DELOS
dispute resolution

GUIDE TO ARBITRATION PLACES (GAP)

BENIN

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FOR FURTHER INFORMATION

GAP TABLE OF CONTENTS | GAP TRAFFIC LIGHTS FOR ALL JURISDICTIONS | FULL GAP ONLINE

EN DELOS MODEL CLAUSES
ES DELOS CLÁUSULAS MODELO
FR DELOS CLAUSES TYPES
PT DELOS CLÁUSULAS MODELO

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JURISDICTION INDICATIVE TRAFFIC LIGHTS

1. Law
   a. Framework
   b. Adherence to international treaties
   c. Limited court intervention
   d. Arbitrator immunity from civil liability
2. Judiciary
3. Legal expertise
4. Rights of representation
5. Accessibility and safety
6. Ethics

Evolution of above compared to previous year =

7. Tech friendliness
8. Compatibility with the Delos Rules

VERSION: 4 NOVEMBER 2021 (v01.01)

There have not been any material changes requiring an update to this chapter (including the traffic lights) since the date of the latest version. Nonetheless, please note that this chapter does not constitute legal advice and its authors, the contributing law firm and Delos Dispute Resolution decline any and all responsibility.

IN-HOUSE AND CORPORATE COUNSEL SUMMARY

The Republic of Benin is a member of the Organisation for the Harmonisation of Business Law in Africa ("**OHADA**"). OHADA provides for a uniform system of business law directly applicable in its Member States through "Uniform Acts". Uniform Acts are sets of material rules adopted to regulate a specific legal field which are designed to apply in all OHADA States once they have been adopted by the Council of Ministers of OHADA. There are currently ten (10) Uniform Acts, all largely inspired by French law, covering matters such as corporate law, securities, bankruptcy, arbitration, and mediation.

There are two types of arbitration in Benin: ***ad hoc* arbitration** and **institutional arbitration.**

***Ad hoc* arbitration** is governed by the Uniform Act on Arbitration ("**UAA**") (which shall be applicable to any arbitration when the seat of the arbitral tribunal is located in one of the Member States) and, for some issues relating to the arbitral procedure, the Beninese Code of Civil, Commercial, Social, Administrative and Accounts Procedure ("**CCCSAAP**"). *Ad ho*c arbitration procedure is governed by the procedural rules on which the parties have agreed, subject to the mandatory provisions of the UAA and CCCSAAP.

As regard **institutional arbitration**, in practice, when reference is made to "*institutional arbitration*" in a OHADA/Beninese context, this is intended to refer to the Common Court of Justice and Arbitration ("**CCJA**") institutional arbitration.

However, in keeping with the traditional meaning of "*institutional arbitration*" in an international context, the terms "*institutional arbitration*" will also include arbitrations pursuant to the arbitration rules of other institutions. Thus, the Parties may select for instance the following options:

- the recourse to the institutional arbitration rules of the CCJA ("**CCJA Arbitration Rules**"). CCJA is located in Abidjan, Ivory Coast. The provisions of Title IV of the OHADA Treaty, the CCJA Arbitration Rules, the internal regulations of the CCJA and other related decisions adopted by the various OHADA institutions (such as CCJA or the Council of Ministers) are all relevant to determine the substance of **CCJA arbitration law** in the Republic of Benin. Pursuant to an arbitration clause ("*clause compromissoire*") or an arbitration agreement ("*compromis d'arbitrage*"), any party to a contract either whether one of the parties is domiciled or is habitually resident in one of the States Parties, or whether the contract is executed or to be performed in all or part of the territory of one or more States Parties, may submit a contractual dispute to CCJA Arbitration Rules. CCJA Arbitration Rules will not be presented in their entirety but for the sake of completeness, reference will be made where applicable and/or relevant;
- the recourse to the Center of Arbitration, Mediation and Conciliation of the Chamber of Trade and Industry of Benin ("**CAMeC**"), located in Cotonou[1];
- any other institutional arbitration rules on which the parties may agree, including Delos Dispute Resolution[2]; or
- not to resort to a national or private arbitration center and agree between them on the course of the arbitration, by for instance adopting their own rules[3].

