Title:
Organization for the Harmonization of Business Law in Africa (OHADA), Uniform act on arbitration

Additional Information:
We would like you to draw your attention to the following article providing a general overview of the current OHADA Arbitration legal framework: Kodo, Jimmy, Aperçu général de l’actuel régime de l’arbitrage OHADA Association Suisse de l’Arbitrage - ASA Bulletin, Volume 36, No. 4, 2018, pp 846-865 Dezember 2018

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Content:
The uniform act on arbitration, December 2010 pursuant to article 8 of the Treaty on the harmonization of the business law in Africa (Traité relatif à l’harmonisation du droit des affaires en Afrique), can be accessed at the OHADA official website (official French version). The translation has also been provided by OHADA.

UNIFORM ACT ON ARBITRATION (translation)

CHAPTER 1: SCOPE OF APPLICATION

ARTICLE 1
This Uniform Act shall be applicable to any arbitration when the seat of the arbitral tribunal is located in one of the Member States.

ARTICLE 3-1
The arbitration agreement may be in the form of an arbitration clause or of a submission agreement.
The arbitration clause is an agreement whereby the parties agree to submit to arbitration disputes which may arise out of or result from a contractual relationship. The submission agreement is an agreement whereby the parties to an existing dispute agree to settle it through arbitration. The arbitration agreement must be made in writing, or in any other form evidencing its existence, in particular, by reference to a document containing the agreement.

CHAPTER 2: CONSTITUTION OF THE ARBITRAL TRIBUNAL

ARTICLE 5

The duties of an arbitrator may only be performed by a natural person. The arbitral tribunal shall be composed of a sole arbitrator or of three arbitrators. Absent agreement of the parties, the arbitral tribunal shall be composed of a sole arbitrator.

ARTICLE 7

The arbitrator who accepts his mandate shall communicate his acceptance to the parties by any means in writing. The arbitrator undertakes to complete his mandate until the end, unless he justifies of an impediment or legitimate reason for abstention or resignation. The arbitrator shall enjoy full exercise of his civil rights and shall remain independent and impartial vis-à-vis the parties. Any prospective arbitrator shall inform the parties of any circumstance likely to create in their minds a legitimate doubt about his independence and impartiality, and may only accept his appointment with their unanimous and written consent. From the date of his appointment and during the course of the proceedings, the arbitrator shall reveal any such circumstances to the parties.

ARTICLE 8

In case of disagreement, and if the parties have not agreed on the challenge procedure, the competent jurisdiction in the Member State shall decide the challenge no later than thirty (30) days, after the parties and the arbitrator have been heard or duly summoned. If the competent jurisdiction fails to render a decision within this above-mentioned time period, it shall be discharged, and the challenge application may be brought before the Common Court of Justice and Arbitration by the most diligent party. The decision of the competent jurisdiction dismissing the challenge application may only be challenged before the Common Court of Justice and Arbitration. Any ground of challenge must be raised no later than thirty (30) days after the fact having motivated the challenge has been discovered by the party seeking to invoke it. The challenge of an arbitrator shall only be admissible for reasons which have become known after his appointment. When the mandate of an arbitrator is terminated, or when he resigns for any other reason, a replacing arbitrator is appointed according to the applicable rules to the nomination of the replaced arbitrator, unless otherwise agreed by the parties. The same procedure shall be followed if the arbitrator’s mandate is revoked by mutual agreement of the parties or any other case when his mandate is terminated.

CHAPTER 3: ARBITRAL PROCEEDINGS
ARTICLE 9
The parties shall be treated equally and each party shall be given full opportunity to present its case.

ARTICLE 11
The arbitral tribunal alone is competent to rule on its own jurisdiction, as well as on any issues concerning the existence or validity of the arbitration agreement.
Any objection to arbitral jurisdiction shall be raised before any defense on the merits except where the facts on which it is based have been disclosed later.
The arbitral tribunal may rule on its own jurisdiction in the award dealing with the merits or in a partial award subject to the annulment action.

ARTICLE 13
When a dispute, for which an arbitral tribunal is seized pursuant to an arbitration agreement, is brought before a state court, the latter must, if one of the parties so requests, declare that it lacks jurisdiction.
Where the arbitral tribunal is not yet seized, or if no arbitral request has been filed, the state court shall also declare itself incompetent, unless the arbitration agreement is manifestly null or manifestly inapplicable to the case. In that case, the competent jurisdiction shall issue a final decision on its jurisdiction within a maximum of fifteen (15) days. Its decision may only be appealed before the Common Court of Justice and Arbitration in accordance with its Rules of Procedure.
In any case, the competent jurisdiction may not on its own motion declare itself incompetent. However, the existence of an arbitration agreement shall not preclude a state court, at the request of a party and in the event of a recognized and reasoned emergency, to order provisional or conservatory measures so long as such measures do not imply an examination of the merits of the case, for which only the arbitral tribunal is competent.

