of the Federal Supreme Court's decisions on the interpretation of laws are binding on Federal and State courts (article 10(2) and 26 (3) of the Federal Courts Proclamation No.1234/2021).

The Federal Courts are split into civil, criminal and labour divisions.

Federal Courts have jurisdiction over:

- cases arising under the Constitution, federal laws and international treaties;
- parties specified in federal laws;
- places specified in the Constitution or in federal laws; and
- interpreting and observing the provisions of the Constitution.

In civil cases, the Federal Courts have jurisdiction over cases to which a federal government organ is party, suits between persons permanently residing in different regional states, cases to which a foreign national is a party, suits relating to patent, literary and artistic ownership rights, suits regarding insurance and applications for *habeas corpus*. The State Courts hear all other civil cases.

Federal judicial power concerning matters falling under federal high courts' jurisdiction and first instance courts at the state level is delegated to state supreme and high courts, respectively. Also, a State Supreme Court's decisions on Federal matters are appealable to the Federal Supreme Court. (article 80 of FDRE constitution).

The Constitution also allows the operation of religious and customary courts in connection to family and personal matters.

Social and Municipal Courts are established at the community level in rural and urban areas to deal with public health and municipal administration issues.

3. What are the time limits for bringing civil claims?

The general limitation for civil actions based on contract is ten years from the date the cause of action arose (article 1845 of the Ethiopian Civil Code).

The specific limitation for invalidating a contract based on the vices of consent is two years (article 1810 of the Ethiopian Civil Code).

Proceedings in tort must be instituted within two years of the tort, or damage (in case of latent damage occurring). If the tort leads to criminal liability that has a longer period of limitation, the latter period of limitation will prevail (article 2143 (1) & (2) of the Ethiopian Civil Code).

Proceedings based on possession are required to be instituted within two years (article 1149 (2) of the Ethiopian Civil Code).

Proceedings based on ownership need to be submitted within ten years (article 1192 of the Ethiopian Civil Code).

Employment claims generally must be brought within one year, claims for wages, overtime and other payments within six months and claims for reinstatement following unlawful termination within three months (article 163 of the Labor Proclamation No.1156/2019).

A claim for enforcement of a judgment must be brought within ten years (article 384 of the Civil Procedure Code).

4. Are communications between a lawyer and his/her client privileged (ie, protected from disclosure to a court/tribunal and opposing parties)?

Yes, communications between a lawyer and his/her client are privileged as per article 24(2) and 55(3) of the Advocacy Service Licensing and Administration Proclamation. Under these provisions, the lawyer and law firm have a professional obligation to keep secret the personal or organisational information of his/her client or any other information he/she obtains in the course of his/her professional service. The lawyer may not, without the consent of the client, reveal such information.

The obligation of professional confidentiality of the lawyer may subsist after termination of his/her contract with the client.

The lawyer is permitted to disclose confidential information obtained in the course of his/her professional duties, in accordance with article 11 of Regulation No. 57/1999, where he/she reasonably believes:

- the information he/she obtained from the client is necessary for the task he/she is undertaking;
- he/she must defend him/herself or claim his/her interests in a dispute with the client;
- a dispute has arisen concerning his/her power of representation; or
- he/she performs his/her obligations as expressly provided otherwise by law.

Breach of confidentiality obligations by a lawyer may result in suspension or revocation of his/her practising licence in accordance with article 85(6) of the Proclamation.

Criminal sanction is also provided under criminal law for breaches of professional secrecy and the aggrieved party may initiate criminal proceeding against the violator (article 399 of the Criminal Code).

5. How are civil proceedings commenced, and what is the typical procedure which is then followed?

To commence a suit, the plaintiff/claimant/applicant is required to prepare his/her statement of claim in accordance with the provisions of articles 80 and 222 of the Civil Procedure Code (CPC).

He/she will then submit to the Registrar of the court his/her statement of claim who will check the same, open a file and provide it to the judge.

The judge will issue a summons, together with a copy of the statement of claim, to the defendant requiring the defendant to appear in court, on a date set by the judge, with his/her statement of defence prepared in accordance with article 234 of the CPC.

The above process, from the time the plaintiff lodges the claim to the time the summons is issued on the defendant, takes about 20 to 30 days and the plaintiff is expected to serve the summons at least 10 days prior to the date appointed for submission of the statement of defence at the office of the Court Registrar (article 94 and following of the CPC).

In the statement of defence, the defendant must raise preliminary objection(s) to the statement of claim, if any, and respond to any substantive issues in the statement of claim. Thereafter, the court will make a decision on the preliminary objection(s) raised by the defendant.

Under article 244 of the CPC, preliminary objections may be raised where:

- the court has no jurisdiction;
- the subject matter of the suit is *res judicata*;
- the suit is pending in another court;
- the other party is not qualified to act in the proceedings;
- prior permission to sue has not been obtained, when this is required by law;
- the suit is barred by limitation; or
- the claim is to be settled by arbitration or has previously been made the subject of a compromise or scheme of arrangement.

The court will decide any objection taken under article 244 of the CPC after hearing the opposing party and ordering the production of such evidence as may be necessary for the decision to be made.

Where the court is satisfied that the objection is well-founded, it shall, in the case of *res judicata* or limitation objections, dismiss the suit and, in other cases, strike out the suit and/or make such other order as it thinks fit.

Where matters proceed, the court adjourns for a period of about one month and issues summons requiring witnesses to appear and for documents from third parties to be brought before it on the appointed date (article 111 and following of CPC).

On the appointed date, witnesses will be examined, cross-examined and re-examined, if necessary, by the court. Then the court will again adjourn the case for at least a month. If the court finds that there needs to be further investigation or presentation of additional evidence, it will ask for it. Otherwise, it will give judgment giving its findings on the substantive issues in dispute according to the law, evidence presented, issues framed and the testimony of witnesses, if any (article 257 and following of CPC).

6. What is the extent of pre-trial exchange of evidence and how is evidence presented at trial?

There is no discovery at the pre-trial stage. However, there is discovery in a limited sense once the plaintiff has initiated proceedings. In this regard, the CPC grants authority to the

court, either on its own motion or on the application of any of the parties, to send for records held by the courts, or in the hands of third parties, provided they are relevant.

For the court to grant such an order, an application for the production of records must show that the record is material to the suit in which the application is made and that the applicant cannot without unreasonable delay or expense obtain a duly authenticated copy of the record, or that the production of the original is necessary for the purposes of justice. The record to be used in evidence must be admissible in the suit (article 145 of the CPC).

7. To what extent are the parties able to control the procedure and the timetable? How quick is the process?

It is difficult for the parties to control matters, as courts in Ethiopia invariably adjourn cases in order to try other cases that, in their discretion, require speedy trial. This is attributable to the fact that courts have backlogs; too many cases and too few judges. Consequently, the timeframes provided above normally vary depending on the number of cases pending in the court. As a result, cases mostly take between one and three years to be concluded. As a matter of practice, the court usually adjourn cases based on agenda of the advocates. However, this is no longer possible after the introduction of case management system where courts are adjourning cases based on their timetable only (based on directive no. 008/2021, a directive to provide for case flow management of civil cases in federal courts).

As per the above directive, the timeframe to complete a case depends up on the hierarchy of federal courts and the type of civil case involved.

8. What interim remedies are available to preserve the “parties” interests pending judgment?

Under the laws of Ethiopia, a party may seek an order for:

- a temporary injunction to restrain the repetition or continuance of a breach;
- arrest before judgment, which may entail the grant of security to guarantee appearance in court by the defendant;
- attachment before judgment;
- interlocutory orders for interim sale, detention and inspection;
- the appointment of receivers;
- the affixing of seals and making of inventories.

The facts must support the grant of such orders and procedural laws must be complied with.

9. What means of enforcement are available?

The CPC provides for various enforcement mechanisms:

- a decree for payment of money may be executed by the attachment and sale of the judgment debtor’s property (article 394 of the CPC);
- a decree for any specific movable property or any share therein may be executed by seizure and delivery to the decree-holder (article 399 of the CPC);

- where the party subject to a decree for specific performance or an injunction has wilfully failed to comply, the decree may be executed by the attachment and sale of his or her property and the court may, out of the proceeds, award to the decree-holder such compensation as it thinks fit (article 400 of the CPC);
- where a decree for the execution of a document or for the endorsement of a negotiable instrument is not honoured, the decree-holder may prepare a draft of the document or endorsement in accordance with the terms of the decree and deliver the same to the court (article 401 of the CPC);
- where a decree is for the delivery of immovable property, possession is conferred on the decree-holder, and if necessary, those bound by the decree removed from the property (article 402 of the CPC).

10. Does the court have power to order costs? Are foreign claimants required to provide security for costs?

Generally, courts have full discretion to decide by whom or out of what property and to what extent such costs are to be paid and to give all the necessary direction to this effect (article 462 of the CPC).

Foreign claimants may be required to provide security for costs whenever it appears to the court that the plaintiff is resident outside Ethiopia and does not possess sufficient immovable property within Ethiopia other than the property in the suit (article 200(2) of the CPC).

11. On what grounds can the parties appeal, and what restrictions apply? Is there a right of further appeal? To what extent is enforcement suspended pending an appeal?

The grounds for appeal, under Ethiopian law, on any final court decision include, but are not limited to:

- Error of law;
- Error of fact;
- Error in evaluating evidence;
- Decision or orders on adjournments;
- Preliminary objections;
- The admissibility or inadmissibility of oral or documentary evidence; and
- Permission to sue as a pauper.

Parties, on the ground of error, have a right to apply for the Cassation Bench of the Federal Supreme Court to review the judgment. However, such a review under Ethiopian law is not appeal in the strict interpretation of the word. This is because apart from the fact that it is not automatically available as a matter of right for the losing party, the court's capacity to review is limited to the lower court's erroneous interpretation of the law, not the facts. Under Ethiopian law, any court's decision or order on interlocutory matters cannot be appealed. Which means only the final court decision is subject to appeal:

- The other restriction concerns the period prescribed for submitting an appeal. Ethiopian law provides different periods of limitations for different cases. Some are in civil cases, an appeal must be instituted within sixty 60 days (article 323(2) of the Ethiopian Civil Procedure Code).

- In an employment dispute, the appeal must be lodged within thirty 30 days (article 139 (3) of the labour proclamation).

An application submitted for a revision of a judgment needs to be submitted in ninety days (article 27 (3) of Federal Courts Proclamation).

Under Ethiopian law, parties in a civil case have a single appeal against the final judgment, which means if the first appellate court confirms a case, there is no second appeal. A second appeal lies only when the first appellate court renders a decision at variance with the first instance court. In contrast, parties in a criminal case have two appeals.

As a matter of rule, an appeal shall not operate as a stay of proceedings under a decree or order appealed from (article 332 of the CPC), but the appellate court may, for sufficient cause, order a stay of execution (article 333 of the CPC). In addition, the President of the court which passed the decree or made the order is also permitted to grant a stay of execution for a period not exceeding 15 days (article 334 of the CPC).

12. To what extent can domestic and/or foreign State entities claim immunity from civil proceedings?

There are no express provisions under the laws of Ethiopia that address the issue of immunity of domestic and/or foreign State entities in civil proceedings.

In principle, and in line with international practice, domestic and/or foreign State entities do not enjoy immunity of their assets or legal persons when engaged in commercial acts. Nevertheless, most parties dealing with domestic and/or foreign State entities normally negotiate an express provision waiving any immunity that the State entity may be entitled to under the contract. Even if there is no separate legislation regarding jurisdictional immunity, courts generally accept any waiver which has been concluded contractually.

13. What procedures exist for recognition and enforcement of foreign judgments?

Concerning the procedural requirement, an applicant for recognition of foreign judgment need to apply presenting:

- a certified copy of the judgment to be executed; and
- a certificate signed by the President or the registrar of the court, having given judgment, to the effect that such judgment is final and enforceable (article 457 of the CPC).

The application for the recognition of a foreign judgment and the documents mentioned will be submitted directly to the competent court, which is the Ethiopian Federal High Court.

In terms of substance, foreign judgments, in accordance with the provisions of article 458 of the CPC, will be recognised and enforced, without retrial, provided that:

- the execution of Ethiopian judgments is allowed in the country where the judgment was rendered (reciprocity);
- the judgment to be executed was given by a court or arbitral tribunal that was duly established and constituted;
- the judgment debtor was given the opportunity to appear and present his defence;
- the judgment is final and enforceable; and
- the execution is not contrary to public order or morals.

Arbitration

14. Is the arbitration law based on the UNCITRAL Model Law? If yes, are there any key modifications? If no, what form does the arbitration law take?

Yes, the new Arbitration and Conciliation Working Procedure Proclamation No. 1237 /2021, is based on the UNCITRAL 2006 Model Law. There are no significant modifications made by the Ethiopian arbitration law when compared to the model law.

15. What are the formal requirements for an enforceable arbitration agreement?

Under Ethiopian arbitral law, an arbitration agreement is an agreement to be implemented to partly or wholly settle future or existing disputes that may arise from a contractual or non-contractual legal relationships.

As a contract, an arbitration agreement is governed by the basic principles of contract law. As such, it must fulfil the conditions set out under the Civil Code of Ethiopia, which are that:

- the parties have expressed their intent to be bound;
- the object of the contract, ie, the obligations created thereunder, are defined, lawful, possible to perform and not immoral. Ethiopian law further requires that the matter in disputes shall be arbitrable. If the subject matter is not arbitrable, its object will be unlawful therefore void. Ethiopian arbitration law provides a list of non-arbitrable cases which include, among others, the following:
 - administrative contracts;
 - land cases, including lease;
 - judgment on bankruptcy; and
 - tax cases.
- an arbitration agreement must be made in writing.

16. Will the courts stay litigation if there is a valid arbitration clause covering the dispute? Does the approach differ in this regard if the seat of the arbitration is inside or outside of the jurisdiction?

Yes, courts in Ethiopia will uphold provisions of a contract with an arbitration clause on the basis of the principle enshrined under the Civil Code where contracts lawfully formed shall be binding on the parties as though they were law.

The courts will not normally entertain a dispute where parties have agreed to have their disputes settled by way of arbitration. If a suit is instituted in court where there is a valid arbitration clause which covers the dispute, the other party is entitled to raise a preliminary objection in accordance with the provisions of the Civil Procedure Code.

The approach will not change if the seat of arbitration is inside or outside Ethiopia.

17. On what grounds can the court intervene in arbitrations seated outside the jurisdiction?

In principle, in Ethiopia, arbitration proceedings enjoy freedom from court intervention and arbitrators generally have the power to decide their jurisdiction (article 19 of the new Arbitration Proclamation), and to grant orders in relation to attendance of witnesses and preservation of assets or evidence.

Nonetheless, parties to an arbitration have the right to apply for court assistance whenever appropriate. Parties may also approach the courts, inter alia, seeking interim relief enjoining a pending arbitral proceeding.

Moreover, courts have supervisory power in some selected matters.

In exercising their supervisory role, the Ethiopian courts can intervene in arbitrations seated whether in Ethiopia or outside Ethiopia and thus entertain:

- (i) Challenge the validity of the arbitration agreement/ clause, article 8(2);
- (ii) Appeal if there is agreement to this effect, article 49;
- (iii) Interim measures, article 9;
- (iv) Application for setting aside an Arbitration Award, article 50;
- (v) Applications for enforcement Awards, article 51 and 53.

18. Can a foreign arbitration award be appealed in the local courts? If so, on what grounds?

Ethiopian arbitration law prohibits appeal to the court from an arbitral award, subject to parties' agreement otherwise. Since it is included in the definition of an arbitral award, a foreign arbitral award is subject to the same restriction. (Article 49 (1) and Art 2 (8) of Arbitration and Conciliation Working Procedure Proclamation No. 1237 /2021).

Under Ethiopian arbitral law, when the parties provide a right to appeal in their arbitration agreement, the Civil Procedure Code's relevant provisions will be applicable. As a result, from the above-discussed (question 11), some suitable grounds can be a source of appeal (article 49 (5) of Arbitration and Conciliation Working Procedure Proclamation No. 1237 /2021).

In contrast, an application based on error of law can be submitted to the Federal Supreme Court cassation division. However, parties are at liberty to provide a finality clause prohibiting revision. (Art 49 (2) of Arbitration and Conciliation Working Procedure Proclamation No. 1237 /2021).

19. What procedures exist for enforcement of awards rendered in arbitrations seated outside of the jurisdiction?

Under Ethiopian arbitration law, there are two parallel legal regimes. One is the New York Convention, ratified by proclamation No 1184/2020. This applies to foreign awards made in the states which are party to the New York Convention. In this scenario, enforcement of arbitral awards, parties shall apply, supplying:

- The duly authenticated original award or a duly certified copy thereof;
- The original arbitration agreement or the contract containing the arbitration clause or a duly certified copy thereof.

In the event that the award or agreement is not made in the country's official language in which the award is relied upon, the party applying for recognition and enforcement of the award is required to produce a translation of these documents. The translation needs to be certified officially or sworn translator or a diplomatic or consular agent.

The second legal regime applies for foreign arbitral awards from non-contracting party states to the New York Convention. Under this regime, any party seeking the execution of an arbitral award by a court needs to apply, submitting the arbitration agreement, the original award, or an authenticated copy of the award. Here, the arbitral award needs to be certified in Ethiopia by the relevant organ of State. Further, if the award is rendered in a language different from the executing court's language, the applicant must produce a translation of these documents into the court's language.

In terms of the applicability of the foreign award in its entirety, in accordance with the provisions of article 53(2) of the Proclamation No. 1237/2021, it will be recognised and enforced, without retrial, provided that:

- (i) it is based on reciprocity;
- (ii) where the arbitral award is based on valid arbitration agreement or rendered by a tribunal which is established in accordance with the law of the country in which such award is rendered;
- (iii) the arbitral award rendered can be enforced in accordance with Ethiopian law;
- (iv) where the parties have had equal rights in appointing the arbitrators or in presenting their evidence and being heard in the course of the proceedings;
- (v) where the matter on which the award is rendered is arbitrable under Ethiopian law;
- (vi) where the arbitral award is not in contravention of public policy, moral and security.

20. Are foreign awards readily enforceable in practice?

There are few cases of this nature that come before Ethiopian courts. That may be partly because Ethiopia has resisted ratifying the New York Convention for too long. For the few cases that reach the courts that have been resolved by international arbitration, the courts had adopted a position that they can review awards given in the context of arbitration agreement even if they have a finality clause in them. The highest court, the court of cassation, had set that rule and enforced it repeatedly.

Another consideration perceived as an obstacle for enforcement of an arbitration award was the requirement of reciprocity. In one instance, the Federal High Court of Ethiopia interprets the requirement of reciprocity very restrictively. In the Salini Construttori case entertained in the Federal Supreme Court of Ethiopia, there was a general bias against foreign/international arbitration, primarily because the case had been brought against a State entity and the court held that reciprocity needed to be proved by a bilateral judicial assistance treaty signed by Ethiopia and the country where the award originates. So far, Ethiopia has signed bilateral judicial assistance treaty, in civil and commercial matters, with China, signed in 2014 and ratified in 2017 by proclamation no. 1007/2017.

Ethiopia has now ratified the New York Convention on February 13, 2020. Also, on April 2, 2021, Ethiopia has enacted an arbitration proclamation. These are a leap of faith for Ethiopia, and they are expected to encourage the development of arbitration and it may not be too long before we see foreign arbitral awards being enforced by the courts in Ethiopia. It must be noted that these are new developments which are in the early stages and their effect concerning enforceability has not yet been tested at the courts.

Alternative dispute resolution

21. Are the parties to litigation or arbitration required to consider or submit to any alternative dispute resolution before or during proceedings?

As per the recent Federal courts proclamation, in some selected cases, labor, succession, family and construction, the disputant parties are required to submit their dispute to court annexed mediation.

22. Are there likely to be any significant procedural reforms in the near future?

The Federal Supreme Court recently issued directive number 25/2025 the Federal Courts Electronic Petition Submission and Litigation. All participants in a case, such as judges, lawyers, litigants, and other stakeholders, will be required to file case documents and signatures in electronic form. The platform allows witness oaths and testimonies to be recorded digitally and gives courts the ability to hold hearings remotely.

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Burkina Faso



Introduction

Burkina Faso has a civil law-based legal system, founded on the Constitution of 2 June 1991, duly ratified or approved treaties and agreements, and laws and regulations. As Burkina Faso is also a member of CEMAC, UEMOA and OHADA, the final jurisdiction of its Supreme Court (*Cour de cassation*) holds solely over matters not governed by the laws introduced by these inter-governmental organisations.

Litigation

1. How are the legal professions organised?

The legal profession is governed by Regulation No 05/CM/UEMOA of 25 September 2014 aimed at harmonising the legal profession in the West African Economic and Monetary Union (UEMOA) area.

At the national level, the profession of lawyer is governed by Law No. 016-2000/AN of 23 May 2000 and Decree 2000-426/PRES/PM/MJ of 13 September 2000. To practise law in Burkina Faso, potential lawyers (*avocats*) must be registered with the Burkina Faso Bar Association and:

- be of legal age and a national of Burkina Faso
- be professionally domiciled in Burkina Faso
- be of good character
- have no criminal record, or any record of disciplinary or administrative penalties
- not have been declared bankrupt
- hold a 4-year law degree (*maîtrise*)
- unless exceptions apply, hold the Certificate of Aptitude for the Profession of Lawyer (*Certificat d'Aptitude à la Profession d'Avocat* or CAPA)

The profession is organised by the Bar Association (*Conseil de l'Ordre*), which makes sure that members abide by the rules governing the profession and takes any necessary disciplinary action. Lawyers registered with the Bar (*Barreau*) can appear

before any court in Burkina Faso and can practise individually or as part of a practice structure.

Foreign lawyers admitted to the Bar in a State that has a reciprocity agreement with Burkina Faso can ask to be registered with the Burkinabe Bar and be admitted to practise law in Burkina Faso.

2. How is the court system structured?

The court system (excluding the criminal courts) is structured as a three-tiered pyramid:

• Courts of original jurisdiction:

- Departmental and urban courts (*Tribunaux départementaux* and *Tribunaux d'arrondissements*) have jurisdiction in all non-contentious matters relevant to individuals such as declarations and certificates of birth, marriage, death, inheritance, guardianship and personal status. In addition, they hear:
 - civil and commercial disputes where no more than XOF 100,000 is at stake, and
 - civil disputes over wandering livestock, destruction of fields, crops in the field or harvested crops, or broken fences where the claimed amount is more than XOF 100,000
- Regional Courts (*Tribunaux de grande instance*) have original jurisdiction over civil and commercial disputes.
- There are also specialised courts for employment and for commercial/trade matters, in particular two Commercial Courts, in Ouagadougou and Bobo-Dioulasso.

• Appellate jurisdictions:

- District Courts hear appeals of decisions handed down by the departmental and urban courts in civil matters. Their judgments can be appealed in turn to the Court of Appeal
- The Court of Appeal hears challenges of decisions in civil and commercial matters handed down by the Regional Courts, the Commercial Court and the Labour Courts

- **The Supreme Court** (*Cour de cassation*) verifies the legality of final decisions issued by lower courts (appellate courts, and first instance courts where no appeal to the appellate courts is allowed). The Supreme Court is subdivided into specialised chambers (criminal, commercial, civil and labour). The conditions for petitioning and appearing before the Supreme Court are set out in Law No. 18-2016/AN of 26 May 2016.

3. What are the time limits for bringing civil claims?

Limitation periods vary depending on the type of action and the parties involved:

- The ordinary limitation period for bringing a civil claim is 30 years (Art. 2262 of the Civil Code)
- For disputes between merchants, the limitation period is 5 years
- Specific limitations apply to certain types of claims. For example:
 - claims by teachers, caterers, and hotel owners against their clients are time-barred after 6 months.
 - claims by merchants against a non-merchant buyer, and claims by doctors, midwives, dentists, or pharmacists against their patients are time-barred after 2 years.
 - claims against architects and contractors under the warranty for major structural work they performed or supervised is time-barred after 10 years.

The limitation period may be shortened or extended by contract in commercial matters only. The limitation cannot, however, be less than one year or more than 10 years.

Limitation periods are primarily tolled by the filing of legal action (even if the court ultimately lacks jurisdiction) or *actes de reconnaissance* (such as acknowledgement of debt, or acknowledgment of parenthood in certain family matters).

4. Are lawyer-client communications privileged?

Lawyers have an absolute confidentiality obligation in all contexts (both as advocate and as counsel). Any breach of a lawyer's confidentiality obligation may result in criminal, civil and disciplinary sanctions.

Clients cannot release their lawyers from their confidentiality obligations.

5. How are civil proceedings commenced, and what is the typical procedure which is then followed?

Civil claims are brought before the courts:

- by way of a written petition (*requête*);
- through an appearance in court along with a declaration for which minutes are drawn up by the Registrar;
- in a joint petition (*requête conjointe*) submitted to the Registrar for the competent court; the parties submit their respective claims to the court stating the points on which they disagree and their respective arguments;
- by way of a summons in which the claimant has the opposing party called to appear before the competent court.

The period for entering an appearance is at least 15 days from service of the summons, with an additional 15 days for parties domiciled outside the territorial jurisdiction of the court and two months for parties residing abroad.

In interim matters (especially commercial matters), it is possible for the presiding judge to issue a summons for a shorter period (day to day or hour to hour).

The Burkinabe legal system does not require parties to go to mediation or conciliation to settle their disputes. However, parties do sometimes use such methods voluntarily for reasons of speed or fairness.

6. What is the extent of pre-trial exchange of evidence, and how is evidence presented at trial?

The Burkinabe Civil Procedure Code does not specify what type of evidence is admissible, but generally speaking, all methods of proof may be admitted by the court.

Evidence is disclosed to the court as along with the parties' claims, and in any case, before the hearing phase has been closed.

At the request of one of the parties, the courts may order the other party to produce any piece of evidence it deems necessary to judge the case. If the assistance of a person with technical skills is necessary to make observations, produce estimates, or conduct research, the court may order an expert review either of its own motion or on request from a party.

New evidence can always be submitted on appeal, but not before the Supreme Court, which rules only on points of law. The parties may, however, present new arguments provided these are purely legal in nature.

7. To what extent are the parties able to control the procedure and the timetable? How long do proceedings last?

The parties do not control the procedure. Once the proceedings have commenced, the timetable is set at the discretion of the court and in practice depends on various factors such as case complexity, the degree of urgency and the court's caseload. Nevertheless, the parties may end the proceedings at any time by mutual agreement.

8. What interim remedies are available to preserve the parties' interests pending judgment?

The following proceedings can be brought in Burkina Faso:

- **Interim proceedings** (*référé*) can be used to obtain interim measures in urgent circumstances without affecting the court's decision on the merits of the case. The claim is reviewed at a hearing held by the presiding judge of the court. The conditions for bringing interim proceedings are urgency, the lack of a serious challenge, and the need to prevent imminent harm, or if the claim is seriously contested, if there is a need to put an end to a clearly unlawful disturbance.
- **Ex parte orders** (*ordonnances sur requête*) can be issued by the presiding judge to preserve the parties' rights and interests without giving all parties an opportunity to respond, if dictated by circumstances. Ex parte orders are immediately enforceable
- **Interim attachment** (*saisie conservatoire*) may be ordered by the presiding judge of the court if the petitioner can show it has a *prima facie* claim and that circumstances may frustrate recovery of the claim.

9. What means of enforcement are available?

The enforcement measures available under Burkinabe law are those provided for in the OHADA Uniform Act Organizing Simplified Recovery Procedures and Enforcement Measures. The principal measures are:

- **Seizure for sale** (*saisie-vente*): any creditor in possession of an enforcement order showing a debt due for immediate payment may have the debtor's tangible, moveable property seized and sold in order to recover the debt from the sale price
- **Third party debt order** (*saisie-attribution de créances*): any creditor in possession of an enforcement order showing a debt due for immediate payment may have receivables owed to the relevant debtor by a third party seized from that third party
- **Penalty payment** (*astreinte*): creditors who obtain an injunction from a court ordering their debtors to either perform or cease and desist from a particular action may ask the court to combine the injunction with a penalty payable for each day/week/month of delay of non-compliance
- **Property foreclosure** (*saisie immobilière*): this enforcement mechanism is applied as a last resort when the seizure of personal property or receivables has been unsuccessful or insufficient. Previous failure to recover the debt must be authenticated by a bailiff (*huissier de justice*); only then may the creditor initiate foreclosure.

The new OHADA Uniform Act Organizing Simplified Recovery Procedures and Enforcement Measures (17 October 2023) simplifies and streamlines certain enforcement procedures in all OHADA Member States. The court or presiding judge may grant a grace period to the unsuccessful party.

10. Does the court have power to order costs? Are foreign claimants required to provide security for costs?

The unsuccessful party bears the costs unless the court decides to charge them to the successful party.

The successful party can recover its legal fees if such costs are requested. In most cases, the legal fees awarded by the courts have been close to the amounts actually incurred.

If the defendant so requests, foreign claimants must provide a personal guarantee (*caution*) as security, and pay an amount into court for any fees and damages that they could be sentenced to pay. The judgment ordering the guarantee payment also sets the amount.

However, defendants are excused from providing security if they can show that real property located in Burkina Faso is sufficient to meet the claim.

11. On what grounds can the parties appeal, and what restrictions apply? To what extent is enforcement suspended pending an appeal? Is there a right of further appeal?

The right of appeal is automatic. Parties have two months to appeal from the date the judgment is issued, if it was after a full hearing of all parties, or two months from service of the judgment if it is handed down by default. In employment law cases, the time limit for appeals is fifteen days, or six days for expedited proceedings. Appeals are possible in all types of

cases, including appeals to the issuing authority (*appel gracieux*). Appeals are filed by way of a bailiff's instrument filed with the Registrar for the Regional Court or the Court of Appeal. It is not possible to make new claims on appeal, except to offset related claims or where the new claim is an argument in defence against the main claim.

Appeals are heard *de novo*, which allows the court to determine the case and rule anew on all of the factual and legal points. An appeal lodged within the deadline suspends enforcement of a lower court decision unless that court also ordered immediate enforcement.

Appellate decisions and those handed down as a final judgments by first degree courts can be appealed to the Supreme Court. The Supreme Court considers the law and not the facts of the case, and the proceedings do not suspend the enforcement of the lower court's decision. If the appeal to the Supreme Court is successful, the case is remanded to a new court for a second appellate judgment. In principle, the remand court of appeal is not required to abide by the Supreme Court's decision. Only a second Supreme Court ruling on the same grounds as the first, by the full Supreme Court, establishes a precedent that must be followed by the remand court of appeal.

12. To what extent can domestic and/or foreign State entities claim immunity from civil proceedings?

In Burkina Faso, proceedings can be brought before the judicial courts against the Government, public authorities and state-owned companies (State liability for failures of the judicial system) and before the public law courts.

For foreign entities, any jurisdictional immunity (in civil, criminal, or public law matters) that may apply derives from the Vienna Convention on Diplomatic Relations of 1961. Burkina Faso ratified this convention on 4 May 1987 and it came into effect on 3 June 1987.

13. What are the procedures for having foreign judgments recognised and enforced?

In Burkina Faso, the Regional Court with territorial jurisdiction over the place of enforcement is competent to grant an order of enforcement, or *exequatur*, of foreign court judgments and decisions by issuing authorities (*décision gracieuse*).

The presiding judge of the court verifies only whether the decision submitted for recognition meets certain requirements under the laws of Burkina Faso. A foreign judgment can only be recognised as enforceable if:

- it is *res judicata* under the laws of its State of origin;
- it is capable of being enforced in its State of origin;
- the official copy satisfies all criteria for being deemed authentic in the State of origin;
- it was handed down by a court with international jurisdiction.

A foreign court has international jurisdiction in cases where:

- the courts of Burkina Faso do not have exclusive jurisdiction for the subject matter;
- the dispute is clearly linked to the State where the matter was submitted to the court;

- the choice of jurisdiction was not fraudulent.
- In practice, it is unusual for parties to encounter major difficulties obtaining *exequatur* of a foreign judgment.

Arbitration

14. Is the arbitration law based on the UNCITRAL Model Law? If so, does it include any key modifications? If not, what type of arbitration does the law provide for?

Burkina Faso is a Member State of OHADA (*Organisation pour l'Harmonisation en Afrique du Droit des Affaires* – Organisation for the Harmonisation of Business Law in Africa). The OHADA Treaty was first signed on 17 October 1993. Under the Treaty, the Council of Ministers of Justice and Finance adopt “uniform acts” that are directly applicable and enforceable in each of the Member States. Arbitration in the OHADA Member States is governed by the revised Uniform Act on Arbitration (the “UAA”) adopted on 23 November 2017.

The UAA is not based on the UNCITRAL Model Law. It was drafted separately, but is nevertheless aligned with the fundamental principles of international commercial arbitration and key features of the UNCITRAL Model Law.

The UAA applies to both national and international arbitration and governs all arbitration proceedings with a seat in a Member State.

One of the most important features of OHADA arbitration is the Common Court of Justice and Arbitration (*Cour commune de justice et d'arbitrage*, the CCJA), which acts as both a permanent arbitral tribunal and as the supreme court of arbitration for all OHADA Member States.

15. What are the main arbitration institutions at the national level?

The main arbitration institution in Burkina Faso is the *Centre d'Arbitrage, de Médiation et de Conciliation de Ouagadougou* (the CAMCO), which operates under the aegis of the Chamber of Commerce. The CAMCO is of particular interest in cases involving commercial disputes.

At the supranational level, there is the CCJA, which was created by the OHADA Treaty and is based in Abidjan, Côte d'Ivoire. The CCJA, which also has a judicial function, serves as an arbitration centre and administers proceedings governed by the CCJA Rules of Arbitration. The CCJA is different from other arbitration centres because it is not a private institution, having been created and organised by OHADA.

Under Article 21 of the OHADA Treaty, the CCJA Rules apply provided that either all or part of the contract in question was performed in the territory of one or more Member States, or at least one of the parties is domiciled or habitually resident in a Member State. According to legal commentators, arbitration under the CCJA Rules should also be possible even where these conditions are not met if the parties have provided for this possibility in their arbitration agreement.

Burkina Faso's 2018 Investment Code provides (Art. 39) for *ad hoc* arbitration for domestic disputes and resolution through ICSID or CCJA arbitration for international disputes.

It is rare to find contracts containing CCJA arbitration clauses in Burkina Faso, due to the high cost of arbitration proceedings for individuals and medium-sized companies.

16. Are there any restrictions on who may represent the parties to an arbitration?

The UAA does not set any restrictions on who can represent parties in an arbitration. They are entitled, but not required, to instruct a lawyer (see Art. 20 of the UAA).

Parties may be assisted by foreign lawyers if they identify the offices of a local Burkinabé law firm as their address for service.

17. What are the formal requirements for an enforceable arbitration agreement?

Article 3-1 of the UAA states that the arbitration agreement must be made in writing or by any other means whereby its existence can be demonstrated. No particular format is required. The UAA also provides that contracts can include an arbitration agreement by reference to a different document.

Generally speaking, local courts interpret the formal requirements for arbitration broadly, and restrict themselves to ascertaining the parties' consent to an arbitration agreement.

18. Will the courts stay litigation if there is a valid arbitration clause covering the dispute? Does this depend on whether the seat of the arbitration is inside or outside the jurisdiction?

Under Articles 11 and 13 of the UAA, national courts must decline jurisdiction where there is an arbitration agreement if the arbitral tribunal has not yet been composed, unless the arbitration agreement is “manifestly void”. Courts cannot decline jurisdiction of their own motion.

If the arbitral tribunal has already been composed, the national court must decline jurisdiction at the request of one of the parties.

In practice, the courts tend to decline jurisdiction in such cases.

Even where the parties have a valid arbitration agreement, however, they can apply to a national court for interim or protective orders if this does not require a review of the case on the merits, provided the circumstances are “clearly shown” to be urgent.

National courts can also intervene in very limited circumstances with a view to assisting the arbitration process (see questions 22 and 23 below).

If the seat of arbitration is outside OHADA, the Burkinabe court may order conservatory or interim measures if these do not require any examination of the merits of the case, over which only the arbitral tribunal has jurisdiction.

19. If the arbitration agreement is silent, how many arbitrators are appointed, and who is the appointing authority?

Although the UAA does not mandate a specific number of arbitrators if the arbitration agreement is silent on this point, it does provide that an arbitral tribunal must have either a sole arbitrator or three arbitrators.

If the parties do not appoint one or more arbitrators, the task falls to the competent court in the Member State of the seat of arbitration. In Burkina Faso, this would be the presiding judge of the Commercial Court for the place of arbitration. (Article 6-3).

20. What rights are there to challenge the appointment of an arbitrator?

Articles 7 and 8 of the UAA set out the rules for the recusal of an arbitrator. An arbitrator must inform the parties of any circumstances that may create a legitimate doubt in their mind about the arbitrator's independence and impartiality. Challenges are decided by the presiding judge of the Commercial Court within 30 days, failing which jurisdiction is transferred to the CCJA unless the parties have agreed on a different procedure. Decisions on challenges rendered by courts of the OHADA Member State are only subject to appeal before the CCJA. CCJA decisions cannot be appealed.

If the parties become aware of a ground for recusal, the challenge must be raised within thirty days of discovering the material fact relied on by the challenging party.

Arbitrators may only be challenged for reasons that come to light after their appointment.

21. Does domestic law contain public policy requirements for arbitration proceedings?

The UAA requires parties to receive equal treatment and to have an opportunity to exercise their rights (Art. 9). Arbitrators may not base their decisions on grounds raised of their own motion without first allowing the parties to submit observations (Art. 14).

Article 18 of the UAA provides that the deliberations are confidential.

The UAA also provides that arbitration cannot last more than six months from the date upon which the last arbitrator accepts the terms of reference, unless that period is extended by agreement of the parties or by the competent court (Art. 12).

22. On what grounds can the court intervene in arbitrations seated inside the jurisdiction?

In principle, if there is an arbitration agreement between the parties, national courts cannot intervene in a dispute until after the award has been issued.

Nevertheless, parties may petition the competent court in Burkina Faso (normally the presiding judge of the Commercial Court) in the following circumstances:

- to resolve difficulties encountered with constituting the arbitral tribunal, to appoint the sole arbitrator or the third arbitrator (Art. 6 and 8)

- to rule on challenges against arbitrators where the parties have not provided for a different procedure (Art. 8)
- to extend the deadline for the conclusion of the arbitration where there is no agreement between the parties to do so, at the request of a party or the arbitral tribunal (Art. 12)
- to order interim or conservatory measures recognised as urgent and where reasons have been given, provided the measures do not require a review of the case on the merits (Art. 13)
- to assist the arbitral tribunal, at its request, with the collection of evidence (Art. 14)

23. On what grounds can the court intervene in arbitrations seated outside the jurisdiction?

As stated above (question 22), national courts cannot intervene in a dispute where there is an arbitration agreement. In addition, all measures relating to the composition of the arbitral tribunal and conduct of the proceedings fall under the jurisdiction of the courts of the country in which the arbitration is seated.

However, it is possible for national courts (other than the competent court of the Member State of the seat) to intervene to order conservatory or interim relief under the conditions described above in question 18 (Art. 13).

24. Do arbitrators have powers to grant interim or conservatory relief?

Although this matter is not dealt with directly in the UAA, legal commentators generally agree that it is possible for arbitrators to order interim or conservatory relief, unless the parties have agreed otherwise.

In arbitrations conducted under the aegis of the CAMCO, the arbitral tribunal is expressly empowered to order protective measures (Art. 27 of the CAMCO Arbitration Rules).

25. When and in what form must the award be delivered?

Save as otherwise agreed by the parties, arbitral awards must be issued within six months from the date on which all of the arbitrators have accepted the terms. This period can be extended by agreement between the parties or by order of the competent court of the Member State – in Burkina Faso, the presiding judge of the Commercial Court – at the request of a party or the arbitral tribunal (Art. 12 of the UAA).

If the arbitration is governed by CAMCO rules, requests for an extension of the 6-month time limit are submitted to the CAMCO mediation and arbitration committee (Art. 29 of the CAMCO Arbitration Rules).

If the arbitration is governed by CCJA rules, authority to extend the deadline belongs to the CCJA (Art. 12.4 of the CCJA Arbitration Rules). Parties can set special requirements for the form of the award. If they do not, awards are issued by majority decision (for tribunals with three arbitrators), and the grounds must be stated. Awards must be signed by at least two of the three arbitrators.

26. Can a successful party recover its costs?

The UAA does not make any provision for cost recovery.

For institutional arbitration, however, the relevant rules (CCJA or CAMCO) clearly state that arbitrators determine arbitration fees and decide which party is to bear the costs, or how the costs are to be shared between them.

27. On what grounds can an award from an arbitration seated in the jurisdiction be appealed to the court?

An application to set aside is the only remedy against an arbitral award. Applications must be brought before the competent court in the Member State where the award was issued within one month from the date of notification that an enforceable award has been issued (Art. 25 and 27 of the UAA).

Under Article 9 of Law No. 047/2017 of 14 November 2017, the Court of Appeal for the seat of the arbitration has jurisdiction set aside an award in Burkina Faso.

The circumstances in which an application to set aside an award can be brought are as follows (Art. 26 of the UAA):

- the arbitral tribunal ruled despite the lack of an arbitration agreement or in reliance on an invalid or expired agreement;
- the arbitral tribunal was not properly constituted;
- the arbitral tribunal did not rule in compliance with its terms of reference;
- the right to be heard (*contradictoire*) was not observed;
- the award breaches an international public policy provision;
- no reasons are given for the award.

Bringing an application to set aside an arbitral award postpones enforcement, unless the tribunal ordered immediate enforcement.

The Court of Appeal must issue a decision within 1 month; exceptionally, this time can be extended by an additional 15 days. The decision can only be appealed to the CCJA (Art. 25 and 28 of the UAA).

Set-aside applications are the only remedy available to parties in national court. Other remedies, namely third party challenges and revision of the award, must be submitted to the arbitral tribunal (Art. 25).

28. Can a foreign arbitration award be appealed in the local courts?

No.

29. What are the procedures for the enforcement of: (i) awards rendered in other jurisdictions and (ii) domestic awards?

To enforce awards issued in an OHADA Member State, the UAA requires parties to obtain an enforcement order (exequatur) from the competent court in that Member State (Art. 30).

Under Article 6 of Law No. 047/2017 of 14 November 2017, the presiding judge of the Commercial Court of Ouagadougou has exclusive jurisdiction to grant exequatur for the enforcement of arbitral awards in Burkina Faso.

The party seeking exequatur must produce the original arbitral award, together with the arbitration agreement, or copies of these documents meeting authentication requirements and, where necessary, a certified translation into French.

Any decision refusing to recognize an arbitral award must include reasons, specifying why the award is contrary to public policy. Decisions rejecting exequatur can be appealed to the CCJA, but decisions granting it are not subject to appeal. If the presiding judge of the Commercial Court has not ruled within 15 days, the exequatur order is deemed granted.

Awards issued in a non-OHADA Member State are recognised under the conditions set out in the applicable international agreements or, if none, the conditions set out in the UAA (Art. 34).

Burkina Faso is a party to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 10 June 1958 (the New York Convention), which facilitates the recognition and enforcement of foreign arbitral awards. For awards handed down outside OHADA Member States, the criteria for recognition under national law are those set out in the New York Convention, ratified by Burkina Faso on 23 March 1987 and effective since 21 June 1987.

Exequatur proceedings require a hearing of all parties; they are brought by petition before the presiding judge of the Commercial Court of Ouagadougou. The court primarily hears procedural issues and examines whether the requirements for international jurisdiction and due process have been satisfied.

Refusal to grant recognition can be appealed to the Supreme Court of Burkina Faso if the UAA does not apply. If the court does grant exequatur, an award is immediately enforceable regardless of any pending Supreme Court appeal.

30. Are foreign awards readily enforceable in practice?

Yes, provided they are first granted recognition. Once an award has been recognised, it is enforceable on the same terms as national judgments.

Alternative dispute resolution

31. Are the parties to litigation or arbitration required to consider or submit to any alternative dispute resolution before or during proceedings?

Proceedings are not subject to any mandatory prior mediation or conciliation unless the law provides otherwise. However, in all areas, parties may enter a voluntary appearance before the competent court for the purposes of conciliation. Claimants may also have a summons served on defendants requiring conciliation, provided the time frame for issuing the summons is observed (Art. 451 of the Code of Civil Procedure).

Reforms

32. Are there likely to be any significant procedural reforms in the near future?

None that we are aware of.

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Gabon



Introduction

The laws of Gabon are based on the civil law tradition. The judicial system is based on the Constitution of 19 December 2024 and Organic Law No. 008/2019 of 4 July 2019, establishing the organization, composition, jurisdiction, and functioning of the courts of the judicial system. Gabon is also a member of CEMAC and OHADA.

Litigation

1. How are the legal professions organised?

The legal profession is governed by Law No. 013/2014 of 7 January 2015 (completed by Law No. 022/2020 of July 17, 2020, amending and supplementing certain provisions of Law No. 13/2014 of January 7, 2015, establishing the legal framework for the practice of lawyers in the Gabonese Republic) and by the Internal Bar Regulations. To practise law in Gabon, potential lawyers (*avocats*) must be registered with the Gabonese Bar and:

- have Gabonese nationality (or have acquired nationality through naturalisation, marriage, adoption, etc., at least 10 years prior to the date of application);
- be at least 21 years old;
- hold a master's degree (*maîtrise*) or bachelor's degree (*licence*) in law, or a foreign legal diploma recognised as equivalent;
- be of good moral character;
- not have been sentenced for offences other than unintentional offences;
- hold a Certificate of Aptitude for the Profession of Lawyer (*Certificat d'aptitude à la profession d'avocat* or CAPA)
- have completed a preparatory internship of one year alongside a lawyer who (i) has been registered for at least five years, (ii) is up to date in their Bar membership fees, (iii) has not been suspended for at least three years, and (iv) has sufficient resources for the intern to receive clients while complying with confidentiality obligations;
- be sponsored by a law firm.

The profession is organised by the Bar Association (*Conseil de l'Ordre*), which ensures that members abide by the rules governing the profession and takes any necessary disciplinary action. Lawyers registered with the Bar can appear before any court and can practise individually or in a practice structure.

No distinction is made between lawyers doing advisory work (solicitors) or advocacy (barristers).

Foreign lawyers can plead before the Gabonese courts if Gabonese lawyers have reciprocal rights in their home countries. Before they can plead in Gabon, a foreign lawyer must notify the President of the Bar (*Bâtonnier*) in advance of their appearance, indicate the case, appear alongside a lawyer registered with the Gabonese Bar, and have a fee agreement with the Gabonese attorney. Foreign lawyers registered with a foreign Bar may be listed with the Bar as an associate of a Gabonese lawyer, pursuant to a decision from the Bar Association.

In addition to lawyers, there is also the profession of Certified Legal Counsel established by the law of 23 September 1988 on the status of legal counsel in Gabon. A natural person or legal entity with the status of legal counsel is competent to provide legal advice, draft private deeds on behalf of clients, assist clients in drafting declarations, briefs, or documents intended for administrative authorities, and represent their clients before specific courts or judicial authorities if the law permits.

2. How is the court system structured?

The Gabonese court system includes:

- Courts of First Instance (*Tribunaux de Première Instance*), with original jurisdiction to hear all contentious and non-contentious matters for which jurisdiction is not expressly and exclusively attributed to another court. They are organised into Chambers:
 - The Civil Chamber has jurisdiction over civil cases;
 - The Criminal Chamber has jurisdiction over most offenses;
 - Commercial Courts have jurisdiction over commercial matters;
 - The Employment Chamber (also referred to as the Labour Tribunal) is the first instance forum for all disputes arising out of the performance of an employment contract.

- Courts of Appeal, which are located in Libreville, Franceville, Port-Gentil, Oyem, and Mouila
- The Supreme Court (*Cour de cassation*), which has four chambers (criminal, commercial, civil and employment law)
- Special Courts, including:
 - The Special Court for Economic and Financial Crime. This Court has special jurisdiction to investigate and prosecute economic and financial crimes such as corruption, extortion, influence peddling, money laundering and the trafficking of ivory, raw materials or pharmaceuticals. It also has jurisdiction in respect of acts of terrorism, criminal conspiracy or murder committed for purposes of removal of organs, and human trafficking.
 - The Special Court of Appeal has jurisdiction over appeals of decisions involving investigations conducted or trials held by the Special Court for Economic and Financial Crime.

3. What are the time limits for bringing civil claims?

Limitation periods vary depending on the type of action and the parties involved:

- the ordinary limitation period for bringing an action is 30 years;
- the limitation period for commercial actions is five years;
- specific limitation periods apply to certain types of action, for instance:
 - salary claims (five years);
 - claims over commercial sales (two years);
 - action for rescission (*action rédhibitoire*) (one year);
 - actions to rescind a gift (*revocation donation*) (one year);
 - annulment of a marriage (one year);
 - determination of parenthood (*contestation de filiation légitime*) (three months).

The limitation period can be modified by contract in commercial matters only, but not reduced to less than one year or extended to more than 10 years.

Limitation periods are most often tolled by the filing of legal actions or acts of acknowledgement (*actes de reconnaissance, for instance acknowledgment of debt or of parenthood*). It is always possible to suspend a limitation period by agreement between the parties.

4. Are lawyer-client communications privileged?

Exchanges between lawyers and their clients are confidential. Lawyers can be held liable for failures to maintain confidentiality. Disciplinary penalties may apply, without prejudice to claims based on any infringements under criminal law.

Clients cannot release their lawyers from this obligation.

5. How are civil proceedings commenced, and what is the typical procedure which is then followed?

Civil proceedings are brought before the courts:

- in a petition submitted to the registrar for the appropriate court;
- through the voluntary appearance of the parties before the court;
- by joint petition in which the parties submit their respective claims to the judge, the points of disagreement and the arguments of each side.

All civil, commercial and employment claims are submitted by petition. Orders are then issued authorising the party to have a summons served that states the court, place, time and date. A copy of the petition and authorising order is provided to the bailiff, who then handles service of the summons.

The period for entering an appearance is at least 15 days from the summons. The deadlines for entering an appearance, challenging a claim, and appealing cases to the Court of Appeal or Supreme Court are increased by one month for parties domiciled outside the court's territorial jurisdiction, and by two months in all other cases.

These deadlines do not apply to interim proceedings, where the timeframes are left to the judge's discretion.

Defendants must comply with the deadlines set by the case management judge (*la mise en état*) for presenting arguments in their defence.

There is no mandatory prior mediation procedure except in cases involving payment orders or in labour disputes.

6. What is the extent of pre-trial exchange of evidence, and how is evidence presented at trial?

As a general rule, all types of evidence allowed under ordinary law may be presented (notarised instruments, witness testimony, private instruments, confessions, etc.).

There is no obligation equivalent to "discovery" under common law countries.

The party relying on a piece of evidence must communicate it to all other parties to the proceedings. Communication must be spontaneous. If it is not, a party can ask the judge for a preliminary ruling ordering another party to produce evidence.

Evidence is submitted to the court together with the parties' claims. New evidence is allowed until the trial phase has been closed and the parties have nothing further to submit. New evidence can also be submitted in an appeal to the Court of Appeal or the Supreme Court (*Cour de Cassation*).

Courts may order an expert review if there are legitimate reasons to preserve or establish proof of certain facts that may be key to the dispute, either before or during the trial, if there is not sufficient evidence in the case file. The expert review must be proportional to the dispute - the simplest and least costly solution. Other parties must be given the chance to challenge the expert evidence. The expert's conclusions or observations are not binding on the court.

7. To what extent are the parties able to control the procedure and the timetable? How long do proceedings last?

The parties do not control the procedure. Once proceedings have commenced, the timetable is set at the discretion of the court and in practice depends on various factors, such as case complexity, degree of urgency, and court caseload.

The average length is one year for proceedings on the merits and six months for ordinary interlocutory petitions. The average length of interim proceedings is at the discretion of the judge receiving the petition.

The average length for appellate proceedings is one year, or eight months in employment matters. Supreme Court appeals take from two to four years.

8. What interim remedies are available to preserve the parties' interests pending judgment?

There are urgent procedures in Gabon for parties to protect their interests while a decision on the merits is pending:

- **Interim proceedings** (*Procédure de référé*) can be used to obtain interim measures in urgent circumstances without prejudice to the final ruling on the merits. An interim petition is submitted at a specific hearing before the presiding judge of the court, and all parties must have an opportunity to respond. Interim proceedings can be used to prevent imminent harm, to put an end to a clearly unlawful disturbance, to grant a provision to a creditor if a debt cannot be seriously contested, or where enforcement of a court decision or other enforceable title is encountering difficulties, if no application has been made to the enforcement judge.
- **Ex parte orders** (*ordonnances sur requête*) are issued by the presiding judge to order any measures necessary to preserve the parties' rights and interests where circumstances demand that the decision be taken without input from the other party. *Ex parte* orders are immediately enforceable.
- **Interim attachment** (*Procédure de saisie conservatoire*) secures the debtor's affected movable property and prevents dissipation to frustrate a future judgment in the creditor's favour. The party seeking attachment must demonstrate that a debt exists in principle. Requests for Conservatory attachment are submitted to the registrar. Unless otherwise provided by law, an order must be issued to authorise the attachment. The order expires within three months. The court must receive an application for enforceable title to confirm the attachment. No more than one month after interim attachment was ordered.

9. What means of enforcement are available?

Judgments are only enforceable once they can no longer be appealed and become final, unless immediate enforcement is automatic or has been ordered in specific cases.

The enforcement measures under Gabonese law are those provided for in the OHADA Uniform Act Organising Simplified Recovery Procedures and Measures of Execution and include:

- **Seizure and sale** (*saisie vente*): any creditor in possession of an enforcement order showing a debt due for immediate payment may have the debtor's tangible, moveable property seized and sold in order to recover the debt from the sale price.

- **Third party debt order** (*saisie-attribution de créances*): any creditor in possession of an enforcement order showing a debt due for immediate payment may seize the debtor's receivables held by a third party.

- **Penalty payment** (*astreinte*): creditors who obtain an injunction from a court ordering their debtors to either perform or cease and desist from a particular action may ask the court to combine the injunction with a penalty payable for each day/week/month of delay or non-compliance
- **Property foreclosure** (*saisie immobilière*): this is a procedure of last resort when the seizure of personal property or of receivables is unsuccessful or insufficient. Previous failure to recover the debt must be authenticated by a bailiff (*huissier de justice*); only then may the creditor initiate foreclosure.

The court may grant grace periods to the unsuccessful party, save for maintenance payments (*dette d'aliments*) or debts pertaining to negotiable instruments (*dettes cambiales*).

The new OHADA Uniform Act Organizing Simplified Recovery Procedures and Enforcement Measures (17 October 2023) simplifies and streamlines certain enforcement procedures in all OHADA Member States.

10. Does the court have power to order costs? Are foreign claimants required to provide security for costs?

The unsuccessful party bears the costs unless the court issues a reasoned decision charging them (or any part of them) to another party. The unsuccessful party only bears the cost of legal fees if their reimbursement was specifically requested from the court. Legal fees are assessed at the judge's discretion, and the discrepancy between the fees ordered by the judge and the fees actually borne in practice is considerable.

Deposits of a provision to cover legal costs are requested of all parties who wish to bring civil proceedings in Gabon. Subject to international agreements and conventions, foreign claimants or participating parties must provide security for the payment of costs as well as any damages they may be ordered to pay, if the defendant so requests before any preliminary motions are entered. A judgment ordering security also sets the amount.

11. On what grounds can the parties appeal, and what restrictions apply? To what extent is enforcement suspended pending an appeal? Is there a right of further appeal?

Parties have one month to appeal judgments handed down by courts with original jurisdiction. For cases that were litigated, appeals must be filed by written or verbal notice received and recorded either by the registrar for the court of the original ruling or the registrar for the Court of Appeal. New claims cannot be made on appeal, except to offset related claims or where the new claim is an argument in defence against the main claim. If filed in due time, appeals suspend the enforcement of the judgment unless the court has ordered immediate enforcement.

After a decision has been handed down on appeal, a further appeal to the Supreme Court (*Cour de Cassation*) is possible. The Supreme Court only judges points of law, not facts. In principle, Supreme Court appeals do not suspend enforcement. If the appeal is successful, the case is remanded to a new court of

appeal or to the same court of appeal with a new panel hearing the case. In principle, the court of remand follows the Supreme Court decision.

12. To what extent can domestic and/or foreign State entities claim immunity from civil proceedings?

Legal action can be brought against the State and public authorities. State-owned companies do not have any immunity from jurisdiction.

Any immunity allowed to foreign entities derives from international agreements on diplomatic and consular relations, particularly from headquarters agreements between those entities and the State of Gabon.

13. What are the procedures for having foreign judgments recognised and enforced?

Gabonese law provides that foreign decisions rendered in civil matters, whether ex gratia or contentious and, including those issued by a criminal court ruling on civil compensation related to a criminal offense, cannot be enforced against property or persons in Gabon unless an exequatur order is granted by the Court of First Instance of Libreville (*Tribunal de Première Instance*).

In Gabon, a foreign judgment is deemed res judicata in all cases only if it has been declared enforceable.

The party invoking a judicial decision or seeking its enforcement must produce:

- (a) an authenticated copy of the said decision;
- (b) the original copy of the writ of service of the judgment or any document proving service;
- (c) a certificate from the clerk of the court that issued the judgment, stating that there is no challenge or appeal against it.

The courts may grant a request for exequatur on the following conditions:

- (i) jurisdiction to hear the dispute does not lie with a Gabonese court and the foreign court that ruled on the case had jurisdiction under the rules followed in the country concerned;
- (ii) the proceedings were conducted properly and the defendant was given the opportunity to present a defence;
- (iii) the dispute has been correctly resolved with regard to the facts of the case and the interpretation of the rules of law applied to the case;
- (iv) there is no Gabonese decision regarding the case or a Gabonese court has not been already seized of the dispute;
- (v) the decision contains nothing contrary to Gabonese public policy.

The court cannot revise the foreign judgment. However, it can find that only certain items of the decision are enforceable, and reduce the amount of any fine or damages.

Arbitration

14. Is the arbitration law based on the UNCITRAL Model Law on International Commercial Arbitration? If so, does it include any major modifications? If not, what type of arbitration does the law provide for?

Gabon is a Member State of the OHADA (*Organisation pour l'Harmonisation en Afrique du Droit des Affaires* - Organisation for the Harmonisation of Business Law in Africa). The OHADA Treaty was first signed on 17 October 1993. Under the OHADA Treaty, the Council of Ministers of Justice and Finance adopt "uniform acts" that are directly applicable and enforceable in each of the Member States. Arbitration in the OHADA Member States is governed by the Uniform Act on Arbitration within the Framework of the OHADA Treaty, which revised version was adopted on 23 November 2017 (the "UAA"),

The UAA is not based on the UNCITRAL Model Law. It was drafted separately but is nevertheless aligned with the fundamental principles of international commercial arbitration and key features of the UNCITRAL Model Law.

The UAA applies to both national and international arbitration and governs all arbitration proceedings with a seat in a Member State.

Prior to the adoption of the UAA, arbitration law was governed by articles 972 to 993 of the Gabonese Civil Procedure Code. The UAA has now replaced all existing domestic law on the subject, save any non-contrary provisions.

One of the most important features of OHADA arbitration is the Common Court of Justice and Arbitration (*Cour commune de justice et d'arbitrage*) (the CCJA), which acts as both a permanent arbitral tribunal and the supreme court of arbitration for all OHADA Member States.

15. What are the main arbitration institutions at the national level?

The main domestic arbitration centre in Gabon is the *Institut International de Médiation, d'Arbitrage et de Conciliation* (IIMAC) created in Libreville by Decree No. 000165/MJGS/SG/DGAC/DAC of 18 March 2020. It officially launched on 20 December 2020 and trained its first class of arbitrators in May 2021 for the settlement of commercial disputes in the OHADA zone. It has been operational since 2021.

Most arbitration proceedings in Gabon are *ad hoc*. The main arbitration institution is the CCJA, which was created by the OHADA Treaty and is based in Abidjan, in Côte d'Ivoire. The CCJA, which also has a judicial function, acts as an arbitration centre and administers proceedings governed by the CCJA Rules of Arbitration. The CCJA is different from other arbitration centres in that it is not a private institution but was created and organised by OHADA.

For the CCJA Rules to be applicable, article 21 of the OHADA Treaty stipulates that all or part of the contract in question must be performed within the territory of one or more Member States or that at least one of the parties must be domiciled or habitually resident in a Member State. According to legal commentators, it should also be possible to go to arbitration under the CCJA Rules even if these conditions are not met, if the parties have provided for this possibility in their arbitration agreement.

16. Are there any restrictions on who may represent the parties to an arbitration?

The UAA does not set any restrictions on who can represent parties in an arbitration. They are entitled but not required to instruct a lawyer (Art. 19 of the UAA).

17. What are the formal requirements for an enforceable arbitration agreement?

Article 3-1 of the UAA states that the arbitration agreement must be made in writing or by any other means of which evidence can be provided. No particular format is required. The UAA also provides that contracts can include an arbitration agreement by reference to a separate document.

18. Will the courts stay litigation if there is a valid arbitration clause covering the dispute? Does their approach differ according to whether the seat of the arbitration is inside or outside the jurisdiction?

Under articles 11 and 13 of the UAA, national courts must decline jurisdiction where there is an arbitration agreement if the arbitral tribunal has not yet been constituted, unless the arbitration agreement is “manifestly void”. Courts cannot decline jurisdiction of their own motion.

If the arbitral tribunal has already been composed, the national court must decline jurisdiction at the request of one of the parties.

In practice, the courts tend to decline jurisdiction when an arbitration agreement is legitimately invoked (see *SOGEF S.A. v. CELTEL Gabon S.A.*, Libreville First Instance Court, Commercial Chamber, No. 371/2005-2006 of 31 May 2006; *Halliburton v. Alto Service Gabon*, Port-Gentil First Instance Court, Commercial Chamber, No. 34/2011-2012 of 25 May 2012).

Parties governed by an arbitration agreement do have the option of applying to a national court for interim or conservatory measures if this does not require a review of the case on the merits, and if the circumstances are “clearly shown” to be urgent.

National courts can also intervene in very limited circumstances with a view to assisting the arbitration process (see questions 22 and 23 below).

There is nothing to prevent a party from applying to the Gabonese courts where the seat of arbitration is outside the OHADA area and interim measures are necessary vis-à-vis a Gabonese party.

19. If the arbitration agreement is silent, how many arbitrators are appointed, and who is the appointing authority?

The UAA does not mandate a specific number of arbitrators if the arbitration agreement is silent on this point, but it does provide that an arbitral tribunal must have either a sole arbitrator or three arbitrators. Failing an agreement between the parties, the arbitral tribunal consists of a sole arbitrator.

If the parties do not appoint one or more arbitrators, the task falls to the competent court in the Member State of the seat of arbitration. In Gabon, this is the Commercial Chamber of the Court of First Instance.

20. What rights are there to challenge the appointment of an arbitrator?

Articles 7 and 8 of the UAA set the rules on arbitrator recusals. An arbitrator must notify the parties of “any circumstance” for which they may be challenged. Any disputes over recusal will be settled by the Court of First Instance within 15 days unless the parties have provided for a different procedure for challenging arbitrators. Decisions on recusal are not subject to appeal.

Arbitrators may only be challenged for reasons that come to light after their appointment.

21. Does domestic law contain public policy requirements for the procedure to be followed?

The UAA requires parties to receive equal treatment and to have an opportunity to exercise their rights (Art. 9); arbitrators may not base their decisions on reasons considered at their own discretion without first allowing the parties to submit observations (Art. 14).

Article 18 of the UAA provides that the deliberations are confidential.

The UAA also provides that arbitration cannot last more than six months from the date upon which the last arbitrator accepts the terms of reference, unless that period is extended by agreement of the parties or by the Court of First Instance, which has jurisdiction (Art. 12).

22. On what grounds can the court intervene in an arbitration seated inside the jurisdiction?

In principle, where there is an arbitration agreement, the national courts cannot intervene in a dispute until the award has been issued.

- Nevertheless, parties may consult the competent court in Gabon in the following circumstances:
- to resolve difficulties encountered with composing the arbitral tribunal, to appoint the sole arbitrator or the third arbitrator (Art. 5 and 8)
- to rule on challenges against arbitrators where the parties have not provided for a different procedure (Art. 7)
- to extend the deadline for the conclusion of the arbitration where there is no agreement between the parties to do so, at the request of a party or the arbitral tribunal (Art. 12)
- to order interim or protective measures in cases of emergency (with reasons given), provided the measures do not require a review of the case on the merits (Art. 13)
- to assist the arbitral tribunal, at its request, with the production of evidence (Art. 14).

Where the arbitration is not governed by the UAA, the presiding judge of the Court of First Instance appoints the president of the arbitral tribunal.

23. On what grounds can the court intervene in an arbitration seated outside the jurisdiction?

In principle, national courts cannot intervene in an arbitration seated outside their jurisdiction where there is an arbitration agreement, as stated above. In addition, all measures relating to the composition of the arbitral tribunal and the conduct of

proceedings fall under the jurisdiction of the courts of the country in which the arbitration is seated.

However, it is possible for national courts other than the competent court of the Member State of the seat to intervene to order conservatory or interim relief under the conditions described above in question 18 (Art. 13).

24. Do arbitrators have powers to grant interim or conservatory relief?

Although this is not dealt with directly in the UAA, legal commentators generally agree that it is possible for arbitrators to order interim or conservatory relief, save where the parties have agreed otherwise.

25. When and in what form must the award be delivered?

Save as agreed otherwise by the parties, arbitral awards must be issued within six months from the date on which all of the arbitrators have accepted the terms. This period can be extended by agreement between the parties or by order of the competent court of the Member State (in Gabon, the Court of First Instance) at the request of a party or the arbitral tribunal (Art. 12).

Parties can set special requirements for awards. If they do not, awards are issued by majority, where the tribunal counts three arbitrators, and must be reasoned. They must be signed by at least two of the three arbitrators.

If the UAA does not apply, the Gabonese Civil Procedure Code provides that unless a timeframe is set in the arbitration agreement, the arbitrators' assignment lasts no more than three months from the date of appointment.

26. Can the successful party recover its costs?

The UAA does not contain any provisions on cost recovery, but the Gabonese Civil Procedure Code does. Please see question 10 above.

Where arbitration is conducted under the aegis of the CCJA, the arbitrator is empowered to award costs.

27. On what grounds can an award from an arbitration seated in the jurisdiction be appealed to the court?

The only remedy against an arbitral award is an application to set aside that award. Applications must be filed with the competent court in the Member State where the award was issued, within one month from the date of service of the award once rendered enforceable (Art. 25 and 27 of the UAA).

The circumstances in which an application to set aside can be brought are as follows (Art. 26):

- the arbitral tribunal ruled without an arbitration agreement or in reliance on an invalid or expired agreement
- the arbitral tribunal was not properly constituted
- the arbitral tribunal did not rule in compliance with its terms of reference
- the right to be heard (*contradictoire*) was not observed

- the arbitral tribunal breached a public policy rule of the OHADA Member States
- no reasons were given for the award

Bringing an application to set aside an arbitral award postpones enforcement, unless the tribunal ordered immediate enforcement.

The Court of Appeal must issue a decision within 1 month; exceptionally, this time can be extended by an additional 15 days. The decision can only be appealed to the CCJA (Art. 25 and 28).

Set-aside applications are the only remedy available to parties before national courts. The other remedies, namely third party challenges and requests for revision of the award, must be submitted to the arbitral tribunal (Art. 25).

28. Can a foreign arbitration award be appealed in the local courts?

The Gabonese Civil Procedure Code (Art. 989) provides that appeals involving arbitral awards lie with the Court of Appeal. The provision makes no distinction between arbitral awards handed down in Gabon or abroad:

- For awards handed down in Gabon and other OHADA Member States, the UAA applies (see question 27 above).
- For other foreign awards, article 989 may apply. If so, the general legal rule whereby appeals imply a full review of the case (procedure, facts and merits) would apply.

29. What are the procedures for the enforcement of: (i) awards rendered in other jurisdictions and (ii) domestic awards?

To enforce awards issued within an OHADA Member State, the UAA requires parties to obtain the recognition (*exequatur*) of the award from the competent court in that Member State (Art. 30). In Gabon, this is the General Court (*Tribunal de première instance*).

This requires the production of the original arbitral award, together with the arbitration agreement or copies of these documents meeting the necessary authentication requirements and, where necessary, a certified translation into French (Art. 31).

Decisions refusing to recognise an arbitral award can be appealed to the CCJA but decisions granting recognition are not subject to appeal (Art. 32).

Awards issued in a different OHADA Member State are recognised in other Member States under the conditions set forth in the applicable international agreements or, failing this, under the conditions stated in the UAA.

Gabon is party to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 10 June 1958 (the New York Convention), which facilitates the recognition and enforcement of foreign arbitral awards. The New York Convention criteria apply to awards handed down outside OHADA Member States.

There are no statistics about the average time it takes to enforce a foreign arbitral award in Gabon. For awards subject to the UAA, exequatur decisions have been issued by the Libreville General Court in less than three months.

30. Are foreign awards readily enforceable in practice?

Yes.

Alternative dispute resolution

31. Are the parties to litigation or arbitration required to consider or submit to any alternative dispute resolution before or during proceedings?

Prior conciliation is not mandatory unless the law provides otherwise (Art. 425 of the Civil Procedure Code). For example, cases involving payment orders or labour disputes are subject to a mandatory mediation procedure.

Beyond this, parties may engage in mediation or conciliation either of their own accord or as ordered by the court at any point in the proceedings (Art. 425 and 426 of the Civil Procedure Code).

Reforms

32. Are there likely to be any significant procedural reforms in the near future?

None that we are aware of.

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Gambia



Introduction

The Gambia implements a tripartite legal system based on English common law, Sharia (Islamic) law, and customary law. The 1997 Constitution recognises statutory enactments, decrees passed by the Armed Forces Provisional Ruling Council (during the transition from military rule from 22 July 1994 to the coming into force of the Constitution), common law and principles of equity, customary law as it concerns the communities to which it applies, and Sharia law on matters of marriage, divorce and inheritance among people of Islamic faith.

Litigation

1. What is the structure of the legal profession?

The legal profession comprises legal practitioners enrolled to practise law by the General Legal Council established under the Legal Practitioners Act (Cap. 7:01) and the common law judges who preside in the High Court, Court of Appeal, Supreme Court, Court Martial and the Magistrates' Courts. In its wider sense the legal profession could be regarded as including the Cadis trained in Islamic law, who preside over the Cadi Courts, and Sharia practitioners (persons qualified in Sharia law permitted to represent litigants before the Cadi Court).

The legal profession is fused, such that there is no distinction between barristers and solicitors. Persons trained as barristers and solicitors anywhere in the Commonwealth may be enrolled to practise as legal practitioners if they meet the requirements specified in the Legal Practitioners Act and fulfil the conditions prescribed by the General Legal Council established under that Act. These include being a citizen of the Gambia (or non-citizen who has been resident for a period of not less than 15 years), having a law degree and a professional qualification which permits the applicant to practise law anywhere in the Commonwealth, having no criminal record, and character references from two current members of the Bar.

According to section 33 of the District Tribunals Act, lawyers have no rights of audience before District Tribunals. The rationale for this may be because common law-based rules of evidence or rules of civil procedure do not include customary law. Only lawyers who are qualified in Sharia law may appear before the Cadi Courts.

2. What is the structure of the court system?

The judicature comprises of the superior courts of record, the subordinate courts, and the Cadi Courts.

The superior courts comprise:

- The Supreme Court
- The Gambia Court of Appeal
- The High Court and Special Criminal Court

The subordinate courts comprise:

- Magistrates' Courts
- Children's Courts
- District Tribunals
- Industrial Tribunals
- Rent Tribunals
- Traffic Offences Courts
- Anti-littering Court

Sharia courts comprise:

- Cadi Court
- Cadi Appeal Panel

Appeals lie from the subordinate courts to the High Court, from the High Court to the Gambia Court of Appeal and from the Gambia Court of Appeal to the Supreme Court as a final Court of Appeal. The High Court also has supervisory jurisdiction over subordinate courts and administrative tribunals and may issue orders and prerogative writs in the nature of *certiorari*, *mandamus*, prohibition and *habeas corpus* for the purpose of enforcing its supervisory jurisdiction.

The Supreme Court has original jurisdiction in matters relating to the interpretation and enforcement of the Constitution (other than fundamental human rights provisions in respect of which the High Court has original jurisdiction), election of the President of the Republic and matters relating to privilege claimed by the State regarding the production of any government document on grounds of security or public interest.

Appeals lie from the Cadi Court to the Cadi Appeal Panel as a final court in matters in which the Cadi Courts have jurisdiction.

3. What are the time limits for bringing civil claims?

The Limitation Act (Cap. 8:01) prescribes limitation periods for instituting civil claims. The Labour Act (Cap. 56:01) also prescribes time limits for claims under that Act. The following periods generally apply, subject to other conditions prescribed under the Limitation Act:

- 12 years applies to most property claims (including claims to recover land or money secured under a mortgage, foreclosure actions, and claims in relation to the estates of deceased persons);
- six years applies to actions in tort and contract, as well as sums recoverable under statute, recovery of rent, mortgage interest, trust property, and enforcement of judgments/arbitral awards;
- three years applies to personal injury (Including death) claims;
- Two years applies to claims arising under the Labour Act, breach of contract of employment, or claims for recovery of contribution in respect of any damage; and
- Six months applies to claims of unfair dismissal under the new Labour Act 2023

Time does not run in the case of fraud, concealment or mistake until discovery. Time does not run during a disability.

4. Are communications between a lawyer and his/her client privileged (ie, Protected from disclosure to a court/tribunal and opposing parties)?

Yes. Sections 172 and 175 of the Evidence Act 1994 (Cap. 6:06) specifically provides that communications between a lawyer and his/her client, including documents and advice, are privileged from disclosure. Excluded from this privilege are communications in furtherance of an illegal purpose and information regarding the commission of a crime or fraud.

Further, no one can be compelled by any court to disclose confidential information between himself/herself and an instructed lawyer unless he/she offers himself/herself as a witness. In such circumstances, he/she may be compelled to disclose confidential information to the extent necessary to explain evidence given by him/her but not others.

5. How are civil proceedings commenced, and what is the typical procedure which is then followed?

The High Court, subordinate courts and Cadi Court have original jurisdiction.

A majority of all claims are handled by the High Court. Civil proceedings in the High Court are commenced by one of the following methods:

- Writ of summons: This is the most common method for the majority of civil claims. The writ of summons is filed with a statement of claim, witness statements, and all the evidence on which the plaintiff relies in a bundle and served on the defendant. The defendant has 30 days to file a statement of defence, witness statements and evidence on which he/she relies in answer to the claim. Time may only be extended for 14 days and, in exceptional cases, a further 14 days. Subsequent pleadings in the form of a reply or rejoinder may be filed at the discretion of the court. Once pleadings are closed, the case is set down for a pre-trial conference.

At the pre-trial conference, the court rules on all preliminary objections relevant to jurisdiction, interlocutory applications, discovery, objections to evidence, the possibility of out-of-court settlement and costs to be applied and sets a timeframe for trial.

The case is thereafter set down for trial. At trial, witness statements are adopted as evidence-in-chief. Witnesses on either side are made available for cross-examination. At the end of the trial briefs are filed and the case is adjourned for judgment.

- Originating summons procedure is adopted for non-contentious legal matters.
- Petitions for matrimonial matters, company proceedings and election matters.

6. What is the extent of pre-trial exchange of evidence, and how is evidence presented at trial?

As stated above, all evidence must be submitted with the originating process. Physical evidence must be submitted at the pre-trial conference. Documentary evidence is presented in the form of statements exhibited in an affidavit. All other evidence must be listed and presented during the pre-trial conference. Objections to evidence are taken at the pre-trial conference. All evidence deemed admissible is adopted at trial by the witness. Expert evidence is treated no differently and has to be exchanged, and experts made available for cross-examination.

7. To what extent are the parties able to control the procedure and the timetable? How quick is the process?

Parties are required to agree on a timeframe to trial, including the taking of any steps required by the rules or the court at the pre-trial conference in proceedings begun by writ. Otherwise, generally, the time for doing anything under the rules is agreed by the parties and the court and must be convenient to the court. If parties cannot agree, timeframes may be imposed by the court.

Following the introduction of this procedure, for the majority of civil cases commenced by writ, the process has been expedited, and civil cases can be disposed of from six to nine months in the case of contentious matters with complex and meritorious defences.

8. What interim remedies are available to preserve the parties' interests pending judgment?

Interim remedies in the form of injunctions to detain property in dispute or to prevent its waste, damage, or alienation may be granted. An order similar to a *mareva* injunction may also be granted for the interim attachment of property if the plaintiff can show that the defendant is about to sell his/her assets with a view to evading judgment.

9. What means of enforcement are available?

The following orders are available:

- writ of attachment (*fieri facias* or *fi.fa*), which authorises the sheriff to seize and sell movable or immovable assets of the judgment debtor. After judgment is entered, the judgment creditor may apply for a writ of *fi.fa* by filing a *praecipe*. The writ is issued by the judge and directed at the sheriff to levy execution against the judgment debtor's property. Execution is levied on movables by taking them into the custody of the sheriff or by attachment on site (if the asset cannot be easily moved eg, plant and heavy machinery). Immovable property is attached by pasting notice on the site and service on the *fi.fa* debtor. Attached property may not be sold, in the case of movable property, until at least seven days after public notice of the sale, and in the case of immovable property, until at least two months after such public notice. Public notice is by advertisement in a prominent newspaper of general circulation and/or radio advertisement.
- writ of possession for the repossession of immovable property and delivering the same to the judgment creditor;
- seizure and delivery up of movable property;
- writ of sequestration against the property of an absconding judgment debtor against whom an order of arrest has been issued and who cannot be found, or has been taken and detained in custody without obeying the judgment of the court;
- garnishee orders attaching money belonging to the judgment debtor in the hands of a third party;
- charging orders against a judgment debtor's stocks or shares in a public company, money held in trust for a judgment debtor, money in court or in the hand of the official receiver appointed by court, land or interest in land of a judgment debtor, share or interest of the judgment debtor in a partnership; and
- committal.

10. Does the court have power to order costs? Are foreign claimants required to provide security for costs?

Yes, the court has the power to make cost orders. In rare cases, the court may make an order for the taxation of costs in which case a bill of costs must be submitted to the registrar of the court.

A foreign litigant may be required to provide security for costs on the application of the defendant. Such an application is made by motion supported by affidavit.

11. On what grounds can the parties appeal, and what restrictions apply? Is there a right of further appeal? To what extent is enforcement suspended pending an appeal?

Parties have a constitutional right of appeal from the subordinate court to the High Court within 30 days, from the High Court to the Court of Appeal within 90 days, and from the Court of Appeal to the Supreme Court within 42 days. An extension of time may be granted on limited grounds.

The grounds of appeal must specify an error of law or misdirection or be based on mixed fact and law. Appeals based on factual errors alone are restricted.

A stay of execution may be granted to an unsuccessful defendant if he/she can show special circumstances. These include the possibility of the destruction or irreversible alteration of the *res*, irreparable loss, the judgment creditor not being able to repay the judgment sum should the appeal succeed, closure of the judgment debtor's business, etc. Each case is decided on its merits. The court must impose conditions for the stay, which may include the deposit of the judgment sum into court.

An injunction may be granted to an unsuccessful plaintiff whose case has been dismissed pending appeal (instead of a stay of execution), on the premise that the dismissal of an action is not executory, and a stay is not appropriate. It is granted for the purpose of maintaining the *status quo* and preserving the *res* pending appeal.

12. To what extent can domestic and/or foreign state entities claim immunity from civil proceedings?

State entities have no immunity unless they are international organisations granted immunity under the Diplomatic Privileges (International Organisations) Act (Cap. 25:01). The Government may be sued just as any other litigant, although there are limitations with respect to enforcement, as execution cannot be levied on government assets. The Government is expected to settle any judgment upon service of a demand on the Accountant General. An application can be brought for contempt proceedings if the Accountant General fails to pay. In practice, the Government usually pays.

Foreign State entities have immunity under the Vienna Convention, which has been given effect in domestic law by the Diplomatic Privileges (Commonwealth and Foreign Missions) Act (Cap. 25:02).

13. What procedures exist for recognition and enforcement of foreign judgments?

A foreign judgment of the High Court of the United Kingdom may be registered in the High Court and enforced by the court under the Reciprocal Enforcement of Judgments Act (Cap. 8:05) as if it were its own decision. Foreign judgments from specified countries may also be enforced under the Foreign Judgments (Reciprocal Enforcement) Act (Cap. 8:06). Where no reciprocal arrangements exist between the Gambia and the originating jurisdiction, the judgment may be enforced by action on the judgment using the writ of summons procedure. This is a common law relief which is based on the judgment itself conferring a right of action.

Arbitration

14. Is the arbitration law based on the UNCITRAL model law? If yes, are there any key modifications? If no, what form does the arbitration law take?

Arbitration is governed by the Alternative Dispute Resolution Act of 2005 (the Act) which is generally based on the UNCITRAL Model Law, with some provisions adapted from the UNCITRAL Rules. Section 55 of the Act provides that, notwithstanding the provisions of the Act, parties to an international commercial agreement may agree that disputes shall be referred to arbitration in accordance with the UNCITRAL Model Law (which are set out in Schedule 1 to the Act) or any other international arbitration rules acceptable to the parties.

While the Gambia is not a signatory to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the New York Convention), the Act specifically applies the New York Convention to the enforcement of international commercial arbitral awards on a strictly reciprocal basis.

The Act contains additional grounds on which an award can be set aside which go beyond those found in the UNCITRAL Model Law. Under section 49 of the Act, an application to set aside an award can be made on the ground that the award was “induced or affected by fraud, corruption or gross irregularity” or on the grounds that a breach of the rules of natural justice occurred during the proceedings or in connection with the making of the award. All of these grounds render the award in conflict with public policy.

15. What are the formal requirements for an enforceable arbitration agreement?

Under section 11 of the Act, it must be in writing and:

- in the form of an arbitration clause in a contract;
- in the form of a separate agreement; or
- inferred in an exchange of points of claim or defence in which the existence of an arbitration agreement is alleged by one party and not denied by the other.

16. Will the courts stay litigation if there is a valid arbitration clause covering the dispute? Does the approach differ in this regard if the seat of the arbitration is inside or outside of the jurisdiction?

Yes, under section 12 of the Act, if a party so requests no later than the submission of its first statement on the substance of the dispute. The court may refuse the application if it finds that the arbitration agreement is null and void, inoperative, or incapable of being performed, or there is not in fact any dispute between the parties regarding the matters agreed to be referred. This also applies if the seat of the arbitration is outside the jurisdiction.

17. On what grounds can the court intervene in arbitrations seated outside the jurisdiction?

The law does not make provision for interference in arbitrations seated outside the jurisdiction. The jurisdiction of the local court would be limited to matters of enforcement of the arbitral award in the local jurisdiction.

Section 13 provides that a party to an arbitration agreement may, before or during the arbitral proceedings, request from a court an interim measure of protection, and the court may grant the measure if it deems it necessary or desirable. For these purposes, the court has the same powers as it has for the purposes of proceedings before it, namely, to make an order:

- for the preservation, interim custody or sale of goods which are the subject matter of the dispute;
- securing the amount in dispute;
- appointing a receiver; or
- to ensure that an award which may be made in the arbitral proceedings is not rendered ineffectual by the dissipation of assets by the other party (interim injunction).

Section 31(1) of the Act provides that an arbitral tribunal can order interim measures of protection on request by a party or on its own motion or may require any party to provide security. By virtue of section 31(2), any arbitral order, irrespective of country, is automatically recognised as binding and will have the same effect as an order made under section 31(1) above.

18. Can A Foreign Arbitration Award Be Appealed In The Local Courts? If So, On What Grounds?

No. Recourse to a court against a domestic or foreign arbitration award can only be made by an application to set aside the award on specified grounds within 60 days of the making of the award, or if the grounds for setting aside are founded on fraud, corruption or gross irregularity, within 60 days of the discovery of the fraud or corruption.

These grounds are set out in section 49(2) and (4) of the Act. If the parties initially agreed in writing to be bound by the UNCITRAL Model Law, Article 34(2) of the UNCITRAL Model Law would apply instead.

19. What procedures exist for enforcement of awards rendered in arbitrations seated outside of the jurisdiction?

An arbitral award, irrespective of the country in which it was made is recognised as binding and, on application in writing to the High Court, must be enforced by entry as a judgment in terms of the award, or by action. This takes between two and six months.

Although the Gambia is not a signatory to the New York Convention, it has domesticated all of the provisions of the New York Convention, which are set out in Schedule 2 of the Act. These domesticated provisions will apply to any award made in any New York Convention Contracting State, provided that:

- the Contracting State has reciprocal legislation recognising the enforcement of arbitral awards made in the Gambia in accordance with the provisions of the New York Convention; and
- the difference arises out of a legal relationship that is contractual. Although Article 11 of the New York Convention refers to “a legal relationship, whether contractual or not”, the Act refers to a contractual relationship only.

20. Are foreign awards readily enforceable in practice?

Yes. That includes awards made against the Government - even prior to the new law, such awards were, upon registration in the High Court, honoured by the Government.

Alternative dispute resolution

21. Are the parties to litigation or arbitration required to consider or submit to any alternative dispute resolution before or during proceedings?

Yes, with the coming of the High Court(Alternative Dispute Resolution Rules) 2024, matters arising from civil cases will automatically be referred to an ADR first before the court hears them, particularly under Rule 3 of the High Court(Alternative Dispute Resolution Rules) 2024, emphasising that A person shall not commence proceedings in the High Court without first exploring an amicable settlement through negotiation or some other form of ADR. The Court shall require evidence that an amicable resolution has been considered before the commencement of the suit.

Reforms

22. Are there likely to be any significant procedural reforms in the near future?

No, we are not aware of any proposed reforms for the time being.

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Ghana



Introduction

Ghana's legal system is based on the Constitution (which came into force on 7 January 1993), statutes passed by Parliament, subsidiary legislation made under powers conferred by either the Constitution (Constitutional Instruments) or statute (Legislative Instruments), English common law, the doctrines of equity and the rules of customary law.

Litigation

1. What is the structure of the legal profession?

Lawyers in Ghana practise as both barristers and solicitors; there is no split profession. Lawyers provide legal services directly to clients and conduct proceedings in the courts. All lawyers have rights of audience before all trial courts and tribunals in Ghana.

Qualifying as a lawyer in Ghana typically involves three stages of training, namely:

- the academic stage;
- the professional education stage; and
- the pupillage stage.

The academic stage involves obtaining a Bachelor of Laws (LLB) degree from a university approved by the National Accreditation Board and the General Legal Council. The professional education stage consists of two years of training at the Ghana School of Law. To qualify for admission at the Ghana School of Law, an applicant must pass a competitive entrance examination. Eligible applicants include LLB graduates from approved Ghanaian universities, as well as Ghanaian LLB graduates or holders of equivalent law degrees from universities in common law jurisdictions. Upon successful completion of the programme, students receive a Qualifying Certificate in Law and are enrolled on the Roll of Lawyers. The pupillage stage involves six months of training under the supervision of a lawyer of at least seven years' standing.

Foreign lawyers may practise in Ghana if they meet the following requirements:

- hold the necessary qualifications from their home jurisdiction;
- provide a letter of good standing from their home Bar; and
- enrol on and complete the Post-Call Law Course at the Ghana School of Law and pass the required examinations, which

cover subjects such as civil and criminal procedure, evidence, interpretation of deeds and statutes, family law, constitutional law and Ghana legal system.

The General Legal Council is the statutory body that regulates the legal profession and handles complaints against lawyers.

The professional stage of the legal education now requires candidates to undertake a mandatory internship of not less than six months as part of the two-year duration of the professional law course, before being called to the bar. An Independent Examinations Committee, appointed by the General Legal Council, administers all examinations for enrolments into the Ghana School of Law, the Qualifying Certificate Examination and any other examinations mandated by the General Legal Council.

2. What is the structure of the court system?

Ghana's court system is divided into the superior courts and the lower courts.

The superior courts consist of the:

- Supreme Court;
- Court of Appeal; and
- High Court and Regional Tribunals.

The lower courts consist of the:

- Circuit Courts; and
- Districts Courts.

Circuit and District Courts have original jurisdiction in both civil and criminal matters. Civil claims not exceeding GHS500,000 (approximately USD47,940) must be initiated in the District Court, and claims not exceeding GHS2,000,000 (approximately USD191,762) in the Circuit Court.

The High Court has original jurisdiction in all criminal and civil matters. The Regional Tribunals have criminal jurisdiction only, limited to offences against the State and the public interest. It has concurrent jurisdiction with the High Court in such matters.

The High Court has specialised divisions, namely Commercial, Financial and Economic Crime, Criminal, Land, Industrial and Labour, Family, Probate and Administration, and Human Rights

Divisions. The High Court has supervisory jurisdiction over the lower courts.

Criminal appeals from the Circuit and District Courts are heard by the High Court. Civil appeals from the Circuit Court are heard by the Court of Appeal while civil appeals from the District Court are heard by the High Court. Appeals from the High Court and Regional Tribunals are heard by the Court of Appeal. Appeals from decisions of the Court of Appeal are heard by the Supreme Court, which is the final appellate court, and its decisions are binding on all lower courts. The Supreme Court is also vested with supervisory jurisdiction over the superior courts and has original jurisdiction in matters relating to the enforcement or interpretation of the Constitution.

In addition to the formal courts, there are several administrative and quasi-judicial bodies that exercise adjudicatory functions in specific areas. These include the National Labour Commission (NLC) and the Commission on Human Rights and Administrative Justice (CHRAJ).

3. What are the time limits for bringing civil claims?

Statutory limitation periods apply to civil actions and vary depending on the cause of action.

The limitation period is 12 years for an action:

- to recover land;
- on an instrument under seal, other than for the recovery of arrears of an annuity charged on movable property, or a principal sum of money or arrears of interest in respect of a sum of money secured by a mortgage or any other charge;
- to enforce an award, where the arbitration agreement is under seal;
- to recover a sum of money due to a registered company by a member of the company under the company's regulations;
- to recover tax due and payable to the commissioner of the Internal Revenue Service, or duty due and payable to the Controller of Customs and Excise;
- on an enforceable judgment;
- to recover the proceeds of the sale of land.

The limitation period is six years for an action:

- founded on contract or torts other than negligence, nuisance or breach of duty;
- to enforce a recognisance to enforce an award, where the arbitration is under an enactment other than the Arbitration Act;
- to recover a sum of money recoverable by virtue of an enactment;
- to recover seamen's wages which are not enforceable *in rem*;
- for an account in respect of a matter which arose more than six years before the commencement of the action;
- for arrears of interest in respect of a debt.

The limitation period is three years for an action:

- claiming damages for negligence, nuisance or breach of duty;
- for damages for the benefit of the dependants of a deceased person.

The limitation period is two years for an action:

- claiming damages for defamation, including libel and slander;
- to recover a contribution against one or more concurrent wrongdoers;
- to recover a penalty or forfeiture, or a sum of money by way of penalty or forfeiture, recoverable under an enactment.

Limitation periods are suspended during periods of disability, including infancy and unsoundness of mind.

4. Are communications between a lawyer and his/her client privileged (ie protected from disclosure to a court/tribunal and opposing parties)?

Yes. Communications between a lawyer and his or her client are privileged and protected from disclosure to a court, tribunal or opposing parties. This privilege includes communications between:

- the client or a representative of the client and the lawyer or a representative of the lawyer;
- the lawyer and a representative of the lawyer; and
- the lawyer or a representative of the lawyer and a lawyer representing another person in a matter of common interest with the client or a representative of the lawyer (section 100(2) Evidence Act, 1975 (NRCD 323.))

The client may claim privilege. Others entitled to do so include the client's guardian or committee, the personal representative of a deceased client, the successor in interest of a client who was an artificial person, the lawyer who received the communication and that lawyer's representative.

There are exceptions to lawyer-client privilege. Privilege does not apply:

- where, apart from the communication itself, there is sufficient evidence to support a finding that the lawyer's services were sought or obtained to enable or aid the commission or planning of a crime or intentional tort;
- where the communication is relevant to a dispute between parties claiming through the same deceased client;
- where the communication is relevant to an allegation of breach of duty by the lawyer to the client, or by the client to the lawyer;
- where the communication concerns the formalities of executing a written document by the client, and the lawyer or the lawyer's representative acted as an attesting witness; and
- where the communication relates to a matter of common interest between two or more clients who jointly consulted the lawyer, and it is offered in proceedings between those clients. In such cases, the privilege is held jointly by the clients.

5. How are civil proceedings commenced, and what is the typical procedure which is then followed?

Generally, civil proceedings are commenced by filing a writ of summons (writ.) The writ must be accompanied by a statement of claim (claim). A defendant who is served with the writ and claim has to file a notice of entry of appearance to the writ within eight days and a statement of defence (defence) in answer to the claim within 14 days. The plaintiff may file a reply within seven days of being served with the defence.

An application for directions must be filed within one month after the close of pleadings. At this stage, the court sets down the issues for trial and determines the mode of trial. The application may include a written request for a stay of proceedings while the parties attempt settlement through alternative dispute resolution or other means. Unless the dispute concerns a matter that legally cannot be settled by alternative dispute resolution (such as issues involving the national or public interest, the environment or the enforcement or interpretation of the Constitution), the court is required to ask the parties whether they are willing to attempt settlement. If the parties are willing, the court must issue appropriate orders to facilitate the settlement process and stay proceedings for one month.

If the dispute is not legally amenable to settlement, or if the parties are unwilling to attempt settlement, or if settlement efforts break down, the court will, at the directions stage, set timelines for the parties to file their witness statements. The court will also fix a date for a case management conference and/or a pre-trial review. Once witness statements are filed, the parties attend the case management conference or pre-trial review, where the judge gives further directions on the conduct of the case. If the judge does not fix a trial date, the registrar issues a notice to the parties specifying the trial date.

In the Commercial Division of the High Court, there is mandatory judicial mediation after the close of pleadings (see question 31 below.)

Although all civil proceedings are required to be commenced by the filing of writs, the rules recognise two other specialised originating processes, namely originating notices of motion and petitions. These are used where a statute specifically provides for proceedings to be commenced in that manner.

6. What is the extent of pre-trial exchange of evidence, and how is evidence presented at trial?

After the close of pleadings, parties typically undertake mutual discovery, which involves exchanging lists of documents without the need to appear before the court. A party's list must set out all documents that are or have been in their possession or custody, or that relate to any matter in question in the action. The list must include a notice of inspection specifying a time and venue for the other party to inspect the documents. In practice, parties often attach photocopies of the relevant documents to the list, accompanied by a verifying affidavit.

Parties may agree to dispense with or limit discovery. If a party fails to disclose documents and no agreement exists, the other party may apply to the court for an order for discovery. The court will grant such an order only if it is satisfied that doing so is necessary to fairly dispose of the matter or to save costs.

With leave of the court, a party may serve interrogatories, ie written questions, on the other party to elicit admissions of fact, obtain relevant evidence or clarify the issues in dispute. The same principle that governs discovery applies: the court will allow interrogatories only where necessary for the fair disposal of the matter or to save costs. A party who fails to comply with an interrogatories order may be held in contempt.

Witnesses are required to file witness statements setting out the evidence they intend to rely on at trial. At the hearing, the witness is sworn in or affirms and tenders the statement, which the court adopts as their evidence-in-chief. The opposing party

may cross-examine the witness on the contents of the statement. A party's lawyer may then re-examine the witness, but only to clarify or explain matters raised in cross-examination.

Judges may question witnesses directly. A witness cannot be recalled without leave of the court.

On any application in any matter, evidence may be given by affidavit. The court may, on the application of any party, order the person making the affidavit to attend court for cross-examination and where, after an order has been made, the person in question does not attend, that person's affidavit must not be used as evidence without leave of the court.

The court or any other party may also call an expert witness. The matters to be submitted to the expert are usually agreed between the parties and the court or set down by the court where they cannot agree. The expert submits a written report to the court and the parties on the matters referred to him, and he may be cross-examined by any party in the suit.

A party may apply to the court for a *subpoena* to compel the attendance of a witness at trial or to produce documents. The court may issue a *subpoena ad testificandum* (to testify) or a *subpoena duces tecum* (to produce documents). A person served with a subpoena who fails to comply without lawful excuse may be held in contempt of court.

Under section 101 of the Electronic Transactions Act, 2008 (Act 772), a court may order an electronic communications service provider to disclose the contents of an electronic communication that is in transit, maintained, stored or previously stored in an electronic communications system. The court will only make such an order if satisfied that the disclosure is relevant and necessary for investigative purposes or in the interest of national security.

7. To what extent are the parties able to control the procedure and the timetable? How quick is the process?

The courts manage their case lists, and judges have considerable powers with respect to scheduling of cases, control over the issues on which evidence is permitted and the way in which evidence is introduced.

The timetable is guided by the Civil Procedure Rules. Before or during the trial, the material disputes between parties may be settled in court and reduced to "issues for trial." The Civil Procedure Rules allow for interlocutory applications between the issue of a writ and the trial, which often delays matters. In many instances, cases that go to full trial take as long as a year or more from issue of the writ. This may be significantly longer if there are interlocutory applications which are then appealed – see question 11 below.

8. What interim remedies are available to preserve the parties' interests pending judgment?

The court may, at any time, preserve a party's interest in a case upon that party's application for the relevant interim remedy pending trial and judgment. The available interim remedies include an order for interlocutory injunction and the detention, custody or preservation of any property which is the subject matter of the suit and is within the court's jurisdiction. An

application for an interlocutory injunction may be made before or after trial irrespective of whether the claim for an injunction is included in the writ.

The court may, rather than grant the application for an injunction, order an early trial to finally determine the matters in issue.

9. What means of enforcement are available?

A judgment for the payment of money may be enforced by:

- writs of *fi. fa.*;
- garnishee orders;
- charging orders;
- appointment of receivers;
- writs of sequestration;
- insolvency proceedings against an individual;
- winding up proceedings against a debtor company.

A judgment for the possession of immovable property may be enforced by:

- writ of possession;
- committal;
- writ of sequestration.

A judgment for the delivery of goods or payment of the assessed value of the goods may be enforced by:

- writ of delivery to recover goods or their assessed value;
- writ of specific delivery with leave of the court;
- writ of sequestration.

A judgment ordering a person to do or abstain from doing an act may be enforced (subject to personal service of the judgment/order on the person in default) by:

- writ of sequestration against the property of the person with leave of the court;
- writ of sequestration against the property of the directors or other officers, if the person involved is a corporate body;
- committal against the person or director or other officer of the corporate body, as the case may be.

In practice, it is fairly easy to enforce judgments where the judgment debtor has unencumbered assets and bank accounts that may be proceeded against. However, it is very difficult to enforce judgments where the judgment debtor has no such available assets or where the judgment creditor has no information with respect to available assets and bank accounts. The most common enforcement methods, particularly with respect to money judgments, are *fi. fa.* and garnishee orders.

10. Does the court have power to order costs? Are foreign claimants required to provide security for costs?

The court has the discretion to award costs of and incidental to proceedings and to determine by whom and to what extent the costs are to be paid. The parties or their lawyers may briefly address the court on the question of costs before any such award is made.

The court takes into consideration a wide number of factors, including reasonable expenses incurred by the party, the court fees paid, the length and complexity of the proceedings, the conduct of the parties before and during the proceedings, and any previous orders as to costs made in the proceedings, before making any award for costs.

A plaintiff who is ordinarily resident outside Ghana may, on the defendant's application, be required to provide security for the defendant's costs. This is not limited to foreign plaintiffs but also applies to plaintiffs not ordinarily resident in Ghana. However, where a plaintiff who is ordinarily resident outside Ghana has assets in Ghana, the court is unlikely to make the order for security for costs.

11. On what grounds can the parties appeal, and what restrictions apply? Is there a right of further appeal? To what extent is enforcement suspended pending an appeal?

In Ghana, the right to appeal is constitutionally guaranteed and there is a general right of appeal against a decision of a court of first instance. Grounds of appeal vary, and range from the omnibus ground, that "the judgment is against the weight of the evidence," to specific grounds of appeal that the party will set out in the notice of appeal. Permission to appeal (leave) is required only under specific circumstances.

Where the first appeal is made to the High Court, for example, from a District Court, a subsequent appeal (second appeal) is heard by the Court of Appeal and is made as of right. Permission is, however, required from the Court of Appeal for any third appeal to the Supreme Court. Usually, permission to appeal is granted where the Court of Appeal is satisfied that the case involves a substantial question of law or it is in the public interest to grant permission to appeal, or that the appeal has a real chance of success.

Where the first appeal is to the Court of Appeal itself, for example, from a High Court or Circuit Court, the second appeal lies as of right to the Supreme Court, and no permission is required.

If dissatisfied with the decision of the Supreme Court, a party may ask for the court to review its decision. The power of the Supreme Court to review its decision is, however, limited to where a party claims that there are exceptional circumstances which have resulted in a miscarriage of justice, or that there are new and important matters or evidence which, after the exercise of due diligence, were not within the applicant's knowledge or could not have been produced by him during the trial or hearing of the case.

Generally, an appeal does not operate as a stay of the decision of the lower court unless the lower court or the appellate court stays the execution of the judgment.

12. To what extent can domestic and/or foreign State entities claim immunity from civil proceedings?

Generally, domestic State entities do not have immunity from civil proceedings. However, one may not sue the State for anything done or omitted to be done by a person while discharging or purporting to discharge responsibilities of a judicial nature vested in that person.

There are statutory provisions expressly granting both civil and criminal immunity to foreign diplomats (foreign diplomatic agents). However, there is no express stipulation to the effect that foreign State entities have immunity from civil proceedings.

However, it is a general rule of international law (applicable in Ghana) that a State (or foreign State entity for that matter) is immune from the jurisdiction of another State unless the foreign State has waived its immunity, either explicitly or by implication. Thus, where a foreign State entity enters into a contract in Ghana, or agrees to submit to the jurisdiction of the Ghanaian courts in a contract, it would be deemed to have waived such immunity and may be sued in Ghana.

13. What procedures exist for recognition and enforcement of foreign judgments?

In Ghana, enforcement of foreign judgments is governed by statute. Judgments of the court of a foreign country are enforced on the basis of reciprocity. The relevant countries and courts are listed by legislative instrument (being Brazil, France, Italy, the United Kingdom, Spain, Israel, Lebanon, Japan, Senegal and the United Arab Republic.) The judgment should be from a superior court (not sitting in its appellate capacity.)

The judgment is enforceable if it is final and conclusive between the parties. A foreign judgment is final and conclusive although an appeal may be pending against it or it may still be subject to appeal in a court of that foreign country.

The judgment of the foreign court must also be registered within six years after the date of the judgment or where there has been an appeal, after the last judgment given in those proceedings. A foreign judgment will not be registered if at the date of the application, it has been wholly satisfied, or it could not be enforced by execution in the foreign country.

Where the judgment of a foreign court is not enforceable on the basis of reciprocity, fresh proceedings may be instituted in Ghana and the foreign judgment relied upon in evidence.

Arbitration

14. Is the arbitration law based on the UNCITRAL Model Law? If yes, are there any key modifications? If no, what form does the arbitration law take?

Arbitration is governed by the Alternative Dispute Resolution Act, 2010 (Act 798) (ADRA) which largely reflects the UNCITRAL Model Law. Provisions under the ADRA 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. There are no key modifications to the UNCITRAL Model Law under the ADRA, although the terms are more comprehensive than the UNCITRAL Model Law. Certain provisions reflect those in the English Arbitration Act, 1996.

15. What are the main national arbitration institutions?

The ADRA provides for an Alternative Dispute Resolution Centre to serve as the main national arbitration institute, but this Centre is yet to be established. There are, however, private arbitration bodies such as the Ghana Arbitration Centre and the Ghana ADR Hub. There are also the arbitration bodies operating within registered associations such as the Chartered Institute of Arbitrators and the Association of Certified Mediators and Arbitrators (GHACMA.)

16. Are there any restrictions on who may represent the parties to arbitration?

Unless otherwise agreed by the parties, a party may be represented by counsel or any other person chosen by the party.

17. What are the formal requirements for an enforceable arbitration agreement?

There must be a written agreement by the parties to submit present or future disputes to arbitration. An agreement is deemed to be in writing where there is an exchange of communication which provide a record of the agreement, or an exchange of statement of claim and statement of defence where the existence of the arbitration agreement is alleged by one party and not denied by the other. There is persuasive authority to the effect that if there is a document providing that any disputes should be referred to arbitration which the parties have accepted or have confirmed, even if orally, then that document will be deemed as a valid arbitration agreement. Under the High Court Rules, parties to pending court action may also apply to the court to refer the matter to arbitration.

18. Will the courts stay litigation if there is a valid arbitration clause covering the dispute? Does the approach differ in this regard if the seat of the arbitration is inside or outside of the jurisdiction?

The Ghanaian courts will stay proceedings and refer a matter to arbitration if there is a valid arbitration agreement covering the dispute before the court. The seat of the arbitration has no impact on the court's decision to stay proceedings.

19. If the arbitration agreement and any relevant rules are silent, how many arbitrators will be appointed, and who is the appointing authority?

Parties are at liberty to determine the number of arbitrators, except that the number must be an odd number. Where there is no agreement as to the number of arbitrators to be appointed, the tribunal will consist of three arbitrators. In an arbitration which requires the appointment of three arbitrators, each party appoints one arbitrator, and the two appointed arbitrators appoint the third arbitrator who shall be the chairperson.

Where a party fails to appoint an arbitrator within 14 days of receiving a request to do so from the other party, or the two appointed arbitrators fail to agree on the third arbitrator within 14 days of the date of their appointment, the appointment is made by the appointing authority upon a request by a party. The appointing authority is any person or authority in whom parties to an arbitration agreement vest power to take any action for or on behalf of the parties, in relation to the arbitration. If there is no appointing authority designated by the parties, the parties may agree on an appointment or either party may apply to the court to make an appointment.

20. What rights are there to challenge the appointment of an arbitrator?

A party may challenge the appointment of an arbitrator only if:

- existing circumstances give rise to reasonable cause to doubt the arbitrator's independence or impartiality; or
- the arbitrator does not possess the pre-requisite qualification(s) agreed between the parties.

The parties are free to agree on the procedure for challenging an arbitrator's appointment, except as otherwise provided in the arbitration agreement. However, a party may not challenge an arbitrator whom it appointed or in whose appointment it participated, unless the reason for the challenge arises after the appointment.

Where no procedure has been agreed, a party wishing to challenge the appointment must submit a written statement of reasons for the challenge to the arbitrator and the other members of the tribunal, if any, within 15 days of either:

- becoming aware of the constitution of the arbitral tribunal; or
- becoming aware of the circumstances that justify the challenge of the appointment of an arbitrator.

The challenge will be decided by the arbitral tribunal or, in the case of a sole arbitrator appointed by an appointing authority, the appointing authority. Where the arbitrator is appointed by a party, the party challenging the arbitrator may apply to the High Court for the determination of the challenge. This procedure applies equally to both institutional and *ad hoc* arbitrations.

21. Does the domestic law contain substantive requirements for the procedure to be followed?

The ADRA allows the parties and arbitrators to determine the procedure and rules that will apply to the arbitration. However, if the arbitration is referred to the Alternative Dispute Resolution Centre, the rules of the Centre set out under the Second Schedule of the ADRA will apply.

22. On what ground can the court intervene in arbitration seated inside the jurisdiction?

The court's role under the ADRA is mainly facilitative, and in some instances complementary, to the arbitrator's role of ensuring effective and efficient determination of the dispute.

However, the court's jurisdiction may be invoked by the parties and in a limited instance by the arbitrator.

In relation to interim relief, the court is empowered to make orders:

- for the taking of evidence of witnesses;
- for the preservation of evidence;
- in respect of the determination of any question or issue affecting any property right which is the subject of the proceedings or in respect of which any question in the proceedings arise;
- for the inspection, photographing, preservation, custody or detention of property;
- for the taking of samples from or the observation of an experiment conducted upon a property; and for that purpose, authorising any person to enter any premises in the possession or control of a party to the arbitration;

- for the sale of any goods which are the subject of the proceedings;
- for the granting of an interim injunction or the appointment of a receiver.

The court also has the power to:

- determine a challenge to the appointment of a sole arbitrator;
- remove an arbitrator;
- make a determination regarding the entitlement to fees/expenses and/or liability of an arbitrator who has resigned;
- make a determination regarding the fees payable to an arbitrator.

Regarding the conduct of the arbitral proceedings, the court is empowered to:

- make a determination regarding the arbitrator's jurisdiction;
- hear a challenge by a party who is subject to arbitration proceedings of which he had not been notified;
- appoint a receiver;
- determine a preliminary question of law where it is satisfied that the question substantially affects the rights of the other party.

In relation to the arbitral award, the court has the power to:

- order the tribunal to deliver the award and determine the fees or expenses payable to the tribunal if the award has been withheld pending payment;
- enforce or set aside arbitral awards, both domestic and foreign.

23. On what grounds can the court intervene in arbitrations seated outside the jurisdiction?

The provisions of the ADRA regulate arbitral proceedings held in Ghana. The provisions on foreign arbitrations under the ADRA refer to foreign arbitral awards and their enforcement in Ghana. It is doubtful whether the courts in Ghana have the jurisdiction to intervene in foreign arbitral proceedings as the above provisions appear to apply to arbitrations seated within Ghana only (there is no equivalent in the ADRA to section 2(3) of the English Arbitration Act 1996).

24. Do arbitrators have powers to grant interim or conservatory relief?

Arbitrators have the same power as the High Court to grant interim relief. Arbitrators are also empowered to make interim awards except where the parties have stipulated otherwise in the arbitration agreement.

25. When and in what form must the award be delivered?

The ADRA does not stipulate the time within which an award should be made by the arbitrators.

An award must be in writing, signed by the arbitrators and should state the date and place where the award was made, and unless otherwise agreed between the parties, the arbitrators' reasons for making the award. Where there are three or more arbitrators, any award or decision of the tribunal must be made by a majority of the arbitrators.

26. Can a successful party recover its costs?

Unless the parties expressly provide otherwise in their arbitration agreement, or the arbitrator makes a decision on costs in the award against the party, all the expenses of the arbitration will be paid equally by the parties. Furthermore, under the rules of the Alternative Dispute Resolution Centre set out under the Second Schedule of the ADRA, the arbitral tribunal must fix the costs of the arbitration in its award. The term “costs” for this purpose means:

- the fees of the arbitrators and umpire;
- the travel and other expenses incurred by the arbitrators;
- the costs of expert advice and of other assistance required by the arbitral tribunal;
- the travel and other expenses of witnesses to the extent that those expenses were approved by the arbitral tribunal;
- the costs for legal representation and assistance of the successful party if these costs were claimed during the arbitral proceedings, and only to the extent that the arbitral tribunal determines that the amount of these costs is reasonable; and
- any fees and expenses of the Alternative Dispute Resolution Centre.

27. On what ground can an award from an arbitration seated in the jurisdiction be appealed to the court?

Arbitral awards are deemed to be final and binding on all parties and any persons claiming through or under them. The ADRA does not provide for appeals from arbitral awards. However, parties may apply to the High Court to set aside an arbitral award on any of the following grounds:

- a party to the arbitration was under some disability or incapacity;
- the arbitration agreement is not valid under the applicable law;
- the applicant was not given notice of the appointment of the arbitrator or of the proceedings or was unable to present its case;
- the award dealt with a dispute not within the scope of the arbitration agreement or outside the agreement, except that the court will not set aside any part of the award that falls within the agreement;
- there has been a failure to conform to the agreed procedure by the parties; and/or
- the arbitrator had an interest in the subject matter of arbitration, which he failed to disclose.

28. Can a foreign arbitration award be appealed in the local courts? If so, on what grounds?

There are no provisions in the ADRA for filing an appeal against a foreign arbitral award. The Act, however, provides that such an award will not be registered in Ghana for the purposes of enforcement where:

- the award has been annulled in the country in which it was made;
- the party against whom the award is invoked was not given sufficient notice to enable the party to present its case;

- a party, lacking legal capacity, was not properly represented;
- the award does not deal with the issues submitted to arbitration; and/or
- the award contains a decision beyond the scope of the matters submitted for arbitration.

29. What procedures exist for enforcement of: (i) awards rendered in arbitrations seated outside of the jurisdiction and (ii) domestic awards?

Both domestic and foreign awards may be enforced, by leave of the High Court, in the same manner as a judgment or order of the court.

Ghana is a party to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 (the New York Convention.) A foreign award made in a country which is a party to the New York Convention can be enforced in Ghana by obtaining the leave of the High Court. Before leave is granted by the High Court, it must be satisfied that:

- the award was made by a competent authority under the laws of the country in which the award was made (a duly authenticated original must be produced); and
- there is no appeal pending against the award in any court under the law applicable to the arbitration.