[1] **Provided that these options comply with the UAA rules**. In case of contradiction, the UAA rules prevail. However, it is important to note that with respect to institutional arbitration, Article 10 of the UAA specifies that when reference is made by the parties to an arbitral institution, the arbitration rules of said institution is binding upon the parties, except for the parties to exclude expressly certain provisions, in agreement with the said arbitral institution.

[2] Ibid.

[3] Ibid.

Key places of arbitration in the jurisdiction?	Cotonou (economic capital of Benin).
Civil law / Common law environment?	Civil law environment: Benin is a former French colony that currently uses mainly the concepts of civil law.
Confidentiality of arbitrations?	Neither the UAA nor the CCCSAAP expressly provide for confidentiality of arbitration, although Benin-seated arbitrations are typically treated as confidential in practice. (CCJA Note: Article 14 of the CCJA Arbitration Rules expressly provides for confidentiality.)
Requirement to retain (local) counsel?	No legal requirement.
Ability to present party employee witness testimony?	There are no legal provisions preventing a party from presenting party employee witness testimony. As a consequence, parties may submit witness testimonies of their employee which probative value will be left to the arbitral tribunal's discretion unless otherwise provided in the terms of reference.
Ability to hold meetings and/or hearings outside of the seat and/or remotely?	Neither the UAA nor the CCCSAAP specifically regulate the possibility of holding meetings and/or hearings outside of the seat and/or remotely. As a consequence, we understand that it may be possible to hold meetings outside the seat of arbitration and/or remotely, with the agreement of all parties to the arbitration procedure. (CCJA Note: pursuant to Article 13 of the CCJA Arbitration Rules, an arbitrator may decide to hold meetings outside the seat of the arbitration after consulting the parties. In parallel, in consideration of the will of the parties and given that there is no prohibition to that effect, parties may choose to hold meetings at a different venue. Unless the parties have agreed on a specific venue, the tribunal has discretion to decide where to hold meetings. This configuration is quite common).
Availability of interest as a remedy?	In the absence of legal provisions relating to the awarding of interest as a remedy in arbitration, this remedy may be considered as available.
Ability to claim for reasonable costs incurred for the arbitration?	There are no legal provisions relating to the allocation of costs. The arbitral tribunal has discretion in this regard but may take into consideration the circumstances of the case, especially if the parties allow the arbitral tribunal to judge *ex aequo and bono*.
Restrictions regarding contingency fee arrangements and/or third-party funding?	Contingency fee arrangements are permitted provided they relate only to part of counsel's remuneration. There is no prohibition on third-party funding.
Party to the New York Convention?	Yes. The Republic of Benin is party to the New York Convention following its adhesion on 16 May 1974. The New York Convention entered into force on 14 August 1974.

Party to the ICSID Convention?	Yes. The Republic of Benin is party to the ICSID Convention following its signature on 10 September 1965 and its ratification on 6 September 1966. The ICSID Convention entered into force on 14 October 1966.
Compatibility with the Delos Rules?	The application of Delos Rules may be considered but they will be subject to those of the UAA and CCCSAAP provisions which are mandatory.
Default time-limitation period for civil actions (including contractual)?	Civil actions: thirty (30) years according to the 1958 French Civil Code applicable in the Republic of Benin. Commercial actions (as regards contractual actions): five (05) years from the day on which the holder of the right to act knew or should have known the facts enabling him to exercise his action, according to Article 16 of the Uniform Act relating to General Commercial Law ("**UAGCL**"). Commercial sale: two (02) years, according to Article 301 of the UAGCL.
Other key points to note?	ϕ
World Bank Enforcing Contracts: *Doing Business* score for 2020, if available?	41.5
World Justice Project, Rule of Law Index: *Civil Justice* score for 2020, if available?	0.41

