

## **UNIFORM ACT ON ARBITRATION**



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The Council of Ministers of the Organization for the Harmonization of Business Law in Africa (OHADA),

Considering the Treaty for the Harmonization of Business Law in Africa, in particular Article s 2, 5 to 12 thereof;

Considering the report by the OHADA Permanent Secretariat and the observations of the States Parties;

Considering the opinion of the Common Court of Justice and Arbitration dated 3 December 1998;

Having deliberated thereon, adopt by unanimous vote of the States Parties present and voting, the Uniform Act set out below:

## **CHAPTER I SCOPE OF APPLICATION**

### **ARTICLE 1**

This Uniform Act shall apply to any arbitration when the seat of the arbitral tribunal is in one of the States Parties.

### **ARTICLE 2**

Any natural or legal person may resort to arbitration with respect to any rights that may be freely disposed of.

States and other local governments as well as State-owned entities may also be parties to arbitration without being able to rely on their national laws to contest the arbitrability of the dispute, their capacity to be parties to arbitration or the validity of the arbitration agreement.

### **ARTICLE 3**

Every arbitration agreement shall be in writing, or in any other form evidencing its existence, in particular, by reference in a contract to a document containing an arbitration clause.

### **ARTICLE 4**

The arbitration agreement shall be independent of the main contract.

Its validity shall not be affected by the nullity of the contract, and it shall be interpreted in accordance with the common intention of the parties, without necessarily referring to national law.

In any case, the parties may, by mutual agreement, resort to an arbitration agreement, even when proceedings are already pending before another jurisdiction.

## **CHAPTER II COMPOSITION OF ARBITRAL TRIBUNAL**

### **ARTICLE 5**

Arbitrators shall be appointed, removed or replaced in accordance with the agreement of the parties.

Failing such arbitration agreement, or where the arbitration agreement is insufficient:

- a)** in an arbitration with three arbitrators, each party shall appoint one arbitrator and the two arbitrators thus appointed shall choose the third arbitrator; if a party fails to appoint an arbitrator within a period of thirty (30) days from the receipt of a request to do so from the other party, or if the two arbitrators fail to agree upon the third arbitrator within a period of thirty (30) days from their appointment, the appointment shall be made, upon request of a party, by the competent judge in the State Party;
- b)** in an arbitration with a sole arbitrator, if the parties fail to agree upon appointment of the arbitrator, the latter shall be appointed, upon request of a party, by the competent judge in the State Party.

### **ARTICLE 6**

Only a natural person may be an arbitrator.

The arbitrator must have full capacity to exercise his civil rights, shall remain independent and impartial in relation to the parties.

### **ARTICLE 7**

The person who accepts to be an arbitrator shall communicate his acceptance to the parties by any means evidenced in writing.

Where the arbitrator is aware of any ground for his recusal, he shall so inform the parties and may accept his mission only with the written consent of the parties.

In case of a dispute, and where the parties have not agreed on the procedure for recusal, the recusal may be brought before the competent judge in the State Party, whose decision shall not be subject to appeal.

Any ground for recusal shall be raised without delay by the party who intends to rely on such ground.

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The recusal of an arbitrator shall be admissible only on grounds disclosed after his appointment.

### **ARTICLE 8**

The arbitral tribunal shall be composed of either a sole arbitrator or three arbitrators.

Where the parties appoint an even number of arbitrators, the arbitral tribunal shall be completed by an arbitrator chosen either in accordance with the agreement of the parties or, in the absence of such agreement, by the appointed arbitrators or, failing an agreement between the appointed arbitrators, by the competent judge in the State Party.

The same procedure shall apply in case of recusal, incapacity, death, resignation or removal of an arbitrator.

## **CHAPTER III ARBITRAL PROCEEDINGS**

### **ARTICLE 9**

The parties shall be accorded equal treatment and each party shall be given full opportunity of presenting his case.

### **ARTICLE 10**

Where the parties have agreed to submit to arbitration by an arbitration institution, they shall be deemed to have submitted to the rules of the said institution unless they have expressly agreed to exclude some of the rules.

Arbitral proceedings shall be deemed to commence when one of the parties refers the dispute to the arbitrator or arbitrators in accordance with the arbitration agreement or in the absence of such appointment, as soon as one of the parties commences the procedure for the composition of the arbitral tribunal.