At common law, an action may be brought to enforce a foreign arbitral award. An award made either in a country which has a reciprocal agreement with Ghana, or under any international convention on arbitration to which Ghana is a party, may be enforced by the enforcement procedure provided for in that agreement or convention.

30. Are foreign awards readily enforceable in practice?

Foreign awards are readily enforceable as long as the award complies with the requirements for the enforcement of foreign arbitral awards discussed under question 29 above. In practice, however, a foreign award will only be readily recognised if made in a country which is a party to the New York Convention.

Alternative dispute resolution

31. Are the parties to litigation or arbitration required to consider or submit to any alternative dispute resolution before or during proceedings?

Parties to arbitration are not required by law to consider or submit to ADR before or during proceedings unless an agreement requires that of the parties. For example, a dispute resolution clause in an agreement might require the parties to engage in pre-arbitration ADR.

With respect to litigation commenced by writs in the Commercial Division of the High Court, there is a mandatory 30-day pre-trial mediation by a judge, when pleadings close. Only where the mediation fails will the judge set down the issues for trial by another judge.

Reforms

32. Are there likely to be any significant procedural reforms in the near future?

We are not aware of any significant procedural reforms that have been formally announced. However, several ongoing developments suggest that further procedural reform, particularly digital reform, is likely.

The Rules of Court Committee is currently reviewing the Court of Appeal and Supreme Court Rules, with amendments expected in due course, although no specific timelines have been published. The focus of this review is to enhance procedural efficiency and align appellate practice with recent technological advancements.

The Judicial Service is also expanding the use of the e-Justice Case Management System, which was introduced in 2019. The system automates case filing, document tracking and fee payments, and forms a central part of the ongoing shift towards paperless court processes. Its roll-out to additional courts across the country is ongoing.

Further reforms are anticipated in the area of virtual hearings. During the legal vacation in August and September, when only vacation courts sit, all hearings in the superior courts are conducted virtually. In 2023, the Chief Justice issued Practice Directions on Virtual Court Hearings, which were amended in 2024 to permit lawyers to appear remotely even when outside Ghana during the legal vacation.

In April 2024, the Chief Justice issued additional Practice Directions and Administrative Guidelines under the LEADing Justice Initiative, which stands for Law, Ethics, Assets, Due Process and Digitalisation. The project aims to enhance the efficiency, transparency and ethical standards of Ghana's judicial system. The Practice Directions cover various procedural matters, including:

- Commercial Pre-Trial Settlement;
- Prerogative Writs Involving Chiefs and Chieftaincy Issues;
- Award of Costs;
- Plea Bargaining;
- Adjournments and Adoption of Proceedings in Part-Heard Trials;
- Court-Connected ADR; and
- Determination of Applications for Injunctions to Restrain Burial of a Deceased Person.

The courts may allow witnesses to give evidence and judges to deliver judgments by video link. These trends suggest increasing formalisation and expansion of remote proceedings, including during term.

The Chief Justice has also emphasised the need for improved case management, expanded access to online judicial services and enhanced digital training for judges and lawyers.

Taken together, these initiatives indicate that while no sweeping reforms are currently in force, further procedural reform, particularly digital reform, is likely in the near future.

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Guinea



Introduction

Guinea is a civil law country. The court system is based on the Constitution of 26 September 2025. Although this fundamental law has not yet been published in the Official Gazette of the Republic of Guinea, the acts issued by the executive authorities refer to it. Guinea is a member of ECOWAS and OHADA. Its Supreme Court (*Cour Suprême*) has final jurisdiction over all matters not governed by the laws introduced by these inter-governmental organisations.

Litigation

1. How is the legal profession organised?

To practise law in Guinea, potential lawyers must be registered with the Guinean Bar Association (*Ordre des avocats*) and meet certain conditions, including:

- having Guinean nationality or that of a country affording reciprocal rights to Guinean lawyers;
- holding the Certificate of Aptitude for the Profession of Lawyer (*Certificat d'aptitude à la profession d'avocat* or CAPA).

The profession is organised by the Bar Association (*Conseil de l'Ordre*), which makes sure that members abide by the rules governing the profession and takes any necessary disciplinary action. Lawyers (*avocats*) registered with the Bar (*Barreau*) can appear before any court and can practise individually or as part of a law firm.

Provided that Guinean lawyers have reciprocal rights in their home countries, foreign lawyers can plead before the Guinean courts on an occasional basis, provided they notify the Chairman of the Bar Association (*Bâtonnier*) of the case in which they wish to represent their client.

2. How is the court system structured?

The court system forms a three-tiered pyramid:

• Courts of original jurisdiction:

Small Claims Court (*juges de paix*), which has ordinary jurisdiction over all civil and commercial matters where the amount in dispute is less than GNF 50 million. There is a Small Claims Court in the chief town of each Prefecture that does not have a General Court. The process of abolishing Small Claims Court is still ongoing pursuant to Law No. 2015/019/AN on the organization of the judiciary in the Republic of Guinea. The goal is to get such claims all before General Court of First Instance. .

General Court of First Instance (*Tribunal de première instance*), which has jurisdiction in all matters where it has not been expressly and exclusively allocated to a different forum. There is a General Court in each Administrative Region. There are other first instance courts, which are specialized or exceptional courts created to deal with specific or sensitive cases that do not fall under common law, such as the Children's Court (*tribunal pour enfants*), the Employment Tribunal (*tribunal de travail*) for the Conakry special zone, the State Security Court (*cour de sûreté de l'Etat*), the High Court of Justice (*haute cour de justice*), the Police Court (*tribunal de simple police*), the Court for the Repression of Economic and Financial Offences (*Cour de répression des infractions économiques et financières - CRIEF*), and the Military Tribunal (*tribunal militaire*).

- **two Courts of Appeal (*Cours d'appel*)** located in Conakry and Kankan;
- **the Supreme Court (*Cour suprême*)**.

With the creation of the Constitutional Court by Law L/2011/06/CNT of 4 October 2011, the Supreme Court has no longer jurisdiction on constitutional matters. Although the Law has not yet been published in the Official Gazette of the Republic of Guinea, the Constitutional Court has already started to function, not least by validating the results of the 2015 presidential elections in Guinea. The members of the Constitutional Court were appointed by a Presidential Decree dated 30 March 2015.

The Constitutional Court deals with matters pertaining to the Constitution, referendums, elections, freedoms and fundamental rights. However, the Supreme Court is still the highest court in Guinea for all civil, commercial, criminal, social and administrative matters.

A Court of Auditors (*Cour des comptes*) is also being established in accordance with the Guinean Constitution, and the Audit Chamber of the Supreme Court will be abolished.

On a final note, a new constitution was adopted by referendum on 21 September 2025 and promulgated on 26 September 2025. This Constitution has established a new jurisdiction, the special court of justice of the Republic (*Cour Spéciale de Justice de la République*), competent to judge the President of the Republic in the event of high betrayal crimes. This special court has also jurisdiction to deal with crimes committed by the Prime Minister and members of the government in the exercise of their functions.

3. What are the time limits for bringing civil claims?

Limitation periods vary depending on the type of action and the parties involved:

- the ordinary limitation period for bringing a civil action is 30 years;
- obligations arising out of a transaction between businesses or a business and an individual are time-barred after five years if no shorter limitation period is stipulated;
- specific limitation periods apply to certain types of actions: for example, two years for commercial companies claiming payment for goods sold to individuals, one year for actions brought by paid workers and employees for the payment of their salaries, and six months for actions between hotel owners.

In insurance matters, the parties can agree on the applicable limitation period, i.e. whether to extend or reduce it.

Limitation periods can be suspended or interrupted, for instance by an acknowledgment of debt.

4. Are communications between a lawyer and his/her client privileged?

All communications between lawyers and their clients are confidential. This applies in all circumstances (from advising clients to defending them in court) and to all materials (paper, fax, electronic, etc).

Clients cannot lift this confidentiality obligation save where strictly necessary for their defence and in the following cases:

- implication in criminal proceedings;
- professional liability disputes;
- fee disputes.

Non-compliance with the confidentiality obligation is an offence and a breach of the ethical rules applicable to lawyers.

5. How are civil proceedings commenced, and what is the typical procedure which is then followed?

Civil proceedings are filed:

- by summons, in which the claimant invites the defendant to appear before the competent court, or
- by petition filed with the registrar of the competent court in personal or property-related cases where the amount in dispute is less than GNF 100,000.

The parties must appear before the court within eight days for defendants domiciled within the jurisdiction of the court, 15 days if domiciled in a neighbouring *préfecture*, and one month for all other areas of Guinea. If the defendant is located outside Guinea, these time frames are extended to two months for parties domiciled in Africa and Europe, and three months for any other continent. Where the proceedings are urgent, parties must appear at a specific, assigned time.

Deadlines for filing submissions and disclosing evidence are set by the court.

Courts receiving notice of opposition to a petition must attempt conciliation proceedings. If the conciliation succeeds, the presiding judge will issue a conciliation agreement to be signed by the parties. One copy of the agreement will be marked as final and binding. If the conciliation attempt fails, the court will immediately rule on the petition, even in the absence of the debtor who filed the opposition, and its decision will have the effect of a decision after trial.

6. What is the extent of pre-trial exchange of evidence, and how is evidence presented at trial?

Written evidence, witness statements, presumptions, confession and testimony given under oath are the only means of evidence admissible in Guinea (article 998 of Law L/2019/035/AN of 4 July 2019 establishing the Civil Code of the Republic of Guinea). The types of evidence allowed do not depend on the court.

There is no equivalent in Guinea of the English law concept of "disclosure".

If a party holds evidence, the court may, at the request of the other party (with supporting arguments), order the first party to produce the evidence, subject to financial penalties for non-compliance. The court may also, at the request of a party, invite or order the disclosure of all documents held by third parties if there is no legitimate reason for their non-disclosure (subject to financial penalties for non-compliance where applicable).

Evidence is produced for the court at the same time as the parties' submissions. The case management judge (*juge chargé de la mise en état*) can take all necessary measures to fully investigate the matter and will set related deadlines. Parties referring to a piece of evidence must disclose it to all other parties to the proceedings of their own volition. If they do not, the other party can file a plea for invalidity based on the failure to disclose submissions or evidence, or ask the court to order such disclosure.

On appeal, parties are not required to produce evidence that was already disclosed before the lower court. However, they are entitled to request the disclosure of evidence and it is possible to produce new evidence on appeal and before the Supreme Court.

The court can only order an expert investigation if the consultations or reports provided are insufficient to make a decision. The judge has sole discretion over such matters.

7. To what extent are the parties able to control the procedure and the timetable? How long do proceedings last?

The parties do not control the procedure. Once the proceedings have commenced, the timetable is set at the discretion of the court and in practice depends on various factors, such as the complexity of the case, the degree of urgency and the caseload of the court. Nevertheless, the parties can end the proceedings at any time by mutual agreement.

On average, first instance proceedings run for three to four months. For proceedings including an appeal to the Supreme Court, the average length is a maximum of two years.

8. What interim remedies are available to preserve the parties' interests pending judgment?

Interim proceedings can be brought in Guinea to protect a party's interests pending a judgment on the merits:

- **Interim proceedings** (*référé*) allow a party to obtain an urgent interim decision without affecting the court's ultimate decision on the merits of the case. Applications are reviewed at a hearing held by the presiding judge of the court, in the presence of all parties. The presiding judge of the General Court or the Small Claims Court protective or remedial measures to prevent imminent damage or put an end to a clearly unlawful situation.
- **Ex parte orders** (*ordonnances sur requête*) are issued by the presiding judge of the court without given all parties an opportunity to respond, if circumstances so require to protect the parties' rights and interests. Ex parte orders are immediately enforceable.
- **Interim attachment** (*saisie conservatoire*) can be ordered by a presiding judge to prevent the disposal of tangible or intangible assets by another party, thereby frustrating enforcement of a future award against that party. Interim attachment is only possible where circumstances show that recovery of the debt is in jeopardy. Parties must apply to the presiding judge of the competent court for the debtor's domicile or place of residence.

In all urgent circumstances, the presiding judge of the General Court or the Small Claims Court can order interim measures where no serious opposition is presented by the other party.

9. What means of enforcement are available?

Judgments are binding when they are no longer subject to an appeal suspending enforcement. At this point they become *res judicata*, unless immediate enforcement is automatic or has already been ordered. Enforcement is therefore only possible once the judgment is marked as final and binding.

The enforcement measures available under Guinean law are those provided for in the OHADA Uniform Act Organising

Simplified Recovery Procedures and Measures of Execution. The principal measures are:

- **Seizure and sale** (*saisie-vente*): any creditor in possession of an enforcement order showing a debt due for immediate payment may have the debtor's tangible, moveable property seized and sold in order to recover the debt from the sale price.
- **Third party debt order** (*saisie-attribution de créances*): any creditor in possession of an enforcement order showing a debt due for immediate payment may have receivables owed by a third party to the relevant debtor seized from that third party.
- **Penalty payment** (*astreinte*): creditors who obtain an injunction from a court ordering their debtors to either perform or cease and desist from a particular action may ask the court to combine the injunction with a penalty payable for each day/week/month of delay or non-compliance.
- **Property foreclosure** (*saisie immobilière*): this is a procedure of last resort when the seizure of personal property or of receivables has been unsuccessful or insufficient. The failure to recover the debt must be authenticated by a bailiff (*huissier de justice*); only then may the creditor initiate foreclosure.

The courts can grant grace periods to unsuccessful parties.

The new OHADA Uniform Act Organizing Simplified Recovery Procedures and Enforcement Measures (17 October 2023) simplifies and streamlines certain enforcement procedures in all OHADA Member States.

10. Does the court have power to order costs? Are foreign claimants required to provide security for costs?

The unsuccessful party bears the costs, unless the court decides (and gives reasons) to order a different party to bear all or part of them.

Costs are limited to court costs. In practice, it is rare for judges to assess legal fees. They generally simply award a fixed amount depending on the parties' claims. However, the party receiving a fixed award of court costs may ask the court to re-assess the amount when the final costs are set, in order to take into account the actual legal fees paid. This is done with the assistance of a bailiff (*huissier de justice*).

Security for costs is only necessary in criminal cases in which the victim joins the proceedings as a civil party (*plainte avec constitution de partie civile*). This applies to claimants of all nationalities.

11. On what grounds can the parties appeal, and what restrictions apply? To what extent is enforcement suspended pending an appeal? Is there a right of further appeal?

The right to appeal is automatic. Appeals of first instance judgments must be filed 10 days from the date of judgment after a hearing of all parties, or from the date of service if handed down by default. In the latter case, the court can give defendants extra time to file an appeal under certain conditions.

Appeals are filed by summons or by way of a petition addressed to the court registrar. New claims cannot be made on appeal, unless they are made to offset related claims or in defence

against the main claim. If filed in due time, appeals suspend enforcement of the judgment, save where the court has ordered immediate enforcement.

Cases are reviewed in full by the Court of Appeal, which issues a new decision on the facts and the law. Appellants should only refer to the grounds of the judgment that are expressly or implicitly disputed (or reliant thereon).

After the appellate stage, an application can be made to the judicial chamber of the Supreme Court to reverse a final decision handed down on appeal. Supreme Court proceedings consider only the law and not the facts of the case, and enforcement of the lower court's decision is not suspended (unless the Supreme Court orders a stay). If the appeal to the Supreme Court is successful, the case is remanded to a new panel of appellate judges for a second judgment.

In principle, the court of remand is not bound by the Supreme Court's decision, but in practice it generally follows the higher court. Moreover, the court of remand must follow the Supreme Court on the relevant point of law if a second decision is overturned on the same grounds as the first.

12. To what extent can domestic and/or foreign State entities claim immunity from civil proceedings?

Proceedings can be brought against the Government or public authorities before the administrative chamber of the Supreme Court. State-owned companies do not have jurisdictional immunity.

For foreign entities, any jurisdictional immunity they may enjoy derives from international agreements on diplomatic or consular relationships.

13. What are the procedures for having foreign judgments recognised and enforced?

In Guinea, foreign judgments are automatically deemed final and binding if they meet the following conditions:

- the decision is final and binding and enforceable under the laws of that country;
- the decision is not contrary to public policy rules in Guinea;
- the decision is not contrary to a final and binding decision from a Guinean court.

Enforcement decisions are made by the presiding judge of the Court of Appeal of the place in which the judgment is to be enforced, regardless of the amount in dispute. The presiding judge will simply verify that the judgment meets the above conditions. If the conditions are met, it is straightforward to obtain the enforcement of a decision in Guinea.

Arbitration

14. Is the arbitration law based on the UNCITRAL Model Law on International Commercial Arbitration? If so, are there any key modifications? If not, what type of arbitration does the law provide for?

Guinea (Conakry) is a Member State of OHADA (*Organisation pour l'Harmonisation en Afrique du Droit des Affaires* – Organisation for the Harmonisation of Business Law in Africa).

The OHADA Treaty was first signed on 17 October 1993. Under the OHADA Treaty, the Council of Ministers of Justice and Finance adopts uniform acts that are directly applicable and enforceable in each of the Member States. Arbitration in the OHADA Member States is governed by the Uniform Act on Arbitration (the “**UAA**”), adopted on 23 November 2017, replacing the Uniform Act of 11 March 1999.

The UAA is not based on the UNCITRAL Model Law. It was drafted separately but is nevertheless aligned with the fundamental principles of international commercial arbitration and key features of the UNCITRAL Model Law.

The UAA applies to both national and international arbitration and governs all arbitration proceedings with a seat in a Member State.

Prior to the adoption of the UAA, arbitration law was governed by the rules set forth in the Guinean Civil, Economic and Administrative Procedure Code (*Code de procédure civile, économique et administrative*).

One of the most important characteristics of OHADA arbitration is the Common Court of Justice and Arbitration (*Cour commune de justice et d'arbitrage*) (the CCJA), which acts as both a permanent arbitral tribunal and the supreme court of arbitration for all OHADA Member States.

15. What are the main arbitration institutions at the national level?

The main arbitration institution in Guinea is the *Chambre d'arbitrage de la Guinée*, which is located in Conakry.

At the supranational level, the CCJA, which was created by the OHADA Treaty and is based in Abidjan, in Côte d'Ivoire, can also hear arbitration matters. The CCJA, which is also a supreme court, acts as an arbitration centre and administers proceedings governed by the CCJA Rules of Arbitration. The CCJA is different from other arbitration centres as it is not a private institution but was created and organised by OHADA.

Under article 21 of the OHADA Treaty, access to the CCJA centre of arbitration is contingent on all or part of the contract at issue having been performed in the territory of one or more Member States, or at least one of the parties being domiciled or habitually resident in a Member State. According to legal scholars, it should also be possible to go to arbitration under the CCJA Rules even if these conditions are not met, if such is the expressed will of the parties in their arbitration agreement.

Many contracts contain arbitration clauses providing for CCJA arbitration.

16. Are there any restrictions on who may represent the parties to an arbitration?

The UAA does not set any restrictions on who can represent parties in an arbitration. They are entitled but not required to instruct counsel (article 20 of the UAA).

The only restriction on foreign lawyers in terms of representing clients in an arbitration is reciprocal rights: the laws applicable in the foreign lawyer's home country must allow Guinean lawyers to represent clients.

17. What are the formal requirements for an enforceable arbitration agreement?

Article 3 of the UAA states that the arbitration agreement must be made in writing or by any other means whereby its existence can be demonstrated. No particular format is required. The UAA also provides that contracts can include an arbitration agreement by reference to a separate document.

In practice, Guinean courts tend to favour a narrow interpretation of these conditions.

18. Will the courts stay litigation if there is a valid arbitration clause covering the dispute? Does their approach differ according to whether the seat of the arbitration is inside or outside the jurisdiction?

Article 13 of the UAA provides that national courts must decline jurisdiction if a dispute that is already in arbitration pursuant to an arbitration agreement is brought before national courts.

If no arbitral tribunal has yet been formed, national courts must nevertheless decline jurisdiction at the request of a party unless the arbitration agreement is manifestly void or inapplicable. Courts cannot decline jurisdiction of their own motion.

In practice, Guinean courts do decline jurisdiction where these conditions are met.

Even where the parties have a valid arbitration agreement, however, they can apply to a national court for interim or protective orders if this does not require a review of the case on the merits, provided the circumstances are “clearly shown” to be urgent.

National courts can also intervene in very limited circumstances with a view to assisting the arbitration process (see questions 22 and 23 below).

19. If the arbitration agreement is silent, how many arbitrators will be appointed and who is the appointing authority?

While the UAA does not stipulate a specific number of arbitrators if the arbitration agreement is silent on this point, it does provide that an arbitral tribunal must have either a sole arbitrator or three arbitrators.

If the parties are unable to appoint an arbitrator or arbitrators, the task falls to the competent court of the Member State in which the arbitration is seated. In Guinea, it is the Conakry General Court.

If the request for arbitration is filed with the CCJA and the parties have not agreed on the number of arbitrators, the Court appoints a sole arbitrator unless the dispute seems to justify the appointment of three arbitrators.

In the latter case, the parties have fifteen days to appoint the arbitrators (Article 3.1 of the UAA).

20. What rights are there to challenge the appointment of an arbitrator?

Articles 7 and 8 of the UAA set the rules for recusal. An arbitrator must disclose “any circumstance that could create a

legitimate doubt in the mind of the parties about the arbitrator’s independence and impartiality”. Arbitrators may accept their mission only with the written consent of the parties.

Once formally appointed, an arbitrator may only be challenged if there is a doubt about his impartiality and independence, on grounds or facts disclosed after the appointment.

Any cause for the recusal of an arbitrator must be raised within thirty days from the discovery of the basis for the challenge.

Unless the parties have provided for a different recusal procedure, the presiding judge of the General Court rules within thirty days, failing which the recusal request may be brought before CCJA by the interested party.

Court decisions dismissing a challenge can only be appealed to the CCJA.

21. Does domestic law contain public policy requirements for arbitration proceedings?

Under the UAA, parties must receive equal treatment and have an opportunity to exercise their rights (Art. 9). Arbitrators may not base decisions on grounds raised of their own motion without first giving the parties an opportunity to submit observations (Art. 14).

Article 18 of the UAA provides that deliberations are confidential.

The UAA also provides that arbitration cannot last more than six months from the date on which the last arbitrator accepts the terms of reference, unless that period is extended by agreement of the parties or by the competent court.

22. On what grounds can the court intervene in arbitrations seated inside the jurisdiction?

In principle, where there is an arbitration agreement, the national courts cannot intervene in a dispute until after the award has been issued.

Nevertheless, parties may petition the competent court in Guinea in the following circumstances:

- to resolve difficulties encountered with composing the arbitral tribunal, to appoint the sole arbitrator or the third arbitrator (Art. 5 and 8);
- to rule on challenges against arbitrators where the parties have not provided for a different procedure (Art. 8);
- to extend the deadline for the conclusion of the arbitration where there is no agreement between the parties to do so, at the request of a party or the arbitral tribunal (Art. 12);
- to order interim or protective measures when urgently necessary (recognised and reasoned circumstances), provided the measures do not require a review of the case on the merits (Art. 13);
- to assist the arbitral tribunal, at its request, with the collection of evidence (Art. 14).

23. On what grounds can the court intervene in arbitrations seated outside the jurisdiction?

As indicated above (question 22), national courts cannot intervene in an arbitration where there is an arbitration

agreement. Moreover, if the arbitration is seated in another jurisdiction, any and all issues relating to the composition of the arbitral tribunal and conduct of arbitral proceedings fall under the jurisdiction of the courts in the State of the seat.

24. Do arbitrators have powers to grant interim or conservatory relief?

The arbitral tribunal may act at the request of either party to order interim or conservatory measures, excluding interim attachments and court-ordered security which are matters within the sole jurisdiction of the national courts (Art. 14 of the UAA).

25. When and in what form must the award be delivered?

Save as agreed otherwise by the parties, arbitral awards must be issued within six months from the date on which all of the arbitrators have accepted the terms of reference. This period can be extended by agreement between the parties, or by order of the competent court of the Member State at the request of a party or the arbitral tribunal (Art. 12).

Parties can establish special requirements for awards. Failing this, awards are issued by majority decision (for tribunals with three arbitrators), and the grounds must be stated. Awards must be signed by at least two of the three arbitrators.

26. Can a successful party recover its costs?

The UAA contains no provisions on cost recovery.

Where arbitration is conducted under the aegis of the CCJA, the arbitrator is empowered to award costs.

27. On what grounds can an award from an arbitration seated in the jurisdiction be appealed to the court?

An application to set aside is the only remedy against an arbitral award. Applications must be brought before the competent court in the Member State where the award was issued.

The circumstances in which an application to set aside can be brought are as follows (Art. 26, UAA):

- the arbitral tribunal ruled without an arbitration agreement or with respect to an invalid or expired agreement;
- the arbitral tribunal was not properly composed;
- the arbitral tribunal did not rule in compliance with the terms of arbitration;
- the adversarial principle (*contradictoire*) was not observed;
- the award breaches a public policy rule;
- no reasons are given for the award.

Bringing an application to set aside an arbitral award postpones enforcement, unless the tribunal ordered immediate enforcement. The decision can only be appealed to the CCJA (article 25).

Applications to set aside are the only possible remedy that can be sought in national courts. Other remedies – third party challenges and applications for revision of the award – must be submitted to the arbitral tribunal itself.

28. Can a foreign arbitration award be appealed in the local courts?

An arbitral award issued abroad may not be appealed before a local court.

29. What are the procedures for the enforcement of: (i) awards rendered in other jurisdictions and (ii) domestic awards?

To enforce awards issued within an OHADA Member State, the UAA requires parties to obtain the recognition of the award from the competent court in that Member State (article 30). Enforcement applications are made to the Court of Appeal in Guinea (article 586 of the Code of Civil Procedure).

This requires producing the original arbitral award, together with the arbitration agreement or copies of these documents meeting the necessary authentication conditions and, where necessary, a sworn translation into French (article 31).

Decisions refusing to recognise an arbitral award can be appealed to the CCJA but decisions granting recognition are not subject to appeal (article 32).

Awards issued in a different OHADA Member State are recognised in other Member States under the conditions set forth in the applicable international agreements or, failing this, under the conditions stated in the UAA.¹

Guinea is a party to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the New York Convention), which facilitates the recognition of foreign arbitral awards, including where the arbitration is seated outside the OHADA area.

30. Are foreign awards readily enforceable in practice?

These can be enforced in Guinea as soon as they obtain *exequatur*.

Alternative dispute resolution

31. Are the parties to litigation or arbitration required to consider or submit to any alternative dispute resolution before or during proceedings?

Parties are not required to undertake preliminary conciliation proceedings in Guinea, save where the law provides otherwise. However, this formality is mandatory for disputes concerning civil status, capacity of natural persons, in particular those relating to family, marriage, divorce, inheritance, donations, as well as land disputes (articles 443 and 444 of the Guinean Civil, Economic and Administrative Procedure Code). As stated above in question 5, certain courts must attempt conciliation in disputed matters.

The parties may also undertake conciliation of their own volition or on the initiative of the court at any stage of the proceedings (article 445 of the Guinean Civil, Economic and Administrative Procedure Code).

1. Article 34 of the Uniform Act does not expressly refer to foreign awards. However, legal authors concur that it does apply to foreign awards. It would be advisable to clarify this point with local counsel.

Reforms

32. Are there likely to be any significant procedural reforms in the near future?

To the best of our knowledge, there are no plans to make any significant reforms of civil or commercial procedure in the near future.

Please note however that the new Constitution was recently adopted by referendum on 21 September 2025;

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Guinea-Bissau



Introduction

The Guinea-Bissau legal framework is based on the Constitution, which came into force on 16 May 1984, and the Civil Code derived from Portuguese law. Since the independence of Guinea-Bissau on 24 September 1973, Portuguese law has remained in effect, except to the extent it is inconsistent with the Constitution or subsequent legislation. Due to its Portuguese roots, the Guinea-Bissau legal system is based on neo-Roman law as reflected in the Napoleonic Codes of the early 19th century and modified by later German thinking.

Litigation

1. What is the structure of the legal profession?

Lawyers in Guinea-Bissau practise as both barristers and solicitors, offering legal services directly to clients and representing them in court proceedings.

To be a member of the Bar Association, an individual must be a Guinea-Bissau citizen and:

- hold a degree in law;
- be in full enjoyment of his/her civil rights; and
- not have any criminal convictions or have behaved dishonourably.

Foreign nationals may only become members of the Bar Association and practise as a lawyer if they satisfy the three requirements above and if, in similar circumstances, a Guinea-Bissau lawyer could also practise in the relevant foreign country.

2. What is the structure of the court system?

There are lower courts and superior courts. The lower courts are made of Judiciary District Courts, which are divided according to their speciality in matters of civil, criminal, employment or administrative proceedings.

Superior courts have jurisdiction over the entire territory of the country, and they comprise:

- the Supreme Court; and
- the Court of Appeal.

The Court of Appeal:

- hears appeals from the Judiciary District Courts;
- has jurisdiction over proceedings seeking damages from judges and prosecutors in connection with the performance of their duties;
- has jurisdiction to decide on conflicts of jurisdiction between courts (including divisions of the same court); and
- judges matters involving the review of foreign judgments or arbitral awards.

The Supreme Court has jurisdiction to:

- hear appeals from the Court of Appeal and District Courts;
- hear claims for damages against judges of the Supreme Court and Courts of Appeal, and against prosecutors in connection with the performance of their duties; and
- decides on conflicts of jurisdiction between courts. At present, the Supreme Court exercises jurisdiction in matters relating to the enforcement or interpretation of the Constitution, as there is not yet a separate Constitutional Court.

Guinea-Bissau formally ratified the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights on November 3, 2021. In addition, it submitted the declaration authorizing individuals and NGOs to appeal directly to the African Court on Human and Peoples' Rights. With this initiative, Guinea-Bissau has become only the eighth African country to allow its citizens direct access to the Arusha Court.

3. What are the time limits for bringing civil claims?

According to the Guinea-Bissau Civil Code, the general limitation period is 20 years (this applies to most contract claims).

However, certain actions are barred after a period of five years, such as claims relating to rent, commercial interests, and other periodically renewable payment obligations.

For tort claims, the limitation period is three years starting from the date on which the injured party became aware of their entitlement to compensation (without prejudice to the general limitation period of 20 years, if it has elapsed from the date of the harmful event).

Guinea-Bissau is the only Portuguese-speaking Member State of OHADA (Organisation for the Harmonisation of Business Law in Africa) by virtue of the OHADA Treaty signed on 17 October 1993. Under the Treaty, the Council of Ministers of Justice and Finance adopts “Uniform Acts” which are directly applicable in each of the Member States. The OHADA Uniform Act on General Commercial Law establishes specific limitation periods for commercial obligations, which coexist with – and prevail over in case of conflict – the rules of the Civil Code applying to relations between traders or involving commercial transactions. The Uniform Act establishes a general limitation period of five years, but sets out certain special limitation periods that are even shorter in specific contexts. Most importantly, in a commercial sale of goods contract, the applicable limitation period is two years from the date on which the claim could have been brought.

4. Are lawyer-client communications privileged (ie, protected from disclosure to a court/tribunal and opposing parties)?

Yes. There is an obligation of confidentiality between a lawyer and his client. This obligation ceases when it is necessary to disclose communications to defend the rights, interests or dignity of the client or the lawyer.

5. How are civil proceedings commenced, and what is the typical procedure which is then followed?

Civil proceedings begin with the filing of a summons by the plaintiff.

Once the summons is submitted, the court clerk reviews it to ensure compliance with all formal requirements. The defendant is then formally summoned. Service is generally performed in person rather than by post, and is carried out exclusively by court clerks or judicial officers. The defendant may respond within 20 days from the date of the summons. Counterclaims may be introduced, as long as they are based on the same facts and legal issues raised in the plaintiff’s initial pleading.

The pleadings should set out the facts and legal bases upon which the parties rely for their claim or defence and include the necessary evidentiary documents to support them.

In certain cases, there may be a right of rebuttal within 8 days, or a second reply within the same time limit.

6. What is the extent of pre-trial exchange of evidence, and how is evidence presented at trial?

The documents a party intends to rely on must be submitted either with the summons or the statement of defence.

If not submitted with pleadings, supporting documents can be submitted up until the close of trial (with the court’s permission). However, the party will be fined unless it can prove that it was unable to submit evidentiary documents along with the pleadings.

As for witnesses, the common procedure is that they provide oral evidence at trial, not written witness statements. Such evidence, together with any documents tendered, is recorded as evidence-in-chief. The other party can cross-examine the witness. Subject to the court’s discretion, re-examination may be directed on matters referred to in cross-examination. Judges are allowed to question witnesses directly. A witness cannot be recalled without the leave of the court.

As for experts, the court’s permission is required to adduce such evidence. Expert reports are submitted to the court. Experts may be summoned to the trial to provide clarifications on their reports.

7. To what extent are the parties able to control the procedure and the timetable? How quick is the process?

While procedural rules govern certain steps to be taken by the parties, the judge retains ultimate authority over the timetable, so the length of proceedings cannot be predicted with certainty.

There are deadlines for the filing of documents and where these are not complied with, penalties including admission of facts or, sometimes discontinuance/dismissal of the claim apply. It is difficult to estimate the average length of a commercial case; this depends on the complexity of the issues and process. However, the time from issue to trial is never less than one to two years.

8. What interim remedies are available to preserve the parties’ interests pending judgment?

Several types of interim remedies may be applied for, namely specified temporary injunctions and unspecified provisional remedies.

Specified temporary injunctions include requests for attachments, provisional alimony, temporary restitution of possession and suspension of corporate resolutions.

Unspecified provisional remedies include orders to perform certain actions, a summons ordering the defendant to refrain from certain conduct, or the delivery of movable or immovable assets which are the subject of the action.

9. What means of enforcement are available?

To enforce decisions issued in proceedings, a party must commence further proceedings called enforcement proceedings.

The main methods of enforcing judgments are:

- enforcement orders (to pay a sum of money by selling the debtor’s assets);
- delivery of assets;
- performing or refraining from engaging in a specific act.

A new OHADA Uniform Act on Simplified Recovery Procedures and Enforcement Measures (17 October 2023) is in force in Guinea-Bissau. This Uniform Act complements the local Civil Procedure Code, simplifying and streamlining certain enforcement procedures in all OHADA Member States.

10. Does the court have power to order costs? Are foreign claimants required to provide security for costs?

Decisions issued in proceedings or on any of its pleas or appeals include an order for the claimant (on the merits or on the incident) to pay costs or, if the action is not won, the party who took advantage from the proceedings.

Each party must pay 10% of the amount at stake in the claim as a court fee upon filing its pleading and/or defence.

Foreign claimants are not required to provide security for costs.

11. On what grounds can the parties appeal, and what restrictions apply? Is there a right of further appeal? To what extent is enforcement suspended pending an appeal?

The right to appeal is constitutionally guaranteed and there is a general right to appeal decisions handed down by courts of original jurisdiction in proceedings where the amount initially claimed is higher than the amount awarded by the court. The Civil Procedure defines a number of possible appeals processes, divided into 'ordinary' and 'extraordinary' appeals, depending on circumstances and subject matter.

Generally, an appeal does operate as a stay of the lower court decision unless otherwise expressly provided in the Civil Procedure Code.

12. To what extent can domestic and/or foreign State entities claim immunity from civil proceedings?

Domestic and foreign States do not have immunity from civil proceedings.

Some domestic state entities are subject to the jurisdiction of the administrative courts, rather than ordinary courts.

13. What procedures exist for recognition and enforcement of foreign judgments?

The Guinea-Bissau Civil Procedure Code states that final foreign court judgments and arbitral awards are enforceable in Guinea-Bissau subject to a recognition procedure.

To obtain recognition of a foreign decision:

- there must be no doubt as to the authenticity of the decision;
- the decision must be final and not amenable to appeal under the law of the country where it was rendered;
- the decision must be recognised under Guinea-Bissau conflict rules and must not be contrary to Guinea-Bissau public policy;
- the defences of *lis pendens* or *res judicata* must be unavailable;
- the defendant must have been duly served unless Guinea-Bissau Law has dispensed with service of process or a judgment in default was obtained;
- it must not contain rulings that are contrary to Guinea-Bissau public policy principles;
- If handed down against Guinea-Bissauan entities, it must not offend the provisions of Guinea-Bissau private law where the matter should be resolved in accordance with this law according to Guinea-Bissauan conflict rules.

Enforcement of a foreign judgment is carry out together with the recognition proceedings.

Arbitration

14. Is the arbitration law based on the UNCITRAL Model Law? If so, are there any key modifications? If no, what type of arbitration does the law provide for?

Since 15 March 2018, arbitration in OHADA Member States has been governed by the revised Uniform Act on Arbitration within the Framework of the OHADA Treaty on 23 November 2017 (the UAA), replacing the initial text of 11 March 1999. The UAA complies with the fundamental principles of international commercial arbitration and is aligned with the essential characteristics of the UNCITRAL Model Law.

The UAA applies to both national and international arbitration and governs all arbitration proceedings with a seat in a Member State (commenced after its effective date). It supersedes existing national laws. The provisions of the national laws which do not conflict with the UAA may be taken into consideration, but only on very subsidiary terms.

Guinea-Bissau has a national arbitration law, Law No. 19/2010 (the Arbitration Law) based on the UNCITRAL Model Law.

In general terms, the national Arbitration Law provides that arbitration procedure should be based on the principles of fair and equal treatment, adversarial process, and hearing of the parties (Art. 11).

The parties can determine what procedure they would like to apply to the dispute, respecting the national principles that govern public order. The parties can also agree that the tribunal will rule according to equity (Art. 20, para. 3). Generally, an arbitral decision cannot be appealed, but there are a few circumstances in which this is allowed (see questions 27 and 28 below).

Regarding the production of evidence, the Arbitration Law stipulates that all types of evidence legally admissible in court may also be admitted in arbitration (Art. 16).

The previous Arbitration Law (Decree-Law No. 9/2000) included a specific chapter on international arbitration (Art. 43 and 44). The current Arbitration Law does not contain the same provisions. In any event, ; notwithstanding the above, in international arbitration, the national Arbitration Law has a secondary role in international arbitration, since most arbitration procedures will be governed by the UAA.

15. What are the main national arbitration institutions?

Arbitration in Guinea-Bissau is still at an early stage, and therefore no arbitration centre has been established to date.

At the supranational level, there is the Common Court of Justice and Arbitration or CCJA, based in Abidjan, Côte d'Ivoire, which was created by the OHADA Treaty. The CCJA is an arbitration institution where the UAA applies. The CCJA is both a judicial court and an arbitration institution covering all the OHADA States. It acts as an arbitration centre and administers proceedings governed by the CCJA Rules of Arbitration revised on 23 November 2017. Title IV of the Treaty establishes the framework for CCJA arbitration and the CCJA Arbitration Rules

set out the particulars. The CCJA is different from other arbitration centres as it is not a private institution.

For CCJA Arbitration Rules to apply, a dispute must be contractual, one of the parties must have its domicile or usual residence in the territory of an OHADA Member State, or the contract must have been performed or must be performed in the territory of an OHADA Member State. The Court may also administer arbitral proceedings based on an instrument related to an investment, in particular an investment code or a bilateral or multilateral investment treaty (Art. 2.1 of the revised CCJA Arbitration Rules).

16. Are there any restrictions on who may represent the parties to an arbitration?

The provisions regarding representation before the judicial courts are applicable to arbitral proceedings. In accordance with the Guinea-Bissau Civil Procedure Code, other than practicing lawyers, trainees, solicitors and the parties themselves may also present submissions but as long as no legal issues are raised.

17. What are the formal requirements for an enforceable arbitration agreement?

Under article 3 of the UAA, the arbitration agreement must be in writing or in any other form offering proof of its existence, including by reference to a separate document containing the agreement.

Article 4 of the UAA also provides that an arbitration agreement is independent of the main contract (principle of separability). Its validity is assessed based on the shared intent of the parties and therefore is not affected if the surrounding contract is voided. The parties also have the possibility of agreeing to take their dispute to arbitration, even if proceedings are already pending before a national court

Under article 3 of the national Arbitration Law, there must be a written agreement between the parties to submit present or future disputes to arbitration, and that agreement must define the scope of disputes to be resolved through arbitration.

18. Will the courts stay litigation if there is a valid arbitration clause covering the dispute? Does the approach differ according to whether the seat of the arbitration is inside or outside the jurisdiction?

Under article 13 of the UAA, national courts must decline jurisdiction, at the request of one of the parties, where there is a valid arbitration agreement. If the dispute has not yet been submitted to an arbitral tribunal, the court should also decline jurisdiction unless the arbitration agreement is manifestly void or inapplicable.

Moreover, article 23 of the OHADA Treaty states that should a case come before any national court of a Member State in a dispute that the parties had agreed to resolve through arbitration, the court must decline jurisdiction and, if necessary, refer the matter for arbitration.

Guinea Bissau's Arbitration Law also includes the principle of *Kompetenz-Kompetenz* in article 13, which states that the tribunal should make a determination on its own jurisdiction.

19. If the arbitration agreement and any relevant rules are silent, how many arbitrators are appointed, and who is the appointing authority?

Under the UAA, the arbitral tribunal is composed of either a sole arbitrator or three arbitrators (Art. 8). Absent an agreement between the parties, cases are commonly adjudicated by a sole arbitrator. Article 5 sets out the mechanisms for arbitrator appointments. If the parties are unable to appoint an arbitrator or arbitrators, the task falls to the competent court in the Member State of the seat of the arbitration.

20. What rights are there to challenge the appointment of an arbitrator?

Article 7 of the UAA states that anyone accepting the role of arbitrator must communicate that acceptance to the parties in writing. Arbitrators must disclose any circumstance that might set off a challenge, and may only accept the role of arbitrator with unanimous consent from the parties given in writing.

The Parties have the right to challenge an arbitrator if there are justifiable doubts about that arbitrator's impartiality and independence. In a dispute where the parties have not determined the procedure for challenging an arbitrator, the competent judge in the Member State must rule on the challenge no more than thirty days after the parties and the arbitrator have been heard or duly summoned. If not, jurisdiction is transferred to the CCJA unless the parties have agreed on a different procedure. Decisions to remove an arbitrator are final (not subject to appeal). Decisions dismissing challenges may only be appealed to the CCJA.

Any grounds for challenging an arbitrator must be raised no more than thirty days after those grounds have been discovered by the challenging party. Thereafter, arbitrators may only be challenged for grounds that came to light after their appointment.

21. Does domestic law contain public policy requirements for the procedure to be followed?

Guinea-Bissau's arbitration law (embodied in the OHADA UAA and the domestic Arbitration Law) lays down a few fundamental procedural guarantees, but otherwise gives parties wide latitude to set the procedure. The key following principles must be followed:

- the parties must be treated equally;
- the defendant must be duly served;
- the principles of adversarial process must be observed in all phases of the procedure;
- the parties must be heard, either by oral or written statement, before the award is issued.

The law does not contain any other substantive procedural requirements.

22. On what grounds can the court intervene in arbitrations seated inside the jurisdiction?

The UAA provides that the national courts may provide assistance in the following matters: resolving issues of arbitrator appointment (Art. 6) and challenges (Art. 8); ordering interim or conservatory measures (Art. 13); collecting evidence (Art. 14); extending time limits (Art. 12); setting aside awards (Art. 25); resolving disputes over immediate enforcement (Art. 28); and granting *exequatur* (Art. 30).

23. On what grounds can the court intervene in arbitrations seated outside the jurisdiction?

At the request of the parties, the national courts in Guinea-Bissau can support an arbitration with a seat outside Guinea-Bissau by, for example, granting an injunction or interim measure to preserve documents or assets. These measures must be urgent in nature.

24. Do arbitrators have powers to grant interim or conservatory relief?

The arbitral tribunal may, upon the request of either party, order interim or conservatory measures, with the exception of interim attachments and judicial liens which remain within the jurisdiction of national courts (Art. 14 of the UAA). These measures will be enforced by the national courts.

The courts in OHADA Member States may order interim measures, as may the arbitral tribunal. The difference is that the courts have the authority to order interim measures that are immediately enforceable, whereas an award containing interim measures must be granted *exequatur* in order to be become enforceable.

25. When and in what form must the award be delivered?

Under the UAA, save as agreed otherwise by the parties, arbitral awards must be issued within six months from the date on which all arbitrators have accepted the terms of reference. This period can be extended by agreement between the parties or by order of the national courts of the Member State at the request of a party or the arbitral tribunal (Art. 12).

Parties may set special requirements for awards in the agreement. If they do not, awards are issued by majority decision in tribunals comprising three arbitrators (Art. 19).

The award must contain:

- the arbitrator or arbitrators' full names
- the date of the award
- the seat of arbitration
- the full names and company names of the parties, and the address of their residence or registered office
- where relevant, the full names of counsel or any other person who represented or assisted the parties
- a statement of the parties' respective claims, arguments, and the stages of the procedure
- the reasons on which the award was based
- mention of the tribunal having decided as *amicable compositeur*, if applicable.

The award must be signed by the arbitrator or arbitrators. However, if a minority of refuses to sign the award, this refusal must be mentioned and the award will have the same effect as if it had been signed by all the arbitrators (Art. 21).

26. Can a successful party recover its costs?

Although the previous Arbitration Law (approved by Decree-Law No. 9/2000) provided in article 39 (1) that the final award would determine which party should pay the costs of the

arbitration or what proportion of costs would be shared between the parties, the current Arbitration Law does not contain any such provision, nor does the UAA.

27. On what grounds can an award from an arbitration seated in the jurisdiction be appealed to the court?

Under the UAA, the arbitral awards cannot be appealed on the merits. The only remedy against an arbitral award is an application to set aside brought before the competent court in the Member State where it was issued. This should be done within one month from service of the award (Art. 25 and 27).

An application to set aside can be brought in the following circumstances (Art. 26):

- the arbitral tribunal ruled despite the lack of an arbitration agreement or in reliance on an invalid or expired;
- the arbitral tribunal was not properly constituted;
- the arbitral tribunal did not rule in compliance with its terms of reference;
- the right to be heard was not observed;
- the award breaches an international public policy provision in an OHADA Member State;
- the award fails to state the reasons on which it is based.

Unless immediate enforcement of the award was ordered by the arbitral tribunal, the filing of an application to set aside stays enforcement of the award until such time as the competent court in the Member State, or the CCJA, as applicable, has rendered a decision.

If an award is set aside, a party may initiate another arbitration in accordance with the UAA (Art. 29).

Applications to set aside are the only remedy available to the parties in national court. However, parties may apply to the arbitral tribunal for revision of the award if they discover a fact capable of having a decisive influence on the outcome which was unknown to both the tribunal and the applying party before the award was made. In addition, an award may be challenged before the tribunal by any third party whose rights are harmed by the award (Art. 25).

28. Can a foreign arbitration award be appealed in the local courts? If so, on what grounds?

Based on article 33(3) of the Arbitration Law, it seems that an application to set aside an award can be brought before the competent court in Guinea-Bissau, even if it was rendered abroad.

The Arbitration Law states that an arbitral award not formed under the UAA must be duly recognised by the Supreme Court. In this case, enforcement of a foreign arbitral award can be challenged if the award is considered as incompatible with international public policy (article 32 (3)).

29. What are the procedures for the enforcement of: (i) awards rendered in arbitrations seated outside of the jurisdiction and (ii) domestic awards?

Awards issued in OHADA Member States will be recognised as binding in other Member States in accordance with the

conditions laid down in applicable international agreements, and absent these, the conditions set out in the UAA.

To enforce awards issued in an OHADA Member State, the UAA requires parties to obtain recognition of the award from the competent court in that Member State (Art. 30).

Article 31 of the UAA states that the existence of the award is proved by producing the original award together with the arbitration agreement or copies of such documents satisfying the necessary authentication conditions. Documents not in an official language of the Member State where the exequatur is sought must be accompanied by a certified translation by a registered translator. Exequatur will be refused where the award is manifestly contrary to the Member State or international public policy.

Decisions refusing to recognise an arbitral award can be appealed to the CCJA but decisions granting recognition cannot (Art. 32).

The Arbitration Law provides, in article 35, that foreign arbitral awards not made under the UAA require foreign decision recognition from the Supreme Court (see question 13 above).

Under Guinea-Bissau civil procedural law, foreign and domestic arbitration awards have the same force as an award handed down by a District Court. Therefore, the same procedures as for enforcing court judgments apply (see question 9 above).

If the seat of the arbitration is Portugal, the rules of the 1989 Legal Cooperation Agreement between the Portugal and Guinea-Bissau apply. The Cooperation Agreement contains several rules covering the conditions of access to each party's courts of law, co-operation in civil matters, recognition and enforcement of decisions, as well as other matters (co-operation involving criminal law, extradition, social security, etc).

The Cooperation Agreement does not make decisions automatically enforceable in the territory of each State, but it does make recognition and enforcement procedures clearer and easier for the parties. The Agreement is clearly applicable to arbitral awards (article 14 (2)).

30. Are foreign awards readily enforceable in practice?

Guinea-Bissau is not party to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the New York Convention), but it did sign the 1965 Washington Convention on the Settlement of Investment Disputes between States and Nationals of other States (the ICSID Convention) in 1991. However, it never ratified the Washington Convention, and so the Convention is not in force.

The UAA made the procedures clearer and more accessible to countries within the scope of OHADA, which facilitates many of them. However, local contingencies, judges' relative lack of experience with international arbitration, and the difficulties faced by the local judicial system still constitute significant obstacles to the enforcement of awards.

Alternative dispute resolution

31. Are the parties to litigation or arbitration required to consider or submit to any alternative dispute resolution before or during proceedings?

There is no legal requirement to submit to any alternative dispute resolution before or during proceedings unless the parties have expressly agreed to do so.

Reforms

32. Are there likely to be any significant procedural reforms in the near future?

The Civil Procedure Code is under revision, but there is no predictable date for its completion.

In February 2025, a national project to strengthen the justice sector was launched under the name *Justisa pa Tudu Djintis* ("Justice for All"). Fully funded by the European Union and supported by the United Nations Development Programme (UNDP), the project aims to enhance access to justice through legal empowerment and judicial reforms. The program includes the rehabilitation and equipping of regional and sectoral courts, as well as the boosting of human resources, in partnership with the Supreme Court of Justice (STJ), the Office of the Attorney General (PGR), and civil society. This initiative forms part of the EU-Guinea-Bissau Multi-Annual Indicative Programme 2021-2027, which seeks to ensure quality judicial services and bring justice closer to the people.

A constitutional revision is also underway. This effort has been under discussion for several years and was formally reactivated by the parliament elected in 2023. The revision is still in the preparatory parliamentary debate stage. One of the key proposals is the creation of a separate Constitutional Court to rule on constitutional issues. Another significant reform under consideration is the establishment of an Ombudsman.

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Kenya



Introduction

Kenya's legal system is based on the Constitution which was adopted upon Kenya's independence from British colonial rule in 1963. On 27 August 2010, a new Constitution was promulgated which introduced a new legal landscape, including the devolution of powers. A notable change to the judicial structure was the introduction of a Supreme Court as well as the mandatory vetting of all judicial officers.

Kenya's legal system is based on common law and the doctrine of precedent in the interpretation and creation of legal principles. The Kenyan Law of Contract Act provides that the common law of England relating to contract (as modified by the doctrines of equity and specified UK legislation) applies in Kenya. As a matter of practice, decisions of English superior courts are treated by the Kenyan courts as persuasive authority.

Laws in Kenya are codified. However, the Constitution recognises customary law in so far as it does not conflict with the Constitution.

Litigation

1. What is the structure of the legal profession?

In Kenya, advocates can act as both barristers and solicitors. While advocates increasingly choose areas of specialism, a majority remain general practitioners.

The legal profession in Kenya is regulated by legislation. The key legislative instruments governing qualifications of lawyers and the practice of law are the Advocates Act, the Legal Education Act, 2012 (the **Legal Education Act**), and the Kenya School of Law Act, 2012. The Law Society of Kenya (**LSK**), a statutory body established under the Law Society of Kenya Act, 2014, regulates the professional codes of conduct and practice of advocates in Kenya.

To qualify as a lawyer in Kenya, one must obtain a Bachelor of Laws degree from a recognised university locally or from an institution overseas which has been approved by the Council of Legal Education (the **CLE**). The CLE is established under the Legal Education Act. To qualify as an advocate of the High Court

of Kenya, candidates study and are examined for a post graduate diploma in law at the Kenya School of Law (KSL), which is regulated by the CLE. KSL offers a one-year programme known as the Advocates Training Programme (**ATP**). After completion of the ATP, lawyers are required to undertake pupillage for a minimum period of six months covering contentious and non-contentious areas of law with a practising advocate of at least 5-years' standing. After successfully sitting the Bar exams offered by the CLE at the end of the ATP, the candidate petitions the Chief Justice of Kenya to be admitted to the Roll of Advocates as stipulated in the Advocates Act.

Through the LSK, members of the public can check the status of an advocate and whether he/she is licensed to practice in any given year. The discipline and conduct of advocates are regulated by the Advocates Complaints Commission and the Advocates Disciplinary Tribunal, both of which are established by the Advocates Act.

2. What is the structure of the court system?

The following laws regulate Kenya's court system:

- the Constitution of Kenya, 2010;
- the Supreme Court Act, 2011;
- the Judicature Act;
- the Environment and Land Court Act, 2011;
- the Employment and Labour Relations Act, 2011;
- the Appellate Jurisdiction Act;
- the Small Claims Court Act, 2022;
- the Magistrates' Courts Act, 2015; and
- the Kadhis' Court Act.

The Constitution establishes the Supreme Court, which is the apex court whose decisions are final and binding on all other courts. It has original jurisdiction over presidential election petitions and has jurisdiction to hear appeals from the Court of Appeal in matters of public importance or constitutional interpretation and application. The Supreme Court also has jurisdiction to render advisory opinions with respect to any matter touching on county governments. An appeal lies as a matter of right to the Supreme Court where the case involves interpretation or application of the Constitution. In all other matters, for an appeal to lie in the Supreme Court, it must first

be certified to be of general public importance. The Supreme Court and the Court of Appeal both have the power of certification. The Court of Appeal determines appeals from the High Court, the Employment and Labour Relations Court and the Environment and Land Court. The High Court has unlimited original jurisdiction in criminal and civil matters, and constitutional challenges and exercises appellate jurisdiction on appeals from subordinate courts and statutory tribunals. The Employment and Labour Relations Court (the **ELRC**) and the Environment and Land Court (the **ELC**) enjoy a status similar to the High Court. The ELRC has jurisdiction to determine employment and labour relation disputes while the jurisdiction of the ELC extends to disputes concerning environmental matters as well as the title and occupation of land. The Arbitration Court established under the Nairobi Centre for International Arbitration (**NCIA**) Act, 2013 may also be fully operationalised under the Arbitration (Amendment) Bill, 2025 if passed by the legislature. The operationalisation of the Arbitration Court would result in a transfer of the functions and powers of the High Court in respect of arbitration proceedings. The Magistrates' Courts, Small Claims Court, and Kadhis' Courts are subordinate courts. The Magistrates' Courts are subordinate courts presided over by different classes of Magistrates. Each class is governed by fixed pecuniary jurisdiction. The Small Claims Court is presided over by Adjudicators and is jurisdictionally limited to civil claims in respect of various contracts, torts, personal injury claims, set-off and counterclaims limited to a claim value of one million Kenya shillings. The jurisdiction of the Kadhis' Court is limited to disputes in succession and matrimonial proceedings over parties, both of whom must profess the Islamic faith.

There are also numerous statutory tribunals that have been established under legislation to determine sector-specific disputes.

3. What are the time limits for bringing civil claims?

The Limitation of Actions Act prescribes the periods of limitation for court actions and arbitrations:

- actions concerning land must be brought within 12 years of the accrual of the cause of action.
- actions founded on contract, seeking account or to enforce an award, and claims seeking equitable relief must be brought within six years of the accrual of the cause of action.
- actions founded on tort must be brought within three years of the accrual of the cause of action, barring an action for libel or slander, which may only be within 12 months from the date the cause of action arose.

The Kenyan Employment Act, 2007 prescribes a limitation period for employment claims of three years after the cause of action accrues.

The 2010 Constitution introduced brand new fundamental rights and freedoms as to which there is no limitation of action for claims.

4. Are communications between a lawyer and his/her client privileged (ie, protected from disclosure to a court/tribunal and opposing parties)?

Communications between an advocate and his/her client (or an agent on the client's behalf) are privileged unless waived by the client. The Evidence Act provides that an advocate must not

disclose any such communication (oral or documentary) without the consent of his/her client. The privilege continues even after the engagement of the advocate ceases.

Privilege does not, however, extend to communications made in furtherance of illegal acts, crimes or fraud observed by the advocate in the course of his/her engagement.

5. How are civil proceedings commenced, and what is the typical procedure which is then followed?

Civil Procedure Rules, 2010

The Civil Procedure Act and the **Civil Procedure Rules**, 2010 (the Civil Procedure Rules) prescribe the procedure for initiation and conduct of civil proceedings.

Proceedings are generally commenced by the filing of a plaint. A plaint must be accompanied by a verifying affidavit, which is a statement verifying the averments in the plaint.

A list of witnesses to be called upon in the event of a trial together with a list of documents to be relied upon should also be filed by the claimant/plaintiff. Each witness (unless he/she is an expert witness) is required to file a written witness statement.

These documents must be filed at the court registry and once a court summons is obtained, they must be served on the defendant who will be required to enter appearance in court within 10 days of receiving the summons, or such other longer period set out in the summons, and lodge a statement of defence within 14 days of entering appearance.

The statement of defence must attach any list of witnesses together with witness statements and a list of documents relied upon, if any. This must be served on the plaintiff within fourteen days from the date of filing. If a defendant fails to appear or file a defence within the prescribed time, the plaintiff may obtain interlocutory judgment against him.

Within ten days after the close of pleadings, the parties are expected to complete a pre-trial questionnaire and have the matter set down within 30 days for a case conference to establish the issues and attempt settlement. If this fails, then a trial conference is scheduled to plan the timetable for the hearing and the manner in which the case will be conducted.

The Civil Procedure Rules facilitate disclosure before trial and narrow the issues for determination through pre-trial conferences. It currently takes an average of two (2) years to conclude a matter (previously it would take five years or more).

In most proceedings, there are invariably interim applications that may alter and delay the proceedings (for example, applications to amend pleadings, further and better particulars, disclosure applications, injunction applications, applications for security for costs etc). These are generally disposed of via written submissions.

Small Claims Court Rules, 2022

The Small Claims Court Act and Small Claims Court Rules, 2022 (the **Small Claims Court Rules**) prescribe the procedure for the initiation and conduct of civil claims at the Small Claims Court.

Proceedings are generally commenced by the filing of a statement of claim in the form set out in the Small Claims Court Rules. The statement of claim must be served within 6 months of being filed otherwise the claim stands as dismissed.

In response to the statement of claim, a respondent may opt to settle the amount claimed in full, admit (in part or in whole) the amount claimed with a proposed mode of payment, deny the whole or part of the claim together with reasons for denial, claim a set-off or make a counterclaim, apply to join a third party who is answerable to the claim, or request the court to transfer the proceedings to an alternative court station.

Within 14 days of service of a statement of claim, other than where the respondent opts to settle the amount claimed in full, the respondent shall file their response in the form set out in the Small Claims Court Rules. If the respondent carries on business or resides outside the local limits of the jurisdiction of the court, they shall file their response to the statement of claim within 30 days of service. In case of a counterclaim or set-off, the claimant will then have 14 days after service of the response to file their response. If the respondent fails to file their response within these periods, the claimant may request the court to enter default judgement and issue a decree in the claimant's favour.

Once the responses have been served, the claim will be scheduled for trial or a hearing of an application, with the Adjudicator required to notify the parties at least 14 days prior to the fixed date. Seven days prior to the hearing, each party to the proceedings shall file and serve on the other parties a list and copies of the documents which they seek to rely on in support of their claim. The court is not bound by the strict rules of procedure or evidence.

6. What is the extent of pre-trial exchange of evidence, and how is evidence presented at trial?

Parties to litigation are expected to file their witness statements and serve these on the opposing party when they file the plaint or statement of defence. In addition, they are expected to file and present the list and bundle of documents they wish to rely on at the hearing.

If there is a requirement for the production of additional documents, parties are at liberty to file and serve on the opposing side a notice seeking the production of specified documents. If the pleadings of either side are unsatisfactory, the other party may seek further and better particulars to enable it to respond.

At trial, the plaintiff opens his case and presents witnesses, followed by the defendant. The principal method of giving evidence at trial is through oral evidence, whether factual or expert. The parties, through their lawyers, cross-examine the other side's witnesses and the parties conclude with oral or written submissions. Experts need not file witness statements although there is a practice by certain courts to have all witnesses file statements.

A written judgment ought to be handed down within 60 days. However, this is not always the case due to the heavy case load experienced by judicial officers.

7. To what extent are the parties able to control the procedure and the timetable? How quick is the process?

The parties to litigation can regulate the procedure to a certain extent. If, for instance, they agree on the issues for determination, they can request that the court decides only on the agreed issues. The court, at a pre-trial hearing, assesses how long a hearing will take to conclude (usually a day or two depending on the complexity of the case and the number of witnesses) and will issue directions in this respect. It is only at the hearing that the court really takes charge of the process since the preliminaries, such as agreement on issues and disclosure, are mainly dealt with by the parties. A fair estimation would be six to eight months for issue, compliance with pre-trial procedures and the setting down of the case for hearing (subject to the Court's diary).

8. What interim remedies are available to preserve the parties' interests pending judgment?

Kenyan courts can issue injunctive relief to deserving parties with a view to preventing the destruction, removal, disposal, wasting away or alienation of any property that is the subject of the litigation. The interim remedies available include prohibitory injunctions, Mareva injunctions, Anton Pillar orders, security for costs, contempt of court orders and appointment of receivers.

The courts can also restrain a party from committing breach of contract or injury of any kind whether compensation is sought or not.

Where there is apprehension by the plaintiff that the defendant will flee the jurisdiction or attempt to frustrate the possible entitlement of the plaintiff, the courts may order arrest or attachment before judgment is obtained.

9. What means of enforcement are available?

Where judgment is delivered, the judgment debtor may be ordered to pay the money into court, or to the decree holder. If payment is not forthcoming, the decree holder may apply to the court for assistance for:

- specific delivery of property;
- attachment and sale of property or sale without attachment;
- attachments of debts through garnishee proceedings;
- arrest and detention of any person; or
- appointment of a receiver.

The ease of enforcement is dependent on locating the defendant and any assets he may have.

10. Does the court have power to order costs? Are foreign claimants required to provide security for costs?

In Kenya, costs are usually awarded to the successful party. The courts tend to award the successful party the costs of the suit unless the party's conduct during the trial militates against this or the parties agree that each shall bear its own costs.

The courts may order security for costs. There is greater likelihood that the court will grant the order where the plaintiff is not resident in Kenya or does not have sufficient assets in the jurisdiction.

11. On what grounds can the parties appeal, and what restrictions apply? Is there a right of further appeal? To what extent is enforcement suspended pending an appeal?

A party may appeal in the first instance from the Magistrates' Court to the High Court or from the High Court to the Court of Appeal on issues of fact and law. Further appeals to the Supreme Court will be in accordance with the criteria discussed in question 2. An appellant is required to first seek leave to appeal from the first instance trial court where leave is necessary.

The appeal does not of itself operate as a stay of execution. However, the court appealed from/to may grant a stay of execution pending the hearing of the appeal. The court can also impose conditions for grant of stay.

12. To what extent can domestic and/or foreign State entities claim immunity from civil proceedings?

The Privileges and Immunities Act (the **PI Act**) sets out the immunities that can be granted to persons. The PI Act seeks to enforce the Vienna Convention on Diplomatic Relations, 1961 and the Vienna Convention on Consular Relations, 1963, and indicates which organisations are entitled to privileges and immunities.

Unless immunity has been granted under the PI Act, all persons are subject to the jurisdiction of the courts.

13. What procedures exist for recognition and enforcement of foreign judgments?

The Foreign Judgments (Reciprocal Enforcement) Act, 1984 prescribes the manner in which judgments given outside Kenya can be enforced. This law makes provision for the enforcement of foreign judgments in Kenya from countries that accord reciprocal treatment to judgments given in Kenya.

Prior to enforcement of a foreign judgment in Kenya, a judgment creditor is required to apply to the High Court to have the judgment registered in Kenya. The application must be presented to the High Court within six years of the judgment. The application must be accompanied by:

- a certificate from the original court;
- if the judgment is not in English, a translation;
- a certified or duly authenticated copy of the judgment issued by the foreign court; or
- an affidavit stating that, at the time of the application, the judgment has not been satisfied, that it is capable of enforcement by the foreign court through execution and if required along with any other relevant evidence as may be prescribed.

Judicial precedent has established that in the absence of a reciprocal enforcement arrangement, a foreign judgment is enforceable in Kenya as a claim in common law. In this case, a party must file a plaint at the High Court of Kenya providing a concise statement of the nature of the claim, claiming the amount of the judgement debt, supported by a verifying affidavit, list of witnesses and bundle of documents intended to be relied upon. A certified copy of the foreign judgement should be exhibited to the plaint.

Arbitration

14. Is the arbitration law based on the UNCITRAL Model Law? If yes, are there any key modifications? If no, what form does the arbitration law take?

The Arbitration Act 1995 is based entirely on the UNCITRAL Model Law. Initially, it was a mirror copy of the Model Law, but with amendments the Act now encompasses recent developments in arbitration practice and procedure. In particular, these provisions include:

- withdrawal and immunity of an arbitrator;
- the equal treatment of parties; and
- the effect of awards, costs and expenses, and interest.

The Arbitration (Amendment) Bill, 2025 contains proposed amendments that may further develop arbitration law and practice in Kenya if adopted, including rules on third party funding and fast track procedures for expedited arbitrations.

15. What are the main national arbitration institutions?

The Chartered Institute of Arbitrators in Kenya is an active arbitration body and was founded in 1984. It is a branch of the Chartered Institute of Arbitrators formed in 1915 with its headquarters in London. It is the entity that in practice regulates arbitrations and trains arbitrators in Kenya. Its website is www.ciarbkenya.org.

The Nairobi Centre for International Arbitration (the **Centre**) was created by the Nairobi Centre for International Arbitration Act, 2013. The Centre was inaugurated in 2016 and is intended to be the overarching body with respect to both international and domestic arbitration in Kenya. The website is www.ncia.or.ke.

16. Are there any restrictions on who may represent the parties to an arbitration?

There are no restrictions as to representation in arbitration proceedings, but ordinarily it is lawyers who represent parties at these proceedings, although other professionals such as engineers and architects also represent parties, especially in construction disputes. However, with regard to applications to the High Court arising from the arbitration, representatives appearing for parties in Kenya must be qualified to practice as advocates under the Advocates Act.

17. What are the formal requirements for an enforceable arbitration agreement?

For an arbitration agreement to be enforceable in Kenya it needs to be in writing and in a document signed by the parties. It can be evidenced by an exchange of emails, letters and other forms of communication that provide proof of agreement. The Arbitration Act, 1995 goes as far as indicating that where there is a statement of claim in which the existence of an agreement is alleged by a party and not denied by the other, that would constitute an arbitration agreement. Lastly, a clause in a contract referring to a document that contains an arbitration clause shall constitute an arbitration agreement if the contract is in writing and the reference is made to make the arbitration clause part of the contract.

18. Will the courts stay litigation if there is a valid arbitration clause covering the dispute? Does the approach differ in this regard if the seat of the arbitration is inside or outside of the jurisdiction?

An arbitration agreement will be upheld to the exclusion of the courts in Kenya. The Arbitration Act is explicit that where an enforceable arbitration agreement is in existence and expected to govern a dispute, the court will stay proceedings and refer the parties to arbitration as long as the party seeking such stay and referral has not submitted to the jurisdiction of the courts by filing a defence and taking steps in the proceedings.

However, the proceedings will not be stayed if it is shown that: (a) the arbitration agreement is void and inoperative; or (b) there is not in fact a dispute with regard to the matters submitted to arbitration.

This provision will apply whether the seat of arbitration is in Kenya or not.

19. If the arbitration agreement and any relevant rules are silent, how many arbitrators will be appointed, and who is the appointing authority?

The parties are free to determine the number of arbitrators. Section 11 of the Arbitration Act provides that where the parties fail to determine the number of arbitrators, there will be one arbitrator and where the parties indicate that they would like two arbitrators, unless they indicate to the contrary, it will be presumed that they intend that the two arbitrators shall appoint a third arbitrator. The Arbitration Act also provides that parties are free to agree on the procedure of appointment of the Arbitrator. Where the parties do not set the appointment procedure the default procedure under the Arbitration Act shall apply. Under the default procedure:¹

- where the parties indicate that they would like three arbitrators, each party shall appoint one arbitrator and the two arbitrators appoint the third arbitrator;
- in an arbitration with two arbitrators, each party shall appoint one arbitrator: and
- in an arbitration with one arbitrator, the parties shall agree on the arbitrator to be appointed.

The court may grant an application to set aside an appointment where it is satisfied there was good cause for failure or refusal by the party in default to appoint his or her arbitrator in due time. Only on granting such an application and with the consent of the parties, can the High Court appoint a sole arbitrator.

20. What rights are there to challenge the appointment of an arbitrator?

Any party can challenge the appointment of an arbitrator if justifiable doubts exist as to his impartiality and independence, if he does not possess the qualifications that the parties have agreed to, if he is physically or mentally incapable of conducting the proceedings, or there are justifiable doubts as to his capacity.

In order to have an arbitrator removed, the parties may agree on the procedure but if they fail to, within 15 days of becoming

aware of the composition of the tribunal or after becoming aware of the circumstances warranting a challenge, a party is expected to write a statement setting out the reasons for the challenge. The arbitrator may withdraw or determine the matter of his challenge.

If the challenge is unsuccessful, the party may, within 30 days, apply to the High Court to determine the matter.

The arbitrator will be entitled to address the court, should they wish to. The court may also hear the other party to the arbitration. The decision of the court on the matter is final and cannot be appealed.

21. Does the domestic law contain substantive requirements for the procedure to be followed?

The procedural requirements included in the Arbitration Act are along the lines of the UNCITRAL Model Law. The parties therefore have latitude to adopt the rules of institutions that they choose to regulate the procedure.

22. On what grounds can the court intervene in arbitration seated inside the jurisdiction?

No court will intervene in matters governed by the Arbitration Act on its own initiative. However, court intervention is permitted under the Arbitration Act, 1995 in the following circumstances:

- if the agreement is silent on the appointing authority, the parties can apply to the High Court for the appointment;
- in appropriate cases, the High Court can also make interim conservatory orders pending the commencement or conclusion of Arbitration proceedings;
- challenges to arbitral awards can be presented by an aggrieved party to the High Court, which can uphold or quash the same;
- to determine questions of law on application by the parties;²
- where the tribunal requests court assistance in the taking of evidence;³ and
- to determine the tribunal's jurisdiction.

23. On what grounds can the court intervene in arbitrations seated outside the jurisdiction?

The courts will intervene in arbitrations only to the extent that the Act allows regarding:

- granting interim measures before or during the arbitral proceedings;
- the appointment/challenge of an arbitrator, where parties disagree;
- the determination of a point of Kenyan law;
- the determination of apportionment of monies deposited in court; and
- applications to recognise and enforce the award.

1. Section 12 of the Arbitration Act

2. Section 39 of the Arbitration Act

3. Section 28 of the Arbitration Act

24. Do arbitrators have powers to grant interim or conservatory relief?

Yes.

25. When and in what form must the award be delivered?

The award must be in writing and signed by the arbitrator(s). Reasons must be provided unless the parties have otherwise agreed.

In order to be valid, the award must indicate the seat of arbitration and should be delivered to each of the parties.

Where the arbitral tribunal consists of more than one arbitrator, the decision of the tribunal can be made by a majority.

26. Can a successful party recover its costs?

The arbitrator is expected to make a finding with regard to costs. The Arbitration Act does not give guidance on this. However, most arbitrators are guided by the concept that costs are usually awarded to the successful party and will indicate so in the award. In the absence of a finding by the arbitrator, each party will bear its costs.

The award may be withheld from a party who has not paid his share of the fees due, but such party may deposit money in court and apply to the High Court for the apportionment of the money. The arbitrator can also determine the matter of interest and decide whether to apply simple or compound interest.

27. On what grounds can an award from an arbitration seated in the jurisdiction be appealed to the court?

For domestic awards, the Arbitration Act provides that there is no recourse, save where the parties have expressly agreed in advance on a right of appeal on a point of law. If such is the case, the parties can appeal to the High Court. They can also appeal to the Court of Appeal on a point of law subject to agreement or if the Court of Appeal certifies that there is a matter of general public importance.

Arbitral awards, both foreign and domestic, can be set aside if one or more of the following grounds is established:

- a party was under some incapacity;
- the agreement is not valid under the law to which the parties have subjected it;
- the party was not given notice of the appointment of an arbitrator or was otherwise unable to present his case;
- the award deals with a dispute not contemplated by the reference;
- the composition of the arbitral tribunal was not in accordance with the agreement; and
- the making of the award was induced by fraud, bribery, undue influence or corruption.

The High Court can also set aside an award if the subject matter of the dispute is not capable of settlement by arbitration under the law of Kenya or if the award is in conflict with public policy.

28. Can a foreign arbitration award be appealed in the local courts? If so, on what grounds?

A foreign award cannot be appealed in the Kenyan courts. However, a foreign award may be set aside by the Kenyan courts on the same grounds as domestic awards, as set out in question 27 above.

29. What procedures exist for enforcement of: (i) awards rendered in arbitrations seated outside of the jurisdiction and (ii) domestic awards?

Awards (foreign or domestic) are enforced by applying to the High Court for recognition. The grounds for opposing recognition are the same as for setting aside an award (as set out in question 27 above). Once an award is recognised it is enforced as a decree of the High Court would be (see question 9 above).

Kenya is a party to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 1958 (the New York Convention). Awards made in other Contracting States to the New York Convention will be enforced as an order of the High Court on application by a party. The original sealed award or a certified (and, if necessary, translated) copy must be attached to the application. There must be no pending applications to set aside the award in the courts of the seat of the arbitration. Enforcement of a foreign award may only be resisted on the same grounds as for setting aside.

For domestic awards, the same procedure applies as for court judgments (see question 9 above).

30. Are foreign awards readily enforceable in practice?

Foreign awards can be converted into High Court judgments via a formal application for recognition.

Alternative dispute resolution

31. Are the parties to litigation or arbitration required to consider or submit to any alternative dispute resolution before or during proceedings?

The new Constitution expressly promotes ADR, including arbitration. The courts therefore encourage parties to seek amicable resolution outside of the court system. The Civil Procedure Rules allow for any litigating party to apply to have a matter referred to arbitration. Court-assisted dispute resolution exists under the Civil Procedure Rules and the court may at any time before judgment allow parties to refer a dispute to arbitration. In 2012 there was an amendment to the Civil Procedure Act that introduced court annexed mediation. Under court-annexed mediation, filed cases are screened for suitability for referral to mediation, and if found suitable, are allocated to accredited mediators to assist the parties mediate. The parties are also free to refer their cases to mediation under court-annexed mediation. The parties, however, are not compelled to settle their dispute through mediation, as mediation envisages resolution of disputes by the parties themselves. Parties are however “expected to negotiate in good faith and exert earnest efforts towards settlement.”

In practice, at the case management conferences, the judges establish whether the parties have attempted resolution of their dispute before proceeding to trial.

Reforms

32. Are there likely to be any significant procedural reforms in the near future?

The Constitution of Kenya, 2010 mandated the enactment of numerous laws, many of which have been enacted by the Kenyan Parliament over the past decade. The ongoing legislative efforts aim to streamline court processes, enhance access to justice, and promote alternative dispute resolution (ADR), among other commendable objectives that strive to uphold the values and principles outlined in the Constitution. In addition to the Arbitration (Amendment) Bill, 2025 referenced under questions 2 and 14 above, a dispute resolution bill is currently under consideration which aims to, inter alia, provide a streamlined mechanism for alternative dispute resolution through conciliation and mediation.

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Lesotho



Introduction

Lesotho's dualist legal system is the product of the interaction between Roman Dutch civil law and customary law. It comprises a variety of sources, including the Constitution, legislation, judicial precedent, customary law, and authoritative texts. Decisions from South African courts are persuasive, and the courts refer to them in formulating their decisions. Decisions from similar jurisdictions may also be cited for their persuasive value.

Litigation

1. What is the structure of the legal profession?

Legal practitioners are either advocates or attorneys. An advocate is a specialist in litigation and is not allowed to deal directly with clients. An attorney is entitled to appear in court in the same way as an advocate but can also deal directly with clients. Attorneys can also be admitted as notaries and conveyancers, entitling them to draw notarial documents and the like. Before a legal practitioner can be admitted as an attorney, such practitioner is required to pass practical examinations, including bookkeeping, and is required to maintain a trust account, which is audited annually.

Only registered legal practitioners may practise in the courts of Lesotho.

A legal practitioner is required to hold a four or five year law degree from the National University of Lesotho. Articles of clerkship are not a pre-requisite, although some legal practitioners do undergo articles for a period of two years and more.

Basotho who have obtained their qualifications at a university other than the National University of Lesotho are required to pass a bar examination or to undergo articles of clerkship which culminate in the practical examinations already mentioned.

Certain foreign lawyers can be admitted to practise as legal practitioners in Lesotho based on their admission in their home country but, in order to obtain a practising certificate, they must be part of an office manned full-time by an attorney in Lesotho.

Additionally, Attorneys are still required to sit for the practical examinations set by the Law Society of Lesotho. This requirement has been vigorously maintained by the Chief Justice of the Courts of Lesotho, who hears and determines all admissions in the High Court.

The National Reforms Committee has made a proposal for the overhaul of the Legal Practitioner's Act to provide for the fusion of the profession. This proposal is part of a raft of changes that have been under consideration since 2017. Most recently, The Legal Practice Bill, 2023 was workshopped by the Law Society of Lesotho in May, 2024 and it still remains to be seen whether the Bill will eventually be enacted.

2. What is the structure of the court system?

The court structure in Lesotho is a three-tier system as follows:

- the Court of Appeal;
- the High Court; and
- subordinate courts.

The High Court acts in a number of capacities, including as a Commercial Court, a Constitutional Court, an Electoral Court, a Land Tribunal, and a Revenue Appeals Tribunal.

3. What are the time limits for bringing civil claims?

Generally, a common law limitation period of 30 years applies.

However, there is also a Prescription Act, which lays down time limits in respect of specific contractual causes of action.

In respect of claims for goods sold and delivered, money lent and advanced, rent, admission of debt, money due upon an arbitration award, the purchase price of immovable property, and claims based on cheques/promissory notes and the like, the claim must be brought within eight years.

In the case of claims for the fees of legal practitioners, land surveyors, persons practising in any branch of the medical profession, bakers, butchers, tailors, dressmakers, shoemakers, merchant clerks or the wages of a servant, the claim must be brought within three years of the cause of action arising.

There is no statutory limitation period in respect of torts (*delicts*).

There is also a Prescription Bill, 2024 that is currently in the works by the Lesotho Law Reforms Commission, which aims to revise the prescriptive periods in the current Act, but still excludes prescription in delictual matters.

4. Are communications between a lawyer and his/her client privileged (ie, protected from disclosure to a court/tribunal and opposing parties)?

Legal professional privilege applies in Lesotho. However, it is limited to communications between the legal practitioner and his/her client in contemplation of litigation, either pending or envisaged.

There have recently been significant statutory inroads into legal professional privilege in an effort to combat corruption and money laundering. As such, the scope of privilege is now limited.

5. How are civil proceedings commenced, and what is the typical procedure which is then followed?

Civil proceedings are commenced by the issue of an originating application which has annexed to it, a list of all witnesses and their statements, all exhibits intended to be used in evidence including but not limited to reports, diagrams, models and photos, documentary evidence to be used. If documentary evidence is not in English, it must be duly translated. If there are no witnesses or documents to be used in court, there must be a statement to that effect. There are also application proceedings which commence by issue of a notice of motion together with affidavits in support of the relief being claimed.

In an action instituted by the issue of an originating application, pleadings are signed by both a legal practitioner and the party. Once pleadings have closed, the matter will be referred for mediation. In the event it is unsuccessful, the matter will be allocated a judge and taken for a case planning hearing where issues of the possibility of summary judgment, preliminary objections, security for costs, filing of further pleadings and other matters the judge deems necessary are discussed. Thereafter, the judge will issue an order on the case planning issues discussed.

The next step will be case management conference. Some judges merge it with the case planning conference for expediency, as some issues overlap. At this conference, matters of joinder, consolidation of actions, expert witnesses and their qualifications, manner of adducing evidence, filing of further pleadings, settlement of claims and determination of the number of days to complete the trial are discussed. Before the case conference can be held, the parties must submit a joint case management report. After the conference has been held, the judge must issue an order on directives and agreements made.

A Pre-trial conference follows thereafter. Here, the judge once more enquires on the possibility of settlement. Other issues include time limits for the delivery of the paginated and indexed court record, whether there is a need to transfer the case from one division of the High Court to another, all issues of law and fact to be resolved at the trial, facts which are common between the parties written in a statement and other matters. A pre-trial order will then be issued by the Court after the conference is held. Trial dates are usually obtained at the pre-trial stage.

Should there be any further issues outstanding, the court may at a status hearing impose sanctions to a party who has not met

deadlines. It may condone technical irregularities so that the real issues between the parties are traversed and may make such other directives aiming at a speedy and just resolution of a case.

The case will go to trial and witnesses will be called to lead evidence in support of or in defence of their respective cases. The court will thereafter consider the evidence which has been led and rule in favour of one party.

In the case of an application, this is commenced by the issue of a notice of motion attaching affidavits by the parties and their witnesses. Once answering and replying affidavits have been filed, the parties will attend a case management conference. In this conference, the parties discuss the basis of the relief sought and the opposition; facts in dispute and those which are admitted, dates for filing heads of argument and hearing of the matter. Suggestions to expedite the matter amongst other issues may be heard by the court. At this hearing, the court will not ordinarily hear oral evidence but will decide the case on the evidence that has been presented by way of affidavit. The legal representatives for the parties will argue the case based upon the facts as set out in the affidavits and the law to be applied.

6. What is the extent of pre-trial exchange of evidence, and how is evidence presented at trial?

In actions commenced by an originating application, the parties must:

- produce all relevant documentary evidence;
- give notice as well as a summary of expert evidence which they intend to lead at the hearing;
- provide witness statements from those they intend to call at the hearing;
- give notice of any photographs, plans, etc, which they intend to produce and rely upon at the hearing.
- Some judges prefer that a separate paginated and indexed trial bundle consisting of all documentary evidence be filed typically 14 days before trial.

The hearing then proceeds on the basis of the calling of witnesses to give sworn testimony as to the facts.

In the case of applications, all the evidence is contained in affidavits, with the result that there is no pre-trial exchange of evidence, other than the exchange of affidavits.

7. To what extent are the parties able to control the procedure and the timetable? How quick is the process?

All cases are now judge-driven as a result of the High Court Civil Litigation Rules, 2024. Once pleadings have closed, the registrar must refer the matter for mediation; however practically, it is the applicant who must ensure the matter is mediated and if mediation fails, issue a case planning conference notice once the matter has been allocated a judge. All these procedures must be done by the High Court; however, for those parties keen to have their cases heard sooner, they are in a position to control the procedure and the timetable to some extent by being proactive. This is through deploying the court rules which have been promulgated in respect of each court and which set out the procedure and the time limits for each step to be taken in order to bring the case to a hearing.

Pleadings are usually finalised within two months and different conferences issues resolved within a further six months. A date for the hearing is then allocated, which could be as much as one year ahead.

Postponements of hearings are quite usual, which tend to extend the process substantially as another year has to pass before the matter can again be heard.

8. What interim remedies are available to preserve the parties' interests pending judgment?

Interim remedies are available to the parties pending judgment. However, they will not be available in all instances. In most cases, they will relate to the preservation of an asset, such as a motor vehicle, where it can be shown that the asset will deteriorate in value if interim relief is not granted, or interlocutory applications for interdicts.

9. What means of enforcement are available?

The enforcement of procedures and time limits enables the court to compel the other side to comply.

As for enforcements of judgments already granted, the court process issued is executed by deputy sheriffs (in the case of the High Court) and messengers of court (in the case of the subordinate courts). Where a judgment debtor disrupts execution by a deputy sheriff or court messenger, contempt proceedings can be initiated by the judgment creditor. Sometimes, police officers are also joined in the execution process where judgment debtors resist execution.

10. Does the court have power to order costs? Are foreign claimants required to provide security for costs?

A court is fully empowered to order costs, which are in its discretion.

Foreign claimants are usually required to provide security for costs in litigation.

11. On what grounds can the parties appeal, and what restrictions apply? Is there a right of further appeal? To what extent is enforcement suspended pending an appeal?

There is a right to appeal against a final judgment. However, further appeals are restricted, usually to questions of law.

An appeal does not usually lie in an interlocutory application.

Enforcement of a court's judgment is not suspended pending the appeal but a party can apply for such suspension. This will usually be granted if there are reasonable grounds shown or the party provides security for the capital amount.

12. To what extent can domestic and/or foreign State entities claim immunity from civil proceedings?

There is no general immunity from civil proceedings in respect of domestic State entities. However, a party is prohibited from attaching property of the Government of Lesotho in execution of a judgment against it.

Foreign State entities can claim immunity if the claim is not based on a commercial contract entered into by that foreign State.

13. What procedures exist for recognition and enforcement of foreign judgments?

Foreign judgments may be recognised either by applying to the High Court to register the foreign judgment as an order of the High Court under local legislation which includes the Common law, or by issuing an originating application based on the foreign judgment which will entitle the claimant to apply for summary judgment. If it is then shown that the defendant has no *bona fide* defence to the claim, judgment will be granted and execution can follow.

Arbitration

14. Is the arbitration law based on the UNCITRAL Model Law? If yes, are there any key modifications? If no, what form does the arbitration law take?

Arbitrations in Lesotho are conducted in accordance with the Arbitration Act of 1980 (the Arbitration Act). This is not based on the UNCITRAL Model Law.

The relevant provisions of the Arbitration Act are that arbitration agreements must be in writing, they must provide for reference to arbitration of any existing or future dispute and the dispute must relate to a matter specified in the agreement. Matters which cannot be referred to arbitration are matrimonial matters or matters relating to status.

If a party to an arbitration agreement applies to the court for resolution of a dispute covered by the arbitration agreement, the other party may apply for the stay of the proceedings. The court will have discretion as to whether or not to order a stay and the test is that there must be sufficient reason for the court to hear the matter and not for the dispute to be decided by arbitration.

The procedure for arbitration in terms of the Arbitration Act is that the aggrieved party will serve a written notice upon the other party requiring the appointment of an arbitrator (in accordance with any procedure agreed between the parties in their arbitration agreement). Once the arbitrator is appointed, the basic procedure for the arbitration will be agreed upon between the parties and the tribunal. The award must be made within six months of the appointment of the arbitrator, and must be in writing and signed and delivered in open court. Unless the arbitration agreement provides otherwise, the award will be final and not subject to appeal.

There are also provisions in the Arbitration Act regarding how an award is to be enforced.

15. What are the formal requirements for an enforceable arbitration agreement?

As stated above, the agreement must be in writing, it must provide for reference to arbitration of any existing or future dispute, and the dispute must relate to a matter specified in the agreement. There is no requirement that the arbitrator be named or designated in the agreement itself.

16. Will the courts stay litigation if there is a valid arbitration clause covering the dispute? Does the approach differ in this regard if the seat of the arbitration is inside or outside of the jurisdiction?

A court has the power to stay litigation if there is a valid arbitration clause covering the dispute.

As to the question of whether a Lesotho court would grant a stay of litigation where the parties have agreed that their disputes should be settled by arbitration and the seat of the arbitration is in a foreign country, a Lesotho court has discretion as to whether or not to stay such proceedings. In most cases, the court would give effect to the party's agreement that their disputes be settled by way of arbitration, as well as where that arbitration should take place. This approach by the courts uphold the principle of exhausting all remedies before the parties resort to litigation.

17. On what grounds can the court intervene in arbitrations seated outside the jurisdiction?

We do not believe that the Arbitration Act provides any powers to a court to intervene in an arbitration seated outside the jurisdiction.

18. Can a foreign arbitration award be appealed in the local courts? If so, on what grounds?

The Arbitration Act makes no provision in relation to an appeal from an arbitration award. Indeed, the Act provides that, unless the arbitration agreement contains a provision otherwise, there will be no appeal from an arbitration award wherever it is decided.

19. What procedures exist for enforcement of awards rendered in arbitrations seated outside of the jurisdiction?

The Arbitration Act provides for the enforcement of awards in arbitrations, it does not distinguish between domestic or international arbitrations or those seated within or outside Lesotho.

The procedure would be for the party in whose favour the award is made to apply to the High Court for an order recognising the award and making it an order of the court. Once that order is granted, the award would be enforced in the same way as other orders of court made in the High Court's jurisdiction.

Lesotho is a party to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the New York Convention). The Lesotho courts are, therefore, obliged to enforce foreign arbitral awards in accordance with the terms of the New York Convention.

20. Are foreign awards readily enforceable in practice?

As we have indicated above, foreign awards can be made an order of court through an application procedure.

Once the award has been made an order of court, it will be enforced in the same way as any other order of court.

Alternative dispute resolution

21. Are the parties to litigation or arbitration required to consider or submit to any alternative dispute resolution before or during proceedings?

The Court-Annexed Mediation (CAM) Programme was introduced into Lesotho's judicial system through the Mediation Rules of May 2011. CAM was officially launched in June 2011 and became operational in August 2011. While the Mediation Rules were repealed by the advent of the High Court Civil Litigation Rules of June 2024, the latter rules still provide for CAM. Under CAM, parties to litigation are required to consider

mediation and in most High Court cases with the exception of divorce matters, reference to mediation is obligatory. Parties to litigation in the High Court are mandated to submit to mediation either at the close of pleadings, or during proceedings by referral to a judge or on their request. To date, however, only a fair number of matters referred for mediation are settled as a result of a negative perception towards mediation by litigants and most legal practitioners.

There is no requirement on arbitrating parties to attempt ADR unless they have contractually agreed to do so.

Reforms

22. Are there likely to be any significant procedural reforms in the near future?

There is some discussion about the Arbitration Act being repealed but we have seen no evidence of this as yet.

The National Reforms Committee is considering a number of far-reaching justice sector reforms which, if passed, will see an overhaul of the sector, including the introduction of a human rights commission, a restructure and decentralisation of the courts and a modernised, independent judicial services commission that will be more representative and have wider powers to regulate the judiciary independently of political involvement.

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Liberia



Introduction

Liberia, often regarded as Africa's oldest democracy, was established in 1822 by the United States. The country operates a dual legal system: statutory law, rooted in Anglo-American common law, governs the modern sector, while customary law—based on traditional, unwritten practices—applies to the indigenous population. The primary sources of law in Liberia include the 1984 Constitution (the supreme law), legislation, statutes, customary law, and judicial precedents.

Litigation

1. What is the structure of the legal profession?

There is no split profession. To be admitted as an attorney-at-law, one must be a citizen of Liberia, and a graduate of a recognised law school. After five years of practice, an attorney-at-law must apply to sit an examination for admission to the Supreme Court as a counsellor-at-law. Upon passing, he/she is admitted as a "counsellor-at-law", and is qualified to practise before the Supreme Court.

2. What is the structure of the court system?

The judiciary in Liberia is headed by the Supreme Court, which oversees a system of subordinate courts. In line with the country's dual legal system, Article 65 of Chapter VII of the Liberian Constitution empowers all courts to apply both statutory and customary laws, provided they align with legislative standards. The Supreme Court comprises of five justices—one Chief Justice and four Associate Justices.

Each of Liberia's political subdivisions, known as counties, has one Circuit Court (Court of Records) and several subordinate courts, including Magistrates' Courts and Justices of the Peace Courts, except for Montserrado County, which has six Circuit Courts and five specialised courts. The six Circuit Courts include the Sixth Judicial Circuit – Civil Law Court and Criminal Courts A through E.

The specialised courts are:

- the Debt Court;
- the Labour Court;
- the Juvenile Court;
- the Tax Court;
- the Commercial Court.

To improve access to justice, the government has introduced the draft Legal Aid Act in December 2021, which is still under legislative consideration. Additionally, in a significant step toward accountability and justice, the government established the Office of the War and Economic Crimes Court through Executive Order No. 131 in May 2024. The Office is tasked with investigating, designing, and recommending the framework for establishing a Special War Crimes Court and a National Anti-Corruption Court. Its primary focus is to address impunity for war crimes, crimes against humanity, and serious violations of international humanitarian law committed during Liberia's civil wars between 1989 and 2003. This initiative is seen as a pivotal move toward transitional justice and national reconciliation, and it is expected to enhance legal certainty and institutional accountability, thereby fostering a more stable environment for commercial dispute resolution and foreign investment.

3. What are the time limits for bringing civil claims?

Real property:

- no time limit for claims against persons disqualified to own property;
- to recover real property – 20 years;
- to recover damages for injuries to real property – three years.

Written contracts:

- for debt or damages for breach of contract based upon written instrument – seven years;
- on bond or note secured by mortgage – seven years;
- upon a deed or other instrument establishing a trust – seven years;
- to establish a will – one year after the death of the testator.

Personal injury:

- injuries to the person – three years;
- medical malpractice not involving fraud – three years;
- medical malpractices involving fraud – two years;
- injuries to reputation – one year;
- injuries to domestic relations – one year.

Breach of oral contract:

- three years.

Personal property:

- to recover chattels – three years;
- injury to personal property – three years.

Action by or on behalf of a corporation's agent, director or officer:

- against a present or former director – three years.

Fraud, mistake, or fraudulent concealment:

- based upon fraud or mistake – two years;
- action to impose constructive trust – two years;
- for fraudulent concealment – two years;
- to annul marriage on ground of fraud – one year.

4. Are communications between a lawyer and his/her client privileged (ie, protected from disclosure to a court/tribunal and opposing parties)?

The Code of Moral and Professional Ethics, promulgated in 1999 and revised in 2009, relative to the duties of a lawyer to his/her client, provides that information provided to a lawyer by the client is protected. The client may waive privilege.

5. How are civil proceedings commenced, and what is the typical procedure which is then followed?

Civil actions are commenced by the filing of a complaint accompanied by a written direction to docket the case for the next term of court. The rule is that civil actions filed during one term of court will not be heard until the succeeding term.

Once a complaint is filed, the defendant has up to 10 days to file a responsive pleading and the plaintiff has up to 10 days to file a reply.

6. What is the extent of pre-trial exchange of evidence, and how is evidence presented at trial?

The documents that a party relies upon to prove his/her case must be attached to their pleadings.

During trial, witnesses must testify in person.

Expert evidence may be considered during trial with or without the permission of the court. Where the expert works for the Government or a private institution, he may be *subpoenaed* to appear and testify as an expert witness. On the other hand, if an expert is an independent person, a *subpoena* may not be required to secure his appearance provided there is an agreement between the expert witness and the party seeking to adduce the expert's evidence.

7. To what extent are the parties able to control the procedure and the timetable? How quick is the process?

Parties are required to hold pre-trial conferences to narrow the issues. During the pre-trial conference, parties are required to raise objections they may have against any evidence. If this is done, the trial is usually quicker.

On average, civil actions can be litigated before the civil law court within three to six months and where an appeal is taken to the Supreme Court, at least another six months. It is therefore possible to conclude a civil action from the Circuit Court to the Supreme Court within 12 months.

8. What interim remedies are available to preserve the parties' interests pending judgment?

Different interim remedies are available depending on the action. In an action for ejectment, especially if the matter concerns the construction or development of real property, the plaintiff may apply for a preliminary injunction to stay further construction on the property pending the adjudication of the case. The petitioner will be required to file a bond to indemnify the other party. Although the other party may file a corresponding bond to vacate the injunctive order, each party will be indemnified as a means of protecting their interests.

In matters involving the payment and collection of rental income, either party may file for the sequestration of the rent (a common law principle) and have the same kept in escrow pending the final determination of the case. The party that prevails takes the money from the escrow account.

In debt actions, the plaintiff may consider an action of debt by attachment, by which the court places a lien over properties owned by the defendant as a guarantee that the defendant will appear to satisfy the judgment, or, alternatively, the court may proceed against the attached properties.

9. What means of enforcement are available?

Court judgments may be enforced by execution (chapter 44, section 39.39 of the Civil Procedure Law), a deferred payment plan (chapter 44, section 44.22 of the Civil Procedure Law), receivership (chapter 44, section 44.72 of the Civil Procedure Law), contempt proceedings (chapter 44, section 44.73 of the Civil Procedure Law) or imprisonment (chapter 44, section 44.71(2) of the Civil Procedure Law).

10. Does the court have power to order costs? Are foreign claimants required to provide security for costs?

Costs are governed by chapter 4 of the Civil Procedure Law. The general rule is that the party in whose favour a judgment is entered is entitled to costs in the action unless otherwise provided by statute or rule, or unless the court determines that to allow costs would not be equitable in all the circumstances. The exception to this rule is that costs should not be imposed against or in favour of the Republic of Liberia, the officer sued or suing in their official capacity, its agencies or any agency wholly owned by the Government.

There is no provision under Liberian law making special requirements for foreign plaintiffs to provide security for costs.

11. On what grounds can the parties appeal, and what restrictions apply? Is there a right of further appeal? To what extent is enforcement suspended pending an appeal?

A right of appeal is guaranteed by the Constitution of Liberia from the rulings of all courts except the Supreme Court. Once an appeal is announced in any court, the appeal will serve as a stay on the enforcement of the judgment pending the review of the judgment either by the Circuit Court (appeal from Justices of the Peace and Magistrates' Courts to the Circuit Courts) or by the Supreme Court (appeal from the Circuit Courts). There is no further appeal from the ruling of the Supreme Court except that the Supreme Court may grant a motion for re-argument when a party believes that the Supreme Court made palpable mistakes or inadvertently overlooked some points of law that would have given a different result if taken into consideration.

12. To what extent can domestic and/or foreign State entities claim immunity from civil proceedings?

There is no direct immunity for domestic entities from civil actions. However, the Government of Liberia or the State cannot be sued for anything done or omitted to be done by government officials while discharging their duties. This covers the three branches of the Government of Liberia, namely the legislature, the executive and the judiciary.

Immunities are also provided for diplomatic missions accredited near the capital. However, in any event where a diplomat is charged with the commission of an offence which is an exception to the rule, the summons will be served through the Foreign Ministry.

13. What procedures exist for recognition and enforcement of foreign judgments?

The enforcement of foreign judgment begins with the filing of a petition for enforcement before a competent court of jurisdiction. For example, if a civil judgment is sought to be enforced, the petition for enforcement must be filed in the civil law court. If the judgment originates from a debt court, the enforcement must be filed before a debt court, etc. For details of enforcement procedures, see chapter 25 of the Civil Procedure Code.

Arbitration

14. Is the arbitration law based on the UNCITRAL Model Law? If yes, are there any key modifications? If no, what form does the arbitration law take?

Liberia's arbitration framework is governed by statute, specifically Chapter 64 of the Civil Procedure Law, Title 1 of the Liberian Code of Laws Revised (1 LCLR), commonly referred to as the Arbitration Law. This law does not explicitly reference the UNCITRAL Model Law. Historically, prior to the enactment of the Arbitration Law, the Supreme Court of Liberia held that arbitration clauses were invalid, as they were seen to improperly exclude the jurisdiction of the courts (see *Grant v The Foreign Mission Board of the National Baptist Convention, USA* [1949] LRSC 20; 10 LLR 209 (1949)). This position was reversed following the enactment of the 1956 Code and the 1973 Civil Procedure Law, which now explicitly recognise arbitration and the judicial enforcement of arbitral awards as valid and legal mechanisms for private dispute resolution (see *Chicri Bros v Isuzu Motors* [2000] LRSC 13; 40 LLR 128 (2000)).

In a progressive move to further enhance access to justice, the draft Alternative Dispute Resolution (ADR) Act of 2024 was validated in late 2024. This draft legislation aims to formalise and institutionalise ADR mechanisms, including mediation, conciliation, arbitration, and customary dispute resolution methods. The Act is designed to address systemic challenges such as court congestion and prolonged pretrial detention, while also expanding access to justice, particularly for vulnerable and marginalised populations. By providing a structured and inclusive legal framework for ADR, the Act supports Liberia's broader goals of social cohesion, sustainable development, and alignment with international standards such as the African Union Agenda 2030 and Sustainable Development Goal 16. The initiative is also expected to foster a more predictable and efficient dispute resolution environment, which is beneficial for commercial disputes and foreign investment by enhancing legal certainty and investor confidence.

15. What are the formal requirements for an enforceable arbitration agreement?

The formal requirement for an enforceable arbitration agreement under the Arbitration Law is that the agreement must be in writing. Section 64.1 of the Arbitration Law provides that: *"a written agreement to submit to arbitration any controversy existing at the time of the making of the agreement or any controversy thereafter arising is valid, enforceable without regard to the justiciable character of the controversy, and irrevocable except upon such grounds as exist for the revocation of any contract"*.

16. Will the courts stay litigation if there is a valid arbitration clause covering the dispute? Does the approach differ in this regard if the seat of the arbitration is inside or outside of the jurisdiction?

Parties may apply to the court under paragraphs 1 and 2 of section 64.2 of the Arbitration Law for an order to compel or stay arbitration proceedings respectively. A party applying for an order to direct the parties to arbitrate (as opposed to litigate) under paragraph 1 must show: (i) the existence of a written agreement to arbitrate as described in section 64.1 of the Arbitration Law (above); (ii) that the applicant is party to such agreement; (iii) the referability of the dispute to arbitration; and (iv) that another party to the agreement has refused to arbitrate the dispute.

Section 64.2 paragraph 4 of the Arbitration Law (stay of action or proceedings involving an issue referable to arbitration) provides that: *"any action or proceeding involving an issue referable to arbitration shall be stayed if an order for arbitration or application therefor has been made under paragraphs one and two of this section or, if the issue is severable, the stay may be only with respect thereto. Where the application is made in such action, or proceeding, the order for arbitration shall include such stay."*

Whether or not the seat of the arbitration is inside or outside Liberia makes no difference; the Arbitration Law does not distinguish between national and international arbitration. For example, in *Chicri Bros v Isuzu Motors* the Supreme Court upheld an arbitration clause in a contract governed by Japanese law providing for ICC arbitration seated in Tokyo. Proceedings commenced in the Liberian courts were dismissed without prejudice to the appellant's right to have the dispute settled by arbitration. Once the matter is referred to arbitration, courts will stay further proceedings.

17. On what grounds can the court intervene in arbitrations seated outside the jurisdiction?

There is no specific section in the Arbitration Law on action or the court's intervention in arbitration proceedings inside or outside Liberia. Nor is there an equivalent to section 2(3) of the English Arbitration Act 1996. The court's jurisdiction under the Arbitration Law is set out in section 64.16 which provides that: *"the making of an agreement described in section 64.1 [above] providing for arbitration in this Republic confers jurisdiction on the court to enforce the agreement under this chapter and to enter judgment on an award thereunder"*.

The court can intervene in arbitrations seated outside the jurisdiction in terms of appeal (see question 18 below).

18. Can a foreign arbitration award be appealed in the local courts? If so, on what grounds?

There are appeal provisions under the Arbitration Law. That is, if any of the parties to arbitration proceedings, including foreign arbitrations seated outside Liberia, make an application to the court, the court will hear such an application and make a determination.

For example, a party to arbitration proceedings may file a motion before the court to confirm an arbitration award (section 64.10 of the Arbitration Law) or to vacate an award (section 64.11 of the Arbitration Law) (see further the answer to question 19 below).

Grounds for vacating an award under section 64.11 include:

- (i) procurement of the award by corruption, fraud, or other undue means;
- (ii) arbitrator partiality (except where the award was procured by confession, corruption or misconduct);
- (iii) where the arbitrator/agency or person making the award exceeded his/her powers or rendered an award contrary to public policy or;
- (iv) where the arbitrators refused to postpone the hearing upon sufficient cause being shown or refused to hear evidence material to the dispute, or otherwise conducted the hearing contrary to the provisions in the Arbitration Law concerning the hearing, or oaths, witnesses, *subpoenas* and depositions.

Upon vacating an award, the court will order a re-hearing and determination of all or any of the issues by the tribunal, except where the award was vacated upon the ground that the dispute was not referable to arbitration. If the award was vacated due to arbitrator partiality, corruption or misconduct, the rehearing will be before new arbitrators appointed in accordance with the Arbitration Law.

Grounds for modification or correction of an award by the court under 64.12 include where: (i) there was an evident miscalculation of figures, or an evident mistake in the description of any person, thing, or property referred to in the award; (ii) the arbitrators issued an award upon a matter not submitted to them and the award may be corrected without affecting the merits of the decision upon the issues submitted; and (iii) the award is imperfect as a matter of form not affecting the merits of the controversy.

A judgment entered pursuant to the provisions of the Arbitration Law can be appealed.

19. What procedures exist for enforcement of awards rendered in arbitrations seated outside of the jurisdiction?

Liberia is a signatory of the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the New York Convention). The New York Convention was ratified by Liberia on 16 September 2005 and entered into force on 15 December 2005. Once a foreign award meets the criteria set out under the enforcement of a foreign judgment, it will be enforced under Liberian law.

Parties must file a motion before the court to confirm an award under section 64.10 of the Arbitration Law. Upon the confirmation of an award, judgment should be entered under section 64.13 of the Arbitration Law. Such judgment has the same force and effect as, and is subject to all the provisions of law relating to, a judgment in a civil action, and may be enforced as any other such judgment.

Upon entry of the judgment, the parties must file: (i) the agreement to arbitrate, or a copy thereof, together with each written extension of the time within which to make the award; (ii) if the award was by confession, the statement containing authorisation to make the award as verified by the oath of the parties; (iii) a copy of the award; (iv) a copy of the order(s) confirming, modifying, or correcting the award and the papers upon which they were based; and (v) a copy of the judgment.

When a foreign party makes a successful claim in an arbitration proceeding against a party with assets in Liberia and the award is confirmed by the court, the party will be under a duty to satisfy the judgment or award. If the party fails to satisfy the award, the court may order execution. By this, the assets of the Liberian party may be exposed to public auction or judicial sale to satisfy the award.

20. Are foreign awards readily enforceable in practice?

Since Liberia is a party to the New York Convention and the local law provides a clear procedure for enforcement, provided a foreign award meets the criteria set out under the enforcement of a foreign judgment, enforcement should be quite straightforward.

Alternative Dispute Resolution

21. Are the parties to litigation or arbitration required to consider or submit to any alternative dispute resolution before or during proceedings?

To a large extent, arbitration proceedings are synonymous with alternative dispute resolution under the law. In other words, arbitration proceedings are an alternative to actual courtroom litigation. Where possible resolution is determined during arbitration hearings by the parties, the court will normally endorse that to support the arbitration proceedings, especially if it is achieved through the consensus of the parties.

Reforms

22. Are there likely to be any significant procedural reforms in the near future?

The current arbitration statute in Liberia was enacted in 1973. There has not been any amendment since then. However, the law is evolving, and one cannot therefore rule out future reform to make the law simpler and more effective.

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Libya



Litigation

1. What is the structure of the legal profession?

In Libya, the legal profession is governed by Law No. 3 of 2014 on Law Practice and its Executive Regulation. The role of a lawyer includes providing legal advice and representing their clients before Libyan courts, administrative and disciplinary bodies. There is no regulatory distinction between transactional lawyers and litigation lawyers in Libya.

A lawyer can practice either as a sole practitioner or through a partnership. In either case, lawyers are supervised and regulated by the Libyan Bar Association.

In order for a candidate to be admitted to the Libyan Bar Association, they must meet the following conditions:

- hold Libyan nationality.
- be resident in Libya.
- have full legal capacity and no criminal record.
- hold a degree in law or Islamic law studies from a public or private Libyan university, or a recognised foreign university.
- have a good reputation.
- have been dismissed from other legal professions, such as bailiff or notary public.
- not have committed any act, either by word or action, which offends the legal profession.
- have secured a period of two years training under the supervision of a lawyer admitted to practice before the Court of Appeal or the Supreme Court.
- pass the Libyan Bar Association's written and oral exams.

Based on their level of experience, lawyers are ranked as follows:

- Lawyers admitted to practice before the Supreme Court.
- Lawyers admitted to practice before the Court of Appeal.
- Lawyers admitted to practice before the Court of First Instance.
- Trainee lawyers.

2. What is the structure of the court system?

The Libyan court system is composed of four types of courts:

- **Summary Courts:** summary courts have jurisdiction to hear minor cases, the value of which does not exceed 1,000 Libyan Dinar. Summary Courts are also competent to rule on minor offences and infractions. A Summary Court consists of a sole judge.
- **The Court of First Instance:** the Court of First Instance has jurisdiction over disputes that fall outside of the jurisdiction of Summary Courts, and to hear appeals against judgments made by Summary Courts. When acting as a court of original jurisdiction, a single judge usually sits on the Court of First Instance. However, when deciding on appeals against a Summary Court decision, a panel of 3 judges is seated.
- **The Court of Appeal:** The Court of Appeal is considered as a court of second instance. Generally, the Court of Appeal has authority to decide on appeals against Court of First Instance decisions, and has original jurisdiction over major crimes and administrative law cases. The Court of Appeal consists of a panel of three judges. At present, the Court of Appeal is divided into nine circuits.
- **The Supreme Court:** The Libyan Supreme Court is the highest court and has jurisdiction to rule on the legal aspects of cases submitted to it. The Supreme Court generally does not rule on any factual aspects, as its role is limited to ruling on legal questions. The decisions and principles issued by the Supreme Court are binding on all lower courts and other administrative bodies in Libya.

3. What are the time limits for bringing civil claims?

In general, under the Libyan Civil Code, the time limit to file a civil claim is fifteen years from the date on which the underlying claim materialised.

However, there are other time limits applicable in specific cases, such as for commercial transactions, employment relationships, and payment of taxes.

4. Are lawyer-client communications privileged?

Communications between a lawyer and his/her client are confidential. Lawyers are not allowed to disclose any information which they may have obtained from their clients, even following the expiration or termination of the lawyer-client relationship. However, lawyers are allowed to disclose such information if it could prevent a crime (Article 32, Law No. (3) of 2014 on Law Practice).

If a lawyer represents a party to dispute or has provided legal advice to this party in a dispute, then that lawyer cannot serve as a witness in the dispute unless permitted by the client.

Lawyers who violate a confidentiality obligation may be subject to disciplinary measures.

5. How are civil proceedings commenced, and what is the typical procedure which is then followed?

Under the Civil and Commercial Procedures Code, civil proceedings can be commenced by filing a claim form with a court clerk that is signed and dated by the claimant, or the claimant's representative or lawyer, with one copy provided to the opposing party (or parties). The court clerk will then insert a date for the initial hearing in the copies of the claim form. The claim form will then be provided to the claimant for purposes of serving it on the defendants.

If the defendant is resident in Libya, the time frame for scheduling the first court hearing is a minimum of eight days from service for civil claims, and three days from service for commercial claims.

If the defendant is not resident in Libya, the time frame is extended as follows:

- 30 days if the defendant is domiciled in a country bordering the Mediterranean.
- 60 days if the defendant is domiciled in Europe.
- 150 days if the defendant is domiciled in a country other than those referred to above.

Pursuant to a request, the judge of temporal matters (President of the First Instance Court) may issue an order setting aside any of the above time limits for reasons of urgency, taking into account the place of residence and the method of service.

6. What is the extent of pre-trial exchange of evidence, and how is evidence presented at trial?

When a dispute goes to court, parties may exchange evidence before the date of the trial. Libyan law does not set out a specific process to be followed for the pre-trial exchange of evidence, nor does it set specific timeframes to be followed when producing evidence. However, evidence must be submitted to the Court of First Instance or the Court of Appeal, while new evidence cannot be submitted for the first time to the Supreme Court. The submission of new evidence to the Court of Appeal, in its appellate role, may also be restricted.

All concerned parties to a dispute must be given a reasonable amount of time to be able to reply to any evidence presented. Written evidence must be provided to the court before and during the proceedings. This applies to First Instance Courts as well as to Courts of Appeal.

Evidence may take the form of witness testimony, expert reports and any type of oral or documentary evidence, subject to the rules of evidence in relation to civil and commercial claims.

7. To what extent are the parties able to control the procedure and the timetable? How long do proceedings last?

Under the Civil and Commercial Procedures Code, lawsuit timetables and procedures are primarily controlled by the court. Parties generally have no control over the process, although they are allowed to seek extensions, over which the court has sole discretion.

The ability of a party to terminate proceedings is the only aspect over which a party has some control, although parties must request the court's approval before withdrawing a case. Once the court gives its approval, that decision is treated as a writ of execution with the legal characteristics of a full judgment. Parties may also agree to pause proceedings for no more than six months.