ARBITRATION PRACTITIONER SUMMARY

The OHADA wanted to modernize its arbitration rules as the first set of rules were adopted in 1999. The UAA and the CCJA Arbitration Rules were draw up some 20 years ago and were recently modernized in line with international standards and the needs of present-day business. For example, they currently regulate certain procedures within tight deadlines or reinforce the obligations of the arbitrators and give the arbitral tribunal more powers such as the right to decide on any provisional or conservatory measures ("*mesures provisoires ou conservatoires*") during the course of the arbitration proceedings, to the exclusion of good seizures ("*saisies conservatoires*") and judicial guarantees ("*sûretés judiciaires*"), which remain within the competence of state courts. The great novelty is the now express possibility for the CCJA to administer investment arbitrations where the arbitration is based on an instrument relating to investments (in practice, before the reform, the CCJA had already had to know about investment arbitrations, even if the possibility of seizing the CCJA for investment arbitrations was not expressly mentioned in the previous CCJA Arbitration Rules).

Date of arbitration law?	The UAA was adopted on 11 March 1999, and last amended on 23 November 2017. (CCJA Note: the CCJA Arbitration Rules were adopted on 11 March 1999, and last amended on 23 November 2017.) The two amended sets of rules entered into force ninety days (90) from their publication in the OHADA official journal (which was published on 15 December 2017), *i.e*. on 15 March 2018.
UNCITRAL Model Law? If so, any key changes thereto? 2006 version?	UNCITRAL, as a technical and financial partner of OHADA, has made several proposals regarding the content of the amended UAA and CCJA Arbitration Rules. Some UNCITRAL proposals have been taken in consideration by the drafters.
Availability of specialised courts or judges at the key seat(s) in the jurisdiction for handling arbitration-related matters?	There are no specialised courts or judges in Benin for the handling of arbitration-related issues. However, the UAA created a "dedicated judge" ("*juge d'appui*" or *"juge d'annulation"*) who has jurisdiction over arbitration-related issues and who acts in support of arbitral proceedings (annulment and enforcement of arbitral awards, appointment or recusal of arbitrator if the parties do not agree, third party opposition…). The UAA refers to the "competent jurisdiction" as regards the issues mentioned above and OHADA member countries have to adopt measures designating the "competent court". The CCCSAAP provides some indications, without being exhaustive, with regard to the provisions that are assigned by the UAA to the competent jurisdiction: (i) unless otherwise specified, the judge of the exequatur of the award is the President of the courtof the place where the enforcement is to be carried out (Article 1168) (in practice, the judge of the exequatur of the award in arbitration commercial issues is the President of the Commercial Court), and (ii) the appeal for annulment of the award shall be brought before the Court of Appeal of the seat of the arbitration (Article 1170).
Availability of *ex parte* pre-arbitration interim measures?	The courts may grant *ex parte* interim measures. Pursuant to Article 13 of the UAA, the existence of an arbitration agreement does not preclude, at the request of a party, the state court, in the event of a