### **ARTICLE 11**

The arbitral tribunal shall rule on its own jurisdiction, including any objections with respect to the existence or validity of the arbitration agreement.

An objection that the arbitral tribunal lacks jurisdiction shall be raised before the submission of the statement of defence except the facts on which it is based were revealed subsequently.

The arbitral tribunal may rule on its own jurisdiction in an award on the merits or in a partial award subject to recourse for annulment.

### **ARTICLE 12**

If the arbitration agreement is silent on the time-limit, the mission of the arbitrators shall not exceed six months from the date on which the last of the arbitrators accepted his mission.

The legal or agreed time-limit may be extended, either by agreement of the parties, or by the competent judge in the State Party at the request of one of the parties, or by the arbitral tribunal itself.

## ARTICLE 13

Where a dispute, pending before an arbitral tribunal in accordance with an arbitration agreement, is submitted to a national court, the latter shall, upon request of one of the parties, decline its jurisdiction.

Where the dispute has not yet been referred to an arbitral tribunal, the national court shall nonetheless decline jurisdiction unless the arbitration agreement is manifestly null and void.

In any event, the national court shall not of its own motion decline jurisdiction.

However, the existence of an arbitration agreement shall not prevent a court, upon request of one party, in the event of recognised urgency or where the measures shall be executed in a State which is not a party to OHADA, from ordering interim or conservatory measures, as long as this does not involve the hearing on the merits of the substantive dispute, over which the arbitral tribunal has exclusive jurisdiction.

## ARTICLE 14

The parties may, directly or by reference to a set of arbitration rules, determine the rules of procedure; they may also subject this procedure to a procedural law of their choice.

Failing such agreement, the arbitral tribunal may conduct the arbitration in such a manner as it considers appropriate.

The burden of proof shall lie on the parties to establish the facts relied on in support of their claim or defence.

The arbitrators may request the parties to furnish an explanation of the facts in issue and to adduce by any legally admissible means, any evidence which they consider necessary in support of their claim or defence.

They shall not in their decisions rely on grounds, explanations or documents referred to or tendered by the parties unless each party has been given an opportunity of presenting its observations thereon.

They shall not base their decision on grounds raised of their own motion without having invited the parties to present their observations in relation thereto.

Where the assistance of the court is necessary to obtain evidence, the arbitral tribunal may of its own motion or upon application, request the assistance of the competent judge in the State Party.

A party who, knowingly, fails to raise, without delay, an irregularity and proceeds with the arbitration, shall be deemed to have waived the right to raise it.

Unless agreed otherwise, the arbitrators shall equally have jurisdiction to rule upon objections relating to handwriting verification or a forgery.

## **ARTICLE 15**

The arbitrators shall apply the law designated by the parties as applicable to the substance of the dispute or failing such designation, the arbitrators shall, where applicable apply, the law considered most appropriate taking into account international trade customs and usages applicable to the transaction.

They shall also decide as amicable compounders where the parties have given them such powers.

## **ARTICLE 16**

The arbitral proceedings shall terminate upon the expiration of the time limit for the arbitration, except in case of extension by agreement of the parties or by order of the arbitral tribunal.

The arbitral proceedings shall also terminate where the claim is admitted, in case of withdrawal by the claimant or an amicable settlement or when a final award is made.

## **ARTICLE 17**

The arbitral tribunal shall fix the date to which the matter may be adjourned for deliberation. After this date, no claims or further submissions may be made.

No observations may be made or documents produced unless expressly requested in writing by the arbitral tribunal.

## **ARTICLE 18**

The deliberations of the arbitral tribunal shall be in secret.

# **CHAPTER IV**

## **THE ARBITRAL AWARD**

## **ARTICLE 19**

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

In the absence of such agreement, the award shall be made by a majority of the arbitrators when the arbitral tribunal is composed of three arbitrators.

## **ARTICLE 20**

The arbitral award shall contain the following particulars:

- 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.

The arbitral award shall state the reasons upon which it is based.

## **ARTICLE 21**

The arbitral award shall be signed by the arbitrator or arbitrators.

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

## **ARTICLE 22**

The award renders the arbitrator functus officio in relation to the dispute.

However, the arbitrator has the power to interpret the award or to correct material errors and omissions in the award.

Where the arbitrator omits to rule on any aspect of the claim, he may do so in an additional award.

In either of the above mentioned cases, the application shall be filed within 30 days of notification of the award. The tribunal shall rule within 45 days.