Given the many courts in Libya with different structures and workloads, it is not possible to state an average duration for a lawsuit. The length and pace of proceedings depends on various factors relating to the subject matter of the dispute, the amount at stake, and the workload of the judge or judges presiding over the case. Libyan law does not set a certain time limit for handing down a judgment.

8. What interim remedies are available to preserve the parties' interests pending judgment?

In specific cases and subject to certain conditions, Libyan law provides for various interim measures to preserve the interests and property of a party pending judgment. The main available interim remedies are: (i) a protective seizure order to preserve a party's movable or immovable assets, in the possession of that party and before a judgment is made. Subject to certain conditions, a protective seizure order may be issued even if the party's assets are in the possession of a third party; and (ii) the appointment of a legal guardian to control or manage the assets in dispute.

The main reason why a court would issue the above orders is to secure a party's assets until a judgment is made.

9. What means of enforcement are available?

When an enforceable court judgment is handed down, the losing party may voluntarily execute it, or it can be enforced against him. Enforcement involves seizing the losing party's assets and selling them in a public auction. Certain procedural rules must be followed in the enforcement process, such as notification and time limits.

If the enforcement procedural rules are not fully complied with, a losing party may challenge the enforcement process by submitting an application to the court that issued the relevant judgment.

In practice, the enforcement process is not straightforward, and it can therefore take a long time before a judgment is actually enforced.

10. Does the court have power to order costs? Are foreign claimants required to provide security for costs?

The court has the power to order which party has to bear the costs of litigation. These include filing fees, lawyer's fees and others such as for experts, etc.

The court must decide who bears the costs in the final judgment; generally this is the losing party. If there is more than one losing party, costs are divided between them as determined by the court.

The court can also order the winning party to pay costs if it believes the winning party may have acted in bad faith. If both parties to litigation fail to comply with a court order, they can both be ordered to pay the costs.

Parties must submit statements of their respective costs. The court then decides on and apportions costs in the final judgment.

There is no legal requirement that foreign claimants provide security for costs.

11. On what grounds can the parties appeal, and what restrictions apply? Is there a right of further appeal? To what extent is enforcement suspended pending an appeal?

In principle, all court judgments may be appealed unless the law provides otherwise, or the parties agree otherwise.

Notwithstanding certain cases identified by Libyan law, in general, an appeal must be submitted to the relevant court within thirty days from the date the judgment is served on the relevant party.

If the appealed judgment was handed down by a Summary Court, it is appealed to the Court of First Instance. If the appealed judgment was handed down by the Court of First Instance, the appeal is filed with the Court of Appeal.

In most cases, judgments cannot be enforced until they become final and enforceable. A judgment that is still open to appeal is not final, and therefore cannot be enforced. However, in certain cases, the courts can order the immediate enforcement of judgments, regardless of any subsequent challenges or appeals.

As a general rule, final judgments cannot be appealed. However Libyan law does provide for a petition for reconsideration as a route to challenge a final court judgment. A petition for reconsideration is submitted to the court that rendered the challenged judgment, and is only allowed in limited cases. A petition for reconsideration does not automatically suspend enforcement of the challenged judgment, unless the court decides otherwise based on a request from the petitioner.

Final judgments can also be appealed to the Supreme Court on legal questions only (ie, if a judgment is not consistent with law); the Supreme Court cannot review the merits or facts of a case. Save in certain limited cases, appeals to the Supreme Court must be filed within thirty days (or sixty days for criminal cases) from the date the final judgment is served on the relevant party. Appeals to the Supreme Court do not automatically suspend enforcement, unless the Supreme Court decides otherwise based on a request from the relevant party.

12. To what extent can domestic and/or foreign State entities claim immunity from civil proceedings?

Sovereign acts notwithstanding, Libyan state entities are not entitled to claim immunity in civil and commercial proceedings. Claims made against state administrative bodies in relation to their official actions are primarily heard by the administrative courts (which are subordinate to the Court of Appeal). However, if the action taken by an administrative body is commercial or civil in nature, the claim will be heard before a civil court.

Libyan state entities do, however, have immunity from enforcement proceedings, and therefore the assets of Libyan state administrative entities are not subject to seizure.

Pursuant to international conventions to which Libya is a party, foreign state entities may claim immunity from civil and criminal proceedings (including enforcement proceedings). However this is subject to the principle of reciprocity, and may be rejected in limited instances.

13. What are the procedures for having foreign judgments recognised and enforced?

In order for a foreign judgment to be enforced in Libya, an application for enforcement must be made to the relevant Court of First Instance. The Court will order enforcement of the foreign judgment, without reference to its merits, once it is satisfied that:

- the judgment was issued by a competent judicial body, is final, and can be enforced in the state where it was issued;
- the claimant(s) and respondent(s) were properly represented before the court;
- the judgment does not conflict with Libyan public policy, or any prior judgments or orders of the Libyan courts; and
- Libyan court judgments are enforceable in the state where the judgment was issued.

However, in light of the principle of reciprocity, the recognition and enforcement of foreign judgments in Libya may be subject to the same conditions that would apply to the enforcement of a Libyan judgment in the country where the relevant foreign judgment was handed down.

Arbitration

14. Is the arbitration law based on the UNCITRAL Model Law? If so, are there any key modifications? If not, what type of arbitration does the law provide for?

In April 2023, Law No. 10 of 2023 on Commercial Arbitration entered into force in Libya (the "Arbitration Law"). This law provides a new legal framework for commercial arbitration, based on the UNCITRAL Model Law and laws of neighbouring countries. The Arbitration Law contains 10 Chapters divided in 100 Articles and replaces earlier outdated provisions.

The Arbitration Law applies to all arbitration agreements signed after April 2023 and to proceedings initiated after its enactment, as long as the seat of arbitration is in Libya and the parties have agreed the procedure will be governed by the Arbitration Law. This law applies to both domestic and international arbitrations.

Prior to the Arbitration Law, the legal framework for arbitration in Libya was primarily governed by Section 4, Book 3 of the Libyan Civil and Commercial Procedures Code. There were also other laws that governed specific types of arbitration, such as Law No. 4 of 2010 on Mediation and Arbitration, which applied to minor disputes falling under the jurisdiction of the Summary Courts.

Law No. 4 of 2010 is no longer the primary reference for arbitration in Libya. The new Arbitration Law provides greater clarity, structure, and international compatibility, though some ambiguities remain and will require judicial interpretation.

15. What are the main national arbitration institutions?

Law No. 4 of 2010 (mentioned above) requires the establishment of an arbitration committee in each municipality in Libya. The committees can only hear low-value arbitration cases which fall under the jurisdiction of the Summary Court. However in practice, there is little evidence that these arbitration committees have actually been established and activated. Conversely, several non-governmental arbitration organisations and centres have been established in recent years, and are active in the area of training and capacity building. However, no information is available on whether they are able to hear and decide on disputes.

In 2013, the Libyan Centre for International Commercial Arbitration was established focusing on domestic and international arbitrations. It also provides legal services that protect the interests of parties involved in arbitration proceedings, as well as facilitate the resolution of disputes while preparing future arbitrators.

The Arbitration Law introduces for the first time a legal framework governing the establishment and functioning of arbitration centres. According to Article 84 an arbitration centre must obtain a license from the Ministry of Justice.

The centre is created by decree once its license is published in the Official Gazette.

16. Are there any restrictions on who may represent the parties to an arbitration?

Under applicable laws, there are no specific restrictions on the representation of parties in arbitration.

17. What are the formal requirements for an enforceable arbitration agreement?

According to Article 2 of the Arbitration Law, the arbitration agreement must be in writing whether it is formal customary, traditional or electronic. This includes arbitration agreement by reference if it is a clear reference that such clause is considered incorporated in the contract.

According to Article 16 the subject matter of the dispute must be included in the arbitration agreement.

18. Will the courts stay litigation if there is a valid arbitration clause covering the dispute? Does the approach differ according to whether the seat of the arbitration is inside or outside the court's jurisdiction?

According to Article 13 of the Arbitration Law, if a dispute is first brought before an arbitral tribunal, the court before which the dispute is raised afterwards may rule that it has no jurisdiction to hear the dispute at the request of one of the parties.

A valid arbitration agreement excludes the competence of courts, the court must then decline its jurisdiction.

19. If the arbitration agreement is silent, how many arbitrators will be appointed, and who is the appointing authority?

According to Article 16 the parties must specify the names of the arbitrators as well as the arbitration institution.

If the parties fail to specify the above, the Court of First Instance has jurisdiction to specify the names of the arbitrators and to determine the arbitration institution.

However, according to Article 17, the arbitral tribunal may be composed of one or more arbitrators, and if there are more than one arbitrator, their number must be odd. Each party may choose one or more arbitrators, provided that the selected arbitrators choose an arbitrator weighted to preside over the arbitral tribunal.

If the arbitration is institutional, the parties may agree on the selection of arbitrators and on the method of their selection. Failing an agreement, the parties must refer to the appointing procedures provided for in the arbitration institution rules.

Interactions between the above provisions must be clarified by judicial practice.

20. What rights are there to challenge the appointment of an arbitrator?

According to Article 21 of the Arbitration Law, if the arbitrator does not have the required qualifications, or if there are reasons that raise doubts about his impartiality or independence, the arbitrator may be challenged by any of the parties to the dispute. However, a party cannot challenge an arbitrator appointed by himself or for which he participated in his appointment, except for reasons he discovers after the appointment.

The recusal request shall be submitted to the President of the Court of First Instance where the arbitration is located if the arbitration is institutional, or to the President of the Court of First Instance where the arbitration agreement was concluded if the arbitration is *ad hoc*.

In all cases, the decision of the Court of First Instance is not subject to appeal.

The arbitration procedure is suspended from the date of the submission of the recusal until a decision is issued. The President of the Court of First Instance shall decide on the application within ten days from the date of its submission.

21. Does domestic law contain public policy requirements for arbitration proceedings?

According to Article 8 of the Arbitration Law, parties are free to decide between *ad hoc* and institutional arbitration.

Parties' agreement on arbitration procedural rules may, however, be restricted by public policy and constitutional rules on ensuring a fair trial and equal treatment to all parties to a dispute.

An arbitral award may be set aside if it violates public policy.

22. On what grounds can the court intervene in arbitrations seated inside the jurisdiction?

Pursuant to the Arbitration Law, courts may intervene in arbitration proceedings in specific scenarios.

Courts may issue interim measures before or during the arbitration proceedings (see Question 24 below).

If parties fail to agree on the composition of the tribunal, the Court of First Instance can appoint arbitrators.

The Court of First Instance is also competent for deciding on the recusal of an arbitrator.

Parties may also appeal partial tribunal decisions on jurisdiction or on other matters before the court of appeal.

23. On what grounds can the court intervene in arbitrations seated outside the jurisdiction?

Libyan law does not set out any specific grounds based on which a court can intervene in an arbitration seated outside Libya before an award is made. However, Libyan courts could become involved after the award has been issued. Under the Arbitration Law, in order for a foreign arbitral award to be enforceable in Libya, a written application must be submitted to the President of the competent Court of Appeal, accompanied by an original copy of the award and the arbitration agreement.

24. Do arbitrators have powers to grant interim or protective relief?

Under the Civil and Commercial Procedures Code, Arbitrators were previously not authorised to grant interim or protective relief, even if the parties agreed to allow them to do so. The only route available for parties to obtain interim or protective relief was to submit a request to the competent court.

Under the new Arbitration Law, article 14.2 grants arbitrators the power to order interim measures. However, article 14.1 still provides that courts may grant interim measures before and during the arbitration proceedings upon a party's request, in support of arbitration.

25. When and in what form must the award be delivered?

According to Articles 44 and 45 of the Arbitration Law, the award must be issued in writing, be reasoned and signed by all members of the tribunal.

The award must contain the following:

- The name(s) of the member(s) of the tribunal.
- The place and date of the award.

- The names and titles of the parties to the dispute, their capacities and addresses, and the names, capacities, and addresses of their representatives, if any.
- A brief presentation of the facts, parties' claims, defence arguments, and documents.
- The reasons.
- The decision.
- The quantum of the expenses and fees and the party or the parties that will bear the expenses.
- Signature of the arbitrators.

26. Can a successful party recover its costs?

Under Libyan law, there is no specific provision that addresses the recovery of costs by parties to arbitration. The arbitral tribunal may therefore apply the general rules applicable to litigation and order an unsuccessful party to bear all costs of arbitration.

27. On what grounds can an award from an arbitration seated inside the jurisdiction be appealed to the court?

Arbitral award may be set aside. The submission is filed before the court of appeal at the seat of the arbitration within thirty days from the date of notification of the award.

Pursuant to Article 54, an award in domestic arbitration can be set aside if:

- a party lacked capacity;
- the arbitration agreement is invalid;
- the basic rules of procedure were not observed;
- a party was not duly notified of the arbitration proceedings or the appointment of the arbitrators;
- the award is not based on the arbitration agreement or exceeds its scope;
- the tribunal was not properly constituted;
- the award does not comply with public order.

Pursuant Article 59 of the Arbitration Law, an award in international arbitration cannot be set aside, except in the following cases:

- one of the parties does not meet one of the conditions of eligibility;
- the arbitration agreement is invalid;
- a party was not duly notified of the arbitration proceedings or the appointment of the arbitrators or was unable to defend his rights for a *force majeure* reason;
- the award settled a dispute outside the scope of the arbitration agreement;
- the tribunal was not properly constituted;
- the award does not comply with public order from a private international law perspective.

For the sake of completeness, according to Article 12 of the Arbitration Law an arbitration is international if (i) it is related to international trade, (ii) the subject matter is related to more than one country, (iii) the workplace of the parties at the time of the signature of the arbitration agreement was located in at least two different countries and (iv) one of the following places is located outside Libya (the place of the arbitration in the arbitration agreement and/or the place of performance of the largest part of the obligations arising from the contractual relationship between the parties).

28. Can a foreign arbitration award be appealed in the local courts? If so, on what grounds?

Arbitration Law seems to exclude the possibility to challenge foreign awards before the local courts.

29. What are the procedures for the enforcement of: (i) awards rendered in other jurisdictions and (ii) domestic awards?

Under the new Arbitration Law, domestic and foreign arbitral awards are both enforceable in Libya.

For domestic arbitral awards, an application is filed at the competent Libyan court (Articles 60 and 61).

For foreign arbitral awards, prior to the new Arbitration Law, the Civil and Commercial Procedure Code required that an application be made to the relevant court following the rules of enforcing foreign court judgements.

Under the new Arbitration Law, a written application must be submitted to the President of the competent Court of Appeal, accompanied by an original copy of the award and the arbitration agreement.

30. Are foreign awards readily enforceable in practice?

Foreign arbitral awards are theoretically enforceable if the procedures and conditions set out above are complied with.

Alternative dispute resolution

31. Are the parties to litigation or arbitration required to consider or submit to any alternative dispute resolution before or during proceedings?

In general, there are no legal provisions that require parties to refer their disputes to alternative dispute resolution before or during litigation or arbitration proceedings. The referral to another form of alternative dispute resolution is optional and not mandatory.

Reforms

32. Are there likely to be any significant procedural reforms in the near future?

At present, there are no attempts to introduce reforms to procedural laws in Libya. Libya launched a National Program for Artificial Intelligence and Digital Transformation under Decree No. 40 of 2025. This aims to modernize the judicial system by replacing paper-based processes with electronic systems, using AI, machine learning, and blockchain for case management, improving transparency, reducing delays, and lowering costs.

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Madagascar



Introduction

Madagascar gained independence from France in 1960. The Malagasy legal system is based on the Roman civil law tradition. Individual rights and fundamental liberties are guaranteed by the Constitution but their exercise is organised through laws passed by Parliament.

Litigation

1. What is the structure of the legal profession?

The profession is governed by Act No. 2001-006 of 9 April 2003 as amended by Act No. 2013-011 of 20 February 2014 organising the profession of lawyer (the "Profession of Lawyer Act") which provides the following definition in its first article: "Lawyers' mission is to represent parties before the courts in conciliation, mediation and arbitration proceedings and before administrative or disciplinary bodies of any order and within companies; to assist them, to apply, plead and conclude on their behalf and to pursue the enforcement of decisions of justice".

In accordance with the provisions of article 23, the profession is accessible to persons who:

- Are at least twenty-one (21) years of age;
- Have been Malagasy nationals for more than five (5) years;
- Hold a master's degree in law or an equivalent diploma (High School Certificate [Bac] + 4 or higher.

To practice as a lawyer, candidates meeting the above conditions must chronologically:

- successfully pass the entrance exam at the Lawyers Professional Training Institute (*l'Institut de Formation Professionnelle des Avocats* (IFPA), followed by:
- a one year training course at IFPA (360 hours of courses and internships at law firms, courts or companies);
- the final IFPA examination to obtain a Certificate of Aptitude for the Profession of Lawyer;
- take an oath as a lawyer;
- complete an internship of a minimum of 3 years with lawyers registered with the Bar Association (internships can be extended to 5 years at the request of the trainee lawyer);

- apply for registration with the Bar Association.

Under Article 6 of the judicial cooperation agreement between France and Madagascar ratified by Madagascar on 4 June 1973 (the France-Malagasy Convention), lawyers registered with the bar in either State can, with proper authorization, represent clients before the courts of the other country under the same conditions as local lawyers. To do so, they must apply to the President of the Bar Association in the relevant jurisdiction and designate a local lawyer to serve as their official address for service.

This means that a French lawyer is authorised to defend a French citizen before the Malagasy courts and similarly, a Malagasy lawyer is authorised to represent a Malagasy citizen before the French courts.

However, lawyers who hold a Certificate of Aptitude issued abroad cannot register with the Madagascar Bar Association.

Under Article 19 of Act No. 2001-006, lawyers registered with the Bar Association may represent the parties before all courts of Madagascar.

2. What is the structure of the court system?

Madagascar's judicial system is based on the principle of the right of appeal and has three distinct branches of jurisdiction: the ordinary judicial branch, the administrative branch, and the financial branch.

I. Ordinary judicial courts

The judicial branch is composed of the Courts of First Instance, the Court of Appeal and the Court of Cassation.

A - The Court of First Instance

Article 7 of Decree No. 60-107 of 27 September 1960 reforming the organisation of the judiciary provides that:

"The court of first instance shall be an ordinary court of first instance. In particular, the judge in first instance has jurisdiction over:

- all civil and commercial matters irrespective of the applicable law and the status of the parties involved,
- oppositions to the registration of immovable property and refusals to acquiesce to the registration of real property rights;

- individual disputes arising in connection with an employment contract between worker and employer and disputes arising between workers in connection with work;
- offences punishable by criminal sentences which are not referred to another court by a particular law, and minor infractions which have not been the subject of the payment of a fixed fine or an arbitration procedure, subject to the jurisdiction conferred on police courts presided over by the sub-prefects and district heads by articles 62 and 73 of this text."

Article 9 of the Decree states that:

"The courts of first instance shall comprise:

- a civil chamber;
- a commercial chamber;
- a social chamber known as the labour court;
- a criminal and police chamber."

B - The Court of Appeal

In accordance with the principle of the right of appeal, judgments rendered by the Courts of First Instance may be appealed to the Court of Appeal, pursuant to article 77 of Act No. 2001-022 of 9 April 2003 establishing the Malagasy Civil Procedure Code (the "MCPC") providing that:

"The courts of appeal shall rule on appeals lodged against decisions rendered by:

- courts of first instance ruling in civil matters and at first instance;
- the courts of first instance ruling on registration matters;
- commercial courts,
- courts of first instance ruling in commercial matters and at first instance;
- the labour courts ruling at first instance;
- Presidents of courts of first instance or commercial courts ruling in non-contentious and contentious civil and commercial matters".

The time limits and procedure for appealing a decision rendered by the Court of First Instance are set out in the MCPC.

C - The Court of Cassation

Under Article 24 of Act No. 2004-036 of 1 October 2004 on the organisation, powers, functioning and the procedure applicable before the Supreme Court and the three constituent courts (the "Supreme Court Act"), "[t]he Court of cassation shall rule on appeals lodged in any matter against final decisions rendered at last instance by the courts of the judicial order".

The time limits and procedure for appeals to the Court of Cassation are set out in the Supreme Court Act.

II. Administrative Courts

The administrative Branch is composed of the Administrative Courts and the Council of State.

A - Administrative Tribunals

According to Article 9 of Act No. 2001-025 of 21 December 2001 on the Administrative and Financial Tribunal (the "Administrative and Financial Tribunal Act"), the Administrative Tribunal has jurisdiction:

"In the first instance:

- To review the legality of acts and decisions of provincial authorities when they are not of general application;
- To review the legality of acts of the authorities of the Decentralised Territorial Authorities and their public institutions;
- Over actions to invalidate administrative acts and contracts signed by said authorities;
- Over actions aimed at holding the Decentralised Territorial Authorities liable in their administrative capacity;
- To hear litigation involving taxes and duties under the General Tax Code levied for the benefit of these same authorities and their public establishments.

In the first and last instance:

- Over any contentious applications relating to provincial, regional and communal elections.

The Administrative Court shall be the ordinary judge of administrative acts or contracts concluded by an administrative authority situated within its territorial jurisdiction."

The time limits and procedure for referring a matter to the Administrative Tribunal are provided for in the Administrative and Financial Tribunal Act.

B - The Council of State

Article 129 of the Supreme Court Act provides that "[t]he Council of State is the ordinary court for administrative disputes; it adjudicates actions to invalidate acts of central or provincial administrative authorities; it rules on contentious claims in tax matters; it hears appeals with unlimited jurisdiction for harmful acts caused by the activities of the administration; it reviews the legality and their compliance with conventions of acts of general application of authorities of the autonomous provinces. It rules on appeals or cassation on decisions handed down by the administrative courts in the autonomous provinces; it hears electoral disputes determined by law ..."

The time limits and procedure for referring a matter to the Council of State are provided for in the Supreme Court Act.

III. Financial Courts

The financial branch is composed of the Financial Tribunals and the Court of Auditors.

A - Financial Tribunals

Article 114 of the Administrative and Financial Tribunal Act provides that:

"The Financial Tribunal decides at first instance on:

- the accounts of public accountants of the Decentralised Territorial Authorities and the establishments or public bodies attached to them; and
- The accounts of the de facto accountants of the said authorities."

Article 115 of the Administrative and Financial Tribunal Act specifies that:

"The Financial Tribunal has jurisdiction over:

- reviews of the implementation of budgets of the Decentralised Territorial Authorities and examination of their management;

- audits of the accounts and management of public establishments that are administrative or industrial and commercial in nature and of the enterprises belonging to the said authorities;
- reviews of the budgetary acts of a Decentralized Territorial Authority on referral to the Representative of the Autonomous Province in cases of a failure to adopt [a budgetary act] within statutory deadlines, lack of real balance, or failure to register or to issue payment for a mandatory expenditure".

The time limits and procedure for referring a matter to the Financial Tribunals are provided for in the Administrative and Financial Tribunal Act.

B - The Court of Auditors

Pursuant to articles 276 et seq. of the Supreme Court Act, the Court of Auditors judges in first and last instance the accounts of the senior accountants for:

- the State and its supplementary budgets;
- the autonomous provinces and related public bodies;
- national public institutions.

To this end, it verifies that revenue and expenditures described in the said accounts are correct and lawful.

It also rules on appeals of decisions handed down by financial tribunals in the autonomous provinces or by administrative bodies that are judicial in nature.

The time limits and procedure for referring a matter to the Court of Auditors are laid down in the Supreme Court Act.

3. What are the time limits for bringing civil claims?

Legal action can no longer be brought once the limitation period has expired.

The limitation periods in civil matters are as follows:

- In civil matters, Article 379 of Act No. 66-003 of 2 July 1966 on the General Theory of Obligations (the "LGTO") provides that: *"Both personal actions and actions in rem are time barred after thirty years in civil matters..."*;
- The LGTO provides for shorter limitation periods in article 385 regarding *"obligations of periodic performance, such as rent and interest, [which] are time barred after five years of each of their terms."* Article 386 provides that *"[b]oarding and hotel expenses, the price of supplies and current provisions shall be time barred after one year"*.
- In commercial matters, the aforementioned article 379 of the LGTO provides that *"[b]oth personal actions and actions in rem are time barred ... after five years in commercial matters if the law does not provide otherwise"*.
- For wages, related amounts and pay in lieu of notice and severance, Article 72 of Act No. 2003-044 of 28 July 2004 establishing the Labour Code provides that *"as an exception to the provisions of Article 387 of Act No. 66-003 of 2 July 1966 on the General Theory of Obligations, actions for the payment of wages and related amounts as well as pay in lieu of notice and severance are time barred after twelve (12) months"*.

4. Are lawyer-client communications privileged (ie, protected from disclosure to a court/tribunal and opposing parties)?

Article 50 of the Rules of Procedure of the Bar Association of Madagascar updated on 17 April 2020 provides that:

"Lawyers are bound to absolute professional secrecy by virtue of both the constant tradition of the Bar, statute, and their oath. Confidentiality also applies to the handling of funds. Lawyers cannot deliver documents entrusted to them to a third person nor provide any testimony for or against their clients or opponents".

Lawyers therefore bear a professional duty of confidentiality to their clients. Discussions and/or correspondence between lawyer and client are covered by confidentiality with regard to third parties.

The failure to comply with the duty of confidentiality exposes the lawyer to the following penalties imposed by the Bar Association, pursuant to section 39 of the Profession of Lawyer Act:

- warning;
- reprimand;
- temporary disqualification from practice, which may not exceed three years.

5. How are civil proceedings commenced, and what is the typical procedure which is then followed?

In civil matters, the MCPC provides in its article 115 that *"proceedings are brought either by petition or by summons."*

The court is seized either by an application introducing proceedings filed by the plaintiff, or by a summons served by a bailiff acting on the plaintiff's behalf.

Since ordinary civil procedure is a written procedure, counsel for the defendant or defendants must formally inform the court that their services have been retained by submitting a signed letter of appointment stating the name of the defendant being assisted or represented.

Under Article 21 of the MCPC, *"[a]ny party may plead and appear to support itself in the defence of that party's personal interests."*

However, under article 23 of the Code, parties must call on a lawyer in disputes brought before the Courts of First Instance and their branches, the Courts of Appeal and before the Supreme Court.

Preliminary proceedings are then initiated, and the claims and arguments are communicated in the form of briefs or pleadings under the supervision of the investigating judge. The parties must exchange any documents they intend to share with the court.

The investigating judge refers the case for hearings, usually three to four weeks apart in practice. The judge may, for example, order a party to take any necessary or useful action for the case or its resolution. These measures of judicial administration are not subject to appeal.

When the case is ready for trial, the investigating judge officially closes the preliminary phase. A trial date is then set for counsel for both parties to present their arguments before the Court.

Cross-examination is not part of civil practice under Malagasy law. After pleading, lawyers submit to the court all documents that have been disclosed between them. The court renders its judgment on a date that is announced at the end of the pleading phase.

6. What is the extent of pre-trial exchange of evidence, and how is evidence presented at trial?

Article 9 of the MCPC provides that "[i]t is the responsibility of each party to prove in accordance with the law the facts necessary for the success of its claim".

This means that each party is required to present the necessary evidence to prove the facts alleged.

At hearings during the investigation phase or during the trial, evidence may be submitted by the parties who will appear personally or by witnesses, pursuant to articles 271 and 272 of the MCPC.

Parties also have the opportunity to request the production of evidence held by the other party or a third party. Under article 11 paragraph 2 of the MCPC, judges may order, under penalty, the production of evidence held by one party upon the request of the other party. Judges may also order third parties to produce documents, under penalty, unless there is a legitimate impediment.

Pursuant to the MCPC, civil cases are governed by the requirement of an adversarial debate between the parties.

All arguments and documents must therefore be exchanged between the parties before the end of the pre-trial phase. Pursuant to Article 266 of the MCPC, "[t]he party who reports a exhibit must disclose it to any other party to the proceedings. The disclosure of exhibits must be spontaneous."

7. To what extent are the parties able to control the procedure and the timetable? How long do proceedings last?

The regulations in force do not stipulate any specific duration of the procedure from the filing of the application until the delivery of the judgment.

In practice, the length of proceedings before the courts varies according to the specifics of the dispute and the court's discretion. The parties have no means of controlling the procedure or the timetable, which generally depend on the judicial bodies involved.

8. What interim remedies are available to preserve the parties' interests pending judgment?

If the recovery of a debt is endangered, the following measures may be ordered pending judgment:

- Garnishment, which is a judicial procedure provided for in articles 652 et seq. of the MCPC allowing any creditor of a civil or commercial claim to seize sums of money or movable effects belonging to the debtor that are held by a third party (most often a credit institution where the debtor has an account).

The procedure to be followed depends on whether the claim is due under an enforceable title (for example, the creditor has a judgment recognizing the merits of the claim and ordering payment, or a notarial deed acknowledging a debt) or without an enforceable title (for example, arises simply from an outstanding invoice).

(i) Garnishment with an enforceable title

Creditors with an enforceable title may, before the seizure, warn the third party and the debtor that seizure is imminent. Article 656 of the MCPC specifies that "A warning prohibits the third party from paying and the debtor from disposing of the receivable or pursuing recovery thereof. Seizures must be executed within eight days after the day on which the warning is served. After this period, the warning is null and void".

(ii) Garnishment without an enforceable title

Garnishment without an enforceable title allows a creditor to freeze funds held by a third party and oblige that party to pay the funds to the seizing creditor. Payment to the creditor only occurs after service of a court judgment on the merits. This procedure is initiated by a bailiff's writ and is effective only after the debtor is summoned on the merits within 15 days of service (articles 661 et seq. of the MCPC).

Garnishment without an enforceable title should be used when the creditor lacks sufficient information about the debtor's bank accounts. In this case, the writ can be served on all credit institutions, potentially blocking the same amount in multiple institutions.

The garnishment of money owed to the creditor has a deterrent effect on debtors with functioning accounts who do not want to see their cash tied up for several times the value of the debt. Garnishment is useless, however, against an insolvent debtor.

Preventive seizure governed by Articles 721 et seq. of the MCPC can be sought to prevent debtors from organising their insolvency. It must be shown that the claim is well founded in principle and that the recovery of the debt is in jeopardy.

To be valid, an order authorizing preventative seizure must state the authorised amount of the seizure and set a time limit for the creditor to pursue recovery of the debt. Proceedings pursuing recovery of the debt may only be instituted after "a period of fifteen days following the seizure or notification of the order if the seizing creditor has already executed the seizure" pursuant to Article 722 of the MCPC. Article 724 of the MCPC specifies that "if the creditor has failed to bring proceedings on the merits within the period prescribed in Article 722, the seizure shall be null and void without the need for an official release".

Since preventive seizure is a provisional measure, substantive confirmation of the measure by a court is necessary. Preventive seizures are carried out by a court bailiff who draws up a report containing a precise and detailed description of the seized property (articles 725 et seq. of the MCPC).

After a seizure, the bailiff designates the custodian of the seized property. In the vast majority of cases, mainly for reasons related to the costs of guarding the seized property (rental of storage premises, remuneration of a custodian, moving costs, etc.), custody of the seized property remains with the debtor, with the seizing creditor's consent.

Article 626 of the MCPC further provides that where the value of seized property is outweighed by the costs of appointing a different custodian, the seized debtor may be designated as custodian even without the creditor's consent. In any case, the custodian does have the duty to keep and preserve the seized property and to prevent any misappropriation until the date of sale.

9. What means of enforcement are available?

Article 466 of the MCPC provides that "[t]he State is obliged to assist in the enforcement of judgments and other enforceable titles. The refusal of the State to lend its assistance gives rise to a right to compensation. Any beneficiary of a judgment has the right to obtain a copy of it for the purpose of enforcement referred to as an "execution copy". The "execution copy" is endorsed by the chief clerk of the court having issued the ruling, along with an order for enforcement enabling the beneficiary to pursue enforcement, with recourse, if necessary, to law enforcement."

Creditors with an enforceable title or judgment may therefore recover their claims against all movable and immovable property belonging to the debtor by the following means:

- Garnishment and preventive seizure (see above)
- Seizure and sale of movable property
Pursuant to article 616 of the MCPC, creditors may have a writ served on the debtor to achieve the sale of seized movable property belonging to the debtor. If the debtor fails to pay following the receipt of the order, the bailiff may proceed with the seizure (article 617 et seq. of the MCPC).
- Forced sale of business as a going concern (*fonds de commerce*) : under Article 61 of Act No. 2003-038 of 3 September 2004 the seller and the creditor may sell the business that constitutes their pledge within eight days after summons to pay made to the debtor and the third-party holder, if any, remained unsuccessful.
- Seizure of real property

Where the debtor has mortgaged a property of a creditor, the creditor exercise its right of action against the debtor in the event of payment default on the agreed due date (Article 205 of Act No. 2003-041 of 3 September 2004 on the taking of security).

The creditor can seize the secured real property in such cases in accordance with the rules laid down in Articles 490 et seq. of the MCPC and obtain payment of the amount owed through the sale of the property by public auction.

10. Does the court have power to order costs? Are foreign claimants required to provide security for costs?

The courts can order the payment of costs, including expert fees, by the unsuccessful party (Article 197 of the MCPC).

If an appeal is deemed a delaying tactic or abuse of process, the appellant can be ordered to pay between MGA 10,000 and 100,000 without prejudice to any damages that may be claimed (article 419 of the MCPC).

Under articles 12 and 13 of the MCPC and subject to international conventions, foreign plaintiffs are required, if the defendant so requests, to provide security for the payment of damages which they may be ordered to pay. The judgment ordering the security sets the amount.

The France-Madagascar Convention deviates from the above articles, providing in its article 5 that "*nationals of each of the two States may not, in the territory of the other, be required to provide security or deposit under any denomination whatsoever by reason of their status as foreigners or lack of domicile or residence in the country.*"

11. On what grounds can the parties appeal, and what restrictions apply? Is there a right of further appeal? To what extent is enforcement suspended pending an appeal?

The right of ordinary (appeal) or extraordinary (cassation) appeal is not limited under Malagasy legislation.

With the exception of automatically enforceable judgments (interim orders, employees' claims), an appeal suspends enforcement until the Court of Appeal has rendered a new judgment (article 392.8 of the MCPC). An appealable judgment rendered by a Court of First Instance is therefore not enforceable.

However, the court may decide that its judgment is immediately or partially enforceable, whether or not accompanied by security (articles 190 to 196 of the MCPC). This may apply depending on how long the debt has been due, or on the precarious circumstances of the parties. In such cases, even if an appeal is filed, the judgment is immediately enforceable within the limits indicated.

On the other hand, under article 33 of the Supreme Court Act, a Court of Appeal judgment is enforceable even if it is appealable to the Court of Cassation, except in cases involving, for instance:

- personal status;
- land registration;
- electoral matters;
- criminal matters.

There is no recourse beyond an appeal to the Court of Cassation.

12. To what extent can domestic and/or foreign State entities claim immunity from civil proceedings?

Madagascar does not appear to have a specific national statute codifying immunity rules.

13. What are the procedures for having foreign judgments recognised and enforced?

Subject to bilateral international agreements, a judgment rendered by a foreign court may be made enforceable in Madagascar through an *exequatur* procedure before a civil court (article 468 of the MPC).

For instance, Articles 2 and 3 of Annex 2 to the France-Malagasy Convention provide that:

"In civil, social or commercial matters, contentious and non-contentious judgments rendered by all courts sitting in the territory of the French Republic and in the territory of the Malagasy Republic, are automatically recognized in the territory of the other State if they meet the following conditions:

- *The decision was issued by a court with international jurisdiction within the meaning of Article 11 of the present Annex [...];*

- The decision may no longer be appealed under the law of the State in which it was rendered;
- The parties were duly summoned, represented or declared as being in default;
- The decision does not contain anything contrary to the public policy of the State where recognition is sought;
- A dispute between the same parties based on the same facts and having the same subject-matter:
 - is not pending before a court of the receiving State,
 - has not given rise to a judgment in the receiving State,
 - has not given rise to a judgment rendered in another State which satisfies the conditions necessary for its recognition in the receiving State.

[...] Judgments recognised in accordance with the preceding Article and capable of enforcement in the State of origin cannot be enforced by the authorities of the other State or be the subject, on the part of those authorities, of any public formality such as entry or listing on public registers until they have been declared enforceable there. However, in matters relating to the status of persons, foreign judgments may be published without exequatur in the civil status registers if this is not contrary to the law of the State in which the registers are kept."

Arbitration

14. Is the arbitration law based on the UNCITRAL Model Law? If so, are there any key modifications? If not, what type of arbitration does the law provide for?

The law of arbitration was introduced into the Malagasy MCPC by two Acts: Act No. 98-019 of 2 December 1998 (Arbitration Act 1998) and Act No. 2001-022 of 9 April 2003 (Arbitration Act 2003). There were no provisions governing arbitral rules or procedure before the passage of these two Acts.

The Arbitration Act 2003, incorporated into the MCPC, is based on certain aspects of the UNCITRAL Model Law (in particular with regard to the appointment of arbitrators and the general structure of the procedure). However, the Malagasy arbitration law is much less detailed than the UNCITRAL Model Law.

Arbitration procedure, according to Malagasy law, varies according to whether the arbitration is national (domestic) or international.

According to section 452.(1) of the Arbitration Act 2003, an arbitration is "international" in any of the following cases:

- The parties to an arbitration agreement are, at the time of entering that agreement, established in different States.
- One of the following places is situated outside the State where the parties have their place of business:
 - the seat of the arbitration, if specified or determined in the arbitration agreement, or
 - the place where a significant part of the contractual obligations of the parties is to be performed or the place with which the subject-matter of the dispute has the closest connection.
- The parties have expressly agreed that the subject matter of the arbitration agreement concerns more than one country.

- Generally speaking, the arbitration concerns international trade, i.e., cross-border transfers of funds, interest or capital services take place between the parties.

The place of business of a party to an arbitration shall be determined as follows:

- If a party has more than one place of business, the place taken into consideration is that which has the closest connection with the arbitration agreement;
- If one of the parties does not have a place of business, their habitual residence shall be considered the place of business,
- If a party is a subsidiary of a foreign company, its place of business is, unless otherwise agreed, the registered office of the parent company.

Although it is nowhere defined, an arbitration that does not fall within any of the first four cases listed above may be considered a domestic arbitration.

The Arbitration and Mediation Center of Madagascar (CAMM) was created in 2000 as an independent arbitration body with a separate legal personality. CAMM organizes and supervises arbitration and mediation procedures for national and international disputes in accordance with its rules.

CAMM has concluded several cooperation and mutual assistance agreements with similar foreign organisations.

15. What are the formal requirements for an enforceable arbitration agreement?

As stated above, the MCPC distinguishes between domestic arbitration and international arbitration.

15.1 Domestic Arbitration

Pursuant to article 439 of the MCPC, an arbitration agreement takes the form of an arbitration clause or an arbitration agreement. Pursuant to article 440.2 of the MCPC, to be valid an arbitration clause under which the parties to a contract undertake to submit any disputes that may arise to arbitration must:

- appear in writing in the main agreement or in a document signed by both parties and referred to in the main agreement;
- identify the arbitrator(s) or specify the procedure for their appointment.

Pursuant to article 440.3 of the MCPC, for parties to a dispute that has already arisen to validly agree to submit it to arbitration, they must:

- establish that agreement in writing;
- determine the subject matter of the dispute;
- appoint the arbitrator(s) or specify the procedure for their appointment.

15.2 International arbitration

For international arbitration, the arbitration agreement must, to be valid, be established in writing, pursuant to article 453 of the MCPC. It may for this purpose be recorded in a document signed by the parties or in an exchange of letters, communications, telegrams, or any other means of telecommunication.

16. Will the courts stay litigation if there is a valid arbitration clause covering the dispute? Does their approach differ according to whether the seat of arbitration is inside or outside the jurisdiction?

With regard to domestic arbitration, article 440.6 of the MCPC provides that “[w]hen a dispute referred to an arbitral tribunal under an arbitration agreement is brought before a state court, the state court must decline jurisdiction”.

Pursuant to the above, a court receiving an application for the settlement of a dispute covered by an arbitration agreement must declare the claim inadmissible if the parties have contractually agreed on to domestic arbitration.

However, article 440.4 of the MCPC specifies that in the following limited cases, the court to which an interlocutory petition has been submitted by a party or the arbitral tribunal can issue an order without ruling on the merits of the dispute:

- orders of provisional or protective measures to prevent imminent harm or to put an end to an unlawful disturbance (article 440.7 of the MCPC);
- orders for the appointment of arbitrators in the event of disagreement between the parties on the choice of arbitrator (Article 443 of the MCPC);
- orders in disputes between the parties over the recusal of an arbitrator (article 444 of the MCPC);
- orders suspending the arbitral proceedings while the arbitral tribunal verifies allegations of falsified documents (article 447.5 of the MCPC).

In international arbitration, regardless of the place of arbitration, article 453.3 of the MCPC provides that “[a]n ordinary court seized of a dispute on a matter covered by an arbitration agreement shall refer the parties to arbitration if one of them so requests no later than when that party submits its first pleadings on the merits, unless the court finds that the arbitration agreement is clearly void, inoperative or not capable of being enforced”.

Under article 453.4 of the MCPC, parties can seek provisional conservatory relief before the First President of the Court of Appeal of Antananarivo.

17. On what grounds can the court intervene in arbitrations seated outside the jurisdiction?

Please see the answer to question 16 above relating to international arbitration.

18. Can a foreign arbitration award be appealed in the local courts? If so, on what grounds?

No, a foreign arbitral award cannot be appealed. However, parties can make an application to the local courts to challenge the enforcement or the recognition of the foreign award in Madagascar (Article 464.1 MCPC).

A party seeking to challenge the enforcement or recognition of an award must prove that:

- (i) The arbitral tribunal was not properly constituted;
- (ii) The parties lacked capacity to enter into the arbitration agreement or such agreement was not valid;

- (iii) The arbitration agreement is invalid under the applicable law to which the parties subjected it;
- (iv) The party against whom the award was granted did not receive proper notice of the arbitration proceedings or appointment of an arbitrator or it was impossible for such party to properly defend himself;
- (v) The arbitral award settled a matter which was not referenced to arbitration in the agreement; and
- (vi) The arbitral award is not binding on the parties or has been set aside or suspended by a court in the foreign State of the seat of the arbitration.

The local court may refuse to enforce or recognize the foreign award if it finds that:

- (i) the subject of the dispute should not have been settled by arbitration;
- (ii) the recognition or enforcement of the foreign award would be manifestly contrary to the international public policy.

19. What are the procedures for the enforcement of awards rendered in arbitrations seated outside the jurisdiction?

Article 464 of the MCPC provides that an “arbitral award, regardless of the country in which it was rendered, is recognized as binding and, upon written request addressed to the Court of Appeal of Antananarivo, shall be enforced subject to the provisions of this article and article 464.1” specifying that recognition or enforcement can only be refused:

A. If the party against whom enforcement is sought submits evidence to the Court that:

1. a party to the arbitration agreement was under some incapacity or the agreement is not valid under the governing law chosen by the parties or, if no governing law was chosen, under the rules of private international law;
2. the party against whom enforcement is sought was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings, or was otherwise unable to assert their rights;
3. the award deals with a dispute not contemplated by or not falling within the terms of the arbitration clause or contains decisions that go beyond the terms of the arbitration agreement or arbitration clause; if the provisions of the award relating to matters submitted to arbitration may be separated from those not so submitted, only that part of the award containing decisions on matters not submitted to arbitration may be annulled;
4. the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties or, in the absence of such an agreement, with the law of the seat of arbitration;
5. the award has not yet become binding on the parties or has been set aside or stayed by a court of the country under the laws of which it was rendered ;

B. If the Court finds that:

1. the subject-matter of the dispute is not capable of being settled by arbitration ;

2. the recognition or enforcement of the arbitral award would be clearly contrary to international public policy

Pursuant to Article 464 of the MCPC, requests for enforcement of an international arbitral award must be filed with the Court of Appeal of Antananarivo, appending:

- the authenticated original or a certified copy of the arbitration award; and
- the arbitration agreement or a certified copy of the original.

If the arbitration award or arbitration agreement is in a language other than Malagasy or French, certified translation by a sworn translator must be produced.

20. Are foreign awards readily enforceable in practice?

The procedure for applying for enforcement is simple insofar as a simple application with the Court of Appeal of Antananarivo must be filed and the services of a local lawyer used for this purpose.

However, in the absence of any time limits established in applicable laws and regulations, it is not possible to estimate the time necessary to process requests for enforcement, as this will be specific to the dispute in question.

Alternative dispute resolution

21. Are the parties to litigation or arbitration required to consider or submit to any alternative dispute resolution before or during proceedings?

Whether before or during arbitration proceedings, the parties are free, by means of a settlement agreement, to decide to terminate the dispute between them by virtue of contractual freedom.

Reforms

22. Are there likely to be any significant procedural reforms in the near future?

We are not currently aware of any proposals for procedural reforms.

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Malawi



Introduction

The Malawian legal system is based on the Constitution of 18 May 1994, subsidiary legislation, Acts of Parliament (in particular the Legal Education and Legal Practitioners Act (Cap 3:04)), English rules of common law and equity which have been adopted as part of Malawi law, and customary law. Malawi is bound by international law instruments that it has ratified and domesticated and is also subject to principles of customary international law.

Litigation

1. What is the structure of the legal profession?

One must be admitted to the bar to practice law in Malawi. A person is eligible to be admitted to the bar if she/he is a citizen or permanent resident of Malawi and holds a Bachelor of Laws degree from an accredited institution or from a foreign Common Law or Roman Dutch legal system or is admitted to practice law in a jurisdiction whose prevailing legal system is common law or Roman-Dutch. A person meeting such requirements is further required to enrol with the Malawi Institute for Legal Education for at least a year and passes the Malawi Law Exam. A person who holds a Bachelor of Laws degree from an accredited institution and has passed courses assessed by the Council for Legal Education to be comparable to those offered by the Institute is exempt from the requirement to enrol with the Institute and pass the Malawi Law Exam.

Petitions for admission to the bar are made to and granted by the Chief Justice. Upon admission to the bar, one must become a member of the Malawi Law Society and obtain a practising licence. Such a licence is renewable annually, subject to fulfilling conditions such as minimum Continuous Professional Development (CPD) training requirements, payment of applicable taxes (such as the Malawi Law Society Levy), professional indemnity cover and after fulfilling at least 24 hours mandatory pro-bono hours. Lawyers in Malawi practise as both barristers and solicitors; there is no split profession. Lawyers

provide legal services directly to clients and conduct proceedings in the courts. All licenced lawyers have rights of audience before all trial courts except in the Industrial Relations Court where leave of the court must first be sought. Such leave is almost always granted.

The legal profession is regulated by the Malawi Law Society, a statutory body established under the Legal Education and Legal Practitioners Act. The Malawi Law Society has powers, amongst others, to make rules dealing with standards of professional conduct with which every legal practitioner must comply and to discipline lawyers that do not comply with professional and ethical stipulations.

2. What is the structure of the court system?

The court system is comprised of subordinate courts, the High Court and the Supreme Court of Appeal. Subordinate courts include Magistrate's Courts and the Industrial Relations Court. Magistrate's Courts are classified into professional and lay magistrate's courts. Lay magistrate's courts are graded according to jurisdiction as follows: Third Grade Magistrate's Courts, with jurisdiction over civil claims not exceeding **MK 7,000,000.00**; Second Grade Magistrate's Courts, with jurisdiction over civil claims not exceeding **MK 10,000,000.00**; and First Grade Magistrate's Courts, with jurisdiction over civil claims not exceeding **MK 20,000,000.00**. Resident Magistrate's Courts are presided over by professional magistrates with a minimum qualification of a Bachelor of Laws (Hons) degree and have jurisdiction over civil claims not exceeding **MK 50,000,000.00**. However, the Magistrates' Courts do not have jurisdiction to over:

- land ownership disputes;
- claims for the cancellation or rectification of instruments;
- most guardianship or custody disputes;
- disputes over the validity or dissolution of any marriage other than where customary law is in question;
- relating to the title to any right, duty or office;
- seeking any declaratory decree or injunction

Such jurisdiction is vested in the High Court.

In terms of criminal jurisdiction, Resident Magistrate's Courts, as well as First or Second Grade Magistrates may try any offence other than treason, concealment of treason, piracy, manslaughter and murder, as well as being an accessory to any of these offences. Second Grade Magistrate's courts are further precluded from trying rape and defilement, and their attempts. The law also provides for sentencing limits for subordinate courts.

Malawi has specialised courts such as the Industrial Relations Court, which is a subordinate court with jurisdiction over all employment and labour matters. The Industrial Relations Court has one registry in each of the three regions of the country. Proceedings in the Industrial Relations Court are considerably less formal than in the other courts, and litigants may be represented by trade union representatives rather than legal counsel. The Child Justice Court is also a specialised subordinate court with jurisdiction over child justice related matters, including child custody claims. Proceedings at the Child Justice Court are also semi-formal, with much consideration being given to the welfare of the child concerned.

Appeals from all subordinate courts, including the Industrial Relations Court and the Child Justice Court, are made to the High Court. In addition to this appellate jurisdiction, the High Court has original jurisdiction over all civil and criminal matters. It has various divisions such as the civil division, criminal division, commercial division, family and probate division, revenue division, and the financial crimes division. The High Court also sits as a Constitutional Court in constitutional matters. Additionally, the High Court has appellate jurisdiction over matters from the subordinate courts. Unlike the subordinate courts, the High Court is a court of record.

Appeals from the High Court lie to the Supreme Court of Appeal, which is the apex court in Malawi and a superior court of record. Its decisions are binding on the High Court and subordinate courts.

3. What are the time limits for bringing civil claims?

The Limitation Act (Cap 6:02) provides limitation periods for bringing civil claims.

A 12-year limitation period applies to:

- actions brought upon a judgment;
- actions to recover land;
- actions to recover any principal sum of money secured by a mortgage or other charge on property, whether real or personal, or to recover proceeds of the sale of land;
- foreclosure actions in respect of mortgaged personal property;
- actions in respect of any claim to the personal estate of a deceased person or to any share or interest in such estate, whether under a will or on intestacy.

A six-year limitation period applies to:

- actions founded on contract or torts (other than those specifically provided for);
- actions to enforce a recognisance;

- actions to enforce an award;
- most actions to recover sums recoverable by virtue of written law;
- actions for an account;
- actions to recover arrears of interest payable in respect of any sum secured by a mortgage or other charge or payable in respect of proceeds of sale of land or to recover damages in respect of such arrears;
- actions for damages in respect of such arrears.

A three-year limitation period applies to actions for damages for negligence, nuisance or breach of duty where the damages claimed by the plaintiff consist of or include damages in respect of personal injury to any person.

There is no limitation period in respect of actions brought by a beneficiary under a trust, in respect of any fraud or fraudulent breach of trust to which the trustee was a party or proxy or to recover from the trustee trust property or proceeds in the possession of the trustee, or previously received by the trustee and converted to his/her use.

4. Are communications between a lawyer and his/her client privileged (ie, protected from disclosure to a court/tribunal and opposing parties)?

English law rules of privilege apply in Malawi. As such, although the existence of some classes of documents must be disclosed, they are privileged from production and inspection by the other side.

Privileged documents, including letters and other communications passing between a party, or their predecessor in title, and their lawyer(s), are privileged from production, provided they are, and are sworn to be, confidential, and written to, or by, the lawyer in their professional capacity, and for the purpose of obtaining or giving legal advice or assistance for the client.

A document is afforded privilege from disclosure to the court or opposing parties on the ground of legal professional privilege if the dominant purpose for which it was prepared was that of submitting it to a legal adviser for advice and/or use in litigation.

Such privilege can be waived by the client and is subject to disclosure required by law.

5. How are civil proceedings commenced, and what is the typical procedure which is then followed?

(a) High Court

Generally, civil proceedings in the High Court are commenced by filing a summons: A different commencement mode may be used where a statute or procedure specifically requires otherwise. A Claimant is required to serve a Summons on the Defendant within 3 months from the date of issuance of the Summons. A period of 14 days is provided for the Defendant to file a Response, which signifies an intention to defend the matter, and 28 days to file a defence. If the Defendant does not file a defence within 28 days, the court may enter judgment in favour of the Claimant. This is typically prompted by an application made by the Claimant. Once a defence has been

filed, the matter is set down for mandatory mediation, except in certain circumstances where the matter is exempted. If parties reach a settlement at mediation, a settlement order is executed, concluding the matter. Where parties fail to agree at mediation, the matter is referred to a different judge for trial. In the event that a defence is filed but it does not demonstrate any real prospects of successfully defending the matter, the court may enter summary judgment. The court may also enter judgment on admission if, in the response or defence, the Defendant admits to the claim.

Some of the actions that are commenced using a different mode are actions for divorce, judicial separation, bankruptcy and winding-up proceedings. These are commenced using a petition. Some actions may be commenced by way of application, for example, applications for judicial review, and applications to set aside interim orders of the Competition and Fair Trading Commission. The procedure followed in these matters varies according to the nature of the proceedings and does not include mandatory mediation.

(b) Magistrates Court

Actions in the Magistrates' Courts are generally commenced by way of default summons. The defendant has eight days within which to file an affidavit of defence if they intend to contest the proceedings. They may indicate through the affidavit of defence that they intend to file a defence within seven days from the date of filing the affidavit of defence or they may include their grounds of defence in the affidavit itself. A defendant has 7 days within which to after filing the affidavit of defence.

If the defendant fails to file the affidavit of defence, a default judgment may be entered against them. In practice, a defendant is granted 14 days after service of summons before a default judgment can be entered. Mediation is no longer mandatory in the magistrates' courts and the matter proceeds to trial.

(c) Industrial Relations Court

Actions in the Industrial Relations Court are commenced using a form known as IRC Form 1. A respondent is required to file IRC Form 2 (a defence) within 14 days of being served with the IRC Form 1, failing which, default judgment may be entered. Before proceeding to trial, parties are required to hold a pre-hearing conference, at which an attempt is made to settle the matter out of court. This conference takes place between the parties themselves and is not presided over by a judicial officer. If the parties fail to reach a settlement at this stage, the matter proceeds to trial.

6. What is the extent of pre-trial exchange of evidence, and how is evidence presented at trial?

Generally, discovery must be given of any documents relating to any matter in question between the parties to the action. It is not restricted to documents which would be admissible in evidence at trial. Discovery must be given of documents in a party's possession, custody or power. This covers documents physically held by a party, and also documents which the party can call for in the capacity in which they are being sued. The list of documents which the parties to proceedings are obliged to exchange, must contain a statement of the time and place at which the documents listed can be inspected.

Regarding actions in the High Court, where a party claims that a document cannot be disclosed on the grounds of privilege, that party is required to make an application for an order dispensing with disclosure of the document on that ground.

As a general rule, discovery of documents cannot be obtained against third parties, nor is it proper to join a third party as a party merely for the purpose of discovery. If documents or information in the possession of a third party are required, it is ordinarily necessary to call them as a witness at the hearing or trial.

Written witness statements and expert reports are exchanged pre-trial. In the High Court, parties are required to exchange trial bundles, containing witness statements, ahead of the hearing, and in any case, not less than 14 days prior to the hearing. In the subordinate courts, such exchange of witness statements is not mandatory. However, some registries have issued practice directions requiring that witness statements be filed and served on the other party at least two days before the date of hearing.

At trial, documentary evidence may be admitted directly by the maker or be exhibited to witness statements. Witnesses give oral evidence and the other party can cross-examine the witness. Re-examination is limited to an explanation of the matters referred to in cross-examination. Reluctant witnesses may be summoned to court under *subpoena*.

7. To what extent are the parties able to control the procedure and the timetable? How quick is the process?

The management of timelines is primarily in the court's power. Once pleadings are closed, parties file notices for the next stage in the proceedings. However, it is the court that issues the notices and schedules dates of hearing. If a party seeks an adjournment, it must provide a concrete reason for doing so. Failure to adhere to timelines or to take necessary steps in the matter as prescribed by procedure or directed by the court may cause the court to issue adverse orders against the non-compliant party. These include orders for costs and dismissal of an action, in the case of a Claimant, or entry of judgment against the Defendant.

The timelines from one court to the other are as follows:

- Supreme Court of Appeal – The Appellant is required to file and serve skeleton arguments supporting the appeal within 14 days of filing a notice of appeal. The Respondent must file skeleton arguments within 14 days of being served with the Appellant's skeleton arguments. A date of hearing of the appeal will be given after a record of appeal has been prepared by the court and served on or given to the parties.
- High Court of Malawi – the timetable is governed by the Courts (High Court) (Civil Procedure) Rules, 2017. The issues to be determined at trial are defined by the pleadings and are agreed at a scheduling conference. The court has inherent powers on its own motion to dismiss a matter for want of prosecution. A defendant may also apply to dismiss a matter if the claimant is not complying with the timeframe in prosecuting a matter. The onus is on the claimant to file and serve a bundle of pleadings and a trial bundle before a matter is set down for trial. The time taken to conclude a matter depends mainly on whether there are interlocutory applications, and the availability of a judge to preside over the trial. On average, matters are concluded within two to three years

- Industrial Relations Court – interlocutory applications are heard by the registrar or the chairperson/deputy chairperson depending on the nature of the application. The court has its own rules which are very flexible. The challenge in this court is the lack of judicial officers and/or assessors. It is difficult to obtain an early hearing date due to a backlog of outstanding cases. On average, matters are concluded within three to five years.
- Magistrates' Courts – the procedure is governed by Subordinate Court Rules. All interlocutory applications are presided over by the magistrate. On average, matters are concluded within 12 to 15 months.

8. What interim remedies are available to preserve the parties' interests pending judgment?

The law allows a party at any time to apply for an interim remedy pending judgment. The available interim remedies include an order for interlocutory injunction, detention, custody, preservation or attachment of any property which is the subject matter of the suit and is within the court's jurisdiction. An application for an interlocutory or interim injunction may be made before or after trial. Such orders are granted at the discretion of the court where the interests of justice require. For example, orders for an interim injunction are granted subject to the applicant establishing that they have an arguable case and that damages would not be an adequate remedy. The applicant must also undertake to pay damages to the respondent if it turns out later that the order was wrongly granted. The jurisdiction to grant interim injunctions rests with the High Court. Magistrates' courts do not have such power.

9. What means of enforcement are available?

A judgment for the payment of money may generally be enforced by:

- seizure and sale orders/warrant of execution;
- third party debt order proceedings/garnishee proceedings;
- charging orders;
- appointment of receiver;
- order for delivery, preservation or custody of goods;
- order for committal;
- insolvency proceedings against the individual or winding up proceedings against a debtor company.

A judgment for possession of immovable property can be enforced by:

- order of possession;
- order of committal.

A judgment for the delivery of goods may be enforced by:

- order for delivery, preservation, or custody of goods;
- order of committal.

A judgment ordering a person to do or abstain from doing an act may be enforced (subject to personal service of the judgment/order on the person in default) by:

- committal against the person or director or other officer of the corporate body, as the case may be.

In practice, the mechanisms for enforcement of a judgment in Malawi are effective. For example, there is a Sheriff's department which works under the court, making it easy to enforce seizure and sale orders and any of the enforcement modes which require the services of the Sheriff.

A claimant can also easily apply to court for a committal order where the defendant is in contempt of court.

10. Does the court have power to order costs? Are foreign claimants required to provide security for costs?

The court has discretion to award costs of and incidental to proceedings and full power to determine by whom, and to what extent, costs are to be paid. Generally, costs follow the event. This means the successful party is entitled to its costs.

The court takes into consideration a wide number of factors, including the expenses incurred by the party or its lawyer, the court fees paid by that party or the lawyer, the length and complexity of the proceedings, the conduct of the parties before and during the proceedings, and any previous orders as to cost made in the proceedings. At times, the court may order that each party bears its own costs, for example where the matter deals with a new area of law whose jurisprudence has not significantly developed.

A claimant who is ordinarily resident outside Malawi may, on the defendant's application, be required to provide security for the defendant's costs. A nominal claimant (a claimant who is suing for the benefit of some other person) may also be required to provide security for costs if there is reason to believe that he will be unable to pay costs. Further, a plaintiff whose address is not stated or is not correctly stated in the originating process or who has changed their address during the course of the proceedings with a view to evading consequences of litigation may also be ordered to provide security for costs. An order for security for costs may also be granted where the claimant is about to leave the jurisdiction and there is reason to believe that he has insufficient property available within the jurisdiction for enforcement to pay the defendant's costs. However, where a plaintiff who is ordinarily resident outside Malawi has assets in Malawi, the court is unlikely to make an order for security for costs.

11. On what grounds can the parties appeal, and what restrictions apply? Is there a right of further appeal? To what extent is enforcement suspended pending an appeal?

The right to appeal is constitutionally guaranteed and there is a general right of appeal against a decision of a court of first instance. In some cases, leave to appeal is required (eg, in relation to a judgment given by the High Court in its appellate capacity, an order of the High Court or any judge thereof made with the consent of the parties, an order as to costs only, or an order made in chambers by a judge of the High Court). Appeals, however, lie only in respect of final orders or judgments of the Court and not on interlocutory matters. Appeals on interlocutory matters are regarded as inchoate and premature.

An appeal from the Industrial Relations Court to the High Court may be on a point of law or jurisdiction only. An appeal from a Magistrates' Court to the High Court may lie on point of fact and/or law. Leave is required to appeal from the Magistrates' Court to the High Court..

An appeal from the High Court to the Supreme Court of Appeal may lie on a point of fact and/or law. When dissatisfied with the decision of the Supreme Court of Appeal, a party may ask the Supreme Court to review its decision. The power of the Supreme Court to review its decision is, however, limited to where a party claims that there are exceptional circumstances which have resulted in a miscarriage of justice, or there is new and important evidence which was not within the applicant's knowledge or could not be produced by them during the trial.

Generally, an appeal does not operate as a stay of the decision of the lower court unless the court stays the execution of the judgment. Stay of a judgment is not as of right. It is an equitable remedy. In order for a court to grant an order staying execution of judgment pending appeal, the applicant must establish that the chances of success on appeal are high and that unless execution of judgment is stayed, the appeal will be rendered nugatory or abortive, or generally that it will be in the interests of justice to stay execution pending appeal.

12. To what extent can domestic and/or foreign State entities claim immunity from civil proceedings?

The Malawi Government and its entities do not have immunity from civil proceedings.

The Immunities and Privileges Act expressly grants immunity to foreign States. A foreign State includes the Sovereign or other Head of that State in his or her public capacity, the Government of that State and any department of that Government. However, there are exceptions to the general immunity granted to foreign States. These exceptions include: proceedings in which the foreign State has submitted to the jurisdiction of the Malawian courts; proceedings relating to commercial transactions; contracts of employment; personal injuries, damage to property, ownership, possession and use of property; intellectual property and use of a trade or business name in Malawi; its membership of a corporate body, an unincorporated body or a partnership; proceedings against ships used for commercial purposes; and liability for any customs and excise duty.

A foreign State entity (ie, a separate entity distinct from the executive organs of the Government of a State and capable of suing or being sued) is immune from the jurisdiction of the Malawian courts if, and only if, the proceedings relate to anything done by it in the exercise of sovereign authority and the circumstances are such that a State would have been so immune.

13. What procedures exist for recognition and enforcement of foreign judgments?

The British and Commonwealth Judgments Act of 1922 provides for recognition of judgments of superior courts of the United Kingdom, on a reciprocal basis. Judgments of UK superior courts and Commonwealth courts may be registered in the High Court at any time within 12 months after the date of the judgment or such longer period as may be allowed by the High Court. Upon registration, these judgments would have the same effect as if they had originally been given in the court in which they were registered.

Further, under the Registration and Execution of Judgments Act, Malawi recognises judgments of the Zimbabwean and Zambian courts. The party in whose favour the judgment is given must register the Zimbabwean/Zambian judgment in Malawi. Upon registration, the judgment has the same force and effect in all respects as a judgment of the Malawi court in which it is registered.

In relation to judgments issued in other jurisdictions, the plaintiff can commence an action in Malawi based on the judgment. The plaintiff must adduce evidence before the court to prove that the judgment was issued in the relevant jurisdiction. If the court is satisfied, it will issue its own judgment, based on the foreign judgment, which can then be enforced in Malawi.

Arbitration

14. Is the arbitration law based on the UNCITRAL Model Law? If yes, are there any key modifications? If not, what form does the arbitration law take?

In Malawi, there are two forms of arbitration: international arbitration and local arbitration. International arbitration is governed by the International Arbitration Act which came into force on 2 September 2024.

International arbitration in Malawi aims to facilitate the use of arbitration as a method of resolution of international commercial disputes, and to resolve disputes under the UNCITRAL law. It also aims to give effect to the obligations of the Republic of Malawi under the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 1958.

Local arbitration, on the other hand, is governed by the Arbitration Act, Cap 6.03 of the Laws of Malawi (the Arbitration Act). Notwithstanding the specific Act governing international arbitration in Malawi, the Protocol on Arbitration Clauses signed on behalf of the United Kingdom at a meeting of the Assembly of the League of Nations held on 24 September 1923 and the Convention on the Execution of Foreign Arbitral Awards signed in Geneva on behalf of the United Kingdom on 26 September 1927 were incorporated into the Arbitration Act.

The Arbitration Act also provides that where it is agreed in a contract that arbitration shall be under the Arbitration Act 1950 of the United Kingdom, or any Act which that Act replaced, such contract shall be read as if this Arbitration Act were substituted for the aforesaid Act of the United Kingdom.

15. What are the formal requirements for an enforceable arbitration agreement?

Under the International Arbitration Act, an arbitration agreement is generally enforceable in terms of the UNCITRAL Model Law. Enforceability of an arbitration agreement is possible if such agreement was made in the territory of a Contracting State to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 1958 [this Convention is applicable if the dispute under the agreement pertains to a legal relationship which is recognised as commercial under the Laws of Malawi]. An arbitration agreement is enforceable if copies of both the arbitration agreement and the arbitral award are duly certified in accordance with the formalities of certifying documents where they were executed.

Under the Arbitration Act, an arbitration agreement must take the form of a written agreement to submit present or future differences to arbitration whether an arbitrator is named therein or not. There is no specific requirement that the agreement must be signed by both the parties in order to be valid. However, as with all agreements, a signed document is the best way to demonstrate the assent of both parties to enter into the agreement.

There is no requirement under the Arbitration Act to specify the seat of arbitration. Where a seat is not specified, it is likely that a court will find that the seat of arbitration is Malawi.

There is no requirement to specify the number of arbitrators. Where this is not specified, the arbitration agreement will be deemed to include a provision that reference shall be to a single arbitrator.

16. Will the courts stay litigation if there is a valid arbitration clause covering the dispute? Does the approach differ in this regard if the seat of the arbitration is inside or outside of the jurisdiction?

Courts will normally stay litigation on application of one of the parties to the agreement if there is a valid arbitration clause covering the dispute, regardless of where the seat of arbitration is. Any party to the arbitration may, before delivery of any pleadings or the taking of any other steps in the proceedings commenced in court, apply to the court to stay the proceedings. A party may also apply for a common law injunction in aid of arbitration, in order to give effect to the arbitration clause covering the dispute.

The court, if satisfied that there is no sufficient reason why the matter should not be referred in accordance with the arbitration agreement and the applicant remains ready and willing to do all things necessary in the proper conduct of the arbitration, may make an order staying the proceedings.

What amounts to “sufficient reason” is generally left to the court’s discretion. A stay may be refused where one of the matters at issue raises a serious constitutional question or if it can be shown that there is good ground for apprehending that the arbitrator will not act fairly in the matter. The Arbitration Act provides that the court may decline to stay proceedings if it is satisfied that the agreement or arbitration has become inoperative or cannot proceed or there is no actual dispute between the parties.

17. On what grounds can the court intervene in arbitrations seated outside the jurisdiction?

The courts will not normally intervene in arbitrations seated outside the jurisdiction. Generally, however, where, after a dispute has arisen, any party applies for leave to revoke the authority of an arbitrator designated in the agreement on the ground that the arbitrator is not or may not be impartial, or where a dispute arises which involves the question whether any such party has been guilty of fraud, the court may order that the agreement cease to have effect or may revoke the authority of an appointed arbitrator.

The Arbitration Act provides that, for the purpose of and in relation to a reference, courts will have the same power of making orders in respect of (among others) the preservation,

interim custody or sale of any goods which are the subject matter of the reference and interim injunctions. While this provision does not specifically refer to foreign-seated arbitrations, in our view, a party to a foreign-seated arbitration can apply to the courts for such relief. This provision does not apply to foreign seated arbitration.

Under the International Arbitration Act, which, as stated above, expressly incorporated the UNCITRAL Model Law as part of Laws of Malawi, parties may benefit from interim orders under Article 17 of the Model Law. The Model law guarantees parties to an international arbitration agreement in Malawi, the right to apply for interim measures aimed at maintaining status quo pending arbitration, preventing steps that would prejudice arbitration proceedings, preserving evidence and material relevant to the dispute, preserving assets that are the subject matter of the dispute and to for security for costs.

18. Can a foreign arbitration award be appealed in local courts? If so, on what grounds?

Unless a contrary intention is expressed in an arbitration agreement, every arbitration agreement is deemed to contain a provision that the award to be made by the arbitrator or umpire shall be final and binding on the parties. The court may only set aside an award where the arbitrator is deemed not to be impartial or where there is an allegation of fraud.

The Arbitration Act provides that in all cases of reference to arbitration the court may from time to time remit the matters referred, or any of them, to the reconsideration of the arbitrator or umpire.

19. What procedures exist for enforcement of awards rendered in arbitrations seated outside of the jurisdiction?

Malawi acceded to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the New York Convention) on 4 March 2021. The Convention entered into force for Malawi on 2 June 2021. Malawi made reservations that it will only apply the convention with respect to:

- (i) recognition and enforcement of awards made in the territory of another contracting State (the reciprocity reservation);
- (ii) differences arising out of relationships that are considered commercial under the national laws of Malawi (the “commercial reservation”);
- (iii) arbitration agreements concluded, or arbitral awards rendered, after the date of accession.

Under the Arbitration Act, certain foreign awards are enforceable such as:

- those made pursuant to an arbitration agreement to which the Protocol on Arbitration Clauses signed on behalf of the United Kingdom at a meeting of the Assembly of the League of Nations on 24 of September 1923 applies, such as awards made in the United Kingdom, Germany, France and India among others. Under the Protocol, each of the contracting States undertakes to recognise the validity of such agreements between contracting parties subject to the jurisdiction of the different contracting States.

- those made in such territories and between persons as the Minister of Justice and Constitutional Affairs, being satisfied that reciprocal provisions have been made, may by notice published in the Gazette declare to be parties to the Convention on the Execution of Foreign Arbitral Awards signed in Geneva on behalf of the United Kingdom on 26 of September 1927. However, as far as we are aware, the Minister has not yet published such notice in the Gazette.

In order for any foreign award to be enforceable, it must:

- be pursuant to an arbitration agreement which is valid under the law by which it is governed;
- be made by the tribunal provided for in the agreement or constituted in a manner agreed upon by the parties;
- be made in conformity with the law governing the arbitration procedure;
- become final in the country in which it was made;
- be in respect of a matter which may lawfully be referred to arbitration under the law of Malawi and the enforcement thereof must not be contrary to the public policy or the laws of Malawi.

A foreign award will not be enforceable if the court is satisfied that:

- the award has been annulled in the country in which it was made;
- the party against whom it sought to enforce the award was not given sufficient notice of the arbitration proceedings to enable it to present its case, or was under some legal incapacity and was not properly represented;
- the award does not deal with all the questions referred or contains decisions beyond the scope of the arbitration agreement. If the award does not deal with all the questions referred, the court may either postpone the enforcement of the award or order its enforcement subject to the giving of such security by the person seeking to enforce it.

The Arbitration Act also allows for the enforcement of foreign awards other than those made pursuant to the Protocol and Convention referred to above and awards where the seat of arbitration is in a non-reciprocating State. Such awards must comply with the above requirements. There is no practical difference in the enforcement procedure.

Foreign awards are enforceable either by action or by leave of the court in the same manner as a judgment or order to the same effect. Where leave is given by the court, judgment may be entered in the same terms as the award. The time taken to enforce such an award cannot be ascertained with precision. Where an action is commenced to enforce a foreign award, if enforcement is not resisted by the defendant, it should take approximately four to six weeks to enforce.

20. Are foreign awards readily enforceable in practice?

Foreign awards will be enforceable by the courts if they comply with the requirements laid out in the Arbitration Act as stated in question 19 above. However, recognition or enforcement of a foreign arbitral award may be resisted on the basis that: the arbitrator lacked jurisdiction; the award was obtained by fraud; its recognition or enforcement would be contrary to public policy; or it was obtained in proceedings which contravene the rules of natural justice.

Alternative dispute resolution

21. Are the parties to litigation or arbitration required to consider or submit to any alternative dispute resolution before or during proceedings?

In the subordinate courts, there is no obligation for parties to litigation to consider or submit to alternative dispute resolution. In the High Court, however, parties are required to undergo mandatory mediation before a judge. Such mediation is confidential and, if the parties agree to settle the matter at this stage, results in a settlement agreement with the force of a judgment of the High Court. If the parties fail to settle the matter at mediation, it is referred to another judge for trial. Parties are exempted from mandatory mediation in certain circumstances, such as when the trial is expedited, or where the matter is disposed of by an application for summary judgment or by judgment on admission. The court may also make an order exempting parties from mandatory mediation in the exercise of its discretion.

Where parties executed a valid arbitration agreement, they are required to undergo arbitration, and courts typically grant orders for stay of proceedings where it is established that the parties agreed to submit their dispute to arbitration as the chosen dispute resolution mechanism. Arbitration, like mediation, is a form of alternative dispute resolution method, and there is no requirement for parties undergoing arbitration to consider or submit to another form of alternative dispute resolution mechanism.

Reforms

22. Are there likely to be any significant procedural reforms in the near future?

No.

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Mali



Introduction

Mali is a civil law country. Its legal system is now based on the Constitution adopted on 22 July 2023. The country is a member of the Organisation for the Harmonisation of Business Law in Africa (OHADA), the West African Economic and Monetary Union (UEMOA), and the African Union. However, Mali is no longer a member of the Economic Community of West African States (ECOWAS), having exited effective 29 January 2025.

Ultimate jurisdiction over matters that do not fall within the competence of these intergovernmental organisations to which Mali belongs lies with the Supreme Court.

Litigation

1. How is the legal profession organised?

In Mali, the legal profession is governed by both regional and national law. At the regional level, it is subject to Regulation No. 05/CM/UEMOA on the harmonisation of rules governing the legal profession in the UEMOA, and Regulation No. 10/2006/CM/UEMOA on the free movement and right of establishment of lawyers in the UEMOA. At the national level, it is governed by Law No. 94-042/AN RM of 13 October 1994 establishing and organizing the legal profession in Mali.

To practise as a lawyer, the candidate must meet certain requirements. They must either be of Malian nationality, a national of a UEMOA member state, or a national of another country with which Mali has a reciprocity agreement. They must also hold the Certificate of Aptitude for the Legal Profession (*Certificat d'Aptitude à la Profession d'Avocat*, the "**CAPA**").

The profession is regulated by the Bar Association (*Conseil de l'Ordre*), which ensures compliance with professional rules and takes disciplinary action when necessary. Lawyers admitted to the Bar may appear before the courts, draft and sign procedural documents, and enforce judgments. They may practice individually or within a law firm.

It is important to note that in Mali, no distinction is made between lawyers providing legal advice and those who focus on pleading cases. As for foreign lawyers, they must be registered with a local law firm, provided that there is a reciprocal agreement with the lawyer's country of origin.

For lawyers registered with the bar association of a UEMOA member state, pursuant to Articles 36 and 42 of the Regulation harmonising the rules governing the legal profession in the UEMOA, they are simply required to inform the president of the bar association of the member state where they are to act as part of their mission. They therefore benefit from the free movement of lawyers within the UEMOA.

2. How is the court system structured?

Mali's judicial system is organised as a three-tier pyramid.

At the first level are the courts of first instance and the district courts. The courts of first instance and district courts have jurisdiction in the first and last instance for civil and customary law cases where the amount in dispute is less than or equal to XOF 500,000. These courts also have jurisdiction, but in the first instance only, over disputes involving individuals and cases involving amounts exceeding XOF 500,000.

At the second level are the Courts of Appeal, located in Bamako, Kayes, and Mopti, which review decisions issued by the lower courts.

At the top of the hierarchy is the Supreme Court, which serves as the highest judicial and administrative authority in the country.

There are also a set of specialised courts: trades courts, employment courts, and administrative courts, all of them operating on the same three-level principle.

3. What are the time limits for bringing civil claims?

The time limits for civil claims in Mali depend on the type of action and the parties involved. The ordinary limitation period for bringing a claim for damages, whether contractual or non-contractual, is 20 years unless otherwise provided by law. For actions between merchants, the limitation period is five years.

There are also specific limitation periods for certain types of claims. For example, claims relating to commercial sales are time-barred after two years.

It should be noted that these time limits are matters of public policy and cannot be altered by contract. As a general rule, the limitation period is suspended when legal proceedings are initiated or when an act of recognition is made.

4. Are lawyer-client communications privileged?

Yes. Under the UEMOA legal framework, communications between lawyer and client are strictly protected by a duty of professional confidentiality (*secret professionnel de l'avocat*). This confidentiality is general and absolute, covering all information, correspondence, and consultations obtained in the course of providing professional legal services. The lawyer cannot reveal or be compelled to disclose any such information. A breach of this duty constitutes a disciplinary offense under national bar rules. The only exceptions are for communications intended to commit an offense or to mandatory disclosures provided by law, such as anti-money-laundering obligations via "suspicious activity reports".

5. How are civil proceedings commenced, and what is the typical procedure which is then followed?

Civil actions are filed with the court:

- by written petition (*requête écrite*), dated and signed by the claimant;
- by oral petition (*déclaration verbale*), which is exceptional;
- by summons.

The parties are summonsed to appear by the court with jurisdiction. The interval between the date of service of the summons and the date on which the defendant is scheduled to appear must be at least eight days for residents of the seat of the court, 15 days for residents within the territorial jurisdiction of the court, 30 days for defendants residing in national territory but outside the jurisdiction, two months for defendants residing in Africa, and three months for those outside Africa. The court may reduce these time frames for urgent proceedings, provided that the defendant is granted a reasonable amount of time to appear.

There is conciliation for divorce matters or orders to pay. Apart from these cases, there is no mandatory mediation or conciliation procedure. The Code of Civil, Commercial and Social Procedure nonetheless gives the court the authority to attempt to reconcile the parties at any time during the proceedings. The court may therefore, in agreement with the parties, appoint a mediator to try to reach an amicable settlement.

6. What is the extent of pre-trial exchange of evidence, and how is evidence presented at trial?

Evidence can be produced by all the usual means (notarised document, private agreement, confession, witness testimony, etc.). If a party has evidence in its possession, the court may order it to be produced at the request of the other party. There is no equivalent to the English law concept of "disclosure" in Malian law.

Evidence must be communicated to the other party at the same time as written submissions.

7. To what extent are the parties able to control the procedure and the timetable? How long do proceedings last?

The parties do not control the procedure. Once proceedings have started, the timetable is set at the discretion of the court and in practice depends on various factors, such as the complexity of the case, the degree of urgency and the court's caseload. Nevertheless, the parties may end the proceedings at any time by mutual agreement.

Interim proceedings (*référé*) last for an average of two to three weeks, and proceedings on the merits for one to two months. Supreme Court proceedings last longer.

8. What interim remedies are available to preserve the parties' interests pending judgment?

There are interim proceedings in Mali which protect the interests of the parties whilst waiting for a decision on the merits of the case:

- **Interim proceedings** (*référé*) allow a party to obtain an urgent interim ruling without prejudice to the court's decision on the merits of the case. Interim applications are considered at a hearing held by the presiding judge of the court
- **Ex parte orders** (*ordonnances sur requête*) can be issued by the presiding judge of the court without giving all parties an opportunity to respond if circumstances so require to protect the parties' rights and interests. Ex parte orders are immediately enforceable
- **Interim attachment** (*saisie conservatoire*) can be ordered to prevent the disposal of tangible or intangible assets by another party, thereby frustrating enforcement of a future award against that party. Interim attachment is possible where the petitioner can demonstrate it has a prima facie claim and that recovery of the debt is in jeopardy. The petition is filed with the court with jurisdiction over the debtor's place of residence.

9. What means of enforcement are available?

Judgments are only enforceable once they are *res judicata* and can no longer be appealed with suspensive effect, unless there is an automatic right to or a specific order for immediate enforcement. Unsuccessful parties may be able to obtain a grace period. Enforcement is possible only if the judgment includes the writ of execution (*formule exécutoire*).

Enforcement measures available under Malian law are those provided for in the OHADA Uniform Act Organising Simplified Recovery Procedures and Measures of Execution. The principal measures are as follows:

- **Seizure for sale** (*saisie-vente*): any creditor in possession of an enforcement order showing a debt due for immediate payment may have the debtor's tangible, moveable property seized and sold in order to recover the debt from the sale price
- **Third party debt order** (*saisie-attribution de créances*): any creditor in possession of an enforcement order showing a debt due for immediate payment may have receivables owed by a third party to the relevant debtor seized from that third party
- **Penalty payment** (*astreinte*): creditors who obtain an injunction from a court ordering their debtors to either perform or cease and desist from a particular action may ask the court to combine the injunction with a penalty payable for each day/week/month of delay or non-compliance

- **Property foreclosure** (*saisie immobilière*): this enforcement mechanism is applied as a last resort when the seizure of personal property or receivables has been unsuccessful or insufficient. Previous failure to recover the debt must be authenticated by a bailiff (*huissier de justice*); only then may the creditor initiate foreclosure.

The new OHADA Uniform Act Organizing Simplified Recovery Procedures and Enforcement Measures (17 October 2023) simplifies and streamlines certain enforcement procedures in all OHADA Member States.

10. Does the court have the power to order costs? Are foreign claimants required to provide security for costs?

In principle, the unsuccessful party pays the costs (which comprise court and bailiff fees but not fees for counsel). Claimants must make a payment to the court, which is intended to cover various procedural and registration costs. If they do not, the case will not be listed. Main claimants or foreign parties must, if requested by the defendant, provide security to cover costs and any damages they may be ordered to pay.

11. On what grounds can the parties appeal, and what restrictions apply? To what extent is enforcement suspended pending an appeal? Is there a right of further appeal?

For civil matters, parties have one month to appeal a first instance decision, starting from the date of service of the decision if it was handed down after a hearing of all parties, or from the deadline for opposition if handed down by default.

Specially, in administrative matters, the litigant has two months from the date of the administrative court's decision to lodge an appeal.

The interim order may also be appealed within 24 hours of receiving notification of the order, unless otherwise specified.

Appeals are made by way of a notice by registered mail or telegram filed by the appealing party with the registrar of the court that handed down the decision. An appeal made in time suspends enforcement, unless the original decision included immediate enforcement.

An appellate decision can then be appealed further to the Supreme Court on points of law only, not of fact. An appeal to the Supreme Court does not suspend enforcement. If the appeal is successful, the case is remanded to a new appeal court for re-hearing. The Supreme Court can also quash a decision without remanding the case. Although in principle, Supreme Court decisions are not binding on the appeal court, in practice appellate courts hearing cases on remand frequently align their ruling with the Supreme Court.

The standard time limit for lodging appeal to the supreme court is two months from service of the decision.

12. To what extent can domestic and/or foreign State entities claim immunity from civil proceedings?

Proceedings can be brought against the Government or public authorities in the judicial or administrative courts, depending on

the type of action. Such authorities have immunity from enforcement; however, in principle, state-owned companies do not.

For foreign entities, any jurisdictional immunity rights that may be applied derive from international agreements on diplomatic or consular relationships.

13. What are the procedures for having foreign judgments recognised and enforced?

In Mali, decisions made by foreign courts are automatically enforceable if they meet the following conditions:

- the decision was made by a court with jurisdiction;
- the foreign decision applies the law which governs the dispute;
- the dispute in question does not, according to Malian law, fall within the exclusive jurisdiction of the Malian courts;
- the decision is final and may be enforced in the foreign country; and
- the foreign decision does not infringe a final decision made by a Malian court.

An enforcement order is only granted if it would be granted in the foreign country for decisions made by the Malian courts. In practice, it is easy to obtain an enforcement order after providing proof that the decision is final and not contrary to Malian public policy.

Arbitration

14. Is the arbitration law based on the UNCITRAL Model Law on International Commercial Arbitration? If so, does it include any key modifications? If not, what type of arbitration does the law provide for?

Mali is a Member State of OHADA (*Organisation pour l'Harmonisation en Afrique du Droit des Affaires* - Organisation for the Harmonisation of Business Law in Africa). The OHADA Treaty was first signed on 17 October 1993. Under the OHADA Treaty, the Council of Ministers adopt "uniform acts" that are directly applicable and enforceable in each of the Member States. Arbitration in the OHADA Member States is governed by the Uniform Act on Arbitration (the "UAA") adopted on 23 November 2017.

The UAA is not based on the UNCITRAL Model Law. It was drafted separately but nevertheless complies with the fundamental principles of international commercial arbitration and the key features of the UNCITRAL Model Law.

The UAA applies to both national and international arbitration and governs all arbitration proceedings with a seat in a Member State.

One of the most important characteristics of OHADA arbitration is the Common Court of Justice and Arbitration (the **CCJA**) (*Cour Commune de justice et d'arbitrage*), which acts as both a permanent arbitral institution and the supreme court of arbitration for all OHADA Member States.

15. What are the main arbitration institutions at the national level?

The main arbitration institution in Mali is the *Centre de conciliation et d'arbitrage du Mali* (the CECAM-COM).

Created on 29 July 2004 under the aegis of the Malian Chamber of Commerce (CCIM), the CECAM administers arbitration and conciliation procedures and is involved in the training of business operators, arbitrators, in-house lawyers, judges and judicial officials. As an administrative body, the CECAM does not itself issue any decisions, but organises and administers conciliation and arbitration procedures through its Secretariat. Its task is to ensure compliance with the Rules, the adversarial principle and confidentiality. It has already helped resolved several disputes by ensuring that administrative costs are affordable for users.

At the international level, the CCJA, based in Abidjan (Côte d'Ivoire) also acts as an arbitration centre and administers proceedings governed by the CCJA Rules of Arbitration. The CCJA is different from other arbitration centres because it is not private, having been created and organised by OHADA.

16. Are there any restrictions on who may represent the parties to an arbitration?

The UAA does not set any restrictions on persons who can represent parties in an arbitration matter. They are entitled, but not required, to instruct a lawyer (Article 20 of the UAA).

There is nothing in Malian law to limit this freedom.

17. What are the formal requirements for an enforceable arbitration agreement?

Article 3-1 of the UAA states that the arbitration agreement must be made in writing or in any other form of which evidence can be produced. No particular format is required. The UAA also provides that contracts can include an arbitration agreement by reference to a separate document, or the arbitration agreement may be in the form of a standalone agreement.

18. Will the courts stay litigation if there is a valid arbitration clause covering the dispute? Does their approach differ according to whether the seat of the arbitration is inside or outside the jurisdiction?

Article 13 of the UAA provides that national courts must decline jurisdiction if a dispute that is already in arbitration pursuant to an arbitration agreement is brought before national courts.

If no arbitral tribunal has yet been formed, national courts must nevertheless decline jurisdiction at the request of a party unless the arbitration agreement is manifestly void or inapplicable. Courts cannot decline jurisdiction of their own motion.

In principle, the location of the seat of arbitration has no effect on this issue.

The existence of an arbitration agreement does not prevent the parties from applying to a national court for interim or protective orders where the circumstances are "clearly shown" to be urgent, if this does not require a review of the case on the merits.

National courts can also intervene in very limited circumstances to assist the arbitration process.

19. If the arbitration agreement is silent, how many arbitrators are appointed, and who is the appointing authority?

While the UAA does not mandate a specific number of arbitrators for cases where the arbitration agreement is silent on this point, it does provide that tribunals must have either a sole arbitrator or three arbitrators. In the absence of an agreement between the parties, the case is adjudicated by a sole arbitrator.

If the parties do not agree on the appointment procedure or if their agreement is not sufficiently detailed, the UAA provides that:

- in an arbitration with three arbitrators, each party appoints one arbitrator and these two arbitrators choose the third arbitrator; if a party fails to appoint an arbitrator within thirty days of the receipt of a request to do so from the other party, or if the two arbitrators fail to agree on the third within thirty days of their appointment, the appointment is made, at the request of a party, by the competent court in the Member State;
- in an arbitration with a sole arbitrator, if the parties fail to agree on the appointment, the arbitrator is appointed, at the request of a party, by the competent court in the Member State.

20. What rights are there to challenge the appointment of an arbitrator?

Articles 7 and 8 of the UAA set the rules for recusal. An arbitrator must disclose "any circumstance that could create a legitimate doubt in the mind of the parties about the arbitrator's independence and impartiality". The competent court in the Member State (in Mali, the presiding judge of the regional court) rules on any challenges, unless the parties resolve the challenge otherwise.

If the competent court rejects the request for recusal, it can only be appealed to the CCJA.

Any cause for recusal must be raised within no more than thirty days after discovery of the grounds for recusal by the requesting party.

Arbitrators may only be challenged on grounds that come to light after their appointment.

21. Does domestic law contain public policy requirements for arbitration proceedings?

Under the UAA, parties must receive equal treatment and have an opportunity to exercise their rights. The arbitral tribunal must abide by and enforce the right to be heard, and only rely on evidence presented to the extent all parties had an opportunity to respond to it. Arbitrators cannot base their decisions on grounds raised of their own motion without first giving the parties an opportunity to submit observations.

The arbitral tribunal rules on the substance of the dispute in accordance with the legal rules chosen by the parties. If the

parties made no such choice, the tribunal must apply the legal rules it deems most appropriate, taking international trade practices into account where relevant.

The UAA also provides that arbitration cannot last more than six months from the date on which the last arbitrator accepts the terms of reference, unless that period is extended by agreement of the parties or by the competent court.

22. On what grounds can the court intervene in arbitrations seated inside the jurisdiction?

In principle, where there is an arbitration agreement, the national courts cannot intervene in a dispute until the award has been issued.

Nevertheless, parties may petition the competent court in Mali in the following circumstances:

- to resolve difficulties encountered with constituting the arbitral tribunal, to appoint the sole arbitrator or the third arbitrator (Art. 5 and 8, UAA)
- to rule on arbitrator recusals if the parties have not agreed on a different procedure (Art. 8, UAA)
- to extend the time limit for completing the arbitration, at the request of a party or the arbitral tribunal, if there is no agreement between the parties to do so (Art. 12, UAA)
- to order interim or conservatory measures of recognised, demonstrated urgency, provided they do not require any review on the merits (Art. 13, UAA)
- to assist the arbitral tribunal, at its request, with the collection of evidence (Art. 14, UAA)
- to interpret the award or correct clerical errors or omissions affecting the award in cases where the arbitral tribunal cannot be re-seated (Art. 22, UAA).
- To challenge the award

23. On what grounds can the court intervene in arbitrations seated outside the jurisdiction?

As a matter of principle, national courts cannot intervene where there is an arbitration agreement. If the arbitration is seated in another jurisdiction, any and all issues relating to the composition of the arbitral tribunal and conduct of arbitral proceedings fall under the jurisdiction of the courts of the State of the seat.

However, it is possible for national courts other than the competent court of the country in which the arbitration is seated to intervene to order conservatory or interim relief, under the conditions defined above in question 18 (Art. 13).

National courts may also intervene in the process of enforcing awards.

24. Do arbitrators have powers to grant interim or conservatory relief?

Article 14 of the UAA authorises the arbitral tribunal to act at the request of either party to order interim or conservatory relief, excluding interim attachment and court-ordered security which are matters for the national courts.

25. When and in what form must the award be delivered?

Unless otherwise agreed by the parties, arbitration awards must be made within six months from the date on which all of the arbitrators have accepted the terms of reference. This period can be extended by agreement between the parties, or by order of the competent court of the Member State at the request of a party or the arbitral tribunal (in Mali, the regional court).

Unless otherwise agreed by the parties, the arbitration award should be issued by majority vote when the tribunal is composed of three arbitrators, and signed by the arbitrator or arbitrators. If a minority refuses to sign the award, this should be mentioned and the award will have the same effect as if it had been signed by all arbitrators.

26. Can a successful party recover its costs?

The UAA makes no provision for cost recovery.

Where arbitration is conducted under the aegis of the CCJA, the arbitrator is empowered to award costs.

27. On what grounds can an award from an arbitration seated in the jurisdiction be appealed to the court?

An application to set aside is the only remedy against an arbitral award. Applications to set aside must be brought before the competent court in the Member State where the award was issued. However, the parties can agree to waive to right to file applications to set aside as long as the award is not contrary to international public policy provisions.

An application to set aside can only be brought in the following circumstances (Art. 26, UAA):

- the arbitral tribunal ruled despite the lack of an arbitration agreement or in reliance on an invalid or expired agreement;
- the arbitral tribunal was not properly constituted;
- the arbitral tribunal did not rule in compliance with its terms of reference;
- the right to be heard (*contradictoire*) was not observed;
- the award breaches an international public policy provision;
- no reasons are given for the award.

Applications to set aside are admissible as soon as the award has been issued, for up to one month after service of the award together with an exequatur (enforceability) decision.

Bringing an application to set aside an arbitral award suspends enforcement until the competent court in the Member State (or the CCJA, whichever applies) has ruled, unless the award includes immediate enforcement. The same court has jurisdiction over disputes related to immediate enforcement.

If the award is harmful to a third party's rights, that party can challenge an arbitral award before the Member State court that would have had jurisdiction absent arbitration (Art. 25(4), UAA). Revision of the award can also be sought from the tribunal itself or, if the tribunal cannot be re-seated, the Member State court that would have had jurisdiction absent arbitration.

28. Can a foreign arbitration award be appealed in the local courts?

No (see question 27 above).

29. What are the procedures for the enforcement of: (i) awards rendered in other jurisdictions and (ii) domestic awards?

To enforce awards made in an OHADA Member State, the UAA requires the parties to obtain an order for enforcement, or exequatur, from the competent Member State court (Art. 30). To obtain exequatur, the requesting party must produce the original arbitral award together with the original arbitration agreement, or copies of these documents meeting authentication requirements and, where relevant, a certified translation into French (Art. 31, UAA).

Decisions refusing to recognise an arbitral award can be appealed to the CCJA, but decisions granting recognition cannot be appealed (Art. 32, UAA).

The procedure for obtaining recognition of awards is not adversarial. The court reviews the documentation submitted pursuant to Article 31 of the UAA. The enforcement of an award is suspended by an application to set aside, unless the arbitral tribunal ordered immediate enforcement.

Under Article 34 of the UAA, “arbitral awards rendered on the basis of rules different from those provided for in this Uniform Act are recognized in the State Parties under the conditions provided for by international conventions that may be applicable and, in the absence thereof, under the same conditions as those provided in this Uniform Act”. Accordingly, the recognition and enforcement of awards issued in a country outside the OHADA region will be governed by any applicable conventions (such as the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards). When there is no applicable international convention, the recognition and enforcement of such awards will be governed by the UAA. Mali is a party to the New York Convention.

30. Are foreign awards readily enforceable in practice?

Once an enforcement order has been obtained (exequatur), the foreign award is treated the same as other enforceable decisions made by national or other competent courts.

Alternative dispute resolution

31. Are the parties to litigation or arbitration required to consider or submit to any alternative dispute resolution before or during proceedings?

Conciliation is used for divorce matters or orders to pay. Apart from these cases, there is no mandatory mediation or conciliation procedure. The Code of Civil, Commercial and Social Procedure gives the court the authority to attempt to reconcile the parties at any time during the proceedings. The court may therefore, in agreement with the parties, appoint a mediator to try to reach an amicable settlement.

Reforms

32. Are there likely to be any significant procedural reforms in the near future?

To the best of our knowledge, there are no plans to make any significant reforms of civil or commercial procedure in the near future.

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Mauritania



Introduction

The Mauritanian legal system is based on the Constitution of 12 July 1991, as amended by the Constitution of 12 July 2006 (adopted by referendum), the Constitution of 20 March 2012, and on national laws and regulations.

Litigation

1. How is the legal profession organised?

The legal profession is governed by Law No. 016-2020 of 24 July 2020 organising the profession of lawyer, which made it a free and independent profession, and a partner to judicial authorities, so as to ensure the primacy of the law and the defence of individual rights and liberties.

To practise law in Mauritania, prospective lawyers must meet certain requirements, including:

- having Mauritanian nationality and being in full possession of their civil and citizen's rights
- being at least 24 years of age
- holding a Masters level degree in law, Sharia law, or an equivalent qualification
- holding the Certificate of Aptitude for the Profession of Advocate (*Certificat d'Aptitude à la Profession d'Avocat* or CAPA)
- completing a two-year internship at a law firm, with the exception of (i) judges who have worked for at least 15 years, (ii) tenured university professors and Mauritanian nationals who have taught at a Mauritanian faculty of law or Sharia law for 5 years, and (iii) lawyers who are Mauritanian nationals and have practiced in another State for 5 years (traineeship included) on condition that State has concluded an agreement with Mauritania that grants nationals of each State the right to practice law in the other.

The profession is organised into a Bar Association (*Conseil de l'Ordre*) which makes sure that members abide by the rules governing the profession and takes any necessary disciplinary measures.

Lawyers (*avocats*) registered with the Bar (*Barreau*) can appear before any court; representation by a lawyer is mandatory in the courts of appeal, the Supreme Court, the commercial court, administrative chambers of regional courts, the criminal courts, the constitutional courts, the various public procurement committees, in arbitration and in mediation. They can practise individually or as part of a law firm.

Foreign lawyers can appear before the Mauritanian courts, provided that Mauritanian lawyers have reciprocal rights under mutual legal assistance treaties. They must first notify the *Bâtonnier*, the opposing party's counsel and, if the case is criminal, the representative from the Public Prosecutor's office (*Ministère public*), and appoint the offices of a local lawyer as their address for service.

2. How is the court system structured?

The Mauritanian court system forms a three-tiered pyramid:

- **Courts of original jurisdiction:**
 - **the *tribunaux de Moughataa*/county courts** have unlimited jurisdiction, in principle, to hear personal status cases and disputes between individuals rather than businesses
 - **the *tribunaux de Wilaya*/regional courts** have special jurisdiction over that of the county courts to hear all cases defined by the Procedure Code (*Code de procédure*) (disputes involving insurance, real property covered by a title of ownership, etc.)
 - There are other specialised courts of original jurisdiction, such as the commercial and employment courts located in Nouakchott and Nouadhibou, and a criminal court in all regional capitals.
- **Four courts of appeal** (in Nouakchott, Nouadhibou, Kiffa and Aleg)
- **the Supreme Court** (in Nouakchott)

3. What are the time limits for bringing civil claims?

Limitation periods vary depending on the type of action and the parties involved:

- for an action for damages in contract: 15 years
- for commercial claims between traders, or traders and non-traders: 5 years

- for a non-contractual action for damages: 3 years
- specific limitation periods apply to certain types of case; for example, actions involving doctors and other healthcare professionals are time-barred after two years, and third-party claims after one year.

It is not possible to waive or reduce these limits in advance. However, it is possible to waive the limitation period once it has run out. Parties can also agree by contract to extend limitation periods, although not beyond the maximum limit of 15 years set by law.

Limitation periods are most frequently interrupted by legal action, the declaration of a claim in insolvency proceedings against a debtor, and any action whereby a debtor acknowledges a debt.

4. Are communications between a lawyer and his/her client privileged?

All communications between lawyers and clients are confidential.

Lawyers found to have breached this confidentiality duty may face disciplinary action, criminal prosecution or an action for damages depending on the scale of the harm suffered from the breach.

Under the law organising the legal profession, clients cannot release their lawyers from this duty of confidentiality.

5. How are civil proceedings commenced, and what is the typical procedure which is then followed?

Civil proceedings are filed:

- **by written petition** issued by the claimant or his/her lawyer
- **by an appearance** in court and a statement recorded by the court registrar

The petition must be served on the defendant at least 10 days before the hearing for small claims of 400,000 MRU or less and at least 20 days for larger claims if the defendant is located in the area over which the court has jurisdiction or another region of Mauritania, and at least three months in advance if the defendant is located outside Mauritania.

There are no time limits for urgent matters (*référé*). The judge may set a time limit on a case-by-case basis.

6. What is the extent of pre-trial exchange of evidence, and how is evidence presented at trial?

Evidence can be presented in any form.

There are no time limits for disclosing evidence, but it must be produced in the first instance and before the Court of Appeal.

Parties have the right to examine and challenge all evidence produced and can ask the court to order the other party to produce evidence, if that party has referred to such evidence in its submissions without producing it for the court. There is no equivalent to the English law “disclosure” system in Mauritania.

New evidence is not admissible on appeal or before the Supreme Court, since new claims are not admissible on appeal, and appeals to the Supreme Court are limited to points of law.

In terms of expert investigations, the procedure applicable in Mauritania is still relatively undeveloped. The expert has an obligation to inform the parties and to ask them to disclose any supporting documentation or opinion on the subject under examination. However, there are no provisions under Mauritanian law guaranteeing the exchange of evidence between the parties, or a debate between them or even their presence during the preparation of the expert’s report. Observance of the adversarial principle (*contradictoire*) in the preparation of expert reports is clearly lacking. This can lead to misuse, thereby affecting the quality level of such reports, and often reflects bias on the part of the expert.

7. To what extent are the parties able to control the procedure and the timetable? How long do proceedings last?

The parties do not control the procedure. Once proceedings have commenced, the timetable is set at the court’s discretion. In practice this depends on various factors, such as the complexity of the case, the degree of urgency and the court’s caseload. Nevertheless, parties may end the proceedings at any time by mutual agreement.

First instance proceedings can run for 6 to 18 months, depending on the complexity of the case and provided the parties are co-operative and do not use delaying tactics.

The average length of proceedings before the Court of Appeal and the Supreme Court is the same. But due to the low level of trust in the judicial system – in which the Minister of Justice may file a Supreme Court appeal in all subject matters “in the interest of the law” –, proceedings may often be suspended indefinitely in practice. However, it bears noting that the situation seems to have improved since the end of 2013, and that appeals “in the interest of the law” have been rare. The two ministers of justice since then have declared their intent to put an end to this type of appellate proceeding altogether.

8. What interim remedies are available to preserve the parties’ interests pending judgment?

There are two types of urgent procedure that can be brought to protect the parties’ interests pending a judgment on the merits:

- Interim proceedings (*référé*) allow a party to obtain an interim decision on urgent matters without affecting the judgment on the merits. Interim orders to protect a party’s rights and interests are requested by *ex parte* petition and handed down by the presiding judge of the court when circumstances require a decision without input from the opposing party. Interim orders can also be sought regarding difficulties with enforcing a right or judgment. *Ex parte* orders are immediately enforceable.
- Orders to pay may be issued for debts arising out of a contract, bills of exchange, promissory notes, endorsements or guarantees, or acceptance of a debt transfer or acknowledgment of an uncontested debt.

9. What means of enforcement are available?

The principal means of enforcement permissible under Mauritanian law are as follows:

- **Protective attachment** (*saisie conservatoire*), under which a debtor's movable assets (cited by the order) are frozen, thus preventing the debtor from dissipating the assets to defeat a creditor's attempt at recovery
- **Third party debt order** (*saisie-arrêt or opposition*), under which the creditor can have all funds and personal property owed by a third party to the debtor seized from that third party (or challenge any transfer thereof)
- **Seizure and sale** (*saisie-exécution*), under which the creditor can have the debtor's assets seized and sold

The law allows the appellate courts to grant debtors a grace period through a stay of immediate enforcement (*sursis à exécution provisoire*) where there is an imminent threat or where the arguments on which the appeal is based seem well-founded and justified.

However, the Supreme Court will only order a stay of immediate enforcement in exchange for security in an amount equal to the award, even where there is an imminent threat or where the debtor's arguments seem well-founded and justified.

10. Does the court have power to order costs? Are foreign claimants required to provide security for costs?

In principle, the unsuccessful party bears the costs of proceedings. These include all justified expenses except lawyers' fees. In Mauritania, lawyers' fees or expenses are borne by the instructing parties.

In practice, the courts tend to limit the costs they order and they rarely correspond to the actual costs incurred.

The court may ask the claimant to deposit a sum of money with the court registrar as security for court costs. In practice, the courts do not use this option, even in cases brought by non-Mauritanian parties.

11. On what grounds can the parties appeal, and what restrictions apply? To what extent is enforcement suspended pending an appeal? Is there a right of further appeal?

The right to appeal is automatic for all parties and no leave is necessary. All first instance judgments can be appealed within 15 days (i) of the date on which they were handed down after a hearing of all parties (adversarial proceedings), (ii) of the date of service if the proceedings is deemed adversarial, and (iii) of the deadline for opposition if issued by default. New claims cannot be made on appeal, unless they are to offset related claims or where the new claim is a defence against the main claim.

If filed in time, appeals suspend enforcement of the judgment, unless the court ordered immediate enforcement, which is possible where the case is based on a notarised or uncontested document. In practice, immediate enforcement is rarely accorded.

Cases are reviewed in full by the Court of Appeal and a new decision issued where the appeal is not limited to certain parts of

the lower court's judgment, if the appellant is seeking the reversal of the judgment or the subject matter of the case is not divisible.

A further appeal to the Supreme Court can be made within two months of the date of the appellate decision for judgments handed down after a hearing of all parties, and from the date of service in all other cases. The Supreme Court only rules on points of law.

12. To what extent can domestic and/or foreign State entities claim immunity from civil proceedings?

Mauritanian state entities cannot claim immunity from civil proceedings. Civil matters must be submitted to the judicial courts. However, state assets cannot be seized to enforce a judgment, a restriction that state and related entities use quite broadly, thereby making enforcement difficult to impossible.

Foreign State entities can potentially claim immunity from jurisdiction and enforcement where this is provided for under an international agreement or customary under international practices. They can also waive the right to immunity in an international business agreement.

13. What are the procedures for having foreign judgments recognised and enforced?

It is possible to obtain the enforcement (*exequatur*) of a foreign judgment handed down in a country that has a judicial agreement with Mauritania. To do so, an application is filed with the Mauritanian court with jurisdiction over the defendant's place of residence, or over the place of enforcement. However, the court will only grant enforcement under the following conditions:

- the decision is not contrary to Mauritanian public policy or accepted standards of behaviour
- the decision was issued by a competent judicial authority in the country in question and is enforceable under the laws of that country
- the parties were duly called to appear before the court and had the opportunity to be heard
- the foreign judgment does not contradict another judgment issued by a Mauritanian court

In practice, in 2011 and 2012 and after a significant legal battle, our firm was able to obtain the enforcement of a judgment issued by the Paris Commercial Court, based on case law from the full Supreme Court. It now represents settled case law and provides guidance on the criteria that apply for the *exequatur* of any foreign judgment issued by the courts in countries tied to Mauritania via judicial agreement. This case law has been relied on several occasions in recent years, including by our firm.

Arbitration

14. Is the arbitration law based on the UNCITRAL Model Law on International Commercial Arbitration? If so, does it include any key modifications? If not, what type of arbitration does the law provide for?

Law No 2000-06 of 18 January 2000 introducing the Mauritanian Arbitration Code (*Code de l'arbitrage*) applies to domestic and international arbitration and is based on the UNCITRAL Model Law.

However, institutional and *ad hoc* arbitration are both virtually non-existent in Mauritania due to the lack of modern rules on the subject. This is partly due to the common practice of parties influencing court decisions, which means that they do not go to arbitration.

The following responses are therefore theoretical, in that the rules described below are not applied in practice for the time being.

In April 2015 a joint decree of the Justice and Trade Ministers was signed during an official ceremony approving, pursuant to the Arbitration Code and Decree 2009/182 of 7 June 2009, the establishment of permanent institutions of arbitration and mediation, and of an international centre for mediation and arbitration in Mauritania to be installed at the Chamber of Commerce, Industry and Agriculture of Mauritania. To date, this remains a theoretical creation; the Chamber of Commerce is planning on launching a major awareness campaign to publicise the centre, and its usefulness and potential contribution to the business community.

15. What are the main arbitration institutions at the national level?

The Centre for Mediation and Arbitration mentioned above is the main institution at the national level.

Other mediation and arbitration institutions could be founded pursuant to the following legislation:

- Law No 2000-06 of 18 January 2000 introducing the Arbitration Code
- Decree No 2009/182 of 7 June 2009 on the establishment of a permanent arbitration and mediation institution
- Decree No 2009/206 of 24 September 2009 on the establishment of permanent arbitration and mediation institutions

However to date, no other arbitration institutions have been set up based on this legislation.

16. Are there any restrictions on who may represent the parties to an arbitration?

The law does not provide for any restrictions and, in the absence of actual arbitration practice, we can conclude that there should be no such restrictions. The most recent law organising the Bar does make representation by a lawyer mandatory in any arbitration or mediation.

17. What are the formal requirements for an enforceable arbitration agreement?

The arbitration agreement must be in writing, either as a notarised instrument or a private instrument. It is possible for an agreement to be recorded in the official record further to a declaration made before an arbitral tribunal.

An arbitration clause may also be inserted into an agreement, contract or memorandum of understanding and may be recorded in a separate instrument. The Mauritanian courts will recognise each of these possibilities.

Under Mauritanian law, the arbitration clause is a separate agreement and is detachable from the rest of the contract in which it is contained. It will therefore survive any dispute pertaining to the validity of the contract.

18. Will the courts stay litigation if there is a valid arbitration clause covering the dispute? Does their approach differ according to whether the seat of the arbitration is inside or outside the jurisdiction?

The Mauritanian courts will decline jurisdiction if there is a valid arbitration clause, regardless of the location of the seat of arbitration.

If a dispute that has already gone to arbitration under an arbitration agreement is subsequently brought before a national court, the court must declare the proceedings inadmissible, at the request of the parties and prior to issuing a decision on the merits, pending completion of the arbitration or expiry of the arbitration agreement. This applies to both domestic and international arbitration.

If the arbitral tribunal has yet to be consulted, the national court must also decline jurisdiction (at the request of a party), save where the arbitration agreement is manifestly void (in domestic arbitration) or unenforceable (in international arbitration).

19. If the arbitration agreement is silent, how many arbitrators will be appointed, and who is the appointing authority?

In a domestic arbitration, if there are multiple arbitrators, the number must be odd. If the parties appoint an even number of arbitrators, an additional arbitrator must be appointed to complete the tribunal, selected by mutual agreement between the parties or, failing this, by the arbitrators they have already appointed. In the event of a disagreement, the presiding judge of a first instance court (Wilaya) for the area in which the arbitration is seated will make the appointment.

In an international arbitration, the parties can choose any odd number of arbitrators. If they cannot agree, the default number of arbitrators is three.

20. What rights are there to challenge the appointment of an arbitrator?

Arbitrators must be individuals, of age and in full possession of all their rights as a citizen. They must be independent and impartial with respect to the parties.

If the arbitration agreement appoints a legal entity, that entity's sole contribution is to appoint the arbitral tribunal.

Judges or public officials may act as arbitrators on the condition that they do not neglect their official duties and obtain authorisation from the competent authority prior to accepting the role.

Arbitrators may only be challenged where there are legitimate reasons to doubt their impartiality or independence or because they do not have the qualifications required by the parties.

Parties may only dismiss arbitrators they have appointed or in whose appointment they participated, and only for reasons that came to light post-appointment.

Applications to dismiss an arbitrator for lack of independence or impartiality are heard by the regional court for the area in which the arbitration is seated, which will review the application in accordance with the Arbitration Code.

Arbitrators may also be dismissed on the same grounds as judges.

However, due to the fact that arbitration is a newly approved and very recent development in Mauritania, this system is entirely theoretical and thus impossible to assess.

21. Does the domestic law contain public policy requirements for the procedure to be followed?

Mauritanian law merely states that arbitrations may be *ad hoc* (ie the tribunal sets the procedure to be followed) or institutional.

However, due to the fact that arbitration is a newly approved and very recent development in Mauritania, this system is, as of yet, still impossible to properly assess.

22. On what grounds can the court intervene in arbitrations seated inside the jurisdiction?

Courts can intervene:

- in the appointment of arbitrators
- to remove arbitrators or with respect to related problems
- if conservatory measures are ordered by an arbitral tribunal

Given the lack of arbitration in practice, and thus of instances where the courts intervened in an arbitration in Mauritania, it is impossible to assess this situation any further.

23. On what grounds can the court intervene in arbitrations seated outside the jurisdiction?

See question 22 above.

24. Do arbitrators have powers to grant interim or conservatory relief?

In international arbitration, save as provided otherwise by the parties, the arbitral tribunal can order any interim or conservatory measures it sees fit, at the request of a party.

If the other party fails to comply with the order, the arbitral tribunal can ask assistance from the senior presiding judge (*premier président*) of the competent Court of Appeal.

In both cases, the arbitral tribunal or judge can order the payment of interim damages to a party as compensation for the expense caused by the measure.