	recognised and motivated emergency, from ordering provisional or protective measures as long as these measures do not imply an examination of the dispute on the merits for which only the arbitral tribunal is competent. (CCJA Note: before the case file is transmitted to the arbitral tribunal and, exceptionally after it, in the event that the urgency of the provisional and protective measures requested does not allow the court of arbitration to make a decision in good time, the parties may request such measures from the competent court.)
Courts' attitude towards the competence-competence principle?	The courts' attitude toward the competence-competence principle has evolved with OHADA arbitration reforms. Previously, a state court had jurisdiction to hear a dispute on the basis of an arbitration clause only if (i) it was manifestly void and (ii) the arbitral tribunal was not yet constituted. The competence-competence principle is now extended in the event that the arbitration agreement is manifestly inapplicable, thus allowing the state courts to intervene in cases where recourse to arbitration on the basis of an arbitration clause would not have obviously been possible. In addition, the courts have to rule on this matter within a 15-day time limit.
May an arbitral tribunal render a ruling on jurisdiction (or other issues) with reasons to follow in a subsequent award?	Each award must be reasoned, under the risk of annulment (cf. Articles 20 and 26 of the UAA). As a consequence, an arbitral tribunal which renders a ruling on jurisdiction (or other issues) with reasons to follow in a subsequent award exposes the said award to annulment. Pursuant to Article 11 paragraph 3 of the UAA, the arbitral tribunal may rule on its own jurisdiction in the award on the merits or in a partial award subject to an action for annulment.
Grounds for annulment of awards additional to those based on the criteria for the recognition and enforcement of awards under the New York Convention?	Pursuant to Article 26 of the UAA, there is at least a cause for annulment of awards that does not exist in the New York Convention, namely that the award may be set aside if it is devoid of any reasoning.
Do annulment proceedings typically suspend enforcement proceedings?	Pursuant to Article 28 of the UAA, unless the provisional execution of the award has been ordered by the court of arbitration, the exercise of the annulment remedy suspends the execution of the arbitral award until the competent court in the State Party or the Common Court of Justice and Arbitration, as the case may be, has ruled. (CCJA Note: pursuant to Article 21.3 paragraph 2 of the CCJA Arbitration Rules, when an action for annulment is filed against a prior award by which the arbitral tribunal retained its jurisdiction, the arbitral proceedings are not suspended. Pursuant to Article 30.2 paragraph 2 of the CCJA Arbitration Rules, unless provisional enforcement of the award has been ordered by the arbitral tribunal, the exercise of the annulment remedy

	suspends the enforcement of the arbitral award until the court has ruled.)
Courts' attitude towards the recognition and enforcement of foreign awards annulled at the seat of the arbitration?	The question of whether Beninese courts are bound by the foreign court's set-aside decision is not finally settled. To the best of our knowledge, no decision has been rendered in relation to this subject-matter by Benin national courts or by the CCJA. Beninese courts, when confronted to this situation in light of the position under French arbitration rules which considers that the award is not attached to the seat of arbitration but rather forms part of an "arbitral legal order" distinct from state jurisdictions' legal orders, and that its annulment at the seat has no impact on its validity, may be inspired by French rules or may proceed to its own verification. In any event, as regards OHADA *ad hoc* arbitration, in application of Article 34 of the UAA, arbitral awards rendered on the basis of different rules of those provided for by UAA are recognized in the States Parties, in the conditions provided for by any applicable international conventions and, failing that, under the same conditions as those provided for by the provisions of the UAA.
If an arbitral tribunal were to order a hearing to be conducted remotely (in whole or in part) despite a party's objection, would such an order affect the recognition or enforceability of an ensuing award in the jurisdiction?	If a party objects for hearings to be held remotely, in the absence of specific applicable provisions, the arbitral tribunal will want to analyse whether the refusal of the objecting party is justified or not and support its decision on the *imperium* conferred to it by the parties. Given that courts are not empowered to rule on the merits of the award, we assume that the arbitral tribunal order for a hearing to be held remotely despite a party's objection should not affect the recognition or enforceability of an ensuring award.
Key points to note in relation to arbitration with and enforcement of awards against public bodies at the jurisdiction?	Based on the analysis of the cases in which the State of Benin has been condemned, we can state that there are, sometimes, difficulties to execute arbitral awards against public bodies (for instance, refusal to pay arbitration fees and to enforce the arbitration award).
Is the validity of blockchain-based evidence recognised?	As legal framework in sub-Saharan Africa, and particularly in Benin, is not yet developed on blockchain, this point is not expressly addressed. Nevertheless, the validity of blockchain-based evidence is neither expressly recognised, nor prohibited.
Where an arbitration agreement and/or award is recorded on a blockchain, is it recognised as valid?	Pursuant to Articles 19 (paragraph 1) and 21 (paragraph 1) of the UAA, (i) the arbitration award is rendered in the procedure and according to the agreed forms by the parties, but (ii) the award has to be signed by the arbitrator(s). Contractual freedom makes it possible to issue an award in the form agreed by the parties and at first sight may leave a room to envisage the use of blockchain technology, but the need of the signature of the award by the arbitrators remains.