ARTICLE 14
The parties may, directly or by reference to arbitration rules, determine the arbitral procedure. They may also make it subject to a procedural law of their choice.
Absent such agreement, the arbitral tribunal may conduct the arbitration as it deems appropriate.
In support of their claims, the parties bear the burden of alleging and adducing evidence to prove the facts thereof.
The parties shall act quickly and with loyalty in the conduct of the proceedings, and shall refrain from any dilatory actions.
If, without raising a legitimate reason:
a) the claimant does not submit its claim, the arbitral tribunal shall terminate the arbitral proceedings;
b) the respondent does not submit its defense, the arbitral tribunal shall continue the arbitral proceedings without, however, considering this failure per se as an acceptance of the claimant’s allegations;
c) one of the parties fails to appear at the hearing or to produce documents, the arbitral tribunal may continue the proceedings and decide on the basis of the evidence before it.
The arbitral tribunal may invite the parties to provide it with factual explanations and to submit to it, by any legally admissible means, the evidence it believes will be necessary for the solution to the dispute.
It may not retain in its ruling, the arguments, explanations or documents submitted by the parties, unless both parties have been in a position to discuss them.
It shall not base its ruling on evidence established on its own motion without previously inviting each of the parties to submit its comments.
Where the assistance of judicial authorities is necessary for the taking of evidence, the arbitral tribunal may, on its own motion or upon request, seek the assistance of a competent jurisdiction in the Member State.

A party who knowingly abstains from invoking, without delay, an irregularity and yet proceeds with the arbitration, is deemed to have waived its right to object.

The arbitral tribunal shall, unless otherwise agreed by the parties, be empowered to decide any incidental claims concerning the verification of the authenticity of documents or forgery.

If necessary, the arbitral tribunal may, after consulting the parties or upon their request, appoint one or more experts to report on specific issues it determines and hear them at the hearing.

The arbitral tribunal may also, upon the request of either party, order interim or conservatory measures, with the exception of conservatory seizures and judicial sureties which remain within the jurisdiction of state courts.

ARTICLE 15

The arbitral tribunal shall rule on the merits of the dispute pursuant to the rules of law chosen by the parties. Absent such choice by the parties, the arbitral tribunal shall apply the rules it deems the most appropriate, by taking into consideration, as the case may be, international trade practices.

It may also decide as amiable compositeur when the parties have authorized it to do so.

ARTICLE 16

The arbitral procedure shall end with the rendering of a final award.

It may also be terminated with a closing order.

The arbitral tribunal may issue a closing order when:

a) the claimant withdraws its request, unless the respondent objects and the arbitral tribunal acknowledges that there is a legitimate interest in finally settling the dispute;

b) the parties agree to terminate the proceedings;

c) the arbitral tribunal finds that pursuing the proceedings has become, for any other reason, unnecessary or impossible;

d) the initial or extended arbitral time limit has expired;

e) there is an acknowledgement of the claim, withdrawal from the proceedings, settlement.

ARTICLE 18

The deliberations of the arbitral tribunal shall be confidential.

CHAPTER 4: THE ARBITRAL AWARD

ARTICLE 19

The arbitral award shall be rendered in accordance with the procedure and the forms agreed upon by the parties.

Absent any such agreement, the award shall be rendered by a majority vote when the tribunal is composed of three arbitrators.

If the parties come to an agreement during the course of the arbitral proceedings, they may ask the arbitral tribunal to issue an award by consent. Such award shall have the same status and shall have the same effects as any other award bringing the dispute to an end.
ARTICLE 20

Apart the holding, the arbitral award shall contain:
a) the first and last names of the arbitrators having rendered the award;
b) its date;
c) the seat of the arbitral tribunal;
d) the last and first names and trade names of the parties, as well as headquarters or registered office;
e) as the case may be, the last and first names of counsel or any person having represented or assisted the parties; and
f) the statement of the respective claims of the parties, their pleas and arguments, as well as the procedural history.
The arbitral award must state the reasons on which it is based.
If the arbitral tribunal has been empowered by the parties to decide as amiable compositeur, this shall be mentioned.

ARTICLE 21

The arbitral award shall be signed by the arbitrator or arbitrators.
However, if a minority of them refuses to sign the award, mention shall be made of such refusal, and the award shall have the same effect as if all the arbitrators had signed it.

ARTICLE 23

As soon as it is rendered, the arbitral award has res judicata effect regarding the dispute it settles.

Referring Principles:
- XIII.1.1 - Arbitration agreement
- XIII.1.3 - Arbitration agreement and interim measures by court
- XIII.2.1 - Number of arbitrators
- XIII.2.2 - Arbitrator’s duty to disclose
- XIII.2.3 - Grounds for challenge of an arbitrator
- XIII.2.4 - Principle of separability of the arbitration clause
- XIII.2.5 - Power of arbitral tribunal to order interim measures
- XIII.3.1 - Arbitral due process
- XIII.3.2 - Determination of rules of procedure
- XIII.3.3 - Seat of arbitration
- XIII.3.8 - Default of a party
- XIII.4.1 - Rules applicable to merits; decision ex aequo et bono
- XIII.2.7 - Immunity of arbitrator
- XIII.4.3 - Settlement
- XIII.4.2 - Form and contents of award
- XIII.4.4 - Termination of proceedings
XIII.4.5 - Conclusive and preclusive effects of awards; res judicata
XIII.5.1 - Confidentiality