25. When and in what form must the award be delivered?

If the parties do not agree on a time frame, the arbitrators will have six months to make their decision from the date on which the last arbitrator accepted the terms of appointment. The parties may agree to extend this period at the request of a party or the arbitral tribunal.

The award must be delivered in writing and signed by the arbitrators.

In international arbitration, the award must state the grounds for the decision unless the parties have agreed otherwise. In addition, the award must state the date and the seat of arbitration.

26. Can a successful party recover its costs?

It is possible for the successful party to recover its costs, at the discretion of the *ad hoc* or institutional arbitral tribunal. It is not possible to be more precise given the lack of actual arbitration proceedings in Mauritania as organised and governed by the Arbitration Code.

27. On what grounds can an award from an arbitration seated in the jurisdiction be appealed to the court?

In domestic arbitration, awards can be appealed where the parties have not expressly waived the right to appeal in the arbitration agreement and where the arbitrators are acting as *amiable compositeurs*, ie with the power to base their decisions on equity and fairness.

An award that has already been appealed cannot be set aside. In addition, if the court of appeal confirms the award, it must then order its enforcement. If the court of appeal overturns the award, it must then rule on the merits.

If the parties waive the right to appeal, an application to set aside can be brought in the following circumstances:

- if the award was issued without an arbitration agreement or under an invalid or expired agreement
- if the tribunal was not validly formed or the sole arbitrator not duly appointed
- if the arbitrator ruled outside the remit of the terms of appointment
- if the arbitrator breached a public policy rule
- if the fundamental rules of due process relating to defence rights were breached

In international arbitrations seated in Mauritania, it is only possible to file an application to set aside the award. This is possible in the following circumstances:

- when a party does not have legal capacity
- where the arbitration agreement is invalid under the law selected by the parties or the applicable law under the rules of private international law
- where the claimant was not duly informed of the appointment of the arbitrators or the arbitral procedure, or was otherwise prevented from asserting its rights
- where the award concerns a dispute not covered by the arbitration agreement or matters not within the scope of the arbitration agreement
- where the court considers the award to be contrary to public policy

28. Can a foreign arbitration award be appealed in a local court?

The national courts can intervene in arbitration proceedings seated outside Mauritania on matters of jurisdiction and to obtain enforcement.

Any party can appear before national courts (Court of Appeal) to appeal against an arbitral award on the grounds that the arbitral tribunal lacks jurisdiction.

Other than in these cases, foreign arbitral awards cannot be appealed in Mauritania.

29. What are the procedures for the enforcement of: (i) awards rendered in other jurisdictions and (ii) domestic awards?

The New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the New York Convention) has been in force in Mauritania since 30 April 1997. In international arbitration, it is possible to obtain the enforcement of a foreign award in Mauritania by applying in writing to the presiding judge of the relevant regional (Wilaya) court.

The judge will only grant enforcement if:

- the parties to the arbitration agreement had the necessary legal capacity to enter into a contract or if the arbitration agreement is valid under the law selected by the parties or the applicable law under the rules of private international law
- the unsuccessful party was duly informed about the appointment of the arbitrator(s) or the arbitration procedure or was in a position to assert its rights
- the award pertains to matters/disputes covered by the arbitration agreement
- the arbitral tribunal was validly constituted in compliance with the arbitration agreement
- the award is enforceable under the laws in force at the place of delivery and is final and binding
- the decision is not contrary to Mauritanian public policy

In domestic arbitration, awards can only be enforced by the presiding judge of the Regional (Wilaya) Court with jurisdiction over the area where the award was issued. The following must be provided to obtain enforcement:

- an original, authenticated counterpart or certified copy of the award
- an original counterpart or certified copy of the arbitration agreement
- an official translation of both documents into Arabic

30. Are foreign awards readily enforceable in practice?

The provisions of the Arbitration Code on the enforcement of foreign awards, the New York Convention and recent case law from the joint session on the enforcement of foreign judgments should in theory make it easier to enforce foreign awards in Mauritania. However, in practice, this is often not the case.

In any case, the Arbitration Code does not allow the Mauritanian courts to revise arbitral awards. We have never come across a case involving such practices.

The recent approval for the International Centre for Mediation and Arbitration and of the partnership with the Chamber of Commerce of Mauritania should support the development of arbitration and facilitate the enforcement of arbitral awards.

Alternative dispute resolution

31. Are the parties to litigation or arbitration required to consider or submit to any alternative dispute resolution before or during proceedings?

While the parties are not required by law to submit to mediation or any other dispute resolution procedure before or during litigation, the presiding judge of the court may attempt to conciliate the parties through mediation. Although mediation is not frequently used in Mauritania, judges often invite the parties to attempt it.

Reforms

32. Are there likely to be any significant procedural reforms in the near future?

Several reforms in civil, commercial, and administrative procedure may soon take shape.

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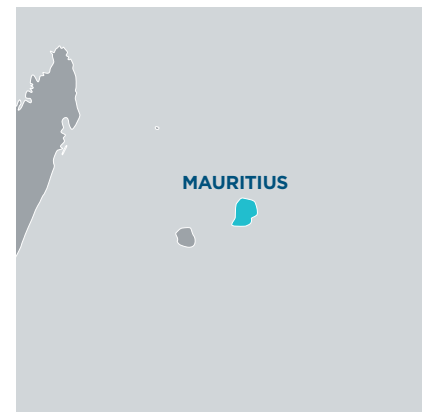
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Mauritius



Introduction

Mauritius has a hybrid legal system, reflecting its past colonisation by both France and Great Britain. The main areas of private law are based on a civilian model and contained in French-inspired codes that were enacted in the early nineteenth century (*Code Civil* and *Code de Commerce*). At the same time, a French-inspired *Code de Procedure Civile* was also enacted.

The substantive criminal law was also originally based on a *Code Penal* enacted by the French administration – it is still in force today, although it has been amended over the years. As the island lived under British rule after its independence in 1968, it adopted a Westminster style of passing legislation; and several English-inspired statutes were enacted, such as, the Companies Act. As a rule, matters of evidence and criminal procedure follow English rules. It is commonplace for judges and magistrates to refer to both English and French judicial decisions for guidance, in the appropriate contexts, when applying Mauritian law to a case. In cases involving the interpretation of the Companies Act and Insolvency Act, judges also refer to judicial decisions from Australia and New Zealand.

Litigation

1. What is the structure of the legal profession?

The legal profession is divided into three branches: attorneys, barristers and notaries. Attorneys act as instructing lawyers and are involved in the procedural aspects of litigation. Barristers specialise in advocacy and consultancy work, while notaries deal mainly with the drawing up of title deeds, conveyances and succession documents. Pursuant to the Law Practitioners Act 1984, foreign lawyers and international law firms may also be registered in Mauritius. Foreign lawyers will however be limited in the legal services they may provide, for example they cannot appear before Mauritian Courts, unless the Chief Justice grants them a right of audience or they cannot provide advice on Mauritian law, save where such advice is necessarily incidental to a foreign law or international law.

2. What is the structure of the court system?

The judicial system in Mauritius consists of:

1. The Judicial Committee of the Privy Council (the “JCPC”)

- The JCPC serves as the final court of appeal and appeals to the JCPC arise:
 - either as of right (for example in final decisions, in any civil

or criminal proceedings, on questions as to the interpretation of the Constitution); or

- with leave of the Supreme Court (for example where the question involved in the appeal is of great, general or public importance).

2. The Supreme Court

- The Supreme Court has unlimited jurisdiction to hear and determine any civil or criminal proceedings. It is also:
 - A court of equity, empowered to administer justice where no legal remedy exists;
 - A court of original jurisdiction for both civil and criminal matters;
 - A court of appeal (The Supreme Court sits on appeal over decisions of subordinate courts, namely the District, Intermediate, and Industrial Courts);
 - A court endowed with constitutional jurisdiction (The Supreme Court can interpret the Constitution and rule on substantial questions of law referred from other courts).
- The Supreme Court is organised into several specialised divisions to handle different types of cases:
 - Family Division
 - Commercial/Bankruptcy Division
 - Mediation Division
 - Criminal Division
 - Financial Crimes Division
 - Land Division
 - Court of Civil Appeal
 - Court of Criminal Appeal
- In addition:
 - the Master and Registrar of the Supreme Court primarily conducts and hears all formal matters in relation to civil cases which are pending before the Supreme Court.
 - The Judge in Chambers is endowed with specific jurisdiction to grant injunctions and hear such matters requiring urgent intervention.

3. The subordinate courts

- The subordinate courts consist of:
 - Court of Rodrigues
 - District Courts
 - Intermediate Court (Civil Division, Criminal Division and Financial Crimes Division)
 - Industrial Court
 - Bail and Remand Court
 - Children's Court

3. What are the time limits for bringing civil claims?

There are statutory limitations for bringing civil claims. These limitations vary, depending on the cause of action.

The general rule is that, if the claim relates to the exercise of a personal right, the time limit is 10 years. If the claim relates to exercising a right over property, the time limit is 30 years.

There are other shorter time-bar periods which are prescribed, for example claims for unpaid rent or unpaid salaries should be made within 3 years from the date when the cause of action arises.

4. Are communications between a lawyer and his/her client privileged (ie, protected from disclosure to a court/tribunal and opposing parties)?

Communications between a lawyer and a client are privileged and protected from disclosure provided that the purpose of the communication is to give or receive legal advice. The communication must directly relate to the performance by the lawyer of his professional duty as a legal advisor to the client. As such, communications relating to general business or commercial advice are not privileged and are not protected from disclosure. The privilege is that of the client and it may be waived by the client. Otherwise, disclosure of a professional secret is a serious offence and is punishable by a term of imprisonment and by a fine.

5. How are civil proceedings commenced, and what is the typical procedure which is then followed?

Generally, civil proceedings before the Supreme Court of Mauritius exercising its original jurisdiction are initiated by way of plaint with summons. An action may also be initiated by way of motion supported by affidavit, provided that the action is either one of a prerogative order or the circumstances require urgency or it is so prescribed in the Supreme Court Rules.

The plaint with summons is lodged in the Registry of the Supreme Court and served upon the defendant not later than 14 clear days prior to a returnable date and time specified in the summons. Service on the defendant is effected by a court usher or a registered usher. The plaint with summons is returnable before the Master and Registrar, who has jurisdiction to deal with all formal matters prior to the hearing of the case. The powers vested in his/her office are:

- to conduct and hear all formal matters (except those which relate to criminal cases) pending before the Supreme Court, including the power to hold pre-trial conferences, and the power to give such orders or directions for the just, expeditious and economical disposal of proceedings;

- to tax costs, the conduct and management of judicial sales, probate of wills and incidental matters;
- any other matters that may be referred to him by the Chief Justice of Mauritius.

In civil matters before the Supreme Court, the pleadings filed comprise of the plaint with summons, demand of particulars, answer to particulars, plea, reply to plea, counterclaim and reply to counterclaim. The practice in respect of the Supreme Court (Bankruptcy/Commercial Division) is different in that the Judge will himself manage these pre-trial exchanges and the pleadings will be filed in court and exchanged between the parties via the e-filing system.

The pleadings are also exchanged between the parties and the case is placed on the list of cases awaiting trial.

6. What is the extent of pre-trial exchange of evidence, and how is evidence presented at trial?

Disclosure/discovery of documents

Pre-trial exchange of documents in civil matters is done at the stage of demand of particulars ("DOP") on plaint with summons, answer to particulars ("ATP") on plaint with summons, DOP on plea, ATP on plea, DOP on counterclaim and ATP on counterclaim. The DOP includes an application for inspection of documents. These steps are dealt with before the Master and Registrar of the Supreme Court, except for cases lodged before the Supreme Court (Bankruptcy/Commercial Division) where the Judge will deal with such exchanges himself.

In criminal matters, the defence counsel will request the prosecution for communication of copies of the statements from the witnesses for the prosecution and of any documentary evidence to be produced at the trial and of any unused material to allow defence counsel to prepare the case for the accused party.

The court may also issue an order, either on its own motion or upon request by a party, for the court/the parties/witnesses/the jury to inspect a movable property, where such inspection is material to the determination of the question in dispute.

Furthermore, in the context of a criminal investigation, the police may obtain a search warrant from a District Magistrate for the search of a premises and may seize any document or article which the police has reasonable grounds to suspect may assist an investigation.

Evidence

Evidence is usually presented in oral form, unless prescribed otherwise by Mauritian laws, and includes testimony upon oath or solemn affirmation given *viva voce* or by affidavit in writing and unsworn personal answers of parties to trials. Evidence adduced in court in civil matters is restricted to the evidence relating to the facts that have been asserted in the pleadings.

Witnesses

A party to any case may apply to the Court for witnesses to be summoned and for witnesses to produce books, deeds, papers or writings in their possession or control. In matters before the Supreme Court, a party must serve on the other party, a list of witnesses that he or she wishes to examine at least one day prior to application for a summons.

Expert evidence

Expert evidence may be required on technical aspects in certain matters. In matters which are before a mediation judge (see question 21 below), the latter may appoint an expert whose advice must be given in an independent and fair manner and whose costs are borne equally by all parties. Parties may also appoint experts, in which case they may either each appoint an expert of their choice, or find common ground to appoint a single expert.

Mediation

Before or at any stage of the proceedings, the parties in a civil case can apply to the Chief Justice to refer the matter before the Supreme Court to mediation, setting out reasons for such application. If so referred, a mediation judge is appointed to facilitate the mediation and enable parties to reach an agreement. The parties cannot be forced to participate but may face cost sanctions if they do not. Mediation is subject to the Supreme Court (Mediation) Rules 2010 (the “**SC Mediation Rules**”) (see further question 21 below).

Before the lower courts, for example in employment law related matters, the Magistrate of the Industrial Court is endowed with informal powers to assist in the settlement of a dispute.

7. To what extent are the parties able to control the procedure and the timetable? How quick is the process?

Parties may not usually derogate from timeframes which have been set by the court unless they can provide satisfactory explanation. If parties disrupt the flow of proceedings, it is likely that they will face cost sanctions.

From plaint to trial the average timeframe may be 6 to 12 months. However, this time frame may vary depending on various factors such as:

- availability of the court;
- the availability of counsel appearing for the parties;
- the type of application (eg urgent applications like injunctions are usually dealt with in a more expeditious manner);
- complexity of the case;
- the number of parties involved;
- procedural issues;
- any incidental applications (eg counterclaims, joinders, interim arguments, etc).

An unsuccessful referral to mediation may also delay the process. That said, the court tries to expedite matters as far as practicable.

8. What interim remedies are available to preserve the parties' interests pending judgment?

Available interim remedies include orders for interim injunction (pending judgment in the main case) as well as attachment orders (*saisie arrêt*) for preservation of assets (pending judgment validating such attachment).

In any cause or matter relating to the inspection of property, the court may, on the application of either party or on its own

motion, make an order for inspection by the court, the jury, the parties, or witnesses of any movable or immovable property, the inspection of which may be material to the proper determination of the questions in dispute. The court may also give such directions with regards to inspection as it sees fit.

As a matter of practice, an interim order is made pursuant to an application being lodged by a party who must show good cause why such an order must be made. Amongst the various factors relevant to the issue of interim orders, the urgency attributed to the particular circumstances will be a determining factor.

9. What means of enforcement are available?

In essence, court orders direct the execution or enforcement of a judgment rendered by a judge. The mode of enforcement depends on the case and the urgency of the matter. The main means of enforcement are:

- where a judgment debtor has defaulted on a payment order, warrants of execution against the goods and chattels of that party may be made;
- insolvency proceedings against a debtor company;
- attachment orders and orders for recovery of assets;
- the payment of fines.

It is difficult to paint a generic picture of the ease and practicality of enforcement procedures. This will largely depend on the urgency that may be attributed to the circumstances requiring enforcement. For example, some cases may require the judge to expedite the issue of an order directing payment of a judgment debt (for instance, if it is anticipated that a debtor will dispose of assets). In such a situation, the judge must be presented with sufficient evidence to satisfy himself that the matter at hand is urgent and that immediate payment of the debt is required.

10. Does the court have power to order costs? Are foreign claimants required to provide security for costs?

Any court has the discretion to award costs of and incidental to proceedings and full power to determine by whom and to what extent the costs are to be paid.

In practice, the court takes into account an array of factors such as the length and complexity of the proceedings, and the conduct of the parties before and during the proceedings.

Foreign claimants, who do not hold immovable property in Mauritius, are required to furnish security for costs, in any matter other than a commercial matter, pursuant to article 21 of the *Code Civil Mauricien*. In an international arbitration, a party can apply for an order for security for costs if its provided for under the arbitration agreement or under the applicable arbitral rules.

11. On what grounds can the parties appeal, and what restrictions apply? Is there a right of further appeal? To what extent is enforcement suspended pending an appeal?

A person may appeal a final decision of the subordinate courts to the Supreme Court (in its appellate jurisdiction).

A person may appeal a final decision of the Supreme Court (where the Supreme Court was sitting in its original jurisdiction) to the Court of Civil Appeal or the Court of Criminal Appeal.

A person may, in relation to any order, decision or judgment of a Judge in Chambers in any matter in which an appeal lies, appeal that order, decision or judgment to the Supreme Court.

Any person wishing to lodge an appeal to the Court of Civil Appeal or the Court of Criminal Appeal must serve notice of appeal on the other party to the case and lodge the appeal in the Registry within 21 days from the date of the judgment or order appealed from. An appeal usually involves a fee which is paid to the court.

An appeal against a final judgment of the Intermediate Court, the Industrial Court, the Children's Court and a District Court is made to the Supreme Court. The person making the appeal should give notice of same to the clerk of the relevant court within 21 days of the date of the final judgment.

There exists a right to further appeal to the JCPC either as of right or with leave of the Supreme Court. In cases where the Supreme Court refuses leave to a party to appeal to the JCPC, that party may seek leave directly from the Judicial Committee of the Privy Council.

In some circumstances, an under the Court of Civil Appeal Act operates as a stay of execution or of proceedings under the judgment or order appealed for. However, there is no automatic stay in an appeal from the Supreme Court to the Court of Criminal Appeal: a motion for stay will need to be made.

12. To what extent can domestic and/or foreign State entities claim immunity from civil proceedings?

As regards the State of Mauritius, there exists a time bar of 2 years to file civil proceedings against the State. Secondly, actions in tort initiated against the State will not succeed unless the Plaintiff expressly states that the State is vicariously liable for acts of its employees/agents and one month's prior notice of the intended action, suit, proceedings and of the subject matter of the complaint, has been given to the State. As far as foreign States are concerned, there is no local legislation which addresses the issue of immunity. Mauritius is not a party to the United Nations Convention on Jurisdictional Immunities of States and their Property adopted in December 2004. However, customary international law, from which the principle of state immunity is derived in the absence of treaty or relevant legislation, applies in Mauritius. The Supreme Court has adopted the position that it is the restrictive doctrine of state immunity which applies in Mauritius, ie, state immunity will not extend to commercial activities.

13. What procedures exist for recognition and enforcement of foreign judgments?

A final judgment of a foreign court may be enforced by the courts in Mauritius, without re-examination of the merits of the case, through *exequatur* proceedings in accordance with article 546 of the *Code de Procédure Civile*.

An application under the provisions of article 546 is made by way of motion and affidavit.

Additionally, a final judgment of a foreign court may also be enforceable in Mauritius if the foreign court is situated in a country to which the Reciprocal Enforcement of Judgments Act 1923 applies. As a general rule, this Act only applies to judgments rendered by superior courts in the United Kingdom.

Arbitration

14. Is the arbitration law based on the UNCITRAL Model Law? If yes, are there any key modifications? If no, what form does the arbitration law take?

Under Mauritian law, there are two separate arbitration regimes; the first regime governs domestic arbitration, and the second one governs international arbitration. Articles 1103 to 1007 of the *Code de Procédure Civile* set out the governing principles for domestic arbitration.

International arbitration is governed by the International Arbitration Act 2008 which is based on the UNCITRAL Model Law on Arbitration. Mauritius has adopted the original text of the amended Model law and has incorporated some customised provisions derived from the arbitration laws of other jurisdictions. Mauritius is a signatory to the 1958 New York Convention on Recognition and Enforcement of Foreign Arbitral Awards (the New York Convention). Mauritius has also signed a Host Country Agreement with the Permanent Court of Arbitration (the "PCA"), under which it has delegated administrative functions under the International Arbitration Act to the PCA (which also has a physical presence in the country).

There are currently two arbitration institutions in Mauritius which administer international arbitration disputes, namely the Mauritius International Arbitration Centre ("MIAC") and the Mediation and Arbitration Centre ("MARC") (ie the arbitration arm of the Mauritius Chamber of Commerce and Industry). Each of the MIAC and the MARC have their own set of arbitration rules.

15. What are the formal requirements for an enforceable arbitration agreement?

International Arbitration

Under the International Arbitration Act, an arbitration agreement must be in writing to be enforceable. It can be either in the form of an arbitration clause in a contract or other legal instrument or in the form of a separate agreement.

There is no requirement in the International Arbitration Act for an arbitration agreement to be signed to be enforceable, but it must otherwise be in writing. It shall be in writing where its contents are recorded in any form, whether or not the arbitration agreement or the contract has been concluded orally, by conduct, or by other means.

An arbitration agreement can be concluded by an electronic communication which is accessible and usable for subsequent reference. In addition, it can also be contained in an exchange of statements of claim and defence in which the existence of the agreement is alleged by one party and not denied by the other.

Domestic Arbitration

In respect of domestic arbitrations, under article 1004 of the *Code de Procédure Civile* the arbitration agreement must be made in writing, either in the agreement out of which the

dispute arises, or in a separate document which refers to the main agreement. The arbitration agreement also needs to designate the name/s of the chosen arbitrator/s or, alternatively, the modalities of his/their appointment.

16. Will the courts stay litigation if there is a valid arbitration clause covering the dispute? Does the approach differ in this regard if the seat of the arbitration is inside or outside of the jurisdiction?

International Arbitration

Under the International Arbitration Act, where an action is brought before any court and a party contends that the action is the subject of an arbitration agreement, that court shall automatically transfer the action to the Supreme Court, provided that the request is not later than the submission of the first statement on the substance of the dispute.

A panel of three Designated Judges from the Supreme Court must on such a transfer refer the parties to arbitration unless a party shows, on a *prima facie* basis, that there is a very strong probability that the arbitration agreement may be null and void, inoperative or incapable of being performed, in which case the three Designated Judges must themselves proceed to determine whether the arbitration agreement is null and void, inoperative or incapable of being performed. Where the panel finds in favour of the latter, it transfers the matter back to the court that made the transfer. The process is expedited in as much as the referral to arbitration will be done as soon as there has been transfer unless the panel of three Designated Judges finds that the arbitration agreement is null and void.

The above-mentioned approach will also apply to arbitrations with a juridical seat outside Mauritius.

Domestic Arbitration

Similarly, for domestic arbitrations, courts will not be competent to hear a dispute: (i) which is the subject of an arbitration agreement, save where such agreement is null and void; or (ii) in respect of which an arbitral tribunal has been duly appointed.

17. On what grounds can the court intervene in arbitrations seated outside the jurisdiction?

Pursuant to the International Arbitration Act, the court can intervene in arbitrations seated outside Mauritius in certain specific circumstances, namely:

- To refer a matter to arbitration, where a party to a court action contends that such action is subject to an arbitration agreement (see answer 16 above);
- To grant interim measures of protection in support of arbitration;
- To grant interim measures where the arbitral tribunal is unable for the time being to act effectively; and
- Upon application to the Supreme Court, to enforce an interim measure granted by an arbitral tribunal.

18. Can a foreign arbitration award be appealed in the local courts? If so, on what grounds?

A foreign award (ie an award issued outside of Mauritius) cannot be appealed in Mauritian courts unless: (i) the arbitration has its seat in Mauritius; and (ii) the parties have

expressly agreed to opt for the possibility of appeals on questions of Mauritian law, which arise out of the foreign award.

However, where a party applies to the Supreme Court enforce a foreign arbitral award, a party to such enforcement proceedings may resist enforcement on the grounds set out at Article V of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the “**New York Convention**”) (See answer 19).

19. What procedures exist for enforcement of awards rendered in arbitrations seated outside of the jurisdiction?

Foreign arbitral awards may be enforced in Mauritius under the Convention on the Recognition and Enforcement of Foreign Arbitral Awards Act 2001 (the “**2001 Act**”). This Act implements the New York Convention in the internal law of Mauritius. When Mauritius ratified the New York Convention in 1996, it declared that it would apply the New York Convention only to awards made in other Contracting States. In addition, the Supreme Court (International Arbitration Claims) Rules 2013 set out the procedure to be followed when an award has to be enforced in Mauritius. The Rules apply to any application arising under the 2001 Act.

Further, the Reciprocal Enforcement of Judgments Act 1923 (the “**1923 Act**”) defines “judgment” as including “*an award in proceedings on an arbitration if the award has, under the law in force in the place where it was made, become enforceable in the same manner as a judgment given by a court in that place*”. As the 1923 Act only applies to judgments rendered by superior courts in the United Kingdom, this means that enforcement in Mauritius under the 1923 Act is only available for awards made in United Kingdom seated arbitrations which have become enforceable as if they were a judgment of a United Kingdom court.

The process for the enforcement of a foreign arbitral award would be by way of an *inter-partes* application before the court and generally the length of time will depend on whether the application is resisted or not. It may take between three to six months depending on the availability of dates for the court and for the parties.

20. Are foreign awards readily enforceable in practice?

In practice, the Mauritian courts will generally enforce foreign awards if the requirements of the 2001 Act are met and the procedures provided by the Supreme Court (International Arbitration Claims) Rules 2013 are followed (see question 19 above).

Alternative dispute resolution

21. Are the parties to litigation or arbitration required to consider or submit to any alternative dispute resolution before or during proceedings?

In 2011 the Supreme Court adopted the SC Mediation Rules in terms of which several judges of the Supreme Court are appointed as mediation judges, to assist parties in settling their disputes. These rules apply to civil suits and actions pending before the Supreme Court and suits that the Chief Justice deems appropriate to refer to mediation. Additionally, a party to a civil action may also apply to the Chief Justice for the matter to be referred to mediation.

The primary purpose of mediation under the SC Mediation Rules is for the parties to dispose of civil suits and actions by common agreement. There is no obligation for parties to civil suits and actions to participate in a mediation process. However, it is in the party's interest to participate to avoid adverse cost consequences.

In March 2019, the Chief Justice made the Intermediate Court (Mediation) Rules (the "IC Mediation Rules"). The **IC Mediation Rules** apply to civil suits and actions pending before the Intermediate Court and any other matters which the President of the Civil Division of the Intermediate Court may deem appropriate to refer to mediation. The mediator in such cases will be a magistrate of the Intermediate Court. Any party to a civil suit, action, cause or matter before the Intermediate Court may also, of its own accord, apply to the President of the Civil Division of the Intermediate Court for referral of the matter to mediation.

There is no requirement for parties to arbitration to engage in alternative dispute resolution.

Reforms

22. Are there likely to be any significant procedural reforms in the near future?

No, we do not anticipate any significant procedural reforms in the near future.

However, the new Government which is in office since November 2024 has announced in its Government Programme 2025 to 2029 that it intends to establish two new Courts; namely:

- a superior court of appeal to hear appeals from the Supreme Court and the arbitration tribunals, as currently the same judges of the Supreme Court sitting in its original jurisdiction also sit as judges of the Court of Civil Appeal or the Court of Criminal Appeal;
- a new international investment and commercial court.

In July 2025, the National Assembly enacted the Criminal Appeal and Criminal Review Act [No. 17 of 2025]; however, the legislation is not yet in force. The Civil Appeal Bill was also introduced in July 2025 but has not yet been passed. The main object of the Criminal Appeal and Criminal Review Act and the Civil Appeal Bill is to clarify, simplify and standardise the procedures for all appeals.

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Morocco



Introduction

Morocco's legal system is based on the Constitution of 1 July 2011 and its laws and implementing regulations.

Litigation

1. What is the structure of the legal profession?

The profession of lawyer (*avocat*) is governed by Law No. 1-93-162 of 10 September 1993 enacted by Dahir (decree) issued by the King of Morocco on the organisation of the legal profession, as amended by Law No. 28-08 of 20 October 2008 enacted by Dahir No. 1-8-101.

In order to practise as a lawyer in Morocco, a candidate must satisfy certain conditions, which means:

- having Moroccan nationality (subject to mutual recognition agreements with other countries)
- being over 21 years of age
- holding a law degree (*licence en droit*) or other equivalent foreign qualification
- having successfully passed the Bar examination
- being registered with the Moroccan Bar

The profession is organised by the Bar Association (*Conseil de l'Ordre*), which makes sure that members abide by the rules governing the profession and pursues any related disciplinary actions.

Lawyers registered with the Moroccan Bar may appear before any court and give legal opinions. They may practise independently or with a firm.

There is no distinction between solicitors (*avocat conseil*) and barristers (*avocat plaidant*).

Foreign lawyers may appear before Moroccan courts for a specific case, either under an international agreement between Morocco and the country of origin, or with prior approval from the Minister of Justice.

However, a lawyer registered with a foreign Bar cannot simultaneously be registered with the Moroccan Bar. Removal from the foreign Bar should be complete before registration with the Moroccan Bar is requested.

In parallel, Law No. 29-08 on civil partnerships of lawyers, enacted by Dahir No. 1-08-125 of 20 October 2008, governs the collective practice of the law as part of a dedicated practice structure.

This law allows two or more lawyers registered within the same Bar to form a partnership firm (*Société Civile Professionnelle - SCP*) to practise law jointly, in accordance with Article 2 of the said law. Each firm must be composed exclusively of lawyers registered with a Moroccan Bar.

The main characteristics of a law partnership are as follows:

- it must be formed exclusively between lawyers registered with the same Bar;
- it has legal personality and independent assets;
- its sole purpose is the practice of the legal profession;
- it must be authorised by the relevant Bar Association before being registered with the Bar;

Share capital is made up of the total cash contributions and the monetary equivalent of contributions in kind, and is divided into equal shares of the same value.

Partners in a partnership firm cannot represent parties with conflicting interests. They may only perform their professional duties within the framework of the same firm and from a single shared office.

The firm must also comply with the ethical rules of the legal profession and is subject to the disciplinary authority of the Bar Association.

Lastly, practising as part of a partnership does not exempt each partner from their personal professional liability towards clients.

2. What is the structure of the court system?

The Moroccan judicial system is governed by Law No. 38-15, issued by Dahir No. 1-22-38 dated 30 June 2022. It is based on a two-tier structure: courts of first instance and appellate courts.

2.1 Courts of first instance (original jurisdiction) include:

- **Courts of First Instance**, which have jurisdiction over all civil, criminal, social, personal status, and commercial matters, unless otherwise provided by law. These courts may include specialised chambers (civil, criminal, social, commercial, etc.).
- **Administrative Courts**, which hear disputes between individuals and public authorities.
- **Commercial Courts**, which handle commercial disputes.

2.2 Appellate courts include:

- **Courts of Appeal**, which review appeals against lower court decisions rendered by the Courts of First Instance.
- **Administrative Courts of Appeal**, which review appeals of judgments from Administrative Courts.
- **Commercial Courts of Appeal**, which review decisions from Commercial Courts.

The Supreme Court (*Cour de Cassation*), based in Rabat, is the highest court in Morocco. It rules exclusively on questions of law and ensures the interpretation of legal texts remains consistent across national territory.

Law No. 38-15 also establishes a distinction between cases heard by a single judge and those requiring a panel of judges, depending on the nature and seriousness of the dispute.

3. What are the time limits for bringing civil claims?

The limitation period for bringing a civil claim is generally 15 years from the date on which the related obligation arises. However, there may be shorter time limits in specific subject areas or for commercial or tort claims:

- for commercial and/or tort claims: five years
- for claims based on bills of exchange or cheques: three years
- for insurance and/or lease claims: two years
- product liability claims for hidden defects: filed within 30 days to one year depending on the nature of the defect

The parties cannot waive the limitation period or extend it beyond 15 years.

4. Are lawyer-client communications privileged (ie, protected from disclosure to a court/tribunal and opposing parties)?

All lawyers are required to comply with the principle of confidentiality.

This is a public policy rule which must be strictly observed for both advisory work and litigation.

Communications between lawyers are also confidential, unless they agree otherwise through their communications, or unless one of the lawyers authorises the other to disclose such communications.

Any breach of confidentiality can result in disciplinary measures and compensation for the injured party if substantial harm is incurred.

5. How are civil proceedings commenced, and what is the typical procedure which is then followed?

Proceedings are brought before the Courts of First Instance either through a summons signed by the claimant or claimant's representative, or a declaration made by the claimant in person with minutes taken by a court-appointed clerk. In most cases, proceedings are brought by way of a summons signed by a lawyer. A copy is then served on the defendant by a bailiff.

The time limit for scheduling the first court hearing is a minimum of five days from service of the claim, if the defendant is domiciled in the seat of the Court of First Instance or a bordering locality, or fifteen days if the defendant is domiciled elsewhere in Morocco.

If the defendant is domiciled abroad, this time limit is extended to:

- two months if the defendant is domiciled in Algeria, Tunisia or in Europe
- three months if the defendant is domiciled in another African country, in Asia, or in America
- four months if the defendant is domiciled in Oceania

There is no minimum legal time frame for urgent proceedings.

With the exception of divorce, there are no mandatory mediation or conciliation procedures that must be followed beforehand.

6. What is the extent of pre-trial exchange of evidence, and how is evidence presented at trial?

Documents

Evidence is submitted to the court along with the summons and submissions. There are no time for producing evidence, but it can only be presented in the first instance and on appeal; the opposing party must be able to respond to the evidence presented. No new evidence may be presented in appeals to the Supreme Court.

Evidence must be written: contracts, invoices, acknowledgments of debts, bills of delivery, written witness statements, etc.

There is no equivalent to the English law obligation of "disclosure", and the courts have no power to force the production of evidence by a party.

Experts

If a court issues a preliminary judgment ordering expert evidence, the appointed expert must invite the parties to attend a meeting with their lawyers in order to present his/her technical arguments. Expert proceedings are *audi alteram partem* – all parties must have the opportunity to respond. The expert then files a report and the parties can respond and present arguments supporting or rebutting the report in submissions filed before the court.

7. To what extent are the parties able to control the procedure and the timetable? How long do proceedings last?

The parties have no control over the procedure or the timetable insofar as the court selects the hearing dates. Parties can only

seek extensions, which are granted at the court's sole discretion. The speed of the proceedings depends on various factors such as the subject matter of the dispute and the workload of the judge presiding over the case.

In practice, the average time to obtain a judicial decision is six to nine months.

8. What interim remedies are available to preserve the parties' interests pending judgment?

Judges have the power to freeze a party's assets pending judgment where there is *prima facie* evidence of a good arguable case against the owner of the assets, and a credible risk that they may be dissipated to defeat a judgment.

Where appropriate, the court may also issue orders or hand down other prohibitory or mandatory injunctions in order to preserve the status quo until trial.

Interim orders may also be made (if appropriate, without notice to the defendants) to enable a party to trace the flow of funds through financial institutions, or to enter a defendant's premises to search for and seize evidence.

The courts also have jurisdiction in criminal cases to prohibit a defendant or debtor under a judgment from leaving Morocco.

9. What means of enforcement are available?

A declaratory judgment or a judgment creating a new legal relationship does not require enforcement. Only mandatory or prohibitory injunctions require enforcement.

Unless immediate enforcement is automatic or has been ordered, decisions only become enforceable once they can no longer be suspended by an appeal, at which point they become final.

Enforcement measures available under Moroccan law include, but are not limited to:

- an auction sale of assets to satisfy the judgment
- issuance of an order for an examination of the debtor (or a corporate debtor's directors) to disclose all assets (with failure resulting in criminal sanctions)

Court decisions can be enforced for up to 30 years after they are issued.

For prohibitory or mandatory injunctions, there are few practical means of enforcement in case of non-compliance. The only means of enforcement is through court-ordered penalties. There is no concept of contempt of court in Morocco, so the judgment debtor is indirectly compelled by way of a monetary penalty. For example, the court can require the judgment debtor to make a penalty payment to the judgment creditor for each day that an order has not been honoured.

10. Does the court have power to order costs? Are foreign claimants required to provide security for costs?

The unsuccessful party bears the court costs (fees paid to the court when filing a claim, costs of bailiffs, experts, appeals, etc.) and any tax.

However, each party covers its own lawyer's fees.

No security for costs can be ordered.

11. On what grounds can the parties appeal, and what restrictions apply? Is there a right of further appeal? To what extent is enforcement suspended pending an appeal?

Judgments may be appealed to the Court of First Instance (in certain cases) or to the Court of Appeal (for decisions handed down by a Court of First Instance) within 30 days of the date of service of the judgment to the unsuccessful party. This time frame can be reduced to 15 days for interim orders and for judgments rendered by the Commercial Courts, or extended to 90 days for parties not residing in Morocco.

In principle, an appeal suspends enforcement of the decision. Moroccan courts must order immediate enforcement – when requested to do so – in all cases involving an official instrument (*titre authentique*), an acknowledged obligation by the debtor, or a previous final decision rendered against the debtor.

Parties may also appeal to the Supreme Court within 30 days of service of the appellate decision. The Supreme Court rules on legal issues, not facts, and may decide to allow an appeal (quashing the appealed decision and inviting the parties to reapply to a lower court) or to dismiss it.

12. To what extent can domestic and/or foreign State entities claim immunity from civil proceedings?

Moroccan state entities are not entitled to immunity from proceedings. There are, however, specific legal restrictions on the enforcement of judgments against them.

Article 9 of the 2020 Moroccan Finance Law provides that judgments against the State or local authorities must be enforced by the relevant public officer within sixty (60) days from the date of notification, within the limits of available budget funds. If funds are insufficient, the payment must be scheduled over multiple fiscal years, and the seizure of State or local authority assets is forbidden.

The Moroccan Administrative Courts have jurisdiction over other official actions by state entities, while disputes that are purely matters of civil law may be submitted to the ordinary courts. However, the assets of state entities cannot be seized for enforcement purposes.

Foreign state entities can only claim immunity under the diplomatic immunity rules applicable to diplomats of foreign States, subject to the principle of reciprocity.

13. What are the procedures for having foreign judgments recognised and enforced?

A foreign judgment can be enforced in Morocco (*exequatur*) by leave of the Court of First Instance with jurisdiction over the defendant's place of residence or, where applicable, the place of enforcement. However, the court will not give leave to enforce the judgment unless:

- it was made by a competent court in the relevant jurisdiction;

- the judgment is enforceable under the law in which it was rendered and has become final;
- the parties were properly represented and duly notified;
- the decision is not contrary to Moroccan public policy.

Arbitration

14. Is arbitration law based on the UNCITRAL Model Law? If so, are there any key modifications? If not, what type of arbitration does the law provide for?

The governing law on arbitration in Morocco is now Law No. 95-17 on Arbitration and Conventional Mediation, enacted by Dahir No. 1.22.34 dated 24 May 2022. This law repealed and replaced Law No. 08-05, which had previously amended Chapter VIII of Title V of the Moroccan Code of Civil Procedure and is extensively based on the UNCITRAL Model Law of 1985 (as amended in 2006). Arbitration is widely accepted and used in Morocco.

15. What are the main national arbitration institutions?

Morocco has four main arbitral institutions:

- the *Cour marocaine d'arbitrage près CCI Casablanca*
- the Maritime Arbitration Chamber of Morocco
- the Rabat International Mediation and Arbitration Centre
- the *Cour atlantique d'arbitrage international*
- the Casablanca International Mediation and Arbitration Centre (CIMAC)

16. Are there any restrictions on who may represent the parties to an arbitration?

There are no restrictions on legal representation in international or domestic arbitrations.

17. What are the formal requirements for an enforceable arbitration agreement?

Under Moroccan law, an arbitration agreement must be in writing, regardless of whether the arbitration is domestic or international. According to Article 3 of Law No. 95-17 on Arbitration and Conventional Mediation, the agreement may be concluded by notarial deed, private agreement, minutes drawn up before the arbitral tribunal, or any other method agreed upon by the parties. An agreement is also deemed to satisfy the requirement if it appears in signed documents, exchanged correspondence, or other legally recognised written forms, including electronic communications.

Morocco recognises the severability of arbitration clauses, ie the arbitration clause remains valid even if the validity of the contract containing the clause is challenged.

18. Will the courts stay litigation if there is a valid arbitration clause covering the dispute? Does the approach differ according to whether the seat of arbitration is inside or outside the jurisdiction?

If a dispute has already been submitted for arbitration under an arbitration agreement and is subsequently brought before a court, the court must find the proceedings to be inadmissible, if

the defendant so requests before a ruling has been made on the merits, until the arbitration has come to an end or if the arbitration agreement has not been declared invalid.

If no request for arbitration has been submitted, the court must also declare the proceedings to be inadmissible (at the defendant's request) unless the arbitration agreement is manifestly invalid.

19. If the arbitration agreement is silent, how many arbitrators are appointed, and who is the appointing authority?

In domestic arbitration, if the parties have not agreed on the number of arbitrators, three will be appointed: one by each party and the third by the first two arbitrators. If one of the parties fails to appoint an arbitrator within 15 days of receiving notice to do so from the other party, or if the two arbitrators appointed by the parties cannot agree on the third within 15 days of the appointment of the second arbitrator, the presiding judge of the local court with jurisdiction will make the appointment at the request of one of the parties.

In matters of international arbitration, the arbitration agreement may, either directly or by reference to an arbitration rule, designate the arbitrator(s) or set out the procedure for their appointment and replacement.

In there are difficulties constituting the arbitral tribunal, and unless otherwise agreed by the parties, the more diligent party may refer the matter to:

- the presiding judge of the Commercial Court that will subsequently be responsible for granting enforcement of the arbitral award, if the arbitration takes place in Morocco, or
- the presiding judge of the Commercial Court of Casablanca, if the arbitration takes place abroad and the parties have agreed to apply Moroccan arbitration law.

20. What rights are there to challenge the appointment of an arbitrator?

Arbitrators may be disqualified with the unanimous consent of all parties or challenged by one of the parties for a reason that occurs or is discovered after the appointment and that falls into one of the following categories:

- A final judgment has been issued against the arbitrator convicting him or her for acts involving dishonour, lack of integrity, or public decency; or disciplinary penalties have been imposed on the arbitrator resulting in dismissal from public office; or one of the financial penalties set out in Section 7 of Book V of Law No. 15-95 (the Moroccan Commercial Code) has been imposed on the arbitrator; or the arbitrator has been deprived of the capacity to engage in commercial activities or of any of their civil rights.
- The arbitrator or spouse, ascendants, or descendants of the arbitrator have a direct or indirect personal interest in the dispute.
- There is a parenthood or in-law relationship between the arbitrator or his or her spouse and one of the parties, up to the fourth degree, or between the arbitrator and counsel to one of the parties.
- There are ongoing proceedings or concluded proceedings within the past two years between one of the parties and the

arbitrator or the arbitrator's spouse, ascendants, or descendants, or between the arbitrator and counsel to one of the parties.

- A relationship of subordination exists between the arbitrator (or the arbitrator's spouse, ascendants, or descendants) and one of the parties (or their spouse, ascendants, or descendants), or between the arbitrator and counsel to one of the parties.
- There is a known friendship or hostility between the arbitrator and one of the parties or their counsel.
- The arbitrator is a creditor or debtor of one of the parties or their counsel;
- The arbitrator has previously pleaded, appeared, or testified in the dispute submitted to the arbitral tribunal.
- The arbitrator has acted as the legal representative of one of the parties or their counsel.
- The following are not considered valid grounds for challenge:
 - Professional relationships between the arbitrator and a party's representative in the dispute;
 - Relationships between members of the arbitral tribunal;
 - Disputes that have arisen between the arbitrator and one of the parties within the context of a concluded arbitration.

21. Does domestic law contain public policy requirements for arbitration proceedings?

Domestic law provides that the arbitral tribunal sets the procedural rules for the arbitration as it sees fit. The tribunal is not bound to follow the rules established by the courts unless the parties have stipulated otherwise in the arbitration agreement.

22. On what grounds can the court intervene in arbitrations seated inside the jurisdiction?

The court can intervene in the process of appointing arbitrators and in recusals, and in conservatory measures ordered by an arbitral tribunal or requested by a party directly.

23. On what grounds can the court intervene in arbitrations seated outside the jurisdiction?

Please see question 22 above.

24. Do arbitrators have powers to grant interim or conservatory relief?

Unless the parties have agreed otherwise, the arbitral tribunal may act, at the request of a party and within the scope of its terms of reference, to order any interim or conservatory relief that it deems necessary.

If the party fails to comply with the order, the other party may ask the president of the competent court to issue an enforcement order.

25. When and in what form must the award be delivered?

If the arbitration agreement or the applicable arbitration rules do not set a time frame for handing down the award, arbitrators have six months from the date on which the last arbitrator accepts his/her appointment to issue an award.

The award must be handed down in writing, signed by the arbitrator or arbitrators, and include a brief summary of the parties' claims and arguments. It must state reasons for the decision and include the following information:

- the arbitrators' names, nationalities, and addresses
- the date of the award
- the seat of arbitration
- the parties' names and their addresses, and the company name of any legal entities, address of their registered offices and, if applicable, the name of the lawyers or persons who represented or assisted the parties
- the arbitration fees and expenses and method of sharing these between the parties.

26. Can a successful party recover its costs?

The unsuccessful party bears the costs. In practice, the amounts recovered will depend on the arbitrators' decision.

27. On what grounds can an award from an arbitration seated in the jurisdiction be appealed to the court?

In domestic arbitration, arbitral awards may be appealed in an application to set aside. Applications may be brought by the parties to the arbitration or by third parties (who deem the award to be harmful or potentially harmful to their interests) on the following grounds:

- the arbitral tribunal has ruled without an arbitration agreement or in reliance on an invalid agreement, or after the expiry of the time period stipulated in the arbitration agreement;
- the arbitral tribunal was improperly constituted or the sole arbitrator improperly appointed;
- the arbitral tribunal ruled without complying with its terms of reference;
- no reasons are given in the arbitral award (unless the parties agreed to this);
- the rights of defence have not been respected;
- recognition or enforcement of the award is contrary to international or national public policy;
- the arbitral award was not rendered in accordance with the parties' agreement on procedural formalities or on the law applicable to the dispute.

In international arbitration, applications to set aside awards handed down in Morocco may be brought on all but the fourth and seventh grounds above.

28. Can a foreign arbitration award be appealed in the local courts? If so, on what grounds?

International awards, whether rendered in Morocco or abroad, are not subject to appeal.

29. What are the procedures for the enforcement of: (i) awards rendered in other jurisdictions and (ii) domestic awards?

In international arbitration, the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the

New York Convention) has been in force in Morocco since 7 June 1959. Morocco was the second signatory country of the Convention. It is possible to enforce a foreign arbitral award in Morocco by leave of the Moroccan courts. However, the courts will not grant leave to enforce the award unless:

- it was made by a competent court in the relevant jurisdiction;
- the award is enforceable under the law in which it was rendered;
- the parties were properly represented;
- the decision is not contrary to Moroccan public policy.

In domestic arbitration, the enforcement of an arbitral award may only be undertaken with an *exequatur* order (order for enforcement) from the presiding judge of the court within whose jurisdiction the award falls. An official copy of the award together with a copy of the arbitration agreement and a translation into Arabic, if applicable, must be registered with the court clerk within seven days of the award being handed down.

30. Are foreign awards readily enforceable in practice?

The courts will only enforce arbitral awards in the circumstances described in question 29 above.

Alternative dispute resolution

31. Are the parties to litigation or arbitration required to consider or submit to any alternative dispute resolution before or during proceedings?

Mediation is used in parallel to arbitration and litigation. In a bid to prevent or to resolve disputes, the parties may agree to appoint a mediator to facilitate a settlement (article 86 of Law No. 95-17). However, parties are generally not required by law to consider or submit to alternative dispute resolution before or during proceedings. Mandatory “mediation or conciliation” procedures do apply in divorce cases, however.

Reforms

32. Are there likely to be any significant procedural reforms in the near future?

Yes, several major legislative reforms are currently underway. Notably, draft laws affecting the Code of Civil Procedure, the Code of Criminal Procedure, and the law governing the legal profession (lawyers) have already entered into the legislative process.

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Mozambique



Introduction

Mozambique is a civil law jurisdiction. The Mozambican legal system is based on codified laws, the fundamental law being the Constitution which was last amended in 2018 by Law no. 1/2018 of 12 July. The legal system and, notably the procedural rules in force are largely influenced by the Portuguese legal system.¹

Litigation

1. What is the structure of the legal profession?

The legal profession in Mozambique is not divided as, for instance, in England and Wales where there are solicitors and barristers. In Mozambique once admitted to the Mozambican Bar Association, Lawyers may appear before all courts, including the Courts of Appeal, the Supreme Court and Constitutional Council².

In order to be admitted to the Mozambican Bar Association, one must hold a law degree and undertake a traineeship lasting 14 (fourteen) months divided into two stages. The first stage – which lasts for 8 (eight) months – involves training sessions, with the view to provide the trainee lawyer with technical, professional and ethical knowledge always supervised by senior lawyer with at least 5 (five) practicing experience. The second stage – which lasts only for 6 (six) months – involves practical training, including attending trial hearings.

2. What is the structure of the court system?

The court system is composed by the common/judicial courts and courts with specialized jurisdiction.

The common/judicial courts are structured as follows:

- Supreme Court;

- Court of Appeals;
- Provincial Courts, and
- District Court, which are classified as First Instance and Second Instance courts.³

The jurisdiction of both the Provincial and the District Courts is subject to thresholds based on amounts calculated by reference to the Public Administration minimum wage. In 2025, the Public Administration minimum wage was set at MZN 8,758,00.

District Courts of **First Instance** have jurisdiction over the following matters:

- Family and children's related matters;
- Civil lawsuits not exceeding 100 times the minimum wage;
- Criminal matters punishable with imprisonment not exceeding 12 years.

District Courts of Second Instance have jurisdiction over the following matters:

- To adjudicate the appeals lodged against the decisions rendered by the community courts, and
- To adjudicate habeas corpus petitions that fall within its jurisdiction, under the applicable procedural law..

Provincial courts have jurisdiction over the following matters:

- Claims not specifically assigned to another court;
- Civil lawsuits exceeding 100 times the minimum wage;
- As second instance courts, review of the decisions made by District Courts and Arbitral Tribunals (in accordance with the arbitration law);
- Ruling on conflicts of jurisdiction between District Courts.

1. Mozambique is a former Portuguese colony which adopted the laws that were in force in Portugal at the time of its independence in 1975. Many relevant statutes and laws, such as the Civil Code or the Civil Procedural Code remain the same, save for certain amendments.

2. The Constitution of the Republic of Mozambique defines the Constitutional Council as a sovereign organ of the State specifically responsible for administering justice in matters of a constitutional legal nature. Established by the 1990 Constitution, its functions were temporarily performed by the Supreme Court until 3 November 2003, when the Constitutional Council came into existence as an autonomous institution. The nature and powers established by law for the Constitutional Council, namely the review and declaration of the unconstitutionality of laws and the illegality of normative acts of State organs, electoral disputes, and the legality of the formation of political parties, their coalitions, and their respective names, acronyms, and symbols, give the Constitutional Council a prominent role in consolidating the democratic rule of law in Mozambique.

3. Article 78 paragraph 1 of Law 24/2007 of 29 August, which approves the Judiciary Courts Organizations (as amended).

The Courts of Appeals have jurisdiction over the following matters:

- (a) Review of decisions rendered by the Provincial Courts;
- (b) Lawsuits against judges and public attorneys affected to the Provincial Courts;
- (c) Ruling on conflict issues concerning the lower courts.

The common court system is considered to be adversarial, substantial evidence being produced in trial hearing through examination and cross-examination of witnesses. There are no jury trials in civil cases.

Also, there are Community Courts, which are non-judicial independent institutionalised bodies for non-judicial conflict resolution. They rule in a non-legal, informal way according to common sense, usages and fairness, favouring oral communication and addressing the social and cultural values existing in the Mozambican society, abiding by the Mozambican Constitution.

In addition, there are the following Courts with specialized jurisdiction:

- Administrative Court;
- Tax Court;
- Customs Court;
- Labour Court;
- Maritime Court;
- Minors Court, and
- Police Court

3. What are the time limits for bringing civil claims?

The general statute of limitation period for civil/contractual claims is 20 years. However, shorter limitation periods apply depending on the subject matter of the claim, such as five years (eg claims related with lease rents or interest), two years (eg claims related with fees for services rendered by independent professionals), or six months (eg claims related with accommodation services).

4. Are communications between a lawyer and his/her client privileged (ie, protected from disclosure to a court/tribunal and opposing parties)?

Yes. According to the Statute of the Mozambican Bar Association lawyers must keep professional secrecy and they may refuse to testify as witnesses in court in cases where their statements may breach the duty of professional secrecy. Exceptions may be made in case the lawyer's deposition is deemed absolutely necessary for the defence of the lawyer or the client's dignity, rights and interest, subject to prior authorisation granted by the Mozambique Bar Association.

5. How are civil proceedings commenced, and what is the typical procedure which is then followed?

Civil proceedings generally start with the submission of the statement of claim to the competent court by the claimant. Following registration of the case, the defendant is notified of the statement of claim and to submit a defence within 20 days. Further submissions may be admitted in case a counterclaim is submitted by the defendant or the latter raises exceptions in law in the statement of defence (such as the lack of jurisdiction of the court or the lack of legal standing of any of the parties). A preliminary hearing may be scheduled by the judge where the parties will be given the opportunity to inter alia discuss their positions, notably if in the submissions the parties raised exceptions in law.

Subsequently, the judge issues an order – the “*despacho saneador*” – deciding the exceptions in law, to the extent possible, and listing (i) the facts considered proven in light of the evidence produced so far by the parties, and (ii) the other relevant facts that have been contested by any of the parties which, as such, require additional evidence. Also, in this order – “*despacho saneador*” – the judge may rule on the merits of the case if it is considered that all the required information and evidence and the necessary security to render a decision exist.

If the case is not ruled in the so-called “*despacho saneador*”, the judge schedules the trial hearing where the parties will be given the opportunity to produce additional evidence on the relevant facts not yet proven, notably through witness testimony. At the end of the trial hearing the parties are granted the opportunity to submit final arguments, following which the judge hands down a written decision.

6. What is the extent of pre-trial exchange of evidence, and how is evidence presented at trial?

In Mozambique there is no pre-trial exchange of evidence. All documentary evidence shall be submitted by the parties with the written submissions where the relevant facts related to such documentary evidence are alleged (statement of claim, statement of defence, reply, rejoinder). Exceptionally, documents may be submitted afterwards in the proceedings, although subject to the payment of a fine, unless such documents did not exist or they were not accessible to the party at the time such party filed the relevant submission. Legal and technical opinions may be submitted at any stage of the proceedings.

Also, in the submissions the parties must list the witnesses they wish to be heard in the trial hearing.

After the “*despacho saneador*”⁴ – where the judge will list the relevant facts not yet proven – the parties are granted the opportunity to submit additional evidence or request additional evidence to be produced, including alter the list of witnesses to be heard at the trial hearing.

A party may request the judge to order the other party or a third party to present a certain document that the requesting party does not have access to. For this purpose, the requesting party shall identify the document and specify the facts that it wishes to prove through such document.

4. For details on the “*despacho saneador*”, please see response to question 5.

7. To what extent are the parties able to control the procedure and the timetable? How quick is the process?

According to our experience a judicial proceeding may take up to two or three years for a judgement to be rendered by the first instance court. In the case of Labour Courts such period is reduced to between one and two years.

The Code of Civil Procedure foresees several deadlines for the judge to perform certain acts and issue decisions. However, such deadlines are often not complied with by the courts/judges, notably due to the volume of cases pending in the courts.

8. What interim remedies are available to preserve the parties' interests pending judgment?

A party may request the judge to order interim measures, notably with a view to secure the effects of a final decision to be rendered in the context of a main judicial proceeding (where the party's claim is submitted and ruled upon). These measures may be requested prior to or pending the corresponding main judicial proceeding.

The Mozambican Code of Civil Procedure provides for specific types of interim measures – which are subject to specific requirements – such as the arrest/sequestration of assets and/or documents, the embargo (suspension) of a new construction, or the temporary restitution of possession over an asset.

In addition, the Mozambican Code of Civil Procedure provides for the possibility of the court ordering any other type of measures that may be requested by a party, as long as certain requirements are met. In summary, when requesting a non-specified interim measure, the requesting party shall submit sufficient evidence that (i) the right invoked by the applicant appears to exist and, therefore, that it would be recognized and upheld by the court in the corresponding main judicial proceedings (the so-called *fumus boni iuris*); and (ii) in case the measure requested is not ordered by the court, there is a grounded fear that the applicant's right will be seriously harmed in a way that will most likely not be able to be repaired (the so-called *periculum in mora*). Therefore, as long as the interim measure requested is not *contra legem*, it may be ordered by the court if the requirements referred to above are met.

9. What means of enforcement are available?

In Mozambique, enforcement is made through the courts in the context of enforcement proceedings. For the enforcement to proceed the party must present an enforceable title (a final judicial ruling or arbitral award valid in Mozambique or any other document where certain obligations are undertaken, in the latter case subject to the fulfilment of certain formalities prescribed by the law).

The opposing party (against which enforcement is sought) is ordered to fulfil the relevant obligation (which may be *inter alia* the payment of a certain amount or the delivery of a certain object/asset) or to submit an opposition to the enforcement application. In case the enforced obligation corresponds to the payment of a certain amount, the court shall order the attachment of assets belonging to the opposing party with sufficient value to cover the credit and, in case the opposing party's opposition is found groundless, such assets will be sold and the requesting party will be paid with the respective proceeds. In case the enforced obligation relates to the delivery

of a certain object, the court will order the same to be delivered; if the assets are not delivered and cannot be located, an amount will be attributed to them and the opposing party ordered to pay such amount, failing which its assets will be attached and sold through the court, as explained above.

10. Does the court have power to order costs? Are foreign claimants required to provide security for costs?

Initial court fees/filing fees must be paid following the submission of the statement of claim and the statement of defence. After the final decision is rendered the court clerk calculates the full amount of the court fees – according to the Code of Judicial Fees – which shall be paid in accordance with the judge's decision on costs. The judge's decision is based on the principle that a losing party shall bear the costs of the proceedings. The winning party has the right to request reimbursement of the initial court fees paid. Foreign claimants are not required to provide security for costs.

Failure to pay the filing fees triggers the payment of a fine in the amount of the fees due. If payment of the fees and the fine is not made within 5 five days as of the date of the court notice the case will be dismissed (in the case of plaintiff's failure to pay) or the statement of defence is withdrawn (in the case of defendant's failure to pay).

11. On what grounds can the parties appeal, and what restrictions apply? Is there a right of further appeal? To what extent is enforcement suspended pending an appeal?

The parties may, in general, appeal decisions that amount to more than 50 (corresponding to MZN437,900) and 25 (corresponding to MZN218,950) times the minimum wage in the Provincial Courts and District Courts, respectively. The appeal is limited to points of law and/or fact. Depending on the type of appeal, it may act to suspend the first instance court decision.

12. To what extent can domestic and/or foreign State entities claim immunity from civil proceedings?

Generally, domestic State entities do not have immunity in the context of civil proceedings. As for foreign State entities, although the Mozambican ordinary law does not expressly foresee their sovereign immunity, the rules of international law shall apply, notably those of the treaties and conventions ratified by Mozambique.

13. What procedures exist for recognition and enforcement of foreign judgments?

Foreign judgement must be reviewed and confirmed by the Supreme Court in order to be valid and enforceable in Mozambique. Such judgements may, however, be used before the Mozambican courts as a means of evidence, not subject to prior recognition/confirmation.

The Code of Civil Procedure provides for the requirements that must be met for a foreign judgement to be recognized in Mozambique, such as, the judgement may not contain any decision contrary to Mozambican public policy principles and there must not be any doubts as to the authenticity of the document in which the judgement has been recorded nor on the decision's reasoning. The requirements foreseen in the Code of Civil Procedure are cumulative, thus, failure to meet any of such

requirements prevents the confirmation/recognition of the foreign judgment.

Following the recognition of the foreign judgement the same may be enforced in the same terms as a judgement from a Mozambican State court, under enforcement proceedings.

Arbitration

14. Is the arbitration law based on the UNCITRAL Model Law? If yes, are there any key modifications? If not, what form does the arbitration law take?

The arbitration legal framework in Mozambique is basically provided for in the Mozambican Arbitration Law⁵ which is largely inspired by the 1985 Model Law on International Commercial Arbitration of the United Nations Commission on International Trade Law ("UNCITRAL"), although it is not listed by UNCITRAL as a statute based on the Model Law.⁶

Similarly to the UNCITRAL Model Law, the Mozambican Arbitration Law governs both domestic and international commercial arbitrations. Pursuant to the Mozambique Arbitration Law, an arbitration is deemed international if *international trade interests* are at stake and, specifically, when the parties to an arbitration agreement have business domiciles in different countries at the time of the execution of the arbitration agreement, or when the parties have expressly agreed that the subject-matter of the arbitration has connections with more than one country.

The general provisions of the Mozambican Arbitration Law apply to international commercial arbitrations seated in Mozambique, except where otherwise provided for. In particular, in the case of international commercial arbitrations subject to Mozambican Arbitration Law, failing the appointment of an arbitrator such appointment shall first be requested to an arbitral institution whereas in the general rules applicable to domestic arbitration, the appointment may be directly requested to the competent State court. Also, in relation to international commercial arbitration, the Mozambican Arbitration Law provides that the tribunal will rule on the dispute in accordance with the substantive law chosen by the parties (excluding the conflict of laws rules).

In contrast to the Model Law, the Mozambican Arbitration Law sets forth that the arbitral award shall be rendered within six months from the date of the last arbitrator's appointment, unless otherwise agreed by the parties; also, it grants only one month for the parties to bring setting aside proceedings.

15. What are the main national arbitration institutions?

The main national arbitration institution is the Centre for Arbitration, Conciliation and Mediation (Centro de Arbitragem, Conciliação e Mediação or "CACM"). The CACM is located in Maputo and it is the only commercial arbitration institution currently operating in Mozambique. In addition, several *Centros de Mediação e Arbitragem Laboral* (Labour Mediation and

Arbitration Centres) were established in different provinces of Mozambique for the purpose of hosting labour disputes. Lastly, since 2021, the Supreme Court has implemented within the Provincial Judicial Courts a Judicial Mediation Service aimed at resolving any non-criminal disputes, provided that such disputes concern the parties' disposable rights.

Pursuant to Mozambican Arbitration Law any legal person may set up and administer arbitration, conciliation and mediation centres, no prior government authorization being necessary for said purpose, notwithstanding the supervision of their activity by the Minister of Justice, who may order any such centre to be closed down if it is found to lack the necessary conditions or integrity to conduct the proceedings.

16. Are there any restrictions on who may represent the parties to an arbitration?

The Mozambican Arbitration Law does not impose any restriction on who may represent the parties to an arbitration as it merely sets forth that the parties may appoint a person or persons to represent or assist them before the tribunal.

17. What are the formal requirements for an enforceable arbitration agreement?

Pursuant to the Mozambican Arbitration Law the arbitration agreements must be in writing. An arbitration agreement is considered to be in written form if documented either in a written instrument signed by the parties or in correspondence exchanged between them. Reference to a document containing an arbitration clause also constitutes an arbitration agreement provided that the document referred to is in writing and the reference to such document makes the arbitration clause an integral part thereof.

The Mozambican Arbitration Law also sets forth minimum requirements for the arbitration agreements: in case of arbitration clauses, the parties must identify the relationship or the facts from which future disputes may arise, and in the case of submission agreements – relating to existing disputes – the parties must identify the precise subject matter of the existing dispute.

18. Will the courts stay litigation if there is a valid arbitration clause covering the dispute? Does the approach differ in this regard if the seat of the arbitration is inside or outside of the jurisdiction?

By entering into a valid arbitration agreement, the parties waive the right to submit the relevant disputes to State courts. According to the Mozambican Code of Civil Procedure, in case of a valid arbitration agreement the State court will dismiss the judicial proceedings and refer the parties to arbitration. However, the existence of a valid arbitration agreement will not be assessed by the court *ex officio*; it must be raised by the parties in their first submissions on the merits of the case. The State court will not dismiss the judicial proceedings if it finds that the arbitration agreement is null and void or incapable of being performed. These rules and approach apply to arbitration agreements related to arbitrations seated both inside and outside Mozambique.

5. The Law No. 11/99, of 8 July 1999 on Arbitration, Conciliation and Mediation.

6. As per the UNCITRAL website available at https://uncitral.un.org/en/texts/arbitration/modellaw/commercial_arbitration/status

19. If the arbitration agreement and any relevant rules are silent, how many arbitrators will be appointed, and who is the appointing authority?

Pursuant to the Mozambican Arbitration Law, in case the composition of the arbitral tribunal has not been agreed upon by the parties the tribunal shall be composed of three arbitrators, one appointed by each party and the third appointed by the two previously appointed arbitrators.

Where any of the parties fail to appoint an arbitrator or if the parties are unable to agree on the appointment of an arbitrator, as the case may be, the appointment will be made by a permanent arbitral institution chosen by the parties or a delegate thereof; failing the parties' agreement as to the choice of this body, the arbitrator will be appointed by the competent State court. The appointment by an appointing authority – arbitral institution or State court – is not subject to appeal.

20. What rights are there to challenge the appointment of an arbitrator?

A party may challenge the appointment of an arbitrator only in case of justified doubts as to his/her impartiality or independence, or whenever the arbitrator does not meet the qualifications agreed by the parties. A party may only challenge an arbitrator it has appointed based on circumstances which such party only became aware of after the appointment was made.

Parties are free to agree on the procedures for the challenge of arbitrators. In case no agreement exists, the party intending to challenge an arbitrator shall submit a written statement to the arbitral tribunal within fifteen days from the date on which it was given notice of the tribunal's constitution or the date on which it became aware of the grounds for such challenge. In case the party's challenge fails, it may proceed with the challenge before State courts, the latter's decision being final and binding. Whilst the challenge in the State courts is pending, the arbitral tribunal may continue with the arbitral proceedings.

21. Does the domestic law contain substantive requirements for the procedure to be followed?

The parties are free to agree on the rules of procedure to be followed in the arbitration, including adopting the rules of an arbitration institution, subject to the provisions of the Mozambican Arbitration Law. Failing the parties' agreement, the procedure shall be determined by the tribunal. The Mozambican Arbitration Law provides for rules regarding: the arbitration costs and their payment by the parties; the minimum contents of the parties' submissions; rules on the type of evidence that may be produced before the tribunal. It further confirms the tribunal's powers to order interim measures unless the parties agree otherwise.

22. On what grounds can the court intervene in arbitrations seated inside the jurisdiction?

State courts are invested in *ius imperii* and are allowed in all instances to order the appropriate interim measures, even if related to an arbitration. In addition, State courts may intervene in domestic arbitrations in the appointment of an arbitrator and to decide a challenge of an arbitrator (as the case may be), and they may also assist the tribunal on the taking of evidence.

Also, State courts have jurisdiction to rule on the jurisdiction of the tribunal after the latter having rendered a decision on that matter and also have jurisdiction for the set aside of the arbitral award.

23. On what grounds can the court intervene in arbitrations seated outside the jurisdiction?

In the context of arbitrations seated outside Mozambique, the Mozambican State courts will have the necessary powers and jurisdiction to order interim measures concerning assets or rights located in Mozambique, according to the rules set forth in the Mozambican Code of Civil Procedure.

24. Do arbitrators have powers to grant interim or conservatory relief?

Pursuant to the Mozambican Arbitration Law – which is applicable only to arbitrations seated in Mozambique – arbitrators have the necessary powers to grant interim measures, except where the parties have agreed otherwise. The tribunal may demand the requesting party to provide a guarantee in connection with the requested interim measure.

25. When and in what form must the award be delivered?

Unless otherwise agreed by the parties, the arbitral award shall be rendered within six months from the date of the tribunals' constitution. The time limit for the award to be rendered may be extended to twice its initial duration, in the event of force majeure, by the parties' written agreement or upon the tribunal's own initiative.

The award shall be made in writing and include the following: the identification of the parties; a reference to the arbitration agreement; identification of the subject-matter of the dispute; identification of the arbitrators; the seat of the arbitration; the place and date on which the award was rendered; the signature of the arbitrator(s). The award shall also include a decision on the allocation of the arbitration costs as well as the grounds for the decision on the merits, unless the parties have agreed otherwise.

The award must be notified to each of the parties by registered mail or by other means allowing for a written record of the notification and an original of the award shall be deposited in the State court of the place of the arbitration.

26. Can a successful party recover its costs?

In the award the tribunal shall allocate the arbitration costs (including legal fees) to the parties, at its discretion. In case a party is entitled to be reimbursed of all or part of the costs incurred with the arbitration, as per the tribunal's decision, such party may file for enforcement proceedings against the other party to enforce the decision on costs.

27. On what grounds can an award from an arbitration seated in the jurisdiction be appealed to the court?

Pursuant to the Mozambican Arbitration Law, arbitral awards are final and may not be subject to appeal on the merits. The parties may only seek the setting aside of the award on the following grounds:

- The subject matter of the dispute is not arbitrable under Mozambican law;

- A party to the arbitration agreement is legally incapacitated;
- The arbitration agreement is not valid under the law to which the parties have submitted it to or, failing said choice, under the laws of Mozambique;
- A party to the arbitration was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or it was otherwise unable to present its case;
- The award deals with a dispute not described in the arbitration agreement, or contains decisions on matters beyond the scope of the arbitration agreement, provided that if the decision in the award in respect of matters submitted to arbitration can be segregated from those not so submitted, only that part of the award containing decisions on matters not submitted to arbitration may be set aside;
- The composition of the arbitral tribunal or the arbitral procedures are not in accordance with the agreement of the parties (unless such agreement conflicted with a provision of the LACM from which the parties cannot derogate) or, failing such agreement, are not in accordance with the LACM;
- The judgment conflicts with the public policy of the Mozambican State.

28. Can a foreign arbitration award be appealed in the local courts? If so, on what grounds?

An arbitration award, whether foreign or domestic, may not be subject to appeal to Mozambican State courts but only to set aside proceedings. In relation to foreign arbitral awards, local courts only have jurisdiction for their recognition and enforcement in Mozambique.

Mozambique is a signatory to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the "New York Convention"). At the time of signature of the New York Convention, Mozambique reserved the right to apply the same on the basis of reciprocity, which means that the rules of the New York Convention only apply to the recognition and enforcement in Mozambique of arbitration awards rendered in the territory of other States signatories to the Convention.

The recognition of foreign arbitration awards rendered in the territory of non-signatory States to the New York Convention shall be made under a confirmation and revision procedure in the competent State court (Supreme Court), in accordance with the rules set forth in the Mozambican Code of Civil Procedure.

29. What procedures exist for enforcement of: (i) awards rendered in arbitrations seated outside of the jurisdiction and (ii) domestic awards?

Domestic arbitral awards have the same legal power and effects as the judgements from State courts. In case the losing party does not voluntarily comply with the award, the winning party may immediately file for enforcement proceedings, no *exequatur* being required.

Foreign arbitral awards must first be recognized by Mozambican State courts to be enforced in Mozambique (see question 28 above). After recognition, the foreign arbitral award will be deemed an enforceable title being subject to enforcement in the same terms as a domestic award or State judgement.

30. Are foreign awards readily enforceable in practice?

As noted, in order to be enforceable in Mozambique, foreign awards must first be recognized under the regime of the New York Convention or of the Mozambican Code of Civil Procedure. According to our experience, once recognized the foreign awards are readily enforceable in practice. However, considering that Mozambican State court decisions are not generally published it is difficult to determine if readily enforceability generally occurs.

Alternative dispute resolution

31. Are the parties to litigation or arbitration required to consider or submit to any alternative dispute resolution before or during proceedings?

Parties to litigation and arbitration are not required to consider or submit to alternative dispute resolution before or during proceedings. Mediation and conciliation exist in Mozambique and their legal regime is dealt with in the Mozambican Arbitration Law, although resorting to such alternative dispute resolution mechanisms is not yet common in Mozambique.

Pursuant to the Mozambican Arbitration Law parties to a dispute may attempt to resolve it through mediation or conciliation prior or during judicial or arbitral proceedings. An eventual settlement between the parties within a mediation and conciliation procedure shall have the legal force and value of an arbitral award, pursuant to the Mozambican Arbitration Law.

Reforms

32. Are there likely to be any significant procedural reforms in the near future?

Both the Tax Procedural Code and the Customs Procedural Code are under discussion, and they are expected to be approved in the near future.

The Government has included, among its commitments under the Five-Year Plan 2025–2029, the expansion of arbitration and judicial mediation as alternative mechanisms for dispute resolution, with the aim of making such practices more accessible throughout the national territory. However, this inclusion does not constitute, literally, an amendment to the Arbitration Law or to any other related legislation.

In the electricity sector, the Electricity Law has been revised in 2024 to allow the parties to freely choose the seat of arbitration and the language to be used in such proceedings (provided that simultaneous translation into Portuguese is ensured), instead of mandating that the forum be located in Maputo and that Portuguese be the exclusive language. This reform seeks to make the country more 'attractive' to foreign investors.

In addition, the Government approved new regulations to the Private Investment Law in 2024, affecting the guarantees granted, procedures, and incentives, and also encompassing provisions concerning the settlement of disputes between investors and the State.

The extractive sector (Mining and Oil & Gas) is undergoing a legal review aimed at strengthening governance, transparency, and efficiency, with a view also to reducing litigation and improving dispute resolution mechanisms.

Laslty, no significant reform of the Code of Civil Procedure is expected to occur.

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Namibia



Introduction

Namibia has a mixed legal system grounded in uncodified Roman-Dutch common law for the core of civil law, with significant English-law influence in corporate and mercantile fields. The Namibian Constitution is supreme. Laws that applied in the former Territory of South West Africa continue in force after 21 March 1990 until repealed by Parliament or declared unconstitutional. The system draws on multiple sources: Acts of Parliament, subordinate legislation, common law, and the recognised customary law of Namibia's indigenous communities where applicable and not inconsistent with the Constitution or statute.

Civil justice is administered by an independent judiciary comprising the Supreme Court, the High Court, and lower courts, along with specialist statutory forums. The legal profession is fused under the Legal Practitioners Act 15 of 1995, with rights of audience in all courts and defined specialist roles such as notaries and conveyancers. Civil procedure in the High Court is governed by the Rules and Practice Directions, including judicial case management and court-connected mediation in designated categories. Recognition and enforcement of foreign civil judgments is primarily statutory. Arbitration is regulated by the Arbitration Act 42 of 1965, with court assistance for enforcement and limited judicial intervention.

This framework provides the context for the sections that follow on litigation, arbitration, and alternative dispute resolution, including time limits, evidentiary exchange, party control of timetables, interim measures, costs, appeals, immunity, and cross-border recognition and enforcement.

Litigation

1. What is the structure of the legal profession?

Namibia has a fused profession under the Legal Practitioners Act 15 of 1995. The Act abolished the former split and recognises a single status, legal practitioner. All admitted legal practitioners have rights of audience in every court. Appearance in the Supreme Court requires a Law Society certificate confirming at least one year of post-admission practice.

Entry pathway into the profession

Entry begins with an LLB from the University of Namibia or another prescribed equivalent. The graduate is then registered by the Board for Legal Education as a candidate legal practitioner for the Justice Training Centre programme and the Legal Practitioners' Qualifying Examination.¹ During this stage the candidate trains under supervision through office attachments and prescribed coursework, may perform only the tasks permitted by law, rules and practice directions, is not on the Roll, is not a member of the Law Society, holds no fidelity fund certificate, and may not accept or hold client money. When the qualifying examination is passed and the statutory requirements are met, the High Court admits the person, the Registrar enrolls them on the Roll of legal practitioners, and Law Society membership becomes compulsory. From admission, the practitioner may practise as an attorney (described immediately below) or, alternatively, elect to practise as an advocate within the voluntary referral Bar.

Practising as an attorney

Admission is as a legal practitioner; in practice, you are regarded as an attorney when you practise on your own account or within an attorney's firm, take instructions directly from clients, and, where you receive or hold client money, hold a fidelity fund certificate and comply with the trust-account and audit regime. Attorneys conduct litigation and advisory or transactional work, and brief advocates where specialist courtroom advocacy or complex drafting is preferred. They may practise as sole practitioners, in partnerships, or through professional companies, in each case in accordance with the Act and the rules of the Law Society².

1. Hubbard, D. "Regulation of the Legal Profession: Issues and Ideas" August 2017, 15.

2. Hubbard *Regulation of the Legal Profession*, 14.

Practising as an advocate at the voluntary referral Bar

An advocate is a legal practitioner who chooses to practise through the Society of Advocates on a referral-only basis. Advocates do not take instructions or money directly from the public. They accept work only on brief from legal practitioners who hold fidelity fund certificates. On that basis they hold exemption certificates from the requirement to hold a fidelity fund certificate.³ In practice, the Society requires six months of pupillage, a further two months assisting a High Court judge, and a Bar examination as conditions for membership. Rights of audience are those of any legal practitioner, subject to the one-year certificate requirement for appearances in the Supreme Court.

Specialist capacities within the single profession

A legal practitioner has the general right to practise and the right of audience in any court or tribunal where representation is permitted. In addition, a legal practitioner who holds the conveyancing certificate referred to in section 87 of the Act has the right to present any document for registration in a deeds registry, or for attestation or execution by the Registrar of Deeds. A legal practitioner who holds an appointment as notary public under section 86 of the Act has the right to perform any act which, by law, is reserved to notaries public.

Notaries public

A legal practitioner may not perform notarial acts unless appointed as a notary public. The Chief Justice may appoint a legal practitioner as a notary on application if the practitioner has practised in Namibia for at least five years and there are no pending striking or suspension proceedings.

Conveyancers

Only a legal practitioner who holds, or is deemed to hold, the conveyancing certificate may exercise the conveyancing rights.⁴

2. What is the structure of the court system?

Overview

Judicial power is vested in the courts of Namibia, which comprise the Supreme Court, the High Court, and the lower courts. In addition, specialist forums created by statute form part of the structure. The courts are independent and their decisions bind all persons and authorities in the Republic.

Supreme Court

The Supreme Court is the highest court of appeal. It hears appeals from the High Court, including matters on the interpretation and enforcement of the Constitution. It may also exercise limited original and review powers where authorised by the Constitution or statute. Its decisions are final and bind all other courts.⁵

High Court

The High Court is a superior court of record. It exercises original jurisdiction over civil and criminal matters, including constitutional questions, and it hears appeals and reviews from lower courts and certain tribunals. As a court of first instance, it ordinarily sits with a single judge, with provision for a full bench where appropriate. The seat is in Windhoek, and the Court goes on circuit to other centres as required.⁶

Labour Court

The Labour Court forms part of the superior-court tier. A judge of the High Court designated by the Judge President presides. It hears appeals from District Labour Courts and determines applications and reviews as provided by labour legislation. Assessors may be appointed to advise the Court. Appeals from the Labour Court lie to a full bench of the High Court on questions of law, with leave.

District Labour Courts

District Labour Courts are classified as lower courts. They are presided over by a designated magistrate or officer of the Ministry of Justice and hear statutory labour complaints in the first instance. Appeals lie to the Labour Court.⁷

Magistrates' Courts

Magistrates' Courts are courts of record and constitute the core of the lower court system. They sit in regional, district, sub-district, and periodical divisions. They try criminal matters within statutory limits and determine civil disputes within statutory thresholds. They also sit as specialised courts when designated, for example maintenance courts and domestic violence courts. Appeals from Magistrates' Courts lie to the High Court.⁸

Community Courts

Community Courts are established by statute to administer customary law for defined communities. They are courts of record presided over by justices appointed by the Minister of Justice. Appeals from Community Courts lie to a Magistrate and thereafter to the High Court.⁹

Appellate pathways

Appeals and reviews from lower courts, District Labour Courts, and Community Courts go to the High Court or Labour Court as provided by statute, and from the High Court appeals go to the Supreme Court. The Supreme Court is the final court of appeal.

3. What are the time limits for bringing civil claims?

In Namibia, time limits for bringing civil claims are primarily governed by the Prescription Act 68 of 1969. Section 11 of the

3. Hubbard *Regulation of the Legal Profession*, 18.

4. Hubbard *Regulation of the Legal Profession*, 18 – 19.

5. Amoo, S. K. *The structure of the Namibian judicial system and its relevance for an independent judiciary*, p 69; 73 – 74.

6. Amoo *The structure of the Namibian judicial system*, 75 – 76.

7. Amoo *The structure of the Namibian judicial system*, 80.

8. Amoo *The structure of the Namibian judicial system*, 83.

9. Amoo *The structure of the Namibian judicial system*, 90 – 91.

Act prescribes default extinctive prescription periods as follows:

- Thirty years for
 - a debt secured by mortgage bond
 - a judgment debt
 - a tax or levy imposed by law
 - a share of profits, royalties or other dues payable to the State under a right to mine minerals
- Fifteen years for
 - a debt owed to the State arising from an advance or loan or from a sale or lease of land, unless a thirty-year category applies
- Six years for
 - a debt on a bill of exchange or other negotiable instrument
 - a debt arising from a notarial contract, unless a longer category applies
- Three years for
 - any other debt, unless an Act prescribes otherwise
- When time starts
 - when the debt is due and enforceable
 - for non-contractual debts, not before the creditor has knowledge of the identity of the debtor and of the facts from which the debt arises, or is deemed to have such knowledge with reasonable care
 - where the debtor wilfully prevents the creditor from acquiring knowledge of the debt, time does not begin until the creditor becomes aware of it.

A special regime applies to delictual claims against provincial administrations, representative or local authorities, and their officers under the Limitation of Legal Proceedings (Provincial and Local Authorities) Act 94 of 1970:

- Compulsory written notice within 90 days from the day the debt became due, setting out the material facts and known particulars
- Waiting period of 90 days after service of notice, unless liability is expressly denied in writing, before proceedings may be instituted
- Absolute time bar of 24 months from the day the debt became due to institute proceedings.
- When time starts
 - not before the creditor knows the identity of the debtor and the facts giving rise to the debt, or could with reasonable care have acquired such knowledge; if the debtor intentionally prevents knowledge, the debt is not regarded as due before actual knowledge.
- Limited relaxations
 - court may grant leave to serve a late notice on conditions if the debtor is not prejudiced or if special circumstances made timeous notice unreasonable; the 90-day waiting rule and the 24-month absolute period still apply.

4. Are communications between a lawyer and his/her client privileged (ie, protected from disclosure to a court/tribunal and opposing parties)?

Yes. Communications between a lawyer and client are protected by the doctrine of legal professional privilege. This doctrine, based on common law principles, is a cornerstone of the administration of justice because it allows clients to speak freely and candidly with their legal advisers, knowing that what they disclose will not be revealed to a court, tribunal, or opposing party without their consent.

Privilege is distinct from confidentiality. Confidentiality arises as a duty owed by the lawyer, but privilege is a substantive right vested in the client. The client alone holds the privilege and may assert or waive it. The lawyer has a duty to respect and protect the privilege on behalf of the client.

Two categories of legal professional privilege are recognised. Legal advice privilege protects confidential communications between lawyer and client made for the purpose of obtaining or giving legal advice. Litigation privilege extends the protection to communications made for the dominant purpose of actual or reasonably anticipated litigation, and it applies to communications with third parties as well where they are made for that purpose.

The scope of privilege is limited to communications with qualified legal practitioners acting in their professional capacity. It does not extend to advice given by non-lawyers, even if they possess legal expertise, nor to informal exchanges outside the professional relationship. Privilege also does not cover communications made in furtherance of unlawful conduct.

The protection is not absolute. Privilege can be waived by the client, either expressly or by conduct inconsistent with maintaining confidentiality. Once privileged material enters the public domain, the privilege is irretrievably lost. In exceptional circumstances, legislation or overriding considerations of public interest may require disclosure.

In essence, legal professional privilege operates as a shield against disclosure, ensuring that lawyer-client communications for advice or litigation remain protected, thereby preserving the integrity of the legal process.¹⁰

As in other common law jurisdictions, legal professional privilege is regarded in Namibia as a principle of near-sacred importance, safeguarding the confidentiality of communications between client and legal adviser.

5. How are civil proceedings commenced, and what is the typical procedure which is then followed?

Civil proceedings in Namibia are commenced in one of two ways: by action (summons) or by application (motion proceedings). The choice depends on whether there is likely to be a factual dispute requiring oral evidence or whether the dispute can be decided on written papers.

10. Marcus, R "The shield of legal professional privilege" December 2021.

The Action Procedure

Where there is a real dispute of fact or law that requires oral evidence, the action procedure is used. It begins with the issue and service of a summons by the plaintiff. Different forms of summons exist, such as a combined summons (for claims requiring detailed particulars of claim at the outset).¹¹

Once the defendant enters an appearance to defend, the case is referred to a Managing Judge for commencement of the Judicial Case Management System, implemented in terms of the Amended High Court Rules of 2014.

After the Managing Judge is appointed, the parties engage in a case planning conference, during which they agree on dates for the exchange of pleadings. The parties will agree on by when the plea, replication, and any further pleadings in convention and discovery of documents must be filed.

The amended rules introduced a compulsory mediation process for designated matters.

This process may be conducted immediately after exchange of pleadings has been finalised, and the purpose thereof is for the parties to obtain a full and final settlement. The objective of the mediation process is to curtail legal proceedings in terms of the costs incurred thereby and time spent. It has been significantly successful since implementation and has greatly assisted in reducing the already congested court rolls.

The mediation processes are conducted at a special Mediation Centre stationed at the High Court of Namibia.

In the event that matters are not settled at mediation, they are postponed for a case management conference and subsequently a pre-trial hearing.

The parties file reports for these respective hearings and agree on the issues in dispute, and those not in dispute, as well as on when witness statements and expert reports should be filed.

The pre-trial report forms an important part of the trial process and plays a significant role in preparing and ensuring that cases are trial-ready.

The trial follows, where evidence is presented mainly through oral testimony, subject to cross-examination. After hearing evidence and argument, the court delivers its judgment, which typically includes an order on the merits, interest, and costs.¹²

The Application Procedure

In contrast, the Application Procedure applies where the dispute involves no real factual conflict and can be resolved on written evidence. Proceedings are commenced by a notice of motion supported by a founding affidavit. The opposing party responds with an answering affidavit, and the matter is decided on the

papers without oral evidence, unless the court refers it to an action or trial. Applications may be *ex parte* (without notice, in urgent or exceptional cases) or on notice to the respondent. This procedure is faster and less costly than an action.¹³

Application proceedings are also subject to compulsory mediation (in respect of certain causes of action) and thus proceed to the Judicial Case Management System referred to above.

After Judgment

If a party is dissatisfied, they may launch an appeal (where the decision is challenged on the merits) or a review (where procedural irregularity or misconduct is alleged). Where a judgment debt is not satisfied voluntarily, the successful party may enforce it through debt collection mechanisms, including writs or warrants of execution against property, or section 65 financial enquiries in the Magistrates' Courts.

Additional Procedures

The rules also provide for specialised procedures such as summary judgment proceedings on liquid documents, interdicts (mandatory or prohibitory orders), and interim relief pending judgment, particularly in divorce or bodily injury matters. Many disputes are also resolved by settlement, either before or during litigation, often recorded as a court order.¹⁴

In summary, civil proceedings typically begin with the choice between summons and motion proceedings, followed by pleadings and pre-trial steps, then trial or hearing, judgment, and, if needed, appeal or enforcement. The structure is designed to progressively narrow the issues, test the evidence, and ensure that disputes are resolved fairly and with finality.

6. What is the extent of pre-trial exchange of evidence, and how is evidence presented at trial?

Pre-trial exchange of evidence

In both the High Court and Magistrates' Court, parties are required to disclose evidence to each other before trial. This is done through a process known as "discovery". Each party must provide the other with a list of all documents and recordings in their possession or control that are relevant to the dispute, in accordance with the relevant procedural rules. The opposing party is entitled to inspect and make copies of those documents. This ensures that the trial is not conducted by surprise and that each side knows the evidence that may be used.¹⁵

In the High Court, the pre-trial process also includes a case management system. After pleadings close, the parties must hold a pre-trial conference and file a joint report that identifies the issues in dispute, the facts that are common cause, the witnesses to be called, and the documents that will be relied upon. The managing judge then issues a pre-trial order that controls the course of the proceedings.¹⁶

11. Peté, S Hulme, D du Plessis, M Palmer, R Sibanda, O & Palmer T *Civil Procedure: A Practical Guide* 3rd ed (2016), 212.

12. Ibid.

13. Peté et al *Civil Procedure*, 189 – 190.

14. Peté et al *Civil Procedure*, 56.

15. Nored Electricity (Pty)Ltd v Nelumbu HC-MD-CIV-ACT-OTH-2017/04328 (2021) NAHCMD 32 (8 February 2021), 5.

16. Rule 22 of the Rules of the High Court of Namibia: High Court Act 16 of 1990.

Presentation of evidence at trial

At trial, evidence is formally presented in court in one of two forms: documentary evidence and oral testimony.

- **Documentary evidence:** Documents disclosed during discovery may be introduced into evidence if they are relevant and admissible. They are usually handed to the court as exhibits.
- **Oral testimony:** Witnesses give evidence under oath in open court. The party who calls the witness leads their evidence, after which the opposing party has the right to cross-examine. The court may also put questions to the witness for clarification.

The general rule is that factual disputes are resolved by oral evidence tested through cross-examination. Affidavits and written statements are used in interlocutory or application proceedings, but in trials (actions) oral testimony remains the principal mode of proof.

7. To what extent are the parties able to control the procedure and the timetable? How quick is the process?

In Namibian civil proceedings, particularly in the High Court, parties exercise significant control over procedure and timetables through the Judicial Case Management System (JCMS), introduced under the amended rules, but this autonomy is subject to judicial oversight to ensure efficiency and fairness.

Following docket allocation (after appearance to defend), the managing judge initiates an initial case planning conference within 15 days. Following the close of pleadings, parties must collaborate to submit a joint case management report within 30 days, proposing dates for key steps such as further pleadings, discovery, witness statements, expert reports, and pre-trial conferences. At a subsequent mandatory case management conference (held within 14 days of the report), parties discuss and agree on procedural matters, including the nature of claims, potential summary judgments, and timelines for resolution. These agreements form the basis of a joint case plan, which the managing judge reviews and incorporates into a binding case management order (issued within 15 days), setting firm deadlines. Parties can seek extensions or amendments on good cause, and they retain flexibility to agree on special trial dates with judicial consent. However, the court retains ultimate control: it can relax timelines, condone irregularities, or impose sanctions (eg, striking pleadings or dismissing claims) for non-compliance, ensuring proceedings advance promptly. Compulsory mediation for designated matters further empowers parties, as settlements can be reached collaboratively post-pleadings, potentially bypassing later stages.

In sum, parties in Namibia's High Court can meaningfully shape both procedure and timetable through the JCMS regime, proposing steps and dates, and pursuing mediation. The managing judge converts those proposals into binding orders and polices compliance, including with sanctions. Under the JCMS, the process is structured and generally swift: prior to the reforms, civil trials faced average waits of two years; now, trial dates can typically be secured within six months, provided parties comply and the matter is not unusually complex.

8. What interim remedies are available to preserve the parties' interests pending judgment?

In Namibia, the principal interim remedy is the interim interdict, an interlocutory order that restrains or compels conduct to prevent prejudice pending judgment. To obtain it, an applicant must establish a *prima facie* right, a well-grounded apprehension of irreparable harm if relief is refused, that the balance of convenience favours the grant, and the absence of an adequate alternative remedy.¹⁷

The court may also grant asset-preservation or attachment orders *pendente lite*, including restraints on dealing with identified funds, the *mandament van spolie* to restore possession after unlawful dispossession, and, where appropriate, orders that a party furnish security for costs.

In matrimonial causes, Rule 90 of the Rules of the High Court permits maintenance *pendente lite*, a contribution towards costs, interim custody and interim access in relation to a child of the family, orders preserving joint assets by prohibiting damage, transfer, encumbrance, concealment, or disposal, and protective orders against domestic violence, including stay-away directives.¹⁸

Collectively, these measures preserve rights, assets, and the practical status quo until final judgment.

9. What means of enforcement are available?

Once judgment is granted, enforcement proceeds by execution, which is the process through which the Deputy Sheriff secures the fruits of judgment for the judgment creditor by attaching and realising the debtor's property where necessary. The rules recognise execution against movable, immovable and incorporeal property, with transfer and distribution of proceeds regulated in general by the rules on post-sale processes.¹⁹

This is practically executed by way of issuing a writ of execution in the High Court for the attachment process to commence which is in turn executed by the Deputy Sheriff of a particular district.

Other methods of enforcement include garnishee orders, emoluments attachment orders, Section 65 proceedings in the Magistrates Court (whereby execution debtors are brought to Court to explain why are not honouring outstanding debts after a court order has been obtained) and sequestration and liquidation proceedings.

10. Does the court have power to order costs? Are foreign claimants required to provide security for costs?

Costs Orders

The Namibian courts have an unfettered discretion to award costs in civil proceedings, exercised judicially on the facts of each case. The general rule is that costs follow the event, meaning the party that achieves substantial success is entitled to its costs. Departures from this rule may be made in exceptional circumstances, including reprehensible conduct by the successful party, excessive claims, or misconduct that justifies censure. Costs are usually awarded on a party-and-party scale,

17. Damaseb, PT *Court-Managed Civil Procedure of the High Court of Namibia* (2020) 1st ed, 178.

18. Damaseb *Court-Managed Civil Procedure*, 314.

19. Damaseb *Court-Managed Civil Procedure*, 323 – 324.

but may in appropriate cases be ordered on a punitive scale such as attorney-and-client or *de bonis propriis*.²⁰

Once judgment has been granted in a party's favour, that party must prepare a bill of costs for taxation. Taxation is conducted by the Taxing Master of the High Court of Namibia, who, if satisfied, issues an *allocatur*. The *allocatur* may then be delivered to the Deputy Sheriff for execution to obtain the relief sought.

Security for Costs

Foreign claimants are not automatically required to provide security for costs. Security for costs is discretionary and procedure-driven. A defendant who is entitled to seek security may deliver a notice promptly after proceedings begin, stating the grounds and the amount claimed. If only the amount is disputed, the registrar fixes the quantum after a short, registrar-convened meeting. If liability to give security is disputed, or if the claimant fails to provide the security fixed or demanded within 10 days, the defendant may apply to the Managing Judge for an order compelling security and staying the action until compliance; persistent default may result in dismissal or striking out of pleadings. Security is therefore not a rule of automatic application to foreign claimants, but in practice (*peregrinus* plaintiffs) are commonly asked to furnish it, subject to judicial discretion.²¹

11. On what grounds can the parties appeal, and what restrictions apply? Is there a right of further appeal? To what extent is enforcement suspended pending an appeal?

An appeal is concerned with the correctness of the decision made by a judge. Appeals are typically brought on questions of law, fact, or a mixed question of law and fact. Appeals are subject to procedural safeguards to prevent abuse. Generally, leave to appeal is mandatory for civil appeals, except where expressly provided by law. Interlocutory judgments require discretionary judicial leave. There are also certain time restrictions. An application for leave must be filed within 15 court days of the judgment (extendable on good cause, via affidavit). The Supreme Court of Namibia is the highest court of appeal, and section 17(1) of the Supreme Court Act 15 of 1990 explicitly states: "There shall be no appeal from, or review of, any judgment or order made by the Supreme Court," establishing it as the final appellate authority. Enforcement of High Court judgments is generally suspended automatically upon noting an appeal, unless the court directs otherwise. However, parties may apply for a formal stay of execution simultaneously with the notice of appeal, which is discretionary to the court.

12. To what extent can domestic and/or foreign State entities claim immunity from civil proceedings?

Foreign state entities enjoy immunity from civil proceedings in Namibian courts primarily under the Diplomatic Privileges Act 71 of 1951, which grants comprehensive immunities, rights, and privileges to representatives of other states or governments, international conference delegates, members or officials of recognised organisations or institutions, and related incidental matters, often on a reciprocal basis. This includes civil (and

criminal) immunity for heads of state, diplomatic agents, special envoys, conference representatives, and others entitled under international law. Legal processes against such persons or their property are void, and immunity extends to official acts, including for those in transit.

However, exceptions apply: immunity does not extend to proceedings concerning private immovable property (unless held for mission purposes), succession matters where the person is involved privately, or actions arising from professional or commercial activities outside official functions. Waivers are permitted by the entitled person, organisation, or government, and the President may withdraw immunity if reciprocity is lacking.

Beyond diplomatic immunities, foreign states claim sovereign immunity under Namibian common law, which adopts the restrictive theory: absolute immunity for sovereign acts (*jure imperii*), but no immunity for commercial or private acts (*jure gestionis*). This aligns with public international law principles, as reflected in statutes like the Enforcement of Foreign Civil Judgments Act 28 of 1994, which bars enforcement where the foreign entity was entitled to immunity.

The President, however, enjoys targeted protections under Article 31 of the Namibian Constitution. While in office, the President is immune from civil suits for acts or omissions performed in the exercise of official powers or functions, regardless of when the cause arose. This does not extend to private acts, for which the President may be sued. Additionally, the President is fully immune from criminal proceedings during their term. These immunities safeguard the dignity of the office while permitting accountability for non-official conduct.

13. What procedures exist for recognition and enforcement of foreign judgments?

The means of enforcement in Namibia, as set out in the Enforcement of Foreign Civil Judgments Act, are structured around the registration and execution of foreign civil judgments from designated countries.

Once a certified copy of a judgment from a designated country is lodged with the clerk of a Magistrate's Court in Namibia, it may be registered in the prescribed manner. Registration covers the balance payable under the judgment, accrued interest, and the reasonable costs of registration. After registration, the judgment has the same effect as a civil judgment of the Namibian court in which it is registered. Execution, however, is stayed until at least 21 days have elapsed after notice of registration has been served on the judgment debtor, or until any application to set aside the registration has been disposed of.

A registered judgment can then be enforced by the ordinary execution mechanisms of the Namibian courts, such as attachment and sale of property. The Act also provides protective measures: service of the registration notice operates as an interdict preventing the removal or disposal of the debtor's assets in a way that would prejudice enforcement.

In short, enforcement is achieved by registration in a Namibian court, followed by execution as if it were a local judgment, subject to statutory protections and grounds for challenge.

20. Damaseb Court-Managed Civil Procedure, 350.

21. *Hepute and Others v Minister of Mines and Energy and Another* (SA5/2007) (2008) NASC 16; 2008 (2) NR 399 (SC) (31 October 2008), 1A – B.

However, such enforcement of a foreign judgment may be limited by the legal principles under the Prescription Act and Conventional Penalties Act 15 of 1962.

Arbitration

14. Is the arbitration law based of the UNCITRAL Model Law? If yes, are there any key modifications? If no, what form does the arbitration law take?

No, Namibia's arbitration law is not based on the UNCITRAL Model Law.

Instead, arbitration in Namibia is governed by the Arbitration Act 42 of 1965, a legacy statute that addresses domestic arbitration through written agreements and enforcement of awards. The Act does not expressly deal with international commercial arbitration, and it lacks many features typical of modern Model Law statutes. That is, the arbitration law in Namibia takes the form of an older, "classical" domestic arbitration statute rather than a Model Law-style international arbitration framework.²²

Arbitration proceedings are limited to civil proceedings and thus exclude criminal matters and matrimonial or family law proceedings.

For purposes of enforcement, the arbitration award must be made an order of the High Court by way of application, after which it may be enforced by the Deputy Sheriff.

15. What are the main national arbitration institutions?

Namibia does not have a national arbitration institution. However, arbitration is widely practiced in Namibia and is supported by various professional bodies. The Namibian legal system recognises and welcomes arbitration as an effective method of alternative dispute resolution, provided that commercial contracts contain an arbitration clause.

16. Are there any restrictions on who may represent parties to an arbitration?

The Arbitration Act does not regulate the representation of parties during arbitration proceedings, however, it has become the practice that parties are represented by legal practitioners and that appointed arbitrators are selected from among the advocates who are members of the Society of Advocates.

17. What are the formal requirements for an enforceable arbitration agreement?

Under the Arbitration Act, an arbitration agreement must be in writing to be enforceable. The Act defines an arbitration agreement as:

"[a] written agreement providing for the reference to arbitration of any existing dispute or any future dispute relating to a matter specified in the agreement, whether an arbitrator is named or designated therein or not."²³

In other words, oral agreements to arbitrate are not legally valid. The written agreement may cover either present disputes (already arisen) or future disputes (anticipated under a defined relationship or contract). The form of writing is flexible; it does not require notarisation or formal registration, but the parties must clearly express their intention to submit disputes to arbitration.

18. Will the courts stay litigation if there is a valid arbitration clause covering the dispute? Does the approach differ in this regard if the seat of the arbitration is inside or outside of the jurisdiction?

Yes. Under section 6 of the Arbitration Act, Namibian courts have discretion to stay litigation if a valid arbitration agreement exists. Where a party to such an agreement nonetheless commences court proceedings, the opposing party may apply for a stay. If the court is satisfied that there is no sufficient reason why the matter should not proceed to arbitration, it may stay the litigation on terms it considers just.²⁴

The stay is not automatic: the court retains discretion and will only grant it if a party raises an objection and insists on arbitration. If no objection is made, the court may allow the litigation to continue.²⁵

The Act does not distinguish between arbitrations seated in Namibia and those seated outside the jurisdiction.

19. If the arbitration agreement and any relevant rules are silent, how many arbitrators will be appointed, and who is the appointing authority?

By default, under the Arbitration Act, arbitration in Namibia is referred to a single arbitrator unless the parties have expressly agreed otherwise.

The Act assumes that the disputing parties themselves appoint the original arbitrator. This is the usual practice in arbitration: once a dispute arises, the parties must try to agree on who the arbitrator will be.

If an arbitrator is unable to act or a party fails to appoint one where multiple arbitrators are contemplated, the other party may proceed with its appointment or, in certain circumstances, appoint the sole arbitrator. Ultimately, if the parties cannot agree on the appointment, any party may apply to the court, which has the authority to appoint the arbitrator(s) or an umpire.

Thus, the default position is one arbitrator, but the Act provides mechanisms to ensure appointments can be completed, with the court acting as the final appointing authority where party agreement breaks down.

20. What rights are there to challenge the appointment of an arbitrator?

The appointment of an arbitrator may be challenged under section 13 of the Arbitration Act by way of an application to the High Court. However, such an application must be launched promptly after the parties discover that such grounds exist.

22. Warikandwa, TV & Usebiu, L "A proposal for international arbitration law in Namibia based on the UNCITRAL Model Law on International Commercial Arbitration" 2023 *De Jure Law Journal*, 259 – 262.

23. S 1 of Act 42 of 1965.

24. Damaseb *Court-Managed Civil Procedure*, 253 – 254.

25. Damaseb *Court-Managed Civil Procedure*, 254.

These grounds fall under the broad category of “good cause”, which include:

- Lack of appropriate qualifications
- Bias or lack of impartiality
- Failure to proceed with reasonable dispatch (ie, undue delay)

The Act does not provide for challenges based on exceeding powers, which is instead a ground for setting aside an arbitral award under section 28.

21. Does domestic law contain substantive requirements for the procedure to be followed?

Yes. Namibia’s Arbitration Act lays down substantive requirements for arbitral procedure, although the parties retain wide autonomy to agree otherwise. Unless the arbitration agreement stipulates different rules, the Act governs the procedure. For example:

- Default tribunal structure
- Filling vacancies and appointment powers
- Evidence and hearings
- Interim measures
- Powers of the tribunal, including evidence and hearings
- Court-ordered interim measures

In practice, this means arbitration in Namibia is party-driven and flexible, but the Act provides a statutory procedural backbone where the parties’ agreement is silent.

22. On what grounds can the court intervene in arbitrations seated inside the jurisdiction?

On what grounds can the court intervene in arbitrations seated inside the jurisdiction? Namibian courts intervene in arbitrations only on specific statutory grounds under the Arbitration Act. The court may stay court proceedings where a dispute is covered by a valid arbitration clause, unless there is sufficient reason not to do so, and may revoke the reference if the agreement becomes void or the dispute is not arbitrable, or declare certain matters non-arbitrable.

To support the process, the court can resolve appointment deadlocks or fill vacancies, and remove an arbitrator for good cause. It may grant procedural assistance similar to ordinary civil cases, including orders for security, discovery, interim custody of property or interim interdicts. At the award stage, the court can make an award an order of court for enforcement, remit a matter to the tribunal for reconsideration, or set aside an award only for misconduct, gross irregularity, excess of powers, or where the award was improperly obtained.

23. On what grounds can the court intervene in arbitrations seated outside the jurisdiction?

Namibian courts have very limited scope to intervene in arbitrations seated abroad. The Arbitration Act does not give the courts supervisory powers over foreign arbitrations. The role of the courts is confined to ancillary matters, such as when a party seeks to enforce or resist enforcement of a foreign arbitral award in Namibia. In that context, the courts may examine issues like the validity of the arbitration agreement, procedural fairness, or whether recognition would offend

Namibian public policy. Otherwise, the conduct and supervision of arbitrations seated outside the jurisdiction remain with the courts at the seat of arbitration.

24. Do arbitrators have powers to grant interim or conservatory relief?

Under Namibian law, arbitrators can grant such powers to grant interim or conservatory relief. Section 26 of the Arbitration Act provides that, unless the arbitration agreement expressly excludes it, an arbitral tribunal may make an interim award at any time during the proceedings and within the period allowed for making the final award. In practice, this means that arbitrators can issue binding determinations on matters requiring urgent or temporary resolution, such as the preservation of assets or rights, before the final resolution of the dispute.

25. When and in what form must the arbitration award be delivered?

Under the Arbitration Act, the requirements for the form and timing of an arbitral award are clearly prescribed.

An award must generally be made within four months of the arbitrator(s) entering on the reference or being called upon to act, whichever is earlier. Where the matter is before an umpire, the time limit is three months. These time limits may, however, be extended either by written agreement of the parties or, on good cause shown, by order of the court.

The Act further requires that the award must be in writing and signed by all members of the tribunal. If a minority of arbitrators refuse to sign, this refusal must be noted in the award, but the award remains valid.

Finally, the award must be delivered to the parties, either in person or after they have been summoned to appear, and it is deemed published on the date of delivery. From that point, the award becomes binding, subject to any remittal, correction, or setting aside under the Act.

26. Can a successful party recover its costs?

Yes. Under section 35 of the Arbitration Act, the award of costs lies within the discretion of the arbitral tribunal, unless the arbitration agreement provides otherwise. The tribunal may direct by whom, to whom, and in what manner such costs are to be paid, as well as the scale on which they are to be taxed. The tribunal may even award costs on the attorney-and-client scale where appropriate.

If the tribunal does not make provision for costs or fails to fix the scale of taxation, either party may approach the taxing master of the High Court to tax the costs. Furthermore, where costs are directed but not quantified, the court may, when making the award an order of court, order taxation by the taxing master and determine the applicable scale.

Importantly, any clause in an arbitration agreement that attempts to require a party to bear its own costs regardless of outcome is void. The Act also empowers the court to make costs orders in relation to proceedings under the Act itself, including against arbitrators or umpires where just.

In practice, this means that a successful party can normally expect to recover its costs, subject to the tribunal’s discretion and the usual principles of fairness.

27. On what grounds can an award from an arbitration seated in the jurisdiction be appealed to the court?

Under Namibian law, arbitral awards are final and not subject to appeal on the merits. Section 28 of the Arbitration Act provides that an award is binding and final, except as otherwise provided in the Act.

The courts may only intervene on narrow statutory grounds. These include:

- **Remittal:** A court may remit a matter back to the tribunal for reconsideration “on good cause shown,” provided the application is made within six weeks of the publication of the award.
- **Setting aside:** An award may be set aside if the arbitrator or tribunal has misconducted themselves, committed a gross irregularity, exceeded their powers, or if the award was improperly obtained. Applications must be brought within six weeks of the award’s publication, or within six weeks of discovering corruption, but not later than three years after publication.

Accordingly, arbitral awards cannot be appealed simply because a party disagrees with the arbitrator’s reasoning or findings. Court oversight is confined to issues of procedural fairness, jurisdiction, or misconduct, ensuring finality and aligning with international arbitration practice.²⁶

28. Can a foreign arbitration award be appealed in the local courts? If so, on what grounds?

No. Namibian courts do not entertain an appeal on the merits of a foreign arbitral award. A foreign award is brought to the High Court for recognition and enforcement under the Recognition and Enforcement of Foreign Arbitral Awards Act 40 of 1977. If an application to set aside or suspended the award is pending at the seat, the Namibian court will stay the recognition proceedings and order security. Once an award is made an order of court, it is enforced as a judgment. Only the High Court’s ruling on recognition or enforcement may be appealed, and any appeal is confined to those recognition grounds; the arbitral award itself is not reopened on the merits.

29. What procedures exist for enforcement of: (i) awards rendered in arbitrations seated outside of the jurisdiction and (ii) domestic awards?

(i) Foreign awards

Awards seated outside Namibia are enforced under the Recognition and Enforcement of Foreign Arbitral Awards Act. A foreign award may be recognised and enforced by the High Court, unless one of the limited grounds for refusal applies under section 4 of the Act. Where such grounds are not established, the award is recognised and enforced as if it were a domestic judgment.

(ii) Domestic awards

An arbitral award rendered in Namibia has the same force as a judgment once made an order of court. Section 31 of the Arbitration Act provides that a party may apply to the court to have the award made an order of court. Once this is done, the award is enforceable in the same manner as any judgment of the court, including execution against property.

Practical effect

In both cases, once the court has issued an enforcement order, the award carries the same weight as a domestic judgment, allowing the successful party to pursue execution or other remedies through the court system.

30. Are foreign awards readily enforceable in practice?

Yes, but not automatically. In practice, foreign arbitral awards can be recognised and enforced by the High Court under the Recognition and Enforcement of Foreign Arbitral Awards Act or, failing that, under common law. If the respondent does not oppose, conversion to a court order is usually straightforward and the award is then enforced like any judgment. If opposed, applications often turn on familiar issues such as proof of the arbitration agreement, proper notice and opportunity to be heard, whether the tribunal stayed within its mandate, the status of any set-aside proceedings at the seat, and public policy. Those objections can delay enforcement, but they are narrowly framed and the court will not revisit the merits.

Recent jurisprudence indicates some progress. In *Nautilus Fishing Industries v Skeleton Coast Trawling (Pty) Ltd*,²⁷ the Namibian Supreme Court summarily dismissed challenges to enforcement of a domestic arbitral award and reaffirmed that enforcement should only be refused on limited statutory grounds.²⁸

Alternative dispute resolution

31. Are the parties to litigation or arbitration required to consider or submit to any alternative dispute resolution before or during proceedings?

Yes, Namibian law requires consideration of alternative dispute resolution in certain circumstances. In the High Court, mediation is the recognised form of court-connected ADR.²⁹ Rule 38 of the High Court Rules empowers a managing judge, either on the request of a party or on the judge’s own initiative, to refer a matter or any issue in dispute to mediation. Before doing so, the parties must be heard on the terms of reference, the choice of mediator, and the timetable.³⁰

In addition, Practice Direction 19(5), issued under the authority of the Judge-President, makes mediation compulsory in designated categories of cases. These include insurance claims, medical negligence, professional negligence by legal practitioners, building contract disputes, divorce, custody or access to minor children, spousal or child maintenance, loan

26. D’Amico, M “No appeals allowed for arbitration awards - High Court rules” November 2024.

27. (HC-MD-CIV-MOT-GEN-2022/00107) (2023) NAHCMD 91 (6 March 2023).

28. Mockton Chambers “Namibian Supreme Court rejects challenge to the enforceability of an arbitral award” February 2024.

29. Damaseb *Court-Managed Civil Procedure*, 251.

30. Damaseb *Court-Managed Civil Procedure*, 255.

default claims, motor vehicle accident claims, and defamation. A case in these categories cannot proceed to trial until mediation has been attempted and a certificate of outcome is issued.

Outside these categories, the court still has discretion to refer any matter to mediation if it considers that such referral could facilitate settlement. Parties themselves may also request referral to mediation, and such a request will ordinarily be granted unless the judge is satisfied that mediation would serve no purpose.³¹

In arbitration, section 6 of the Arbitration Act allows a party to apply for a stay of court proceedings if the dispute falls within an arbitration agreement. The court may then order the matter to proceed to arbitration instead of litigation, unless sufficient cause is shown why the dispute should not be arbitrated.

In summary, ADR is not universally mandatory in Namibia, but mediation is compulsory in certain categories of High Court cases, discretionary in others, and arbitration may be enforced where parties have bound themselves contractually.

Reforms

32. Are there likely to be any significant procedural reforms in the near future?

Yes, there are concrete, near-term procedural changes on the way, and a few already in force.