	Furthermore, as legal framework in sub-Saharan Africa, and particularly in Benin, is not yet developed on blockchain, this point is not expressly addressed. As a consequence, we assume an arbitration agreement recorded on a blockchain would not be inclined to be considered as valid. Nevertheless, to the best of our knowledge, this case has not yet arisen in arbitrations under Republic of Benin arbitration rules.,
Would a court consider a blockchain arbitration agreement and/or award as originals for the purposes of recognition and enforcement?	As legal framework in sub-Saharan Africa, and particularly in Benin, is not yet developed on blockchain, this point is not expressly addressed. As a consequence, we assume a Beninese court would not be inclined to consider a blockchain arbitration agreement and/or award (including (i) an award rendered under OHADA arbitration (UAA or CCJA Arbitration Rules) which, moreover, has to be signed by the arbitrators, or (ii) an award rendered under another legal framework which recognises blockchain technology) as originals for the purposes of recognition and enforcement. Nevertheless, to the best of our knowledge, this case has not yet arisen in arbitrations under Republic of Benin arbitration rules.
Other key points to note?	Pursuant to Article 21 of the UAA, the award shall be signed by all the arbitrator(s). However, if a minority of them refuses to sign it, mention shall be made of such refusal, and the award shall have the same effect as if it had been signed by all the arbitrators.

JURISDICTION DETAILED ANALYSIS

1. The legal framework of the jurisdiction

1.1 The Form of Beninese arbitration rules

The Republic of Benin is a Member State of OHADA. OHADA is an international legal integration organisation whose harmonisation tools (the Uniform Acts) are directly applicable and binding in the States Parties despite any contrary provision in domestic law, whether prior or subsequent. Consequently, the provisions adopted by OHADA concerning arbitration are of direct application in the Republic of Benin and must be considered as being national law, in addition to the provisions adopted by the legislator or the Beninese executive in the matter and which are not contrary.

As a result, *ad hoc* arbitration in the Republic of Benin is governed by the **UAA**, and articles 1167 et seq. of the Beninese **CCCSAAP**. Institutional arbitration refers to the rules of the chosen arbitration centers such as CCJA, CAMeC, Delos Dispute Resolution (arbitration centers rules (other than CCJA rules) have to comply with the UAA).

Given that regional rules (OHADA) are also used as national law, we have included for ease of reference the position under the CCJA Arbitration Rules (OHADA arbitration), where applicable and/or relevant.

Benin is a signatory of the Convention on the Settlement of Investment Disputes between States and Nationals of other States (Washington, March 18, 1965) (the "**ICSID Convention**"). ICSID is one of the arbitral institutions covered by the new Benin Investment Code (adopted on 20 March 2020) (the "**Benin Investment Code**") for the settlement of disputes relating to the interpretation or execution of the provision of the Benin Investment Code (Article 45). In addition, from a general point of view (i.e., outside of the Benin Investment Code rules), ICSID Convention may also apply when the conditions for its application are met.

Benin also acceded to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 1958) (the "**New York Convention**").

1.2 Last major revision of the Beninese arbitration Rules

The UAA was reformed in 2017. More precisely, its amended version was adopted by the Council of Ministers of OHADA in Conakry on 23 November 2017 and entered into force on 15 March 2018. The articles in relation to arbitration in the CCCSAP have not been revised since 2008.

(CCJA Note: the CCJA Arbitration Rules were revised in 2017. More precisely, their amended version was adopted by the Council of Ministers of OHADA in Conakry on 23 November 2017 and entered into force on 15 March 2018.)