Where the arbitral tribunal can no longer be convened, the action shall be brought before the competent judge of the State Party.

## **ARTICLE 23**

The award has, from the moment it is made, res judicata effect with respect to the dispute which it decides.

## **ARTICLE 24**

The arbitrators may grant provisional enforcement of the arbitral award if such provisional enforcement has been requested, or they may reject such request, by a reasoned decision.

## **CHAPTER V**

### **APPEAL AGAINST THE ARBITRAL AWARD**

#### **ARTICLE 25**

An arbitral award shall not be subject to opposition, or appeal in a Court of Appeal or to the Highest Appellate Court.

It may be subject of an application for annulment filed before the competent judge in the State Party.

The decision of the competent judge in the State Party shall only be appealable before the Common Court of Justice and Arbitration.

The arbitral award may be the subject of an intervention filed before the arbitral tribunal by any natural or corporate person who was not given notice of the proceedings and whose rights are imperilled as a result of the award.

It may also be subject to an application for review before the arbitral tribunal upon the discovery of facts which may decisively influence the award but which at the time of the award were unknown to the arbitral tribunal and to the party applying for the revision.

#### **ARTICLE 26**

- An application for annulment shall be admissible only in the following cases:
- if the arbitral tribunal has ruled without an arbitration agreement or on the basis of a void or expired agreement;
- if the arbitral tribunal was improperly constituted or the sole arbitrator was irregularly appointed;
- if the arbitral tribunal failed to comply with its assigned mission ;
- if the principle of adversary proceeding has not been respected;
- if the arbitral tribunal has violated a rule of international public policy of the States signatories of the Treaty;
- if the award does not state the reasons on which it is based.

#### **ARTICLE 27**

The application for annulment shall be admissible immediately the award is rendered. It shall no longer be admissible if it is not brought within one month of the date of notification of the award bearing an exequatur.

## ARTICLE 28

Except where provisional enforcement has been ordered by the arbitral tribunal, an application for annulment of the arbitral award shall stay the execution of the award, pending the determination of the application by the competent judge in the State Party.

The competent judge shall also have jurisdiction to rule over disputes relating to provisional enforcement.

## ARTICLE 29

Where the arbitral award has been declared null and void, it shall be incumbent on the most diligent party, if he so desires, to commence fresh arbitration proceedings in conformity with the provisions of this Uniform Act.

# CHAPTER VI

## RECOGNITION AND ENFORCEMENT OF ARBITRAL AWARDS

### ARTICLE 30

The arbitral award may be forcefully executed only by virtue of an order of exequatur granted by the competent judge of the State Party.

### ARTICLE 31

Recognition and exequatur of the arbitral award presuppose that its existence is proven by the party relying thereupon.

The existence of the arbitral award is established by the production of the original together with the arbitration agreement, or by copies of the said documents accompanied by proof of their authenticity.

If the said documents are not in French, the party shall produce a translation certified by a translator registered on the list of experts established by the competent courts.

The recognition and exequatur shall be refused only where the arbitral award is manifestly contrary to a rule of international public policy of the States Parties.

### ARTICLE 32

The decision to refuse the exequatur shall only be subject to appeal before the Common Court of Justice and Arbitration sitting as the Highest Appellate Court.

The decision to grant the exequatur shall not be subject to any appeal.

However, the application for annulment shall ipso facto be deemed to be an appeal against the decision granting the exequatur, within the limits of the terms of the action brought before the competent judge of the State Party.

## **ARTICLE 33**

The dismissal of the application for annulment shall automatically validate the arbitral award as well as the decision granting the exequatur.

## **ARTICLE 34**

Arbitral awards rendered on the basis of rules other than those of the present Uniform Act shall be recognized in the States Parties in accordance with any international conventions that may be applicable and, failing any such conventions, in accordance with the provisions of this Uniform Act.

## **CHAPTER VII** **FINAL PROVISIONS**

## **ARTICLE 35**

This Uniform Act shall be the law governing arbitration in the States Parties.

This Uniform Act shall apply only to arbitral proceedings, instituted after its entry into force.

## **ARTICLE 36**

This Uniform Act shall be published in the OHADA Official Gazette and the Official Gazette of the States Parties.

It shall enter into force in accordance with the provisions of Article 9 of the Treaty relating to the Harmonization of Business Law in Africa.

Done at Ouagadougou, on 11 march 1999