High Court reforms now in force

The High Court Amendment Act 2 of 2024 commenced on 22 August 2025. It empowers the Judge-President to make new rules on several procedural fronts, including a commercial disputes track with defined steps, compulsory mediation where prescribed, peremptory time limits for rulings and judgments, and pre-trial scheduling by the managing judge. It also introduces primary-home protections and reserve-price rules for sales in execution, tightens procedures around proof of cessions, and creates a detailed regulatory framework for deputy-sheriffs. Expect implementing rules to follow under section 39 of the High Court Act.

Magistrates' Courts changes likely once commenced

Parliament has passed the Magistrates' Courts Amendment Act 18 of 2023, which has been promulgated but has not yet come into force. When commenced, it will significantly expand civil jurisdiction thresholds, empower rules on execution against immovable property, and add primary-home safeguards including reserve-price requirements.

Continued digitisation of procedure

The judiciary is actively expanding the e-Justice electronic case management and e-filing platform to deeper parts of the court system. The Ministry of Justice and the Judiciary have publicly confirmed plans to deploy the e-Justice system at the Supreme Court, building on prior rollouts in the High Court and Magistrates' Courts.³²

These digital reforms, alongside the High Court and forthcoming Magistrates' Courts rule changes, suggest that procedural control, timing, service, and document exchange will become more tightly managed via technology, reducing reliance on paper, postal service, and discretionary delays.

In sum, the High Court amendments are already operative and will be implemented through new rules that hard-wire stricter case-management, commercial-case procedure and execution safeguards. At the lower-court level, a major step-change is expected once the 2023 Magistrates' Courts amendment is brought into force. Digitisation continues alongside these statutory reforms.

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Niger



Litigation

Niger is a civil law jurisdiction. Its judicial court system, which was based on the Constitution of the Seventh Republic of 25 November 2010, was more or less affected by the *coup d'état* of 26 July 2023.

The constitution was suspended and the judicial institutions based on the constitution, such as the Supreme Court (*Cour de Cassation*) and the Council of State (*Conseil d'Etat*), were abolished by Order No. 2023-01 of 28 July 2023 from the National Council for the Safeguarding of the Homeland (*Conseil national pour la sauvegarde de la patrie* (CNSP))

The CNSP, which was created to exercise all legislative and executive powers pending a return to normal constitutional order, merged the Council of the State and the Supreme Court into a single court called the State Court (*Cour d'Etat*) by Order No. 2024-11 of 11 April 2024 amending and supplementing Order No. 2023-11 of 5 October 2023 determining the organisation, duties and functioning of the State Court.

Niger is no longer a member of ECOWAS, but it remains a member of OHADA and UEMOA.

1. How are the legal professions organised?

a) Lawyers

As a profession, lawyers are governed by the provisions of Regulation 05/CM/UEMOA of 24 September 2014, which entered into force on 1 January 2015, and Law 2004-42 of 8 June 2004 regulating the legal profession (to the extent its provisions are not contrary to Regulation No. 05). To practise law in Niger, potential lawyers must:

- be a citizen of an UEMOA Member State
- be at least 24 years of age
- hold a traineeship certificate (*certificat de fin de stage*)
- be of evident good moral character (Art. 30, Regulation 05)

The profession is organised by the Bar Association (*Conseil de l'Ordre*), which ensures that members abide by the rules governing the profession and takes any necessary disciplinary action.

Lawyers can practise either individually, as an associate or an employee, or as part of a practice structure (*association, société civile professionnelle, cabinet groupé, société civile de moyens, groupement d'intérêt professionnel*).

Lawyers who are nationals of any State that grants reciprocity can appear before the courts of Niger in specific cases, provided that:

- they are practising at a law firm in Niger
- the chairman of the Bar and opposing counsel are informed
- the presiding judge and the public prosecutor of the relevant jurisdiction are informed (Art. 42, Regulation 05)

b) The Judiciary

In Niger, membership of the judiciary is governed by Law 2018-36 of 24 May 2018 establishing the status of judge.

The judiciary includes professional *magistrats* with the Ministry of Justice, active judges with seats on courts and tribunals, and those on secondment, leave of absence, in training, or serving at-large (*hors cadre*) or in the armed forces. Any member of the judiciary can be appointed to the bench, as public prosecutor, or to the central administration at the Ministry of Justice.

Law 2018-36 also contains provisions governing notaries, bailiffs (*huissiers de justice*), public auctioneers (*commissaires-priseurs*), and court-appointed creditors' representatives (*mandataires judiciaires*).

2. How is the court system structured?

The structure of the court system in Niger arises out of Law 2018-37 of 1 June 2018 establishing court organisation and jurisdiction in the Republic of Niger, as amended and supplemented by Law 2019-61 of 10 December 2019 and Law 2020-061 of 25 November 2020. The judicial system is organised as follows:

A. Courts of original jurisdiction

This category includes courts of ordinary law and specialised courts

a) Ordinary courts

Ordinary courts include the regional courts (*tribunaux de grande instance*), borough courts (*tribunaux d'arrondissements*)

communaux), small claims courts (*tribunaux d'instance*) and local courts (*tribunaux communaux*).

i. Local courts

Local courts (*tribunaux communaux*) have jurisdiction to hear civil and commercial disputes if the amount at stake is no more than XOF one (1) million.

Local courts also hear all cases pertaining to the subjects set out in article 72 of the judicial organisation law (eg, personal status, family status, marriage, divorce, or inheritance) and involving persons governed by customary law, whatever the amount at issue.

Local courts also have jurisdiction over all disputes governed by local practices derived from customary law and involving the aforementioned persons, whatever the amount at stake, and over all landlord-tenant disputes involving verbal rental arrangements of a maximum annual value of XOF one million (1,000,000).

Judgments handed down in local court can be appealed to the regional court with territorial jurisdiction.

ii. Small claims courts

A small claims court (*tribunaux d'instance*) has been created in each *department* (county).

Small claims courts have jurisdiction over all ordinary civil matters involving personal or moveable property disputes, provided the amount in principle does not exceed XOF 5 million.

They also hear cases on procedural or enforcement issues, and on all types of enforcement, if the subject of the dispute is within their jurisdiction and no more than XOF 5 million is at stake.

In commercial matters, small claims courts can hear all personal or moveable property cases involving any person and a disputed amount of no more than XOF 3 million.

Decisions handed down in small claims courts are appealed to the Court of Appeal. Appeals in customary matters, however, are heard by the regional court with territorial jurisdiction.

iii. Borough courts

Borough courts have jurisdiction over all commercial disputes over personal or moveable property, involving any person, where the amount at issue is no more than XOF 3 million. Borough courts have only been established in the City of Niamey (which has five (5) boroughs).

iv. Regional courts

Regional courts hear cases of ordinary law in all subject areas except those for which jurisdiction has been expressly assigned to other courts.

In civil matters, they have jurisdiction over all cases that do not fall to the small claims courts, local courts, borough courts and specialist courts (employment tribunals, commercial courts, rural property courts, administrative courts, juvenile courts, and military courts).

In commercial matters, pending the full establishment of the commercial courts, they have jurisdiction over commercial disputes where the amount at stake is XOF 3 million or more.

b) Specialist courts

There are many specialist courts in Niger, including:

i. Employment Tribunals

Employment tribunals hear ordinary employment cases. Their jurisdiction includes disputes over employment or training contracts, collective bargaining, between workers and/or apprentices, and those arising out of regulations on workplace accidents, health, and safety. Employment tribunals are made up of a professional magistrate who acts as presiding judge, and two assessors, one representing employees and the other the employer.

ii. Commercial Courts

The commercial courts have jurisdiction to hear:

1. disputes over commitments and transactions between traders, within the meaning of the OHADA Uniform Act on General Commercial Law;
2. disputes involving business-to-business contracts;
3. challenges between any persons or entities involving commercial transactions or paper instruments, within the meaning of the OHADA Uniform Act on General Commercial Law;
4. insolvency proceedings;
5. disputes between shareholders of a commercial company or an economic interest group;
6. generally, disputes over commercial transactions engaged in by traders in the course of their business, and all commercial disputes, even civil law matters where the claimant is a trader;
7. disputes and opposition to decisions taken by the commercial courts;
8. disputes over competition rules;
9. disputes over the law as it applies to security/guarantees and banking.

The commercial courts (i) are the courts of first and last resort for all claims involving no more than XOF 100 million (100,000,000) and (ii) are courts of original jurisdiction for all claims involving more than XOF 100 million.

To date however, only the Niamey Commercial Court has been set up, and therefore commercial disputes outside the capital are directed to the ordinary courts.

Other specialist courts have been established as well: administrative courts; juvenile courts; military courts; a specialised division for economic and financial matters created in 2015 for all financial infringements that are or appear to be highly complex because of the large number of perpetrators, accomplices or victims, the scale of the harm done or the geographical scope; and a specialised division for terrorism and international organised crime created in 2016.

B. Appellate courts

a) Courts of Appeal

While many courts of appeal are still in the process of setting up, the jurisdiction of the courts of appeal already in place is (provisionally) as follows:

- Niamey Court of Appeal: the Dosso, Tillabéry and Niamey regions
- Tahoua Court of Appeal: the Tahoua and Agadez regions
- Zinder Court of Appeal: the Diffa, Maradi and Zinder regions

The **courts of appeal** have second degree jurisdiction. They include a civil chamber, and employment chamber, two criminal chambers divided according to the seriousness of the charge, a chamber of indictments, and a juvenile chamber.

The **Niamey Court of Appeal** also includes specialist chambers for cases involving economic and financial matters, and terrorism and international organised crime.

b) Specialist courts of appeal

A specialist Commercial Court of Appeal has been created in the main town of each region. The jurisdiction of the Commercial Court of Appeal is regional, and it is competent to hear all commercial matters brought before it.

C. High courts: the State Court (*Cour d'Etat*)

The State Court is now the supreme court of the Republic for both judicial and administrative matters.

It hears final appeals against rulings handed down in the last instance by non-administrative courts, with the exception of cases that are governed by OHADA law and therefore come under the exclusive jurisdiction of the Common Court of Justice and Arbitration (the **CCJA**).

It is also now the highest court for matters of administrative law. It is the court of first and last resort for *ultra vires* appeals and for appeals seeking a review of the legality of administrative acts. It also hears appeals against final decisions handed down by administrative lower courts, final decisions made by administrative organisations and professional bodies, and final decisions taken by courts ruling on disputes over voting registration and by regional courts ruling on election-related issues.

3. What are the time limits for bringing civil claims?

Limitation periods vary depending on the type of action and the parties involved (Art. 14, Civil Procedure Code). The ordinary limitation period for bringing an action is 30 years (Art. 2262, Civil Code), while between merchants, it is five years unless a shorter period is stipulated (Art. 16, Uniform Act on Commercial Law).

Specific limitation periods apply to certain types of claims:

- For commercial sales: two years (Art. 301, Uniform Act on Commercial Law)
- For avoidance or rescission: 10 years (Art. 1304, Civil Code) unless shorter limitation periods apply (for instance, rescission of a sale due to inadequate compensation (*lésion*))

must be claimed within two years from the date of sale (Art. 1676, Civil Code))

- Third party actions against architects and contractors: 10 years (Art. 2270, Civil Code)
- Actions involving teachers of science and the arts, for courses they provide on a monthly basis: six months (Art. 2271, Civil Code)
- Actions involving hoteliers and caterers: six months (Art. 2271, Civil Code)
- Actions involving labourers and employees for payment of their days of work, supplies and wages: six months (Art. 2271, Civil Code)
- Actions involving bailiffs and fees for the documents they serve and the assignments they complete: one year (Art. 2272, Civil Code)
- Actions involving lawyers and fee payments: two (2) years (Art. 56, UEMOA Regulation 05 and Art. 75, Law 2004-42 of 8 June 2004)
- Actions involving doctors, surgeons, dental surgeons, midwives and pharmacists: two years (Art. 2272, Civil Code)

Limitation periods established by law constitute public policy rules, unless otherwise provided by law.

4. Are lawyer-client communications privileged?

Communications between lawyers and clients are confidential. Protected communication types are correspondence between lawyers, and correspondence and consultations between clients and their lawyers. Lawyers found to have breached their confidentiality obligations face disciplinary and/or criminal action. Clients cannot release their lawyers from their confidentiality obligations.

5. How are civil proceedings commenced, and what is the typical procedure which is then followed?

Civil proceedings are filed either by summons or by joint application (except in specific cases where the law allows proceedings to be commenced by *ex parte* petition, or by voluntary appearance of the parties before the judge) (Art. 98, Civil Procedure Code).

Proceedings can also be filed with the Commercial Court by making a verbal statement to the court clerk or electronically.

A **summons** (*assignation*) is a bailiff's instrument in which the claimant calls on the defendant to appear in court (Art. 434, Civil Procedure Code). It sets out the subject matter of the claim and a statement of case in fact and in law. Interlocutory proceedings are initiated by means of an ordinary or an urgent (*d'heure en heure*) summons.

A **joint application** is a petition in which the parties submit their respective claims to the judge (Art. 432, Civil Procedure Code).

The time limit for the defendant to appear before a Regional Court is eight clear days. A case management procedure was introduced in the new Civil Procedure Code (Art. 454 to 458).

Mediation or conciliation proceedings can also be initiated by the parties or the judge.

6. What is the extent of pre-trial exchange of evidence, and how is evidence presented at trial?

The summons must state on what documentary evidence (exhibits) the claim is based. The party relying on an exhibit must provide it to all other parties to the proceedings. Exhibits must be produced voluntarily beforehand and in full. A party may ask the judge to order the production of documents.

On appeal, the re-submission of exhibits already submitted in the first instance is unnecessary, although any party can request it (Art. 149, Civil Procedure Code). It is possible to communicate new exhibits on appeal.

If a technical question arises, the court judge may order an expert report, either of its own motion or at the request of the parties, for the sole purpose of examining technical questions (Art. 266 to 300, Civil Procedure Code).

7. To what extent are the parties able to control the procedure and the timetable? How long do proceedings last?

The parties do not control procedure. Once the proceedings have commenced, the timetable is set at the court's discretion and in practice depends on various factors, such as the complexity of the case, the degree of urgency and the court's caseload.

Nevertheless, the parties may end the proceedings at any time by mutual agreement.

In general, proceedings last for an average of two months for each level of jurisdiction.

8. What interim remedies are available to preserve the parties' interests pending judgment?

Interim proceedings can be brought in Niger to protect parties' interests pending a judgment on the merits:

- **Interim proceedings** (*référé*) are held in the presence of all parties. In all urgent cases, the presiding judge of the court may order any measure that is not seriously disputed or that demonstrates the existence of a dispute. Even if there is a serious challenge, the judge may still order the necessary interim, reinstatement, or restorative remedies either to put a stop to a clearly unlawful situation or prevent imminent harm (Art. 459 to 465, Civil Procedure Code)
- **Ex parte applications** (*ordonnances sur requête*) are used to obtain any remedy to protect a party's rights and interests where circumstances dictate that this be decided in the absence of the other party. *Ex parte* orders are immediately enforceable (Art. 466 to 468, Civil Procedure Code)
- **Interim attachment** (*saisie conservatoire*) is where any person with a *prima facie* monetary claim files an *ex parte* petition requesting authorisation to attach the debtor's tangible or intangible assets as a protective measure, if the creditor can show recovery of the debt is at risk.

9. What means of enforcement are available?

The principal enforcement measures are seizure and sale (*saisie vente*), pre-harvest seizure (*saisie des récoltes sur pieds*) third party debt order (*saisie attribution*), seizure of shareholder rights and securities, seizure/repossession (*saisie-appréhension*), seizure and assignment of earnings (*saisie et cession des rémunérations*), and foreclosure of property (*saisie immobilière*).

These are all provided for in the OHADA Uniform Act on Simplified Recovery Procedures and Enforcement Measures. This OHADA Uniform Act was amended on 17 October 2023 and has simplified and streamlined certain enforcement procedures in all OHADA Member States.

10. Does the court have power to order costs? Are foreign claimants required to provide security for costs?

The unsuccessful party bears the cost of proceedings. Lawyers' fees are not included in these costs. However, the court can always order the party liable for the costs to pay the opposing party an amount for unrecoverable costs (as determined by the court). The court awards costs with an eye to fairness and the economic circumstances of the party being ordered to pay. Based on the same reasoning, the court can also decide of its own motion that there is no reason to award costs (Art. 392, Civil Procedure Code).

In all matters, foreign claimants must pay an amount into court as security for any damages that may be awarded against them, unless they own real estate in Niger that is sufficiently valuable to cover any award. However, bilateral and multilateral cooperation agreements between States limit the scope of this article (Art. 16, Civil Code).

11. On what grounds can the parties appeal, and what restrictions apply? Is there a right of further appeal? To what extent is enforcement suspended pending an appeal?

Parties have one month to appeal from the date of judgment, if issued in the presence of all parties, and one month from the date of service for a default judgment. Parties have 15 days in non-contentious matters, which runs from the date the decision is issued (Art. 520, Civil Procedure Code). The deadline for appealing a court ruling on the court's own jurisdiction, in a separate judgment on that question alone, is 15 days.

For commercial matters, the deadline for appeals is eight days. After an adversarial process, the deadline begins running from the announcement of the decision; for default judgments, from the date on which opposition is no longer admissible.

Appeals may be filed against any first instance judgment unless stipulated otherwise.

New claims on appeal are inadmissible, unless they seek to offset related claims, or aim at dismissal of the opposing party's claims or at obtaining a judgment on issues that arose during a third party intervention or due to the discovery of a new material fact. A claim is not considered as 'new' if it has the same objective as the claim presented to the lower court, even if on different legal grounds.

An appeal stays the relevant judgment unless immediate enforcement was ordered by the lower court. For commercial matters, immediate enforcement is automatic in cases where the judgment is for less than XOF 100 million. Immediate enforcement can also be ordered, without payment into court, for awards of XOF 100 million or more.

After an appellate decision, a final appeal to the State Court is possible. The Court rules on questions of law, not fact. Appeals to the State Court only stay enforcement in the following cases:

- personal status matters
- incidental claims
- real property registration, or when the purchase or transfer of a property has been ascertained by means of legally admissible proof
- where the law so provides
- where the amount of the award exceeds XOF 25 million

If the appeal to the State Court is successful, the case is remanded to a different panel of the same court (the appellate court or lower court of last resort) for a second judgment. Although in principle, the court of remand is not required to abide by the State Court's decision, in practice it generally does so.

12. To what extent can domestic and/or foreign State entities claim immunity from civil proceedings?

Proceedings can be brought against the State, but the State has immunity from enforcement.

For foreign entities, any jurisdictional immunity they may have is derived from international agreements on diplomatic or consular relationships. Certain international institutions are also entitled to such immunity.

13. What are the procedures for having foreign judgments recognised and enforced?

In Niger, contentious and non-contentious judgments handed down by foreign courts are enforceable if they are final, binding and enforceable, and the matter is no longer before the foreign national court.

Enforcement decisions are made by the presiding judge of the regional court with territorial jurisdiction over the place of enforcement, regardless of the amount in dispute. The court simply verifies that the judgment meets the above conditions.

For commercial cases, the presiding judge of the Commercial Court with territorial jurisdiction over the place of enforcement rules on the enforceability of decisions obtained through litigation (or appeals for reconsideration) and handed down by foreign courts. Enforceability is requested by *ex parte* petition presented to the presiding judge.

The party against which enforcement is sought is summonsed to appear by the chief court clerk.

The presiding judge merely verifies that the decision to be enforced meets the requirements.

Partial enforcement may be granted for one or several heads of decision. An enforceability decision only takes effect with regard to the parties to proceedings, and it cannot be appealed to the State Court.

If enforcement is granted, the enforcement order is added to the judgment by the relevant chief court clerk.

Arbitration

14. Is arbitration law based on the UNCITRAL Model Law on International Commercial Arbitration? If so, does it include any major modifications? If not, what type of arbitration does the law provide for?

Niger is a Member State of OHADA (*Organisation pour l'Harmonisation en Afrique du Droit des Affaires* – Organisation for the Harmonisation of Business Law in Africa). The OHADA Treaty was signed on 17 October 1993 and amended on 17 October 2008. Under the Treaty, the OHADA Council of Ministers adopts "uniform acts" that are directly applicable and enforceable in all Member States. Arbitration is therefore governed by the Uniform Act on Arbitration (the "UAA") adopted on 23 November 2017, replacing the Uniform Act of 11 March 1999.

The UAA is not based on the UNCITRAL Model Law. It was drafted separately, but is nevertheless consistent with the fundamental principles of international commercial arbitration and main features of the UNCITRAL Model Law.

The UAA applies to both national and international arbitration and governs all arbitration proceedings with a seat in a Member State.

One of the most important characteristics of OHADA arbitration is the Common Court of Justice and Arbitration (the "CCJA"), which serves as both a permanent arbitration institution and as a supreme court of arbitration for OHADA Member States.

15. What are the main arbitration institutions at the national level?

The main national institution for arbitration is the Centre of Mediation and Arbitration in Niamey (**CMAN**).

At the regional level is the CCJA based in Abidjan, Côte d'Ivoire. The CCJA has an adjudicative function; it also includes an arbitration centre and administers proceedings governed by the CCJA Rules of Arbitration.

16. Are there any restrictions on who may represent the parties to an arbitration?

The UAA does not set any restrictions on who can represent parties in arbitration. They are entitled but not required to instruct counsel (Art. 20, UAA).

The same principle applies under articles 21 and 38 of the CMAN Rules: parties can be represented or assisted by anyone of their choosing, whether or not that person is a lawyer.

A conflict of interest is the only limiting factor on who can represent parties in arbitration.

17. What are the formal requirements for an enforceable arbitration agreement?

Article 3-1 of the UAA states that the arbitration agreement must be made in writing or by any other means whereby its existence can be demonstrated. No particular format is

required. The UAA also provides that contracts can include an arbitration agreement by reference to a separate document.

Local judges favour a narrow interpretation of these formal conditions. Local law does not contain any other requirement of form.

18. Will the courts decline jurisdiction if there is a valid arbitration clause covering a dispute? Does their approach differ according to whether the seat of arbitration is inside or outside the court's jurisdiction?

Article 13 of the UAA provides that national courts must decline jurisdiction if a dispute that is already in arbitration pursuant to an arbitration agreement is brought before national courts.

If no arbitral tribunal has yet been formed, national courts must nevertheless decline jurisdiction at the request of a party unless the arbitration agreement is manifestly void or inapplicable. Courts cannot decline jurisdiction of their own motion.

In principle, the location of the seat of arbitration has no effect on this issue.

Even where the parties have a valid arbitration agreement, however, they can apply to a national court for interim or conservatory measures if this does not require a review of the case on the merits, in circumstances that are "clearly shown" to be urgent.

National courts can also intervene in very limited circumstances to assist the arbitration process (see questions 22 and 23 below).

19. If the arbitration agreement is silent, how many arbitrators are appointed, and who is the appointing authority?

While the UAA does not mandate a specific number of arbitrators for cases where the arbitration agreement is silent on this point, it does provide that tribunals must have either a sole arbitrator or three arbitrators. In the absence of an agreement between the parties, the case is adjudicated by a sole arbitrator.

If the parties do not agree on the appointment procedure or if their agreement is not sufficiently detailed, the UAA provides that:

- In an arbitration with three arbitrators, each party appoints one arbitrator and these two arbitrators choose the third arbitrator. If a party fails to appoint an arbitrator within thirty days of the receipt of a request to do so from the other party, or if the two arbitrators fail to agree on the third arbitrator within thirty days of their appointment, the appointment is made, at the request of a party, by the competent court in the State Party.
- In an arbitration with a sole arbitrator, if the parties fail to agree on the appointment, the arbitrator is appointed, at the request of a party, by the competent court in the State Party.

The competent court in Niger for hearing issues around the constitution of the arbitral tribunal is the Regional Court, which also has jurisdiction to make up for any inadequacies of the arbitration clause.

20. What rights are there to challenge the appointment of an arbitrator?

Articles 7 and 8 of the UAA set the rules for recusal. An arbitrator must be independent and impartial with regard to the parties, and must disclose "any circumstance that could create a legitimate doubt in the mind of the parties about the arbitrator's independence and impartiality".

The competent court in the State Party rules on any challenges, unless the parties resolve the challenge otherwise. In Niger, the same court is competent for arbitrator recusals and for assisting with the composition of the arbitral tribunal, ie the Regional Court.

Decisions by a competent court dismissing a challenge can only be appealed to the CCJA.

Any grounds for recusal must be raised within no more than thirty days from discovery of the material fact relied on by the party seeking recusal.

Arbitrators may only be challenged on grounds that come to light after their appointment.

21. Does domestic law contain public policy requirements for arbitration proceedings?

Under the UAA, parties must receive equal treatment and have an opportunity to exercise their rights (Art. 9, UAA). Arbitrators may not base decisions on grounds raised of their own motion without first giving the parties an opportunity to submit observations (Art. 14, UAA).

Article 18 of the UAA provides that deliberations are confidential.

The UAA also provides that arbitration cannot last more than six months from the date on which the last arbitrator accepts the terms of reference, unless that period is extended by agreement of the parties or by the competent court.

Local law contains no public policy provisions other than those applicable under the UAA.

22. On what grounds can the court intervene in arbitrations seated inside the jurisdiction?

In principle, where an arbitration agreement has been formed, national courts cannot intervene in a dispute until after the award has been issued.

Nevertheless, parties may petition the competent court in Niger in the following circumstances:

- to resolve difficulties encountered with constituting the arbitral tribunal, to appoint the sole arbitrator or the third arbitrator (Art. 5 and 8, UAA)
- to rule on arbitrator recusals, if the parties have not provided for a different procedure (Art. 7)
- to extend the deadline for the conclusion of the arbitration at the request of a party or the arbitral tribunal, where there is no agreement between the parties to do so (Art. 12, UAA)
- to order interim or conservatory measures of recognised and demonstrated urgency, provided no review of the case on the merits is necessary (Art. 13)

- to assist the arbitral tribunal, at its request, with the collection of evidence (Art. 14, UAA)
- to interpret the award or correct clerical errors or omissions affecting the award in cases where the arbitral tribunal cannot be re-seated (Art. 22, UAA).

23. On what grounds can the court intervene in arbitrations seated outside the jurisdiction?

As a general principle, national courts cannot intervene where there is an arbitration agreement. Moreover, any and all issues relating to the composition of the arbitral tribunal and conduct of arbitral proceedings fall under the jurisdiction of the courts of the State of the seat.

However, it is possible for national courts (other than the competent court of the Member State of the seat) to intervene to order conservatory or interim relief, under the conditions defined above in question 18 (Art. 13, UAA).

24. Do arbitrators have powers to grant interim or conservatory relief?

Article 14 of the UAA authorises the arbitral tribunal to act at the request of either party to order interim or conservatory relief, excluding interim attachment and court-ordered security, which are matters for the national courts.

Article 24 of the CMAN Arbitration Rules also provides for this possibility.

25. When and in what form must the award be delivered?

Unless otherwise agreed by the parties, arbitral awards must be issued no more than six months after the date on which the last arbitrator accepted the terms of reference. This period can be extended by agreement between the parties, or by order of the competent court of the Member State – in practice, the Regional Court – at the request of a party or the arbitral tribunal (Art. 12, UAA).

Delivery of the award marks the end of the arbitral tribunal's jurisdiction. The tribunal can interpret the award or rectify any clerical errors or omissions. If it failed to rule on a head of claim, it can do so in an additional award. In either of the cases above, a request must be submitted within thirty days of service of the award, after which the tribunal has forty-five days to issue its interpretation or additional award. If the tribunal cannot be re-seated, the task of making a ruling falls to the competent court of the State Party.

Parties can establish special formal requirements for awards. If they do not, awards are issued by majority decision (for tribunals with three arbitrators), and the grounds must be stated. Awards must be signed by at least two of the three arbitrators.

26. Can a successful party recover its costs?

The UAA contains no provisions on this point, nor did local law prior to the adoption of the UAA.

If arbitration is conducted under the aegis of the CCJA, the arbitrator is empowered to award costs.

27. On what grounds can an award from an arbitration seated in the jurisdiction be appealed to the court?

An application to set aside is the only remedy against an arbitral award. Applications must be brought before the competent court in the Member State where the award was issued within one month from the date of service of an enforceable award (Art. 25 and 27, UAA). The parties can agree to waive applications to set aside the award, on the condition the award is not contrary to international public policy provisions.

An application to set aside can only be brought in the following circumstances (Art. 26, UAA):

- the arbitral tribunal ruled despite the lack of an arbitration agreement or in reliance on an invalid or expired agreement;
- the arbitral tribunal was not properly constituted;
- the arbitral tribunal did not rule in compliance with its terms of reference;
- the right to be heard (*contradictoire*) was not observed;
- the award breaches an international public policy provision;
- no reasons are given for the award.

An application to set aside an arbitral award suspends its enforcement, unless the tribunal ordered immediate enforcement. The court's decision can only be appealed to the CCJA (Art. 25 and 28, UAA).

If the award is harmful to a third party's rights, that party can challenge an arbitral award before the State Party court that would have had jurisdiction absent arbitration. Revision of the award can also be sought from the tribunal itself or, if the tribunal cannot be re-seated, the State Party court that would have had jurisdiction absent arbitration.

28. Can a foreign arbitration award be appealed to a local court?

The arbitral award is not open to opposition or appeal.

It can be the subject of an application to set aside filed with the competent State Party court (Art. 25, UAA). Local law does not contain any specific provision in this regard.

29. What are the procedures for the enforcement of: (i) awards rendered in other jurisdictions and (ii) domestic awards?

To enforce awards issued in an OHADA Member State, the UAA requires parties to obtain an order for enforcement, or exequatur, from the competent Member State court (Art. 30); in Niger, this is the Regional Court.

The requesting party must produce the original arbitral award together with the original arbitration agreement, or copies of these documents meeting the authentication requirements and, where relevant, a certified translation into French (Art. 31, UAA).

A national court receiving a request for recognition or exequatur must rule within no more than fifteen days of the referral. If the court has not issued a decision by the end of this period, exequatur is deemed to have been granted. If exequatur is

granted or if the court receiving the application has not responded with fifteen days as described above, the most diligent party applies to the chief court clerk or competent authority in the State Party to have the enforcement order imprinted on the official original copy of the award. The procedure for requesting exequatur is not adversarial.

Decisions refusing the recognition of an arbitral award can be appealed to the CCJA, but decisions granting recognition are not subject to appeal (Art. 32, UAA). In general, recognition and exequatur are only denied if the award clearly conflicts with a rule of international public policy.

Under Article 34 of the UAA, “arbitral awards rendered on the basis of rules different from those provided for in this Uniform Act are recognized in the State Parties under the conditions provided for by international conventions possibly applicable and, in the absence thereof, under the same conditions as those provided in this Uniform Act”. Accordingly, the recognition and enforcement of awards issued in a country outside of the OHADA region will be governed by any applicable conventions (such as the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards). When there is no applicable international convention, the recognition and enforcement of such awards should in principle be governed by the UAA. Niger is a party to the New York Convention.

30. Are foreign awards readily enforceable in practice?

In practice, foreign awards are readily enforceable in Niger through application of the New York Convention.

Alternative dispute resolution

31. Are the parties to litigation or arbitration required to consider or submit to any alternative dispute resolution before or during proceedings?

Alternative dispute resolution is not compulsory in Niger but mediation or conciliation proceedings may be instigated by the judge in litigation proceedings with the consent of the parties.

Reforms

32. Are there likely to be any significant procedural reforms in the near future?

To the best of our knowledge, there are no significant procedural reforms coming in the near future.

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Nigeria



Introduction

The Nigerian legal system is broadly based on: (i) received English law; (ii) judicial precedents; (iii) indigenous or customary laws and Sharia (Islamic) law; and (iv) local legislation. These systems collectively form the foundation of Nigeria's plural legal order.

Three categories of received English law are recognised as direct sources of Nigerian law: common law, principles of equity and statutes of general application in force in England on 1 January 1900.

Judicial precedents play a central role in Nigeria's legal system. The doctrine of *stare decisis* ensures that decisions of higher courts are binding on lower courts.

The indigenous legal system applies customary law in resolving disputes, including through customary arbitration. Customary law is a system of law that reflects the culture, customs, values and habits of the ethnic groups whose activities it regulates, and which have, by reason of consistent usage, obtained the force of law. Customary law is particularly dominant in the areas of personal and family relations such as marriage, divorce, guardianship and custody of children, property and succession. It is largely unwritten but owes its authority to the fact that the custom has been established from ancient days and has become generally accepted by the local populace. In the states in the southern part of the country, Islamic law, where it exists, is integrated and has always been treated as an aspect of customary law. Since 1956, Islamic law has been administered in the northern states as a separate and distinct system. It only applies in relation to Muslim personal law. Sharia law, unlike ethnic customary law, is written. Its principles are clearly defined and articulated. Its sources include the Holy Qur'an, the Sunna (practice of the Prophet), the consensus of scholars (*ijma'*), and analogical reasoning (*qiyas*).

Local legislation includes laws enacted by the National Assembly (federal laws) and State Houses of Assembly (state laws), as well as subsidiary legislation made by authorised bodies or public officers under enabling statutes. These laws operate within the federal framework, ensuring that national laws apply throughout Nigeria while state laws govern matters

within the legislative competence of the states under the Nigerian Constitution.

Litigation

1. What is the structure of the legal profession?

The legal profession is founded on and remains largely similar to that of England and Wales. However, the major distinguishing feature is that the Nigerian legal profession is fused, so upon acquiring professional qualifications, a lawyer is licensed to practise as a barrister and solicitor of the Supreme Court of Nigeria.

There are three categories of people entitled to practice law in Nigeria under the Legal Practitioners Act: (a) those entitled to practice generally; (b) those entitled to practice for the purpose of any particular office; and (c) those entitled to practice for the purpose of any particular proceedings (by warrant).

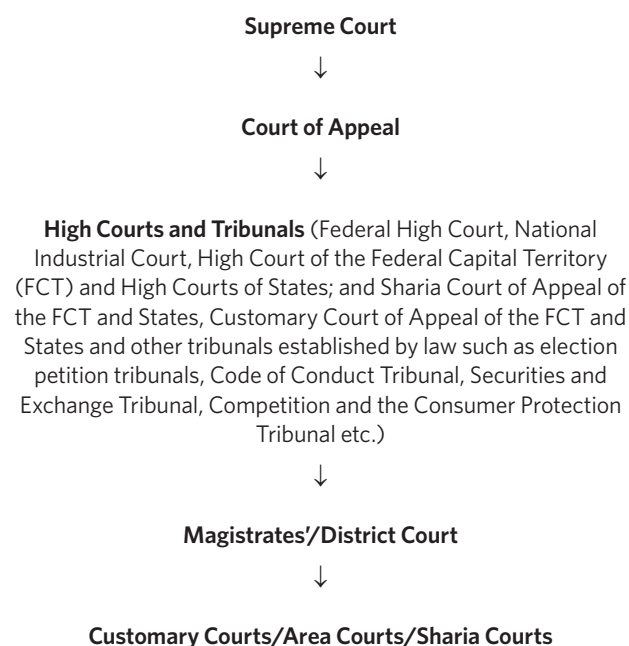
The first category is the most common route. To qualify as a barrister and solicitor of the Supreme Court of Nigeria, an individual must first obtain a law degree from a Nigerian university or from a university in a common law jurisdiction. Graduates of Nigerian universities are required to undertake a one-year mandatory training at the Nigerian Law School and sit for the Bar Part II examinations.

Law graduates from other common law countries must first pass the Bar Part I examinations before proceeding to the one-year Bar Part II programme. Candidates who successfully complete the requisite training and examinations are formally called to the Nigerian Bar and enrolled as legal practitioners of the Supreme Court of Nigeria.

The practice of conferring on successful barristers the status of King's or Queen's Counsel was followed in Nigeria until the 1970s when it was restyled as the conferment of the status of Senior Advocate of Nigeria. The Legal Practitioners Privileges Committee is responsible for conferring the rank of Senior Advocate of Nigeria (SAN). The conferment of SAN rank requires that a legal practitioner in Nigeria must have practiced, for not less than ten years and has achieved distinction in the legal profession in such manner as the committee may decide. Such conferment, as is the case in England and Wales, is also known in Nigeria as promotion to the inner Bar from the outer Bar.

2. What is the structure of the court system?

The Nigerian courts are structured as follows:



Courts in Nigeria are classified into superior courts and inferior courts. The Nigerian Constitution has set out a list of superior courts in Nigeria. These include (a) Supreme Court of Nigeria; (b) Court of Appeal; (c) Federal High Court; (d) National Industrial Court; (e) High Court of the Federal Capital Territory, Abuja; (f) High Court of a State; (g) Sharia Court of Appeal of the FCT; (h) Sharia Court of Appeal of a State; (i) Customary Court of Appeal of the FCT; (j) Customary Court of Appeal of a State; and (k) any other courts established by law by the National Assembly or a State House of Assembly to exercise jurisdiction over federal or state matters. The jurisdiction of any of these courts over any given claim depends on the nature of the claim and the parties to the action.

The Sharia Courts, Area Courts, Customary Courts, magistrate courts and district courts are inferior courts. The inferior courts, together with the High Courts and Tribunals also serve as courts of first instance or original jurisdiction being the first level at which most civil and criminal cases are heard and determined. Their jurisdiction is also limited to the territory of any given state for which they have been established. However, the Federal High Court, the National Industrial Court and tribunals established under federal law enjoy nationwide jurisdiction with divisions located across the various states of the federation.

Appellate courts comprise mainly of the Court of Appeal and the Supreme Court, although these courts, in limited cases, exercise original jurisdiction. The High Courts and Tribunals also act as first appellate courts for inferior courts such as the Magistrates' Courts, District Courts, and administrative tribunals. The National Industrial Court hears appeals from Industrial Arbitration Panels. Also, in matters before the Sharia Courts and Customary or Area Courts, appeals respectively lie to the Sharia Court of Appeal, which is presided over by the *Grand Kadi* or *Kadi* who is expected to have a specialist knowledge of Islamic law and practice, and the Customary Court of Appeal, presided over by a *President* learned in customary law.

All appeals from High Courts and tribunals, whether state or federal, are made to the Court of Appeal and subsequently to the Supreme Court, both of which are Federal Courts. The Court of Appeal hears appeals from the High Courts and Tribunals, the Sharia Court of Appeal, the Customary Court of Appeal and, to a limited extent, the National Industrial Court. The Supreme Court is the final court of appeal and, except in limited cases of leapfrog appeals (where appeals bypass the Court of Appeal and go directly to the Supreme Court), hears appeals from the Court of Appeal. In certain cases, the Court of Appeal is the final court to which an appeal may lie.

The judicial system is adversarial in nature, and although it is provided for in some Nigerian legislation (especially legislation enacted prior to 1960) Nigeria no longer operates a jury system. Jury trials were prevalent particularly in criminal cases until the early 1970s, after which they were disposed of. The judge at first instance sits as an impartial umpire and parties have full control over the presentation of their respective cases (subject to compliance with procedural and evidential laws and rules). It is the duty of the judge to resolve questions of fact and thereafter apply the law to the resolved facts in his or her judgment.

3. What are the limits for bringing civil claims?

Limits to civil claims may be determined by (a) time; (b) subject matter and monetary value of claims; and (c) statutory limitations such as ouster clauses, conditions precedent, territorial jurisdiction and immunity from action.

Time Limits

Most states in Nigeria are governed by limitation laws which prescribe timeframes within which civil actions must be commenced. For instance, under section 8 of the Limitation Law of Lagos, the limitation period for actions for the recovery of land by a state authority is 20 years, and by an individual, 12 years. The limitation period for a claim under seal (by deed) is 12 years from the date the cause of action accrued. Actions in contract and tort may not be brought after the expiration of six years from the date the cause of action accrued. The tort of negligence resulting in personal injury has a limitation period of three years. Limitation may also be prescribed in certain cases by specific statutes governing specialised areas such as maritime or aviation claims. Further, regulatory enactments, such as those establishing administrative agencies, also stipulate **unique limitation frameworks** for suits against such bodies.

Subject Matter and Monetary Limits

The jurisdiction of civil courts in Nigeria is largely determined by subject matter, as no court now enjoys unlimited jurisdiction. The Constitution and enabling statutes clearly delineate jurisdiction among courts. For instance, the Federal High Court's jurisdiction is limited to matters expressly provided under section 251 of the Constitution and the National Industrial Court's jurisdiction is limited under section 254C of the Constitution, while State High Courts have residual jurisdiction over all other civil matters.

In terms of monetary limits, superior courts of record (such as the High Courts) generally have no financial ceiling on the value of claims they can entertain. However, inferior courts, including Magistrates' and District Courts, operate within statutorily prescribed monetary limits depending on their grade and location.

Other Statutory Limitations

Beyond time and subject matter, several statutes and Rules of courts impose additional restrictions on civil actions. These include: (a) ouster clauses, which exclude court jurisdiction in special constitutional or administrative matters; (b) conditions precedent, such as pre-action notices or statutory remedies, which must be satisfied before filing a claim; (c) immunities, including the constitutional immunity of the President, Vice-President, Governors, and Deputy-Governors while in office, as well as diplomatic immunity and qualified immunities enjoyed by legislators and public officers under various enactments (d) limit on the territorial jurisdiction of the court.

4. Are communications between a lawyer and his/her client privileged (ie protected from disclosure to a court/tribunal and opposing parties)?

The Nigerian Evidence Act confers privilege on communications between a legal practitioner and a client, and this privilege is highly respected. The privilege covers communications between the legal practitioner and his/her client in the course of and for the purpose of his/her employment including documents and advice rendered. The obligation not to disclose such information continues even after the employment between the solicitor and client has ceased. The client does not waive this privilege if he/she volunteers evidence during proceedings nor is it waived if any party calls the legal practitioner as a witness. The privilege is only waived if the client questions the legal practitioner during judicial proceedings about the privileged communication. The client cannot be compelled to disclose privileged communications unless he/she offers himself/herself as a witness in proceedings in which case he/she may be compelled to disclose any such communication as may appear to the court necessary to explain any evidence which he/she has given, but no other.

Legal privilege does not apply to communications between a solicitor and client made in furtherance of any illegal purpose.

5. How are civil proceedings commenced, and what is the typical procedure which is then followed?

The rules governing civil proceedings are not uniform across Nigeria. The High Courts of the respective states in Nigeria, Federal High Court and the National Industrial Court have its own civil procedure rules. For present purposes, we focus on the Lagos Magistrate and High Court Rules.

Magistrates' Court claims

Civil proceedings are commenced in the Magistrates' Court by the lodgement of a plaint form at the court registry, which is subsequently served on the defendant. The claim must be within the monetary limits of the Magistrates' Court. In Lagos State, the current monetary limit for civil claims is NGN 10 million. On the Criminal jurisdiction, Section 29(3) of the Magistrates Court Law of Lagos State 2009 provides that the fine to be imposed for any offence should not exceed the maximum fine for that offence under the Law. This figure is significantly high due to the status of Lagos as Nigeria's commercial capital. The monetary limits are much lower in other states. For example, in Kano state, the monetary limit is 300,000 Naira. The Magistrates' Courts are essentially courts

of summary jurisdiction for effective disposal of relatively smaller claims.

High Court claims

In the High Court, civil actions are usually commenced by a writ of summons, originating summons, originating motion or petition. A writ of summons is the general method of commencing any civil action and therefore the most common. It can be used where the nature of a claim is contentious, or facts are highly disputed. An originating summons is used where there is no substantial dispute as to facts and the dispute is essentially one of law, such as the interpretation of a will, contractual document or statute. It can be used for any type of civil claim. An originating summons is used where there is no substantial dispute as to facts and the dispute is essentially one of law, such as the interpretation of a will, contractual document or statute. Proof in such matters is only by affidavit evidence, but if the affidavits evince conflicting facts, the court may convert the originating summons into an action commenced by a writ of summons and order pleadings so that the parties can call oral evidence to prove their respective positions. An originating motion is used where a statute specifically prescribes it as the appropriate method to commence the action, such as the Fundamental Rights (Enforcement Procedure) Rules 2009, or for an action to set aside an arbitral award in the High Court. A Petition is also used where a statute specifically prescribes it as the appropriate method to commence the action.

For actions commenced by writ of summons, full details of the claim may be endorsed on the writ, or in a separate document called the "statement of claim" (order 18 of the High Court of Lagos State (Civil Procedure Rules) 2019 (HCLSCP 2019)). High Courts in Lagos and Abuja have adopted the "frontloading" system, requiring all civil proceedings commenced by writ of summons to be accompanied by the statement of claim, list of witnesses to be called at trial, written statements on oath, and copies of every document to be relied on at trial, Pre-action protocol form 01 with necessary documents, or Certificate of pre-action counselling Form 6. Civil claims commenced by originating summons or originating motion are accompanied by an affidavit setting out the facts relied upon, all the exhibits to be relied on, and a written address in support of the application. These documents together are called the "originating processes", and are subsequently served on the defendant, in accordance with the court's rules (see generally order 5 of HCLSCP 2019).

A defendant who wishes to defend the claim is required to file a memorandum of appearance within the time specified in the originating process (usually 42 days from the time he/she is served, in Lagos State), a statement of defence (in answer to the statement of claim), supported by copies of documentary evidence, a list of witnesses and the witnesses' written statement on oath.

Federal High Court claims

In the Federal High Court, the rules on commencement of actions are similar to those of the Lagos High Courts. However, in the Federal High Court, a defendant who wishes to challenge the jurisdiction of the court must do so within 30 days of the service of the originating processes, otherwise his/her application will not be heard by the court until after trial.

A defendant may also, in his/her defence, include a "counterclaim". Further, the defendant in the Federal High Court has 30 days to enter an appearance and file a defence to the claim.

Where the claimant wishes to address any issues raised in the statement of defence, or a counterclaim, he/she may do so by way of a reply.

At the Federal High Court, pleadings are closed fourteen days after the service of the statement of defence or reply (if one is filed). In the Lagos High Court, pleadings are deemed closed where a Defendant fails to file his/her defence within the 42 days prescribed by the Rules or at the expiration of 7 days after the service of the defence or reply (if one is filed). A Claimant at the Lagos High Court must apply for the issuance of case management conference (CMC) notice within 7 days of the close of pleadings. The CMC must be concluded within 30 days and extended where necessary only for 14 days. It is not uncommon for a matter to be settled at the pre-trial conference stage (Order 27 of the Lagos High Court Rules).

Under Order 13 of the Lagos High Court Rules, a claimant may apply for summary judgment where he believes sincerely that the defendant has no defence to the claim. In such a case, the originating processes are accompanied with an application for summary judgment. The affidavit in support of the application must state the grounds for the belief that there is no defence to the claim. The defendant is expected to file his/her statement of defence, witness deposition, documents to be relied upon and a counter affidavit to the application for summary judgment, written address, and memorandum of appearance within 42 days. If the defendant has no defence to the action, he is not expected to file anything and on the day of hearing, the court will proceed to enter judgment in favour of the claimant. If the defendant has a defence, it must positively and sufficiently answer the claim. The judge will hear the application expeditiously and if the application is successful, the claimant will be given judgment on the merits. If the application fails, the matter will proceed to a full hearing as the defendant will have established a defence to the claim. Judgment obtained under Order 13 is a judgment on the merit which cannot be set aside except on appeal.

6. What is the extent of pre-trial exchange of evidence, and how is evidence presented at trial?

The Rules of Court prescribe rules for pre-trial formalities which include the disclosure and exchange of documents, interrogatories, case management conference and the settlement of issues. The essence of the rules in this regard is to ease the entire trial process.

At the pre-trial stage, the claimant or the defendant may serve an application for the discovery on oath of any evidence that may be in the possession of the opposite party that would help the case of either the claimant or the defendant. This usually forms part of the agenda at the case management conference. Discovery may also be made by either party delivering to the other party documents that are in his/her possession (see generally Order 29 Lagos State High Court Rules). A party may also, in its pleadings, give the other party or parties "notice to produce" a document that such a party wishes to rely on to prove its case.

As has already been stated, the parties are expected to file their witness statements on oath at the commencement stage of the proceedings. Consequently, at trial, witnesses are examined-in-chief by way of adoption of their statements on oath following which they are cross-examined, with the option of re-examination open to the party who called the witness. It is not uncommon for the judge to ask the witnesses questions during the trial.

Where a party engages an expert to prepare a report on its behalf on a specific aspect of the dispute prior to the commencement of the action, it must file the expert report together with the witness statement of such expert as part of his originating processes. If, however, the decision to call an expert witness is taken after the commencement of proceedings, the party must apply to court for leave to call an additional witness and the witness statement of the proposed expert is annexed to this application. In the event, however, that the expert is to be subpoenaed by a party, filing a witness statement is not required.

At trial, the evidence of an expert is admitted like that of any other witness. Cross-examination is permitted. The expert may either produce a report or give evidence orally.

7. To what extent are the parties able to control the procedure and the timetable? How quick is the process?

As stated in the preamble to the Lagos High Court Rules, the objective of the rules is to foster the quick and effective dispensation of justice. Under order 27 Lagos High Court Rules, the judge is responsible for managing the case. Parties are, however, encouraged to co-operate with the judge to work within the timetable. The rules also provide time periods within which to file and serve court processes. Adjournments by either side contribute to delay. Cases which go to trial can take anything from 18 months to three years, though a longer period can occur where any of the parties file an interlocutory appeal in the course of trial.

8. What interim remedies are available to preserve the parties' interest pending judgment?

The court may, on its own or by application of a party, make orders with regard to disputed property pending judgment. Such orders depend largely on the nature of the property in dispute. Orders include preservation or interim custody of the subject matter of a disputed contract, an order for the sale of perishable goods, an order for the preservation or inspection of property which is the subject of an action, or the appointment of a receiver in the case of debt recovery (see generally order 42 HCLS 2019).

Interim injunctions are available if the plaintiff establishes a case of real urgency showing that the *res* could be destroyed within a period of less than seven days. Judges are prepared to grant such applications on condition that the claimant provides a cross-undertaking in damages. Such injunctions, when granted, do not last more than seven days in Lagos State, and can be renewed for a further seven days but no more. In the Federal High Court, such interim orders could lapse by effluxion of time if: (a) the party affected by the order applies to have the order set aside and the court fails to hear the application within 14 days of it being filed; or (b) the court hears the application in time but fails to deliver a ruling within 14 days of the hearing of

the application. The essence of these rules is to ensure that an interim injunction obtained without a hearing *inter partes* is not permitted to remain extant for long. In actual practice, the courts seldom grant interim relief on an *ex parte* basis.

In addition, Nigerian courts also grant specialised remedies such as Mareva injunctions (Freezing Orders) which are orders restraining a defendant from dissipating or removing assets within or outside Nigeria before judgment. To obtain a Mareva injunction, the claimant must show (a) a good arguable case; (b) a real risk that the defendant intends to dissipate assets; and (c) that it is just and convenient for the order to be granted. Courts also grant Anton Piller orders (Search and Seizure Orders) which permit a claimant, under court supervision, to enter the defendant's premises to inspect, search, and seize documents or materials relevant to the dispute. Such orders are granted in exceptional cases involving strong prima facie evidence of serious wrongdoing, such as intellectual property infringement or breach of confidence, and where there is a real possibility that evidence may be destroyed.

9. What means of enforcement are available?

Enforcement methods in relation to money judgments include:

- execution by a writ of *fi fieri facias*;
- garnishee proceedings;
- charging orders;
- judgment debtor summons;
- writ of sequestration.

Enforcement of money judgments is not difficult if the judgment debtor has assets within the jurisdiction to satisfy the judgment debt. The most effective method of enforcing a money judgment is by garnishee proceedings, a procedure that permits the court to attach money belonging to the judgment debtor in any bank or financial institution in Nigeria. Once granted, the garnishee order is difficult to reverse and banks usually comply, provided there is money in the judgment debtor's accounts.

For the enforcement of judgments other than money judgments, the applicable modes include:

- writ of possession, writ of sequestration or committal order for judgments for possession of land;
- if a judgment debtor has refused to execute a deed/instrument, a judgment creditor may prepare the deed/instrument in accordance with the terms of the judgment, and apply to the court for the deed/instrument to be endorsed by the registrar of the court;
- enforcement of a judgment for the delivery of goods may be achieved by way of a writ of delivery or restitution or writ of sequestration or committal order;
- a judgment to cause a person to do or to refrain from doing an act may be enforced by writ of sequestration against the property of the disobedient person or committal order.

10. Does the court have power to order costs? Are foreign claimants required to provide security for costs?

In Nigeria, costs follow the event, and the court has wide discretion to award and fix the amount of costs payable by the losing party. This discretion must, however, be exercised judicially and judiciously (see *Gabari v Ilori* [2002] 14 NWLR (Part 786) 103). Costs may not be awarded against a losing party if it lost the case purely on technical grounds rather than on the facts, or counsel diligently prosecuted the case with commendable industry. The quantum of costs awarded at the end of hearing is very small compared to the actual cost incurred by the winning party.

An interesting provision introduced by order 53(2) Lagos High Court Rules is that where an offer of settlement made in relation to the Pre-Action Protocol or in the course of case management or ADR is rejected by a party and that party eventually succeeds at trial but is awarded sums not in excess of the offer of settlement made earlier, the winning party must pay the costs of the losing party from the time of the offer of settlement up to judgment. This provision is designed to encourage claimants to accept offers of settlement prior to trial.

By order 53(4) Lagos High Court Rules a foreign claimant (a claimant ordinarily resident outside the jurisdiction) may be ordered to give security for costs even if they are temporarily resident within the jurisdiction. The practice is that the resident defendant would apply to the court for such security, and it is within the court's discretion to make such an order.

11. On what grounds can the parties appeal, and what restrictions apply? Is there a right of further appeal? To what extent is enforcement suspended pending an appeal?

Appeals lie as of right or by leave of the court. Section 241(1) of the Constitution of the Federal Republic of Nigeria 1999 (the Constitution) provides circumstances where appeals lie as of right from the High Court to the Court of Appeal, and section 233(2) of the Constitution provides circumstances where appeals lie as of right to the Supreme Court.

Sections 242(2) and 241(2)(c) of the Constitution provide for circumstances where appeals lie to the Court of Appeal from the High Court with leave. Similarly, section 233(3) of the Constitution provides that appeals which are not listed under section 233(2) of the Constitution will be by leave.

The general rule is that an appeal does not act as a stay of execution of the judgment of the court below. Consequently, an appellant would, depending on the stage of the proceedings in the court below, need to apply to the court for an interim order pending appeal. These orders include a stay of execution, an injunction pending appeal, and an order for the stay of proceedings.

12. To what extent can domestic and/or foreign State entities claim immunity from civil proceedings?

Nigerian courts follow the principle of **restrictive state immunity**. That is, foreign states are only immune from legal action when performing sovereign or governmental acts. However, in matters involving **commercial transactions**, as such activities are considered outside the scope of sovereign functions.

13. What procedures exist for recognition and enforcement of foreign judgments?

Enforcement of foreign judgments in Nigeria is governed by statute and common law. The applicable laws under statute are the Foreign Judgments (Reciprocal Enforcement) Act, Cap F35, Laws of the Federation of Nigeria, 2004 (FJREA or the Act); and the Reciprocal Enforcement of Foreign Judgments Ordinance, Cap 175, Laws of the Federation of Nigeria and Lagos 1958 (the 1958 Ordinance).

Under the FJREA, the enforcement of foreign judgments in Nigeria is primarily based on the principle of reciprocity. Section 3 of the Act empowers the Minister of Justice to extend the Act's operation to any foreign country whose courts accord substantially similar treatment to judgments of Nigerian courts. However, since the commencement of the FJREA, the Minister of Justice has not made any order directing that Part 1 of the Act shall apply to the judgments of any foreign country. Consequently, the 1958 Ordinance remains in force while the FJREA remains dormant/inapplicable until such a time that the Minister makes the order under section 3 of the FRJEA.

Pursuant to section 3 and 5 of the Ordinance, judgments of the High courts/superior courts of the following countries are registrable in Nigeria: England, Ireland, the Court of Session in Scotland; Ghana, Sierra Leone, Gambia, Newfoundland, New South Wales and the State of Victoria; and countries which were part of Her Majesty's Dominions (Barbados, Bermuda, Guiana, Gibraltar, Grenada, Jamaica, Leeward Islands, St. Lucia, St. Vincent and Trinidad and Tobago)

To qualify for registration under Section 3(2) of the Ordinance, a foreign judgment must be presented for registration within 12 months of its delivery, unless the Nigerian court grants an extension of time.

Upon registration, the foreign judgment attains the same force and effect as a domestic judgment of the High Court, including all rights of execution and appeal.

An application for registration is made by **motion on notice** before a **High Court** in Nigeria, supported by an **affidavit** deposing to the facts of the judgment and annexing a **certified true copy (CTC)** of the foreign judgment as an exhibit.

The Nigerian court will register a foreign judgment of a reciprocating country where:

- (i) the superior courts of the foreign country acted within jurisdiction;
- (ii) the judgment debtor voluntarily appeared or otherwise submitted or agreed to submit to the jurisdiction of the foreign court;

- (iii) the judgment debtor has been duly served with the court processes;
- (iv) the judgment was not obtained by fraud;
- (v) there is no appeal pending, or there is no right of appeal, and, if entitled, the judgment debtor has not shown any intention of appealing; and
- (vi) the judgment is not in respect of a cause of action, which for reasons of public policy or for some other similar reasons would not have been entertained by the Nigerian courts .

Upon registration, the foreign judgment attains the same force and effect as a domestic judgment of the High Court, including all rights of execution and appeal.

Where a foreign judgment originates from a country not covered by the applicable statute such as the Ordinance, the judgment creditor must seek enforcement under common law. This requires initiating a fresh action in a Nigerian court, treating the foreign judgment as a new cause of action. This is akin to a suit for the recovery of a debt or enforcement of an obligation arising from the judgment.

Arbitration

14. Is the arbitration law based on the UNCITRAL Model Law? If yes, are there any key modifications? If no, what form does the arbitration law take?

Yes. The Nigerian Arbitration and Mediation Act 2023 (the AMA or the Act) is based on the UNCITRAL Model Law. The AMA repealed the Arbitration and Conciliation Act 1988 which was also based on the UNCITRAL Model Law.

While the AMA introduced several modifications, some modifications focus on form rather than the principles of the model law. Other modifications include best practices that have emanated in the arbitration ecosystem since the last amendment of the UNCITRAL Model Law in 2006.

A major modification is that the AMA adds provisions for mediation. This is found in Part II of the AMA. Some of the provisions introduced include the commencement of mediation proceedings (70), suspension of limitation period (section 71), resort to arbitral or judicial proceedings (section 80), immunity for mediators and mediation providers (section 81), application of the convention on international agreements (the Singapore Convention) resulting from mediation, etc.

Another key modification is the recognition of third-party funding by the AMA. Section 62 of the AMA mandates a funded party to notify the other party or parties and the arbitral tribunal in writing. The notice should be made on or before the commencement of the arbitration, at the commencement of arbitration or after the commencement of the arbitration. The AMA is however silent on the effect of non-disclosure.

Furthermore, by Section 59, where parties are silent on the procedure for the appointment of an arbitrator in an international arbitration and no appointing authority is designated, the Director of the Regional Centre for International Commercial Arbitration, Lagos, is the default appointing authority.

While the AMA is a federal law and applies to arbitration throughout Nigeria, there are some state-enacted arbitration laws that govern arbitration where the parties choose the respective state as arbitration seat. These include the Lagos Arbitration Law 2009 and the Delta State Arbitration Law 2022 which are also based on the UNCITRAL Model Law. For this contribution, the discussion of the state arbitration laws will be limited to the Lagos Arbitration Law 2009, given that Lagos is the commercial nerve centre of Nigeria, and the Delta State Arbitration Law, considering that the law is one of the most recent state arbitration laws.

One key modification in the Lagos Arbitration Law is that the Lagos Court of Arbitration has replaced the conventional courts regarding powers to default appointment of an arbitrator. Thus, where parties fail to appoint an arbitrator within 30 days, an application can be made to the Lagos Court of Arbitration to appoint same. Key modifications in the Delta State Arbitration Law 2022 include its recognition of third-party funding, virtual hearings and consolidation.

15. What are the main national arbitration institutions?

The main national arbitral institutions in Nigeria are the Nigerian Institute of Chartered Arbitrators (NICArb) and the Chartered Institute of Arbitrators (UK), Nigeria Branch (CIArb), which are responsible for the training, certification, and regulation of arbitrators in Nigeria.

Others include the Lagos Court of Arbitration (LCA), which provides modern facilities and institutional support for arbitral proceedings, the Lagos Chamber of Commerce International Arbitration Centre (LACIAC) which provide arbitration and other ADR services, the Regional Centre for International Commercial Arbitration, Lagos (RCICAL), established under the auspices of the Asian-African Legal Consultative Organization (AALCO), also serves as an important arbitration centre providing international-standard arbitration services, the Institute of Construction Industry Arbitrators (ICIArb) which provides institutional support for resolving construction disputes. In addition, there is the Maritime Arbitrators Association of Nigeria (MAAN) which promotes maritime arbitration.

16. Are there any restrictions on who may represent the parties to an arbitration?

No. Under the AMA, there is no restriction on who may represent parties in arbitration. Article 5 of the Arbitration Rules in the First Schedule to the AMA provides that a party may be represented or assisted by “persons chosen by it”.

Reference to “persons chosen by it” suggests that there are no restrictions as any person appointed by the parties can represent such parties in arbitral proceedings. It is noteworthy that Article 5 of the Arbitration Rules replaces “legal practitioners” (which was used in Article 4 of the Arbitration Rules in the ACA) with “persons”. This departure clarifies the confusion under the ACA regime regarding the propriety of non-lawyers acting as party representatives in a Nigerian seated arbitration. It does not however settle the debate on whether a lawyer that is not licensed in Nigeria can represent a party in a Nigerian seated arbitration.

Article 6 of the LCA Arbitration Rules 2018 (the Lagos Arbitration Rules) which applies to arbitration where the Lagos Arbitration Law 2009 is the applicable law, also contains similar provisions.

Section 25 of the Delta State Arbitration Law of 2022 does not only permit a party to be assisted by any other “person”, it clarifies that the party may appear and act in person.

17. What are the formal requirements for an enforceable arbitration agreement?

Under the AMA, the major formal requirement for an enforceable arbitration agreement is that it must be in writing. Section 2(3) explains that the writing requirement is satisfied where the arbitration agreement is recorded in any form. The AMA further acknowledges electronic communication of an arbitration agreement as valid. The arbitration agreement can be in the contract from which the dispute emanates or from a separate agreement to arbitrate any dispute arising from the contract. The writing requirement is also satisfied if it is contained in an exchange of statements of claim and defence in which the existence of an agreement is alleged by one party and not denied by the other.

Section 3 of the Lagos Arbitration Law and section 9 of the Delta State Arbitration Law both specify that an arbitration agreement must be in writing. They also recognize electronic documentation of an arbitration agreement as valid. Both laws further agree that an arbitration agreement is in writing if it is contained in an exchange of statements of claim and defence in which the existence of an agreement is alleged by one party and not denied by the other.

18. Will the courts stay litigation if there is a valid arbitration clause covering the dispute? Does the approach differ in this regard if the seat of the arbitration is inside or outside of the jurisdiction?

Yes. Nigerian courts will stay litigation proceedings in favour of arbitration under the AMA unless the arbitration agreement is void, inoperative or incapable of being performed. Section 5(1) of the AMA eliminates the former provision in the ACA that the applicant must show willingness and readiness to proceed with the arbitration. What the AMA requires is that a party applies for stay of proceedings pending arbitration before submitting its first statement on the substance of the action. Meanwhile, the requirement that a stay of proceedings application be brought before the filing of the first statement on the substance of the dispute suggests that the right to apply for stay can be waived.

The AMA also grants the Court the powers to make interim and supplementary orders in the application for stay where necessary. See section 5 (1) of the AMA.

Just like the AMA, the Lagos Arbitration Law and the Delta State Arbitration Law only require a party to file for stay of proceedings before submitting its first statement on the substance of the dispute.

The approach to stay of proceedings is the same for arbitration seated within and outside Nigeria.

19. If the arbitration agreement and any relevant rules are silent, how many arbitrators will be appointed, and who is the appointing authority?

If an arbitration agreement is silent, the number of arbitrators under the AMA is one pursuant to section 6(2). The appointing authority is usually the person or entity designated by the parties. However, by Section 7(3)(b), where the parties are unable to agree on the arbitrator within 30 days after the receipt of a written communication containing a request for the dispute to be referred to arbitration, and there is no designated appointing authority, the appointment shall be by any arbitral institution in Nigeria or by the Court.

Notably, where parties are silent on the procedure for the appointment of an arbitrator in an international arbitration and no appointing authority is designated, the Director of the Regional Centre for International Commercial Arbitration, Lagos, is the default appointing authority. See section 59.

Section 7(3) of the Lagos Arbitration Law provides that where the arbitration agreement is silent, the arbitral tribunal shall consist of a sole arbitrator. Section 14 of the Delta State Arbitration Law also contains similar provision. Parties have the freedom to choose an appointing authority. However, where no appointing authority has been chosen, the appointing authority under the Lagos Arbitration Law shall be the Lagos Court of Arbitration (LCA) while the appointing authority under the Delta State Arbitration Law shall be the Delta State Multidoor Courthouse. The application to the LCA or the Multidoor Courthouse shall be made within 30 days of the disagreement on who should be the sole arbitrator.

20. What rights are there to challenge the appointment of an arbitrator?

There are two instances where parties to an arbitration agreement may challenge the appointment of an arbitrator:

- if circumstances exist that give rise to justifiable doubts as to his impartiality or independence; or
- if he does not possess the qualifications agreed by parties (Sections 8(3) of the AMA).

However, a party would not be allowed to challenge the appointment of an arbitrator for reasons that such party was aware of before the appointment. The AMA permits parties to determine the procedure for the challenge of an arbitrator. Where parties are unable to reach an agreement on the procedure, a party who intends to challenge must, within 14 days of becoming aware of the constitution of the arbitral tribunal or becoming aware that there are justifiable doubts as to the independence or impartiality of the arbitrator, send to the arbitral tribunal a written statement of the reasons for his challenge. Unless the challenged arbitrator withdraws or the other party agrees to the challenge, the arbitral tribunal decides on the challenge. Where the challenge is rejected, the challenging party may, within 30 days of receiving the notice of the decision rejecting the challenge, request either an appointing authority, arbitral institution or the Court to decide on the challenge.

The procedure is the same under the Lagos Arbitration Law and the Delta State Arbitration Law. However, the challenging party must communicate the reason (s) for the challenge to the arbitral tribunal within 15 days.

21. Does the domestic law contain substantive requirements for the procedure to be followed?

Yes. The AMA contains substantive requirements on the procedure to be followed in arbitral proceedings. However, these provisions are subject to the consent of the parties. Section 31(1) of the AMA recognises parties freedom to agree on the procedure to be followed by the arbitral tribunal in conducting arbitral proceedings. The section also provides that where parties have not made specific provisions as to procedure, the Arbitration Rules set out in the First Schedule of the AMA shall apply.

Besides the Arbitration Rules, the AMA contains specific provisions regarding procedure. It provides for the equal treatment of parties and the right to be heard, the conduct of proceedings including rules on statements of claim and defence, hearings, and evidence. It further provides that a tribunal may decide to conduct the proceedings by way of an oral hearing, based on documents and other materials or a combination of both methods.

By Section 31 of the Lagos Arbitration Law, except as otherwise agreed by the parties, the arbitral proceedings shall be conducted in accordance with the procedure contained in the LCA Arbitration Rules. Where the Rules are silent, the arbitral tribunal is permitted to conduct the arbitration in any manner it considers appropriate to ensure a fair hearing.

Under the Delta State Arbitration Law, section 4(a) gives parties the freedom to choose the applicable procedural rules.

22. On what grounds can the court intervene in arbitrations seated inside the jurisdiction?

The AMA provides for grounds in which a court may intervene in arbitral proceedings seated in Nigeria. Such grounds include where the court aims to stay court proceedings pending arbitration (Section 5), appoint arbitrators where parties do not agree on the appointment procedure or appointing authority (Section 7), grant interim measures of protection (Section 19), recognize and enforce interim measures granted by an arbitral tribunal (Section 29), secure the attendance of witnesses before an arbitral tribunal (Section 43), recognize and enforce arbitral awards (Section 57), refuse to recognize or enforce an arbitral award (Section 58), set aside a Nigerian seated arbitral award (Section 55), etc.

Importantly, section 64 of the AMA provides that intervention of the Court in arbitral proceedings shall only be according to the stipulations of the AMA. While this provision has been criticized for being overly restrictive as there may be instances that merit court intervention that are not covered by the AMA, this provision seeks to prevent arbitrary intervention by the court in arbitral proceedings.

The Lagos State Arbitration Law states that an arbitral award shall be recognized and enforced irrespective of the jurisdiction in which it was made. See section 56(1) of the Lagos State Law. However, the unlimited jurisdiction for enforcement is not repeated in the set aside provisions of the Law. This suggests that the power to set aside is limited to arbitrations seated within jurisdiction. Article 4 of the Arbitration Applications Rules of 2009 permits service of Originating Motion out of jurisdiction where the claimant seeks to set aside an arbitration award "made within the jurisdiction". This supports

the inference that, under the Lagos Arbitration Law, an arbitration award can only be set aside when the award is seated within jurisdiction

Notably, section 10 (1) of the Delta State Arbitration Law permits arbitral proceedings to continue and an award to be issued even when the application for stay is still pending before the Court.

23. On what grounds can the court intervene in arbitrations seated outside the jurisdiction?

The AMA in section 1(7) enumerates grounds where Nigerian Courts can intervene in arbitral proceedings seated outside Nigeria. These grounds include where the Court aims to stay court proceedings pending arbitration (Section 5), grant interim measures of protection (Section 19), recognize and enforce interim measures issued by an arbitral tribunal (Section 28), refuse the recognition and enforcement of interim measures issued by an arbitral tribunal (Section 29), secure the attendance of witnesses before an arbitral tribunal (Section 43), and recognize and enforce arbitral awards (Section 57).

24. Do arbitrators have powers to grant interim or conservatory relief?

Yes. The AMA grants arbitrators the power to grant interim or conservatory reliefs where necessary. According to section 20 of the AMA, an arbitral tribunal can order an interim measure where a party requests for same, whether in the form of an award or in any other form at any time before the final award.

The interim measures contemplated in the AMA includes an order to maintain status quo pending the determination of the dispute, an order to take an action or refrain from taking an action that is likely to cause harm or prejudice the arbitral process. Interim measures can also be ordered to preserve assets out of which a subsequent award may be satisfied or preserve evidence that may be relevant to the resolution of the dispute and the preservation of the subject matter of the arbitration itself.

However, the requesting party shall satisfy the tribunal that there is a reasonable chance of success and that an award of damages would not sufficiently remedy the harm sought to be prevented by the order.

Section 21 of the Lagos Arbitration Law and section 38 of the Delta State Arbitration Law contains similar provisions.

25. When and in what form must the award be delivered?

Section 47 of the AMA covers the form and content of the award. The award must be in writing and signed by the arbitrator(s). Where the tribunal consist of more than one arbitrator, the signature of the majority shall suffice provided that the reason for the absence of the other signature(s) is explained. In addition, the award must state the reasons upon which it is based unless the parties agree otherwise, the date it was made, and the seat of the arbitration as agreed or determined. The award must be rendered in the language of the arbitration, usually English for Nigerian seated awards.

By section 45 (1), if the parties to the arbitration agreement settle the dispute during the arbitral proceedings, the tribunal

can, if requested by the parties and agreed to by the tribunal, recognize the terms of settlement as consent award. The consent award must also conform to the form prescribed in section 47.

Section 47 of the Lagos Arbitration Law and section 51 of the Delta State Arbitration Law contains similar provisions.

26. Can a successful party recover its costs?

Yes, a successful party can recover costs. Under article 50 of the Arbitration Rules, costs of the arbitration are usually borne by the unsuccessful party. However, the arbitral tribunal has a discretion and may apportion such costs between the parties as it deems reasonable. This is usually dependent on the circumstances of each case. Cost is usually determined in the final award or any other award.

Similar provisions apply in arbitration seated in Lagos and Delta State pursuant to article 44 the Lagos Court of Arbitration Rules of 2018 and article 18(2) of the Delta State Arbitration Rules of 2022 respectively.

27. On what grounds can an award from an arbitration seated in the jurisdiction be appealed to the court?

Awards made in arbitrations **seated within Nigeria** are generally **final and binding**. An unsuccessful party can only resist the recognition and enforcement of the award or apply to the court to set aside the award on limited grounds, such as where a contracting party lacked the legal capacity to contract, the composition of the tribunal was not in line with the agreement of parties, the award deals with dispute not submitted for arbitration, the award has not yet become binding or has been set aside, etc.

The grounds for setting aside an award in the AMA include where a party to the arbitration agreement was under some legal incapacity, where the arbitration agreement is invalid under the applicable law, where the applicant was not given prior notice of the appointment of the arbitrator, where the award deals with a dispute not submitted to arbitration, and where the award contains decisions on matters which are beyond the scope of the submission to arbitration. Other instances include where the composition of the arbitral tribunal was not in accordance with the agreement of parties, where the Court finds that the subject matter of the dispute is not arbitrable or the award is against the public policy of Nigeria.

28. Can a foreign arbitration award be appealed in the local courts? If so, on what grounds?

Under the AMA, Nigerian courts do not have jurisdiction to review the merits of a foreign award or to sit in appellate capacity over arbitral tribunals seated outside Nigeria. Section 1(7) of the AMA clearly outlines the powers of Nigerian courts in relation to foreign awards and excludes any authority to review the merits or set aside of such awards.

The AMA marks a significant departure from the controversy under the repealed Arbitration and Conciliation Act (ACA), which had left room for conflicting interpretations of the power of the court to set aside foreign awards.

Notably, in *Limak v. Sahelian* [2021] LPELR-56408 (CA), the Court of Appeal held under the ACA, that Nigerian courts could set aside a foreign award. However, this position has been effectively overruled by implication under the new AMA.

In *Hempel Paints South Africa Pty Ltd v. Oil & Industrial Services Ltd* (Appeal No. CA/177/2020, delivered in January 2025), the Court of Appeal applying the AMA, held that Nigerian courts lack jurisdiction to set aside a foreign-seated arbitral award, though it did not expressly overrule *Limak*.

Thus, under the current legal regime foreign awards may only be challenged at the enforcement stage, not appealed or set aside. Grounds for resisting enforcement are limited to those under Section 57 of the AMA (which mirrors Article V of the New York Convention), such as procedural irregularities, excess of jurisdiction, lack of arbitrability, or violation of Nigerian public policy.

29. What procedures exist for enforcement of: (i) awards rendered in arbitrations seated outside of the jurisdiction and (ii) domestic awards?

(i) Foreign Arbitral Awards

Awards rendered in arbitrations seated outside Nigeria are enforceable under the AMA and the New York Convention. A party seeking enforcement must apply to the appropriate High Court by originating motion, supported by- the authenticated original award or a certified copy, the original arbitration agreement or a certified copy, and a certified translation of the award (if not in English).

The application must satisfy the court that the award is valid and not subject to any grounds for refusal under Section 57 of the AMA (eg, incapacity, procedural irregularities, public policy). Once satisfied, the court will recognize and enforce the award as if it were a judgment of the court.

(ii) Domestic Awards:

Domestic awards are enforced under Section 54 of the AMA. A party may apply to the High Court for recognition and enforcement by originating motion, supported by the arbitral award and evidence of the arbitration agreement.

In both cases, enforcement may be resisted on limited grounds, including lack of jurisdiction, breach of natural justice, or public policy considerations.

Similarly, if there is no application to set aside the award (within the statutory period), the court will grant leave to enforce the award, and it may be entered as a judgment of the court.

30. Are foreign awards readily enforceable in practice?

Yes. Foreign arbitral awards are recognised and enforced in Nigeria in accordance with the provisions of the New York Convention. Nigeria is a signatory to the New York Convention, and it forms part of Nigerian Arbitration law as it is recognized in the second schedule of the AMA. The conditions for enforcement includes the following: the country of the party seeking enforcement must be a signatory to the New York Convention, and the dispute must emanate from a legal, commercial relationship.

Alternative dispute resolution

31. Are the parties to litigation or arbitration required to consider or submit to any alternative dispute resolution before or during proceedings?

Yes. In litigation, parties are required to attempt to resolve their disputes using ADR before commencing the action and during proceedings.

(a) Settlement attempts before the filing of an action:

Under the Lagos High Court Rules), the Chief Judge introduced the Pre-Action Protocol (Expeditious Disposal of Civil Cases) Practice Direction No. 2 to promote early resolution of civil disputes through ADR before litigation.

The Protocol requires a prospective claimant to serve a Memorandum of Claim, outlining the basis of the claim, material facts, reliefs sought, and a proposed settlement. The respondent is expected to reply, after which the claimant must make a genuine effort to resolve the matter amicably.

Although parties retain the right to proceed to court if ADR fails, the Practice Direction imposes a strict condition: no originating process will be accepted for filing unless the parties have complied with the pre-action protocol. This reflects the court's commitment to encouraging settlement and improving judicial efficiency.

(b) Settlement attempts after the filing of an action:

Under the High Court Rules, the court is empowered, at the time of filing or at the commencement of a suit, to review originating processes and, where appropriate, refer parties to Alternative Dispute Resolution (ADR). Specifically, Order 5 Rule 8 of the Rules vests the court with discretionary authority in this regard. The Rule provides that all originating processes filed at the Registry shall be screened to determine their suitability for ADR and may be referred to the Lagos Multi-Door Courthouse or any other appropriate ADR institution or practitioner, in accordance with the Practice Directions issued by the Chief Judge.

This provision reflects the court's commitment to promoting the efficient and amicable resolution of disputes through ADR mechanisms, even before substantive proceedings commence.

Similarly, Section 45 of the Arbitration and Mediation Act (AMA) recognises the right of parties to settle their dispute at any stage, including after the commencement of arbitral proceedings. Where parties reach a settlement, they may submit the terms of the settlement to the arbitral tribunal. With the consent of both the parties and the tribunal, the terms may be entered as a consent award. This provision reinforces the legislative intent of the AMA to encourage settlement and preserve party autonomy, even during arbitration.

Reforms

32. Are there likely to be any significant procedural reforms in the near future?

There are strong indications that Nigeria's litigation system is poised for further significant procedural reforms, particularly in the areas of digitalization, case management, and access to justice. Following the adoption of electronic filing and virtual hearings under the Supreme Court Rules 2024, it is anticipated

that many other courts across the country will introduce similar provisions aimed at enhancing efficiency and minimizing procedural delays.

A notable development is the recent launch of the Federal High Court's hybrid e-filing system in the Lagos Division. This pilot initiative is expected to serve as a model for expansion to other judicial divisions nationwide, reflecting a broader shift toward fully digital court operations—where filing, service of processes, and record-keeping are conducted electronically.

At the state level, several jurisdictions—including Lagos, Delta, and the Federal Capital Territory—are actively developing procedural rules and practice directions to entrench electronic case management, e-affidavits, and online dispute resolution (ODR) mechanisms. For example, Delta State's Administration of Civil Justice Law 2022 has already established the legal framework for electronic filing and virtual proceedings, with further refinements anticipated as digital infrastructure improves.

In Lagos State, the Court Management Information System (CoMiS), which currently facilitates e-filing and the submission of e-affidavits, is expected to evolve into a more integrated digital platform that incorporates ADR processes and virtual court sittings.

Collectively, these reforms signal a transformative era for the Nigerian judiciary—one that prioritizes technological innovation, procedural efficiency, and broader access to justice.

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Republic of Congo



Introduction

The Republic of Congo is a civil law country. The legal system is based on the Constitution of 25 October 2015 and Law No. 022-92 of the 20th August 1992 on the organisation of the judiciary in the Republic of Congo, supplemented and amended by Law No 19-99 of 15 August 1999.

The Republic of Congo is also a member of CEMAC and OHADA. The Supreme Court has ultimate jurisdiction for matters that do not fall within the scope of these inter-governmental organisations.

Litigation

1. How are the legal professions organised?

The legal profession is governed by Law No. 026-92 of 20 August 1992 published for the organisation of the legal profession. In order to practise as a lawyer in the Republic of Congo, one must be admitted to the Congo Bar which is contingent on meeting the following conditions:

- having Congolese nationality (subject to any reciprocity agreements that may apply to non-Congolese lawyers); and
- holding a master's degree in law or equivalent legal diploma, and a diploma from the *Ecole Nationale d'Administration et de Magistrature*.

The profession is organised by the Bar Association, which makes sure members abide by the rules governing the profession and takes any necessary disciplinary action. Lawyers admitted to the Bar may appear before any court except for the Supreme Court. They may practise either individually or in a practice structure.

There is no distinction between advisory work (*solicitors or avocat conseil*) and advocacy (*barrister or avocat plaidant*).

Foreign lawyers may only plead in Congo if their country of origin has signed a reciprocity agreement with the Congolese Government allowing Congolese lawyers to plead in that country.

2. How is the court system structured?

The Congolese judicial system is governed by Law No. 19-99 of 15 August 1999, which amends and supplements certain provisions of Law No. 022-92 of 20 August 1992 on the organisation of the judiciary.

The Congo court system is organised as a three-tier pyramid:

• High Courts:

They hear all personal claims and actions relating to movable and immovable property whose capital and income do not exceed 1 million CFA francs and income 300,000 CFA francs, as well as matters of rental and lease (see Article 62 of the above-mentioned law).

They also have jurisdiction in divorce matters, as spouses are given the option of choosing between the High Court and the Magistrates' Court (see Article 63 of the same law).

In criminal matters, the High Court hears cases involving offences punishable by correctional penalties and contraventions brought before them (see Article 64).

• Magistrates' Courts

Magistrates' Courts hear civil cases involving all actions and disputes relating to personal, movable or immovable property in the first instance and on appeal, up to a value of 1,000,000 CFA francs in capital and 300,000 CFA francs in income, annuities (see Article 122).

In matters of divorce, spouses have the possibility of referring the matter to the District Courts (see article 122);

They are also competent in matters of seizure only within the limits of their competence (Cf. article 1233);

Alongside the High Courts, there are courts of exception, namely:

• Commercial Courts

The jurisdiction of these courts is governed by the OHADA Uniform Act on General Commercial Law and Simplified Recovery and Enforcement Procedures.

• Labour Courts

Labour courts are common law judges in first instance in social matters.

They judge individual or collective disputes arising during the employment contract or apprenticeship contract between the worker and his employer, the apprentice and his master.

They also rule on individual disputes relating to collective agreements (see Article 130).

- **Administrative Courts**

They are common law judges of first instance in administrative matters (see Article 82).

- **Juvenile Courts**

They deal with matters concerning minors, such as the legal custody of children born out of wedlock, child support, and offences committed by minors.

- **Military Courts**

They are responsible for military offences, punishable by correctional penalties and related contraventions, as well as military offences punishable by police penalties committed in the exercise of their duties.

- **Courts of Appeal.**

There are five Courts of Appeal throughout the Congolese territory.

However, the courts of appeal hear appeals as a court of last resort against judgments handed down at first instance by the High Courts, Magistrates' Courts, Commercial Courts, Administrative Courts, Juvenile Courts, Military Courts and, in general, judgments handed down at first instance by any court within their jurisdiction for which no special court of appeal is designated by the law (See Article 48).

- **The Supreme Court**

It has jurisdiction in cassation, except in matters falling within the scope of OHADA uniform acts, for which jurisdiction lies with the Common Court of Justice and Arbitration based in Abidjan, Côte d'Ivoire.

- **The Court of Auditors**

It has powers to audit the activities of semi-public organisations, social security and welfare organisations, subsidised organisations and, in general, all organisations, whether incorporated or not, that are subject to its control by law (See Article 9 of Law No. 19-99 of 15 August 1999 amending and supplementing certain provisions of Law No. 022-92 of 20 August 1992 on the organisation of the judiciary).

3. What are the time limits for bringing civil claims?

Time limits vary depending on the type of action and the parties involved:

- the ordinary limitation period for bringing an action for damages in contract is 30 years;
- the ordinary limitation period for bringing an action for damages in non-contractual matters; is 10 years; and
- the limitation period for claims between merchants is five years

Special limitation periods apply for certain types of actions; for example, actions relating to commercial sales are time-barred after two years, to real estate after 10 years, claims for wages after one year and actions for debt recovery after three years.

Furthermore, claims for wages, allowances, commission bonuses and various benefits or allowances representing these benefits are subject to a limitation period of one year from the date on which the wages and wage supplements become due.

Time limits are matters of public policy and cannot be adjusted by contract. Time limits are suspended when a summons is served, an action is brought, or by court order.

4. Are lawyer-client communications privileged?

Lawyers are strictly bound by a duty of confidentiality whether they are advising or defending a client.

Any breach of this obligation may generate civil liability for the lawyer.

Congolese law does not expressly prohibit clients from releasing their lawyers from this obligation.

5. How are civil proceedings commenced, and what is the typical procedure which is then followed?

Civil actions are started in the courts by written petition (*requête*), summons (*assignation*), or even by an oral statement made to the registrar (especially in family matters).

The application must contain the following mandatory information:

- The surnames, first names, occupation, marital status, nationality and domicile of the parties and, where applicable, of the representative;
- The subject matter of the application and the grounds on which it is based; and
- It must be dated and accompanied by twice as many copies as there are defendants involved.

The president of the court shall immediately issue an order setting the date on which the case will be heard.

This order shall contain a notice to the defendant to file their defence with the court registry at least eight days before the hearing.

In practice, however, it is only at the hearing that the conclusions are presented.

The deadline for entering an appearance is 30 days if the defendant lives in the Congo and three months if the defendant is not domiciled or resident in the Congo. These deadlines do not apply to emergency procedures (such as interim relief), for which the court generally deliberates within 15 days. However, in practice, this deadline is sometimes extendable.

The defendant must file his written submissions in defence on the day of the hearing (except in criminal matters where the procedure is essentially oral) and the court receives them during the hearing. There are mandatory conciliation procedures, in particular for opposition to orders to pay, and in divorce and employment disputes.

6. What is the extent of pre-trial exchange of evidence, and how is evidence presented at trial?

In civil matters and for all courts, evidence can be produced in writing, by witness testimony, or in affidavits, bailiff reports, etc.

The Court may also order any measures necessary to establish the truth, such as:

- Investigation at the bar;
- Transportation to the scene; and
- Hearing of a witness.

There is no equivalent to the English law concept of “disclosure” in Congolese law.

A party can ask the court to order the other party to produce evidence.

A request to appoint an expert may be made by the parties or automatically by the court. The court appoints an expert for a specific mission and gives a deadline for filing the report. Evidence must be communicated to the other party when and as the report conclusions are finalised.

In first instance proceedings, new evidence can be produced as long as the case has not been adjourned for deliberations. New evidence can also be produced on appeal, but no new claims can be made. At the Supreme Court level, new exhibits can be produced if it can be shown that they were not available at the time of the first appeal.

7. To what extent are the parties able to control the procedure and the timetable? How long do proceedings last?

The parties do not control the procedure. Once proceedings have commenced, the timetable is set at the discretion of the court and, in practice, this depends on various factors such as case complexity, degree of urgency, and court caseload. However, the parties may end the proceedings at any time by mutual agreement.

It is therefore essential to remember that this is a trial between the parties, and as long as they consider that they have not exhausted all possible arguments, they are free to exhaust all possible arguments at their disposal. It is therefore up to them to indicate that they no longer wish to conclude the case, either for pleadings or for deliberation, so that a judgement can be handed down on a date to be set by the Court, which alone has control over its schedule.

The average length of proceedings is at least six months in the first instance and on appeal, and one year for the Supreme Court. Depending on the factors described above, these periods may be much longer.

8. What interim remedies are available to preserve the parties' interests pending judgment?

There are interim procedures in Congo to protect the interests of the parties whilst waiting for a decision on the merits of the case:

- **Interim proceedings** (*référé*): in all urgent circumstances where speed is essential, or where there are serious difficulties in enforcing a decision or other enforcement order. This procedure does not resolve the substance of the dispute but is limited to taking interim measures, namely:
 - Precautionary seizure;
 - Suspension or cessation of work;
 - Sequestration; or
 - Cessation of disturbance of enjoyment.
- **Ex parte orders** (*ordonnance sur requête*): the courts may order any protective or investigation measures and, more generally, any urgent measures that are not prejudicial to third party rights
- **Interim attachment** (*saisie-conservatoire*): brought under the same conditions as an interim proceeding before a judge of first instance or for petitions, the presiding judge of the small claims court or regional court, or in commercial matters, the presiding judge of the commercial court.

9. What means of enforcement are available?

In the Republic of Congo, enforcement procedures are governed by the new Uniform Act on the Organisation of Simplified Recovery Procedures and Enforcement Measures, adopted in Kinshasa on 17 October 2023 and published in the OHADA Official Journal on 15 November 2023.

This Uniform Act has led to numerous amendments, some of which are purely formal and others substantive. Above all, it has given rise to various innovations to take account of certain developments, case law and certain realities in OHADA countries that had not been included in the initial text. Among these innovations, there are a few that can be considered major reforms. These innovations include:

- The introduction of a preliminary chapter devoted to common provisions and which includes definitions, provisions relating to the form of acts, the meaning of these acts, time limits, etc. This includes, among other things:
 - The introduction of electronic media for acts of conservation and recovery of debts. Subject to meeting certain conditions, electronic media has a value equal to that of paper media;
 - Harmonization of the form of bailiff's acts;
 - Admission of service by electronic means under the conditions set out in the uniform act;
 - The principle of no nullity without text is established for formal defects except if they concern substantial formalities or public order. When nullity is admitted, it will nevertheless be necessary for proof of a grievance to be provided by the applicant for nullity; and

- The modification of the calculation of time limits. Indeed, the new Uniform Act has made a distinction depending on whether the time limit is expressed in days, months or years. Incidentally, Article 1-14 of the said act specifies that:

“When a period is expressed in days, the day which constitutes the starting point and the day of the deadline are not taken into account in the calculation.

When a period is expressed in months or years, it expires on the day of the last month or year which has the same date as the day of the act, event, decision or notification which starts it running; in the absence of an identical date, it expires on the last day of the month.”

- The introduction of provisions specific to the precautionary seizure and seizure and sale of livestock (article 73.1 et seq.).
- The introduction of provisions relating to the seizure of property placed in a safe belonging to a third party (article 152-16 et seq.).
- Extension of the seizure of shareholders’ rights and securities to other negotiable debt securities (Article 236 et seq.)
- The extension of the seizure of claims to claims representing an asset in digital currency (article 153).
- The introduction of provisions specific to the seizure of the business (article 245-1).
- The modification of the time limit for opposing an injunction to pay or return (article 10 which reduced the time limit for opposing to 10 days).
- The obligation to serve the notice of opposition on all parties, on the registry of the competent court and also on the bailiff or enforcement agent, under penalty of forfeiture (which constitutes an innovation) under penalty of forfeiture (article 11).
- The modification of the formalities and the time limit for appeals in matters of opposition to an order for payment or restitution. Indeed, Article 15 of the new Uniform Act requires that an appeal against any judgment rendered following a procedure in opposition to an order for payment to be made by extrajudicial act and within a period of 15 days. However, under the old Uniform Act, an appeal could be lodged by any means and within a period of 30 days.
- The obligation to transmit the file to the Court of Appeal within 10 days in the event of an appeal against a judgment given on opposition (Article 15 cited above), an obligation which did not exist in the old Uniform Act.
- The possibility of requesting the enforceable formula be affixed on the order for payment when a decision is not subject to a suspensive appeal, such as in the following cases:
 - The opposition is declared inadmissible;
 - The notice of opposition is declared null and void; or
 - The court seized on opposition has declared itself or has been declared incompetent.
- The new Uniform Act, through its new Article 49, established a genuine enforcement judge whose prerogatives go beyond those of the interim relief judge since, unlike the interim relief judge, the enforcement judge can order payment of damages.
- For efficiency, the new Uniform Act requires the enforcement judge to rule on any request for a protective measure or forced execution within two months from the date of the appeal;

- Recognition of mediation agreements bearing the enforceable formula under the Uniform Act on Mediation as an enforceable title (Article 33.5).
- The weakening of the immunity from execution of legal entities governed by public law. Indeed, the new Uniform Act gives the possibility to any creditor of a legal entity to have his claim entered in the budget of the debtor legal entity, under compulsory expenditure, in order to obtain payment.

Although it introduced innovations in the means of enforcement, the new Uniform Act retained the means of enforcement provided for in the old Act, namely:

- **Seizure and sale** (*saisie-vente*): any creditor in possession of an enforcement order showing a debt due for immediate payment may have the debtor’s tangible, moveable property seized and sold in order to recover the debt from the sale price
- **Third party debt order** (*saisie-attribution de créances*): any creditor in possession of an enforcement order showing a debt due for immediate payment may have receivables owed by a third party to the relevant debtor seized from that third party
- **Penalty payment** (*astreinte*): creditors who obtain an injunction from a court ordering their debtors to either perform or cease and desist from a particular action may ask the court to combine the injunction with a penalty payable for each day/week/month of delay or non-compliance
- **Property foreclosure** (*saisie immobilière*): this enforcement mechanism is applied as a last resort when the seizure of personal property or receivables has been unsuccessful or insufficient. Previous failure to recover the debt must be authenticated by a bailiff (*huissier de justice*); only then may the creditor initiate foreclosure.

The court may grant a period of grace to the unsuccessful party, if requested.

10. Does the court have power to order costs? Are foreign claimants required to provide security for costs?

The court routinely orders the parties to pay costs. The Court has discretion on the allocation of such costs.

Costs cover lawyers’ and bailiffs’ fees, and all other fees incurred in the proceedings.

It is upon application for the purposes of liquidation of costs that a party brings the matter before the Tribunal for that purpose.

Lawyers’ fees are estimated by the court during the costs hearing. In practice, the fee reimbursements ordered are close to actual fees incurred.

Foreign claimants may be obliged to provide guarantees for the payment of court costs. A *judicatum solvi* guarantee may be required for nationals of countries that do not have a legal co-operation agreement with the Republic of Congo.

11. On what grounds can the parties appeal, and what restrictions apply? To what extent is enforcement suspended pending an appeal? Is there a right of further appeal?

There is a right to appeal. Parties have one month to appeal a first instance decision, which starts to run from the date of the decision if issued after a hearing of all parties, or from the date of notification if by default. The appeal is filed by the unsuccessful party by letter or oral statement transcribed into a register kept by the registrar. No new claims can be made on appeal, except in the case of a claim for damages or where the new claim is an argument in defence against the main claim. An appeal of a first instance decision suspends enforcement of the decision unless the original court ordered immediate enforcement, or if it involves the enforcement of an order.

The appeal fully transfers the case from the lower court to the appellate court, which then has jurisdiction to hear the case and issue a new ruling.

An appeal to the Supreme Court covers points of law only and not of fact. A Supreme Court appeal does not suspend enforcement; a specific application for a stay must be made. If the appeal is successful, the decision is overturned, and the case may be remanded to a new panel of the appeal court for re-hearing. Although the Supreme Court decision should be followed as a matter of principle, in practice the appeal court may deviate from the Supreme Court ruling.

12. To what extent can domestic and/or foreign state entities claim immunity from civil proceedings?

Proceedings can be brought against the Government or public authorities before the judicial or administrative courts. They are immune from enforcement but not jurisdiction.

State-owned companies do not benefit from any immunity.

For foreign entities, any jurisdictional immunity rights that may apply are derived from international agreements on diplomatic or consular relationships.

13. What are the procedures for having foreign judgments recognised and enforced?

In order to enforce foreign decisions, a request must be made to the enforcement judge and the decision in question to be enforced must be final (ie not subject to any ordinary recourse such as the appeal).

In the Republic of Congo, the Regional Court has jurisdiction to grant enforcement orders.

The conditions for recognising and enforcing foreign judgments are governed by international private law and specifically by bilateral agreements. For example, Law No. 05/75 of 12 March 1975 ratifying the legal co-operation agreement between Congo and France provides that for a decision to be recognised in France or in Congo:

- the decision must have been made by a competent court in accordance with the conflicts of law rules of the State in question;

- it must comply with the law of the State where it was issued and no longer be open to appeal;
- the parties must have been properly summonsed to appear, and either represented or declared in default;
- the decision must not be contrary to public policy in the State where it is being enforced;
- there must not have been any decision handed down in the Republic of Congo between the same parties, on the same grounds in respect of the same facts and purpose; and
- there must be no decision either made or pending in a State between the same parties that satisfies the conditions for recognition in the Republic of Congo

The same conditions must be met even if the decision was handed down in a State that has no legal co-operation agreement with the Republic of Congo.

In practice, it is easy to obtain enforcement of a foreign decision in the Republic of Congo.

Arbitration

14. Is the arbitration law based on the UNCITRAL Model Law? If so, does it include any key modifications? If not, what type of arbitration does the law provide for?

The Republic of Congo is a Member State of OHADA (*Organisation pour l'Harmonisation en Afrique du Droit des Affaires* – Organisation for the Harmonisation of Business Law in Africa). The OHADA Treaty was first signed on 17 October 1993 and amended on 17 October 2008. Under the Treaty, the Council of Ministers adopt “uniform acts” that are directly applicable and enforceable in each of the Member States. Arbitration in OHADA Member States is governed by the Uniform Act on Arbitration (the “**UAA**”) adopted on 23 November 2017, replacing the Uniform Act of 11 March 1999.

The UAA is not based on the UNCITRAL Model Law. It was drafted separately but is nevertheless aligned with the fundamental principles of international commercial arbitration and key features of the Model Law.

The UAA applies to both national and international arbitration and governs all arbitration proceedings with a seat in a Member State.

Before the adoption of the UAA, arbitration law was governed by the provisions of the French Civil Code on arbitration, the pre-independence (15 August 1960) provisions of which were applicable in the Republic of Congo.

One of the most important features of OHADA arbitration is the Common Court of Justice and Arbitration (the “**CCJA**”), which serves as both a permanent arbitration tribunal and as a supreme court of arbitration for all OHADA Member States.

It should be noted that the Congo is not a signatory to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 1958).

15. What are the main arbitration institutions at the national level?

The Republic of Congo has created a permanent arbitration centre, the “*Centre de Médiation et d’Arbitrage auprès des Chambres Consulaires du Congo*” (CEMACO), whose mission is to organise and administer conciliation and arbitration procedures in disputes governed by an arbitration clause, an arbitration agreement or a mediation or conciliation agreement.

CEMACO’s role is to promote alternative dispute resolution methods and to improve the business environment. The institution was inaugurated in Congo (Pointe Noire) in November 2015. There is currently a Centre in each consular district of Brazzaville and Pointe-Noire.

At the supranational level, the CCJA, which was created by the OHADA Treaty and is based in Abidjan, in Côte d’Ivoire, can also hear arbitration matters. The CCJA, which is also a supreme court, acts as an arbitration centre and administers proceedings governed by the CCJA Rules of Arbitration. The CCJA is different from other arbitration centres as it is not a private institution but was created and organised by OHADA.

For the CCJA Rules to be applicable, article 21 of the OHADA Treaty stipulates that all or part of the contract must be performed within the territory of one or more Member States, or that at least one of the parties must be domiciled or usually reside in a Member State. According to legal authors, it should also be possible for the parties to refer a dispute to arbitration under the CCJA Rules even if these conditions are not met, if they have provided for this possibility in their arbitration agreement.

16. Are there any restrictions on who may represent the parties to an arbitration?

The Uniform Act does not set any restrictions on who can represent parties in an arbitration matter. They are entitled but not required to instruct a lawyer (article 20 of the UAA).

There are no particular restrictions on parties being represented by foreign lawyers, provided that they comply with local rules (see question 1 above).

17. What are the formal requirements for an enforceable arbitration agreement?

Article 3 of the UAA states that the arbitration agreement must be made in writing or by any other means whereby its existence can be demonstrated. No particular format is required. The UAA also provides that contracts can include an arbitration agreement by reference to a separate document.

In practice, the court will above all seek to identify the parties’ intent to go to arbitration, without necessarily referring to a national law.

18. Will the courts stay litigation if there is a valid arbitration clause covering the dispute? Does their approach differ according to whether the seat of the arbitration is inside or outside the jurisdiction?

Article 13 of the UAA provides that national courts must decline jurisdiction if a dispute that is already in arbitration pursuant to an arbitration agreement is brought before national courts.

If no arbitral tribunal has yet been formed, national courts must nevertheless decline jurisdiction at the request of a party unless the arbitration agreement is manifestly void or inapplicable. Courts cannot decline jurisdiction of their own motion.

This rule also applies when arbitration takes place in a State that is not an OHADA Member State.

Even where the parties have a valid arbitration agreement, however, they can apply to a national court for interim or protective orders if this does not require a review of the case on the merits, provided the circumstances are “clearly shown” to be urgent.

When arbitration takes place in an OHADA Member State, national courts can also intervene in very limited circumstances to assist the arbitration process (see questions 21 and 22 below).

If arbitration takes place in a State that is not an OHADA Member State, the matter can be referred to the Congolese courts if the arbitration award is to be performed in the Republic of Congo and if there is an interest in doing so.

19. If the arbitration agreement is silent, how many arbitrators will be appointed, and who is the appointing authority?

The Uniform Act does not stipulate a specific number of arbitrators if the arbitration agreement is silent on this point. However, it does provide that an arbitral tribunal must have either a sole arbitrator or three arbitrators.

If the parties are unable to appoint one or more arbitrators, they will be appointed by the presiding judge of the Regional Court in civil matters and by the presiding judge of the Commercial Court in commercial matters.

If the request for arbitration is brought before the CCJA and the parties have not agreed on the number of arbitrators, the Court appoints a sole arbitrator unless the dispute seems to justify the appointment of three arbitrators. In the latter case, the parties have a period of fifteen days to appoint the arbitrators (Article 3.1 of the CCJA Arbitration Rules).

20. What rights are there to challenge the appointment of an arbitrator?

Article 8 of the UAA and article 12 of CEMACO’s arbitration rules (if selected by the parties) set out the rules for challenging an arbitrator.

Pursuant to the UAA, arbitrators must notify the parties of “any circumstance that could create a legitimate doubt in the mind of the parties about the arbitrator’s independence and impartiality”. Any disputes will be resolved by the presiding judge of the *Tribunal de grande instance*, as was the case before the UAA came into force, unless the parties have provided for a different procedure for recusal. Decisions cannot be appealed.

Arbitrators may only be challenged for reasons that come to light after their appointment.

Article 12.3 of the CEMACO arbitration rules specifies that the party seeking recusal must present its request for recusal either within 15 days of receipt of the appointment or confirmation of

the arbitrator from the Centre, or within 15 days of the date on which the requesting party was informed of the facts and circumstances presented in support of the request if this occurred later than the date of receipt of such appointment or confirmation from the Centre.

21. Does domestic law contain public policy requirements for the procedure to be followed?

Under the UAA, parties must receive equal treatment and have an opportunity to exercise their rights (Article 9). Arbitrators may not base decisions on grounds raised of their own motion without first giving the parties an opportunity to submit observations (Article 14).

Article 18 of the UAA provides that deliberations are confidential.

The UAA also provides that arbitration cannot last more than six months from the date on which the last arbitrator accepts the terms of reference, unless that period is extended by agreement of the parties or by the competent court (Article 12).

There are no other mandatory provisions under national law relating to arbitration.

22. On what grounds can the court intervene in arbitrations seated inside the jurisdiction?

In principle, where there is an arbitration agreement, the national courts cannot intervene in a dispute until the award has been made.

It is believed that national courts will stay proceedings if an arbitration agreement is legitimately invoked. Courts in Congo have not been known to hinder arbitral proceedings.

Nevertheless, parties may consult the court with jurisdiction in the Republic of Congo in the following circumstances:

- to resolve difficulties encountered with composing the arbitral tribunal, to appoint the sole arbitrator or the third arbitrator (Article 5 and 8);
- to rule on challenges against arbitrators where the parties have not provided for a different procedure (Article 7);
- to extend the deadline for the conclusion of the arbitration at the request of a party or the arbitral tribunal where there is no agreement between the parties to do so (Article 12);
- to order interim or protective measures when urgently necessary ("recognised and reasoned" circumstances), provided the measures do not require a review of the case on the merits (Article 13); or
- to assist the arbitral tribunal, at its request, with the collection of evidence (Article 14)

23. On what grounds can the court intervene in arbitrations seated outside the jurisdiction?

In principle, national courts cannot intervene before an arbitral tribunal seated outside their jurisdiction where there is an arbitration agreement. In addition, any and all issues relating to the composition of the arbitral tribunal and conduct of arbitral proceedings fall under the jurisdiction of the courts of the State of the seat.

24. Do arbitrators have powers to grant interim or conservatory relief?

Although the UAA expressly provides that the arbitral tribunal has the power to order interim measures under Article 14, it also states that interim attachment and court-ordered security remain within the sole jurisdiction of national courts.

25. When and in what form must the award be delivered?

Unless otherwise agreed by the parties, arbitration awards must be made within six months of the date on which all of the arbitrators have accepted their appointment. This period can be extended by agreement between the parties or by the competent court (the Regional Court for civil matters and Commercial Court in commercial matters), following a request made by a party or by the arbitral tribunal (Article 12).

Parties can set special requirements for awards. If they do not, awards are issued by majority decision (for tribunals with three arbitrators), and the grounds must be stated. Awards must be signed by at least two of the three arbitrators.

26. Can a successful party recover its costs?

The Uniform Act makes no provision for cost recovery.

If arbitration is conducted under the aegis of the CCJA, the arbitrator is empowered to award costs.

27. On what grounds can an award from an arbitration seated in the jurisdiction be appealed to the court?

The only remedy against an arbitration award is an application to set aside the award brought before the competent court in the Member State where it was made within one month from the date of service of an enforceable award (Article 25 and 27).

The circumstances in which an application to set aside can be brought are as follows (Article 26):

- the arbitral tribunal ruled despite the lack of an arbitration agreement or in reliance on an invalid or expired agreement;
- the arbitral tribunal was not properly composed;
- the arbitral tribunal did not rule in compliance with its terms of reference;
- the right to be heard (*contradictoire*) was not observed;
- the arbitral tribunal breached a public policy rule of the OHADA Member States; or
- no reasons are given for the award.

Bringing an application to set aside an arbitration award suspends enforcement, unless the arbitral tribunal ordered immediate enforcement. The decision can only be appealed to the CCJA (Article 25 and 28).

This is the only remedy available to parties in national court. Other remedies – third party opposition and an application for a revision of the award – must be submitted to the arbitral tribunal (Article 25).

28. Can a foreign arbitration award be appealed in the local courts?

A foreign arbitration award cannot be appealed to a local court.

29. What are the procedures for the enforcement of: (i) awards rendered in other jurisdictions and (ii) domestic awards?

An arbitration award is final immediately when issued and must be performed in good faith by the parties once it has been served. Enforcement is only necessary if it is not.

To enforce awards made in an OHADA Member State, the UAA requires the parties to obtain an order for enforcement, or *exequatur*, from the competent Member State court (Article 30). In the Republic of Congo, this is the presiding judge of the Regional Court.

The requesting party must produce the original arbitration award, together with the arbitration agreement or copies of these documents meeting authentication requirements and, where necessary, a certified translation into French (Article 31).

Decisions refusing to recognise an arbitration award can be appealed to the CCJA, but decisions granting recognition cannot be appealed (Article 32).

Awards rendered in an OHADA Member State are recognised in other OHADA Member States under the conditions laid down in any applicable international or bilateral agreements or, if none apply, under the conditions set down by the UAA. The Republic of Congo is not a party to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the New York Convention).

For a foreign arbitral award to be recognised and enforced in Congo, it is necessary to produce:

- the foreign award together with the arbitration agreement (an original or copy);
- supporting documents for the initial claims; and
- the recognition request (*exequatur*).

If these documents are not in French, a certified translation must also be provided.

It should also be noted that when recognition and enforcement of a foreign award is requested, appellate proceedings do not suspend enforcement unless the appeal is premised upon an enforcement defence.

30. Are foreign awards readily enforceable in practice?

Once an enforcement order has been obtained, a foreign award is treated like a local decision, following the same rules for enforcement.

In practice, judges readily grant *exequatur* when the above-mentioned requirements are met.

Alternative dispute resolution

31. Are the parties to litigation or arbitration required to consider or submit to any alternative dispute resolution before or during proceedings?

There are mandatory conciliation procedures at the national level, in particular for opposition to orders to pay, and in divorce and employment disputes.

In addition, on 23 November 2017 OHADA adopted a Uniform Act on mediation which is applicable throughout all Member States.

Under article 1 of the Uniform Act on mediation, "mediation may be implemented by the parties (conventional mediation), at the request or invitation of a state court (judicial mediation), of an arbitral tribunal, or of a competent public entity. The mediation may be ad hoc or institutional."

Under article 2, mediation does not apply "to cases in which a judge or an arbitrator, during judicial or arbitral proceedings, attempts to facilitate a settlement directly with the parties."

Lastly, it is worth noting that CEMACO will be establishing Mediation Rules based on the framework of this Uniform Act.

Reforms

32. Are there likely to be any significant procedural reforms in the near future?

The overhaul of all codes has been announced for some time now, and we are still waiting for it. As far as OHADA is concerned, no reforms have yet been announced.

On 29 March 2025, a new law was enacted establishing the profession of bailiff. This repeals the law of 20 August 1992 relating to the profession of bailiff.

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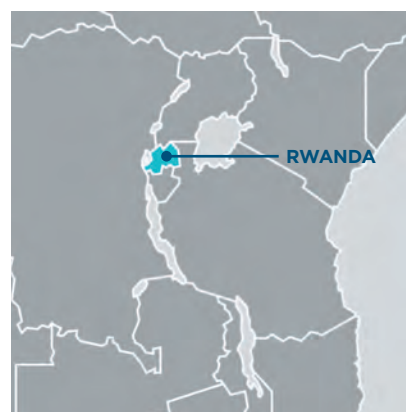
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Rwanda



Introduction

The Rwandan Legal framework is based on the constitution of 2003 revised in 2015 and various organic laws; international treaties and agreements ratified by Rwanda; ordinary laws; orders; equity and custom. The Supreme Court is the highest court of the land.

Rwanda's legal system is largely civil, but has adopted some practices of the common law system.

Litigation

1. What is the structure of the legal profession?

The Rwanda Bar Association which was established in 1997 is charged with *inter alia* ensuring that the rules and principles of the Advocates profession are complied with.

Lawyers in Rwanda assist and represent clients in transactional matters, conciliation/mediation and litigation. They have rights of audience before administrative entities, courts and other decision-making organs.

The requirements for becoming a lawyer include *inter alia*, being a Rwandan national, having obtained at least a bachelor's degree in Law, having a certificate from the Institute of Legal Practice and Development and having passed the bar exam.

Foreign lawyers may be permitted to practice in Rwanda where their national legislation provides for reciprocity and/or subject to international and regional integration agreements to which Rwanda is a party.

2. What is the structure of the court system?

The Rwandan Judiciary is composed of ordinary and specialized courts. The ordinary courts consist of:

- The Supreme Court;
- The Court of Appeal;
- The High Court;
- Intermediate Courts (12 nationwide), and
- Primary Courts (41 nationwide).

The Specialized courts are:

- Commercial Court;
- Commercial High Court;
- Military Court; and
- Military High Court.

The Primary and Intermediate Courts have original jurisdiction in both criminal and civil proceedings. All civil claims exceeding RWF 3,000,000 and Commercial claims with the value from Rwandan Francs (RWF) 5 million but not exceeding RWF 20 million are heard by Primary Courts whereas all other civil matters exceeding RWF 20 million are heard by the Intermediate Courts. It is important to note that any civil claim with a value below RWF 3 million falls under the jurisdiction of the Abunzi Committee (conciliation committees established at the cell and sector levels within the local administrative authority). These claims are heard at first instance by the Abunzi Committee and, on appeal, by the Primary Courts (as the last instance).

In addition, Intermediate Courts have jurisdiction to hear appeals from Primary Courts. While the Intermediate Court has jurisdiction over civil matters, it also has specific chambers to hear administrative claims and labour claims.

The High Court is vested with original jurisdiction in both criminal and civil matters and appellate jurisdiction over the decisions of Intermediate Courts. The High Court has first jurisdiction to hear claims seeking the enforcement of foreign judgments and arbitral awards and authentic instruments issued abroad.

The Court of Appeal has appellate jurisdiction over cases tried by the High Court, the Commercial High Court and the Military High Court. Cases tried by the Court of Appeal cannot be appealed.

The Supreme Court has jurisdiction over applications to review judgements rendered at last instance on the ground that they are vitiated by injustice, subject to the approval of the President of the Supreme Court. However, the Supreme Court may delegate its power to hear such claims to a court higher than the one that rendered the allegedly unjust decision.

The Supreme Court also has exclusive jurisdiction in matters relating to the enforcement or interpretation of the Constitution and trying high ranking officials.