2. The arbitration agreement

2.1 Determination of the law governing the arbitration agreement

There is no legal requirement for the arbitral tribunal to determine the law applicable to the arbitration agreement. Pursuant to Article 4 of the UAA, the validity of the arbitration agreement is not affected by the nullity of this contract and it shall be interpreted in accordance with the common will of the parties, without reference to a national law.

2.2 In the absence of an express designation of a "seat" in the arbitration agreement, how do the courts deal with references therein to a "venue" or "place" of arbitration?

The courts will seek to demonstrate the common will of the parties as to the seat of the arbitration, through all the clusters of indices listed. If the arbitral tribunal is constituted without incident, the courts, in the name of the principle of competence-competence, will want to attribute this responsibility to the latter.

2.3 Is the arbitration agreement considered to be independent from the rest of the contract in which it is set forth?

Pursuant to Article 4 of the UAA, the arbitration agreement is independent of the main contract. Its validity is not affected by the nullity of the contract and it shall be interpreted in accordance with the common will of the parties.

2.4 What are the formal requirements (if any) for an enforceable arbitration agreement?

Pursuant to Article 3-1 of the UAA, the arbitration agreement must be made in writing or by any other means that may be used to prove its existence and contents, in particular by reference to a document stipulating it.

There are no other formal requirements for an enforceable arbitration agreement.

2.5 To what extent, if at all, can a third party to the contract containing the arbitration agreement be bound by said arbitration agreement?

The UAA does not provide for any specific provision dealing with this matter. Moreover, Article 1165 of the 1958 French Civil Code applicable in the Republic of Benin provides the general principle of privity of contracts, according to which contracts are only binding upon their signatories.

As a consequence, we understand that a third-party may only be bound by an arbitration agreement to the extent that it has agreed to the arbitration agreement.

Nevertheless, as the French Civil Code of 1958 and the general principles of French civil law are applicable in the Republic of Benin, cases of extension of the arbitration agreement to third parties to the contract admitted by the French jurisdictions, such as in the cases below, must be taken in consideration: non signatories were validly assigned substantive rights and obligations arising out of the main contract; in the presence of a group of contracts; and in the presence of a group of companies.

To the best of our knowledge, there are no decisions taken by Beninese courts about this matter.

2.6 Are there restrictions to arbitrability? In the affirmative:

2.6.1 Do these restrictions relate to specific domains (such as anti-trust, employment law etc.)?

Pursuant to Article 2 of the UAA, any natural or legal person may resort to arbitration to defend any rights on which she has the free disposal[4]. States, other public territorial bodies, public entities and any other legal person under public law may also be a party to an arbitration, regardless of the legal nature of the contract, without being able to invoke their own laws to object to the arbitrability of the dispute, to their capacity to submit to arbitration or the validity of the arbitration agreement.

The subject-matters which cannot be referred to arbitration are the rights of which the natural or the legal person does not have free disposal, such as:

- people's status and family law, given that it is impossible for parties to resort to arbitration for marriage, divorce, or paternity suits;
- criminal matters.

However, in France for example, it may be possible that issues such as the financial consequences relating to divorce (maintenance obligation or quota of the maintenance allowance) or the monetary compensation owed to the victim of a criminal offence recognised in a judgment of a criminal court, be subject to arbitration.

[4] To have the free disposal of its rights means the expression of the freedom rightfully belonging to everyone, to give to do, or not to do, when the legal act that is planned to be realised is not contrary to the dictates of public order.

What about OHADA *ad hoc* arbitration? This question is worth asking because OHADA rules govern in principle only commercial matters and not civil matters. To the best of our knowledge, there is no case law yet on this subject.

(CCJA Note: Article 21 of the OHADA Treaty of 17 October 1993 states that the arbitration procedure concerns a contractual dispute. Tort disputes are therefore excluded from CCJA arbitration. In addition, as Benin is a former French colony and a country of civil law, the general principles of French civil law would be applicable: rights that are not freely disposable by a natural or legal person cannot be decided upon via arbitration.)