3. What are the time limits for bringing civil claims?

The time limit for civil claims depends on the cause of action, for example:

- Thirty (30) years for civil actions especially those relating to immovable property.
- Five (5) years for divorce, insurance related claims, and for tax matters.
- Two (2) years for labour matters.

4. Are communications between a lawyer and his/her client privileged (ie, protected from disclosure to a court/tribunal and opposing parties)?

Yes, communications between a lawyer and their client are privileged unless the client has waived such confidentiality or if disclosure is required by law.

5. How are civil proceedings commenced, and what is the typical procedure which is then followed?

Civil proceedings are commenced by paying a court fee and then filing submissions (statement of claim) instituting proceedings through the Electronic Filing System (IECMS). After receiving notification of the claim, the defendant must file their statement of defence.

Through the electronic filing system (IECMS), the court registrar schedules a date for the pre-trial (or preliminary) hearing, which is then communicated to the defendant via a court summons. The pre-trial hearing is followed by the main court hearing, which is scheduled immediately after the conclusion of the pre-trial proceedings. It is important to note that, except for urgent applications, all civil cases commence with a pre-trial proceeding before proceeding to the main hearing.

The judge conducts the hearing at the scheduled date and has a timeline to pronounce the decision within one month after hearings are closed or within forty-eight hours in urgent matters. However due to the heavy loads of courts, this timeline might go beyond 30 days. The court cases in commercial matters in practice has an estimation to last between 6 to 9 months from the filing to the conclusion of the proceedings and pronouncement of the ruling. As for the civil cases might be one year to one year and a half.

Appeals are normally submitted within 30 days (or 5 to 15 days for urgent matters).

6. What is the extent of pre-trial exchange of evidence, and how is evidence presented at trial?

Before the trial, parties must submit all their evidence together with their written submissions to give each party enough time for inspection before the pre-trial conference. The admissibility of evidence and other key points of the case are discussed during the pre-trial conference. Documents, notes, submissions, etc. not submitted before the pre-trial conference are not admitted unless they were discovered thereafter and are relevant in the demonstration of the truth.

All types of evidence are admissible, and the presiding judge determines their validity and the weight to be accorded to them. Official documents issued abroad are admissible only if duly legalized in accordance with the law, including legalization by the competent embassy and the Ministry of Foreign Affairs (or accompanied by an apostille, where applicable).

During the trial, the Court may call upon a witness to provide oral testimony. Written testimony in the form of affidavits can also be submitted. The court may summon the person making an affidavit to be cross-examined. The cross-examination of a witness is done through the judge; it is a practice for the parties to address each other and the witnesses through the judge.

Where the court requires the opinion of an expert on a particular subject, it can appoint an expert to provide such opinion. The expert's report is shared with the parties to provide their comments thereon.

7. To what extent are the parties able to control the procedure and the timetable? How quick is the process?

The Court procedure, beginning with the filing of claims through to the execution of judgments, is determined by the relevant procedural laws. The timetable however is made and managed by the courts and is subject to some delays caused by summary procedure claims, requests for adjournment by parties, caseloads, and similar factors.

The court process usually takes at least one (1) year from the date of institution of proceedings. Some cases may however last six (6) months or less depending on the subject matter and the issues in dispute. For summary procedures, the estimated timeline is between one (1) and three (3) months.

8. What interim remedies are available to preserve the parties' interests pending judgment?

Parties may request interim remedies to protect their interests if they can prove that such interests require urgent protection, failing which irreparable or substantial damage/consequences would follow pending the court judgement on the case on merit. There are different interim remedies that a court can grant to parties pending judgment, such as: injunctions; custody or preservation of property that is the subject matter of a claim, suspension of execution of administrative decisions, provisional detention, etc.

Courts normally deliver judgments on such applications within forty-eight (48) hours from the closing of hearings.

9. What means of enforcement are available?

Enforcement of judgments is mainly done through court bailiffs. Court bailiffs execute civil judgement through bailiff orders to the losing party, seizure or auctioning of assets/property of the losing party. Bailiffs are regulated by the ministry of justice and there are subject to judicial oversight.

Sometimes however, depending on the subject matter, government authorities (regulators) will have the power to enforce judgments, for example: the Rwanda Revenue Authority (tax matters), Rwanda Land Management Authority (land matters), Rwanda Development Board (corporate matters), etc.

10. Does the court have power to order costs? Are foreign claimants required to provide security for costs?

Courts have power to order costs only if such costs have been requested by the party in whose favour they are awarded. As per the Civil Procedure Law, a judge may not decide on more than they have been asked to. The judge however has the discretion to determine how much of the requested costs if any should be awarded and the manner in which they are to be paid. The judge considers the court fees and the expenses incurred by that party during the trial, among other factors. The judge's discretion is guided by the evidence presented to support the cost claimed.

Unless the issue is not raised by the interested party during the court proceeding, all foreign claimants must deposit an amount of security (monetary or immovable property located in Rwanda) which is enough to satisfy the costs and damages that might arise from the case, unless:

- a. They are from the East African Community;
- b. Their claim is regarding their property in Rwanda that they have been deprived of;
- c. There is an agreement between Rwanda and their country that exempts their nationals from depositing such security.

11. On what grounds can the parties appeal, and what restrictions apply? Is there a right of further appeal? To what extent is enforcement suspended pending an appeal?

Parties generally have a right to appeal against judgments rendered at first instance. Further appeal is also allowed if the conditions stipulated by law have been satisfied.

Decisions of Primary Courts are appealed before Intermediate Courts and further appeal can be made before the High Court if conditions are met. A decision rendered at first instance by an Intermediate Court will be appealed before the High Court, further appeal can be made to the Court of Appeal if conditions are satisfied.

Judgments rendered at first instance by the High Court, the Commercial High Court and Military High Court are appealed before the Court of Appeal. Cases decided by the Commercial High Court and Military High Court at second instance can be appealed to the Court of Appeal if the conditions are satisfied. Cases tried by the Court of Appeal cannot be appealed.

Decisions made by the Supreme Court at first instance and last instance are not appealable. The Supreme Court may however review its decision when requested by the parties.

As a form of special recourse, once all ordinary remedies of appeal have been exhausted, a party who considers that the judgment is vitiated by injustice may request a review. Such a request for review does not in itself suspend enforcement of the judgment, unless suspension is specifically sought and granted during the proceedings. In general, when an appeal is lodged, the execution of a judgment is suspended unless the court has ordered its provisional execution. The exception is administrative decisions where appeal does not automatically suspend the execution of the decision unless such suspension is separately requested by the concerned party as an interim remedy.

12. To what extent can domestic and/or foreign State entities claim immunity from civil proceedings?

Foreign State Entities can only be sued in Rwanda if they have waived their immunity or expressly submitted to the jurisdiction of Rwandan Courts. Though the Rwandan civil laws do not provide for immunity of foreign entities from civil proceedings, International Laws (which are applied in Rwanda) protect states, their entities and diplomats from being sued in foreign courts. Such immunity may also be provided under a hosting agreement concluded with the Government of Rwanda.

Domestic State Entities cannot claim immunity from civil proceedings in Rwandan courts.

13. What procedures exist for recognition and enforcement of foreign judgments?

Foreign judgments can only be recognized and enforced in Rwanda by a court ruling of the High Court. During the hearing of the proceeding of such case, the High Court ascertains whether:

- the foreign judgment does not comprise an element incompatible with public order and Rwandan law principles;
- the judgment has acquired the force of *res judicata* in accordance with the laws of the country of origin;
- the copy of the judgment fulfils all the conditions necessary for its authenticity in accordance with such laws;
- the rights of defence have been respected.

Exequatur proceedings normally take about one to two months.

Arbitration

14. Is the arbitration law based on the UNCITRAL Model Law? If yes, are there any key modifications? If no, what form does the arbitration law take?

The Arbitration Law (Law No 005/2008 of 14 February 2008 on arbitration and conciliation in commercial matters) is based on the UNCITRAL Model Law. Though most of the provisions are similar to or in line with the provisions of the Model Law, the legislators modified the model law to add the element of reciprocity in the recognition and enforcement of awards and interim measures.

15. In addition to the Arbitration Law, institutional arbitration—such as proceedings conducted under the Kigali International Arbitration Centre (KIAC)—is often governed by the Centre's rules, which are themselves based on the UNCITRAL Model Law and serve to supplement the statutory framework. What are the formal requirements for an enforceable arbitration agreement?

Under article 9 of the Arbitration Act, an arbitration agreement must be written, whether as a clause in a contract or as a separate agreement or in any form of record be it electronic or even by reference in a contract if that clause seeks to make it part of the contract.

An arbitration agreement is also considered to be in writing if it is contained in an exchange of statements of claim and defence

in which the existence of an agreement is alleged by one party and not denied by the other.

16. On what grounds can the court intervene in arbitrations seated outside the jurisdiction?

The court may intervene to grant interim measures when requested by a party to the arbitration. These measures should not be contrary to the arbitration agreement.

17. Can a foreign arbitration award be appealed in the local courts? If so, on what grounds?

No. Arbitral awards are final and binding upon the parties. However, the Court may, upon the request of the parties to the arbitration, set aside an award if:

- a party to the arbitration agreement was under some incapacity; or
- the said agreement is not valid under the law to which the parties have subjected it to or, failing any indication thereof, under Rwandan Law; or
- 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 their case; or
- 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, provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, only that part of the award which contains decisions on matters not submitted to arbitration may be set aside; or
- the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless such an agreement is in conflict with provisions of the Rwandan Law from which the parties cannot derogate, or failing such agreement, was not in accordance with the Rwandan Law; or
- the court finds that the subject-matter of the dispute is not capable of settlement by arbitration under Rwandan Law; or
- the award is in conflict with the public security of the Republic of Rwanda.

18. What procedures exist for enforcement of awards rendered in arbitrations seated outside of the jurisdiction?

Foreign Awards are recognized and enforceable in Rwanda by a decision of the High Court depending on reciprocity in enforcement of awards.

Common civil procedure is followed for the institution of proceedings.

19. Are foreign awards readily enforceable in practice?

Yes. As long as it went through the recognition procedure before the High court.

Enforcement may only be refused on the grounds provided by the law (same grounds provided in art. 36 of the UNCITRAL Model Law).

Alternative dispute resolution

20. Are the parties to litigation or arbitration required to consider or submit to any alternative dispute resolution (ADR) before or during proceedings?

The law does not require parties to arbitration to consider or submit to any ADR mechanisms before or during proceedings. The parties may opt to submit to the ADR mechanisms if they so wish or if it is so provided in their agreement.

Under recent developments and the judiciary's strategic plan, during pre-trial meetings the court clerk must propose mediation—either conducted between the parties, guided by the court, or by a professional mediator at the parties' request. If the parties opt for mediation, the proceedings are suspended until the results of the mediation. If the parties settle, the agreement is submitted to the court, which will issue an order noting that the case was concluded by mediation and will close the case. The same process may also occur during the hearing.

ADR is optional for parties in commercial litigation but mandatory for labour cases.

Reforms

21. Are there likely to be any significant procedural reforms in the near future?

At present, there are no significant procedural reforms anticipated in the near future.

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*2025 edition is based on previous editions drafted and updated by **Richard Mugisha** from **Trust Law Chambers**

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São Tomé and Príncipe



Introduction

The São Toméan legal framework is based on the Constitution of 1990 and on the Civil Code, which is derived from Portuguese law.

The courts are independent of political power and have a pyramid structure, with the Supreme Court at the apex.

Litigation

1. What is the structure of the legal profession?

In São Tomé and Príncipe (“STP”), lawyers offer legal counsel directly to clients and represent them in judicial proceedings. To be admitted to the legal profession and become a member of the Bar Association, an individual must:

- be a citizen of STP;
- possess a law degree;
- be in full enjoyment of civil rights; and
- hold no criminal convictions or record of dishonorable conduct.

Foreign nationals holding law degrees from foreign universities and possessing permanent residency in STP may apply for registration with the Bar Association under the same conditions as the nationals, provided that their country of origin grants reciprocal privileges to Santomean lawyers.

2. What is the structure of the court system?

Under law No. 7/2010, of 6 August the STP judicial system is composed of two instances/levels:

- the Courts of First Instance; and
- the Supreme Court of Justice.

The courts of First Instance operate across various regions, including the districts of Água Grande (includes the districts Mé Zochi, Cantagalo, Lobata e Caué); Lembá and the island of Príncipe.

These courts have jurisdiction over civil, criminal and labor disputes.

The Supreme Court of Justice is organized into two chambers: one responsible for civil, labor, administrative and tax cases, and another dedicated to criminal matters.

The Supreme Court of Justice has the authority to:

- hear appeals from decisions issued by the First Instance Courts;
- adjudicate cases involving high-level officials, including members of Parliament, judges, prosecutors and administrative authorities;
- Rule on jurisdictional disputes between different courts or divisions; and
- Review and decide on the recognition of foreign judgments and arbitral awards.

3. What are the time limits for bringing civil claims?

Variable statutory limitation periods apply to civil claims under STP law. The general statutory limitation period available to civil claims is 20 years. However, other periods apply to specific subject-matters such as annual perpetual rents, periodically renewable instalments, conventional or legal interests, companies’ dividends and alimony. The way these periods are calculated will also vary depending on the subject-matter/kind of liability at stake. These are substantive law issues.

4. Are communications between a lawyer and his/her client privileged (ie, protected from disclosure to a court/tribunal and opposing parties)?

Yes. Under the Bar Association Law, a duty of confidentiality exists between a lawyer and its client. This duty may only be waived when disclosure is essential to safeguard the rights, interests or dignity of either the client or the lawyer.

5. How are civil proceedings commenced, and what is the typical procedure which is then followed?

Civil proceedings are initiated once the Statement of Claim (“SoC”) is filed, ie when it is received by the Court. A formal examination by the Court of the underlying formal requirements is made and service to the Defendant follows.

The SoC must contain the following elements: indication of the competent Court and full identification of the parties (name and address), the facts giving rise to the dispute and underlying legal grounds, claims and relief sought (including interest). The Claimant must file all its documentary evidence, in or translated into Portuguese with its SoC. Nonetheless and within certain timings, new documents may be filed later on in proceedings.

As a rule, the Defendant will be granted 20 (twenty) days from the date the SoC is served to it, to file its Statement of Defence ("SoD"). The SoD must indicate which facts alleged in the SoC the Defendant denies, which facts the Defendant admits and which facts it is unable to admit or deny (and the reasons behind this).

The Defendant may, in general terms, bring a counterclaim against the Claimant if the cause of action is based on the same grounds of the SoC. Set-off is also allowed, in general terms, provided the underlying legal requirements are met. If a counterclaim is filed, the Claimant will be allowed to respond to it within 20 (twenty) days from the date it is served notice thereof.

As occurs with the SoC, with its SoD the Defendant must file all its documentary evidence in or translated into Portuguese.

Parties are generally allowed to file Joinders and Rejoinders.

Further to this, parties may, under certain circumstances and within certain deadlines, file additional written statements, modify their claims or the causes of action throughout proceedings, subject to certain limitations.

After the parties have finished exchanging their written pleadings, the Court may convene a pre-trial hearing to, amongst other things, allow parties to discuss and settle the case.

If no settlement is attained at this stage and the court does not find that it has enough evidence to enter into a summary judgment or there are no procedural grounds on which to dismiss the case, it will set a date for the trial hearing.

After the trial hearing is held (where parties will be allowed to question their witnesses and offer final factual and legal arguments), the court will issue a Judgment, which may be challenged by way of appeal.

6. What is the extent of pre-trial exchange of evidence, and how is evidence presented at trial?

As flows from 5) above, any documents that a party intends to rely upon must be submitted with their written submissions.

Should the documents not be included with the initial submissions, they may still be submitted at any point prior to the conclusion of the trial, subject to the court's authorization – which, in practice, is routinely granted. However, unless the submitting party can demonstrate that earlier submission was not reasonably possible, a procedural fine may be imposed.

Regarding witness testimony, the standard procedure involves oral evidence presented during trial. Testimony given on or on behalf of a party, along with any supporting documents introduced, is recorded as evidence.

7. To what extent are the parties able to control the procedure and the timetable? How quick is the process?

Although the law provides for precise timelines for parties and the Court to render pleadings and/or decisions/judgments, only the ones imposed on parties are binding in practice. Hence, it is not possible to foresee how long a case will take to be ruled on in definite before STP Courts; this said, it can be expected that at a first instance level, cases take 3 (three) years to be ruled on and an additional 2(two) years for appeals to be decided.

8. What interim remedies are available to preserve the parties' interests pending judgment?

At any stage of the process, the court may, upon application by a party, grant interim relief to safeguard that party's interests pending final judgment.

A range of interim measures may be requested, including both specified remedies, such as provisional alimony, restitution, temporary possession of assets, or unspecified provisional remedies which typically include court orders compelling or restraining certain actions or requiring the delivery of movable or immovable property that is subject of the dispute.

In practice, however, courts often take a considerable amount of time to adjudicate such applications, which may compromise the effectiveness of the relief sought.

9. What means of enforcement are available?

According to the STP Code on Civil Procedure, parties may only forego ordinary civil judicial proceedings and commence enforcement proceedings directly based on the following enforcement titles:

- Judicial or Arbitral Awards (always considering that foreign judgements, of whatever nature, are always subject to prior recognition by STP State Courts);
- Documents which have been recorded or authenticated by a notary public that constitute or comprise the recognition of an obligation;
- Private documents acknowledging debt signed by the debtor where the signature has been recognized by a notary public;
- Other titles/documents to which directly enforceability is granted by means of express and special legal provisions.

In no such enforceable title is available, then, a declaratory claim aimed at having a court rule on the effective existence of the debt must first be filed.

If an enforcement title is available, then it is possible to resort immediately to enforcement proceedings.

Santoméan law provides that the principal methods of enforcement include:

- An order for the payment of a monetary sum;
- Compulsory delivery of assets; and
- Enforcement of a specific act.

10. Does the court have power to order costs? Are foreign claimants required to provide security for costs?

The court has discretionary authority to award costs related to the proceedings, including incidental expenses, and may determine both the responsible party and the extent of the payment.

Once the decision on costs is communicated, the parties have the right to lodge a complaint on same.

In determining costs, the court considers a range of factors, such as the duration and complexity of the proceedings.

Foreign claimants are not required to provide security for costs.

11. On what grounds can the parties appeal, and what restrictions apply? Is there a right of further appeal? To what extent is enforcement suspended pending an appeal?

The right to appeal is constitutionally protected, and parties generally have the right to challenge decisions rendered by first instance courts

The Code on Civil Procedure Code outlines two categories of appeal: ordinary and extraordinary appeals.

As a rule, filing an appeal does not suspend the effect of the lower court's decision unless such suspension is expressly provided for under the Code on Civil Procedure Code.

12. To what extent can domestic and/or foreign State entities claim immunity from civil proceedings?

States, be them foreign or local, are generally not exempt from civil litigation. However, certain domestic entities are not subject to the jurisdiction of civil courts; instead, they fall under the authority of administrative courts, which hold specific jurisdiction for such matters.

13. What procedures exist for recognition and enforcement of foreign judgments?

The Code on Civil Procedure Code expressly provides that without prejudice to what is foreseen in International Treaties and Conventions to which STP is a party to, no foreign judgment/award may produce effects in the territory without prior review by the STP courts. As a consequence, it falls to the Supreme Court to confirm that:

- There are no doubts as to the judgment's authenticity;
- There is evidence to the fact that the relevant judgment has already transited in rem according to the law of the country of its issuance;
- There is evidence that the judgment was rendered by a court with jurisdiction to rule the relevant case as per the STP's conflict of jurisdiction rules;
- The resolution of the same dispute is not pending with the STP courts;
- No final and binding ruling has been rendered by STP courts on the very same matter;

- There is evidence that the Defendant was duly summoned to the proceedings;
- The judgment contains no decisions contrary to the STP principles of public policy;
- Having been rendered against an STP party, the judgment contains no decisions offensive of the STP private law (should this law be applicable law to the situation according to the STP conflict-of-law rules).

The request for recognition must be filed alongside a copy of the Judgment to be reviewed, certified by the Court of origin stating that it is final and binding together with a translated version of same into Portuguese language.

Only after the Judgement/Award has been reviewed may enforcement proceedings be instituted with the STP Courts.

Arbitration

14. Is the arbitration law based on the UNCITRAL Model Law? If yes, are there any key modifications? If no, what form does the arbitration law take?

Arbitration in STP is governed by Law no 9/06 of 02 November which applies to both domestic and international arbitration. While it is not based on the UNCITRAL Model Law, it draws heavily from Portugal's former arbitration legislation.

Although arbitration practice in STP remains in its early stages, the country has taken significant steps toward international integration – it signed the ICSID Convention in 1999, which was ratified in 2013 and the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards which entered into force in the country, on February 2013.

More recently, through Decree-Law No 26/2020 of 14 December, the Arbitration Centre of the Chamber of Commerce, Industry, Agriculture and Services was established. Although it operates as an independent institution, it actively promotes the use of institutional arbitration as a mechanism for dispute resolution. This marks a significant step toward the acceptance and development of arbitration as a legitimate and increasingly recognized method of dispute resolution.

15. What are the formal requirements for an enforceable arbitration agreement?

According to the Santomean Civil procedure Code and the Arbitration Law, parties must formally agree in writing to resolve current or future disputes through arbitration.

The definition of a written agreement includes documents signed by the parties, or communications exchanged via letters, telex, fax or other forms of telecommunication. The arbitration clause may be stated directly in these documents or referenced in another document that contains the arbitration terms.

The arbitration agreement should clearly outline which types of disputes are subject to arbitration.

The Arbitration Law further provides that disputes involving non-transferable rights cannot be settled through arbitration.

16. Will the courts stay litigation if there is a valid arbitration clause covering the dispute? Does the approach differ in this regard if the seat of the arbitration is inside or outside of the jurisdiction?

Once the parties have agreed to resort to arbitration, the intervention of the judicial Court is limited to those instances set forth in the Arbitration law aimed at assisting the arbitration proceedings. In the event, however, parties lodge judicial proceedings in breach of an arbitration agreement, the Defendant may rely on the latter and request that the proceedings be dismissed accordingly.

17. On what grounds can the court intervene in arbitrations seated outside the jurisdiction?

In certain cases, courts in STP may provide temporary relief to support arbitrations conducted abroad. This can include protective measures such as freezing orders or directives aimed at securing assets or preserving evidence located within the country, even though the arbitration itself is seated outside the jurisdiction.

18. Can a foreign arbitration award be appealed in the local courts? If so, on what grounds?

When an arbitral award qualifies as “international” under article 30, it generally cannot be appealed before Santomean courts. An exception applies only if the parties have explicitly agreed to allow appeals and have clearly defined the procedural framework for such appeals.

In contrast, for domestic arbitration, Santomean law permits a party to challenge an award through annulment under specific circumstances, namely:

- the subject matter of the disputes is not legally arbitrable under Santomean legislation;
- the award fails to provide reasoning, lacks the required number of arbitrator signatures.

19. What procedures exist for enforcement of awards rendered in arbitrations seated outside of the jurisdiction?

São Tomé and Príncipe joined the New York Convention, which governs the international recognition and enforcement of arbitral awards. The Convention became legally binding in the country in February 2013.

Although no specific domestic legislation has been adopted to implement it, the Convention is directly applicable and serves as the legal framework for enforcing foreign arbitral awards in the country.

Where the Convention does not apply, foreign arbitral awards are subject to recognition proceedings under the Code on Civil Procedure.

20. Are foreign awards readily enforceable in practice?

With the New York Convention in effect, Santomean courts are expected to recognize and enforce awards issued in other member states. However, practical challenges may arise due to limitations within the judicial system, including limited familiarity among judges with international arbitration procedures. These factors could lead to delays and inconsistencies in enforcement.

Alternative dispute resolution

21. Are the parties to litigation or arbitration required to consider or submit to any alternative dispute resolution before or during proceedings?

In both instances, there is no statutory obligation to engage in alternative dispute resolution prior to or during legal proceedings, unless the parties have expressly agreed to do so.

Reforms

22. Are there likely to be any significant procedural reforms in the near future?

The Government of STP has outlined a comprehensive legal reform agenda, which includes revisions to the Civil Procedure Code, Labor Code and Commercial Code.

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Senegal



Introduction

Senegal is a civil law country. The legal system is based on the 2001 Constitution (as amended). Senegal is also a member of OHADA, WAEMU (UEMOA) and ECOWAS (CEDEAO). For matters that do not fall within the scope of these inter-governmental organisations, the Supreme Court has ultimate jurisdiction.

Litigation

1. How is the legal profession organised?

The legal profession includes judges and law clerks – government employees regulated by specific laws and regulations – and court officers (*auxiliaires de justice*), a category that comprises lawyers, bailiffs and experts.

The profession of lawyer in Senegal is governed by the legal framework set out in Regulation No. 05/CM/UEMOA of 25 September 2014 on the harmonisation of the rules governing the profession of lawyer within the West African Economic and Monetary Union (UEMOA), Law No. 84-09 of 4 January 1984 creating the Bar Association (as amended by Laws No. 87-30 of 29 December 1987 and 2009-25 of 8 July 2009), and the Internal Rules of the Senegalese Bar Association. The organisation of the judicial system in Senegal is defined in Law No. 2014-26 of 3 November 2014 (as amended).

In order to practise as a lawyer in Senegal, a person must satisfy certain conditions, and in particular be:

- a national of a UEMOA member state
- at least 24 years old
- in possession of a completion of training certificate
- of good character

The profession is organised by the Bar Association, which ensures member compliance with the rules of the profession and takes all necessary disciplinary action.

Lawyers have the right to appear before courts, disciplinary bodies and arbitral tribunals in all matters and to represent their clients with no territorial restrictions.

2. How is the court system structured?

The Senegalese court system is organised as a three-tiered pyramid:

- The courts of original jurisdiction are the general courts and the regional courts established by Law No. 2014-26 of 3 November 2014:
 - General Courts (*tribunaux d'instance*) are the ordinary courts of original jurisdiction in all matters not specifically attributed to other courts. They are also competent to interpret and assess the legality of decisions taken by administrative authorities in connection with the cases before them.
 - Regional Courts (*tribunaux de grande instance*) have jurisdiction for all matters not within the jurisdiction of the General Courts. They are also competent for administrative and fiscal matters, and to interpret and assess the legality of all administrative decisions in the course of proceedings brought before them. Regional Courts serve as appellate courts for decisions rendered by the General Courts.
- The Courts of Appeal hear appeals against decisions issued by Regional Courts.
- The highest courts are the Supreme Court, the Court of Auditors, and the Constitutional Court. The Supreme Court hears appeals against final decisions rendered by all lower courts in all matters that are not covered by OHADA, UEMOA or ECOWAS law.

There are also specialised courts with special jurisdiction over juvenile and military matters, employment disputes, and commercial matters.

Commercial courts hear disputes over obligations and transactions between traders within the meaning of the Uniform Act on General Commercial Law, between shareholders of commercial companies or economic interest groupings, between all parties over acts carried out in a business capacity, and insolvency proceedings.

The commercial courts have jurisdiction of first and last resort over claims of up to XOF 25 million, and in the first instance for larger amounts (or where the amount in dispute is undetermined). Decisions rendered by the commercial courts are appealed to the competent commercial chamber of the appropriate Court of Appeal.

3. What are the time limits for bringing civil claims?

The ordinary limitation period for bringing civil claims is ten years.

Limitation periods vary, however, depending on the type of action and the parties involved. For example, the time limit for obligations involving ongoing performance (eg rent, arrears, interest) is five years from each maturity date. For sales, the limitation period between traders is two years.

4. Are lawyer-client communications privileged?

Letters, information, conversations, and documents exchanged between a lawyer and client are legally privileged.

A lawyer is the client's natural confidant. The lawyer's professional duty of confidentiality is absolute and unlimited in time. It covers everything related to advising and advocacy, irrespective of the type of medium used.

5. How are civil proceedings commenced, and what is the typical procedure which is then followed?

Civil and commercial proceedings are instituted by summons unless the parties appear voluntarily.

The summons must state the court with jurisdiction, the subject matter, and a summary of legal and factual arguments.

The interval between service of the summons and the date of the first hearing is 5 days for parties domiciled where the relevant court sits, 10 days for those domiciled elsewhere but in the same jurisdiction, and two months for parties domiciled in Europe.

6. What is the extent of pre-trial exchange of evidence, and how is evidence presented at trial?

There is no equivalent to the common law concept of disclosure.

The only types of evidence allowed by law are written evidence, testimony, rebuttable presumption, confession, and oath.

All types of evidence can be submitted in commercial matters, but in civil matters only written evidence may be admitted.

During the preparatory phase it may become apparent, based on the circumstances of the case, that one of the parties, a witness, or a third party is in possession of documents or some other relevant piece of evidence. If so, the case management judge or the court can order this evidence produced (unless there is a legitimate barrier to doing so) within a reasonable amount of time either at the request of a party or of its own motion.

The court may appoint an expert at the request of a party and/or of its own motion.

7. To what extent are the parties able to control the procedure and the timetable? How long do proceedings last?

Civil proceedings are a matter for the parties. The case management judge (*juge de la mise en état*) ensures that the procedure is followed and sets any time limits necessary for investigating the case, taking into account its nature, urgency and complexity. The judge may, in consultation with the parties, set a timetable for pre-trial preparation. In all cases, there is a 4-month limit on the preparatory phase, which can only be extended for serious and duly substantiated reasons.

8. What interim remedies are available to preserve the parties' interests pending judgment?

All of a debtor's assets are subject to protective remedies, even if assets are held by third parties, unless they are declared unseizable. Protective measures can include the freezing of the debtor's assets, or seizure of a bank account or other receivables.

The debtor may also ask the court to cancel interim remedies or make them dependent on the other party's payment of a deposit, bank guarantee or other security.

9. What means of enforcement are available?

The enforcement measures available in Senegal are those provided for in the OHADA Uniform Act Organising Simplified Recovery Procedures and Measures of Execution. The principal measures are:

- **Seizure and sale** (*saisie-vente*): any creditor in possession of an enforcement order showing a debt due for immediate payment may have the debtor's tangible, moveable property seized and sold in order to recover the debt from the sale price.
- **Third party debt order** (*saisie-attribution de créances*): any creditor in possession of an enforcement order showing a debt due for immediate payment may have receivables owed to the relevant debtor by a third party seized from that third party.
- **Penalty payment** (*astreinte*): creditors who obtain an injunction from a court ordering their debtors to either perform or cease and desist from a particular action may ask the court to combine the injunction with a penalty payable for each day/week/month of delay or non-compliance.
- **Property foreclosure** (*saisie immobilière*): this is a procedure of last resort when the seizure of personal property or of receivables has been unsuccessful or insufficient. The failure to recover the debt must be authenticated by a bailiff (*huissier de justice*); only then may the creditor initiate foreclosure.

There is a new OHADA Uniform Act on Simplified Recovery Procedures and Enforcement Measures (17 October 2023) that simplifies and streamlines certain enforcement procedures in all OHADA Member States.

10. Does the court have power to order costs? Are foreign claimants required to provide security for costs?

According to the Senegalese Code of Civil Procedure, "the unsuccessful party bears the costs". Costs include procedural costs and fees owed to the State, the court, bailiffs or counsel.

When filing a complaint, both Senegalese and foreign claimants must pay a sum to the court registrar that is sufficient to cover State fees and fixed-rate registration duty.

If the defendant so requests, a foreign claimant from a country without a judicial cooperation agreement with Senegal must deposit an amount as a personal guarantee of the future payment of any damages awarded against the claimant. The amount of the guarantee is set by the court.

11. On what grounds can the parties appeal, and what restrictions apply? To what extent is enforcement suspended pending an appeal? Is there a right of further appeal?

Any party not satisfied with a first instance decision may appeal it to a higher court. Parties have one month to lodge an appeal, and the time limit starts to run from the day on which the decision is handed down (after a hearing of all parties). If the first instance decision was a default judgment, the one-month period starts, for the defendant, on the day an action to have the judgment set aside (*opposition*) can no longer be filed, and for the claimant on the day the default judgment is handed down.

Appeals are brought via a bailiff's instrument summoning the parties to a fixed-date hearing. The appellant must remit the notice of appeal to the registrar and ask to have the case placed on the docket no later than the day before the hearing.

Appeals suspend the enforcement of the lower court decision unless the court has ordered immediate enforcement. If no party has requested immediate enforcement or if the court has not ruled on such a request, immediate enforcement can still be sought as part of the appeal by simple request once all parties have appointed counsel, or in all other cases by way of an urgent summons.

New claims cannot be made on appeal unless they seek to offset related claims or where the new claim is an argument in defence against the main claim.

Appellate decisions can be appealed to the Supreme Court. The Supreme Court considers points of law and not of fact, and the enforcement of the lower court's decision is not suspended. If an appeal to the Supreme Court is successful, the case is remanded to a new court of appeal for a new hearing in full. Although in principle, the court of remand is not required to abide by the Supreme Court's decision, in practice it generally does so.

12. To what extent can domestic and/or foreign State entities claim immunity from civil proceedings?

Where a party with immunity from jurisdiction under international agreements on diplomatic or consular relationships has been summoned in a civil, commercial or employment case, the party's immunity may be acknowledged by the public prosecutor, without that party being required to appear.

Enforcement and conservatory measures cannot be put into effect against persons with immunity from enforcement.

The country claiming jurisdictional immunity must involve the Foreign Ministry of the host country in this process.

State-owned or semi-public companies do not have jurisdictional immunity.

13. What are the procedures for having foreign judgments recognised and enforced?

In Senegal, decisions rendered by foreign courts are enforceable if they meet the following conditions:

- the decision was made by a court with jurisdiction under Senegalese law;

- according to Senegalese conflict of law rules, the foreign court applied the law governing the dispute;
- the decision is final and enforceable in the country of origin;
- the parties were properly summoned, represented or declared in default;
- the decision does not breach Senegalese public policy or conflict with a *res judicata* Senegalese court decision.

The enforcement order (*exequatur*) is made by the presiding judge of the Regional Court in the jurisdiction where enforcement is sought. The presiding judge merely verifies that the foreign decision complies with the above-mentioned conditions.

If so, *exequatur* is easy to obtain in practice.

Arbitration

14. Is the arbitration law based on the UNCITRAL Model Law on International Commercial Arbitration? If so, does it include any key modifications? If not, what type of arbitration does the law provide for?

Senegal is a Member State of OHADA (Organisation for the Harmonisation of Business Law in Africa). The OHADA Treaty was first signed on 17 October 1993. Under the Treaty, the Council of Ministers adopts "uniform acts" that are directly applicable and enforceable in each of the Member States.

Arbitration in the OHADA Member States is governed by the Uniform Act on Arbitration (the "**UAA**") adopted on 23 November 2017. The UAA is not based on the UNCITRAL Model Law. It was drafted separately, but nevertheless abides by the fundamental principles of international commercial arbitration and the essential characteristics of the UNCITRAL Model Law.

The UAA applies to both national and international arbitration and governs all arbitration proceedings seated in a Member State.

Prior to the adoption of the UAA, arbitration law in Senegal was governed by the Code of Civil Procedure. All provisions that were similar or contrary to the UAA have since been repealed.

One of the most important features of OHADA arbitration is the Common Court of Justice and Arbitration (*Cour Commune de justice et d'arbitrage*) (the **CCJA**), which acts as both a permanent arbitral tribunal and the supreme court of arbitration for all OHADA Member States.

15. What are the main arbitration institutions at the national level?

The main national arbitration institution in Senegal is the Chamber of Commerce (*Chambre de Commerce, d'Industrie et d'Agriculture* (CCIAD)), which sits in Dakar.

It specialises in disputes between companies.

At the supranational level, the CCJA, which was created by the OHADA Treaty and is based in Abidjan, in Côte d'Ivoire, can also hear arbitration matters. The CCJA acts as an arbitration centre and administers proceedings governed by the CCJA Rules of Arbitration; it also serves as a supreme court. The

CCJA is different from other arbitration centres because it is not private, having been created and organised by OHADA.

Under article 21 of the OHADA Treaty, access to CCJA arbitration is contingent on all or part of the contract at issue having been performed in the territory of one or more Member States, or at least one of the parties being domiciled or habitually resident in a Member State. According to legal authors, arbitration under the CCJA Rules should also be possible even if these conditions are not met, if such is the expressed will of the parties in their arbitration agreement.

16. Are there any restrictions on who may represent the parties to an arbitration?

The UAA does not set any restrictions on who can represent parties in an arbitration. They are entitled but not required to instruct counsel (Art. 20 of the UAA).

17. What are the formal requirements for an enforceable arbitration agreement?

Article 3-1 of the UAA states that the arbitration agreement must be made in writing or by any other means whereby its existence can be demonstrated. No particular format is required. The UAA also provides that contracts may contain an arbitration agreement by reference to a clause in a separate document. An arbitration agreement may also take the form of a standalone agreement.

18. Will the courts stay litigation if there is a valid arbitration clause covering the dispute? Does their approach differ according to whether the seat of the arbitration is inside or outside the jurisdiction?

Article 13 of the UAA provides that national courts must decline jurisdiction if a dispute that is already in arbitration pursuant to an arbitration agreement is brought before national courts.

If no arbitral tribunal has yet been formed, national courts must nevertheless decline jurisdiction at the request of a party unless the arbitration agreement is manifestly void or inapplicable. Courts cannot decline jurisdiction of their own motion.

In principle, the location of the seat of arbitration has no effect on this issue.

The existence of an arbitration agreement does not prevent the parties from applying to a national court for interim or protective orders where the circumstances are “clearly shown” to be urgent, if this does not require a review of the case on the merits.

In practice, the Senegalese courts tend to decline jurisdiction if there is an arbitration clause.

19. If the arbitration agreement is silent, how many arbitrators are appointed, and who is the appointing authority?

While the UAA does not mandate a specific number of arbitrators if the arbitration agreement is silent on this point, it does provide that an arbitral tribunal must have either a sole arbitrator or three arbitrators.

If the parties are unable to appoint one or more arbitrators, they will be appointed by a court with jurisdiction in the State of the seat. In Senegal, the Regional Courts have jurisdiction.

The CCIAD has its own arbitration procedure that sets out how the number and make-up of the arbitration tribunal are defined, including where the agreement is silent or a particular clause or rule is lacking.

20. What rights are there to challenge the appointment of an arbitrator?

Articles 7 and 8 of the UAA set the rules for recusal. An arbitrator must disclose “any circumstance that could create a legitimate doubt in the mind of the parties about the arbitrator’s independence and impartiality”. The competent court in the Member State rules on any challenges, unless the parties resolve the challenge otherwise.

If the competent court rejects the request for recusal, the rejection can only be appealed to the CCJA.

Any cause for recusal must be raised within no more than thirty days after the requesting party’s discovery of the grounds for recusal.

Arbitrators may only be challenged for reasons that come to light after their appointment.

21. Does domestic law contain public policy requirements for the procedure to be followed?

Under the UAA, parties must receive equal treatment and have an opportunity to exercise their rights. The arbitral tribunal must abide by and enforce the right to be heard. Arguments, explanations or documents cited or produced by the parties can only be relied upon in its decision if the parties had an opportunity to debate them. Arbitrators cannot base their decisions on grounds raised of their own motion without first giving the parties an opportunity to respond.

The arbitral tribunal rules on the substance of the dispute in accordance with the legal rules chosen by the parties. If the parties made no such choice, the tribunal must apply the legal rules it deems most appropriate, taking international trade practices into account where relevant.

The tribunal’s deliberations are confidential.

The UAA also provides that arbitration cannot last more than six months from the date on which the last arbitrator accepts the terms of reference, unless that period is extended by agreement of the parties or by the competent court.

Unless otherwise agreed by the parties, the arbitration award should be issued by majority vote when the tribunal is composed of three arbitrators and signed by the arbitrator(s). If a minority refuses to sign the award, this should be mentioned, and the award will have the same effect as if it had been signed by all arbitrators.

22. On what grounds can the court intervene in arbitrations seated inside the jurisdiction?

In principle, where there is an arbitration agreement, the national courts cannot intervene in a dispute until the award has been issued.

Nevertheless, parties may petition the court with jurisdiction in Senegal in the following circumstances:

- to resolve difficulties encountered with constituting the arbitral tribunal, to appoint the sole arbitrator or the third arbitrator (Art. 5 and 8, UAA)
- to rule on arbitrator recusals if the parties have not agreed on a different procedure (Art. 8, UAA)
- to extend the arbitration period at the request of a party or the arbitral tribunal if there is no agreement between the parties to do so (Art. 12, UAA)
- to order interim or conservatory measures of recognised, demonstrated urgency, provided no review of the case on the merits is necessary (Art. 13, UAA)
- to assist the arbitral tribunal, at its request, with the collection of evidence (Art. 14, UAA)
- to interpret the award or correct clerical errors or omissions affecting the award in cases where the arbitral tribunal cannot be re-seated (Art. 22, UAA).

23. On what grounds can the court intervene in arbitrations seated outside the jurisdiction?

In principle, national courts cannot intervene in an arbitral tribunal seated outside their jurisdiction where there is an arbitration agreement. Any and all issues relating to the composition of the arbitral tribunal and conduct of the proceedings fall under the jurisdiction of the courts of the country where the arbitral tribunal sits.

However, it is possible for national courts (outside the State of the seat) to intervene to order conservatory or interim relief under the conditions defined above in question 18 (Art. 13).

24. Do arbitrators have powers to grant interim or conservatory relief?

Article 14 of the UAA authorises the arbitral tribunal to act at the request of either party to order interim or conservatory relief, excluding interim attachment and court-ordered security, which are matters for the national courts.

25. When and in what form must the award be delivered?

Unless otherwise agreed by the parties, arbitration awards must be made within six months from the date on which all of the arbitrators have accepted their terms of reference. This period can be extended by agreement between the parties or by order of the competent court in the Member State – in Senegal, the Regional Court – at the request of a party or the arbitral tribunal (Art. 12).

Parties can set special requirements for awards. If they do not, awards are issued by majority vote (for tribunals with three arbitrators), and the grounds must be stated. Awards are signed by at least two of the three arbitrators.

The CCIAD defines its own process, including the time allotted to deliver the award.

26. Can a successful party recover its costs?

Neither the UAA nor local law make any provision for cost recovery.

If arbitration is conducted under the aegis of the CCJA, the arbitrator is empowered to award costs.

27. On what grounds can an award from an arbitration seated inside the jurisdiction be appealed to the court?

The only remedy against an arbitration award is an application to set aside. Applications must be brought before the competent court in the Member State where it was issued within one month from the date of notification of an enforceable award.

The circumstances in which an application to set aside can be brought are as follows (Art. 26, UAA):

- the arbitral tribunal ruled despite the lack of an arbitration agreement or in reliance on an invalid or expired agreement;
- the arbitral tribunal was not properly constituted;
- the arbitral tribunal did not rule in compliance with its mandate;
- the right of all parties to be heard (*contradictoire*) was not observed;
- the award breaches an international public policy provision;
- no reasons are given for the award.

Bringing an application to set aside an arbitration award suspends enforcement, unless the tribunal ordered immediate enforcement. The decision can only be appealed to the CCJA (Art. 25 and 28).

Setting aside applications are the only remedy available to parties before a national court. Other remedies – third party opposition and applications for revision – must be submitted to the tribunal itself.

28. Can a foreign arbitration award be appealed in the local courts?

No.

29. What are the procedures for the enforcement of: (i) awards rendered in other jurisdictions and (ii) domestic awards?

To enforce awards issued in an OHADA Member State, the UAA requires parties to obtain an order for enforcement, or *exequatur*, from the competent Member State court (Art. 30). In Senegal, this is the regional court with jurisdiction over the place of residence (or registered office) of the debtor or defendant against whom the award is made.

To obtain *exequatur*, the requesting party must produce the original arbitration award, together with the arbitration agreement or copies of these documents meeting the necessary authentication requirements and, where necessary, a certified translation into French (Art. 31).

Decisions refusing to recognise an arbitration award can be appealed to the CCJA. However, decisions granting recognition cannot be appealed (Art. 32).

Under Article 34 of the UAA, “arbitral awards rendered on the basis of rules different from those provided for in this Uniform Act are recognized in the State Parties under the conditions provided for by international conventions that may be applicable and, in the absence thereof, under the same conditions as those provided in this Uniform Act”. Accordingly, the recognition and enforcement of awards issued in a country outside of the OHADA region will be governed by any applicable conventions

(such as the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards). When there is no applicable international convention, the recognition and enforcement of such awards should in principle be governed by the UAA. Senegal is a party to the New York Convention.

30. Are foreign awards readily enforceable in practice?

Foreign awards are easily recognized and enforceable in Senegal.

Alternative dispute resolution

31. Are the parties to litigation or arbitration required to consider or submit to any alternative dispute resolution before or during proceedings?

In divorce matters, conciliation is mandatory before the Regional Court, and in employment matters, mediation/conciliation is mandatory before the employment courts.

In commercial disputes, parties may agree to an amicable phase before the case can be referred to any national court or arbitral tribunal, but this is not mandatory. An agreement of this kind is binding and if it exists, the court cannot declare an action admissible if it has been initiated without first attempting conciliation.

Reforms

32. Are there likely to be any significant procedural reforms in the near future?

To the best of our knowledge, no.

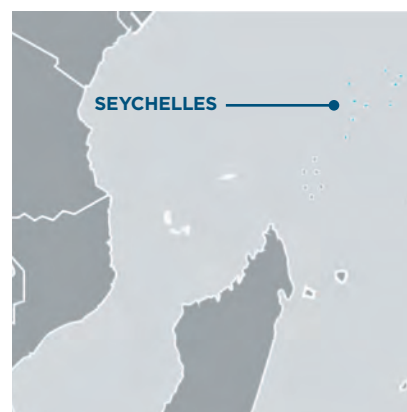
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Seychelles



Introduction

The Seychelles, having been under successive French and British colonial administrations, has a mixed legal system. The basic private law is of French origin and consists of a civil and a commercial code.

Legislation relating to the more modern aspects of commerce, such as corporations and bills of exchange, as well as international financial services (which have grown into one of the main pillars of the country's economy), is mostly common law-inspired. The criminal and public laws are also based on the common law, as is much of the adjectival law.

The Seychelles was granted independence by Britain and became a republic in 1976. Its present Constitution, which came into force in 1993, contains an entrenched bill of rights and provides for a separation of powers between the executive, legislative and judicial branches of State. The Government is headed by an executive president who, like the members of the legislature, is elected by direct suffrage for a term of five years.

Litigation

1. What is the structure of the legal profession?

The Seychelles has no split profession. Lawyers are known as attorneys and have rights of audience in all courts and tribunals.

To be admitted as an attorney, a candidate must have passed the Seychelles Bar final examination or the Bar or other law professional examination of England or Mauritius or been admitted to practise law in a Commonwealth jurisdiction. But before admission to the Seychelles Bar, the candidate must serve two years' pupillage in the Seychelles.

Lawyers practising in a Commonwealth jurisdiction may be granted *ad hoc* rights of audience in the Seychelles courts for a period not exceeding six months or the duration of the proceedings. Typically, such *ad hoc* rights of audience are granted to litigation lawyers who are experts in their area of practice. Foreign lawyers are required to be assisted by a Seychelles attorney. All lawyers practising in Seychelles are subject to the regulatory control of the Supreme Court.

Most Seychelles attorneys are members of the Bar Association of the Seychelles and thus are also subject to its regulatory control.

2. What is the structure of the court system?

The Seychelles has a three-tier court system:

- the Magistrate Courts, with jurisdiction to try civil disputes relating to amounts not exceeding SCR 350,000 and minor criminal matters;
- the Supreme Court, with original jurisdiction in criminal, civil (including admiralty) and constitutional matters and appellate and supervisory jurisdiction over the Magistrate Courts, tribunals and adjudicatory and administrative authorities; and
- the Court of Appeal, which is the apex court, with appellate jurisdiction over the Supreme Court.

3. What are the time limits for bringing civil claims?

Actions for the enforcement of immovable property rights must be brought within 20 years where the claimant's title is evidenced by deed and 10 years where the claimant's title is not based on a deed.

Contractual and delictual (tortious) actions (including claims against the Government and public officers) must be brought within five years of the cause of action arising.

Actions to review the legality or constitutionality of the acts of the Government and other State entities are subject to a time limit of three months.

4. Are communications between a lawyer and his/her client privileged (ie, protected from disclosure to a court/tribunal and opposing parties)?

Attorney-client communications are privileged and protected and may only be disclosed in the public interest (eg, to prevent the commission of a crime or to comply with the attorney's reporting obligations under the Anti-Money Laundering Act).

5. How are civil proceedings commenced, and what is the typical procedure which is then followed?

Most proceedings are commenced by filing a plaint with summons at the Registry of the court. Other forms of originating processes are provided by certain legislation, eg, writ of summons in admiralty and bills of exchange claims, and petitions in company, matrimonial matters and generally in claims determined by way of summary proceedings.

Generally, a defendant is granted about 14 days to file its statement of defence to a plaint. Where the statement of defence includes a counterclaim, the plaintiff would also be granted around 14 days to file its answer to it. When the pleadings are closed, a date is set for the hearing of the case.

6. What is the extent of pre-trial exchange of evidence, and how is evidence presented at trial?

Where a Plaintiff sues on a document (other than a document transcribed at the Mortgage Office), it must annex a copy of that document to the plaint. Each party to a plaint is required to file in court and serve on the other party a list of all the documentary evidence it relies on.

A party may apply to the court for an order for discovery, where the opposing party fails to disclose relevant documents.

The parties and their witnesses, including expert witnesses, may give oral evidence at trial and produce any documentary evidence listed in their pleadings and are liable to cross-examination. Witnesses may be re-examined on matters arising in cross-examination. A witness may be recalled with leave of the court.

7. To what extent are the parties able to control the procedure and the timetable? How quick is the process?

The court sets dates for hearing of cases in consultation with the parties at the close of the pleadings. Generally, hearings commence within 12 months of the filing of the case and are completed within 9 months. Judgments are delivered within about six months of completion of the hearing.

Summary proceedings (where evidence is adduced by way of affidavit, although the deponent may be cross-examined with leave of the court) are normally completed and judgment delivered within twelve months.

8. What interim remedies are available to preserve the parties' interests pending judgment?

The following conservatory remedies are available:

- provisional seizure of movable property;
- provisional attachment of funds in the hands of third parties;
- interim and interlocutory injunctions;
- warrant of arrest (in admiralty claims);
- inhibition (preventing the registration of any dealing in registered immovable property).

9. What means of enforcement are available?

Judgments of the courts may be enforced by:

- attachment proceedings;
- seizure and judicial sale of property (both movable and immovable);
- writ of possession (in respect of both movable and immovable property);
- contempt of court proceedings to penalise non-compliance with orders of specific performance, injunctions or other orders of the court;
- insolvency proceedings against judgment debtors.

10. Does the court have power to order costs? Are foreign claimants required to provide security for costs?

The court is empowered to award costs of proceedings to such of the parties and in such amount as it considers appropriate.

A party to a case (plaintiff or defendant) who is a non-resident may, on the application of the other party, be required to furnish security for costs of the proceedings.

11. On what grounds can the parties appeal, and what restrictions apply? Is there a right of further appeal? To what extent is enforcement suspended pending an appeal?

There is a right of appeal against a final judgment of the Magistrate or the Supreme Court (whether exercising its original or appellate jurisdiction) in respect of both findings of law and fact.

An appeal from any interlocutory judgment of the Supreme Court or final judgment of the Supreme Court where the subject matter of the appeal has a monetary value less than SCR 10,000 is subject to leave of the Supreme Court. If leave is refused by the Supreme Court, it may be granted by the Court of Appeal.

On the application of an appellant, the execution of a judgment may be stayed pending appeal on such terms as the court may decide (including the provision of security).

12. To what extent can domestic and/or foreign State entities claim immunity from civil proceedings?

Generally, Seychelles State entities do not have immunity from civil proceedings in the Seychelles. However, the State may not be sued for any act or omission of a judicial officer whilst discharging a judicial function lawfully vested in him or her, except where a person has suffered imprisonment as a result of a serious miscarriage of justice.

A foreign State (including any State entity) is immune from the jurisdiction of the Seychelles courts, unless it has waived its immunity by submitting to the jurisdiction. However, jurisprudence suggests that the Seychelles courts would not uphold a claim of State immunity where the dispute arises from a commercial transaction or other non-sovereign activity.

13. What procedures exist for recognition and enforcement of foreign judgments?

Judgments of some superior courts of Britain and certain other designated countries of the British Commonwealth are enforceable in the Seychelles under the Reciprocal Enforcement of British Judgments Act. The judgments are required to be registered as judgments of the Seychelles Supreme Court in accordance with this legislation before becoming executory.

Other foreign judgments may be enforced under the Seychelles Code of Civil Procedure. The foreign judgment creditor is required to file a plaint in the Seychelles Supreme Court for a declaration that the judgment is executory in Seychelles.

In each these cases, the foreign judgment must satisfy these basic requirements:

- the judgment is capable of execution in the country where it was delivered;

- the rights of the defendant to a fair hearing have been respected in the foreign court proceedings;
- the foreign court has applied the proper law, in accordance with the Seychelles rules of private international law;
- the judgment is not contrary to any rule of public policy applicable in the Seychelles;
- there was no fraud.

Arbitration

14. Is the arbitration law based on the UNCITRAL Model Law? If yes, are there any key modifications? If no, what form does the arbitration law take?

The Seychelles arbitration law, set out in the Commercial Code, is not based on the UNCITRAL Model Law. It is modelled on the text of the Uniform Law on Arbitration proposed by the European Convention on Arbitration 1967. It includes elements of the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the New York Convention).

The Seychelles only acceded to the New York Convention in 2020, with the reciprocity reservation.

15. What are the formal requirements for an enforceable arbitration agreement?

The Commercial Code requires that there be an instrument in writing signed by the parties or other document binding on the parties showing their intention to have recourse to arbitration.

16. Will the courts stay litigation if there is a valid arbitration clause covering the dispute? Does the approach differ in this regard if the seat of the arbitration is inside or outside of the jurisdiction?

The court will stay proceedings if it is seized of a dispute in respect of which there is a valid arbitration agreement (whether or not the arbitration is seated in or outside the Seychelles).

17. On what grounds can the court intervene in arbitrations seated outside the jurisdiction?

The Seychelles court may not intervene in arbitration proceedings seated outside the Seychelles, except on application of a party to grant conservatory or other interim relief.

18. Can a foreign arbitration award be appealed in the local courts? If so, on what grounds?

No appeal lies against a foreign arbitral award in the Seychelles court, but the award may be set aside by the Supreme Court on grounds (essentially of public policy) identical to those set out in article V of the New York Convention.

19. What procedures exist for enforcement of awards rendered in arbitrations seated outside of the jurisdiction?

Arbitral awards rendered in convention States as of the 3 May 2020 (the date the convention came into force in Seychelles) may be enforced in Seychelles. Importantly, enforcement under the convention is not retroactive.

Such foreign arbitral awards may be registered in the Supreme Court with leave of the court, and it may then be enforced in the same manner as a judgment or order of that court.

As an alternative, a foreign arbitral award may be enforceable in the Seychelles under the Reciprocal Enforcement of British Judgments Act if it is first registered as a judgment of a superior court of Britain or certain other Commonwealth countries (see 13 above). This indirect enforcement route may be available in cases where the awards were rendered in a non-convention State or before Seychelles acceded to the New York Convention.

20. Are foreign awards readily enforceable in practice?

Recent decisions of the courts indicate that foreign awards under the New York Convention are readily enforceable in the Seychelles.

Alternative dispute resolution

21. Are the parties to litigation or arbitration required to consider or submit to any alternative dispute resolution before or during proceedings?

The Supreme Court (Mediation) Rules 2013 have established a court-annexed mediation system. A judge of the Supreme Court, seized of a civil dispute may, on his/her own motion or at the request of a party, refer the dispute to mediation. The mediator may be a judge of the Supreme Court or other person authorised under the Rules to act as a mediator.

Reforms

22. Are there likely to be any significant procedural reforms in the near future?

No significant procedural reform is anticipated.

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Sierra Leone



Introduction

The Sierra Leone legal system is based on the Constitution of 1991 as well as English common law and Sierra Leone legislations/statutes.

Litigation

1. What is the structure of the legal profession?

Sierra Leone has no split profession. Upon satisfactory completion of the required pupillage, the name of a pupil barrister is entered in the Roll of Court as a legal practitioner and a certificate of enrolment is issued entitling him/her to practise both as a barrister and solicitor in all courts of Sierra Leone except the Local Courts (see below).

To become a lawyer in Sierra Leone one must:

- obtain an honours degree in law from either:
 - one of several specified universities in Sierra Leone; or
 - an approved institute of the Commonwealth/country with a legal system similar to that of Sierra Leone;
- complete a one-year course at the Sierra Leone Law School and be called to the Bar/awarded a Certificate of Qualification in Law to practise as a legal practitioner;
- serve a period of pupillage of not less than 12 months with a legal practitioner of at least 10 years' standing in Sierra Leone.

Foreign lawyers are permitted to register to practise law in Sierra Leone provided they satisfy the Council of Legal Education that:

- they have been admitted and enrolled as legal practitioners in any Commonwealth country approved by the Council;
- they have practised law in that country for a period of at least five years;
- they are fit and proper to be granted such right;
- they are a citizen of a Commonwealth country which has similar legal provisions granting equivalent rights to citizens of Sierra Leone;

However, foreign lawyers may only work as legal practitioners in either the judicial and legal service or in the services of the State, but not as private practitioners.

2. What is the structure of the court system?

The court system in Sierra Leone comprises of two levels, the superior courts and the lower courts. The superior courts are:

- the Supreme Court;
- the Court of Appeal;
- the High Court (Commercial and Admiralty Division (ie, Fast Track Commercial Court), Land, Property and Environmental Division, Family and Probate Division, Criminal Division, Anti-Corruption Division, Industrial and Social Security Division, Sexual Offences Division and General Civil Division).
- District Appeals Court.

The lower courts are:

- the Magistrates' Court, including the Juvenile Court and Coroners Court;
- Local Courts

The Local Courts are now under the jurisdiction of the judiciary.

The Magistrates' Courts are courts of summary jurisdiction and are established in several districts in Sierra Leone. Their jurisdiction is limited to those districts. They hear both criminal and civil disputes (excluding defamation, divorce, and breach of promise of marriage cases).

The District Appeals Court hears appeals from the magistrate court. A judge sits with two (2) assessors who advice on customary law and practices, but is not bound to follow their advice.

The High Court is a court of original jurisdiction both in civil and criminal matters. It is also a court of supervisory jurisdiction over all lower courts.

The High Court has an appellate jurisdiction, and it hears appeals from the Magistrates' Courts and in its local division from the District Appeal Court (ie, from the Local Courts). It also has jurisdiction to determine matters relating to industrial and labour disputes and administrative complaints.

The Court of Appeal deals with matters on appeal in both civil and criminal cases from the High Court. The Court of Appeal also has jurisdiction to answer specific questions of law which a judge of the high court would have submitted to them for clarity and interpretation. This is usually done during the trial at the high court, to enable a judge to be properly directed on the law relating to a particular issue, which said direction could assist to effectually determine the matter.

The Supreme Court is a court of original jurisdiction in all matters relating to the enforcement or interpretation of the Constitution and other matters relating to election petitions.. The Supreme Court is also the final court of appeal and has supervisory jurisdiction over all courts in Sierra Leone and over any adjudicating authority.

3. What are the time limits for bringing civil claims?

The time limits for bringing civil claims are provided for by statute and limitation periods vary depending on the cause of action.

A limitation period of 12 years applies to actions:

- upon a specialty;
- upon any judgment from the date on which the judgment became enforceable;
- to redeem mortgaged land or non-foreclosure of mortgaged personal property;
- to recover principal amounts secured by a mortgage or other charge on property;
- to recover proceeds of the sale of land;
- relating to the personal estate of a deceased person, or to any share or interest in such estate.

A limitation period of six years applies to actions:

- founded on simple contract or tort;
- to enforce recognisance;
- to enforce an award where the submission is not by an instrument under seal;
- to recover any sum recoverable by virtue of any enactment, other than a penalty or forfeiture or sum by way of penalty;
- to recover someone's wages;
- in respect of further successive conversions or wrongful detention and extinction of title in chattels;
- to recover arrears of rent or damages;
- to recover arrears of interest, in respect of any legacy, judgment or mortgage;
- to recover trust property or breach of trust.

A limitation period of three years applies to actions claiming damages for negligence, nuisance or breach of duty.

A limitation period of two years applies to actions arising out of any penalty or forfeiture.

A limitation period of one year applies to actions against public authorities.

Extensions of the limitation period are available in cases where the person to whom the right of action accrued is under a disability.

4. Are communications between a lawyer and his/her client privileged (ie, protected from disclosure to a court/tribunal and opposing parties)?

Like nearly all civil law jurisdictions based on English jurisprudence and the common law, communications between a client and a lawyer are privileged. For such communications to qualify as privileged the communications must have been confidential in nature and must have been made in the course of a lawyer/client relationship or with a view to establishing such a relationship. Therefore, giving or obtaining legal advice is privileged whether or not litigation is contemplated. This simply means neither the lawyer nor his/her client can be compelled by any court or tribunal to divulge the nature and/or content of such privileged communications.

Further, section 39(1) of the Legal Practitioner Code of Conduct Rules 2010 states "A Legal Practitioner employed as Counsel shall not communicate to any third person information which has been entrusted to him in confidence or use such information to his Client's detriment or to his own or another Client's advantage".

If a client admits guilt in respect of criminal charges to his/her lawyer, the lawyer should not proceed with the defence but should advise his/her client to plead guilty in court. If the client refuses to plead guilty, the lawyer is still not entitled to breach the client's confidentiality. The only choice open to the lawyer is to withdraw his/her representation.

5. How are civil proceedings commenced, and what is the typical procedure which is then followed?

Civil proceedings may be initiated by writ of summons, originating summons, originating motion or petition.

Generally, civil proceedings commence by a writ of summons filed together with a statement of claim, at the High Court Registry or a District Registry. Service of the writ is then affected, and an affidavit of service filed. Once served, the defendant has 14 days to enter an appearance and after the expiration of the 14 days, another 10 days within which to file a defence (and counter-claim if any). Thereafter, the plaintiff has 10 days to file a reply (and defence to counter-claim if any) if need be.

Within 14 days of the close of pleadings there is mutual exchange of documents on which the parties rely and/or ordered discovery by the court. Within one month of the close of pleadings an application for directions is filed (summons for directions). Admissions and agreements, issues for trial, the mode of trial and trial date are all discussed and fixed.

For commercial matters that are commenced at the Fast Track Commercial Court, once pleadings are closed, there is a mandatory alternative dispute resolution mechanism ("ADR") for both parties to go through a mediation process in which a judge sits as a mediator. If the matter is not settled at this stage, a different judge will proceed to preside on the matter and will now proceed to hear any interlocutory application and/or an application for summons for direction. The only step that can take place prior to the mandatory ADR is the obtaining of judgment based on the admissions of the other party.

6. What is the extent of pre-trial exchange of evidence, and how is evidence presented at trial?

After the close of pleadings, the parties undertake discovery by exchanging lists of documents. Each party's list is served on the other within 14 days of the close of pleadings to allow time for the inspection of the documents disclosed. Either party is at liberty to serve a notice on the other requiring it to verify its list by affidavit.

At the summons for directions stage, the court usually directs the parties to serve on each other, within 14 weeks or so, written statements of oral evidence which each party intends to use as evidence in court (witness statements or affidavits). If there is no written statement, the name of the intended witness should be provided to the other party. Where the witness whose written statement has been served is not called to testify, no other party can put the statement in evidence at trial. However, the court may direct that the statement served or part of it be put as evidence-in-chief of the witness or the evidence.

Cross-examinations of a witness giving oral testimony or a deponent to an affidavit or a person making a deposition ordered by the court can be made by the other party. The other party at their discretion may re-examine a witness or deponent mostly for clarity purposes on questions asked under cross-examination.

Experts are treated like any other witness. An expert can make a deposition and will be called to give oral evidence in court. They will be subject to cross-examination once they give evidence.

Before or after the pre-trial exchange of documents, parties can seek production of documents through a Discovery process. Also, a party can seek answers/information to specific factual questions against the other side through the issuance of Interrogatories.

7. To what extent are the parties able to control the procedure and the timetable? How quick is the process?

The procedure and timetable are guided by the High Court Rules/Civil Procedure Rules (as set out in question 5 above). After the close of pleadings, the action is set down for trial and a date fixed by the court. These processes are out of the control of the parties.

The speed of the process depends on the approach of the parties and the trial judge. For instance, interim applications or delays in responding to documents filed may slow down the process considerably. Also, each judge manages his or her own case list and, because there are a limited number of judges available, cases are almost always adjourned up to ten times or more. The absence of counsel for either side can also lead to delay of the proceedings.

Therefore, civil proceedings in Sierra Leone can be a very slow process. The length of time between the issuance of a writ of summons and the start of trial can be up to three months, and the length of time from trial to final judgment may be one year or more. However, the process is much faster in the Fast Track Commercial Court.

8. What interim remedies are available to preserve the parties' interests pending judgment?

A court may grant interim remedies before or during trial to preserve certain interests or the status quo pending trial. Interim remedies available to preserve a party's interests include: injunction; detention, custody or preservation of property which is the subject matter of the action; and/or sale of property.

An application for an interim order may be granted conditionally or unconditionally, and such an application may be made before or after trial.

Where an application is made to the court for an interim order and it appears to the court that the matter in dispute can be better dealt with by an early trial, the court may make such an order. Further, when an application for an interim order is made, the court, before making such order, will require that the applicant gives an undertaking as to damages to the person opposing the application.

Interim remedies are regularly granted in practice.

There is also provision in the High Court Rules for a party to apply for a stay of execution, to preserve the status quo even after a judgment has been delivered.

9. What means of enforcement are available?

A judgment for the payment of money may be enforced by one or more of the following:

- writ of *fi. fa.* (ie *fi. fa.*);
- garnishee proceedings;
- appointment of a receiver;
- charging orders (eg, charge on land, stock etc);
- writ of sequestration;
- attachment of debts;
- bankruptcy notice;
- an order of committal.

A judgment for the payment of money into court may be enforced by one or more of the following:

- appointment of a receiver;
- an order of committal;
- writ of sequestration.

A judgment of possession of immovable property may be enforced by:

- writ of possession;
- committal;
- writ of sequestration.

A judgment for the delivery of goods may be enforced by:

- writ of delivery;
- committal;
- writ of sequestration.

A judgment to do or abstain from doing any act may be enforced by:

- writ of sequestration against the property of that person;
- writ of sequestration (if it is a corporate body) against the property of any director or other officer of the body;
- committal.

Enforcement orders are made routinely in practice. The most popular form of enforcement is *feri facias*.

10. Does the court have power to order costs? Are foreign claimants required to provide security for costs?

The court has broad discretion to award costs of and incidental to proceedings. Usually, costs follow the event.

The court will consider all the facts of the case, the result and the conduct of the parties. A party may be entitled to costs without an order from the court where the claim is a liquidated demand.

Foreign claimants may be required to provide security on an application to the court made by the defendant. This order is usually granted in situations where the claimant is ordinarily resident outside of the jurisdiction, or is suing for the benefit of some other person, or where the claimant has changed his address during the course of the proceedings. The security to be given will be at the discretion of the court.

11. On what grounds can the parties appeal, and what restrictions apply? Is there a right of further appeal? To what extent is enforcement suspended pending an appeal?

The most common grounds of appeal in Sierra Leone are:

- a misdirection as to the law;
- a misdirection as to the facts;
- an error in law;
- jurisdictional issues;
- an incorrect judgment in light of the weight of the evidence.

The grounds of appeal must be set out concisely according to the cause of action.

An appeal may lie as of right from a final judgment, decree or order of the court. The time limit within which such an appeal must be brought is 21 days after the date of judgment for criminal cases and 3 months for civil cases. An extension of time can be granted based on the discretion of the court.

In relation to interlocutory judgments, an appeal requires leave of the court. Where an appeal lies by leave only, the appellant must apply in the court below or to the Court of Appeal within 14 days from the date of the decision. Exceptionally an extension of time of 14 days will be granted.

An appeal in itself does not operate as a stay of execution. The appellant may, however, apply to the Court of Appeal (or to the Supreme Court) for an order of a stay of execution of the judgment and an order for a stay of proceedings in the court below pending the hearing and determination of the appeal by either the Court of Appeal or the Supreme Court.

12. To what extent can domestic and/or foreign State entities claim immunity from civil proceedings?

The Constitution of Sierra Leone provides for civil actions to be brought against government ministers, government officials and domestic State entities. By the enactment of the State Proceedings Act 2000, at least three months' notice must be given to the office of the Attorney General of the intention to commence such an action. It is only after the expiration of three months' notice and in the absence of any action taken by the office of the Attorney General (during the tenure of the notice) that the claimant can proceed to issue a writ of summons to commence the action.

Since it has been made possible for civil actions to be brought against State officials and domestic entities there is no longer any claim for immunity from civil proceedings available to such persons/institutions, apart from the usual constitutional, presidential immunities and parliamentary privileges and immunities.

The only foreign State entities which can claim immunity from civil proceedings are those that have been accorded diplomatic status and immunities from civil proceedings. Sierra Leone, like any other country, recognises the diplomatic privileges and immunities internationally accorded to all foreign embassies, diplomats and diplomatic premises but there are no automatic immunities for other foreign State entities that operate within the jurisdiction of Sierra Leone. Any immunity from civil proceedings enjoyed by a foreign entity can be waived by the foreign State in certain instances.

13. What procedures exist for recognition and enforcement of foreign judgments?

The Sierra Leone courts will recognise a foreign judgment that emanates from a jurisdiction that shares a bi-lateral reciprocal enforcement treaty with Sierra Leone. The procedure is governed by the Reciprocal Enforcement of Judgments Act, Cap 21, and the Sierra Leone High Court Rules.

Provided there is a bilateral reciprocity treaty between the Government of the State in which the original judgment was given and the Sierra Leone Government, a foreign judgment will be recognised through an *ex parte* application (supported by evidence) made by originating summons to the High Court for leave to have the foreign judgment registered in the High Court of Sierra Leone. In granting leave for the foreign judgment to be registered, the court will state the time limit within which the judgment creditor is entitled to apply to set aside the registration of the judgment the execution of the judgment by the judgment creditor within the jurisdiction of Sierra Leone by way of a writ of execution, if the judgment debtor fails to apply by summons to set aside the registered foreign judgment within the timeframe given.

Arbitration

14. Is the arbitration law based on the UNCITRAL Model Law? If yes, are there any key modifications? If no, what form does the arbitration law take?

The arbitration law is not based on the UNCITRAL Model Law. The law governing arbitration in Sierra Leone is the Arbitration Act 2022, which is considered modern and contemporary.

Sierra Leone is now a party to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (The New York Convention) which makes enforcement of foreign arbitral awards possible.

15. What are the formal requirements for an enforceable arbitration agreement?

In order for an arbitration agreement to be enforceable, there must be an express term in the contract that any disputes arising out of the contract should be finally settled through arbitration. The content of the agreement may be recorded in any form.

16. Will the courts stay litigation if there is a valid arbitration clause covering the dispute? Does the approach differ in this regard if the seat of the arbitration is inside or outside of the jurisdiction?

The High Court of Sierra Leone will stay proceedings where there is a valid arbitration clause, except where the agreement is null, void, inoperative or incapable of being performed.

17. On what grounds can the court intervene in arbitrations seated outside the jurisdiction?

The Arbitration Act provides for the High Court to grant interim or conservatory relief in support of a foreign-seated arbitration. However, it is arguable that with the ratification of the New York Convention, the court can preserve assets, grant injunctions etc. in its supportive role to arbitration proceedings.

The court can also intervene to set aside awards where the arbitrator has conducted himself incorrectly or the award has been improperly procured, for example, where the tribunal exceeded its jurisdiction, or where the tribunal disregarded a fundamental rule of justice.

18. Can a foreign arbitration award be appealed in local courts? If so, on what grounds?

The award can also be appealed, where the parties have agreed in their contract that the award is appealable.

19. What procedures exist for enforcement of awards rendered in arbitration seated outside of the jurisdiction?

Sierra Leone is now a party to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the New York Convention).

Awards or judgments in arbitration seated outside Sierra Leone can be enforced pursuant to the provisions of order 45 of the High Court Rules 2007 (Reciprocal Enforcement of Judgment). The party seeking to enforce the award should first seek leave of the court to register the foreign award as a judgment and once duly registered, it must be treated as a judgment of the High Court of Sierra Leone and be enforced by a writ of execution.

The High Court might refuse to register a foreign award in circumstances where:

- the award was procured by fraud;
- the respondent to the arbitration did not receive notice of the arbitration in sufficient time for them to appear to defend the claim;
- enforcement would be contrary to public policy in Sierra Leone.

Alternatively, awards can be enforced if a judgment is obtained in that foreign country based on the award. The judgment can subsequently be registered in the High Court of Sierra Leone pursuant to the provisions of the High Court Rules 2007 as stated above.

20. Are foreign awards readily enforceable in practice?

The Sierra Leone judicial system has made provision for the expeditious enforcement of foreign awards like any awards made by a Sierra Leone court.

Alternative dispute resolution

21. Are the parties to litigation or arbitration required to consider or submit to any alternative dispute resolution before or during proceedings?

No, parties are not required to consider or attempt ADR. However, the judicial process has always encouraged alternative dispute resolution during litigation. At any stage of a legal action, parties can enter into consent judgments ie, the parties reach an agreement in settlement of part or all of a claim in writing, and the same is submitted to the court which enters it as a judgment of the court.

However, with the establishment of the Fast Track Commercial Court, a more formal judicial mandatory alternative dispute resolution mechanism has been introduced into the judicial system of the fast-track commercial court by Part VII of The Commercial and Admiralty Court Rules 2020.

This stage is now firmly regarded as the Alternative Dispute Resolution stage (ADR), and it can result in the settlement of a matter without recourse to full trial.

Reforms

22. Are there likely to be any significant procedural reforms in the near future?

Since the reform of the Sierra Leone High Court Rules in 2007 to replace the old rules of the 1960s, it is very unlikely that there will be any procedural reforms in civil proceedings in the near future.

The Sierra Leone Law Reform Commission has been working on a Mediation Act. It has not yet progressed into law.

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Somalia



Introduction

Somalia is a melange of jurisdictions, each with its own legal history, prevailing legal norms and overarching set of traditional dispute resolution mechanisms. There are three major jurisdictions within the area that used to be known as the former Democratic Republic of Somalia (which is shown as Somalia on most maps). At independence, Somalia had four distinct legal traditions: English common law, Italian law, Islamic Sharia law, and Somali Xeer (customary law). The challenge after 1960 was to integrate these diverse legal systems. During the 1960s, a uniform Penal Code, a Code of Criminal Court Procedures, and a standardised judicial organisation were introduced.

Ever since the fall of the Siad Barre regime in 1991, which left Somalia without a centralised Government, Somalia has suffered chronic underdevelopment compounded by decades of lawlessness and communal violence. Today, the country is much less integrated, with a number of regions declaring either sovereignty or autonomy from the Federal Republic of Somalia.

As of 2025, there are six (6) Federal Member States (FMS) – Puntland, Galmudug, Hirshabelle, South West, Jubaland, and the newly established North Eastern State (also known as SSC-Khatumo) – together with the Banadir Regional Administration (BRA), which form the Federal Government of Somalia. The North Eastern State was formally declared in July 2025 following the ratification of its regional constitution by 417 delegates at the SSC Grand Conference in Las Anod and was subsequently recognized by the Federal Government as Somalia's sixth Federal Member State. This development redefines the country's federal map, integrating areas that were previously considered disputed territories between Puntland and Somaliland.

However, Somaliland is the de facto State of Somaliland which has, since 1991, pursued a course completely divergent from the remainder of the Somali region. Somaliland has its own Constitution, President, Parliament, Supreme Court, and governance system. Somaliland does give credence to legislation and treaties that were in force upon its self-declared separation from the remainder of the Somali region in 1991. Following 1991, any action by the Government in Mogadishu is not viewed as authoritative in Somaliland.

Each FMS has some level of independence in its own affairs. Each FMS has its own State Constitution President, Parliament, and Supreme Court. The Federal system remains in gradual transition, with the Federal Constitution still provisional pending final review and ratification by Parliament, which is expected to occur during 2024–2025. The ongoing constitutional review process aims to clearly define the division of powers between the Federal Government and the Federal Member States, as well as to establish permanent institutions such as the Constitutional Court and the Judicial Service Commission.

In Somalia, the main sources of law are as follows:

- Islamic Sharia law; Article 2(3) of the Constitution confirms that a law which is not compliant with the general principles of Sharia cannot be enacted;
- the Constitution, which according to Article 4 of the Constitution is the supreme law of the country after the Sharia and which binds the government and guides policy initiatives and decisions; any law or administrative action which is contrary to the Constitution may be invalidated by the Constitutional Court;
- duly enacted legislative acts;
- customary “Xeer” principles; and
- international treaties and agreements; Article 90 of the Constitution confirms that the President is entitled to sign international treaties proposed by the Council of Ministers and approved by the House of the People.

In addition, recent federal reforms and justice sector strategies (2025–2029) emphasize harmonization of legal systems between the Federal Government and Federal Member States, improved coordination of judicial administration, and the gradual integration of customary and Sharia-based justice within the national legal framework.

Litigation

1. What is the structure of the legal profession?

The Somali region has a fused legal profession where lawyers are known as advocates and have rights of audience in all courts and tribunals.

Persons with a degree in law from a recognised university may, after serving as a law apprentice for a period of six months and after passing an examination conducted by the Bar Council, be enrolled as advocates or solicitors on the Ordinary Roll of Advocates and Solicitors, maintained by the Supreme Court.

In particular cases, the President of the Supreme Court and the President of the Court of Appeal may, by a decree not subject to appeal, authorise the appearance of foreign advocates, under the supervision of local advocates, provided their names are entered in the Roll of their respective countries.

The Law of Advocates Co-operative (Law No: 85 of 21 October 1975) was introduced in 1975 which repealed the Somaliland 1957 Advocates Ordinance and the 1958 Advocates Law of Somalia which were applied in the country.

The 1975 Law created a roll of professional lawyers registered at the then Supreme Court ALBO that registration gave them license to practice as advocates. The law prohibited the practice of non-lawyers “wakiils” (representatives) as court representatives and a Notary cannot be an advocate, at the same time. The Roll in the bar was maintained by a committee headed by the President of the Supreme Court with Consultation of Somali Cooperative Lawyers. The Advocate’s Cooperative was repealed in 1986

As of 2025, the Federal Government of Somalia is transitioning toward a modern regulatory framework through the draft Somali Advocates and Legal Practitioners Bill (2022), which seeks to replace outdated co-operative structures. The Bill introduces a unified licensing system, disciplinary procedures, and continuous professional development (CPD) requirements for all practising advocates across the Federal Member States.

However, Somaliland has its own Somaliland Advocates Law. After the separation in 2004 adopted Law No 30/2004 then amended on 28 September 2013. However, a Somali citizen from Federal Republic of Somalia cannot practice in Somaliland. Although formal cross-practice remains prohibited, some informal professional cooperation continues between advocates in Somaliland and the Federal Republic, particularly in commercial, family, and inheritance cases handled through mutual liaison or traditional dispute mechanisms. Under Article 6 (a) a law graduate to be a lawyer must a citizen of Somaliland Republic, be mentally fit and have reached the minimum age of 25.

In Somaliland, there are three categories of lawyers:

- **General Advocate** (Article 6) who can practice in all the courts of the land, civil or criminal. Must be a law graduate. The previous requirement of 5 years’ experience as a judge at a regional or higher court has been removed from Article 6, but this experience now serves as an exemption to the requisite professional examination.
- **Criminal Bar Advocate** (Article 7) who can practice in the criminal courts at all levels.
- **Sharia Advocate** (Article 8) who can practice only in Sharia suits and/or appeals.

However, in Somalia after 1991, different categories of lawyers do not exist. A new lawyer after articling six months with another senior, with no experience in district court or in regional, can practice in the criminal courts and civil courts at Somali High Court and other courts at all levels. Even new lawyer with no experience can be a judge at regional court or at an appeal court with appointment of the President of Somalia.

Somaliland lawyers have rights of audience throughout only Somaliland; Somali lawyers from other regions have rights of audience in the other Somali regions. Currently, there are no formal mechanisms for allowing non-Somaliland lawyers rights of audience in Somaliland courts and vice versa. However, the lack of formal mechanisms allowing for such activity does not stop such practices.

Currently, in Somaliland the requirements for obtaining a practising certificate are being debated. It is likely that the other Somali regions will also debate this question in the coming years. In Somaliland lawyers are admitted to practise based on either a law degree or extensive experience before courts.

There is a Somali Bar Association located in Mogadishu. Its members also include practitioners in Puntland, Galmudug, Hirshabelle, Banadir Regional Administration (BRA), South West State, Jubaland and North East.

The Somali Bar Association is currently undergoing institutional reform under the Ministry of Justice and the United Nations Development Programme (UNDP) within the framework of the Justice Sector Strategy 2025–2029. The reform aims to establish a centralised register of advocates, harmonise ethical standards, and strengthen disciplinary enforcement mechanisms.

The Bar registers its members and regulates compliance with ethics standards. It is not currently effective for security reasons; however, it is the recognised Bar in the region, and recognised by the Somali Federal Parliament. In September 2025, the Council of Ministers approved the “Higher Institute of Legal Affairs Bill,” intended to create a national institute responsible for legal education, judicial training, and accreditation of lawyers, judges, and notaries. Together, these reforms mark a significant shift toward professionalisation and institutional capacity-building in Somalia’s legal sector.

2. What is the structure of the court system?

All the Somali regions have a four-tier court system. According to Article 108 of the Constitution, the national court structure in Somalia can be divided into three levels, as follows:

- Constitutional Court;
- Federal Government level courts; and
- Federal Member State level courts: the highest court at the Federal Government level is the Federal High Court whilst the highest court at the Federal Member State level is the Federal Member State High Court.

If a case is presented to a court and concerns the Federal Government, the court must refer the case to the Federal Government level court. Likewise, a case concerning a constitutional matter may be referred to the Constitutional Court, which has the final authority in constitutional matters (Article 109 of the Constitution).

As of 2025, the Constitutional Court remains unestablished, and the Supreme Court continues to exercise its functions as the de facto Constitutional Court pending the passage of the Federal Judicial Reform Bill. The Judicial Service Commission (JSC), mandated under Article 109A of the Constitution to oversee judicial appointments and discipline, is also yet to be operationalized. The Federal Parliament is expected to enact the necessary enabling legislation within the 2025-2029 reform period.

Somali Criminal procedure of 1965 provides that Criminal Jurisdiction shall be exercised in accordance with the provisions of the Constitution and of the Law on the Organization of the Judiciary by:

- District Courts;
- Regional Courts;
- Courts of Appeal;
- The Supreme Courts.

Article 2: Jurisdiction and Composition of the Courts – except as otherwise provided, the criminal jurisdiction and composition of the Courts both in regard to the subject matter and territory shall be determined in accordance with the Law on the Organization of the Judiciary.

Notwithstanding anything contained in paragraph 4 of Article 2 of the Law on the Organization of the Judiciary, and except as otherwise provided in any special law, the Criminal Section of the District Courts shall have jurisdiction over all offences punishable with imprisonment up to three years or fine up to SOS 3 million, or both.

Article 4 (1): *Subject Matter Jurisdiction – “To determine whether the Court has jurisdiction over the subject matter, regard shall be had to the maximum punishment established by law for each offence for which a charge has been brought, taking into account any aggravating circumstances, but excluding the effects of recidivism.”*

In order of precedence from lowest to highest:

- District Courts have original jurisdiction to try civil disputes relating to amounts not exceeding SOS 3 million, family disputes, inheritance (in accordance with Sharia and for all matters relating to personal statutes, without limit of value. The territorial jurisdiction of the District Court is limited by the District border. (Article. 7 of the Somali Civil Procedure Code (SCPC) Article 7. Competence of the District Court), criminal matters for which the minimum punishment is less than three years imprisonment, and cases which have no monetary value.
- Regional Courts have jurisdiction in cases above SOS 3 million, criminal cases for which the minimum punishment is more than three years' imprisonment, enforcement of employment cases, and original jurisdiction over all remaining matters that are not constitutional or administrative in nature.
- Courts of Appeal maintain appeal supervision over the lower courts and deal with the recognition of foreign judgments and the administrative power of the region's courts.
- Supreme Court, with original jurisdiction in constitutional and administrative cases, acts as the final appellate court, although it can review its own cases in full bench. According to Article 10 of SCPC, the Supreme Court is competent to hear following cases:

- (a) All appeals against second instance and non-appealable first instance sentences pronounced by the judicial bodies- of the Republic;
- (b) All administrative causes;
- (c) The revocation proceedings, (Article 266), of the sentences issued by the Supreme Court itself;
- (d) All matters attributed by law to its competence;
- (e) Regulations of jurisdiction and jurisdiction between ordinary judicial bodies and between these and the extraordinary and special courts, (Article 26 SCPC), except when provided for in Article 9.

The Court also has original jurisdiction over corporate dissolution cases and approval of election results. The Supreme Court also acts as the Constitutional Court (or High Court of Justice) and carries duties conferred on it by articles 99 and 102 of the 1960 Constitution. The previous Constitutions of Somalia are applicable in so far as they are not in conflict with the August 2012 Provisional Constitution.

In 2025, the Federal Government and all Federal Member States adopted the Justice Sector Strategy (2025-2029), supported by UNDP and international partners. The Strategy seeks to harmonize judicial structures, improve the independence of courts, and implement an electronic case management system to increase transparency and accessibility across the justice sector.

A national consultation to reform and modernize the Penal Code and Criminal Procedure Code was launched in September 2025, aiming to align criminal law with Islamic principles, human rights standards, and international best practices.

New specialized courts, including Commercial Courts and Labour Courts, have been established in Mogadishu and Kismayo to handle contractual, corporate, and employment disputes more efficiently, with plans to expand to other Federal Member States.

The Ministry of Justice has also initiated a Digital Justice and Data Management Framework to digitize case filing and judicial records, forming part of Somalia's wider e-Governance agenda.

Following the recognition of the North Eastern State (SSC-Khatumo) in 2025 as Somalia's sixth Federal Member State, regional court structures are being established in line with the Federal judicial framework.

3. There is also a clan system underpinning the formal court system. This operates informally but is particularly active in the field of ADR (see question 21 below). What are the time limits for bringing civil claims?

In Somali law (Articles 371-385 of Somali Civil Code, Law No. 19 of 27 July 1974 (Somali Civil Code)) there is a limitation period varying from 1, 3, 5, 15 years depending on the cause of action. For example, actions for unpaid accounts for recognised professions are subject to a limitation period of three years. The limitation period for costs of any arrears of *per diem* accounts is one year. Actions to enforce immovable property rights must be brought within 15 years. Contractual Insurance claims and tort claims must be brought within three years from the date when the cause of action arose.

According to Article 3 of the Somali civil code: *"Periods of limitation will be calculated according to the Gregorian calendar, unless expressly provided otherwise by a law."*

According to Article 649 (1) of the Somali civil code: *"Actions arising out of insurance contracts shall be barred by limitation after the expiration of three years from the date of the occurrence which gave rise to such actions"*.

Actions to review the legality or constitutionality of the acts of Government have no definite limitation period.

The 1974 Somali Civil Code remains in force as the principal source governing limitation of actions; however, it is currently under comprehensive review under the Justice Sector Reform and Codification Project (2024–2026), which aims to modernize the Code and harmonize it with Sharia principles, international standards, and digital case management reforms.

In practice, enforcement of limitation periods remains uneven across Federal Member States due to administrative delays, limited case tracking, and reliance on customary (Xeer) and Sharia-based adjudication in rural areas. Courts often exercise discretionary interpretation when applying limitation rules to equitable or moral claims.

Claims adjudicated under Sharia or customary (Xeer) mechanisms, particularly family, inheritance, and land disputes, are not bound by the statutory limitation periods of the Civil Code and instead follow traditional and religious norms.

Federal Member States continue to apply the Civil Code limitation framework, although regions such as Puntland and Jubaland have introduced procedural circulars to clarify the computation and suspension of limitation periods in commercial and employment disputes.

4. Under the Justice Sector Strategy (2025–2029) and the new e-Justice and Digital Case Management Framework, courts in Mogadishu, Baidoa, and Garowe are beginning to digitize case registration and filing systems, expected to strengthen compliance with statutory limitation rules and reduce case backlog. Are communications between a lawyer and his/her client privileged (ie, protected from disclosure to a court/tribunal and opposing parties)?

These are not clearly protected under Somali law at this time, nor we have in the Somali Bar Association policy or act provisions that protect legal advice privilege (LAP), litigation privilege (LP) and Legal professional privilege (LPP).

Currently, neither the Law of Advocates Co-operative (Law No. 85 of 1975) nor the Somali Civil or Criminal Procedure Codes explicitly recognize attorney–client privilege or the confidentiality of legal communications.

However, the draft Somali Advocates and Legal Practitioners Bill (2022), which remains under parliamentary review as of 2025, includes explicit provisions establishing legal professional privilege and protecting all communications between an advocate and his or her client made in the course of professional employment. This bill also defines the limited exceptions under which disclosure may be compelled, such as court-ordered investigations into criminal conduct involving the lawyer.

In practice, Somali courts tend to respect the confidentiality of correspondence and legal advice exchanged between lawyers and their clients, especially in civil and commercial cases, although such recognition is based on professional ethics and judicial discretion rather than a statutory right.

The Somali Bar Association's revised Code of Conduct (2024 draft), supported by UNDP and the Ministry of Justice, also proposes mandatory confidentiality obligations for advocates, making disclosure of client information without consent a disciplinary offence.

Furthermore, the Data Protection Act (Law No. 005 of 2023) indirectly reinforces confidentiality protections by prohibiting unauthorized disclosure or processing of personal or sensitive information, which may include legal communications exchanged electronically.

Until the Advocates Bill and the accompanying Bar Regulation Act are enacted, attorney–client privilege in Somalia remains a professional norm rather than a legally enforceable right.

5. How are civil proceedings commenced, and what is the typical procedure which is then followed?

Proceedings begin by filing a complaint establishing a cause of action against another party along with a directive to the Registrar of the Court (Article 119 of the SCPC provides for the content of an application in a civil proceeding and Article 120 of the SCPC provides for the registration of the case). On the first appearance in court, the defendant is granted time, usually about 15 days, to file its response (see Article 121 of the SCPC for appearance deadlines). Where the response includes a counterclaim, the plaintiff is also granted about 14 days to file an answer. When the pleadings are closed, the parties and the court collaboratively establish the date for the beginning of the trial.

The Somali Civil Procedure Code of 1974 remains the principal procedural law governing civil litigation in Somalia, but it is currently under review under the Justice Sector Reform and Codification Project (2024–2026) to align it with contemporary judicial standards, digital procedures, and Federal Member State (FMS) structures.

Under the Justice Sector Strategy (2025–2029), the Ministry of Justice has introduced the e-Justice and Digital Data Management Framework, enabling pilot courts in Mogadishu, Baidoa, and Garowe to conduct partial electronic case filing, digital registration, and automated case tracking. These reforms aim to modernize filing procedures and improve transparency and access to justice.

Civil courts are now encouraged to refer parties to pre-trial mediation before trial commencement, particularly in commercial, labour, and family matters, to promote amicable settlement and reduce case backlog. Judicially supervised mediation sessions may be conducted within the court premises or in accredited ADR centres linked to the judiciary.

Although the SCPC applies nationwide, Federal Member States exercise procedural autonomy by issuing localized judicial circulars to improve administrative efficiency, especially regarding filing timelines, adjournment limits, and hearing scheduling.

Service of summons and court notices, traditionally conducted in person under Articles 123-125 of the SCPC, is now increasingly recognized through courier and electronic means, including official court email or SMS confirmation, following administrative directives of the Ministry of Justice (2024).

To address chronic case delays, the Federal Judiciary and Ministry of Justice have introduced performance tracking and digital monitoring systems to ensure timely resolution and limit unnecessary adjournments.

6. What is the extent of pre-trial exchange of evidence, and how is evidence presented at trial?

There is no pre-trial civil discovery process in Somalia. The proceeding is not divided into a pre-trial and trial phase, but facts and evidence are presented and admitted into the record from the beginning of the proceeding. As most of the inquisitorial systems countries, the Somali judge has more power in the proceeding and instructs the parties involved in the litigation on how to proceed, approves or denies their demands for submission of evidence, and ultimately decides upon facts and evidence, without any jury.

Each party to a complaint is required to file in court and serve on the other party a list of all documentary evidence relied upon. In commercial cases, a party is also required to file in court and serve on the other party copies of all documentary evidence listed in its pleadings.

Although there is still no formal discovery mechanism, certain pilot Commercial and Labour Courts in Mogadishu and Kismayo now allow limited pre-trial exchange of key documents and witness lists under judicial supervision to expedite the hearing process.

Under the Justice Sector Strategy (2025-2029), judges are receiving training on evidentiary management, digital recordkeeping, and early case assessment, aiming to standardize judicial practices across Federal Member States.

The e-Justice and Digital Data Management Framework (introduced in 2025) allows scanned or electronic copies of documents to be filed in pilot courts in Mogadishu, Baidoa, and Garowe, provided their authenticity is verified by the court registrar. The parties and their witnesses may give oral evidence at trial and be cross-examined/re-examined on points arising in cross-examination. They may also produce any documentary evidence listed in their pleadings. Witness testimony is routinely disallowed where there is some modicum of bias on the part of the witness, which presents lawyers with a difficulty in civil cases.

Digital and electronic evidence—such as emails, photographs, videos, or verified electronic records—is increasingly being admitted, particularly in commercial and administrative disputes, though Somalia does not yet have a dedicated electronic evidence law.

Expert testimony is permissible and has been used more prevalently in recent years given the need for Somali legal expertise in Somalia's emerging legal regime (for example, regarding the purchase and sale of real estate). Expert witnesses are now increasingly drawn from certified professionals in construction, finance, Islamic banking, and land valuation, often registered under the Ministry of Justice's expert witness list.

In line with the Alternative Dispute Resolution (ADR) integration initiative under the Justice Sector Strategy, judges may suspend proceedings and refer cases to pre-trial mediation, especially in contractual or family disputes, before the commencement of the evidentiary phase.

7. To what extent are the parties able to control the procedure and the timetable? How quick is the process?

The court sets dates for hearing cases in consultation with the parties at the close of the pleadings. Generally, hearings commence within a few weeks of the filing of the case. Judgment is usually delivered within a further few months after the hearing has been completed.

In practice, however, the degree of control that parties have over the timetable remains limited. Scheduling is largely determined by the presiding judge in accordance with the Somali Civil Procedure Code and the court's workload. Although parties may request specific adjournments or consolidation of hearings, such requests are subject to judicial discretion.

Under the Justice Sector Strategy (2025-2029) and the newly launched Digital Justice and Data Management Framework, courts in Mogadishu, Baidoa, and Garowe have introduced e-Justice tools that allow electronic case registration, digital calendars, and automated scheduling notifications. These reforms are gradually improving predictability and reducing case backlog, especially in commercial and labour matters.

Specialized Commercial and Labour Courts now operate on accelerated procedural timelines, often requiring the first hearing within 30 to 60 days from filing and aiming for judgment within three to six months, depending on complexity.

Nevertheless, in ordinary civil courts, case delays are still common due to limited judicial personnel, infrastructure gaps, and intermittent security disruptions.

Additionally, courts may, under Article 333 of the Civil Code and recent ADR integration guidelines (2024), suspend proceedings to allow mediation or amicable settlement before continuing to trial.

8. What interim remedies are available to preserve the parties' interests pending judgment?

The following conservatory remedies are available:

- provisional seizure of movable property;
- provisional attachment of funds in the hands of third parties;
- interim and interlocutory injunctions.

Under Articles 285 to 300 of the Somali Civil Procedure Code (1974), courts may grant these remedies when there is an urgent risk of irreparable harm, dissipation of assets, or obstruction of justice. Judges have wide discretion to issue such orders either upon inter partes hearing or, in cases of urgency, ex parte—subject to later confirmation within seven days of issuance.

Since 2024, specialized Commercial and Labour Courts in Mogadishu and Kismayo have been handling applications for provisional attachment, freezing of accounts, and injunctions under accelerated procedures introduced by the Ministry of Justice.

The Justice Sector Strategy 2025–2029 and the Digital Justice Framework (2025) further permit electronic filing of urgent motions in pilot courts, enabling faster issuance of conservatory orders.

Courts may also issue interim “status quo” or non-disposal orders while a dispute is undergoing mediation or other ADR proceedings, consistent with the IDLO 2024 ADR Integration Guidelines.

9. What means of enforcement are available?

Judgments of the courts may be enforced by:

- attachment proceedings;
- seizure and judicial sale of property (both movable and immovable) (see Article 293 to 299 of the SCPC);
- writ of possession (in respect of both movable and immovable property);
- contempt of court proceedings to penalise non-compliance with an order of specific performance or other order of the court;
- insolvency proceedings against individual judgment debtors and corporate debtors.

Under the Justice Sector Strategy 2025–2029, the Ministry of Justice has established specialized Enforcement Units within District and Regional Courts to supervise the execution of judgments and monitor compliance timelines.

Through the Digital Justice and Case Management System (DJ-CMS) pilot, enforcement orders and writs can now be issued and tracked electronically in the Mogadishu and Kismayo Commercial and Labour Courts.

Commercial courts are also authorized to enforce secured transactions and collateral recoveries under the revised Financial Institutions Law (2025) and Central Bank enforcement regulations, improving creditor protection.

Judicial cooperation on enforcement between Federal and Federal Member State courts has been strengthened through the Judicial Coordination Directive (2024), enabling reciprocal recognition of orders and judgments.

Furthermore, courts may now enforce mediated or ADR-based settlement agreements once they are registered under Article 333 of the Civil Code, consistent with the IDLO 2024 ADR Integration Guidelines.

10. Does the court have power to order costs? Are foreign claimants required to provide security for costs?

The court may award costs of proceedings to any of the parties and in any amount the court considers appropriate. Any party to a case, on the application of the other party, may be required to furnish security for costs of the proceedings. Security for litigation costs is routine in civil cases.

Under the Justice Sector Strategy 2025–2029, courts are guided by principles of proportionality and fairness when awarding costs, ensuring that cost orders correspond to the complexity, duration, and conduct of the parties during proceedings.

With the implementation of the Digital Justice and Case Management pilot (DJ-CMS) in Mogadishu and Kismayo, filing fees and cost assessments are increasingly being calculated and recorded electronically, improving transparency and predictability in cost awards.

Foreign claimants may still be ordered to furnish security for costs, but exceptions now apply in commercial or arbitral disputes under reciprocity arrangements and arbitration clauses recognized in the draft Commercial Arbitration Bill (2024).

Additionally, parties represented under the Legal Aid Act (2019) through accredited providers under the Somali Legal Aid Network (SLAN) are exempted from security and court cost requirements.

11. On what grounds can the parties appeal, and what restrictions apply? Is there a right of further appeal? To what extent is enforcement suspended pending an appeal?

The appellant is required to write a letter of appeal, pointing out the legal and factual defects of the judgment or any evidence unlawfully excluded from the lower court. An appeal must be brought within 30 days of the judgment rendered by the lower court. Any party who voluntarily confesses/admits before the lower court in either a civil or criminal case has no right to appeal for any adverse judgment based on those admissions/confessions.

Appeals may now be electronically registered in pilot jurisdictions under the Digital Justice and Case Management System (2025), improving accessibility and record tracking. Filing fees and procedural timelines are standardized through this system.

Under the Justice Sector Strategy 2025–2029, appellate courts are empowered to review both procedural and substantive errors, particularly where there is a miscarriage of justice or evident misapplication of law.

Appeals from District Courts proceed to Regional Courts, then to the Courts of Appeal, and finally to the Supreme Court, which remains the highest judicial authority until the Constitutional Court is operationalized.

Judgments of the Commercial and Labour Courts (currently piloted in Mogadishu and Kismayo) are appealable directly to the Federal High Court within 30 days, pending nationwide implementation.

Enforcement of civil judgments is ordinarily suspended pending appeal, except where the court orders provisional execution due to urgency or risk of dissipation of assets, in accordance with Article 273 of the Somali Civil Procedure Code.

A right of further appeal to the Supreme Court exists on points of law or matters of public interest, though factual disputes are only reconsidered where a gross procedural error or violation of due process is demonstrated.

12. To what extent can domestic and/or foreign State entities claim immunity from civil proceedings?

Generally, Somali State entities do not have immunity from civil proceedings in Somali courts. However, the State(s) may not be sued for any act or omission of a judicial officer whilst discharging a judicial function lawfully vested in him or her, except where a person has suffered imprisonment as a result of a serious miscarriage of justice.

Under the 2025 Justice Sector Framework, State liability is further guided by draft amendments to the Civil Code clarifying compensation claims against public authorities for administrative misconduct.

Theoretically, a foreign State (including any State entity) is immune from the jurisdiction of Somali courts, unless it has waived its immunity by submitting to the jurisdiction of the Somali court. This follows customary international law principles as Somalia has not yet enacted a specific State Immunities Act. In practice, foreign entities are routinely sued in Somali courts.

13. What procedures exist for recognition and enforcement of foreign judgments?

In order to enforce a foreign judgment in Somalia, one must first show:

- that the foreign court respected the main principles of its legal system
- the full participation of the parties in the proceeding or proved absence of one or more of the parties in accordance with the law
- that the judgment rendered by the foreign court was enforceable
- that the judgment rendered by the foreign court does not contradict the principles of the Somali Civil Code or other prevailing laws

that the matter is not currently also in dispute before a Somali judge.

Under the 2024 Memorandum of Understanding between the Ministry of Justice and the Supreme Court, registration of certain foreign arbitral awards and commercial judgments is now permitted, provided reciprocity and compliance with public order are proven.

Arbitration

14. Is the arbitration law based on the UNCITRAL Model Law? If yes, are there any key modifications? If no, what form does the arbitration law take?

No. There is currently no formal arbitration law. However, a draft *Commercial Arbitration Bill (2024)* based on the UNCITRAL Model Law has been prepared by the Ministry of Justice and is under review. The bill aims to regulate domestic and international arbitration and recognizes the Somali Arbitration Centre (established in 2023) as the main institutional forum for commercial and Islamic finance disputes.

15. What are the formal requirements for an enforceable arbitration agreement?

Arbitrators (also called referees) are mutually appointed by the parties through agreement. If the parties cannot agree on an arbitrator, they make submissions before the Regional Court, after which the judge will make a binding determination on the arbitrator, having taken note that the parties are unable to agree (Article 321, SCPC). The appointed arbitrator must be a legally competent Somali citizen (Article 323, SCPC). In practice, parties increasingly register arbitration clauses or agreements with the Somali Arbitration Centre (established in 2023) to ensure enforceability, pending adoption of the draft Commercial Arbitration Bill (2024).

16. Will the courts stay litigation if there is a valid arbitration clause covering the dispute? Does the approach differ in this regard if the seat of the arbitration is inside or outside of the jurisdiction?

If the parties have unanimously agreed to submit a dispute to arbitration, Somali law requires a stay of court proceedings. No one is allowed to have recourse to the court before the arbitration has taken place (Article 317, SCPC). In practice, Somali courts increasingly recognize arbitration clauses registered with the Somali Arbitration Centre (since 2023), including those with foreign seats, provided they do not contravene Somali public policy or Sharia principles.

17. On what grounds can the court intervene in arbitrations seated outside the jurisdiction?

Somali courts recognise and apply the parties' choice of foreign governing law and foreign court jurisdiction in accordance with Article 26 of the SCPC.

Article 26 states that until the case is decided in the first instance, each of the relevant parties can ask for the resolution of the question of jurisdiction. An application must be submitted to the Supreme Court or to the Court of Appeal pursuant to Article 9 in the case of conflict between District Courts of the same region and between them and the Regional Court. The decisions of the Court of Appeal regarding conflicts of jurisdiction and jurisdiction are subject to appeal before the Supreme Court, except in cases of conflict of territorial jurisdiction, for which the decision of the Court of Appeal is final.

Furthermore, Somali courts recognise and apply the parties' choice of arbitration as a dispute resolution mechanism. The mutual consent of the parties to private dispute resolution, including arbitration, is binding on the parties under Somali law.

Under the Civil Procedure Code, on application of a party, the court may grant conservatory or other interim relief in support of an arbitration seated outside the jurisdiction. This routinely happens within the domestic context as the courts and traditional dispute resolution mechanisms usually operate simultaneously.

In addition, following the 2024 Memorandum of Understanding between the Supreme Court and the Ministry of Justice, Somali courts may now register and enforce foreign arbitral awards or provide interim judicial assistance in line with UNCITRAL principles, provided that enforcement does not contravene Somali public policy or Sharia principles.

18. Can a foreign arbitration award be appealed in the local courts? If so, on what grounds?

There is no appeal process regarding foreign arbitration awards. However, Somali courts may review such awards only for procedural fairness and compliance with Somali public policy and Sharia principles before enforcement.

19. What procedures exist for enforcement of awards rendered in arbitrations seated outside of the jurisdiction?

If a form of ADR (including arbitration) is successful, the parties may register the agreement or award with the Regional Court within 10 days from its issuance (if it is in written form and meets other formality requirements) in order to have the court support its enforcement.

Courts have, at times, enforced foreign arbitration awards. Usually, courts require foreign arbitration awards to have been registered as judgments within the foreign jurisdiction where the arbitration took place. This allows the courts to enforce the foreign judgments under the Somali Civil Code. The case must be between two foreigners or a Somali national (not currently residing in the country) and a foreigner. The courts do not enforce foreign awards between two Somali nationals. Since 2024, enforcement has improved under a Memorandum of Understanding between the Supreme Court and the Ministry of Justice, which provides a procedural framework for the registration of foreign arbitral awards in Somali courts.

20. Are foreign awards readily enforceable in practice?

Somalia (and Somaliland) is not a party to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards.

Foreign awards are rarely enforced in the Somali courts. Mostly this is due to the current incapacity of the Somali judiciary and the lack of foreign individuals working here. There simply is not the flow of money and interests across borders that require the development of such norms.

However, there are several articles of SCPC relating to the enforcement of foreign court judgments (namely Articles 312, 313 and 314). Somali courts retain jurisdiction to enforce foreign judgments pursuant to the Somali Judiciary Act of 1974 (Article 10, which is similar to the aforementioned Articles).

Articles 312 of the SCPC states that any person wishing to enforce a foreign judgment in Somalia must apply to the Court of Appeal for the judgment to be enforced. According to Article 312, the declaration of effectiveness of the foreign judgment can also be requested through diplomatic channels. The Public Prosecutor may intervene in the enforcement.

According to Article 313, before declaring the validity of the foreign judgment, the Court of Appeal must ascertain that:

- the judgment was carried out in compliance with the laws of the jurisdiction in which it was issued;
- the parties duly appeared before the relevant court or the judgment was declared in default in accordance with the law;
- the sentence has become *res judicata*;

- it is not contrary to another sentence pronounced by a Somali judge;
- no other judgment is pending before the Somali courts in respect of the same matter and between the same parties before the foreign judgment became final; and
- the sentence does not contain provisions contrary to Somali public order.

Pursuant to Article 314 of the SCPC, if, based on the conditions indicated in Article 313, the judge declares the effectiveness of the foreign judgment, it shall be enforceable in Somalia.

Somali courts will only review the merits of the claim if the judgment concerns a matter which is deemed to be illegal under local law or Islamic law. Save for these limited circumstances, a court in Somalia shall enforce a foreign court judgment without re-examining the merits of the claim.

Somalia is not a party to any treaty for the reciprocal enforcement of foreign judgments. However, enforcement practices have shown gradual improvement following the 2024 Memorandum of Understanding between the Supreme Court and the Ministry of Justice, which established a procedural channel for registering and recognizing foreign arbitral awards. This effort forms part of the broader Justice Sector Strategy (2025-2029) aimed at strengthening international judicial cooperation and harmonizing commercial enforcement mechanisms.

Alternative dispute resolution

21. Are the parties to litigation or arbitration required to consider or submit to any alternative dispute resolution before or during proceedings?

It is customary practice in both the Regional Court and Appeal Court that the judge will inquire whether the parties want to participate in alternative dispute resolution (called out-of-court settlements or extra-judicial conciliation). If so, the judge will consent to an adjournment of the proceeding to resolve the dispute.

In practice, most cases go through some form of ADR administered by the clan networks either at the request of the parties or the judge. The clan system is commonly known as the informal judicial system. The parties may submit their case to ADR, which should stay the litigation pending the outcome of the ADR.

For such extra-judicial conciliations or settlements to be effective and enforceable they must be registered at the district court of the place which the conciliation has occurred (Article 333, Somali Civil Code).

Since 2024, the Ministry of Justice and the Federal Member States have begun formally integrating ADR into the judicial framework under the Justice Sector Strategy (2025-2029). Pilot ADR centers, supported by UNDP and IDLO, have been established in Mogadishu, Baidoa, and Garowe to link traditional (Xeer) mechanisms with formal court oversight. These initiatives are improving the recognition and enforcement of ADR settlements nationwide.

Reforms

22. Are there likely to be any significant procedural reforms in the near future?

There are a number of developments in Somali law that are contingent on the implementation of the relatively new constitutional amendments in the 2012 Provisional Constitution. Somalia is in the process of developing a Federal judicial system that is integrated across Somalia. The effectiveness of these reforms will depend on political dialogue and negotiation between the Somali Federal Government and the various autonomous regions.

Further, the Somali Bar Association is in discussion with Federal authorities to expand its regulatory scope and jurisdiction across Somalia. We expect to see an increase in membership in the Somali Bar across Federal Member States.

In addition, the Federal Government and the Federal Member States have adopted the Justice Sector Strategy (2025–2029), which aims to harmonize judicial procedures, introduce digital case management systems, and establish Commercial and Labour Courts. The Federal Judicial Reform Bill, currently before Parliament, also seeks to operationalize the Constitutional Court and Judicial Service Council, marking a major step toward institutionalizing the federal judiciary.

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South Africa



Introduction

South Africa is a mixed common law jurisdiction. Substantive law is primarily derived from Roman-Dutch law which is partially influenced by English law. Procedural law is primarily based on English law. All law is governed by a supreme Constitution incorporating a justiciable Bill of Rights.

Litigation

1. What is the structure of the legal profession?

The South African legal profession operates as a split bar, consisting of “attorneys” (solicitors) and “advocates” (barristers). The primary difference between the two professions was that members of the public (clients) could only instruct attorneys directly while advocates could only receive briefs directly from attorneys. Advocates were briefed mainly for court appearance work but are also briefed for opinion work.

The legal profession in South Africa has, however, undergone a significant change under the Legal Practice Act of 2014 and its subsequent amendments (Legal Practice Act). The Legal Practice Act offers a new legislative framework regulating the legal profession in South Africa.

The first significant change brought about by the Legal Practice Act is the title of a “legal practitioner” which attempts to remove the distinction between attorneys and advocates. For example, the Legal Practice Act now makes it easier for attorneys to appear in the South African superior courts (including the High Court, the Supreme Court of Appeal and the Constitutional Court). In addition, advocates are now also allowed to receive briefs directly from members of the public in certain circumstances.

Despite this legislative change, however, the practice remains split with advocates primarily handling oral advocacy and trial related cases with attorneys filling the historical role of instructing attorneys.

2. What is the structure of the court system?

The South African judiciary is categorised into superior courts (presided over by judges who are appointed by the President

upon the recommendation of the Judicial Service Commission) and lower courts (presided over by magistrates who are appointed by the Minister of Justice on the advice of the Magistrates’ Commission). Section 166 of the Constitution sets out the structure of the court system in South Africa

The superior courts are:

- the Constitutional Court, which is the highest court of appeal in all cases, with exclusive jurisdiction in particular constitutional cases
- the Supreme Court of Appeal, which may handle appeals from any division of the High Court
- the High Court, which is categorised into provincial and local divisions with delineated territorial jurisdiction and
- Statutory Courts with similar status to the High Court (including Tax Court, Electoral Court, Land Claims Court, Labour Court, Labour Appeal Court and Competition Appeal Court)

The lower courts (better known as Magistrates’ Courts) are categorised into:

- Regional Courts, which handle mainly criminal cases but also certain civil cases
- District Courts, which handle lesser criminal and civil cases and
- Statutory Courts and Tribunals with similar status to District Courts (including Equality Courts, Community Courts, Customary Courts, Consumer Courts and Tribunals, Military Courts, Rental Housing Tribunals, Workers’ Compensation Tribunals, etc)

3. What are the time limits for bringing civil claims?

The Prescription Act of 1969 sets the following time limits in respect of the bringing of civil claims:

- 30 years for any debt secured by mortgage bond, any judgment debt, any tax debt, and any debt owed to the State in respect of any share of the profits or royalties from mining
- 15 years for any debt owed to the State and arising out of an advance or loan of money or a sale or lease of land by the State

- 6 years for any debt arising from a notarial contract, a bill of exchange or other negotiable instrument
- 3 years in respect of any other debt

Normal commercial debts therefore prescribe after three years. Previously, the phrase “any other debt” was afforded an extremely broad interpretation by the South African courts which had the effect that any claim could become time barred after 3 years. However, the courts have recently developed a new method of interpreting this phrase and now afford it a narrower interpretation. For example, it is now trite that a claim for return of property is not a debt that is governed by prescription.

The applicable time limit begins to run from the date on which the debt becomes due, provided that it will not be deemed to become due until the creditor becomes aware (or, by exercising reasonable care, could have become aware) of the debtor’s identity and the facts from which the debt arises.

4. Are communications between a lawyer and his/her client privileged (ie, protected from disclosure to a court/tribunal and opposing parties)?

Yes, “legal privilege” is a common-law right which all clients are entitled to. In this regard, there are two types of privilege, namely, “litigation privilege” (communications between a legal practitioner and their client in respect of ongoing or contemplated litigation) and “legal advice privilege” (communications between a legal practitioner and their client in respect of legal advice provided by a legal advisor, acting as a legal advisor).

Privilege applies to in-house attorneys or legal advisers. However, privilege will not apply if the client sought advice for purposes of committing a crime or fraud.

The Protected Disclosures Act 26 of 2000 offers protection of information disclosed to a legal advisor for the purpose of obtaining legal advice.

5. How are civil proceedings initiated, and what is the typical process which is then followed?

There are two main types of civil proceedings:

- Action proceedings (in trial court) are suitable for cases involving material disputes of fact, which cannot be resolved without oral evidence. These proceedings are initiated by the plaintiff issuing a summons and particulars of claim, making the essential allegations necessary to establish its cause of action, without reference to supporting evidence. The defendant must file a notice of intention to defend, followed by a plea, making the essential allegations necessary to establish its defence, to which the plaintiff may file a replication. After full discovery of documents, interrogatories, and a pre-trial conference, dates are allocated for a trial, where each party presents and challenges documentary evidence and witnesses, followed by legal argument.
- Application proceedings (in motion court) are suitable for cases involving no material disputes of fact (or such limited disputes as can be resolved without the need for oral evidence). Such proceedings are instituted by the applicant issuing a notice of motion and founding affidavit setting out the reasons for the relief sought and presenting all of the supporting evidence. The respondent must file a notice of

intention to oppose, followed by an answering affidavit setting out the reasons for opposing the relief sought and presenting all of the supporting evidence. The applicant is then entitled to address new cases raised by the respondent in its answering affidavit, by filing a replying affidavit. There is no trial and there are no further opportunities to present or challenge evidence. Legal argument is then addressed to the court based upon cases traversed in the respective affidavits.

6. What is the extent of pre-trial exchange of evidence, and how is evidence presented at trial?

In action proceedings, after filing their legal submissions, the parties must make full discovery of anything in their possession that is potentially relevant to the disputed issues (which is not legally privileged). Limited reasons exist to resist discovery of potentially relevant information. This exercise is deliberately overbroad, erring on the side of over rather than under inclusion.

In order to narrow the disputed issues, the parties generally exchange requests for further particulars, interrogatories and requests for admissions of certain facts (such as the authenticity of documents).

The parties are required to agree on a trial bundle, containing all discovered evidence on which the parties intend to rely. The parties exchange witness lists, but not witness statements. Witnesses advance evidence through oral testimony (known as evidence in chief), after which they are cross-examined by opposing sides, and then re-examined by the party calling them to testify. Witnesses are often questioned by the judges who will be called upon to assess the credibility of each witness and the probative value of their evidence.

Documentary evidence is only admitted as evidence in a trial, once introduced by a particular witness who can then be cross examined on a number of aspects, including the authenticity of the document.

7. To what extent are the parties able to control the process and the timetable? How quick is the process?

There are detailed rules of process for both action and application proceedings in the High Court and in the Magistrates’ Courts, as well as more detailed practice manuals and directives issued for the busier divisions (ie, the High Court divisions seated in Pretoria, Johannesburg and Cape Town, as well as the Johannesburg Magistrate’s Court).

Each set of rules does afford the parties a limited degree of control over the timetable, as deadlines for filings and discovery may be extended or shortened by agreement. However, in the absence of demonstrable urgency, the parties cannot expedite the dates for hearing or trial, which are dictated by generally congested court rolls.

Depending on the complexity of the matter and the conduct of the parties, action proceedings in the busier divisions of the High Court generally take between 18 and 36 months (but can take as long as six years in some cases). For example, in the divisions seated in Pretoria and Johannesburg, once the parties have completed all applicable pre-trial processes, they must apply for a trial date- usually, next available trial date is at least a year later.

Application proceedings, which are determined on paper and do not involve oral evidence, are generally quicker. Parties exchange affidavits and may agree on truncated timeframes in urgent matters. The registrar or case management judge allocates hearing dates, and urgent applications may be heard within days. Opposed applications typically take between three and twelve months to resolve, while unopposed or urgent matters may be disposed of in a single day. Overall, application proceedings offer greater procedural efficiency and predictability compared to action proceedings.

8. What interim remedies are available to preserve the parties' interests pending judgment?

South African courts have the inherent power to grant any interim relief that may be shown to be necessary by an applicant. For example, a party may seek an interim injunction (injunction) ordering a counterparty to do or refrain from doing something, pending final determination of the dispute. A party may also seek provisional attachment of certain property or preservation of certain evidence, as well as security for costs.

The High Court also enjoys the power to issue interim relief in support of arbitrations, however, this power is somewhat limited under the International Arbitration Act of 2017, in deference to the power of the arbitral tribunal (if appointed) to grant interim relief.

9. What means of enforcement are available?

South African law provides a range of enforcement mechanisms to ensure compliance with court orders. The most common method is through a writ of execution, which authorises the sheriff to seize and sell the debtor's movable or immovable property. Before immovable property can be attached, the sheriff must first attempt to execute against movable assets. If these are insufficient, the creditor may apply to the High Court under Rule 46A for an order allowing execution against immovable property, such as a residence. The court must consider the debtor's financial position, the nature of the debt, and alternative remedies, especially where the property is a primary residence protected under the Constitution.

Additional enforcement tools include garnishee orders, which direct third parties to pay funds owed to the debtor directly to the creditor, and emolument attachment orders, which deduct amounts from the debtor's salary. In cases of non-compliance with non-monetary orders, contempt of court proceedings may be pursued. Where the debtor is insolvent, the creditor may apply for sequestration (for individuals) or liquidation (for companies), or initiate business rescue proceedings if rehabilitation is possible. These mechanisms ensure that judgments are not merely symbolic but are capable of being executed effectively.

10. Does the court have power to order costs? Are foreign claimants required to provide security for costs?

South African courts have broad discretion to award costs, and the general rule is that costs follow the result. The successful party is typically awarded costs based on the applicable court tariff, which means that full recovery of actual legal costs is rare unless punitive costs are awarded. Punitive costs may be granted where a party's conduct has been unreasonable or abusive. The court may also deprive a successful party of costs if their conduct warrants such a sanction.

Foreign claimants, known as peregrinus plaintiffs, may be required to provide security for costs if they do not own unencumbered immovable property in South Africa and are unlikely to satisfy an adverse costs order. Local claimants, or incola plaintiffs, are generally not required to furnish security unless their claim is vexatious or amounts to an abuse of process. Rule 47 of the Uniform Rules of the High Court governs the procedure for demanding security for costs. The court retains discretion to grant or refuse such orders based on the interests of justice, balancing the defendant's right to recover costs against the plaintiff's right of access to the courts.

11. On what grounds can the parties appeal, and what restrictions apply? Is there a right of further appeal? To what extent is enforcement suspended pending an appeal?

Appeals in South Africa are governed by a structured hierarchy. In the Magistrates' Courts, an unsuccessful litigant has an automatic right of appeal to the High Court. In the High Court, where it acts as a court of first instance, a party must apply for leave to appeal from the judge who issued the judgment. If leave is granted, the appeal may be heard by a full bench of the High Court or the Supreme Court of Appeal (SCA). If leave is refused, the appellant may petition the SCA for special leave. In exceptional cases involving constitutional issues, a party may seek leave to appeal directly to the Constitutional Court.

The appeals process involves strict procedural steps, including the filing of notices, compiling a complete appeal record, and submitting written heads of argument. Oral argument is typically presented during the hearing, allowing counsel to expand on written submissions and respond to judicial questions. Enforcement of a judgment is suspended pending an appeal unless the court orders otherwise. To obtain such an order, the applicant must demonstrate that they will suffer irreparable harm if enforcement proceeds and that the respondent will not suffer irreparable harm if enforcement is delayed.

12. To what extent can domestic and/or foreign State entities claim immunity from civil proceedings?

Domestic organs of state in South Africa do not enjoy immunity from civil proceedings or enforcement of judgments. However, the Legal Proceedings Against Certain Organs of State Act of 2002 prescribes procedural formalities and extended timelines for initiating claims against state entities. These formalities are designed to ensure that state entities are given adequate notice and opportunity to respond to claims, but they do not shield them from liability.

Foreign states, on the other hand, enjoy immunity from South African courts except in specific circumstances. The Foreign States Immunities Act of 1981 provides that foreign states are immune unless the claim relates to commercial transactions, employment contracts, personal injury, damage to property, intellectual property, consumer taxes, admiralty proceedings, or where the state has expressly waived its immunity. This framework aligns with international law and ensures that foreign states are not unduly exposed to litigation in South Africa, while still allowing for accountability in commercial and civil matters.

13. What procedures exist for recognition and enforcement of foreign judgments?

South Africa is not signatory to the Hague Convention of 1971 on the Recognition and Enforcement of Foreign Judgments in Civil and Commercial cases. Enforcement is therefore governed by the common law together with the Enforcement of Foreign Civil Judgments Act of 1988. Unfortunately, however, only one country has been designated for enforcement under this act (Namibia) which renders its application extremely limited.

Under the common law, a foreign judgment is not directly enforceable, but constitutes a cause of action which will be enforced by South African courts as long as:

- the court that issued it had jurisdiction to entertain the case
- it is final and conclusive in its effect and has not become superannuated
- its recognition and enforcement would not be contrary to South African public policy
- it was not obtained by fraudulent means
- it does not involve the enforcement of a penal or revenue law of the foreign State and
- its enforcement of the judgment is not precluded by the provisions of the Protection of Business Act of 1978 (which pertains narrowly to judgments mainly regarding minerals and other raw materials)

A party wishing to enforce the foreign judgment will need to bring either:

- Application proceedings: If no dispute of fact is envisaged or
- Action proceedings: if a dispute of fact is envisaged

The party will need to allege that the above requirements have been met, and it may be opposed by the judgment debtor.

Usually, enforcement proceedings do not permit a party to have the merits of the dispute reconsidered by the South African court, however, the South African court may need to inquire into the merits of the dispute to some extent so as to ensure that the enforcement is allowed under local law.

The Enforcement of Foreign Civil Judgments Act of 1988 was enacted in order to simplify the enforcement of foreign civil judgments. The Act offers that judgments by the courts of designated foreign states will be enforceable in South Africa upon registration of a certified copy of the order in the relevant South African Magistrates' Court. However as mentioned, only one foreign state (Namibia) has been designated under this Act, so its application is extremely limited.

Arbitration

14. Is the arbitration law based on the UNCITRAL Model Law? If yes, are there any key modifications? If no, what form does the arbitration law take?

Domestic arbitration administered within South Africa is governed by the Arbitration Act of 1965 ("Arbitration Act") which predated and therefore is not based on the UNCITRAL Model Law.

International arbitration seated in South Africa is now governed by the International Arbitration Act of 2017 ("International Arbitration Act"), which has introduced the UNCITRAL Model Law into South Africa and has laid the foundation for better alignment with international best practice. The UNCITRAL Model Law on International Commercial Arbitration is incorporated at Schedule 1 of the International Arbitration Act.

An arbitration is "international" if:

- The parties to the dispute have their places of business in different States
- The place or arbitration differs from the places of business of the parties to the dispute
- The place where the substantial part of the obligations of the commercial relationship are to be performed, differs from the places of business of the parties to the dispute
- The place with which the subject-matter of the dispute is most closely connected differs from the places of business of the parties to the dispute
- The parties to the dispute have expressly agreed that the subject matter of the arbitration agreement relates to more than one country.

15. What are the main national arbitration institutions?

The Arbitration Foundation of Southern Africa (AFSA), founded in 1996, is a full-service mediation and arbitration centre, which maintains a panel of arbitrators and its own rules of process. AFSA is both an appointing and administering body. Recently, AFSA has taken the lead by revising its International Commercial Arbitration Rules to better align with international best practice and the new International Arbitration Act.

The Association of Arbitrators, founded in 1979, maintains a panel of arbitrators and a set of rules based on the 2010 UNCITRAL Arbitration Rules. The Association operates as an appointing authority and does not administer arbitrations itself.

In August 2015, AFSA, Africa ADR and the Association of Arbitrators concluded an agreement with the Shanghai International Arbitration Centre to establish the China-Africa Joint Arbitration Centre (CAJAC) which now boasts six local offices: CAJAC Johannesburg, CAJAC Shanghai, CAJAC Beijing, CAJAC Shenzhen, CAJAC Nairobi and CAJAC OHADA. CAJAC operates as both an appointing and administering body.

16. Are there any restrictions on who may represent the parties to an arbitration?

The Arbitration Act and the International Arbitration Act sets no such restrictions, nor does the Legal Practice Act of 2014.

17. What are the formal requirements for an enforceable arbitration agreement?

Under the Arbitration Act, and in respect of domestic arbitrations, the agreement must be in writing and must specify the cases that may be referred to arbitration.

Under the International Arbitration Act, and in respect of international arbitrations, the arbitration agreement is considered to be in writing if the content is recorded in any form,

whether or not the arbitration agreement has been concluded orally or by other means. Further, the requirement that an arbitration agreement is in writing is met by electronic communication or if it is contained in an exchange of statements of claim and defence (alleged by one party and not denied by the other).

18. Will the courts stay litigation if there is a valid arbitration clause covering the dispute? Does the approach differ in this regard if the seat of the arbitration is inside or outside of the jurisdiction?

Under the (domestic) Arbitration Act, the South African courts generally defer to arbitration. Normally, a stay will be granted (if requested) once the court is satisfied that there is “no sufficient reason” why the dispute should not be referred to arbitration in accordance with the agreement. The power to stay proceedings in relation to domestic arbitration is however permissive.

In contrast to domestic arbitration, the International Arbitration Act sets an express duty on the court to stay proceedings in the presence of an agreement to arbitrate.

19. If the arbitration agreement and any relevant rules are silent, how many arbitrators will be appointed, and who is the appointing authority?

Under both the Arbitration Act and the International Arbitration Act, and unless the parties agree otherwise, reference shall be to a single arbitrator, appointed by the parties jointly or, if they are unable to agree on an arbitrator, by the relevant division of the High Court.

20. What rights are there to challenge the appointment of an arbitrator?

Under the Arbitration Act, a party may apply to court on “good cause” for an order setting aside or terminating the appointment of an arbitrator. The expression “good cause” has not been judicially tested, and the Arbitration Act states only that it “includes failure on the part of the arbitrator... to use all reasonable dispatch in entering on and proceeding with the reference and making an award or, in a case where two arbitrators are unable to agree, in giving notice of that fact to the parties”. Likely examples of good cause would include reasonable apprehension of bias, which is the test for recusal of a judge.

Under to the International Arbitration Act the appointment of an arbitrator may only be challenged if there are justifiable doubts with regard to his or her impartiality or independence, or if they do not possess the qualifications agreed to by the parties.

21. Does the domestic law contain substantive requirements for the process to be followed?

The Arbitration Act provides the parties considerable freedom to determine the process, governed by the basic requirement that each party must be afforded written notice of the time and place of the proceedings, and the opportunity to be heard at such proceedings.

The International Arbitration Act similarly provides parties the freedom to determine the process however, this is governed by the provisions of the UNCITRAL Model Law which is incorporated into the International Arbitration Act.

22. On what reasons can the court intervene in arbitrations seated inside the jurisdiction?

Under the Arbitration Act, the South African courts are granted significantly more oversight power than they are granted under the International Arbitration Act.

In respect of international arbitrations, the International Arbitration Act explicitly states that no court will have the authority to intervene except in instances that where the International Arbitration Act specifies that a court may do so.

The International Arbitration Act offers for certain functions of a court in relation to supervision and assistance in arbitrations. These include:

- assistance in the appointment of an arbitrator
- providing a decision on the challenge of an arbitrator
- deciding on the termination of an arbitrator’s appointment, if they are unable to perform their duties and
- setting aside of an arbitral award upon application to a court

Furthermore, if an arbitral tribunal rules that a challenge to its jurisdiction is a preliminary question, a party may refer the matter to a Court for determination. In addition,

Lastly, under the International Arbitration Act the court can be approached before or during arbitration proceedings in order to request temporary relief such as orders relating to:

- preservation, custody or sale of goods in dispute
- the quantum of security where the amount in dispute (but not for an order for security for costs)
- appointment of a liquidator
- an order that ensures any arbitration award is not ineffectual due to dissipation of assets and
- interim interdicts or other interim orders.

Importantly, however, under the International Arbitration Act a Court is not allowed to be granting any interim orders unless:

- the arbitral tribunal has not yet been appointed and the matter is urgent
- the arbitral tribunal is not competent to grant the order or urgency makes it impractical to seek the relief from the arbitral tribunal

On the other hand, in respect of domestic arbitrations, the Arbitration Act offers, in addition to the power to set aside or terminate an arbitrator’s appointment (see question 20), that the High Court may issue an injunction (injunction) precluding an arbitral tribunal from exceeding its jurisdiction, or make a declaratory order invalidating the arbitration agreement.

The Arbitration Act also vests the High Court with widely framed (but rarely exercised) powers, “on good cause shown”, to set aside an arbitration agreement, order that a particular dispute referred to in the agreement shall not be referred to arbitration, or order that the agreement shall cease to have effect with reference to any dispute referred to arbitration.

The High Court is, however, also empowered (and generally more inclined) to support the arbitration process, by ordering:

- security for costs
- discovery of documents and interrogatories
- examination of witnesses
- giving of evidence by affidavit
- inspection, interim custody, preservation or sale of goods or property
- interim interdicts (injunctions) or similar relief
- securing amounts in dispute; substituted service of notices or summonses and
- appointment of a receiver (trustee).

Under the Arbitration Act, and any time before a final award is made, the arbitrator(s) or any or all of the parties, may approach the court for an opinion on a question of law, which will be final and binding on the arbitrator(s) and the parties.

23. On what reasons can the court intervene in arbitrations seated outside the jurisdiction?

In terms of the International Arbitration Act a Court, at the request of a party will have the same powers in relation to arbitration proceedings irrespective of where the judicial seat is located (see question 22 above on the powers that the International Arbitration Act confers onto Courts). Importantly, there is great deference shown to arbitral tribunals before a Court may intervene.

24. Do arbitrators have powers to grant interim or conservatory relief?

In respect of domestic arbitrations, the Arbitration Act in general terms offers that an arbitral tribunal may make an interim award (unless the arbitration agreement offers otherwise), but does not confer any specific powers on an arbitral tribunal, leaving it to the parties to do so in the arbitration agreement (including the supportive powers that may be exercised by the courts (see question 22 above)).

In respect of international arbitrations seated in South Africa, the International Arbitration Act offers that, unless agreed to otherwise by the parties, an arbitral tribunal may grant temporary relief at the request of a party. In this regard the International Arbitration Act it expressly states that temporary relief include any temporary measure to maintain or restore the status quo pending a decision; any action to prevent imminent harm; provision for the preservation of assets which are the subject of the dispute; preservation of evidence and provision for security for costs.

Provisions relating to preliminary orders were removed from the text of the UNCITRAL Model Law incorporated into the International Arbitration Act. As such preliminary orders are not available to the tribunal (but temporary relief are).

25. When and in what form must the award be delivered?

In respect of domestic arbitrations under the Arbitration Act, the award must be written and signed by the arbitrator(s) and delivered to the parties within four months after the

arbitrator(s) took up appointment or within a longer period stipulated in the arbitration agreement, an extension signed by the parties, or a court order.

The International Arbitration Act offers that an award shall be made in writing and signed by the arbitrator(s). The award shall state the reasons on which it is based, unless the parties have agreed otherwise, the date and the judicial seat of arbitration.

26. Can a successful party recover its costs?

In respect of domestic arbitrations, the Arbitration Act offers that unless the arbitration agreement offers otherwise, the arbitral tribunal has the discretion to make an appropriate costs award (including an award of punitive costs).

It is common for arbitrators to order that costs be taxed on the ordinary court scales and in accordance with the court tariff. This often results in a significant under-recovery of incurred costs.

Similarly, the International Arbitration Act offers that unless the parties agree otherwise the award of costs falls within the arbitral tribunal's discretion. It further offers that in exercising its discretion the arbitral tribunal may take into account the conduct of the parties to resolve the matter expeditiously and in a cost-effective manner.

International tribunals are more inclined to award costs actually incurred by the successful party.

27. On what reasons can an award from an arbitration seated in the jurisdiction be appealed to the court?

In respect of domestic arbitrations, under the Arbitration Act unless the arbitration agreement offers otherwise, an arbitral award is final and cannot be taken on appeal. An award may, however, be judicially reviewed and set aside by the High Court on the reasons of arbitrator misconduct, gross procedural irregularity, exceeding jurisdiction, or other impropriety in obtaining the award.

The International Arbitration Act offers that an arbitral award may only be set aside under the following circumstances:

- If the party making the application offers proof that:
 - a party to the arbitration agreement was under some incapacity
 - the party making the application was not given proper notice of the arbitrator's appointment or the proceedings or was unable to present their case
 - the award deals with a dispute that does not fall within the ambit of the submission to arbitration or contains decisions that are beyond the agreed scope or
 - the composition of the arbitration tribunal or process was not in accordance with the arbitration agreement
- The Court finds that the subject-matter of the dispute is not able to settlement by arbitration or the award is in conflict with public policy in South Africa

28. Can a foreign arbitration award be appealed in the local courts? If so, on what reasons?

A foreign arbitration award cannot be appealed in the local courts.

However, the International Arbitration Act offers limited reasons for refusal of the recognition and enforcement of an arbitral award, irrespective of the country. Enforcement and recognition of an arbitral award may only be refused:

- At the request of the party against whom the arbitration award is invoked if:
 - proof is furnished a party to the arbitration agreement was under some incapacity
 - the party making the application was not given proper notice of the arbitrator's appointment or the proceedings or was unable to present their case
 - the award deals with a dispute that does not fall within the ambit of the submission to arbitration or contains decisions that are beyond the agreed scope
 - the composition of the arbitration tribunal or the process was not in accordance with the arbitration agreement
 - the award has not yet become binding or has been set aside or suspended (by the Court in the same country or under the same law which the award was made)
- The Court finds that the subject-matter of the dispute is not able to settlement by arbitration or the award is in conflict with public policy in South Africa.

29. What procedures exist for enforcement of: (i) awards rendered in arbitrations seated outside of the jurisdiction and (ii) domestic awards?

South Africa is a party to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the "New York Convention"). Chapter 3 of the International Arbitration Act deals with the recognition and enforcement of foreign arbitral awards.

According to the International Arbitration Act a foreign arbitration award must be recognised and enforced as required by the Convention governed by Chapter 3 thereof. Chapter 3 states that a party seeking enforcement and recognition of a foreign arbitral award must produce:

- the original award (authenticated) and arbitration agreement or a certified copy of both
- if in a language other than English, a sworn translation of the arbitration agreement

Generally an arbitration award, irrespective of the country in which it was made, shall be binding and enforced (upon application to the competent court) unless a ground of refusal exists. These reasons include:

- The court finding that the subject-matter of the dispute is not able to settlement by arbitration or the award is in conflict with public policy in South Africa
- Proof to the satisfaction of the Court that:
 - A party to the arbitration agreement was under some incapacity

- The arbitration agreement is invalid under the applicable law or where the parties have not subjected it to any law, where the award is invalid under the law of the country where it was made
- The party making the application was not given proper notice of the arbitrator's appointment or the proceedings or was unable to present their case
- The award deals with a dispute that does not fall within the ambit of the submission to arbitration or contains decisions that are beyond the agreed scope
- The composition of the arbitral tribunal or process was not in accordance with the arbitration agreement or
- The award has not yet become binding or has been set aside or suspended (by the court in the same country or under the same law which the award was made)

Under the Arbitration Act, a domestic arbitral award may be made an order of the High Court, upon application by any of the parties after giving notice to the others, and will thereafter be enforceable in the same way as a High Court order (see question 9 above).

30. Are foreign awards readily enforceable in practice?

Foreign awards are readily enforceable in practice, under the procedures set out above.

Alternative dispute resolution

31. Are the parties to litigation or arbitration required to consider or submit to any alternative dispute resolution before or during proceedings?

Alternative dispute resolution (ADR) is not mandatory in South African litigation unless the parties have contractually agreed to it. However, there are exceptions. In labour disputes, parties must first exhaust the procedures of the Commission for Conciliation, Mediation and Arbitration (CCMA) before approaching the Labour Court. In the Gauteng Division of the High Court, mandatory mediation has been introduced for all civil trial matters, including commercial, delictual, family, and personal injury disputes.

Rule 41A of the Uniform Rules of Court, applicable to all High Courts in South Africa, mandates that parties formally consider mediation before initiating any civil action or application. At the outset of proceedings, both the plaintiff/applicant and the defendant/respondent must serve notices indicating whether they agree to or oppose mediation, along with brief reasons for their stance.

These developments reflect a growing emphasis on resolving disputes efficiently and cost-effectively outside of formal litigation. Mediation is increasingly recognised as a valuable tool for narrowing issues, preserving relationships, and reducing the burden on the courts.

Reforms

32. Are there likely to be any significant procedural reforms in the near future?

Significant procedural reforms have recently been implemented and more are anticipated. The digitisation of court processes has accelerated, with electronic filing systems adopted across High Courts and specialist courts. This shift has improved accessibility, reduced administrative delays, and enhanced transparency. The Commercial Court in Johannesburg has been re-established to handle complex commercial disputes with greater efficiency, supported by judicial case management.

Mandatory mediation has been introduced in Gauteng to reduce case backlogs and encourage early settlement. The Judicial Matters Amendment Act of 2023 has strengthened the enforcement of foreign arbitral awards, introduced anti-corruption measures targeting private sector and state-owned entities, and repealed the common law crime of defamation to protect freedom of expression. Additionally, class action litigation has been formalised under Rule 11A, effective September 2025, introducing certification requirements and procedural safeguards to ensure fair and efficient resolution of collective claims. These reforms reflect a broader commitment to modernising the legal system and enhancing access to justice.

Here is a list of key reforms in the recent years:

1. Re-establishment of the Johannesburg Commercial Court (a division of the Johannesburg High Court)

The Johannesburg High Court has re-established its Commercial Court, a specialist division aimed at expediting commercial dispute resolution. Key features include:

- Less rigid procedural rules, resembling arbitral practices.
- Allocation of cases to judges with commercial law expertise.
- Enhanced efficiency in handling complex commercial matters.

The Commercial Court Practice Directive in South Africa includes arbitration-related claims among those that may be designated as “Commercial Court cases.” For a case to qualify, it must meet at least one of the following criteria: it involves complex or novel legal issues, complex factual matters, a monetary value of at least R25 million, or is of public interest.

2. Mandatory Mediation in Gauteng

As of 22 April 2025, the Gauteng Division of the High Court has introduced a mandatory court-annexed mediation process for all civil trial matters, as per a directive issued by the Judge President. Before a trial date can be allocated, parties must first attempt mediation. This initiative aims to reduce the backlog of civil trials and promote early resolution of disputes. The process begins with the delivery of a Rule 41A Notice, which must include detailed information such as the preferred mediation platform, proposed mediator(s), common cause and disputed facts, anticipated expert evidence, procedural timelines, and a response deadline of between 5 and 15 court days. If the parties cannot agree on a mediator, the Mediation Judge (referred to as the Umpire) will appoint one, and this appointment is final and binding.

If a party fails to respond, delays unreasonably, or refuses to cooperate without valid reasons, they may be declared a delinquent party. In such cases, the compliant party may apply

to the Special Interlocutory Court for an order compelling cooperation. Continued non-compliance can result in exemption from mediation, default judgment, striking out of the defence, a contempt order, and punitive costs. Once both parties have exchanged Rule 41A Notices, a pre-mediation meeting is held, followed by the signing of a mediation agreement. If mediation fails, the mediator must file a report within 10 court days, and the parties must submit a joint minute. These documents are uploaded to Court Online, after which the litigation process resumes. Mediation costs are borne individually by each party and are generally treated as costs in the cause.

3. Judicial Matters Amendment Act

President Cyril Ramaphosa assented to The Judicial Matters Amendment Act 15 of 2023, effective 3 April 2024, introduces several changes including:

- amending the International Arbitration Act, reinforcing South Africa’s alignment with the UNCITRAL Model Law and improving recognition and enforcement of foreign arbitral awards.
- Anti-Corruption Measures: A new offence was added to the Prevention and Combating of Corrupt Activities Act, targeting private sector and SOE failures to prevent corruption—aligned with Zondo Commission recommendations.
- Defamation Law Reform: The common law crime of defamation was repealed, protecting journalists and aligning with global free speech standards.]

These changes are already influencing litigation practices, criminal justice procedures, and access to justice, especially for vulnerable groups.

4. Class Actions: Formalisation Under Rule 11A

Effective 19 September 2025, the Uniform Rules of Court have been amended to formally regulate class action litigation in South Africa

Key amendments

- **Definition Introduced:** A class action is now defined as an action brought by a representative on behalf of a class with substantially similar legal or factual issues.
- **Certification Requirement:** Rule 11A codifies the process for court certification, which is now a prerequisite.
- **Criteria for Certification:**
 - Interests of justice.
 - Identifiable class with objective criteria.
 - Valid cause of action.
 - Common issues of fact or law.
 - Determinable relief or damages.
 - Suitable method for damage allocation.
 - Appropriateness of class action as a resolution method.
 - Representative’s ability to fairly and effectively represent the class.

Procedural enhancements

- Certification applications must include a draft Particulars of Claim.
- Courts may issue directions on how notice of the action is to be given.
- Appeals against certification decisions must follow Rule 49 procedures.

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South Sudan



Introduction

The South Sudan legal system is based on the transitional Constitution of the Republic of South Sudan, which came into force on 9 July 2011. In addition, the courts also observe the customs, traditions and the will of the people. The legal system is based on both civil law and English common law.

Litigation

1. What is the structure of the legal profession?

Since the secession of South Sudan from Sudan in 2011, there has been some uncertainty as to the structure of the legal profession. Before seceding, South Sudan's legal profession was merged with that of Sudan.

Lawyers in South Sudan practise as advocates, solicitors, barristers and legal consultants; there is no split profession. To qualify as a lawyer in South Sudan, students must first obtain a law degree from a recognised institution of higher learning, and then undertake a pupillage with a commissioner for oaths or an advocate who has practised law for more than five years. The trainee is then recommended to the South Sudan Bar Association for licensing and entered into the Roll of Advocates.

South Sudan's legal structure does not permit foreign lawyers to practise in South Sudan or appear before its courts. However, foreign lawyers can engage in consultancy or in-house work with South Sudanese law firms.

The South Sudan Bar Association is the regulatory body of the profession.

2. What is the structure of the court system?

The Transitional Constitution of South Sudan mandates the establishment of the judiciary of South Sudan as an independent decentralised institution. The judiciary is independent of the executive and legislature, with its budget charged on government reserves and consolidated funds, thereby affording it necessary financial independence.

Judicial power in South Sudan is derived from the people and will be exercised by the courts in accordance with their customs,

values, norms and aspirations and in conformity with the Constitution and the law. The judiciary of South Sudan is structured as follows:

- the Supreme Court of South Sudan is the court of final judicial instance for any civil litigation under South Sudan or state law, including statutory and customary law;
- the Court of Appeal has jurisdiction to hear and determine the following matters:
 - appeals against judgments and orders of the High Court;
 - appeals against administrative decisions made by administrative authorities;
 - any other matters assigned to its jurisdiction by the Constitution or any other law.
- the High Court has jurisdiction to try original suits without limit as to value or subject matter, except as otherwise provided by law. Under sections 20 and 21 of the Civil Procedure Act 2007, certain matters fall under the exclusive jurisdiction of the High Court and may not be heard by the County Court. Examples of these are:
 - suits concerning companies, trademarks, business names, bankruptcy and settlement between creditors;
 - suits concerning matters of personal law involving foreigners;
 - reviews of administrative decisions.
- County Courts: a County Court of the First Grade has jurisdiction to try other suits without limit as to value and also determines appeals against judgments and orders of Payam Courts, and other appeals as may be expressly provided by any other law. A County Court of the Second Grade has original jurisdiction to try suits of value not exceeding SSP 1,000;
- Payam Courts have original jurisdiction to try suits with a value not exceeding SSP 500 subject to any limitation which may be contained in its warrant of establishment.
- Specialized Courts are family courts and commercial courts.

3. What are the time limits for bringing civil claims?

The law on the limitation of actions has not yet been published. Together with the law on arbitration (see below), this law is considered a priority that must be passed as soon as possible by the Parliament of South Sudan.

4. Are lawyer-client communications privileged (ie, protected from disclosure to a court/tribunal and opposing parties)?

Advocates are not allowed to disclose any communications made to them in the course of and for the purpose of their professional services by or on behalf of a client, or to state the contents or condition of any document with which they have become acquainted in the course of and for the purpose of their professional services, unless with the client's express consent.

This privilege is limited and does not protect from disclosure any communication made in furtherance of any illegal purpose, or any fact observed in the course of providing professional services showing that any crime or fraud has been committed since the commencement thereof.

5. How are civil proceedings commenced, and what is the typical procedure which is then followed?

Commencement of a civil lawsuit begins when the plaintiff files a plaint with the court. A suit is deemed to be instituted on the date of payment of the court fee or, if the plaintiff is exempted from payment of fees, on the date on which the plaint was allowed by the court (section 33 of the Civil Procedure Act 2007). Under section 73 of the Civil Procedure Act, defendants must file a defence and there may be a right of reply (section 82).

Court fees should be paid within seven days from the date on which payment is ordered, otherwise the court should dismiss the plaint.

6. What is the extent of pre-trial exchange of evidence, and how is evidence presented at trial?

A procedure for the pre-trial exchange of evidence does not exist in South Sudan. The court obtains statements and evidence from the plaintiff and the defendant, but neither party is automatically entitled to see the other party's statements and evidence. In practice, the parties can request permission from the court to review and take notes. Such requests will usually be granted by the court, although photocopies of statements and evidence usually may not be taken. There are instances where discovery of documents between adversaries may be allowed, if one party has applied to the court to direct the other party to make discovery of documents in his/her possession (Rules Schedule, rule 5(6) of the Civil Procedure Act 2007); or by order of the court under its inherent power if it deems it necessary for the disposal of the suit or to cut costs (section 328 of the Civil Procedure Act 2007).

The primary source of evidence is oral testimony from individuals (whom the court has accepted as witnesses) with direct knowledge of the matters in dispute. Cross-examination of witnesses is permitted. Expert witnesses may be called to comment upon technical matters, and written evidence in the South Sudanese language may be submitted directly to the court.

7. To what extent are the parties able to control the procedure and the timetable? How long do proceedings last?

Parties have very little control over the timetable, especially after filing the plaint/claim. However, they may reconcile certain issues between themselves thereafter. The court will set the hearing date and may rule on the exchange of statements, witnesses and expert reports.

Litigation timelines vary depending on the type of the case, its complexity and the availability of courts. A civil case may take several months to years to reach resolution.

8. What interim remedies are available to preserve the parties' interests pending judgment?

Interim injunctions, interim declarations, orders for detention, custody, preservation or inspection of relevant property are all possible, as well as orders for the payment of income until a claim is decided. The court may also make an order directing a party to provide information about the location of relevant property or assets or to provide information about relevant property or assets which are or may be the subject of an application for an injunction. The urgency of the matter is usually evidenced in an affidavit (sections 155 and 156 of the Civil Procedure Act 2007).

9. What means of enforcement are available?

The following mechanisms exist:

- delivery of any property specifically decreed;
- attachment of any property specifically decreed;
- arrest and detention in prison of the judgment debtor pending execution of the decree;
- appointment of a receiver;
- any such other manner as the nature of the relief granted may require.

Attachment orders are the most commonly seen method of enforcement. In practice, enforcement against powerful people like army generals or senior executives in government is challenging as they may use their positions of power to overcome enforcement.

10. Does the court have power to order costs? Are foreign claimants required to provide security for costs?

The court has powers to order costs and, where a decree is for the payment of money and interest has been claimed in the plaint, the court may order interest to be paid on the principal sum. Foreign claimants are treated like domestic claimants for the purposes of costs.

Claimants do not usually provide security unless they become counter-defendants or judgment debtors. The law does not differentiate between locals and foreigners.

11. On what grounds can the parties appeal, and what restrictions apply? Is there a right of further appeal?

An appeal is a universal right; leave to appeal is only required if a ground not set out in the memorandum of appeal is advanced (section 191 of the Civil Procedure Act 2007). To initiate an appeal, the party must file a notice of appeal within a defined timeframe, which must include information such as the first degree jurisdiction, the parties involved and the parts of the ruling that are challenged.

The Court of Appeal makes its decision based on the record of the case established by the trial court or agency. It does not receive additional evidence or hear witnesses. The Court of Appeal may also review the factual findings of the trial court,

but typically will only overturn a decision on factual grounds if the findings were “clearly erroneous”. A right of final appeal exists from the Court of Appeal to the Supreme Court and from the County Court to the High Court.

12. To what extent can domestic and/or foreign State entities claim immunity from civil proceedings?

Since South Sudan seceded from Sudan, this question has not been clarified by the courts. However, under international practice, such protection is recognised. Immunity can extend to legal proceedings against the foreign State itself, its organs and enterprises, and its agents. In this case immunity is generally considered to be a procedural bar. If it wishes, the defendant foreign State may waive its right to immunity and the case will then proceed.

Where foreign State entities are plaintiffs or claimants, they are generally treated like other litigants.

13. What are the procedures for having foreign judgments recognised and enforced?

A foreign judgment, decree or order may not be executed by a court in South Sudan unless:

- the judgment, decree or order is made by a competent judicial tribunal in accordance with the rules of international law relating to jurisdiction that are applicable in the country where the judgment or order was made and which have become final in accordance with that law;
- the parties to the suit were duly summoned and duly represented;
- the decree or order does not conflict with a prior decree or order made by the courts of South Sudan;
- the decree or order has not been obtained by fraud;
- the decree or order does not contain a claim founded on a breach of any law in force in South Sudan.

Arbitration

14. Is the arbitration law based on the UNCITRAL Model Law? If so, are there any key modifications? If not, what type of arbitration does the law provide for?

In South Sudan, the law on arbitration is based on common law principles. Being a very young country, it is yet to accede to, adopt or ratify most international principles such as those based on the UNCITRAL Model Law. There is as yet no independent law on arbitration, although the Civil Procedure Act 2007 did commit a whole chapter to arbitration.

At any time before judgment is pronounced, the interested parties in a suit may agree that any matter in issue between them will be referred to arbitration and apply in writing to the court for an order of reference. The aforementioned chapter on arbitration includes provisions on the contents of the reference, the appointment of arbitrators, the court’s powers in the summoning of witnesses and grounds for setting aside an award and staying proceedings where there is an arbitration agreement.

The same provisions of the Civil Procedure Act 2007 on arbitration are applicable, insofar as is practicable, to the arbitration of disputes under a prior agreement between the parties, where such disputes have not been raised before the court.

Where a matter has been referred to arbitration without the intervention of the court, a person interested in the award may apply to any court having jurisdiction over the subject matter of the award for the award to be filed in court.

Juba Centre for Arbitration

In 2013 a group of South Sudanese lawyers proposed and established the Juba Centre for Arbitration (JCA) which has since been registered by the Ministry of Justice as an arbitration centre. The Centre has developed Rules of Arbitration, Mediation and Conciliation and has now opened chambers to handle arbitration matters. The Centre recently (2015) had the first dispute referred to it upon the parties’ application to court. It has also developed a training programme for local lawyers in arbitration, mediation and conciliation.

15. What are the formal requirements for an enforceable arbitration agreement?

The parties must have agreed in writing that any dispute between them should be referred to arbitration. If so, any of the parties to the agreement may apply to the court with jurisdiction in the matter to which the agreement relates, to file the agreement at court. Filing the agreement with the court is mandatory under sections 137 and 138 of the Civil Procedure Act 2007.

Where no sufficient cause preventing the agreement from being filed is shown, the court must order the agreement to be filed and will make an order of reference to the arbitrator(s) appointed in accordance with the provisions of the agreement or, if there is no such provision and the parties cannot agree, the court will appoint the arbitrators. The arbitrators appointed will depend on the subject matter of the arbitration. For example, if the matter is a business dispute, the court may appoint accountants and if the dispute concerns insurance, it may appoint insurance experts.

16. Will the courts stay litigation if there is a valid arbitration clause covering the dispute? Does the approach differ according to whether the seat of the arbitration is inside or outside the jurisdiction?

The Civil Procedure Act 2007 provides that where any party to an arbitration agreement initiates a suit against another party to the agreement over any referable subject matter, any other party to that suit may, at the earliest possible opportunity and before the hearing phase has started, apply to the court to stay the suit.

If the court is satisfied that there is no sufficient reason why the matter should not be referred to arbitration in accordance with the agreement, and that at the time the suit was instituted, the applicant was and still remains ready and willing to do all things necessary in the proper conduct of the arbitration, it may stay the suit.

17. On what grounds can the court intervene in arbitrations seated outside the jurisdiction?

The court may intervene and remit the award or any matter referred to arbitration for reconsideration by arbitrators upon such terms as it deems appropriate, where it is satisfied that any of the following circumstances apply:

- The award has left any of the matters referred to arbitration undetermined, or it determines a matter not referred to arbitration, unless that matter can be separated without affecting the rest.
- The award is so indefinite as to be incapable of execution.
- The award clearly contravenes the law.

An award remitted for reconsideration for any of the above reasons will become void if the arbitrators fail to reconsider it within the time fixed by the court.

Further, the parties may apply to have an award set aside on one of the following grounds:

- one or more of the arbitrators engaged in corruption or misconduct;
- either party is guilty of fraudulent concealment of any matter which ought to have been disclosed, or wilfully misled or deceived the arbitrators;
- the award was made after a court order superseding the arbitration and proceeding with the suit;
- the award was made after the period allowed by the court had expired (section 147 of the Civil Procedure Act 2007), or is otherwise invalid.

18. Can a foreign arbitration award be appealed in the local courts? If so, on what grounds?

No, a foreign arbitration award cannot be appealed in the local courts, as they do not have jurisdiction to consider the award. Any appeal must be in accordance with the agreement between the parties.

19. What are the procedures for the enforcement of awards rendered in arbitrations seated outside the jurisdiction?

South Sudan is not a signatory to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards.

Where an award is issued by an international arbitral tribunal, enforcement of the arbitral award depends on the validity of the award; whether the award is in writing signed by the members of the panel; and whether reasons for the award are included. The validity of the award may be affected by corruption or misconduct of one of the arbitrators, by either party having fraudulently concealed any matter that ought to have been disclosed, or the award having been made after the expiration of the period allowed by the court or being otherwise invalid (section 147 of the CPA 2007).

A party wishing to enforce a foreign-seated award in South Sudan would first need to get the award recognised in the courts of the seat of the arbitration. The courts of South Sudan are competent to enforce awards in arbitration seated outside of the jurisdiction if the parties submit to such jurisdiction

expressly or impliedly by agreement in writing (sections 137 and 138 of the Civil Procedure Act 2007), and if the local court does not find, of its own motion, that it lacks jurisdiction.

20. Are foreign awards readily enforceable in practice?

Not unless the award has been recognised in the courts of the seat.

Alternative dispute resolution

21. Are the parties to litigation or arbitration required to consider or submit to any alternative dispute resolution before or during proceedings?

Since South Sudan seceded from the Sudan, much has been anticipated in relation to alternative dispute resolution. Traditional conflict resolution based on customary law plays a considerable part in dispute and conflict resolution in South Sudan, particularly in the areas of family law and crime. Offences such as adultery, slander and defamation are compensated traditionally, e.g., by paying the aggrieved party in livestock or by simply giving an apology. On the other hand, crimes as serious as murder could be settled, for example, through payment of *dia*. See also question 14 above regarding the new Juba Centre for Arbitration, which offers mediation and conciliation services.

Reforms

22. Are there likely to be any significant procedural reforms in the near future?

None that we are aware of.

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Sudan



Introduction

The Sudanese legal system reflects a complex historical evolution shaped by colonial legacies, Islamic Sharia, statutory law, and customary norms. It operates as a hybrid between common law and Islamic Sharia, blending elements of common law with principles of Islamic jurisprudence. Civil litigation in Sudan is governed by a codified set of procedural and substantive rules designed to uphold judicial independence, safeguard access to justice, and ensure compliance with both national legislation and international obligations.

Litigation

1. What is the structure of the legal profession?

The legal profession in Sudan is primarily regulated under the Advocacy Act of 1983 as amended in 2014 (the “**Advocacy Act**”). Sudan follows a fused bar system, whereby, the route to qualify as a barrister or a solicitor is the same. To practice law in Sudan, an individual must be registered with the Bar Admission Committee and obtain a license. To qualify for this license, the applicant must: (i) be a Sudanese citizen; (ii) be of sound mind; (iii) be at least twenty-one years old; (iv) have good conduct and reputation and must not have been convicted of an offense involving dishonesty or moral turpitude, unless granted a full pardon; (v) hold a law degree from a recognized university and have successfully passed the examination prescribed under any applicable law regulating the legal profession, unless exempted; (vi) have completed the one-year consecutive training requirement, unless exempted, with the condition of training under a supervising advocate with a minimum of ten (10) years’ experience in the legal field.

Upon qualifying, lawyers may stand before any court or tribunal in the hierarchy except the Constitutional Court, as it is confined to senior lawyers. Barristers in Sudan can carry out the role of solicitors and vice versa.

As a general rule, a foreign barrister cannot stand before any court in Sudan, however, foreign lawyers may be authorized by the Bar Admission Committee to appear before the courts in a

specific case or matter, provided that the prescribed fee has been paid. Pursuant to the Advocacy Act, the application for such authorization must include the following information: (i) the name of the applicant; (ii) the party on whose behalf the applicant will appear; (iii) the court or authority before which the appearance will take place; (iv) the case number; (v) the opposing party; and (vi) the name of the licensed lawyer chosen by the applicant to act in the matter.

Further, a Sudanese national holding foreign qualifications, is subject to the same restriction as a foreign lawyer practicing in Sudan. However, such a national may obtain the same rights as a Sudanese lawyer upon passing the Sudanese Bar Examination. The Bar Admission Committee may also exempt from the training requirement any person who has previously practiced law in a country other than Sudan and has either passed the prescribed examination under the applicable law regulating the legal profession or has been exempted from it.

2. What is the structure of the court system?

The judiciary in Sudan operates as an independent authority regulated under the Judicial Authority Act of 1986 (the “**Judicial Authority Act**”). Judicial bodies in Sudan consists of the following court; (1) Court of Appeal; (2) the General Courts which consists of: (i) criminal courts, which has jurisdiction over criminal cases only; (ii) civil courts, which are governed by statute, and they rule in matters concerning commercial, land, labour disputes; and (iii) personal status courts, which rules in matters regarding Islamic Shari’a law; (3) District Courts; and (4) any other courts established by an order issued by the Chief Justice with the Supreme Court serving as the highest judicial authority.

The courts hierarchy, as per Article 10 of the Judicial Authority Act, is the following: (1) the Supreme Court; (2) Courts of Appeal; (3) General Courts; (4) District Courts; and (5) any other courts established by the Chief Justice.

3. What are the time limits for bringing civil claims?

Pursuant to the Civil Transactions Act (the “**Civil Transactions Act**”), following limitation periods apply to civil claims:

- fifteen (15) years for a claim to enforce a mortgage against a possessor of the mortgaged property and for a claim to demand a right of usufruct;
- thirty (30) days for a claim of pre-emption from the date the claimant becomes aware of the registration of the sale, if the

claim is not filed within this period without a lawful excuse, the right of pre-emption shall lapse. However, in all cases, such a claim shall not be heard after six (6) months from the date of registration;

- six (6) months from the date of delivery of the sold item for claims based on warranty against defects, unless the seller has undertaken the warranty for a longer period;
- one (1) year from the date of termination of the employment contract for claims arising out of such contract, without prejudice to the Labor Act of 1997;
- one (1) year from the date of delivery of the sold item for claims of seeking rescission of the contract, reduction of price, or completion of the price;
- ten (10) years for claims of right of easement;
- ten (10) years for claims of possession of moveable, immovable or a right in rem over a movable or immovable property; and
- five (5) years from the day the claimant became aware of the damage and the person responsible for it for an action for compensation arising from a wrongful act, however, in all cases, such a claim shall not be admissible after the lapse of fifteen (15) years from the date on which the wrongful act was omitted.

4. Are communications between a lawyer and his/her client privileged (ie, protected from disclosure to a court/tribunal and opposing parties)?

Yes, attorney-client privilege is protected under the Advocacy Act. An attorney is prohibited from disclosing any secrets obtained from a client, or any facts or information acquired through the practice of the profession, even after the termination of the mandate or the cessation of the attorney's capacity, unless such disclosure was made for the purpose of committing a crime. Further, an attorney is not required to testify in a dispute in which he has been retained or consulted, except with the client's written consent. Additionally, the Evidence Act of 1994, provides that, unless the client authorizes, the testimony of persons bound by confidentiality, such as legal representatives, regarding information acquired through their profession, shall not be admissible, unless the person entitled to confidentiality authorizes or the evidence indicates the commission of a crime in the future.

5. How are civil proceedings commenced, and what is the typical procedure which is then followed?

Sudanese civil litigation follows key procedural principles to ensure fairness. Courts first establish jurisdiction, confirming cases are neither *res judicata* nor pending before other courts. For the civil proceedings to commence, the claimant must submit a statement of claim or petition which includes factual grounds, legal arguments, and supporting evidence. The defendant responds by submitting a written statement of defence. Further, the court has the jurisdiction to order any of the parties to submit any documentation it deems necessary. Following that, and after the pleadings are concluded, the court shall set a date for the hearings to commence. Hearings include presentation of evidence, expert opinions, and arguments. Judgments are public, justified, and immediately enforceable unless postponed.

6. What is the extent of pre-trial exchange of evidence, and how is evidence presented at trial?

Sudanese courts operate under an adversarial system, where the parties bear the responsibility of presenting arguments and evidence, while judges oversee the process to ensure fairness and legal compliance. When presenting a case before a Sudanese court, whether a criminal, civil or personal status, there is generally no specific procedure when it comes to evidence exchange prior to a trial. Each party is responsible for presenting all relevant documents, evidence, and arguments before the judge. The court relies on the evidence presented by the parties, and, pursuant to the Civil Procedures Act, once the statements are completed or the parties' arguments have been heard, the court shall determine, based on the parties' discussions or statements, a summary of the evidence they intend to present to prove the disputed factual issues.

7. To what extent are the parties able to control the procedure and the timetable? How quick is the process?

In practice, the claimant and their representative, the defendant and their representative, together with the trial judge, shall attempt to set a mutually convenient date for the hearing. If they fail to do so, the judge shall set a date suitable for the court. Further, the court may, when necessary and under such conditions as it deems appropriate regarding costs, order the following: (i) adjourn the hearing of a case from time to time for reasonable short periods; and (ii) extend the time for performing any procedural act.

The timeline for a court of first instance to render a decision differs on a case-by-case basis, subject to, *inter alia*, the facts, submitted evidence and case complications. Pursuant to Article 101 of the Civil Procedures Act of 1983, upon the conclusion of the hearings, the court must issue its judgment immediately in the same session. The court shall not postpone the pronouncement of the judgment to another session unless there are serious and urgent reasons, which must be officially recorded in the proceedings.

8. What interim remedies are available to preserve the parties' interests pending judgment?

The courts have the jurisdiction to grant an interim remedy they deem appropriate at any stage of the proceeding, including but not limited to: (i) arrest of defendants; (ii) order to provide financial guarantees or sureties; (iii) preservation orders to prevent loss, damage or transfer of disputed property; (iv) injunctions restraining breaches of contract or further harm; and (v) the appointment of custodians to manage disputed assets.

9. What means of enforcement are available?

In Sudanese law, several means of enforcement are available to ensure compliance with court judgments. These include orders for the delivery of movable property, the handover of immovable property, or the performance of a specific act. The court also has the authority to sell seized assets to compensate the judgment creditor and may, where applicable, order the detention of a debtor to enforce a judgment. Additionally, the court can order the release of a debtor in certain circumstances.

10. Does the court have power to order costs? Are foreign claimants required to provide security for costs?

Yes, courts have the power to order costs. Under Article (112) of the Civil Procedures Act, the court orders the convicted party to bear the expenses of the lawsuit, unless the court, for sufficient reasons, decides otherwise. Foreign claimants are not required by a law to provide security for costs.

11. On what grounds can the parties appeal, and what restrictions apply? Is there a right of further appeal? To what extent is enforcement suspended pending an appeal?

Parties may appeal decisions from lower courts to higher courts within the judicial hierarchy. An appeal must be filed within a period of fifteen (15) days following a judgement.

The grounds of appeal for civil matters are limited to those grounds stated in the appeal petition, unless the court grants permission to raise additional grounds. However, the appellate court is not strictly bound by the petition. In criminal matters, appeals are permitted against preliminary judgments and judgments that have not completed all stages of appeal, orders restricting the appellant's personal freedoms or property, and decisions related to matters of jurisdiction.

Appeals to the Supreme Court are more restricted, as the Supreme Court functions as a court of law rather than fact. Its jurisdiction is limited to reviewing cases solely for legal errors, functioning as a court of law rather than fact. In exceptional circumstances, certain civil judgments of the Supreme Court may be revisited or reopened, particularly when the judgement infringes or is in violation of Shari'a law.

The filing of an appeal does not automatically suspend enforcement of judgment. Once a party appeals a decision, the courts may cease the execution of the judgement being appealed if it deems appropriate for the purpose of reserving the rights of the appellant.

12. To what extent can domestic and/or foreign State entities claim immunity from civil proceedings?

The Sudanese government, its departments, and agencies, are immune from prosecution unless the State explicitly waives immunity. An action against a government agency or a public official requires prior notification to the Minister of Justice, followed by a two (2) months waiting period unless permission is granted earlier.

Regarding foreign entities, foreign embassies and consulates operating in Sudan enjoy immunity under international law, specifically the Vienna Convention on Diplomatic Relations of 1961, including immunity from the jurisdiction of the host state. Finally, international organizations operating in Sudan enjoy immunity from legal proceedings under host country agreements and international treaties.

13. What procedures exist for recognition and enforcement of foreign judgments?

For a foreign judgement to be enforced in Sudan, it must comply with the following criteria:

- the judicial authority that issued the judgement is competent and is in compliance with the international jurisdiction rules of the country where it was rendered and must be final under that country's law;
- all parties have been properly notified and duly represented in the case;
- the judgement does not contradict or challenge a previous judgement issued by the Sudanese courts;
- the judgement does not violate Sudan's public policy and public moral;
- the judgment must not have been obtained fraudulently;
- the claims in the judgement are compatible with the law of Sudan; and
- the country where the judgement was issued recognizes and enforces Sudanese court judgements on the basis of reciprocal enforcement.

Arbitration

14. Is the arbitration law based on the UNCITRAL Model Law? If yes, are there any key modifications? If no, what form does the arbitration law take?

No, the Sudanese Arbitration Act of 2005 as amended in 2016 (the "Arbitration Act") was based on the preceding arbitration rules and the Civil Procedures Act. The Arbitration Act is now the arbitration law in force.

15. What are the formal requirements for an enforceable arbitration agreement?

Article 8 of the Arbitration Act states that an arbitration agreement must be in writing, otherwise it shall be void. The requirement of writing is satisfied by the exchange of messages between the parties to the dispute through various means of communication.

The parties can go to arbitration even though they do not have a valid arbitration agreement, if both parties agree to apply to the court requesting an order that the dispute be referred to arbitration.

16. On what grounds can the court intervene in arbitrations seated outside the jurisdiction?

Courts may intervene in arbitrations in arbitral tribunals in matters such as witness testimony or evidence production. Pursuant to Article 28 of the Arbitration Act, either party to the dispute may request the arbitration panel to summon a witness or any entity to present evidence and If the arbitration panel deems it necessary, it may request the competent court to summon the witness or communicate with the entity to obtain or review the evidence, the court has the authority to enforce this request and take necessary measures if the order is not complied with, within the limits of its jurisdiction.

17. Can a foreign arbitration award be appealed in the local courts? If so, on what grounds?

Yes, Sudanese courts have the authority to review arbitral awards from a procedural perspective. The Arbitration Act governs this process, ensuring that arbitral awards comply with legal standards. Article 42 of the Arbitration Act provides that either party may request annulment before the Court of Appeal

on grounds such as the absence or invalidity of an arbitration agreement, lack of capacity at the time of agreement, failure to apply agreed-upon law, improper tribunal formation, or a party's inability to present their defense due to procedural irregularities. If an award exceeds the scope of arbitration, only the affected parts may be annulled. Additionally, the Court of Appeal has discretionary power to annul an award if it violates Sudanese public policy.

18. What procedures exist for enforcement of awards rendered in arbitrations seated outside of the jurisdiction?

If a court determines that a judgment or award does not contravene the basic rules of Sudanese law, public policy or established morals, it shall issue an order to recognizing the validity of the judgment or arbitral award and enforce it in accordance with the procedures prescribed under the Arbitration Act.

The Arbitration Act requires satisfying certain conditions prior to enforcement of an arbitral award: (i) the arbitral award or order has been issued by a recognized arbitral tribunal or an institution ie, arbitration centre in conformity with international jurisdiction rules recognized in the country the seat of arbitration and the arbitral award has become final under the law of that country; (ii) the parties to the case in which the award was issued have been appropriately summoned and represented; (iii) the arbitral award order does not contravene with a judgment or an order previously issued by a Sudanese court, or arbitration bodies or centres, as the case may be; (iv) the award does not contradict Sudan's public policy and morals; and (v) the country in which the award to be executed was issued shall accept the execution of judgments of Sudanese courts, arbitration centres and bodies within its territory, or by treaties on the enforcement of awards ratified by Sudan.

19. Are foreign awards readily enforceable in practice?

Yes, the enforcement of a foreign arbitral award in Sudan is governed by the Sudanese Arbitration Act and applicable international conventions ratified by Sudan, such as the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards. An application for enforcement may be submitted to the competent court, provided that the conditions for recognition are met, including ensuring that the award has not been set aside and is not contrary to public policy in Sudan. Further, according to practical application many arbitration awards were enforced in Sudan.

Alternative dispute resolution

20. Are the parties to litigation or arbitration required to consider or submit to any alternative dispute resolution before or during proceedings?

The law does not obligate parties to litigation or arbitration to consider or submit to any alternative dispute resolution before or during proceedings. However, the parties may agree to a settlement by alternative means, subject to the approval of the judge and/or arbitrator.

Reforms

21. Are there likely to be any significant procedural reforms in the near future?

At present, there are no clear indications of significant procedural reforms in the near future. However, limited adjustments to procedures may occur in light of legislative developments or judicial practices.

Contributors:

*2025 edition is based on previous editions drafted and updated by **Mr. Tayeb Hassabo** and **Ms. Safia Eltayeb** from **Aztan Law Firm**

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Tanzania



Introduction

The United Republic of Tanzania is a union between Tanganyika (Mainland Tanzania) and Zanzibar (Tanzania Zanzibar). The Tanzanian capital city is Dodoma while the commercial city is Dar es Salaam. The official currency is Tanzanian Shillings and the languages used are Swahili and English.

The legal system in Tanzania is based on English common law. According to the Judicature and Application of Laws Act Cap. 358 R.E 2023, common law, doctrines of equity and statutes of general application are enforceable in Tanzania but only so far as the circumstances of Tanzania and its inhabitants permit, and subject to such qualifications as local circumstances may render necessary. English court decisions are highly persuasive in Tanzanian court decisions and a registered English High Court judgment would, subject to the provisions of the Foreign Judgments (Reciprocal Enforcement) Act, be enforceable in Tanzania as if it were a decision of the High Court of Tanzania.

The primary source of law in Tanzania is the Constitution of the United Republic of Tanzania (as amended from time to time). Secondary sources of law are statutes (Acts of the Parliament), customary laws, case law (precedents), subsidiary legislations and International Treaties and Conventions. Since Tanzania is a common law country, where there is a lacuna in the domestic laws, principles of common law, doctrines of equity and statutes of general application may be applicable as a source of law.

The main dispute resolution methods used to settle disputes in Tanzania are through litigation and arbitration. Other methods include mediation and reconciliation. Dispute resolution by way of arbitration, mediation and reconciliation is referred to as Alternative Dispute Resolution, commonly known as ADR. Tanzania incorporated ADR procedures into the Court system in 1994.¹ In 2000, mediation was incorporated into the supreme law of the land, that is, the Constitution, under the Thirteenth Amendment. The amendment provided that in deciding civil and criminal cases, courts must develop and promote mediation or reconciliation between parties to a dispute.

Litigation

1. What is the structure of the legal profession?

The legal profession in Tanzania is governed by the Advocates Act [CAP. 341 R.E 2019], the Advocates (Professional Conduct and Etiquette) Regulations, 2018, the Advocates (Disciplinary and Other Proceedings) Rules, the Advocates (Remuneration and Taxation of Costs) Rules, the Notaries Public and Commissioners for Oaths Act CAP. 12, the Law School of Tanzania Act CAP. 425 R.E 2023 and the Tanganyika Law Society Act, [CAP 307 R.E 2023]. The Tanganyika Law Society (TLS) is the Bar Association of Tanzania Mainland while the Zanzibar Law Society is the Bar Association for Zanzibar.

For a person to become an Advocate in Tanzania, he/she must first complete and pass a Bachelor of Laws degree (LLB) or obtain equivalent qualifications recognized by the council for legal education in Tanzania. After completion of the Bachelor of Laws degree, a graduate is mandated to undertake a programme of practical training only conducted by the Law School of Tanzania and awarded with the Post-Graduate Diploma in Legal Practice. On completion of the training dispensed by the Law School of Tanzania, a graduate is called to the Bar and admitted to the Roll of Advocates in Tanzania. Admitted Lawyers are called Advocates and may practise as notaries public and commissioner for oaths as well as representing clients in the courts. Tanzanian Advocates act as lawyers and barristers. It is common for an Advocate to handle a corporate matter and then take the brief in relation to any disputes arising from it.

Once admitted and after a ceremony, Tanzanian Advocates are issued with Practising and Notary Public Certificates which are only valid for one year ending on 31 December of each year.

Upon the expiry of the Certificates, Advocates must renew the certificate in the first month of the following year, failing which they are technically disqualified from practising but may proceed with renewal of the practicing certificate in the first six months and pay late renewal penalties. Any late renewal made more than six months after expiry of the practicing certificate must seek the approval of the Chief Justice upon show of good cause. A client's case would be dismissed if handled by an Advocate who has no valid Practising Certificate.

1. Through Government Notice No. 422 of 1994 that amended the First Schedule to the Civil Procedure Code [CAP. 33 R.E 2023]

2. What is the structure of the court system?

The judiciary in Tanzania is composed of the *Court of Appeal of Tanzania*, which is the supreme and the highest court in the country. The Court of Appeal has jurisdiction over Tanzania Mainland and Zanzibar, and the constitution sets out three other jurisdictions of the Court of Appeal, which include appellate, review, and revisional jurisdictions. It has jurisdiction to hear and determine appeals from the High Court and from subordinate courts with extended jurisdiction.

The second highest is the *High Court of Tanzania, and the High Court of Zanzibar*. The High Court of Tanzania has unlimited original jurisdiction to entertain all types of cases. It exercises original jurisdiction on matters of a constitutional nature and also has both appellate and original powers in civil and criminal matters. It hears appeals from the lower courts and tribunals in the exercise of its original, appellate and/or revisional jurisdiction, and has powers to entertain election petitions. The High Court is divided into Zones and specialized Divisions. The High Court's Main Registry, (which includes the sub-Registries) caters for all civil and criminal matters. It has four (4) specialised divisions, the *Commercial Division*, the *Labour Division*, the *Land Division* and the *Corruption and the Economic Crimes Division*.

The Commercial Division has original and appellate jurisdiction in commercial cases in which the value of the claim is at least one hundred million shillings in proceedings for the recovery of possession of immovable property and at least seventy million shillings in other proceedings where the subject matter is capable of being estimated at a monetary value.

The Labour Division has revisional jurisdiction in all employment matters.

The Land Division has original jurisdiction in all civil proceedings involving land matters for the recovery of possession of immovable property where the value of the property exceeds three hundred million shillings; and in other proceedings where the subject matter is capable of being estimated at a monetary value, and in proceedings which the value of the subject matter exceeds two hundred million shillings. It also has revisional and appellate jurisdiction in all proceedings and decisions arising from the District Land and Housing Tribunals.

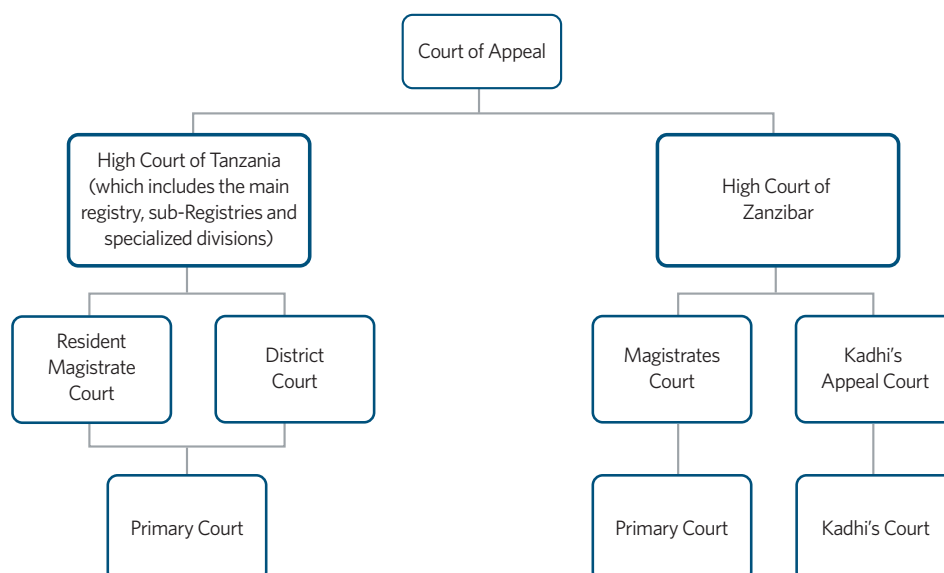
The Corruption and Economic Crimes Division has jurisdiction over corruption and economic crimes.

Other courts in the country include Resident Magistrate Courts, District Courts, and Primary Courts.

Magistrates' Courts and District Courts have jurisdiction over civil and criminal matters. Unlike the Resident Magistrates Courts, District Courts are found throughout all districts in Tanzania. They receive appeals from the Primary Courts, several of which will be found in each district.

The Resident Magistrates Courts are in major towns, municipalities and cities. The Law gives the Chief Justice powers to establish Resident Magistrates Courts through an order published in the Government Gazette. In civil proceedings, the District Court and the Resident Magistrate Court have jurisdiction in all proceedings for the recovery of possession of immovable property in which the value of the property does not exceed three hundred million shillings; and in other proceedings where the subject matter is capable of being estimated at a monetary value, and in proceedings in which the value of the subject matter does not exceed two hundred million shillings. They also have revisional and appellate jurisdiction over all proceedings and decisions of the Primary Courts. All appeals from the Resident and District Magistrates' courts go to the High Court of Tanzania.

Primary Courts are the lowest in the judicial hierarchy. They deal with both criminal and civil cases. Civil cases involving property and family law matters which apply customary law and Islamic law must be initiated at the level of the Primary Court, where the Magistrates sit with lay assessors. Primary Courts also handle civil cases in which the value of the subject matter of the suit does not exceed fifty million shillings, and in any proceedings by way of counter-claim and set-off therein of the same nature and not exceeding such value; and for the recovery of any civil debt arising out of contract, if the value of the subject matter of the suit does not exceed thirty million shillings, and in any proceeding by way of counterclaim and set-off therein of the same nature not exceeding such value. The below figure elaborates on the court system in Tanzania.



In addition to the above four tiers of the court system, there are specialized tribunals which form part of the judicial structure. These tribunals include the Ward Tribunal, District Land and Housing Tribunals, the Fair Competition Tribunal, the Tax Revenue Appeal Board, the Tax Revenue Appeals Tribunal, the Commission for Mediation and Arbitration, and Military Tribunals for the armed forces. Military Tribunals do not try civilians. A party who feels dissatisfied with any decision of the Tribunals may refer it to the High Court for judicial review.

The Ward Tribunal has original jurisdiction in all proceedings of a civil nature relating to land or property whose value does not exceed five million shillings.

The District Land and Housing Tribunals have jurisdiction over all civil proceedings involving land matters under the land laws within a particular District whose value does not exceed three hundred million shillings for recovery of possession of immovable property, and does not exceed two hundred million in other proceedings where the subject matter is capable of being estimated at a monetary value. It also has appellate and revisional jurisdiction over all proceedings and decisions arising from the Ward Tribunal.

The Fair Competition Tribunal is a specialized and independent quasi-judicial body that combines expertise in economics and business with expertise in law. Its function is to hear and determine cases involving competition and regulatory issues arising from orders and decisions of the Fair Competition Commission (FCC) and regulatory authorities, namely the Land Transport Regulatory Authority Board (LATRA), Tanzania Communications Regulatory Authority (TCRA), Energy and Water Utilities Regulatory Authority (EWURA) and Tanzania Civil Aviation Authority (TCAA).

The Tax Revenue Appeals Board has sole original jurisdiction in all civil proceedings in respect of disputes arising from revenue laws administered by the Tanzania Revenue Authority.

The Tax Appeals Tribunal has sole jurisdiction in all appeals arising from the decision of the Board on disputes for which original jurisdiction is conferred on the Board. It also has general powers of supervision over the Board in the exercise of its powers under the Tax Revenue Appeals Act, and may therefore call for and inspect the records of any proceedings before the Board, and may revise any decision thereof.

The Commissions for Mediation and Arbitration have original jurisdiction in civil proceedings over employment and labour disputes. They are in all districts throughout the country. A person who is aggrieved by the decision of the Commission for Mediation and Arbitration can file for revision in the High Court Labour Division.

Military Tribunals have jurisdiction over the armed forces only. They do not try civilians.

3. What are the time limits for bringing civil claims?

The limitation periods for bringing suits in Tanzania is governed by the Law of Limitation Act [CAP. 89 2023].

The limitation period for suits seeking compensation for doing or for omitting to do an act alleged to be in pursuance of any written law is one year.

The limitation for filing a suit to recover any sum by way of penalty or forfeiture recoverable by virtue of any written law, to recover contributions from a joint tort-feasor, and for certain suits involving the sale or attachment of real property is two years.

The limitation for suits founded on tort is three years.

The limitation for suits founded on contract not otherwise specifically provided for, suits to enforce a recognisance, to enforce an award, to recover any sum recoverable by virtue of a written law other than a penalty or forfeiture or sum by way of penalty or forfeiture, claims for equitable relief, for an account, suits to recover arrears of rent, suits by a beneficiary to recover trust property, to recover arrears of interest in respect of legacy or damages in respect of such arrears, and any suit not otherwise provided for is six years.

The limitation for suits founded on a judgment, suits to redeem land in the possession of a mortgagee, to recover a principal sum of money acquired by mortgage on land or movable property or to recover the proceeds from the sale of land, suits for the forfeiture of mortgaged property, suits to recover arrears of interest payable in respect of any sum of money secured by a mortgage, suits in respect of a claim to the movable property of a deceased person whether under a will or intestacy, and suits to recover land is twelve years.

The limitation for suits by or on behalf of the government is sixty years.

4. Are lawyer-client communications privileged (ie, protected from disclosure to a court/tribunal and opposing parties)?

Yes, communications between lawyer and client are protected. According to the Advocates (Professional Conduct and Etiquette) Regulations 2018, an advocate must keep all information acquired from a client confidential unless disclosure is required by law or expressly or impliedly authorized by the client.

The advocate's duty of confidentiality survives the professional relationship and continues indefinitely after the advocate has ceased to act for the client. The fiduciary relationship between advocate and client forbids the advocate from using any confidential information acquired as a result of the professional relationship for the benefit of the advocate or a third party to the disadvantage of the client.

5. How are civil proceedings commenced, and what is the typical procedure which is then followed?

In Tanzania, civil proceedings are instituted by filing a document known as a plaint. Plaints are required to comply with the rules set out in the Civil Procedure Code, [CAP. 33 R.E 2023]. Upon presentation of a plaint, the court must enter the suit in the court register and assign it to a judge or magistrate as the case may be within four (4) days.

Once the case has been assigned to a specific judge or magistrate, the court issues a summons to the plaintiff who serves it on the defendant(s) in the case. The court summons requires the defendant to either appear before the court and answer the claim on the date specified, or to file a written statement of defense of the claim. A summons to appear issued by a court other than the High Court must direct the defendant to produce, on the day fixed for the defendant's appearance, all

documents in his/her possession as well witnesses upon whose evidence the defendant intends to rely upon.

Where a defendant fails to file a written statement of defense within the prescribed time, the court sets a hearing *ex parte* and may pronounce judgment against the defendant if the plaintiff is able to prove the claim.

Once a case has been assigned to a specific judge or magistrate, an initial scheduling and settlement conference is held and must be attended by all the parties or their recognized agents or advocates, for purposes of determining the appropriate speed track and making a scheduling order setting out the dates or time for future events or steps in the case, including preliminary applications, affidavits and notices and the use of Alternative Dispute Resolutions (ADR) procedures. The judge/magistrate must consult the parties or their recognized representatives or advocates to determine the appropriate speed track as described below: -

- (i) *Speed Track One*; - reserved for cases considered by the judge or magistrate to be capable of being concluded quickly within no more than ten months from the date of the first pre-trial conference.
- (ii) *Speed Track Two*; - reserved for cases considered by the judge or magistrate to be capable of being concluded within no more than twelve months from the date when mediation or arbitration or another similar alternative procedure fails.
- (iii) *Speed Track Three*; - reserved for cases considered by the judge or magistrate to be complex cases capable of being concluded no more than fourteen months from the date when negotiation, conciliation, mediation, or another similar alternative procedure fails.
- (iv) *Speed Track Four*; - reserved for cases considered by the judge or magistrate to be special cases which fall into none of the abovementioned three categories, but which nonetheless need to be concluded within no more than twenty-four months from the date when negotiation, conciliation, mediation or another similar alternative procedure fails.

After the first pre-trial conference where the speed track of the case is scheduled, the case file is assigned to a mediator, who tries to help the parties resolve the matter out of court. Mediation is court-administered and has proved very effective, especially for commercial cases.

If mediation fails, the court returns the matter to the trial judge/magistrate in charge of the case for next steps. It should be noted that the mediator's involvement ends at this point.

If the case remains unresolved after the parties have gone through the ADR process (mediation), a final pre-trial conference will take place. A final pre-trial conference and scheduling conference is presided over by the judge or magistrate assigned to try the case in order to frame the issues in dispute between the parties and enable the court to schedule future steps which are likely or certain to arise, including the date or dates of trial.

After the final pre-trial conference and the filing of all other additional documents by the parties, the case is scheduled for hearing to which the defendant and witnesses may be summoned by the court. Any failure by the plaintiff to appear on

the hearing date may lead to dismissal of the case for want of prosecution. If a defendant on whom a summons was duly served fails to appear when the suit is called for hearing, the plaintiff requests that the case proceed against the defendant *ex parte* and the court sets a day for the hearing. If neither party appears when the suit is called on for hearing, the court dismisses the suit.

During the hearing of the case, both parties will give their evidence and testimonies and call witnesses if needed.

When both parties have submitted their evidence and testimonies and their witnesses have been heard, the court schedules the date for parties to file their closing/make submissions. At time the court may order closing submissions to be given orally.

Lastly, the court sets the date for a judgment which, pursuant to the provisions of the Civil Procedure Code, [CAP.33 R.E 2023], should be delivered within the speed track period agreed upon between the parties.

6. What is the extent of pre-trial exchange of evidence, and how is evidence presented at trial?

During the first pre-trial appearance between the parties, parties state whether they intend to file any additional documents to be relied upon during the hearing, and whether they intend to file any notice to produce against each other, or discoveries, affidavits or any other additional documents in addition to those attached to the pleadings already before the court. If so, the trial judge/magistrate sets a time limit for delivering said documents to the court and exchanging them between the parties to the dispute.

It should be noted that any additional document that is intended by a party to be used during the hearing must be reflected in the initial pleadings filed with the court.

Evidence filed by the parties is presented at the trial during the examination of witnesses. The trial starts with examination-in-chief in which the plaintiff's advocate starts with the plaintiff explaining their side of the story while tendering documents and evidence before the court. The witness is then cross-examined by the defendant's advocate. After cross-examination, the plaintiff's advocate may re-examine the witness. The same process applies to each of the plaintiff's witness, and then to the defendant and defendant's witnesses.

Generally, all evidence is presented during the trial where the parties tender it before the court during the examination of witnesses.

7. To what extent are the parties able to control the procedure and the timetable? How quick is the process?

As a general rule, the timeline of the process is predicted by the speed track for the case set in the beginning. The longest speed track is twenty-four months. However, in practice, the parties are not in control of the timetable since judges/magistrates often adjourn cases to future dates, which results in cases taking longer than expected. The longest speed track of twenty-four months may end up being thirty-six months due to adjournments which are beyond the parties' control. In such circumstances, the parties usually request an extension of the

speed track; if they do not, judges or magistrates often extend it at their discretion depending on the circumstance of the relevant cases.

It is therefore advisable that the parties try to settle the disputes in the ADR process since it saves time and costs.

8. What interim remedies are available to preserve the parties' interests pending judgment?

Interim remedies are remedies that do not decide the rights of parties but seek to maintain the status quo pending determination of those rights or enable the court to give directions about the conduct of the case or steps to be taken so the court may ultimately determine the rights of the parties. They include the following:

- (i) Temporary injunctions are court orders whereby a party is either prohibited from or ordered to carry out a specific action. Injunctions can prevent a party from selling, disposing, destroying, removing, or alienating any property or asset which is the subject matter of the dispute.
- (ii) Deposits of money in court's account: where the subject matter of a suit is money or some other thing capable of delivery, and any party thereto admits to holding such money or other thing as a trustee for another party, or that it belongs or is due to another party, the court may order said money or other thing to be deposited in court or delivered to such other party, with or without security subject to the further direction of the court.
- (iii) Security for costs; the judge may order the proceedings stayed until security is paid, in which case the proceedings are stayed until the plaintiff deposits money in the court's account.

9. What means of enforcement are available?

To enforce a judgment, parties must make an apply to the court for execution. When filing the execution application, parties **append an inventory of assets of which they are aware**, including full details and exact locations to make it easy for the court to issue an order for sale against the assets.

A party can also seek a garnishee order for money in the defendant's accounts. Once the court issues an execution order, it also appoints a court broker to dispose of the assets and ensure the creditor or plaintiff receives the amounts due to them.

10. Does the court have the power to order costs? Are foreign claimants required to provide security for costs?

Yes, the Tanzanian Courts have the power to order costs. It is a general rule that costs follow the event, and the successful party is also awarded their costs. However, in some circumstances the court may decide that each party should bear its own costs. Thus, parties to seek costs from the beginning if they wish for an order of costs from the court; the court cannot order costs if they have not been requested.

In Tanzania, the court may order foreign claimants to provide security for costs to ensure the resident party recovers amounts due once the foreign claimant has left the country. Kindly see further explanation in question 8 above.

11. On what grounds can the parties appeal, and what restrictions apply? Is there a right of further appeal? To what extent is enforcement suspended pending an appeal?

A party to a suit may appeal to the higher court if aggrieved by the court's decision. For example, a decision from the Magistrate's Court may be appealed to the High Court, and from the High Court to the Court of Appeal. An appeal may lie on issues of fact and/or law.

Appeals do not operate as a stay of execution. Parties may apply to the court for a stay of execution and if successful, the court of the contested decision or the appellate court may grant a stay of execution, pending the hearing of the appeal. The court may also grant a stay of execution where the decree holder applies to execute the judgment while an appeal has been initiated by the other party. The court will grant a stay if it finds it just to do so, or if executing the judgment would cause the judgment debtor to suffer irreparable loss.

Leave must be obtained from the High Court for appeals against judgments or orders made by the consent of the parties or against any judgment or order for costs where the costs are at the discretion of the parties.

12. To what extent can domestic and/or foreign State entities claim immunity from civil proceedings?

Domestic Immunity

Proceedings against the Government must be brought in accordance with the Government Proceedings Act, [CAP.5 R.E 2023]. Suits must be instituted in the High Court and a 90-day notice of intention to sue is required to be given to the Government, Minister, department or officer prior to instituting the suit. Once the notice period has expired, the suit may be brought against the Attorney-General and a copy served to the Solicitor General, Government, Minister, department or officer alleged to have committed the wrong. Tanzanian Courts are prohibited from issuing an order for execution or attachment to enforce payments by the Government of any money or costs referred to in the Government Proceedings Act, and no person may be individually liable under any order for payment by the Government.

Where a suit is instituted by a person who alleges that the provisions of Articles 12 to 29 of the Constitution have been contravened or are likely to be contravened, and seeking redress against the President, Vice-President, Prime Minister, the Speaker, Deputy Speaker or Chief Justice, the suit can only be brought against the Attorney-General.

An application for order or mandamus, prohibition or certiorari is made in respect of an act or omission by the President, Vice-President, Prime Minister, the Speaker, Deputy Speaker or Chief Justice can only be brought against the Attorney-General.

Foreign State Immunity

The Diplomatic and Consular Immunities and Privileges Act, [CAP.356 R.E 2023] is the law that governs the immunity accorded to foreign diplomats, consular and other diplomatic staff, and it incorporates the provisions of the Vienna Convention on Diplomatic Relations signed on 18 April 1961, into Tanzanian law, to the extent specified in the First Schedule to

the Act and in particular articles 1, 11, 22-41 of the Convention. This does not include state entities of sending States.

13. What are the procedures for having foreign judgments recognised and enforced?

These procedures are governed by the Civil Procedure Code [CAP.33 R.E 2023] and Reciprocal Enforcement of Foreign Judgments Act, [CAP.8 R.E. 2023] (REFJA).

To enforce a foreign judgement from any of the countries recognized under the REFJA, a judgement creditor must make an application to the High Court of Tanzania to have the judgment registered. The application is made in the form of an originating summons supported by an affidavit stating the facts which prove that the requirements for enforcement have been met.

Upon successful registration and subject to the provisions of the REFJA on the setting aside of registration:

- (a) a registered judgement must, for the purposes of its execution, be of the same force and effect;
- (b) proceedings may be taken on a registered judgement;
- (c) the sum for which a judgement is registered carries interest; and
- (d) the registering court has the same control over the execution of a registered judgement,

as if the judgment were a judgment originally given in the registering court and entered on the date of registration.

Arbitration

14. Is the arbitration law based on the UNCITRAL Model Law? If so, are there any key modifications? If not, what type of arbitration does the law provide for?

The Arbitration Act, 2023 (the "Act") [CAP.15 R.E 2023] is law that governs arbitration in Tanzania. The Act is largely based on the United Kingdom Arbitration Act 1996, which was based on principles of the UNCITRAL Model Law.

Nevertheless, the Act did not actually adopt the UNCITRAL Model Law and there is no mention of the New York Arbitration Convention in the Act.

15. What are the formal requirements for an enforceable arbitration agreement?

Arbitration agreements must be in writing. If an agreement contains a reference to a written form of arbitration clause or to a document containing an arbitration clause, it constitutes an arbitration agreement.

16. On what grounds can the court intervene in arbitrations seated outside the jurisdiction?

Courts in Tanzania cannot intervene in arbitrations seated outside of the jurisdiction of the United Republic of Tanzania.

17. Can a foreign arbitration award be appealed in the local courts? If so, on what grounds?

No, a foreign arbitral award cannot be appealed. However, parties can make an application to the High Court to challenge the enforcement of the award. If successfully challenged, the award is set aside.

A party seeking to challenge the enforcement of an award must prove to the High Court that:

- (i) The award was granted as a result of fraud, bribery, corruption or undue influence;
- (ii) The parties lacked capacity to enter into the agreement or were not properly represented;
- (iii) The arbitration agreement is invalid under the applicable law to which the parties subjected it;
- (iv) The party against whom the award was granted did not receive proper notice of the arbitration proceedings or appointment of an arbitrator;
- (v) The arbitral award settled a matter which was not referenced to arbitration in the agreement; and
- (vi) The arbitral award is not binding on the parties or has been set aside by a court in the foreign State.

The High Court of Tanzania may also refuse to enforce a foreign award if it finds that doing so is contrary to Tanzanian law or that the subject matter of the dispute is incapable of being settled by arbitration under Tanzanian law.

18. What are the procedures for enforcing awards rendered in arbitrations seated outside the jurisdiction?

In order for a foreign arbitral award to become recognised and enforceable, a party must make an application to the High Court of the United Republic of Tanzania and submit the original award or an authenticated copy and evidentiary proof that the award is final along with the application.

When considering an application, the High Court requires, for an award to be enforceable, that (i) have been granted in respect of a valid arbitration agreement under its governing law, (ii) it have been granted by an arbitral tribunal provided for in the agreement and in conformity with its governing law, (iii) it be final, (iv) it have been granted in respect of a matter which may lawfully be referred to arbitration under Tanzanian laws, and (v) enforcing the award is not contrary to Tanzanian public policy.

19. Are foreign awards readily enforceable in practice?

Foreign awards are only enforceable after an application for enforcement has been made to the High Court of Tanzania. If successful, a foreign arbitral award will be recognised and as such, will be considered binding and enforceable. Kindly refer to our response in question 18 above.

Alternative dispute resolution

20. Are the parties to litigation or arbitration required to consider or submit to any alternative dispute resolution before or during proceedings?

Yes. Before ordering a trial, the courts must refer a litigated matter for negotiation, conciliation, mediation, arbitration or any other similar alternative dispute resolution procedure. The parties are at liberty to appoint a mediator at their own expense, and where they cannot, the court appoints one for them and informs the parties.

If a party fails to attend the court-scheduled mediation session without good cause, the judge or magistrate in charge may

either order a party to pay costs, dismiss the suit if the absent party is the plaintiff, strike out the defence if the absent party is the defendant, or make any other order deemed appropriate.

Reforms

21. Are there likely to be any significant procedural reforms in the near future?

On the 30 April 2021, the Written Laws (Miscellaneous Amendments) Act, 2021 was published. In the Act, Parliament made Swahili the language of the courts and laws of the United Republic of Tanzania.

In practice, laws in Tanzania are currently in English, while oral proceedings in court may be held in either English or Swahili, and court records and decisions are written in English. As the Act has entered into force, Swahili is now the principal language used in the administration and dispensation of justice by all courts and tribunals. According to the Act, the Minister of Constitutional and Legal Affairs may determine the conditions and circumstances where justice may be administered and dispensed in a language other than Swahili.

However, although the Act made Swahili an official language, the Chief Justice has been encouraging advocates in his speeches to continue using English because it is a commercial language. Since 2021, the Government of Tanzania has formally designated Kiswahili as the official language for publishing legislation. All new laws and amendments are first issued in Kiswahili, followed by English translations. This policy is intended to promote broader public access, engagement, and comprehension of legal matters, reflecting Kiswahili's role as the national language and its widespread use across the country.

Contributor:

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Togo



Introduction

Togo is a civil law jurisdiction. The 1992 Constitution, as revised and amended by various laws, stands at the apex of the hierarchy of laws. Togo's judicial structure is set out in the Constitution, as well as in laws and enacting decrees. Togo is a member of OHADA, UEMOA and ECOWAS.

The constitutional reform adopted in 2024 confirmed Togo's civil law-based legal system and added clarifications regarding judicial independence and the supremacy of ratified international and regional treaties.

Importantly, the 2024 Constitution introduced the principle of a judicial system divided into two branches, clearly separating matters of administrative law (disputes involving public authorities and administrative matters) from the ordinary judicial courts (civil, commercial, criminal and social matters). This duality is reflected in the reorganisation of the courts and assignment of matters to either the judicial or administrative courts, each with its own procedural rules and courts of last resort.

Litigation

1. What is the structure of the legal profession?

The legal profession is governed by Order 80-11 of 9 January 1980 on the practice of law and its enacting decree 80-37 of 7 March 1980, by Law 88-7 of 27 May 1988 modifying Articles 3 and 9 of Order 80-11, by Regulation 10/2006/CM/UEMOA of 25 July 2006 on freedom of movement and the establishment of legal professionals from UEMOA member states in the UEMOA area, and by Regulation 05/CM/UEMOA of 25 September 2014 harmonising the rules governing the legal profession in the UEMOA area, together with many implementing regulations.

All provisions of Order 80-11 of 9 January 1980 that do not conflict with UEMOA Regulations remain applicable.

To practise law in Togo, potential lawyers must be registered with the Togo Bar Association (*Ordre des avocats*) and meet certain requirements:

- They must be a national of Togo or of a UEMOA member state, unless a judicial cooperation agreement applies;
- To be admitted to a traineeship or the Bar, they must be at least 24 years of age;
- They must hold a "Master II" degree recognised by the African and Madagascar Council for Higher Education (CAMES), a masters in law, or an equivalent degree;
- They must hold a CAPA certificate (*Certificat d'aptitude à la profession d'avocat*) recognised in the UEMOA area;
- They must have completed a three-year training contract as evidenced by a training certificate;
- They must be of evident good moral character.

The profession is organised into a Bar Association (*Conseil de l'Ordre*), which makes sure that members abide by the rules governing the profession and takes any necessary disciplinary action. Lawyers (*avocats*) registered with the Bar can appear before any court. They can practise either individually or as part of a legal practice structure.

Lawyers from a UEMOA member state are free to practice in Togo if they meet the above requirements.

Foreign lawyers registered with the Bar of a foreign country that has a judicial cooperation agreement with Togo can ask to be registered with the Togolese Bar.

The UEMOA Harmonised Internal Regulations (*Règlement Intérieur Harmonisé – RIH*), was adopted in 2020 and has applied since 2021, including to the Togolese Bar. These regulations strengthened professional and ethical standards for lawyers, including disciplinary rules and Bar governance.

Additionally, in 2022 Togo established its training centre for lawyers (*Centre de Formation Professionnelle des Avocats (CFPA)*), in compliance with UEMOA rules.

Other legal professions (notaries, bailiffs, clerks, military, judges) continue governed by their respective national statutes, which have not been modified since 2021. However, a UEMOA-wide draft regulation is under discussion to harmonise the professions of bailiff and auctioneer into a single entity called "*commissaire de justice*".

2. What is the structure of the court system?

The Togolese court system (excluding the criminal courts) is structured into three hierarchical tiers with courts of first-instance, courts of appeal, and supreme courts.

(a) **Courts of first instance (original jurisdiction):** these are organised into ordinary and special courts as follows:

- Ordinary courts of first instance
 - **Regional courts** (*tribunaux de grande instance*) in the main cities of administrative regions (there are currently five) with jurisdiction to hear any disputes not specifically assigned to another court.
 - **Local courts for civil and criminal matters** (*tribunaux d'instance à compétence correctionnelle et civile*) with jurisdiction of first and last resort over civil actions where no more than XOF 500,000 is at stake, and in the first instance (appeals notwithstanding) for actions involving larger amounts.
 - **Local courts for civil matters** (*tribunaux d'instance à compétence civile*) with jurisdiction of first and last resort over claims of up to XOF 500,000 and in the first instance for larger amounts.

• Special courts of first instance

- **Commercial Courts**, which have jurisdiction to hear disputes involving:
 - commitments and transactions between merchants themselves and between merchants and non-merchants within the meaning of the OHADA Uniform Act on General Commercial Law;
 - commercial transactions or paper instruments within the meaning of the Uniform Act on General Commercial Law (with the exception of transactions involving a merchant and a non-merchant, for which non-merchants can apply to the ordinary courts);
 - companies and economic interest groups, or between the shareholders of a company or economic interest group;
 - insolvency proceedings;
 - security interests and liens granted to secure the performance of trade obligations;
 - competition, distribution, intellectual property and accounting;
 - consumer goods and protection and generally, the application of trade laws whatever the type of person or entity involved;
 - commercial leases;
 - land, air, and maritime transport;
 - trade intermediaries for actions carried out in connection with their trade or involving their business relationships;
 - registrations with the trade and property register (*registre du commerce et du crédit mobilier* or RCCM).
- **Employment Courts**, which hear individual disputes arising between employees and employers in connection with employment contracts. These courts have jurisdiction to rule on any individual disputes over collective bargaining agreements, as well as apprenticeship contracts, disputes stemming from social security laws, workplace accidents, occupational illnesses, and family and retirement benefits.

• **Juvenile Courts:** It deals with cases involving minors.

• **Military Court:** Established under the Military Justice Code (Law No. 2023 001 of January 9, 2023), military courts hear offences committed by service members in the course of their duties or against military discipline. These courts are made up of a war council presided over by a senior officer, assisted by military and civilian judges. Military court judgments can be appealed to the Regional Military Court of Appeal, and ultimately to the Supreme Military Court of Cassation, which reviews matters of law only.

(b) **Courts of appeal:** these are organised into ordinary and special courts, as follows:

• **Ordinary courts of appeal**

◦ **Court of Appeal:** this court hears appeals of decisions handed down by all lower courts (both ordinary and special) other than military courts. It is sub-divided into several chambers, each dealing with specific matters, including a civil chamber, a commercial chamber, an employment chamber, a criminal chamber, and an administrative chamber.

Togo has two Courts of Appeal, one in Lomé and the other in Kara. These two courts share territorial jurisdiction throughout Togo.

• **Special courts of appeal**

◦ **Military Court of Appeal:** this is the court of appeal for decisions handed down by military courts.

(c) **Supreme Courts**

◦ **Supreme Court of Togo:** It hears appeals against judgments handed down by appellate courts and against final decisions handed down by courts of first instance. There is only one Supreme Court for the entire Togolese Republic. It is divided into a Judicial Chamber and an Administrative Chamber.

The Togolese Constitution of 6 May 2024 abolished the previous Supreme Court and replaced it with a Court of Cassation (*Cour de cassation*), which will hear final appeals of judicial cases, and a Council of State (*Conseil d'Etat*), which will hear final administrative appeals. The new constitution created a conflicts tribunal (*tribunal des conflits*) to settle conflicts of jurisdiction between the administrative and judicial courts.

The new organization established in the 2024 Constitution has not yet been implemented, and to date, the Supreme Court is still the court of last resort pending the effective establishment of the new structure.

◦ **Common Court of Justice and Arbitration (*Cour Commune de justice et d'arbitrage*) (CCJA)** is not a national court, but rather a supranational court common to all OHADA member states. It hears appeals against decisions applying OHADA law. In principle, such disputes fall outside the jurisdiction of the Supreme Court.

The CCJA is based in Abidjan and its decisions are directly enforceable in Togo.

3. What are the time limits for bringing civil claims?

Limitation periods vary depending on the type of action and the parties involved:

- The ordinary limitation period for bringing an action for damages is 30 years.

- The limitation period for disputes between merchants, or between merchants and non-merchants, is five years unless a shorter period applies.
- There are special limitation periods for certain types of legal action, especially in company law:
 - Actions for damages against company executives for wrongful acts committed by them either individually or collectively in the course of their duties are time-barred three years after the date of the harmful event or, if the event was concealed, from the date of its discovery.
 - Derivative suits (seeking damages for harm suffered by a company due to wrongful acts committed by corporate officers acting in their official capacity) are also time-barred three years after the date of the harmful event or, if the event was concealed, from the date of its discovery.
 - Derivative suits against liquidators are also time-barred after three years.
 - Suits for avoidance or rescission of contract are time-barred after ten years, unless a specific law has established a shorter limitation period.
 - Suits filed by buyers based on hidden defects in delivered goods are time-barred one year after the date on which the defect was or should have been ascertained.
 - Suits involving commercial sales are time-barred after two years unless otherwise provided by law.

The parties cannot form agreements on limitation periods, except in commercial matters where the law grants them greater freedom to shorten or extend the limitation period by agreement.

A summons, order, or seizure served on a party for purposes of tolling the time bar effectively interrupts the limitation period.

4. Are lawyer-client communications privileged (ie, protected from disclosure to a court/tribunal and opposing parties)?

All communications between lawyers and clients are strictly confidential. Any breach of the duty of confidentiality may result in disciplinary sanctions for the lawyer.

Clients cannot waive their lawyer's duty of confidentiality.

5. How are civil proceedings commenced, and what is the typical procedure which is then followed?

Civil proceedings are filed:

- by summons served on the defendant by a bailiff, at the claimant's request. The summons is then filed with the registrar for the competent court so the case can be added to the court's docket;
- by oral or written petition presented by the claimant to the registrar for the competent court. When a claim is presented orally, the registrar drafts the claim and has the claimant sign it, after which it is served on the defendant;
- by way of a petition filed jointly by the parties with the registrar for the competent court.

The standard procedural timelines (for appearances in court, appeals, supreme court appeals and opposition) are increased by one week if the defendant resides in a prefecture adjacent to the seat of the court where the claim was filed, by two weeks for those residing in a non-adjacent prefecture, by one month for those residing outside Togo in a country with regularly scheduled flights to Togo, and by two months for other countries.

The court may reduce these time frames for urgent proceedings, such as petitions for interim relief.

6. What is the extent of pre-trial exchange of evidence, and how is evidence presented at trial?

Each party bears the burden of proving the facts necessary to support a claim. Documentary evidence, testimony and confessions are allowed. In commercial courts, all forms of evidence are admissible. Parties citing a piece of evidence must volunteer that evidence to all other parties to the proceeding. If they do not, the court may be asked to order its production and a regular penalty payment for failure to comply. Under the adversarial principle, each party is entitled to respond to evidence produced by the opposing party.

Parties may also ask the court to order the production of documents held by third parties, provided there is no legitimate impediment to such production, along with a regular penalty payment for non-compliance.

Evidence can be adduced until the closing of the proceedings. Parties may also introduce new arguments, exhibits, or evidence on appeal (apart from Supreme Court proceedings, where no new evidence is admitted). However, they cannot raise new claims on appeal.

The court, acting *sua sponte*, has the power to order all legally permissible investigative measures and the parties have a duty to cooperate. If technical knowledge is needed on a point with which the court is unfamiliar, an expert or experts may be appointed either *sua sponte* or at the parties' suggestion. Experts must be independent, and the scope of their testimony should be specified and limited to their specialty. The court sets a deadline for the expert to complete their examination.

7. To what extent are the parties able to control the procedure and the timetable? How long do proceedings last?

The parties do not control the procedure. Once proceedings have commenced, the timetable is set at the discretion of the court and in practice depends on various factors, such as case complexity, degree of urgency and the court's caseload. Nevertheless, the parties may end the proceedings at any time by mutual agreement.

Civil proceedings can last from six months to a year, or even longer.

Commercial proceedings cannot last more than 100 days from the time the court takes up the case, save in exceptional circumstances to be assessed at the court's complete discretion.

8. What interim remedies are available to preserve the parties' interests pending judgment?

Interim proceedings can be brought in Togo to protect a party's interests pending a judgment on the merits:

- **Interim proceedings** (*référé*) allow a party to obtain an urgent interim ruling without prejudice to the court's decision on the merits of the case. Interim applications are considered at a hearing held before the presiding judge of the court. Any claim that cannot be seriously disputed can be subject to interim orders.
- **Ex parte orders** (*ordonnances sur requête*) can be issued by the presiding judge of the court without giving all parties an opportunity to respond if dictated by circumstances to protect the parties' rights and interests. Ex parte orders are immediately enforceable.
- **Interim attachment** (*saisie conservatoire*) can be ordered by a presiding judge to prevent the disposal of tangible or intangible assets by another party to frustrate enforcement of a future award against that party. The petitioner must show it has a *prima facie* claim and that recovery of the debt is in jeopardy. In practice, while it is easy to obtain the permission of the presiding judge, although sometimes it might be difficult to prove the existence of circumstances likely to threaten recovery of the debt. Creditors may also pursue an interim attachment without prior approval from the presiding judge if they are in possession of an enforceable right.

In practice it is relatively easy to obtain these types of orders.

9. What means of enforcement are available?

Judgments are only enforceable once they are *res judicata* and can no longer be appealed with suspensive effect, unless there is an automatic right to or a specific order for immediate enforcement. Unsuccessful parties may be able to obtain a grace period. Enforcement is possible only if the judgment includes the writ of execution (*formule exécutoire*).

Enforcement measures available under Togolese law are those provided for in the OHADA Uniform Act on Simplified Debt Collection Procedures and Enforcement Proceedings; the most common of these include:

- **Seizure and sale** (*saisie-vente*): any creditor in possession of an enforcement order showing a debt due for immediate payment may have the debtor's tangible, moveable property seized and sold in order to recover the debt from the sale price
- **Third party debt order** (*saisie-attribution de créances*): any creditor in possession of an enforcement order showing a debt due for immediate payment may have receivables owed by a third party to the relevant debtor seized from that third party
- **Penalty payment** (*astreinte*): creditors who obtain an injunction from a court ordering their debtors to either perform or cease and desist from a particular action may ask the court to combine the injunction with a penalty payable for each day/week/month of delay or non-compliance
- **Property foreclosure** (*saisie immobilière*): this is a procedure of last resort when the seizure of personal property or of receivables has been unsuccessful or insufficient. The failure to recover the debt must be authenticated by a bailiff (*huissier de justice*); only then may the creditor initiate foreclosure. The same procedure is followed for mortgage foreclosure.

10. Does the court have power to order costs? Are foreign claimants required to provide security for costs?

The unsuccessful party bears the cost of proceedings, unless the court issues a special, reasoned order for the successful party to cover some or all of the costs. Costs include expenses, fees for bailiffs, lawyers and any experts, transportation, and generally any expenses incurred during the proceedings and justified by necessity.

Legal fees are assessed based on the agreement (if there is one) between lawyer and client, the steps actually taken by the lawyer, his or her reputation, length of career, the complexity of the case, etc. The court can award legal fees that are lower than those actually charged to the client.

All foreign and domestic plaintiffs must make a payment into court to cover the cost of proceedings (Art. 399 CPC).

In all cases, foreign claimants must pay sufficient funds into court to cover any costs and damages that may be ordered (*cautio judicatum solvi*) unless they are able to show that they own sufficient real property in Togo to cover any such costs and damages. However case law on this issue has begun to change, as the courts have at times rejected such payments as a barrier to gaining access to justice.

11. On what grounds can the parties appeal, and what restrictions apply? Is there a right of further appeal? To what extent is enforcement suspended pending an appeal?

Parties have one month to appeal first instance civil or commercial judgments. The deadline is calculated from the date of service of the judgment for *inter partes* proceedings, or from the date a challenge is no longer admissible for default judgments.

In employment or enforcement cases, appeals must be filed within fifteen days of the judgment being issued or served.

Appeals are filed by way of a notice of appeal served on the parties and/or to the court registrar, depending on the subject matter, or by joint notice of appeal filed with the appeal court registrar.

No new claims can be made on appeal except to offset related claims or as an argument in defence against the main claim. Appeals suspend enforcement of the original judgment unless immediate enforcement is of right, or was ordered by the lower court.

Appellate judgments and non-appealable judgments can be brought before the Supreme Court (or the CCJA for cases that come under OHADA law). The Supreme Court can only deliver a judgment on issues of law, not fact. Appellate judgments are not suspended while Supreme Court review is pending. If successful, the case is remanded to a different panel of the appellate court for a second judgment. In principle, the court of remand is not required to follow the Supreme Court's decision; however, in practice it does so.

For cases that come under OHADA law, the CCJA has *de novo* review power and thus may issue a final decision on a case without remand to a Court of Appeal.

12. To what extent can domestic and/or foreign State entities claim immunity from civil proceedings?

Proceedings can be brought against the Government, public authorities, or state-owned enterprises in judicial or administrative courts of law. However, they all hold immunity from enforcement. Debts that are due and payable by the Government, public authorities or state companies can only be offset against due and payable debts owed by their creditors, subject to the reciprocity principle.

For foreign entities, any jurisdictional immunity they may enjoy derives from international agreements on diplomatic or consular relationships.

All these types of immunity can be waived by the beneficiary, although property that comes under the sovereign conduct of Government affairs cannot be seized, even if immunity is waived.

13. What are the procedures for having foreign judgments recognised and enforced?

Enforcement orders (*exequatur*) are obtained on the basis of international conventions between Togo and the country where the judgment was issued. Togo has signed bilateral and regional conventions governing the recognition and enforcement of foreign judgments.

Moreover, in OHADA matters, judgments of the CCJA are enforced in each of the Member States on the same footing as domestic court decisions. The writ of execution is added to the judgment without any review other than the verification of its authenticity by the national authority appointed by the Togolese Government.

In practice, it is relatively easy to obtain an enforcement order if the required conditions are met.

Arbitration

14. Is the arbitration law based on the UNCITRAL Model Law? If so, are there any key modifications? If not, what type of arbitration does the law provide for?

Togo is a Member State of OHADA (*Organisation pour l'Harmonisation en Afrique du Droit des Affaires – Organisation for the Harmonisation of Business Law in Africa*). The OHADA Treaty was signed on 17 October 1993 and amended on 17 October 2008. Under the Treaty, the OHADA Council of Ministers of Justice and Finance adopts “uniform acts” that are directly applicable and enforceable in each of the Member States. Arbitration in the OHADA Member States is governed by the Uniform Act on Arbitration (the “**UAA**”) adopted on 23 November 2017.

The UAA is not based on the UNCITRAL Model Law. It was drafted separately but is nevertheless consistent with the fundamental principles of international commercial arbitration and main features of the UNCITRAL Model Law.

The UAA applies to both national and international arbitration and governs all arbitration proceedings with a seat in a Member State.

Before the UAA was adopted, arbitration law was governed by articles 275 to 290 of the Code of Civil Procedure. These articles now only apply to the extent they are not contrary to the UAA.

One of the most important characteristics of OHADA arbitration is the Common Court of Justice and Arbitration (*Cour Commune de justice et d'arbitrage*, the CCJA), which serves as both a permanent arbitration institution and a supreme court of arbitration for OHADA Member States.

15. What are the main national arbitration institutions?

The main arbitration institution in Togo is the *Cour d'arbitrage du Togo* (CATO) based in Lomé. CATO offers companies a framework for mediation, conciliation and arbitration to settle their civil and commercial contractual disputes. CATO serves as an administrative centre that organises and supervises arbitration and conciliation procedures conducted under its auspices and in accordance with its rules.

The Centre International d'Arbitrage et de Médiation de Lomé (CIAM-Lomé) specializing in the settlement of maritime and financial disputes was also launched in 2022. At the international level, the CCJA, based in Abidjan (Côte d'Ivoire) also acts as an arbitration centre and administers proceedings governed by the CCJA Rules of Arbitration. The CCJA is different from other arbitration centres because it is not private, having been created and organised by OHADA.

In practice, many contracts have arbitration clauses referencing CCJA arbitration, CATO arbitration or sometimes ICC arbitration.

16. Are there any restrictions on who may represent the parties to an arbitration?

CATO rules and the UAA do not set any restrictions on who can represent parties in an arbitration.

However under article 3 of Regulation 005/CM/UEMOA harmonising the rules governing the legal profession in the UEMOA area: “[O]nly lawyers are entitled to plead, petition, and represent other parties in all matters, without territorial limits, before the courts or before judicial or disciplinary organisations and arbitral tribunals, save as specifically provided by national law.” The parties may be represented by a non-Togolese lawyer.

17. What are the formal requirements for an enforceable arbitration agreement?

Article 3-1 of the UAA states that the arbitration agreement must be made in writing or by any other means of which evidence can be produced. No particular format is required. The UAA also provides that contracts may contain an arbitration agreement by reference to a clause contained in a different document. An arbitration agreement may also be in the form of a standalone separate agreement.

In practice, the Togolese courts favour a narrow interpretation of these conditions of form. Local law does not lay down any other requirements.

18. Will the courts stay litigation if there is a valid arbitration clause covering the dispute? Does the approach differ according to whether the seat of the arbitration is inside or outside the jurisdiction?

Article 13 of the UAA provides that national courts must decline jurisdiction if a dispute that is already in arbitration pursuant to an arbitration agreement is brought before national courts.

If no arbitral tribunal has yet been formed, national courts must nevertheless decline jurisdiction at the request of a party unless the arbitration agreement is manifestly void or inapplicable. Courts cannot decline jurisdiction of their own motion.

In principle, the location of the seat of arbitration has no effect on this issue.

The existence of an arbitration agreement does not prevent the parties from applying to a national court for interim or conservatory measures where the circumstances are “clearly shown” to be urgent, if this does not require a review of the case on the merits.

National courts can also intervene in very limited circumstances to assist the arbitration process.

19. If the arbitration agreement is silent, how many arbitrators are appointed, and who is the appointing authority?

While the UAA does not mandate a specific number of arbitrators for cases where the arbitration agreement is silent on this point, it does provide that tribunals must have either a sole arbitrator or three arbitrators. In the absence of an agreement between the parties, the case is adjudicated by a sole arbitrator.

If the parties do not agree on the appointment procedure or if their agreement is not sufficiently detailed, the UAA provides that:

- in an arbitration with three arbitrators, each party appoints one arbitrator and these two arbitrators choose the third arbitrator; if a party fails to appoint an arbitrator within thirty days of the receipt of a request to do so from the other party, or if the two arbitrators fail to agree on the third within thirty days of their appointment, the appointment is made, at the request of a party, by the competent court in the State Party;
- in an arbitration with a sole arbitrator, if the parties fail to agree on the appointment, the arbitrator is appointed, at the request of a party, by the competent court in the State Party.

20. What rights are there to challenge the appointment of an arbitrator?

Articles 7 and 8 of the UAA set the rules for recusal. An arbitrator must disclose “any circumstance that could create a legitimate doubt in the mind of the parties about the arbitrator’s independence and impartiality”. The competent court in the State Party (in Togo, this is the presiding judge of the Court for interim matters) rules on any challenges, unless the parties resolve the challenge otherwise.

If the competent court rejects the request for recusal, it can only be appealed to the CCJA.

Any cause for recusal must be raised within no more than thirty days after discovery of the grounds for recusal by the requesting party.

Arbitrators may only be challenged for grounds that come to light after their appointment.

21. Does domestic law contain public policy requirements for arbitration proceedings?

Under the UAA, parties must receive equal treatment and have an opportunity to exercise their rights.

In trusting their disputes to an arbitration institution, the parties make a commitment to apply the rules of arbitration of that institution, unless they expressly deviate from certain rules with the institution’s consent.

The arbitral tribunal rules on the substance of the dispute in accordance with the legal rules chosen by the parties. If the parties made no such choice, the tribunal must apply the legal rules it deems most appropriate, taking international trade practices into account where relevant.

The tribunal’s deliberations are confidential.

The UAA also provides that arbitration cannot last more than six months from the date on which the last arbitrator accepts the terms of reference, unless that period is extended by agreement of the parties or by the competent court.

Only individuals in full possession of their civil rights may be appointed as arbitrator, and they must remain independent and impartial vis-à-vis the parties.

The arbitral tribunal must abide by and enforce the right to be heard. Arguments, explanations or documents cited or produced by the parties can only be relied upon in its decision if the parties were able to engage in adversarial debate over such arguments, explanations or documents. Arbitrators cannot base their decisions on grounds raised of their own motion without first giving the parties an opportunity to submit observations.

22. On what grounds can the court intervene in arbitrations seated inside the jurisdiction?

According to the UAA, an arbitration agreement excludes any intervention by the national courts until an award has been handed down.

Nevertheless, parties may petition the competent court in Togo in the following circumstances:

- to resolve difficulties encountered with constituting the arbitral tribunal, to appoint the sole arbitrator or the third arbitrator (Art. 5 and 8, UAA)
- to rule on arbitrator recusals if the parties have not agreed on a different procedure (Art. 8, UAA)
- to extend the arbitration period at the request of a party or the arbitral tribunal if there is no agreement between the parties to do so (Art. 12, UAA)
- to order interim or conservatory measures of recognised, demonstrated urgency, provided no review of the case on the merits is necessary (Art. 13, UAA)
- to assist the arbitral tribunal, at its request, with the collection of evidence (Art. 14, UAA)
- to interpret the award or correct clerical errors or omissions affecting the award in cases where the arbitral tribunal cannot be re-seated (Art. 22, UAA).