2.6.2 Do these restrictions relate to specific persons (*i.e.,* State entities, consumers etc.)?

Disputes related to the powers of a public authority, and specifically, the validity of a right or a situation arising from a decision of a public authority, may not be subject to arbitration.

3. Intervention of domestic courts

3.1 Will the courts stay litigation if there is a valid arbitration agreement covering the dispute?

Pursuant to Article 13 of the UAA, 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. This applies irrespective of whether the seat of the arbitration is within or outside of the jurisdiction.

If the arbitral tribunal has not yet been seized or if no request for arbitration has been formulated, the State court must also declare itself incompetent unless the arbitration agreement is manifestly void or manifestly inapplicable to the case. In this case, the competent State court decides on its competence in last resort within a maximum period of fifteen (15) days. The court's decision cannot be the subject of an appeal in cassation before the CCJA under the conditions laid down in its Rules of Procedure.

Nevertheless, in any case, the State court may not decline jurisdiction on its own motion.

3.2 How do courts treat injunctions by arbitrators enjoining parties to refrain from initiating, halt or withdraw litigation proceedings?

To the best of our knowledge, in the presence of a valid arbitration agreement, Beninese courts would generally welcome favourably injunctions by arbitrators enjoining them to stay litigation proceedings, provided that the reasons for the injunctions are explained. Indeed, many Beninese magistrates are not sensitised or trained in arbitration.

3.3 On what ground(s) can the courts intervene in arbitrations seated outside of the jurisdiction? (Relates to anti-suit injunctions/anti-arbitration injunctions or orders, but not only)

There is no legislation on this subject and, to the best of our knowledge, there is no case law either, yet, on this subject.

Courts would only act in support of arbitral proceedings (annulment and enforcement of arbitral awards, appointment or recusal of arbitrator if the parties do not agree…).

4. The conduct of proceedings

4.1 Can parties retain foreign counsel or be self-represented?

Parties are at liberty to be self-represented or retain outside counsel, whether Beninese or foreign.

4.2 How strictly do courts control arbitrators' independence and impartiality? For example: does an arbitrator's failure to disclose suffice for the court to accept a challenge or do courts require that the undisclosed circumstances be of a gravity such as to this outcome?

Pursuant to Article 7 of the UAA, any potential arbitrator shall inform the parties of any circumstance likely to create in their mind a legitimate doubt about independence and impartiality and may accept the mission only with their unanimous and written consent.

(CCJA Note: the CCJA makes the appointment of arbitrators under well-supervised conditions. In order to appoint the arbitrators, the CCJA may request the opinion of experts pursuant to Article 3.1 of the CCJA Arbitration Rules. In addition, pursuant to Article 4.1 of the CCJA Arbitration Rules, any arbitrator appointed or confirmed by the CCJA must be and remain independent and impartial vis-à-vis the parties. He must continue the mission efficiently and diligently until the end of the proceedings. Before his appointment or confirmation by the CCJA, the prospective arbitrator shall notify the General Secretary of any circumstances likely to raise legitimate doubts about impartiality or independence. Upon receipt of this information, the Secretary General shall communicate it in writing to the parties and set a deadline for them to submit their observations. The arbitrator shall immediately inform the Secretary General and the parties in writing of circumstances of the same nature that would arise between his appointment or confirmation by the CCJA and the notification of the final award. We can notice that the CCJA and more specifically the Secretary General are directly involved in the process of verifying the independence and impartiality of the arbitrator.)

4.3 On what grounds do courts intervene to assist in the constitution of the arbitral tribunal (in case of *ad hoc* arbitration)?

Courts intervene to assist in the constitution of the arbitration tribunal when the parties failed to appoint the members of the arbitral tribunal, and in the event that an appointment is required because of recusal, incapacity, death, resignation or dismissal of an arbitrator.

Indeed, pursuant to Article 6 of the UAA, the arbitrators shall be appointed, dismissed or replaced in accordance with the parties.