23. On what grounds can the court intervene in arbitrations seated outside the jurisdiction?

As a matter of principle, national courts cannot intervene where there is an arbitration agreement. In principle, moreover, all issues relating to the composition of the arbitral tribunal and the conduct of arbitral proceedings fall under the jurisdiction of the courts of the State of the seat.

However, it is possible for national courts other than the competent court of the Member State of the seat to intervene to order conservatory or interim relief in accordance with the conditions defined above in question 18 (Art. 13).

24. Do arbitrators have powers to grant interim or conservatory relief?

Article 14 of the UAA authorises the arbitral tribunal to act at the request of either party to order interim or conservatory relief, excluding interim attachment and court-ordered security, which are matters for the national courts.

Article 36(1) of the CATO Rules of Procedure also provide for this possibility.

25. When and in what form must the award be delivered?

Unless otherwise agreed by the parties, arbitral awards must be issued no more than six months after the date on which the last arbitrator accepted the terms of reference. This period can be extended by agreement between the parties, or by order of the competent court of the Member State at the request of a party or the arbitral tribunal (Art. 12, UAA).

Delivery of the award marks the end of the arbitral tribunal's jurisdiction. The tribunal can interpret the award or rectify any clerical errors or omissions. If it failed to rule on a head of claim, it may do so by way of an additional award. In either of the cases above, a request must be submitted within thirty days of service of the award, after which the tribunal has forty-five days to issue its interpretation or additional award. If the tribunal cannot be re-seated, the task of making a ruling falls to the competent court of the State Party.

Parties can establish special requirements for awards. If they do not, awards are issued by majority decision (for tribunals with three arbitrators), and the grounds must be stated. Awards must be signed by at least two of the three arbitrators. If one arbitrator refuses to sign the award, this should be mentioned, but the award will have the same effect as if it had been signed by all arbitrators.

In addition to the operative part, the award must state the arbitrator or arbitrators' full names, the date, seat of arbitration, full names of the parties and their domicile or registered office, the full names of legal counsel or any other person having represented or assisted the parties, a summary of the parties' respective claims and arguments, and the steps of the proceedings.

If the parties gave the arbitral tribunal the power to rule as *amiable compositeur* – ie based on fairness and equity – this is referenced in the award.

If the parties reach a settlement during the arbitration, they can ask the arbitral tribunal to formally record this in an award. The

award has the same status and effects as any other award that ends a dispute.

There are other conditions under Togolese law, but they conflict with the UAA and therefore cannot be implemented, pursuant to Article 10 of the OHADA Treaty.

26. Can a successful party recover its costs?

The UAA makes no provisions in this regard.

The parties may, either directly or by reference to a set of arbitration rules, determine the arbitral procedure to be followed, including the question of costs. If they do not, the arbitral tribunal can conduct the arbitration as it sees fit. For example, under article 48 of the CATO Rules of Procedure, the final award issued by the tribunal sets the costs of arbitration and decides which of the parties is ultimately liable for these, or how costs are to be shared between them.

27. On what grounds can an award from an arbitration seated in the jurisdiction be appealed to the court?

Applications to set aside must be brought before the competent court in the Member State where the award was issued. However, the parties can agree to waive the right to file applications to set aside if the award is not contrary to international public policy provisions.

An application to set aside can only be brought in the following circumstances (Art. 26, UAA):

- the arbitral tribunal ruled despite the lack of an arbitration agreement or in reliance on an invalid or expired agreement;
- the arbitral tribunal was not properly constituted;
- the arbitral tribunal did not rule in compliance with its terms of reference;
- the right to be heard (*contradictoire*) was not observed;
- the award breaches an international public policy provision;
- no reasons are given for the award.

Applications to set aside are admissible as soon as the award has been issued, for up to one month after service of the award together with an exequatur (enforceability) decision. The competent court rules within three months of receiving the application. After three months the court no longer has jurisdiction, and the application can be brought before the CCJA in the following fifteen days. The CCJA must rule within six months of case referral.

An application to set aside an arbitral award suspends enforcement until the competent court in the State Party (or the CCJA, whichever applies) has ruled, unless the award includes immediate enforcement. The same court has jurisdiction over disputes over immediate enforcement.

If the award is harmful to a third party's rights, that party can challenge an arbitral award before the State Party court that would have had jurisdiction absent arbitration (Art. 25(4), UAA). Revision of the award can also be sought from the tribunal itself or, if the tribunal cannot be re-seated, the State Party court that would have had jurisdiction absent arbitration.

28. Can a foreign arbitration award be appealed in the local courts?

Before the UAA, unless the parties had agreed otherwise, arbitration decisions could be appealed before ordinary state courts (Art. 289 of the Civil Procedure Code). Under the aegis of the UAA, awards are only subject to an application to set aside, third party challenges, and revision. Awards are not open to applications against default judgments (*opposition*) or appeals. There are, however, no specific provisions about potential remedies against an award made abroad.

29. What are the procedures for the enforcement of: (i) awards rendered in other jurisdictions and (ii) domestic awards?

To enforce awards issued in an OHADA Member State, the UAA requires parties to obtain an order for enforcement, or exequatur, from the competent Member State court (Art. 30).

To obtain exequatur, the requesting party must produce the original arbitral award together with the original arbitration agreement, or copies of these documents meeting the authentication requirements and, where relevant, a certified translation into French (Art. 31, UAA).

Decisions refusing to recognise an arbitral award can be appealed to the CCJA, but decisions granting recognition cannot be appealed (Art. 32).

The procedure for obtaining recognition of awards is not adversarial. The court reviews the documentation submitted pursuant to article 31 of the UAA. The enforcement of an award is suspended if an application to set aside has been filed, unless the arbitral tribunal ordered immediate enforcement.

Under Article 34 of the UAA, “arbitral awards rendered on the basis of rules different from those provided for in this Uniform Act are recognized in the State Parties under the conditions provided for by international conventions possibly applicable and, in the absence thereof, under the same conditions as those provided in this Uniform Act”. Accordingly, the recognition and enforcement of awards issued in a country outside of the OHADA region will be governed by any applicable conventions (such as the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards). When there is no applicable international convention, the recognition and enforcement of such awards should in principle be governed by the UAA. Togo is not a party to the New York Convention.

30. Are foreign awards readily enforceable in practice?

In practice, foreign awards are readily enforceable in Togo except where the unsuccessful party engages in delaying tactics.

Alternative dispute resolution

31. Are the parties to litigation or arbitration required to consider or submit to any alternative dispute resolution before or during proceedings?

All applications are exempt from preliminary conciliation unless the law provides otherwise. Nevertheless, a national court may have the parties attempt conciliation.

Under the UAA, if an agreement requires parties begin by taking steps to resolve their dispute before going to arbitration, the tribunal may, if a party so requests, examine whether this initial step has in fact been taken, and enjoin the parties to do so if it has not. In such cases, the tribunal stays the arbitration for a whatever time period it deems appropriate to allow the most diligent party to take the necessary steps.

The Uniform Act on Mediation also provides that where the parties have agreed to use mediation, and expressly undertaken not to start any arbitral or judicial proceedings over an existing or future dispute, either for a fixed period or until a specific event occurs, their commitment is enforced by the arbitral tribunal or state court until the related conditions (time period or event) have been satisfied.

Reforms

32. Are there likely to be any significant procedural reforms in the near future?

We believe that a law will be enacted to restructure the judicial system in Togo, taking into account the reforms of the Togolese Constitution. As mentioned above, the Constitution of 6 May 2024 abolished the Supreme Court and replaced it with the *Cour de cassation* and the *Conseil d'Etat*. The Constitution also created a conflict tribunal. As these new jurisdictions are not yet effective, it is to be expected that legislation will be passed to govern their establishment.

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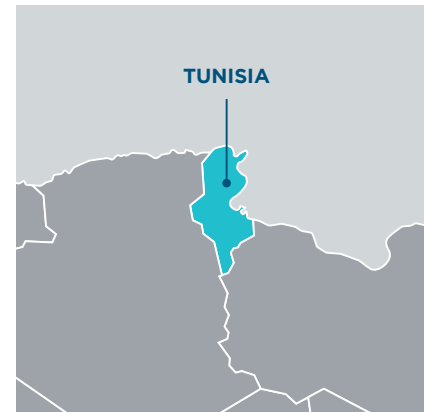
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Tunisia



Introduction

Tunisia's legal system is based on a civil law system. It is structured around a hierarchy of codified laws, including the Constitution, Codes (eg, the Code of Obligations and Contracts, Criminal Code, Code of Civil and Commercial Procedure, Commercial Companies Code, Employment Code, etc.), and other laws for specific sectors. Tunisia also incorporates principles of Islamic law in matters of personal status like inheritance, although the legal framework remains predominantly secular.

Litigation

1. What is the structure of the legal profession?

The legal profession in Tunisia is governed by Decree-Law No. 2011-79 dated 20 August 2011, which repealed and replaced Law No. 89-87 of 1989. The profession is organized and regulated by the National Bar Association (*Ordre National des Avocats de Tunisie* – ONAT).

Lawyers in Tunisia act both as legal advisors and litigators. They are entitled to provide legal opinions, draft contracts and pleadings, and represent clients before all judicial and arbitral bodies.

The legal profession is considered one of the liberal professions. Lawyers may practice individually as a sole practitioner or within a law firm.

The Bar Association is structured as follows:

- A national council (*Conseil de l'Ordre*), headed by a chairman (the *Bâtonnier*).
- Regional bars (*Conseils régionaux*) linked to each court of appeal.
- A General Assembly of lawyers which approves internal regulations and elects the chairman (*Bâtonnier*).

The Bar ensures compliance with ethical and disciplinary rules, including those relating to professional secrecy, conflicts of interest, and independence.

To be admitted as a lawyer in Tunisia, a candidate must:

- have held Tunisian nationality for at least five years and be a resident of the Republic of Tunisia.
- be at least 23 and no more than 40 years old at the time of application.
- hold a Certificate of Aptitude for the Legal Profession (*Certificat d'Aptitude à la Profession d'Avocat* – CAPA) issued by the Higher Institute of the Legal Profession, or a PhD in law.
- have no criminal record for an offence affecting honour or integrity.
- be registered with the Bar Association.

Judges with ten years of experience are exempt from the CAPA requirement but must take an oath before the Court of Appeal upon their acceptance by the national council.

Foreign lawyers may not practice in Tunisia. However, they may intervene occasionally in Tunisian courts in cooperation with a Tunisian lawyer, and only if Tunisian lawyers are granted similar rights in their home country.

2. What is the structure of the court system?

The court system in Tunisia is organized into two basic branches: the ordinary judicial courts and the administrative courts, each with their own hierarchy and jurisdiction.

• The Ordinary Judicial Branch (*Ordre judiciaire*)

This branch handles civil, criminal, commercial, and personal status cases. It is composed of three main levels:

• Courts of First Instance (*Tribunaux de première instance*)

These are courts of general jurisdiction located in each governorate. They handle civil, criminal, commercial, and personal status cases at the first level. Courts of First Instance include interlocutory chambers (*juge des référés*), investigating judges (*juge d'instruction*), and criminal chambers.

- Specialized courts

They may include District Courts, Family Law Courts, and Employment Tribunals.

- **Courts of Appeal**

They review judgments issued by Courts of First Instance.

- **Supreme Court (*Cour de cassation*)**

This is the highest court in the ordinary judicial branch, based in Tunis. It reviews only legal issues (not issues of fact) and ensures consistent interpretation of the law.

- **The Administrative Branch (*Ordre administratif*)**

This branch handles disputes involving public authorities, such as administrative decisions and public contracts.

It includes first instance chambers, an administrative Court of Appeal, and the Supreme Administrative Court.

There are also specialised courts (eg, military courts, court of auditors (*cour des comptes*)).

3. What are the time limits for bringing civil claims?

Under Article 402 of the Code of Obligations and Contracts, the general time limit for initiating civil claims is 15 years from the date the obligation is due, unless a specific law provides a shorter period.

Certain claims are subject to shorter limitation periods:

- One year for actions involving professionals such as traders, craftsmen, suppliers, lawyers, doctors, engineers, and others, particularly regarding wages, service fees, or deliveries (Article 403 and 404);
- Five years for periodic payments such as rent, interest, and pensions (Article 408);
- Five years also apply to claims between business partners arising from liquidation of a partnership (Article 410);
- One year for unfair dismissal claims before employment tribunals.

The time bar for bringing a tort claim is 3 years from the date the victim becomes aware of the harm and the identity of the person who caused it – and in any event, no more than 15 years from the date the harm was incurred (Article 115 of the Code of Obligation and Contracts).

The parties cannot waive the limitations period or extend it beyond 15 years.

4. Are lawyer-client communications privileged (ie, protected from disclosure to a court/tribunal and opposing parties)?

Communications between lawyers and clients are privileged in Tunisia.

Under the Decree-Law No. 2011-79 dated 20 August 2011 which governs the legal profession, lawyers are bound by professional secrecy (Article 31). This duty applies to all information obtained in the context of the lawyer-client relationship: oral, written or electronic.

However, this duty does not apply in case of a legal obligation to disclose (eg under anti-money laundering law).

5. How are civil proceedings commenced, and what is the typical procedure which is then followed?

Civil proceedings are initiated by filing a statement of claim with the competent court after its service by bailiff on the defendant. Article 70 of the Code of Civil and Commercial Procedure provides that a statement of claim must include the following information:

- Full name, profession, place of residence, and status (legal standing) of each party
- Where applicable, the registration number and location of registration in the commercial register
- A summary of the facts
- The legal grounds supporting the claim
- The court seized
- Date and time of the appearance.
- A formal notice requiring the defendant to submit written conclusions with supporting evidence through a lawyer at the hearing
- A warning that if the defendant fails to do so, a default judgment based on available documents may be entered.

The first hearing date is typically set by the court. Once the summons has been prepared, the claimant instructs a bailiff to serve it on the defendant along with supporting documents.

Service must be completed at least 21 days before the first hearing if the defendant resides in Tunisia. If the defendant is abroad, the minimum period is extended to 60 days. When a bilateral judicial cooperation treaty exists and requires diplomatic notification, that procedure must be followed.

For interlocutory proceedings (eg, urgent matters), the notice period is reduced to three days.

After service and filing of the case with the court registrar, the case proceeds through a series of hearings and possible adjournments depending on the parties' submissions.

Conciliation is mandatory before certain courts, specifically District Courts, Family Law Courts, and Employment Tribunals.

6. What is the extent of pre-trial exchange of evidence, and how is evidence presented at trial?

The pre-trial exchange of evidence is not applicable in Tunisia, and the common law concept of discovery has no equivalent. Each party is responsible for submitting its own documentary evidence to support its claims or defences.

As a matter of principle, the court is not required to establish, complete, or produce evidence in support of the parties' claims (Article 12 of the Code of Civil and Commercial Procedures). However, the Code of Obligations and Contracts does regulate the production of documents during civil proceedings. Articles 463, 465 and 466 of the Code set out mechanisms for compelling parties to produce documents when relevant to the dispute.

Witness testimony is strictly regulated. Under Article 92, witnesses may be heard if authorized by the court. The judge or the reporting judge (*juge rapporteur*) must personally conduct the hearing or delegate it to a nearby magistrate. Testimonies collected outside this procedure are inadmissible. Article 93

adds that if a witness resides abroad, the court may use diplomatic channels to obtain testimony via a letter rogatory to the competent foreign authority.

Experts may be appointed by the court at its discretion. Experts must invite the parties to participate in the process, gather their observations, and submit a detailed report to the tribunal.

7. To what extent are the parties able to control the procedure and the timetable? How long do proceedings last?

The parties have limited ability to control the procedure and timetable of civil proceedings. Once the initial summons has been filed and served, the scheduling of hearings and adjournments is primarily managed by the court. However, parties (through their lawyers) may request adjournments to prepare submissions or respond to the other side's pleadings.

The speed of proceedings depends on various factors such as the subject matter of the dispute, the amount at stake, and the workload of the judge presiding over the case.

In practice, a civil claim before the Court of First Instance in Tunis takes an average of six months to one year. For cases requiring court-appointed experts, the time frame can extend to two years in the first instance.

The parties can enter into settlement agreements to terminate litigation at any time.

8. What interim remedies are available to preserve the parties' interests pending judgment?

The parties may seek interim remedies to preserve their rights and interests pending a final judgment by two main procedural mechanisms under the Code of Civil and Commercial Procedures:

- Interlocutory Proceedings (*Procédure de référé*) Articles 201 to 212

A party may initiate an interlocutory proceeding before the judge for interim matters (*juge des référés*) when the case is urgent and requires swift intervention, and the requested intervention does not prejudice the substance of the case.

The judge may issue provisional orders such as injunctions, orders to cease and desist from an activity, or to preserve assets or evidence.

- Petition for Interim Relief (*Ordonnance sur requête*) Articles 213 and 214

A party may also file a petition (*requête*) ex parte, ie without summoning the other party, with the President of the court. Interim relief may be granted in cases expressly provided by law or, in cases where there is a risk of serious and imminent harm (*péril en la demeure*), in order to prescribe any measures necessary to safeguard rights and interests that cannot be left unprotected. When the petition relates to a matter already pending before a court, the President of the competent court is the appropriate authority to hear the petition. The party against whom the measure is taken may later object to the order and ask the same judge for a reversal.

9. What means of enforcement are available?

The enforcement of judgments is governed by the Code of Civil and Commercial Procedure (CCCP), particularly Articles 285 to

490. A judgment may only be enforced once it becomes final and binding. This typically applies to judgments rendered by the Court of Appeal, those issued in the first instance but deemed final by law, or judgments accompanied by immediate enforcement.

In accordance with Article 286 of the Code of Civil and Commercial Procedure, a bailiff serves the enforceable decision on the losing party; a period of twenty days from the date of service is allowed for voluntary compliance. When this period expires, enforcement proceedings may begin. Creditors may also resort to indirect means, such as initiating bankruptcy or liquidation proceedings, to pressure the debtor into compliance.

Enforcement mechanisms include:

- Interim attachment (*saisie conservatoire*): seizures of movable or immovable assets as a protective measure to safeguard the creditor's rights;
- Seizure and sale (*saisie-exécution*), allowing the forced sale of movable or immovable property to satisfy a debt;
- Garnishment (*saisie-arrêt*), where amounts owed to the debtor by third parties, including wages, are seized and redirected to the creditor.

Courts may apply a penalty payment (*astreinte*) to compel compliance with a mandatory or prohibitory injunction.

10. Does the court have power to order costs? Are foreign claimants required to provide security for costs?

The general principle is that the losing party bears the legal costs unless the court decides to divide them between the parties. The awarded legal fees are usually symbolic and do not cover the full amount of fees incurred.

As for foreign claimants, there is no requirement to provide security for costs.

11. On what grounds can the parties appeal, and what restrictions apply? Is there a right of further appeal? To what extent is enforcement suspended pending an appeal?

Judgments rendered by the Court of First Instance may be appealed to the Court of Appeal, provided the appeal is lodged within the statutory deadline of 20 days from the date of service of the judgment (Article 141 of the Code of Civil and Commercial Procedure - CCCP). The Court of Appeal examines both questions of fact and law and may admit new evidence, but not new claims.

Judgments rendered by District Courts (*tribunal cantonal*) are appealable before the Court of First Instance acting in an appellate capacity.

Decisions of the Court of Appeal may be challenged before the Supreme Court on grounds of violation or misapplication of the law, or lack or contradiction of reasoning (Article 175 CCCP). The time limit for filing a Supreme court appeal is 20 days (Article 151 CCCP).

In principle, an appeal suspends enforcement of the first instance judgment (Article 147 CCCP). However, supreme court appeals do not suspend enforcement unless the Supreme Court, upon request and under exceptional circumstances, orders a stay of execution to avoid serious and irreparable harm (Article 179 CCCP).

12. To what extent can domestic and/or foreign State entities claim immunity from civil proceedings?

Tunisian state entities are not entitled to immunity from civil proceedings. Although only administrative courts have jurisdiction over the official actions (*actes administratifs*) of state entities, disputes involving such entities that are purely matters of civil law may be submitted to the ordinary judicial courts. The assets of State entities cannot, however, be seized for enforcement purposes.

Foreign State entities may only claim immunity under the diplomatic immunity rules applicable to the diplomats of foreign States, subject to the principle of reciprocity.

13. What are the procedures for having foreign judgments recognised and enforced?

The recognition and enforcement of foreign judgments are governed by Article 11 of the Code of Private International Law (Law No. 98-97 of 27 November 1998). The recognition and enforcement of a foreign judgment may be refused under the following conditions:

- The subject matter of the dispute falls within the exclusive jurisdiction of the Tunisian courts.
- Tunisian courts have already rendered a final and binding decision in the same matter, between the same parties and on the same grounds.
- The foreign judgment is contrary to Tunisian public policy under private international law or was rendered through a procedure that did not respect the rights of defence.
- The foreign judgment has been invalidated or suspended under the law of the country where it was issued or is not yet enforceable in that country.
- The state where the judgment was rendered does not grant reciprocal recognition and enforcement to Tunisian judgments.

The party seeking enforcement files a request before the Court of First Instance with territorial jurisdiction. The Tunisian court does not re-examine the merits of the foreign judgment but only checks the procedural and substantive conditions for enforcement.

Arbitration

14. Is the arbitration law based on the UNCITRAL Model Law? If so, are there any key modifications? If not, what type of arbitration does the law provide for?

Tunisia enacted its Arbitration Code on 26 April 1993. This legislation is strongly inspired by the 1985 UNCITRAL Model Law, incorporating many of its core principles, although it has not been reformed to reflect the amendments introduced in the 2006 revision of the Model Law. The Tunisian Arbitration Code takes an approach that distinguishes between domestic and international arbitration.

To define an arbitration as international in nature, Article 48 of the Code takes its inspiration from the criteria set forth in Article 1(3) of the UNCITRAL Model Law. Arbitration is deemed

international in the following cases: (a) when the parties to the arbitration agreement have their places of business in different States at the time of entering into the agreement; (b) when the place of arbitration or the place of performance of a substantial part of the obligations lies outside the country of the parties' establishments; (c) when the parties expressly agree that the subject matter of the arbitration is connected with more than one country; or (d) more generally, when the arbitration concerns international trade.

The Tunisian Code departs from the Model Law on certain procedural aspects. Under the Model Law, neither a challenge to an arbitrator nor an appeal against a preliminary ruling on jurisdiction suspends the arbitral proceedings. By contrast, the Tunisian Code provides for suspension in both scenarios. Article 58 paragraph 3 states that "the arbitral proceedings are suspended" pending the Court of Appeal's decision on a challenge to an arbitrator. Similarly, Article 61 paragraph 3 provides that "the resumption of proceedings depends on the outcome of the decision rendered in the appeal" against the preliminary award on jurisdiction.

15. What are the main national arbitration institutions?

The Centre for Conciliation and Arbitration of Tunis (*Centre de conciliation et d'arbitrage de Tunis*).

16. Are there any restrictions on who may represent the parties to an arbitration?

There are no restrictions on who may represent the parties to an arbitration.

17. What are the formal requirements for an enforceable arbitration agreement?

Under Tunisian law, the formal requirements for an enforceable arbitration agreement are governed by Article 6 of the Arbitration Code, which provides a flexible yet structured approach to the requirement that agreements be in written form.

According to Article 6, an arbitration agreement must be in writing, meaning:

- A notarised instrument,
- A private document, or
- A record prepared before the chosen arbitral tribunal.

However, the requirement of written form is interpreted broadly not as a condition of validity, but rather as an evidentiary requirement, especially when relying on the official Arabic version of the Code. This liberal interpretation is intended to facilitate proof of the agreement and prevent bad-faith objections based on formalistic grounds.

The written form may be satisfied by:

- A signed document,
- An exchange of correspondence (letters, telegrams, faxes, emails, or similar communications), or
- Pleadings exchanged between the parties (ie, claims and defences) where one party asserts the existence of an arbitration agreement and the other does not challenge it.

Additionally, Article 6(2) recognizes the validity of an arbitration clause by reference to another document (such as general conditions) if:

- The contract itself is in writing, and
- The reference clearly incorporates the arbitration clause as part of the contract.

This approach is consistent with the UNCITRAL Model Law of 1985, from which the Arbitration Code is largely inspired. However, Tunisia has not yet adopted the 2006 amendments to the Model Law introducing further flexibility, such as fully consensual arbitration agreements without formal writing and recognition of electronic communications as fulfilling the writing requirement.

18. Will the courts stay litigation if there is a valid arbitration clause covering the dispute? Does their approach differ according to whether the seat of arbitration is inside or outside the jurisdiction?

If a court is seized of a dispute that falls under an arbitration agreement, it must refer the case to arbitration, upon application by one of the parties, provided the request is made before or at the time of the first substantive submissions, unless the court finds the arbitration agreement to be null, inoperative, or unenforceable (Article 52 of the Arbitration Code)

19. If the arbitration agreement is silent, how many arbitrators are appointed, and who is the appointing authority?

In international arbitrations, the parties are free to choose any odd number of arbitrators. If there is no agreement on the number of arbitrators, the default number is three (Article 55 of the Arbitration Code).

If a party fails to appoint an arbitrator within 30 days of receiving a request from the other party, or if the two appointed arbitrators fail to agree on the third arbitrator within 30 days of their appointment, the missing appointment shall be made, at the request of a party, by an interim order (*ordonnance de référé*) issued by the First President of the Tunis Court of Appeal.

If the tribunal consist of a sole arbitrator and the parties cannot agree on their choice, the arbitrator is also appointed by the First President of the Tunis Court of Appeal of Tunis, upon application by one of the parties.

In domestic arbitrations, the tribunal comprises a single arbitrator or an odd number of arbitrators.

If an even number of arbitrators is appointed by the parties, an additional arbitrator must be appointed to act as president of the arbitral tribunal. This arbitrator will be selected by agreement between the parties, by the arbitrators who have already been appointed or, in the event of a disagreement, by the presiding judge of a Court of First Instance.

20. What rights are there to challenge the appointment of an arbitrator?

Arbitrators may only be challenged for reasons that raise legitimate doubts as to their impartiality or independence, or if they do not possess the qualifications required by the parties.

A party may only challenge an arbitrator whom it has appointed or to whose appointment it contributed based on reasons it discovered after the appointment (Article 57 of the Arbitration Code).

A party wishing to seek recusal must submit written reasons to the arbitral tribunal within 15 days of the time that party has learned of the tribunal's composition or of circumstances justifying the challenge. If the arbitrator does not withdraw and the other party does not accept the challenge, the challenging party may refer the matter to the Tunis Court of Appeal within 45 days. The court's decision is final and not open to appeal. The arbitral proceedings are suspended pending the court's decision.

21. Does domestic law contain public policy requirements for arbitration proceedings?

Parties are free to agree on the procedure to be followed by the arbitral tribunal. In the absence of any agreement, the tribunal may conduct the arbitration as it sees fit, subject to the provisions of the arbitration law. The tribunal has the authority to assess the admissibility, relevance, effectiveness, and weight of any evidence submitted (Article 64 of the Arbitration Code).

Respect for due process and equal treatment of the parties are fundamental principles of procedural public policy.

22. On what grounds can the court intervene in arbitrations seated inside the jurisdiction?

The court can intervene in the process of appointing arbitrators and in challenges thereto, and in matters involving conservatory relief ordered by an arbitral tribunal.

23. On what grounds can the court intervene in arbitrations seated outside the jurisdiction?

The Arbitration Code extends to international arbitrations seated outside of Tunisia insofar as the parties or the arbitral tribunal agree to apply it. The Tunisian courts have jurisdiction over all matters where the Arbitration Code refers to the competent court.

24. Do arbitrators have powers to grant interim or conservatory relief?

The arbitral tribunal may, on the application of a party, order any interim or conservatory measure it deems necessary. If a party fails to comply, the tribunal may seek assistance from the president of the Tunis Court of Appeal (Article 62 of the Arbitration Code).

The tribunal or the judge may also require an advance on the costs of implementing such measures.

25. When and in what form must the award be delivered?

In domestic arbitration, Article 24 of the Tunisian Arbitration Code sets a time limit for rendering the award. If no specific time frame is fixed, the award must be issued within 12 months from the date the arbitral tribunal is constituted. This period can be extended once, for a further 12 months, upon a reasoned decision by the tribunal.

In contrast, the Tunisian Arbitration Code does not establish any specific time frame for issuing international awards.

All arbitral awards must be issued in writing and signed by the arbitrator or arbitrators. If there is more than one arbitrator, the signatures of the majority are sufficient, provided the reason for the absence of the other signatures is stated.

Additionally, awards must be reasoned unless the parties have agreed otherwise, or if the award is the result of a settlement agreement under Article 15. Awards must also state the date and the place where it was rendered, which is deemed to be the seat of the arbitration (Article 75 of the Arbitration Code).

26. Can a successful party recover its costs?

The unsuccessful party will bear the costs (expenses and lawyers' fees) unless the arbitral tribunal decides to divide them between the parties where both have been partially unsuccessful. In practice, the amounts recovered will depend on the arbitral tribunal's decision.

27. On what grounds can an award from an arbitration seated in the jurisdiction be appealed to the court?

International arbitral awards cannot be appealed. They are only open to an application to set aside filed with the competent court. Article 78 of the Arbitration Code contains an exhaustive list of the grounds on which a set aside application can be based. These include:

- A party to the arbitration agreement was under some incapacity; or said agreement is not valid under the governing law chosen by the parties or, if no governing law was chosen, under the rules of private international law.
- 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 a case.
- The award deals with a dispute not contemplated by or not falling within the terms of the arbitration agreement, or contains decisions on matters beyond the scope of the arbitration agreement.
- The constitution of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties in general, with the arbitration rules chosen by the parties, with the law of a country held to be applicable, or with the Tunisian Arbitration Code.
- The court finds that the recognition or enforcement of the arbitral award would be contrary to public policy within the meaning of private international law.

In domestic arbitration, arbitral awards cannot be appealed on the merits unless the arbitration clause expressly provides otherwise. However, a domestic award may be challenged through a setting aside action, which may be based on the following grounds:

- the award deals with a dispute not contemplated by or not falling within the terms of the arbitration agreement;
- the award has been rendered pursuant to an invalid arbitration agreement or after the expiry of the time limit for arbitration;
- the award contains decisions on matters not claimed;
- the award was rendered in violation of a public policy rule;
- the arbitral tribunal was not correctly constituted;
- the fundamental rules of procedure have not been followed.

28. Can a foreign arbitration award be appealed in the local courts? If so, on what grounds?

Foreign arbitral awards cannot be appealed in local courts.

29. What are the procedures for the enforcement of: (i) awards rendered in other jurisdictions and (ii) domestic awards?

Tunisia is a signatory to the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards. Accordingly, foreign arbitral awards are enforceable in Tunisia pursuant to the Convention's provisions and the Tunisian Arbitration Code. The party seeking enforcement must file a request before the President of the Tunis Court of First Instance. The request must include the original award (or a certified copy) and the original arbitration agreement (or a certified copy), along with an official Arabic translation if the documents are in a foreign language. The court verifies that the award complies with international public policy and that none of the grounds for refusal under the New York Convention or Article 81 of the Arbitration Code apply.

Irrespective of the country where an international award was rendered, recognition or enforcement may only be refused if:

- a party to the arbitration agreement was under some incapacity, or said agreement is not valid under the governing law chosen by the parties or, if no governing law was chosen, under the rules of private international law;
- the party against whom enforcement of the award is sought was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings, or was otherwise unable to present his/her case;
- the award deals with a dispute not contemplated by or not falling within the terms of the arbitration agreement, or contains decisions on matters beyond the scope of the arbitration agreement;
- the constitution of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties in general, with the arbitration rules chosen by the parties, with the law of a country held to be applicable, or with the Tunisian Arbitration Code;
- the award has been set aside or its enforcement was stayed by a court of the country in which, or under the law of which, the award was rendered;
- the court finds that the recognition or enforcement of the arbitral award would be contrary to public policy within the meaning of private international law.

In domestic arbitration, arbitral awards may be enforced by an order of the President of the District Court or the Court of First Instance, depending on the place of the arbitration and the amount awarded. However, if the arbitration involves a dispute pending before a Court of Appeal at the time the arbitration agreement is made, only the President of this Court has jurisdiction to issue an exequatur order.

30. Are foreign awards readily enforceable in practice?

Yes, foreign arbitral awards are generally enforceable in Tunisia. Tunisian courts take an approach generally in favour of the enforcement of foreign awards, which is consistent with Tunisia's obligations under the 1958 New York Convention.

Tunisian courts generally refrain from reviewing the merits of the arbitral award and focus only on the limited grounds for refusal of enforcement as provided under Article 81 of the Tunisian Arbitration Code.

Alternative dispute resolution

31. Are the parties to litigation or arbitration required to consider or submit to any alternative dispute resolution before or during proceedings?

Unless expressly required by their agreement, the parties have no obligation to engage in any alternative dispute resolution procedure before initiating or during the course of proceedings.

Conciliation is mandatory before District Courts, Employment Tribunals, and in family matters such as divorce.

Furthermore, in cases involving disputes between the Tunisian Government and an investor over the interpretation or application of Investment Law No. 2016-71, parties must make every effort to resolve the dispute through conciliation before referring the matter to a court or arbitral tribunal, unless one party expressly waives its right to conciliation, in accordance with Article 23 of the Investment Law.

Reforms

32. Are there likely to be any significant procedural reforms in the near future?

To the best of our knowledge, no major reforms of civil or commercial procedure are planned in the near future

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Uganda



Introduction

The Ugandan legal system is based on the Constitution of 8 October 1995, legislation, rules of common law, doctrines of equity, and customary law. The official languages are English and Swahili.

Litigation

1. What is the structure of the legal profession?

In Uganda, there is no split profession; lawyers practise as both barristers and solicitors. Lawyers have rights of audience before all trial courts and tribunals, save that newly enrolled advocates are limited to Magistrates' Courts for their first eight months in practice.

Training as a lawyer typically involves two stages:

- obtaining a Bachelor of Laws degree from an accredited Ugandan university
- undertaking a nine-month course at the Law Development Centre, including a three-month clerkship/pupillage with the courts, a law firm or an accredited institution. Students are awarded a Diploma in Legal Practice upon successful completion of the course and are eligible to be entered onto the Roll of Advocates provided they have no criminal record for crimes involving moral turpitude and are not an undischarged bankrupt

Foreign qualified lawyers are permitted to practise in Uganda upon being issued with the requisite Practising Certificate by the Registrar of the Courts of Judicature.

The Uganda Law Council is the statutory body regulating the profession and it deals with complaints against lawyers.

2. What is the structure of the court system?

The judiciary consists of the superior courts and the lower courts. The superior courts are courts of record and consist of the:

- Supreme Court;
- Court of Appeal;
- High Court.

The lower courts consist of:

- Chief Magistrates' Courts;
- Grade I Magistrates' Courts;
- Grade II Magistrates' Courts;
- the Family and Children's Courts.

The High Court is divided into various divisions (ie, the Civil Division, Criminal Division, Commercial Division, Land Division, Family Division, War Crimes Division and the Anti-Corruption Division). It is also decentralised and operates various circuit courts in geographical areas in the country.

The High Court is vested with original and unlimited jurisdiction in both criminal and civil proceedings. Claims with a value exceeding UGX 50 million must be initiated in the High Court. Any claim less than UGX 50 million should be initiated in the Chief Magistrates' Courts.

The Court of Appeal has jurisdiction to handle appeals from the High Court and has original jurisdiction in matters relating to the interpretation of the Constitution. This court is headed by the Deputy Chief Justice.

The Supreme Court is the final appellate court in Uganda and is headed by the Chief Justice.

3. What are the time limits for bringing civil claims?

The Limitation Act Cap 290 of the Laws of Uganda, Revised, 2023 sets out limitation periods for bringing civil claims. These vary depending on the cause of action.

The limitation period is 12 years for actions:

- to recover land;
- for foreclosure in respect of mortgaged personal property, and recovery of any principal sum of money secured by a mortgage or other charge over property.

The limitation period is six years for actions:

- founded on tort or contract;
- to enforce an award;
- to recover any sum other than a sum by way of penalty or forfeiture.

The six-year limitation period is reduced to three years in cases of damage in respect of personal injuries to any person arising out of negligence, nuisance or breach of duty.

The limitation period is extended in cases of latent damage, fraudulent concealment, disability, acknowledgement and part payment.

The limitation periods equally apply to private citizens as well as the Government of Uganda, save that they do not apply to proceedings for recovery of taxes or duties or interest thereon, criminal proceedings or any rights to mines and minerals vested in Government. The Act also applies to arbitrations as it does to actions in Court.

The provisions of the Act, however, do not apply to any action or arbitration for which a period of limitation is prescribed by any other enactment, or to any action or arbitration to which the Government is a party and for which, if it were between private persons, a period of limitation would be prescribed by any other enactment.

4. Are lawyer-client communications privileged (ie, protected from disclosure to a court/tribunal and opposing parties)?

Communications between lawyer and client are privileged and cannot be disclosed to the court or opposing parties. A party is at liberty to waive its right to confidentiality.

5. How are civil proceedings commenced, and what is the typical procedure which is then followed?

Generally, civil proceedings are commenced by “notice of intention to sue” (a party risks losing its entitlement to costs if no letter before action is issued). If the dispute cannot be settled, a plaint is filed. It is mandatory for a plaint to include a summary of the evidence, list of documents and list of witnesses. This can, however, be altered at the scheduling conference.

Upon filing the plaint, the court issues a summons to file a written statement of defence and this, together with the plaint, is served upon the defendant within 21 days from the date of issuance of the summons. The defendant has 15 days to file its written statement of defence in ordinary suits and 10 days to file an application for leave to appear and defend the suit in summary suits. The plaintiff has seven days after service of the defence to file a reply. After closure of pleadings, the matter is fixed for a summons for directions hearing which is held before the Registrar; timelines for various filings (joint scheduling memorandum and trial bundles) are agreed upon at this hearing. Thereafter a scheduling conference is held before the Judge at which the agreed and disputed facts and the issues for trial (as set out in the Joint Scheduling Memorandum) are reviewed and settled and the relevant documents marked. The matter is set down for hearing and dates set for the filing of witness statements prior to the hearing date. Save for criminal matters, it is mandatory after closure of the pleadings to refer matters in the High Court to court-annexed mediation.

6. What is the extent of pre-trial exchange of evidence, and how is evidence presented at trial?

Under the Civil Procedure Rules, a list of documents must accompany the plaint, and in practice, photocopies of the listed documents are attached to the plaint.

The opposing party can apply for discovery in the event that a particular document relevant to the dispute is not included in the list of documents accompanying the plaint.

The law provides for witness statements which are filed in Court and served on the opposite party prior to the trial. At the trial, a witness takes an oath and his/her witness statement is adopted as evidence-in-chief. The other party can cross-examine witnesses. Re-examination is also by right. Judges are allowed to question witnesses directly. A witness cannot be recalled without the leave of the court.

Expert evidence is adduced in the same manner as any other evidence and experts are cross-examined. A party is at liberty to call on another expert to rebut expert evidence. Permission of the court is not required to adduce expert evidence.

On application for temporary relief or discovery, evidence may be supported by affidavit. The court may, on the application of any party, order the attendance for cross-examination of the person making the affidavit. If an order has been made but the person in question does not attend, that person's affidavit may not be used as evidence without leave of the court.

7. To what extent are the parties able to control the procedure and the timetable? How quick is the process?

Each trial court is responsible for managing its case list. Judges, therefore, have considerable powers in this respect, including control over the issues on which evidence is permitted and the way in which evidence is put before the court.

Before trial, the material disputes between parties may be agreed by the parties and set down in writing in a “joint scheduling memorandum”, or this may be done in court. In this way, the parties may shorten the trial by agreeing the issues to be tried or may delay the trial by forcing this to be decided under the supervision of the court.

The Civil Procedure (Amendment) Rules 2019 require that a party take out summons for direction within 28 days after closure of pleadings. These summons require the parties to appear before the Court for directions for the trial which include timelines for filing any interlocutory applications, witness statements and trial bundles to ensure an expeditious and economical disposal of the matter. In the event the plaintiff fails to take out summons for direction within the required 28 days, the suit is abated, and the plaintiff is required to file a fresh suit subject to the law of limitation.

The period from filing a plaint to judgment may take 12–24 months and the conduct and proactiveness of the parties is critical in the speedy disposal of an action.

8. What interim remedies are available to preserve the parties' interests pending judgment?

The court may, at any time, preserve a party's interest upon that party's application for the relevant interim remedy pending judgment. Available interim remedies include an order for a temporary or interim injunction, and detention, custody or preservation of any property that is the subject matter of the suit and is within the court's jurisdiction. An application for an interlocutory or interim injunction may be made before or during the trial.

9. What means of enforcement are available?

A judgment for the payment of money may be enforced by:

- attachment of the judgment debtor's assets;
- garnishee proceedings;
- committal to civil prison of a judgment debtor;
- bankruptcy proceedings against the individual or winding-up proceedings against a debtor company.

A judgment of possession of immovable property may be enforced by:

- cancellation of registration of proprietorship of land or interest in land;
- eviction orders;
- committal.

A judgment for the delivery of goods or payment of the assessed value may be enforced by orders for delivery up of goods or their assessed value.

In the past, enforcement was straightforward. However, the position is now different, as orders of enforcement issued by the court are "sanctioned" by the Police and Resident District Commissioners (RDCs) prior to enforcement actually taking place. In effect the Police and RDCs can decide whether or not an enforcement order should be carried out. In some cases, Government Ministers and high ranking army officers also interfere with the enforcement of court orders, especially in land disputes.

10. Does the court have the power to order costs? Are foreign claimants required to provide security for costs?

The court has the discretion to award costs of and incidental to proceedings as well as full power to determine by whom and to what extent costs are to be paid. The successful party to an action files its bill of costs and this is taxed by the registrar of the court in the presence of both parties.

The court takes into consideration a number of factors, including the value and complexity of the dispute, the number of court attendances, the expenses incurred by the party or its lawyer, the court fees paid by the party or its lawyer, the conduct of the parties before and during proceedings, and any previous orders as to costs made in the proceedings.

A plaintiff who is ordinarily resident outside the East African community countries may, on the defendant's application, be required to provide security for the defendant's costs. The court is, however, unlikely to make such orders if the plaintiff has assets within its jurisdiction.

11. On what grounds can the parties appeal, and what restrictions apply? Is there a right of further appeal? To what extent is enforcement suspended pending an appeal?

Appeals are creatures of statute and, if a statute does not provide for appeal, one cannot be made. Appeals from court judgments lie as of right under the Civil Procedure Act. Appeals from rulings (on interlocutory applications) are strictly with leave of the court. Appeals are allowed based on errors of law and/or errors of fact by the trial court.

There are three appellate courts in Uganda: the High Court (from decisions of the Magistrates' Courts), the Court of Appeal (from decisions of the High Court) and the final appellate court, the Supreme Court.

Third appeals (ie, from decisions of the Magistrates Courts) can only be made with leave of the Court of Appeal. Leave to file a third appeal will be granted where the Court of Appeal is satisfied that the case involves a substantial question of law or where it is in the public interest to grant permission to appeal, or where the appeal has a real chance of success.

When dissatisfied with the decision of the Supreme Court, a party may ask for the Supreme Court to review its decision. The power of the Supreme Court to review its decision is, however, limited to exceptional circumstances that have resulted in a miscarriage of justice, or discovery of new and important matters or evidence which, after the exercise of due diligence, were not within the applicant's knowledge or could not be produced by the applicant during the trial or hearing of the case.

Appeals do not operate as a stay of execution of the decision of the lower court and orders for a stay of execution must be applied for.

12. To what extent can domestic and/or foreign State entities claim immunity from civil proceedings?

As a general rule of international law, a State (or foreign State entity for that matter) is immune from the jurisdiction of another State unless the foreign State has waived its immunity either explicitly or by implication.

Under the Diplomatic Privileges Act, the President can, by statutory instrument, make regulations to extend any or all the immunities conferred on diplomatic agents to prescribed organisations. Many foreign State entities have been granted diplomatic immunity pursuant to this Act.

However, where a foreign State entity contractually agrees to submit to the jurisdiction of the Ugandan courts, it would be deemed to have waived such immunity and may be sued in Uganda.

Domestic State entities have corporate personality and can sue or be sued in their names. They do not have immunity from civil proceedings.

13. What are the procedures for recognising and enforcing foreign judgments?

Three statutes provide for recognition and enforcement of foreign judgments. These are:

- The Reciprocal Enforcement of Judgments Act Cap 23 of the Laws of Uganda (2023): this Act makes provision for the enforcement in Uganda of judgments made in Commonwealth countries and the Republic of Ireland. Pursuant to this Act, a judgment creditor may apply to the High Court in Uganda within 12 months of the date of judgment or such longer period as may be allowed by the court to have the judgment registered. Where the judgment of a foreign court is not enforceable on the basis of reciprocity, fresh proceedings may be instituted in Uganda and the foreign judgment relied upon in evidence
- The Foreign Judgments (Reciprocal Enforcement) Act Cap 10 of the Laws of Uganda (2023): this makes provision for the enforcement of judgments given in foreign countries that accord reciprocal treatment to judgments given in Uganda for facilitating the enforcement in foreign countries of judgments given in Uganda and for matters incidental thereto. Under this Act, a judgment creditor may, within six years of obtaining a judgment from a foreign court, apply to the High Court. The High Court must, subject to confirmation that the judgment is yet to be satisfied or was incapable of performance by execution in the country of the original court, order its registration
- The Judgments Extensions Act Cap 15 of the Laws of Uganda (2023): this Act makes provision for the execution by the Ugandan courts of decrees and warrants made and granted by courts in Kenya, Malawi and Tanzania.

Arbitration

14. Is the arbitration law based on the UNCITRAL Model Law? If so, are there any key modifications? If not, what type of arbitration does the law provide for?

Arbitration in Uganda is governed by the Arbitration & Conciliation Act Cap 5 of the Laws of Uganda (2023) (the Act) which applies to domestic and international arbitration (save where otherwise provided in the Act). The Act is based on the UNCITRAL Model Law 1985 with some modifications.

The Act makes specific provision for applications to the court for interim measures (section 6).

The default number of arbitrators is one (section 10).

Under the Act, in addition to the grounds set out in the UNCITRAL Model Law, an award may be set aside by the court if it was procured by corruption, fraud, or undue means or there was evidence of partiality or corruption in one or more of the arbitrators, or if the award is not in accordance with the Act. The parties have one month (rather than three months under the UNCITRAL Model Law) from the date on which they receive the award to seek to have it set aside (section 34).

The Act makes provision for the parties to agree that questions of law arising in domestic arbitrations may be determined by the court (section 38).

Part IV of the Act provides for enforcement of ICSID Convention Awards and Part V of the Act provides for conciliation.

Schedule 2 sets out a number of standard forms which may be used (with variations where necessary), and if used, may not be questioned. These are submission agreements, agreements for appointment of an arbitrator, agreements for extending the time for making an award, applications for making a submission to the court on a question of law under section 38 and standard forms of award.

Section 67 of the Act establishes the Centre for Arbitration and Dispute Resolution whose function *inter alia* is to perform the functions specified in the UNCITRAL Arbitration Rules of 1976 and to act as an appointing authority in accordance with various provisions of the Act.

Schedule 1 of the Act contains rules determining the court procedure to be followed for recognition and enforcement of awards, the filing of applications for setting aside awards, applications for stays of proceedings under section 5 of the Act and applications for the appointment of or challenge to arbitrators.

15. What are the main national arbitration institutions?

The Centre for Arbitration and Dispute Resolution (CADER) is the main national arbitration institution.

In 2018 an independent non-governmental institution, the International Centre for Arbitration & Mediation in Kampala (ICAMEK) was established under the auspices of the Uganda Bankers Association and the Uganda Law Society. The ICAMEK (Arbitration) Rules 2018 applicable to ICAMEK arbitrations are similar to UNCITRAL Model Law 1985 with some modifications.

Most arbitrations in Uganda are still, however, conducted outside the auspices of these institutions, on an *ad hoc* basis with a seat in Uganda. Most arbitrations involving large claims follow the UNCITRAL Arbitration Rules.

16. Are there any restrictions on who may represent the parties to an arbitration?

The Act does not stipulate any restrictions on who may represent parties to an arbitration. However, under the Advocates Act, a person who does not hold a practising certificate cannot appear before the Ugandan courts to represent parties to disputes. It could be argued that this extends to appearances before arbitration tribunals, although there is no judicial pronouncement on the question and we are not aware of any anecdotal evidence for this interpretation. The Advocates Act also empowers the Law Council, subject to issuance by the Chief Justice of a special practising certificate, to admit legal practitioners of any country to practise as advocates on specific cases or matters. The use of the word "matter" may be interpreted to include arbitrations.

17. What are the formal requirements for an enforceable arbitration agreement?

The only requirement prescribed by the Act is the requirement for an arbitration agreement to be in writing (section 3 of the Act). The Act further provides that an agreement is in writing if it appears in a document signed by both parties or in an

exchange of letters, a telex, telegram or other means of communication which provides a record of the agreement. The grounds on which the enforceability of an arbitration agreement can be challenged are derived from common law.

18. Will the courts stay litigation if there is a valid arbitration clause covering the dispute? Does the approach differ in this regard if the seat of the arbitration is inside or outside the jurisdiction?

The Act makes it mandatory for courts, upon application by a party, to stay litigation proceedings if the contract on which the court action is based contains an arbitration clause (section 5 of the Act). The courts' powers extend to referring matters to arbitration where the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the New York Convention) applies (section 40 of the Act).

The courts may decline to stay litigation if they are satisfied that the arbitration agreement is null and void, inoperative or incapable of being performed. In addition, the courts may decline to refer the matter to arbitration if the dispute between the parties is not covered by the arbitration agreement. A stay of litigation will be granted regardless of whether or not the arbitration is inside or outside the jurisdiction.

19. If the arbitration agreement and any relevant rules are silent, how many arbitrators are appointed, and who is the appointing authority?

The Act empowers parties to an arbitration agreement to agree on the number of arbitrators, failing which the Act provides for the appointment of a sole arbitrator (section 10 of the Act).

20. What rights are there to challenge the appointment of an arbitrator?

The Act permits parties to challenge the appointment of an arbitrator only in circumstances that give rise to justifiable doubts as to the arbitrator's impartiality and independence or if the arbitrator does not possess qualifications agreed to by the parties (section 12 of the Act).

Section 13 of the Act permits parties to agree on the procedure for challenging the appointment of an arbitrator. It provides that, if no agreement is arrived at, a party must, within 15 days of becoming aware of the composition of "the appointing authority" (although this is widely understood to be a mistake and the Act should refer here to the "tribunal") and 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 or the other party agrees to the challenge, the appointing authority is required by law to decide on the challenge within 30 days from receipt of the statement.

21. Does the domestic law contain public policy requirements for the procedure to be followed?

Subject to the Act, the parties are free to agree on the procedure to be followed by the arbitral tribunal in the conduct of the proceedings. In the absence of an agreement, the arbitral tribunal may, subject to the Act, conduct the arbitration in the manner it considers appropriate, which includes the power to determine the admissibility, relevance, materiality and weight of

any evidence. The Act does, however, state that every witness giving evidence and every person appearing as witnesses and advocates before the arbitral tribunal must have at least the same privileges and immunities as in proceedings before a court (section 19 of the Act).

The parties may agree on the place where the arbitration will take place and, if not, the tribunal will determine the place (section 20 of the Act).

Within the time period agreed by the parties or determined by the tribunal, the parties must file statements of case in accordance with the Act (unless the parties have agreed as to the particulars of these statements) (section 23 of the Act).

22. On what grounds can the court intervene in arbitrations seated inside the jurisdiction?

Section 9 of the Act provides that, except as provided by the Act, no court may intervene in matters governed by the Act. The court can issue interim measures of protection, eg, injunctions or other interim orders pending the conclusion of the arbitration (section 6 of the Act). However, the court's jurisdiction in this instance must be invoked by the parties.

Under section 38, where parties have agreed, an application may be made to a court to determine any question of law arising during the arbitration or an appeal may be made to the court on any question of law arising out of the award. The court may determine the question of law, confirm, vary or set aside the award, or remit the matter to the tribunal. Whilst the definition of arbitration in section 2 of the Act includes all arbitrations, section 38 is expressed to apply to questions of law arising in domestic arbitration. The Act does not define "domestic" arbitration and we are not aware of any case in which the court has defined "domestic arbitration". Our view is that domestic arbitrations are those administered by domestic institutions or seated in Uganda, regardless of the nationality or residence of the parties.

The arbitral tribunal, or a party with the approval of the arbitral tribunal, may also request assistance from the court in taking evidence, and the court may execute the request within its competence and according to its rules on taking evidence (section 27 of the Act).

23. On what grounds can the court intervene in arbitrations seated outside the jurisdiction?

With the exception of section 38, the sections described above apply whether or not the arbitration is seated outside the jurisdiction.

24. Do arbitrators have powers to grant interim or conservatory relief?

Unless otherwise agreed by the parties, arbitrators may, on the application of a party, take such interim orders of protection as the arbitrator may consider necessary in respect of the subject matter of the dispute, and the arbitrator may require any party to provide appropriate security in connection with such orders (section 17 of the Act). Section 17 of the Act actually refers to the "appointing authority" ordering a party to take interim measures. This is understood to be an erroneous reference and intended to refer to the tribunal's powers.

25. When and in what form must the award be delivered?

The Act provides for a period of two months from entering on the reference, or from having been called upon to act by one of the parties or at a later date which the arbitrators have determined. The award must be made in writing and signed by the arbitrator or arbitrators. Unless otherwise agreed by the parties, the award must state the reasons upon which it is based. Where there is more than one arbitrator, the signatures of the majority are sufficient but the reason for any omitted signature must be stated. Parties can also agree to a settlement prior to the issuance of the award.

26. Can a successful party recover its costs?

Unless otherwise agreed, the arbitral tribunal has the mandate to determine and apportion the costs and expenses of an arbitration (being legal and other expenses of the parties, the fees and expenses of the arbitral tribunal and any other expenses related to the arbitration) in the award. In the absence of an award or additional award determining and apportioning the costs and expenses, each party is responsible for its expenses and for an equal share of the fees and expenses of the tribunal. These costs are recoverable by a successful party.

27. On what grounds can an award from an arbitration seated in the jurisdiction be appealed to the court?

In domestic arbitral awards, appeals can lie on questions of law and only in instances indicated in section 38 which provides that:

“Questions of law arising in domestic arbitration

1. Where in the case of arbitration, the parties have agreed that-

- (a) *an application by any party may be made to a court to determine any question of law arising in the course of the arbitration; or*
- (b) *an appeal by any party may be made to a court on any question of law arising out of the award,*

the application or appeal, as the case may be, may be made to the Court.

2. On an application or appeal being made to it under subsection (1), the Court may, as appropriate –

- (a) *determine the question of law arising;*
- (b) *confirm, vary or set aside the arbitral award or remit the matter to the arbitral tribunal for reconsideration or, where another arbitral tribunal has been appointed, to that arbitral tribunal for consideration.*

3. Notwithstanding sections 9 and 34, an appeal shall lie to the Court of Appeal against a decision of the court under subsection (2) if –

- (a) *the parties have so agreed that an appeal shall lie; and*
- (b) *the Court grants leave to appeal, or where the court fails to grant leave, the Court of Appeal grants special leave to appeal, and on such appeal the Court of Appeal may exercise any of the powers which the court could have exercised under subsection (2)”.*

28. Can a foreign arbitration award be appealed in the local courts? If so, on what grounds?

Arbitral awards are deemed to be final and binding on all parties regardless of whether they are foreign or local awards. There is no provision for appeal on the merits. The High Court can set aside awards on the following grounds:

a party to the arbitration agreement was under some incapacity;

- 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;
- 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;
- 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; as an exception, if the decisions on matters referred to arbitration can be separated from those not so referred, only that part of the arbitral award that contains decisions on matters not referred to arbitration may be set aside;
- 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 the Act from which the parties cannot derogate), or in the absence of an agreement, was not in accordance with the Act;
- 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
- the arbitral award is not in accordance with the Act.

The court can also set aside an award under section 34 of the Act if it 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.

An application for setting aside an award under section 34 of the Act must be made within one month of receiving the award.

29. What procedures exist for the enforcement of: (i) awards rendered in arbitrations seated outside of the jurisdiction and (ii) domestic awards?

The Act provides for the enforcement of awards (from arbitrations seated within or outside Uganda) by application to the High Court for enforcement of the award (sections 35 and 36 of the Act). The award is construed as a decree of the court and the ordinary means of execution apply. There are no grounds listed in the Act for refusing enforcement of an award and, when the time for making an application to set aside has expired or an application has been made and has been refused, an award will be enforced by the court in the same manner as a decree of the court.

Uganda is a party to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the New York Convention) and Part III of the Act deals with enforcing New York Convention awards (awards made in

pursuance of an arbitration agreement in the territory of a State other than Uganda which is a party to the New York Convention). New York Convention awards which would be enforceable under the Act are treated as binding for all purposes on the persons between whom they are made and can be relied upon by those persons by way of defence, set off or otherwise in legal proceedings in Uganda (section 41). New York Convention awards must be recognised and enforced in accordance with section 35. The grounds for refusal of recognition and enforcement in Article V of the New York Convention are not replicated in the Act but can nonetheless be relied upon by a party to resist recognition and enforcement of a New York Convention award.

30. Are foreign awards readily enforceable in practice?

The Act provides for the enforcement of foreign awards by application to the High Court. Ordinary means of execution apply (see question 9 above). An arbitral award issued in a New York Convention Contracting State would be quicker and easier to enforce as all that is required for it to be registered by the High Court is a duly authenticated original award or a duly certified copy and the original or duly certified copy of the arbitration agreement. By way of comparison, registration of a judgment of an English court could be challenged in the Ugandan courts on grounds set out in the Reciprocal Enforcement of Judgments Act, Chapter 23 of the Laws of Uganda. These grounds include the original court having acted without jurisdiction, service of process not having been affected, the existence of a pending appeal. This would have the effect of delaying its enforcement.

Alternative dispute resolution

31. Are the parties to litigation or arbitration required to consider or submit to any alternative dispute resolution before or during proceedings?

Parties to arbitration are not required by law to consider or submit to ADR before or during proceedings, unless an agreement requires this.

In relation to litigation, in all matters filed in the High Court (all divisions of the High Court save for the Criminal Division) it is mandatory after closure of the pleadings to refer matters to court-annexed mediation. This is conducted by registrars of the court, court-accredited mediators, usually advocates, and upon request of the parties, by judges. The mediation period lasts 21 days but may, with the consent of the parties, be extended. It is only where the mediation fails that the trial judge will set down the issues for trial. The judge who conducts a mediation cannot try the dispute.

Reforms

32. Are there likely to be any significant procedural reforms in the near future?

The Judicature (Electronic Filing, Service & Virtual Proceedings) Rules, 2025 (S.I. No. 21 of 2025) which came into force in January 2025 establish a mandatory framework for electronic litigation in Uganda's courts. They require all court documents to be filed, served, and managed through the Electronic Court Case Management Information System (ECCMIS) where the system is operational. Key innovations include 24/7 electronic

filing with time-stamped validation, service of court process via email, SMS, or WhatsApp for registered users, virtual hearings by video link, and digital issuance of court orders and judgments. The rules override older provisions under the Civil Procedure Rules by making e-litigation the default but provide fallback safeguards—such as recognition of technical failures and the right to physical access to court—for litigants who may be digitally excluded. The goal is to enhance efficiency, transparency, and access to justice, while streamlining procedures and reducing manual registry delays.

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Zambia



Introduction

The Zambian legal system is a dual system in which statutory law operates side by side with tribe-specific customary law. Sources of law are:

- the Constitution of Zambia dated 1991 (as amended by the Constitution of Zambia (Amendment) Act No 2 of 2016);
- Acts of Parliament;
- common law;
- doctrines of equity;
- English legislation in force on 17 August 1911 and subsequent English legislation applicable to Zambia pursuant to the British Acts (Extension) Act;
- customary law.

The application of common law, doctrines of equity, and English legislation is subject to the Constitution of Zambia and other written laws.

Litigation

1. How are the legal professions organised?

In Zambia there is no split profession and lawyers practise as both barristers and solicitors.

To qualify as a legal practitioner a person must hold a degree in law from either a public university accredited by the Council of the Zambia Institute of Advanced Legal Education (ZIALE), or an approved private university registered under the Higher Education Act of 2013, the main law governing higher education institutions in the country. In addition, the prospective practitioner must attend a one-year course of post-graduate study required by the Council of the ZIALE, be duly certified by the ZIALE director as having fulfilled the requirements, and must pass the Legal Practitioners Qualifying Examination.

2. What is the structure of the court system?

The structure of the court system is as follows:

- Supreme Court and Constitutional Court, which rank equivalently
- Court of Appeal
- High Court

- Subordinate Courts
- Small Claims Court
- Local Courts

The Local Courts have jurisdiction in respect of civil claims, within the territorial limits set out in their court warrant. In criminal matters the Local Courts have jurisdiction to the extent prescribed by the grade of court to which they belong. The Local Courts are not courts of record and they administer tribe-specific customary laws between disputing parties.

The Subordinate Courts are courts of record with original and appellate jurisdictions in both civil and criminal proceedings in the relevant territorial jurisdictions. They can hear and determine a variety of cases, but certain serious criminal offenses like treason, murder, and aggravated robbery are reserved for the High Court. Civil matters are limited by the value of the claim, with specific limits set by rules of the court. Any civil claim with a value not exceeding ZMW 1,000,000 (approximately US\$ 40,000) may be initiated in the Subordinate Court. Subordinate Courts can hear and determine any action for recovery of land with a maximum value not exceeding ZMW 1,000,000 (approximately US\$ 40,000) or rent of up to ZMW 250,000 (approximately US\$ 10,000). The Subordinate Courts are referred to as courts of first instance because they are the initial point of contact for most criminal and civil cases within their jurisdiction. This means that generally, cases are first brought to the Subordinate Court before potentially being appealed to higher courts like the High Court. Appeals from the Subordinate Court lie to the High Court.

The High Court is a superior court and has original and unlimited jurisdiction throughout Zambia for both civil claims and criminal cases. The General List Division of the High Court deals with civil cases that do not fall under the specialized divisions like commercial, family, or probate matters. The High Court also has specialised divisions called the Industrial Relations Division, Family and Children's Division, the Commercial Division as well as the Economic and Financial Crimes Court (EFCC), a specialized division of the High Court established to handle cases related to economic and financial crimes, including corruption. Established in 2022 through Statutory Instrument No. 5 of 2022, the EFCC has both civil and criminal jurisdiction to address matters involving financial crimes and corruption, including forfeiture applications.

The High Court can hear and determine civil claims and criminal proceedings for offences specifically stated under the law to be tried by the High Court. It also has exclusive jurisdiction in respect of constitutional claims under the Bill of Rights in the Constitution. In addition, the High Court has prescribed appellate and supervisory jurisdiction, as well as jurisdiction to review administrative decisions of any public body or authority. It has registries located in Lusaka, Kabwe, Livingstone, Kitwe, Ndola, Chinsali, Chipata, Kasama, Mansa, Mongu and Solwezi.

The Court of Appeal has jurisdiction to hear appeals from the High Court, except for matters under the exclusive jurisdiction of the Constitutional Court. It also has jurisdiction to hear appeals as may be prescribed from quasi-judicial bodies, except a Local Government Elections Tribunal. An appeal from a decision of the Court of Appeal lies to the Supreme Court with leave of the Court of Appeal.

The Constitutional Court has original and final jurisdiction to hear matters relating to interpretation of the Constitution, violations or contraventions of the Constitution, petitions relating to the election of a President, appeals concerning election of Members of Parliament and councillors and whether or not a matter falls within the jurisdiction of the Constitutional Court. Where a question relating to the Constitution arises in a court, the presiding judge in that court refers the question to the Constitutional Court. Furthermore, petitions alleging that an Act of Parliament or statutory instrument, an action, measure or decision taken under any law or an act, omission, measure or decision by a person or an authority contravene the Constitution and seeking redress are submitted to the Constitutional Court. A decision of the Constitutional Court is not appealable to the Supreme Court.

The Supreme Court has appellate jurisdiction for both civil and criminal appeals from the Court of Appeal and other types of jurisdiction conferred on it by law. The Supreme Court is bound by its own previous decisions, except in the interest of justice and development of jurisprudence. The Supreme Court ordinarily sits every second week of each month. Sittings rotate to a different town each time (Kabwe, Ndola and Lusaka).

3. What are the time limits for bringing civil claims?

The time limits for bringing civil claims in Zambia are primarily determined by the Limitations Act of 1939 of the United Kingdom and the Law Reform (Limitation of Actions) Act, Chapter 72 of the Laws of Zambia. In addition, the Supreme Court has held that various other statutes have specific limitation provisions.

Generally, the applicable limits are as follows:

- 30 years in respect of an action for recovery of land by the State.
- 12 years in respect of:
 - recovery of land by another person;
 - recovery of money secured by mortgage;
 - foreclosure in respect of mortgaged personal property;
 - actions on a contract under seal;
 - actions to recover any share or interest in the estate of a deceased person;
 - enforcement of a judgment.

- 6 years in respect of:
 - actions founded on simple contract or tort;
 - recovery of a sum recoverable by virtue of a statute;
 - recovery of arrears of interest on a judgment debt;
 - subsequent conversion of title/wrong detention;
 - recovery of trust property and breach of trust. However, there is no limitation period for actions by a beneficiary under a trust if the action is: (i) in respect of any fraud or fraudulent breach of trust to which the trustee was a party or privy; and (ii) in relation to recovering from a trustee the trust property or the proceeds thereof in the trustee's possession or previously received by the trustee and converted for his own use;
 - recovery of rent arrears or arrears of interest in respect of any gift to someone in a will;
 - recovery by a tenant of rent paid on account to a landlord;
 - actions to enforce a recognisance;
 - actions for an account in respect of any matter;
 - actions to recover any sum recoverable by virtue of any enactment other than a penalty or forfeiture or sum by way of penalty or forfeiture.
- 3 years (pursuant to the Limitation Act as read with the Law Reform (Limitation of Actions) Act) for an action for damages for personal injury for negligence, nuisance or breach of duty (whether the duty exists by virtue of a contract or a provision made by or under a statute or independently of any contract or any such provision).
- 2 years for an action to recover any penalty or forfeiture, or sum by way of penalty or forfeiture, recoverable by virtue of any enactment.

The above limitations can be postponed in cases of fraud or mistake. Section 26 of the Limitation Act provides that where a period of limitation has been prescribed and: (i) the action is based on fraud of the defendant or his agent; or (ii) the right of action is concealed by such a person; or (iii) the action is for relief from the consequences of a mistake; the period of limitation does not begin to run until the plaintiff has discovered the fraud or the mistake or could with reasonable diligence have discovered it.

4. Are lawyer-client communications privileged (ie, protected from disclosure to a court/tribunal and opposing parties)?

Communications between a lawyer and client whether made for the purposes of obtaining legal advice or with reference to ongoing litigation or whilst litigation is in contemplation are privileged based on common law principles (English Law (Extent of Application) Act, Chapter 11 of the Laws of Zambia). In addition, rule 35(2) of the Legal Practitioners Practice Rules (2002) obliges every legal practitioner to keep the affairs of each client confidential, a duty which extends to both current and former clients. Rule 32(4)(e) of the Legal Practitioners Practice Rules also restricts the disclosure of all or any information communicated to legal practitioners in their capacity as such, unless permitted by law or court order. This duty continues even after the lawyer-client relationship has ended and extends to a legal practitioner's partners, associates

and assistants. However, the Financial Intelligence Centre (FIC) Act No. 46 of 2010 introduces an exception, requiring lawyers to report suspicious transactions, potentially impacting this privilege. These transactions extend to money laundering, terrorist financing and proliferation financing and any other financial crimes

5. How are civil proceedings commenced, and what is the typical procedure which is then followed?

Civil proceedings are commenced through various means depending on the claim. These include:

- writ of summons accompanied by a statement of claim, a list of witnesses to be called at trial, a list of documents to be relied on at trial and a copy of a letter of demand served on the defendant;
- originating summons accompanied by a supporting affidavit;
- originating notice of motion accompanied by affidavit;
- petition;
- appeal.

The typical procedure following the commencement of an action begins by writ of summons (which is the most common mode of commencement). Defendants are served with the originating process and must formally respond to the claim within a specified time (which ranges between 14 and 42 days depending on the location of their place of residence or business). The response to the claim must be a defence accompanied by a list of documents to be relied on at trial and list of witnesses to be called at trial. Once a response to the claim has been filed at court and served on the claimant, the Court is required give orders for directions within 30 days regarding conduct of the matter in preparation for trial. Parties are required, not less than 7 days before the scheduling conference, to prepare scheduling conference briefs and exchange these with each other. The scheduling briefs are required to include a summary of facts and issues, the law to be relied on, witness statements and expert reports, if any.

At the scheduling conference, the judge must consider the parties' compliance with the orders for directions; deal with any interlocutory application and consider appropriate interim relief; plan trial time and set trial dates; make orders which the Court considers appropriate, among other things. It is important to note that a party cannot make any interlocutory applications 14 days before trial commences. The trial judge may also consider making a referral order for mediation (see question 21 below) or arbitration. On conclusion of the scheduling conference, the judge must issue a scheduling conference order.

A judge must convene a status conference not less than 31 days before the date of trial, at which the date and length of trial will be confirmed and any outstanding issues will be considered. If a party does not attend a scheduling conference or a status conference on 2 occasions without justifiable cause, the judge will dismiss that party's action. Additionally, judges are at liberty to dismiss an action if there is no progress on the matter 60 days after commencement of an action

After trial, both parties file their closing arguments at court and a judgment is usually issued by the court within 6 months of final submissions.

If the defendant fails to enter an appearance, the claimant may have a default judgment entered, while in other instances the claimant will be required to proceed to trial despite the defendant's absence. Examples of such instances are defamation or probate suits.

In an action commenced by originating summons, the respondent must oppose the claim raised by the applicant by filing an opposing affidavit. The applicant may then file an affidavit in reply. Unless the presiding judge directs otherwise, the parties will be summoned for a hearing and determination in the matter. Actions where the facts of the matter are not in dispute are suitable to begin by originating summons.

The commencement of an action by originating notice of motion is rare and dependent on the particular legislation under which the action is commenced. The most common pieces of legislation that still provide for this are the Rent Act, Chapter 206 of the Laws of Zambia (Rent Act), and the Landlord and Tenant (Business Premises) Act Chapter 193 of the Laws of Zambia (Landlord and Tenant (Business Premises) Act). Under the Rent Act and Landlord and Tenant (Business Premises) Act, after the applicant files the originating notice of motion and affidavit verifying statements, the respondent may file an affidavit in opposition, but no default judgment is granted if the respondent neglected to do so. The originating notice of motion served on the respondent will state a period when the notice of motion will be heard by the court and there must be 14 clear days between service of the originating notice of motion on the respondent and the date of hearing. On the hearing date, the judge will try the matter and subsequently make a determination.

Actions begun by petition include matrimonial causes, winding up proceedings, challenging of presidential and parliamentary election results, and actions to enforce fundamental rights and freedoms protected under the Zambian constitution. The procedure to be followed is largely dependent on the particular legislation under which the action was commenced but generally, after the petitioner files their petition, it is served on the respondent. A date and time is fixed for the hearing and determination of the petition.

Lastly, appeals from decisions of tribunals or ministers under various pieces of legislation are commenced by filing a notice of appeal with grounds of appeal, generally within 30 days of the decision at issue. A record of appeal is also filed and the court fixes a date for hearing the appeal.

6. What is the extent of pre-trial exchange of evidence, and how is evidence presented at trial?

Parties must disclose documents in their possession, power, or control that are relevant to the dispute. Parties prepare lists of documents, and inspection and discovery take place by exchange of these lists. Sometimes parties may agree on a venue and time to facilitate inspection. Where necessary, a party may apply for a further and better list of documents. When inspection and discovery are concluded, a bundle of documents is prepared and filed into court.

At least seven days before a scheduling conference, the parties must also prepare scheduling conference briefs which are to include expert reports, if any, and witness statements which are exchanged at the scheduling conference. The judge is at liberty to order the parties to give evidence by way of affidavit.

Presentation of evidence at trial is by:

- Oral testimony for and on behalf of a party whilst referring to relevant documents in the bundle of documents. The witness first gives evidence as evidence-in-chief. This is followed by cross-examination and finally re-examination, if desirable. In the High Court, witness statements are prepared and exchanged by parties in advance of trial. If the witness is called at trial, their statement is admitted into evidence as evidence-in-chief and oral testimony proceeds from cross examination by the opposite party;
- Affidavit in some actions. However, the court may, on the application of a party, order the attendance of such person who made the affidavit for the purposes of cross-examination.

Where expert evidence is necessary, an application for leave from the court to rely on expert evidence is required. The court will also give directions on the way in which expert evidence should be adduced. It is usual for each party to be permitted to appoint an expert witness, and each expert will file a witness statement and supporting documents. The experts then have a meeting where they identify the parts of their respective evidence which is in issue, and they file a joint statement indicating what they agree on and disagree on as the case may be.

7. To what extent are the parties able to control the procedure and the timetable? How quick is the process?

The extent of parties' control of the procedure is dependent on the procedural rules applicable and the relevant latitude granted to the parties in respect of these rules. The timetable is largely controlled by the court.

Even though the commercial courts are considered fast-track courts, it is difficult to say how long a commercial claim typically takes, as this will depend on the nature and complexity of the claim, the evidence to be adduced in support of the claim, the number of witnesses to be called by the parties and whether the parties lodge any interlocutory applications. However, the rules of the High Court are structured in such a way as to deter parties from wasting time unnecessarily and occasioning unnecessary adjournments. As a broad estimate, the time period from issue of originating process to trial is likely to be 8-24 months. Matters in the General List Division however are litigated over an extended period of time of up to 48 – 72 months.

The High Court Rules provide that a ruling on an interlocutory application must be delivered within 3 months of the hearing, and a judgment within 6 months of final submissions being filed.

8. What interim remedies are available to preserve the parties' interests pending judgment?

The interim remedies available are:

- order for interim/interlocutory injunction;
- order for stay of proceedings;
- order for security for costs;
- order for sale of perishable goods;
- order for detention and inspection of property relating to the dispute;
- order for attachment of property.

Such orders are readily made in practice, subject to satisfying the court that the requisite criteria exist and that any preliminary steps which the applicant ought to have taken prior to making a formal application to court have been taken.

9. What means of enforcement are available?

The following methods are available:

- writ of fieri facias to enforce a judgment or order for the payment of money. The writ is executed on the judgment debtor's personal property by way of distress and sale. Property such as personal clothing, tools of the trade and beddings cannot be executed upon;
- writ of elegit, by which a judgment creditor seizes possession of a portion of the land or goods of the judgment debtor (except work animals) and holds it until the debt is satisfied out of the rent and profits from the property;
- writ of possession to enforce a judgment or order for the giving of possession of land;
- garnishee proceedings, used when a judgment creditor wishes to access money owed to the judgment debtor by a third party;
- charging orders, whereby a judgment creditor obtains an order from court imposing on specified property of the debtor a charge securing the payment of any money due or to become due under the judgment or order;
- order for attachment of earnings from the judgment debtor's employment.

Enforcement in practice is fairly straightforward, provided the relevant enforcement law and procedures are complied with. The most popular method of enforcement is by way of writ, under which the sheriff is instructed to seize and sell the judgment debtor's chattels.

10. Does the court have power to order costs? Are foreign claimants required to provide security for costs?

Yes, the court has power to award and apportion costs in any manner deemed just. However, the court will not order the successful party in a suit to pay the entire costs of the suit to the unsuccessful party. In the absence of any express direction by the court, the general position is that costs will follow the event.

The court may, on its own motion or on the application of any defendant, if it sees fit, require a foreign claimant to give security for costs to the satisfaction of the court, by deposit or otherwise, or to give further or better security.

Where security for costs is required, the court may order all proceedings to be stayed until the security is provided.

11. On what grounds can the parties appeal, and what restrictions apply? Is there a right of further appeal? To what extent is enforcement suspended pending an appeal?

Parties have an automatic right of appeal where a decision is given in open court.

Any judgment, order or decision of a Subordinate Court, whether interlocutory or final, can be appealed to the High Court, and any judgment, order or decision of the High Court,

whether interlocutory or final, may in turn be challenged in the Court of Appeal. A party dissatisfied with a Court of Appeal decision may appeal it to the Supreme Court if granted permission to do so by the Court of Appeal or the Supreme Court. However, leave to appeal to the Supreme Court is only granted in situations where the appeal raises a point of law of public importance or it is deemed desirable and in the public interest. Appellate Courts rarely interfere with findings of fact established by the trial court unless it can be shown that the evidence adduced before it was overwhelmingly contrary to the court's findings.

An interlocutory order cannot be appealed without leave to appeal (except injunctions for which there is an automatic right of appeal).

An appeal does not operate as a stay of execution or proceedings and, as such, the extent to which enforcement is suspended pending appeal is dependent upon the steps taken by the aggrieved party to seek a stay of enforcement/execution of a judgment pending the appeal.

12. To what extent can domestic and/or foreign State entities claim immunity from civil proceedings?

As a general rule, domestic entities do not have immunity from civil proceedings unless expressly provided by law.

However, a number of statutes such as the Sheriffs Act and the Diplomatic Immunities and Privileges Act (amongst others) afford domestic and foreign entities immunity from certain civil proceedings in relation to certain acts.

The State enjoys immunity under the State Proceedings Act. In particular, no execution or attachment or similar process may be issued out of any court for enforcing payment by the State of any money or costs. Furthermore, the courts cannot grant an injunction or make an order for specific performance against the State, but may in lieu make a declaratory order as to the rights of the parties. Also, in proceedings against the State for the recovery of land or other property, the courts cannot make an order for the recovery of the land or the delivery of the property, but they can make an order declaring that the plaintiff is entitled as against the State to the land or property or to its possession.

13. What are the procedures for having foreign judgments recognized and enforced?

The procedure for recognition and enforcement of foreign judgments in Zambia is set out in the Foreign Judgments (Reciprocal Enforcement) Act, chapter 76 of the laws of Zambia (the Act).

A judgment creditor in receipt of a judgment to which the Act applies may apply to the High Court at any time within six years of the date of the judgment, to have the judgment registered in the High Court. A notice in writing of the registration of the judgment will be served on the judgment debtor, indicating among other things, the full particulars of the registered judgment and the order for registration, the name and address of the judgment creditor or their solicitor, the right of the judgment debtor to apply to have the registration set aside and applicable time frames.

However, it is not clear which countries have reciprocal enforcement of foreign judgments in Zambia, so in practice arbitration is preferred for foreign law disputes.

Arbitration

14. Is the arbitration law based on the UNCITRAL Model Law? If so, are there any key modifications? If not, what type of arbitration does the law provide for?

The UNCITRAL Model Law forms part of Arbitration Act No 19 of 2000 which governs arbitration in Zambia (the Arbitration Act). Arbitration in Zambia is therefore based on both the Arbitration Act and the UNCITRAL Model Law, save where expressly modified. Key modifications to the UNCITRAL Model Law are as follows:

- Section 3 of the Arbitration Act modifies article 1 of the UNCITRAL Model Law in that the Arbitration Act applies to every arbitration agreement and is not restricted to international commercial arbitrations. However, section 6 of the Arbitration Act places a limit on matters which are subject to arbitration and excludes, for instance, criminal proceedings and matrimonial causes.
- While article 7 of the UNCITRAL Model Law requires an arbitration agreement to be in writing, section 2 of the Arbitration Act modifies this by dispensing with the need for a written agreement.
- Section 2 of the Arbitration Act modifies article 2 of the UNCITRAL Model Law, containing more definitions and defining, for example, the terms 'arbitral institution', 'arbitral proceedings' and 'award'.
- Section 10 of the Arbitration Act modifies article 8 of the UNCITRAL Model Law, empowering the court to stay proceedings brought in any matter covered by an arbitration agreement, at any stage of the proceedings, upon application by a party to those proceedings. Under the UNCITRAL Model Law, a request to stay proceedings can only be made before or at the time that a party submits a statement on the substance of the dispute.
- Section 12 (1) of the Arbitration Act modifies article 11 (1) of the UNCITRAL Model Law in that it states that no person may be precluded from acting as an arbitrator based on nationality, gender, colour or creed.
- Additionally, the Lusaka International Arbitration Centre (LIAC) in Zambia is a body established to facilitate the resolution of commercial disputes through arbitration, mediation, and adjudication. It operates under the Arbitration Act No. 19 of 2000 and aims to provide a platform for both domestic and international parties to resolve disputes efficiently and effectively, outside of the traditional court system. While LIAC has its own specific rules and procedures, it draws heavily from the principles and provisions of the UNCITRAL Model Law, particularly in its approach to international commercial arbitration.

15. What are the formal requirements for an enforceable arbitration agreement?

The Arbitration Act does not set out the formal requirements for an arbitration agreement, but it does stipulate that an arbitration agreement is an agreement by parties, whether or not in writing, 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. The

Arbitration Act goes on to recognise that an arbitration agreement may be in the form of an arbitration clause in a contract or a separate agreement.

Ways in which an arbitration agreement is ascertained to be in writing include where it appears in a document signed by the parties or in an exchange of letters, telex, telegrams or other means of telecommunication which provide a record of the agreement, or in an exchange of statements of claim and defence in which the existence of an agreement is alleged by one party and not denied by another. The reference in a contract to a document containing an arbitration clause constitutes an arbitration agreement, provided that the contract itself is in writing and reference is such as to make that clause part of the contract.

In certain instances, an arbitration agreement is deemed to exist. If resolution of a dispute through arbitration is required by statute, the provision of law itself is treated as an arbitration agreement. Anyone who brings or faces a claim under such a law is automatically considered a party to the statutory arbitration agreement. It is worth noting that disputes involving access to land by the holder of a mining right who is not the land owner are subject to arbitration under the Mines and Minerals Act. Similarly, appeals from a decision of the Zambia Public Procurement Authority are resolved through arbitration.

16. Will the courts stay litigation if there is a valid arbitration clause covering the dispute? Does their approach differ according to whether the seat of the arbitration is inside or outside the jurisdiction?

Under the Arbitration Act, in disputes involving a matter subject to a valid arbitration agreement, the court has power to stay proceedings either on its own motion or upon the application of a party to the proceedings, unless the arbitration clause is incapable of being performed.

The court's approach is not affected by whether or not the seat is in Zambia or elsewhere.

17. On what grounds can the court intervene in arbitrations seated outside the jurisdiction?

Zambian Courts generally exercise enforcement jurisdiction rather than supervisory jurisdiction, where arbitrations seated outside the country are concerned. The Arbitration Act limits the court's involvement to interim relief in support of a foreign-seated arbitration. The following are specifically available:

- an order for the preservation, interim custody, sale or inspection of any goods at issue in the dispute;
- an order securing the amount in dispute or the costs and expenses of the arbitral proceedings;
- an interim injunction or other interim order;
- any other order to ensure that an award made in the arbitral proceedings is not rendered ineffectual.

In addition, an application may be made for recognition and enforcement of a foreign award. The grounds on which it can be resisted are detailed in 18 below.

18. Can a foreign arbitration award be appealed in the local courts? If so, on what grounds?

Arbitral awards (foreign and domestic) cannot be appealed in Zambia; the only recourse against an arbitral award is to obtain dismissal of an application for recognition and enforcement. The grounds on which the court may refuse to recognise and enforce an arbitral award are as follows:

- A party to the arbitration agreement was under some incapacity or the agreement is not valid under the governing law chosen by the parties or, if they have not done so, under the laws of Zambia.
- 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 a case.
- The award deals with a dispute not contemplated by or not falling within the terms of the arbitration agreement. If decisions on matters referred to arbitration can be separated from those not so referred, only that part of the award containing decision on matters not referred to arbitration may be set aside.
- The composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties or, failing such an agreement, was not in accordance with the Arbitration Act or the law of the country where the arbitration took place.
- The award has not yet become binding on the parties or has been set aside or suspended by a court of the country in which, or under the law of which, that award was made.
- The subject-matter of the dispute is not capable of settlement by arbitration under the laws of Zambia. Generally, criminal matters, matrimonial causes, the determination of paternity or maternity, or matters affecting the interests of a minor or an individual under a legal incapacity are not capable of settlement by arbitration.
- The award is in conflict with public policy.
- The making of the award was induced or effected by fraud, corruption or misrepresentation.

19. What are the procedures for the enforcement of awards rendered in other jurisdictions?

Zambia is a Contracting Party to the New York Convention of the Recognition and Enforcement of Foreign Arbitral Awards (the New York Convention). Section 18 of the Arbitration Act allows for the recognition and enforcement of foreign arbitral awards irrespective of the country in which the award was made, even if the country is not a party to the New York Convention. A party seeking to enforce the award must make an application to the High Court for the registration of the award. Once an order granting leave to register the award has been issued, the applicant is required to:

- file a notice of the registration of the award at court;
- serve the notice upon the respondent; and
- within three days, endorse on the notice the date on which service was affected. Once the specified period for applications to set the registration aside has lapsed, the applicant may execute the award.

By virtue of section 18 of the Arbitration Act, a reciprocity agreement with the country where the arbitration award was made is not necessary for the award to be recognised and enforced, subject to the grounds for refusing to recognize and enforce awards under the Arbitration Act. The procedure for recognition and enforcement of such awards is as set out above.

It is worth noting that the procedure available for enforcing arbitral awards is the same, regardless of whether the award was made in Zambia or elsewhere.

20. Are foreign awards readily enforceable in practice?

Foreign awards are enforceable in practice, provided enforcement cannot be refused by law in accordance with the New York Convention, and the enforcement procedure is compliant with the Arbitration Act.

Alternative dispute resolution

21. Are the parties to litigation or arbitration required to consider or submit to any alternative dispute resolution before or during proceedings?

For arbitration, there is no requirement for parties to consider or submit to alternative dispute resolution before or during the arbitral proceedings.

In the case of litigation, it is possible for parties to be referred to mediation. The High Court Act provides that every action may, upon being set down for trial, be referred by the trial judge for mediation, excepting cases involving constitutional issues, an individual's liberty, an injunction, or where the trial judge considers the case to be unsuitable for referral. In practice, the High Court annually designates time in August where most cases get referred to mediation. This has come to be known as Mediation Week. However, where mediation fails the judge proceeds with setting a hearing date.

There is no public record of cases settled through mediation. However, we estimate that 10-20% of cases referred to mediation result in a settlement.

Reforms

22. Are there likely to be any significant procedural reforms in the near future?

We do not expect any significant procedural reforms in the near future that deal with litigation and alternative dispute resolution. However, as a point worth noting, there are active discussions and proposals for constitutional reforms in Zambia. A specific bill, the Constitution of Zambia (Amendment) Bill No. 7 of 2025, is currently being considered. This bill includes revisions to the composition of the National Assembly, potentially increasing the number of constituency-based seats and introducing a mixed-member proportional representation system to ensure better representation for women, youth, and people with disabilities. It also addresses electoral processes, including provisions for by-elections, the number of nominated Members of Parliament, and the terms of Parliament and councils. These proposed reforms have sparked debate, with some concerns that they could weaken democratic principles and potentially lead to a more authoritarian system. There are also concerns about the lack of public consultation on the amendments. The bill in its current draft form does not include amendments to the court system or dispute resolution.

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Zimbabwe



Introduction

The Zimbabwean legal system is based on the Constitution introduced in 2013 known as the Constitution of Zimbabwe Amendment (No. 20), 2013, which is supreme and overrides all other laws.

Roman Dutch common law applies in relation to issues not provided for in the Constitution. English law applies in the commercial law context to the extent it is not inconsistent with any other applicable law. Zimbabwe also recognises and applies domestic and international customary law principles.

Litigation

1. What is the structure of the legal profession?

In Zimbabwe, legal practitioners practise as both lawyers and advocates, under a fused profession. As such, legal practitioners provide legal services directly to clients and conduct proceedings in the courts. All registered and practicing legal practitioners have rights of audience before all domestic trial courts. (A legal practitioner must, however, be separately registered as a notary public or a conveyancer before they can engage in those practices.)

However, in practice there exists a *de facto* divided profession, as there are lawyers who practice as advocates and voluntarily regulate themselves in the same way as advocates/barristers in a divided system.

To be registered as a legal practitioner in Zimbabwe an applicant must satisfy the requirements of Section 5 of the Legal Practitioners Act (Chapter 27:07). These are that he/she must complete an LLB (Honours) Degree and then apply for registration to the High Court. LLB graduates from non-Zimbabwean universities must sit for conversion examinations. If the High Court is satisfied that the applicant meets the requirements to be a legal practitioner, ie he/she:

- has completed all formalities prescribed;
- possesses the necessary qualifications;
- is normally resident in Zimbabwe or a reciprocating country or has been granted a residential exemption certificate;

- is at least 21 years of age;
- is not an unrehabilitated insolvent; and
- is a fit and proper person to be so registered,

it will approve the application. The applicant is then registered as a legal practitioner and applies to be a member of the Law Society of Zimbabwe.

The Law Society of Zimbabwe is the statutory body regulating the profession (under section 51 of the Legal Practitioners Act (Chapter 27:07)) and deals with complaints against lawyers.

2. What is the structure of the court system?

The Zimbabwean courts system is derived from section 162 of the Constitution of Zimbabwe Amendment (No.20) Act 2013 (the New Constitution). The courts are independent and subject only to the Constitution and the law, which they must apply impartially, expeditiously and without fear, favour or prejudice.

Zimbabwean courts fall into two broad categories – criminal courts and civil courts. Criminal courts and civil courts comprise the Magistrates' Court, the High Court, the Supreme Court and the Constitutional Court.

There are several specialist courts, namely the Labour Court, Commercial Division of the High Court, Administrative Court, Fiscal Court, Small Claims Court, and local courts applying customary law.

The Magistrates Court is created by the Magistrates Court Act (Chapter 7:10). Unlike the other ordinary courts, this court is a creature of statute in the sense that it can only exercise those powers and duties that are provided by its establishing Act. It has jurisdiction to apply both customary law and general law in its determination of civil cases.

In general the Magistrates' Court only has jurisdiction in civil cases where:

- the amount claimed does not exceed the prescribed limit, which currently stands at USD50,000 fifty thousand United States Dollars¹ as amended by statutory instrument 45 of 2023 (Magistrates Court (Civil Jurisdiction) (Monetary Limits) Rules, 2023).

1. Zimbabwe is using a multiple currency system. As such, a claim can be brought in any currency.

- the defendant resides, carries on business or is employed within the province where the court is situated or where the case arose wholly within the province;
- in specific circumstances where parties have consented to the jurisdiction of the court

The High Court has jurisdiction over all persons and over all matters within Zimbabwe. It has inherent jurisdiction, unless prohibited by law. The High Court may hear matters even where the Magistrates' Court has jurisdiction. However, the High Court can refuse to hear a matter where it is prohibited from entertaining it by statute. The High Court has no monetary limit on claims.

The High Court also has jurisdiction to hear certain appeals, as well as inherent review powers. The High Court may set aside the decision of an inferior court where the decision making process of such court was flawed.

The Supreme Court is an appellate court with jurisdiction to hear civil appeals only where a right of appeal is provided for by statute. It is the final court of appeal for Zimbabwe except in matters over which the Constitutional Court has jurisdiction.

The Constitutional Court is a superior court of record and makes the final decision on whether or not an Act of Parliament or conduct of the President or Parliament is constitutional. The Constitutional Court must confirm any order of constitutional invalidity made by another court before that order has any force.

3. What are the time limits for bringing civil claims?

The Prescription Act (Chapter 8:11) sets out the relevant time periods within which a party must bring a claim to the court. Prescription is interrupted by an acknowledgment of liability by the debtor or by the service of process on the debtor. If the creditor does not successfully prosecute his claim to finality, prescription will begin to run again. The statutory period for bringing a civil claim is dependent on the claim.

The limitation periods for debt claims as provided in the Prescription Act are:

- 30 years in the case of:
 - a debt secured by mortgage bond;
 - a judgment debt;
 - a debt in respect of taxation imposed or levied by or under any enactment;
 - a debt owed to the State in respect of any tax, royalty, tribute, share of the profits or other similar charge or consideration payable in connection with the exploitation of or the right to win minerals or other substances.
- 15 years in the case of a debt owed to the State and arising out of an advance or loan of money or a sale or lease of land by the State to the debtor.
- six years in the case of:
 - a debt arising from a bill of exchange or other negotiable instrument or from a notarial contract;
 - other debts owed to the State.

Except where any enactment provides otherwise, a limitation period of three years applies to all other debts.

The general limitation period for non-debt claims is 30 years.

In addition, the following specific Acts of Parliament have specific time limits for bringing claims:

- Customs and Excise Act (Chapter 23:02): section 196 provides that any claims against the State, the Director of Customs or any customs officer must be made within eight months after the date on which the cause of action arose;
- Police Act (Chapter 11:10): section 70 provides that claims against the police must be made within eight months after the date on which the cause of action arose and notice must be given as provided in terms of section 6 of the State Liabilities Act [Chapter 8:14];
- Road Traffic Act (Chapter 13:11): section 25(1)ii provides that a claim against an insurer for damages for bodily injury arising out of a road accident prescribes two years from the date on which the claim arose.

4. Are communications between a lawyer and his/her client privileged (ie protected from disclosure to a court/tribunal and opposing parties)?

Under section 8 of the Civil Evidence Act (Chapter 8:01), disclosure of confidential communications between a client (or his/her employee/agent) and the client's legal practitioner (or his/her employee/agent) are prohibited where the confidential communication was made for the purpose of enabling the client to obtain, or the legal practitioner to give the client, any legal advice. Since legal practitioner and client privilege is enshrined in an enactment and not common law, it may not be waived. The client, however, is free to waive privilege. Privilege from disclosure will also not apply if the confidential communication was made to perpetrate a fraud. It will also not apply after the death of the client if the disclosure is relevant to ascertain the client's intention or competence.

5. How are civil proceedings commenced, and what is the typical procedure which is then followed?

In Zimbabwe there are two main ways in which civil procedures are commenced:

- Application/Motion;
- Action.

In an Application procedure, the court is approached by means of a notice of motion. The party who files or brings the application to the court is known as the applicant, and the other party is known as the respondent. Legislation may prescribe application (motion) proceedings, but the procedure may also be used where there is no real dispute over any fundamental question of fact.

In an Action procedure, the court is approached by means of summons and there is a clear distinction between the pleadings and trial stage. An action procedure like application procedure is governed by rules of court. The party who files or brings the action is known as the plaintiff whilst the other party is known as the defendant.

Most civil claims are prefaced by a letter of demand, where the plaintiff makes a claim from the defendant and further warns the defendant that if such claim is not settled within a set number of days the plaintiff will institute civil proceedings. A letter of demand is not a legal requirement except where parties have agreed on a demand as a condition precedent to instituting a civil action.

The summons in a civil action can only be served on the other party by a Sheriff/Messenger of Court as the case may be. A defendant who wishes to defend the matter before the High Court should enter an appearance within 10 working days. In the Magistrates Court the time limit is less, being seven working days. It must be in the form of a written statement filed with the court. Where the defendant does not wish to defend the matter, he/she must consent to judgment. Where the defendant fails to enter an appearance to defend, the plaintiff may obtain default judgment. Where the plaintiff is of the view that the defendant does not have a *bona fide* defence, the plaintiff may apply for summary judgment.

After entering an appearance to defend, the defendant may request that the plaintiff provide further particulars to enable him/her to defend the claim. The defendant is then required to file a plea (usually within five days), which should include any counterclaim. The plaintiff may require the defendant to file further particulars.

The plaintiff replies to the defendant's plea with a replication (reply). This is necessary where the defendant makes certain allegations in the plea that require a response.

The documents from summons to the replication are called pleadings. They are deemed closed if the parties make it clear that they disagree with regard to the facts and look to trial for resolution of the dispute.

The Chief Justice of Zimbabwe may by way of practice directions vary the above procedures in conformity with the rules of court. The latest practice direction regulating the conduct of civil proceedings is Practice Direction 1 of 2025, which deals with disposition of abandoned and inactive matters in the High Court following the introduction of the Integrated Electronic Case Management System ("IECMS").

It is also worth noting that Zimbabwe has since migrated from the physical filing system to the use of the IECMS system a digital platform designed to streamline case filing, management, and tracking across all levels of the judiciary.

The migration is underpinned by the Judicial Laws Amendment Act, 2023 (No. 3 of 2023), which amended both the High Court Act [Chapter 7:06] and the Magistrates Court Act [Chapter 7:10] to formally recognise the use of electronic case management systems and electronic service of process. These amendments provide the statutory basis for courts to accept electronic filings, issue electronic summonses and orders, and conduct certain proceedings virtually.

6. What is the extent of pre-trial exchange of evidence, and how is evidence presented at trial?

After the close of pleadings, the parties undertake discovery, whereby either party is required to specify the documents it wishes to rely on as evidence at trial. Any item not produced may not be used at trial.

At the pre-trial conference, held after discovery, both parties appear before the judge/magistrate. The parties define the issues and attempt to reach agreement on issues such as the length of trial, as well as the number of witnesses and evidence to be produced. The parties may also try to settle the matter without going to trial.

At trial, evidence is produced in the following manner. The lawyer for the plaintiff calls witnesses. Examination-in-chief is conducted by the plaintiff's lawyer. The witness is then cross-examined by the defendant's lawyer. Where necessary, there is re-examination conducted by the plaintiff's lawyer.

Expert evidence may be adduced during trial. The court will hear any objections from the party against whom it is being adduced before accepting the evidence. If needed, the expert concerned may be called to give oral evidence on his/her written findings.

At the close of the plaintiff's case, the defendant may apply for absolution from the instance, a type of judgment to the effect that the plaintiff has failed to prove its case sufficiently and there is no case for the defendant to answer.

If absolution from the instance is either not applied for or is declined, the defendant will then open its case and the procedure for examination of witnesses is repeated in the same way. Thereafter, closing submissions are filed by both the plaintiff and defendant and the court gives judgment. The court may give judgment *extempore*.

7. To what extent are the parties able to control the procedure and the timetable? How quick is the process?

The procedure is controlled by the rules of the respective courts, namely the Magistrates Court (Civil) Rules 2018, and High Court Rules 2021.

The timetable, however, is largely determined by the plaintiff. The plaintiff initiates the process and for that reason determines its speed. However, where there are unnecessary delays caused by the plaintiff, the defendant can apply for dismissal of the case.

The duration of a commercial case in Zimbabwe will depend on the complexity of the issues to be determined. The average time of completion is approximately one and a half years. Practice Direction 3 of 2013 and 1 of 2025 issued by the Chief Justice of Zimbabwe now has the effect of placing mandatory timeframes for conduct of certain aspects of civil procedure. For example, where deficiencies in the conduct of the case render it liable to be struck out, the Practice Direction provides a mandatory period of 30 days for such defects to be rectified failing which the matter is deemed to have been abandoned and dismissed.

8. What interim remedies are available to preserve the parties' interests pending judgment?

Principal remedies are interdicts (injunctions). Interdicts can either be prohibitory or mandatory.

These remedies are used when other remedies are either not available or where delay using other remedies could cause irreparable harm. These remedies may be interim or final.

An interim interdict, which is sometimes called an interlocutory or temporary interdict or interdict *pendent lite*, is usually used to preserve or restore the parties' *status quo* pending judgment.

The requirements to obtain an interdict are:

- a clear right;
- an injury actually committed or reasonably apprehended; and
- the absence of similar or adequate protection by any other ordinary remedy (*Setlogelo v Setlogelo* [1914] AD 221 at 227).

If these requirements are proven, in most cases a temporary interdict will be granted. However, if there is no clear right, the courts will consider whether:

- the right that forms the subject matter of the main action which the applicant seeks to protect is *prima facie* established, even though open to some doubt;
- there is a well-grounded apprehension of irreparable harm to the applicant if the interim relief is not granted and he/she ultimately succeeds in establishing the right;
- the balance of convenience favours the granting of interim relief;
- the applicant has no other satisfactory remedy (*Setlogelo v Setlogelo* [1914] AD 221 at 227).

9. What means of enforcement are available?

There are several means of enforcement of judgments, namely:

- execution of property: a warrant/writ of execution issued against immovable and movable property. The court may only attach immovable property where there is insufficient movable property. The courts cannot attach property that is necessary for the judgment debtor to sustain life and work. Debt collection in Zimbabwe by a foreign entity is problematic if the intention is to repatriate the proceeds. A debtor who is confronted with a Writ can discharge a debt incurred in any currency by a payment in Zimbabwe dollars. The scarcity of foreign currency then makes it difficult to source foreign currency for repatriation.
- garnishee order: a garnishee order is made against the judgment debtor's salary and requires the employer to pay a portion of the debtor's salary to the judgment creditor until the full judgment debt has been paid. The amount deducted from the salary must leave a sufficient amount for the judgment debtor to sustain him/herself and his/her dependents.
- civil imprisonment: a debtor may be imprisoned to compel him/her to settle the debt. Civil imprisonment can only be ordered where it has been proved that the debtor has sufficient funds to pay and has wilfully failed to do so. The

maximum period is three months. If the debtor pays before the period is over he/she is released. If the debtor does not pay, and is released after three months, he/she cannot be re-imprisoned. However, other methods of enforcement can be used.

- contempt of court: civil contempt of court proceedings are designed to compel the debtor to comply with the judgment. The judgment creditor applies to the court to have the defaulting judgment debtor found guilty of contempt of court. It must be shown that the order was not complied with and non-compliance was wilful. The defaulting judgment debtor will be imprisoned for contempt of court. In most cases however, imprisonment is suspended pending performance.

The difference between contempt of court imprisonment and civil imprisonment is that the former carries no limit to the term of imprisonment. A debtor on the other hand cannot be imprisoned for a period longer than ninety (90) days.

In practice, judgments are enforceable through the Deputy Sheriff/Messenger of Court depending on the court which has entered the judgment.

10. Does the court have power to order costs? Are foreign claimants required to provide security for costs?

The courts have the power to award *inter partes* or solicitor/client costs. They also have the power to award no costs. Costs usually follow the event.

Foreign claimants are required to provide security for costs where they do not have immovable property in the country. This is, however, not automatic and the counterparty will have to apply to the court for security for costs.

11. On what grounds can the parties appeal, and what restrictions apply? Is there a right of further appeal? To what extent is enforcement suspended pending an appeal?

If a party is dissatisfied with a court judgment, they may appeal to a superior court.

There is no automatic right to appeal, since appeal is only available where permitted by statute. It is not necessary to apply for leave to appeal in all instances, for example where a final judgment has been given. There can be no further appeal after the Supreme Court.

With regards to the enforcement of judgments pending appeal, it is only the court granting the order appealed against that has the power to give leave to allow its judgment to be carried into effect pending the decision of the appeal.

The common law rule of suspending execution of judgment pending appeal is founded upon the avoidance of irreparable damage to the intending appellant. The court must decide whether it is possible to restore the status quo if the appeal were upheld. In instances where the judgment is a monetary judgment the courts usually, but not invariably, grant leave to execute subject to security *de restituendo*. However, in the case of non-monetary, the court must decide what would be just and equitable in all the circumstances.

12. To what extent can domestic and/or foreign State entities claim immunity from civil proceedings?

Immunity from civil proceedings is not afforded to domestic State entities. Regarding foreign State entities, immunity is limited and only provided to those with diplomatic immunity (under the Privileges and Immunities Act). The High Court case of *Sibanda and Another v International Committee of the Red Cross (ICRC)* [2002] ZWHHC 54 confirmed that the immunity granted by the Privileges and Immunities Act is in respect of both suit and legal process.

13. What procedures exist for recognition and enforcement of foreign judgments?

Under the High Court Rules 2021, rule 77 (1), a chamber application must be made in order to register a foreign judgment. Rule 77 (2) requires that the chamber application be verified by an affidavit and exhibit the judgment or a verified or certified or otherwise duly authenticated copy, and state that to the best information and belief of the deponent the judgment has not been satisfied. The affidavit must also give the full name, title, trade or business and usual or last known place of abode or business of the judgment creditor and judgment debtor respectively.

Upon registration of the judgment, pursuant to rule 77 (1), a notice in writing of the registration of the judgment must be served on the judgment debtor within a reasonable time after the registration.

Rule 77 (4) states that the notice must contain full particulars of the judgment registered and of the order for registration. The notice must also state the details of the judgment creditor or his attorney. The notice must state that the defendant is entitled, if he has grounds, to apply to set aside the registration and must also state the number of days for applying to set aside the registration limited by the order giving leave to register.

Once the foreign judgment is registered, it will be enforceable as if it were entered in Zimbabwe.

Important to note is that only judgments from designated countries are registrable through the High Court of Zimbabwe.

Arbitration

14. Is the arbitration law based on the UNCITRAL Model Law? If yes, are there any key modifications? If no, what form does the arbitration law take?

Yes. Legislation incorporating the provisions of the UNCITRAL Model Law into Zimbabwean law was enacted in the form of the Arbitration Act (Chapter 7:15). Modifications appear as follows:

- article 9 gives power to the High Court of Zimbabwe to grant interim relief before or during arbitration proceedings. An application for interim relief may be made on an *ex parte* basis. Urgency is the main pre-condition in such an application, as well as the absence of any other remedy and the possibility of irreparable harm;

- article 10 provides that the number of arbitrators failing determination by the parties may be one in Zimbabwe. This is always the default quorum for arbitration proceedings;
- article 11 gives the High Court of Zimbabwe the power to appoint an arbitrator upon the request of a party;
- article 15 provides for what may be done where there has been a change or replacement of an arbitrator or arbitral tribunal. In particular, where there has been a change or replacement of an arbitrator, a substitute arbitrator shall be appointed according to the rules that were applicable to the appointment of the arbitrator being replaced;
- article 17 gives powers to an arbitral tribunal to grant interim measures. These measures may be enforced by the High Court upon a request for *executor* assistance by the arbitrator concerned;
- article 19 provides for additional rules of procedure. These are enforced by the arbitrator presiding who determines the rules of procedure for the parties to follow;
- article 25 provides additional rules on default of a party to participate in proceedings. The arbitrator enforces these rules through making an award dismissing the claim of either party or giving directions, with or without conditions, for the speedy determination of the claim;
- article 27 provides additional rules for court assistance in taking evidence;
- article 31 provides additional mandatory rules on the form and content of an award. In particular, the article provides that: (1) the award must be made in writing and must be signed by the arbitrator or arbitrators. In arbitral proceedings with more than one arbitrator, the signatures of the majority of all members of the arbitral tribunal suffices, provided that the reason for any omitted signature is stated; (2) the 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; (3) the award must state its date and the place of arbitration as determined in accordance with article 20(1) (the award is deemed to have been made at that place); and (4) after the award is made, a copy signed by the arbitrators in accordance with article 31(1) must be delivered to each party;
- article 34 provides additional grounds for the setting aside of an arbitral award.

15. What are the formal requirements for an enforceable arbitration agreement?

The arbitration agreement must be both:

- in writing;
- signed by both parties.

The agreement may be in one document or in a series of documents (including in an exchange of statements of claim and defence in which the existence of an agreement is alleged by one party and not denied by another). The reference in a contract to a document containing an arbitration clause constitutes an arbitration agreement provided that the contract is in writing and the reference is such as to make that clause part of the contract, and the agreement must provide an unequivocal reference to arbitration.

16. Will the courts stay litigation if there is a valid arbitration clause covering the dispute? Does the approach differ in this regard if the seat of the arbitration is inside or outside of the jurisdiction?

The courts will stay litigation upon the request of a party if there is a valid arbitration clause covering the dispute. This approach does not differ if the seat of the arbitration is inside or outside the jurisdiction.

17. On what grounds can the court intervene in arbitrations seated outside the jurisdiction?

The High Court may not intervene of its own accord but only upon the application of a party in which case the High Court will first decide on whether or not it has jurisdiction to determine on the subject matter of the arbitration. The decision on whether or not the court has jurisdiction will depend on whether the subject matter of the arbitration is within the jurisdiction, the attitude of the parties (whether there is a submission to the jurisdiction of the High Court by the parties either expressly or tacitly), and the common law principles governing the inherent jurisdiction of the court.

The courts are able to grant interim relief in support of a foreign-seated arbitration under article 9 of the Arbitration Act.

18. Can a foreign arbitration award be appealed in the local courts? If so, on what grounds?

A foreign arbitration award may only be appealed in the courts of original jurisdiction, namely the courts of the seat of the arbitration. It may only be set aside in Zimbabwe on public policy grounds as set out in article 34 of the UNCITRAL Model Law, read in conjunction with the Arbitration Act (Chapter 7:15). As such, a foreign arbitration award cannot be appealed on the merits in Zimbabwe.

On public policy grounds, the award may be set aside if:

- a party to the arbitration agreement was under some incapacity; or the said agreement is not valid under the law to which the parties have subjected it or, failing any indication on that question, under the law of Zimbabwe;
- 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/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, provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, only that part of the award which contains decisions on matters not submitted to arbitration may be set aside;
- the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless such agreement was in conflict with a provision of the UNCITRAL Model Law from which the parties cannot derogate, or, failing such agreement, was not in accordance with the UNCITRAL Model Law;

- the High Court finds that the subject-matter of the dispute is not capable of settlement by arbitration under the law of Zimbabwe; or the award is in conflict with the public policy of Zimbabwe (including, but not limited to, where the making of the award was induced or effected by fraud or corruption); or a breach of the rules of natural justice occurred in connection with the making of the award.

The High Court, when asked to set aside an award, may, where appropriate and so requested by a party, suspend the setting aside proceedings for a period of time determined by it in order to give the arbitral tribunal an opportunity to resume the arbitral proceedings or to take such other action as in the arbitral tribunal's opinion will eliminate the grounds for setting aside.

19. What procedures exist for enforcement of awards rendered in arbitrations seated outside of the jurisdiction?

Zimbabwe is a party to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the New York Convention) and the New York Convention is incorporated into the Arbitration Act.

Enforcement of awards, irrespective of the country in which such awards are made, is provided in article 35 of the UNCITRAL Model Law as read in conjunction with the Arbitration Act (Chapter 7:15). The procedure is as follows:

- the party relying on the award must supply the duly authenticated original award or a duly certified copy;
- if the award is in a language that is not English a duly certified translation into English must be provided;
- an application for registration of the award in writing must be made to the High Court of Zimbabwe. Upon the application being granted it becomes and has the effect of a judgment of the High Court.

20. Are foreign awards readily enforceable in practice?

Yes, they are readily enforceable and ordinarily the process should not take more than one month, unless the enforcement is opposed. Foreign court judgments can be enforced if they are from reciprocating countries and do not contravene public policy. In cases where the enforcement is opposed the process will take approximately one year.

Alternative dispute resolution

21. Are the parties to litigation or arbitration required to consider or submit to any alternative dispute resolution before or during proceedings?

The courts may recommend alternative dispute resolution to the parties but parties cannot be compelled to attempt it, unless there is an enforceable agreement to that effect. The rules of the High Court of Zimbabwe as supplemented by practice directions provide for mandatory pre-trial conferences, which parties must hold before proceeding to trial. Such pre-trial conferences are designed to accommodate alternative dispute resolution and to curtail the continuation of litigation.

There is no requirement for parties to arbitration to attempt ADR.

Reforms

22. Are there likely to be any significant procedural reforms in the near future?

Yes, a number of changes in the legal system have taken place since 2013. The Constitution of Zimbabwe Amendment (No. 20) 2013 (the New Constitution) repealed the Lancaster House Constitution on which the Zimbabwe legal system had been based. Under the new constitution, Zimbabwe now has a separate Constitutional Court. Changes will likely take place in several Acts of Parliament, which now need to be aligned to the new constitution. The process is ongoing and is likely take several years.

There has also been an inclination by the Judicial Service Commission of Zimbabwe to make procedural changes to speed up resolution of disputes in the various courts and some of the changes have already taken place through case monitoring systems which have been put in place in the High Court and Magistrates Court which has already been put in place by the IECMS system which is continuously developing.

There also appear to be a shift by Government in its economic policy, which may result in more changes in the Zimbabwean legal system. The need to improve the conditions for doing business in the jurisdiction by Government may see significant procedural reforms particularly to investment related legislation aimed at attracting investment and reducing bureaucracy.

A new set of High Court rules, known as the High Court Rules, 2021 was introduced through Statutory Instrument 202 of 2021 on the 23rd of July 2021 as amended by Statutory Instrument 81 of 2024.

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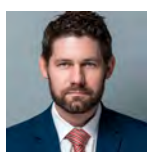
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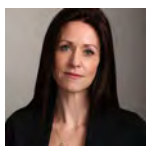
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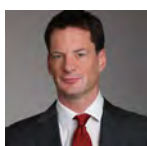
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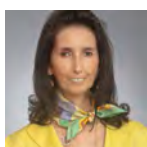


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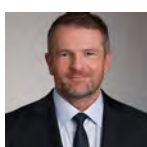
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