When the parties have agreed to appoint two arbitrators (whereas the arbitral tribunal shall be composed of a sole arbitrator or of three arbitrators), the arbitral tribunal shall be supplemented by a third arbitrator mutually chosen by the parties. Nevertheless, in the absence of agreement, the arbitral tribunal shall be completed by the appointed arbitrators or, if there is lack of agreement between them, by the competent court in the Member State. The same procedure shall be followed if an arbitrator is challenged, becomes incapacitated, dies, resigns or is revoked.

If the parties do not agree on the nomination procedure or if their stipulations are inadequate:

- in the case of arbitration with three arbitrators, each party shall appoint one arbitrator and the two arbitrators so appointed shall appoint the third arbitrator; if a party fails to appoint an arbitrator within thirty (30) days from the receipt of a request for this purpose from the other party or if the two arbitrators fail to agree on the choice of the third arbitrator within thirty (30) days from their appointment, the appointment shall be made, upon the request of a party, by the competent jurisdiction in the Member State;
- in the case of arbitration with a sole arbitrator, if the parties cannot agree on the choice of the arbitrator, the latter shall be appointed, upon the request of a party, by the jurisdiction in the Member State. The decision to appoint an arbitrator by the competent court intervenes in fifteen

(15) days from the date of its referral, unless the legislation of the Member State foresees a shorter time period. This decision is not subject to any appeal.

The decision to appoint an arbitrator by the competent court shall be taken within fifteen (15) days of the date of its referral, unless the legislation of the Member State shall not provide for a shorter period.

4.4 Do courts have the power to issue interim measures in connection with arbitrations?

Pursuant to Article 13 of the UAA, upon the request of a party, a state court may, in case of a recognised and motivated emergency, order provisional or conservatory measures as long as these measures do not imply an examination of the merits of the case, for which only the arbitral tribunal is competent.

(CCJA Note: pursuant to Article 10-1 of the CCJA Arbitration Rules, the competent jurisdiction may decide on any provisional or conservatory measures during the course of the arbitration proceedings only concerning claims relating to judicial guarantees and conservatory seizures. Moreover, before submitting the file to the arbitral tribunal and, in exceptional circumstances, even thereafter, where the urgent nature of the provisional or conservatory measures requested does not allow the arbitral tribunal to rule promptly, the parties may request such measures from the competent State jurisdiction.)

4.4.1 If so, are they willing to consider *ex parte* requests?

There are no provisions prohibiting *ex parte* requests.

4.5 Other than arbitrators' duty to be independent and impartial, does the law regulate the conduct of the arbitration?

4.5.1 Does it provide for the confidentiality of arbitration proceedings?

The UAA does not expressly provide for confidentiality of arbitration, although this is typically expected and required in practice.

(CCJA Note: the CCJA Arbitration Rules expressly provide for the confidentiality of arbitration proceedings (Article 14).)

4.5.2 Does it regulate the length of arbitration proceedings?

In the silence of the arbitration agreement, the mission of the arbitral tribunal may not exceed six (6) months from the day on which the last of the arbitrators accepted it (Article 12). Article 1167 of the CCCSAAP refers to the UAA for the length of arbitration proceedings, unless otherwise agreed by the parties.

However, the legal or agreed duration may be extended either by agreement of the parties, or upon request by one of the parties or by the arbitral tribunal to the competent judge in the Member State.

4.5.3 Does it regulate the place where hearings and/or meetings may be held, and can hearings and/or meetings be held remotely, even if a party objects?

The parties are free to agree on the place of arbitration, as well as they are free to decide to hold hearings and/or meetings remotely.

In the absence of such agreements the place of arbitration shall be determined by the arbitral tribunal, which shall pay attention to the circumstances of the case, including the suitability of the place for the parties.

If a party objects for hearings and/or meetings to be held remotely, in the absence of specific applicable provisions, the arbitral tribunal will want to analyse whether the refusal of the objecting party is justified or not and set it is decision by virtue of the *imperium* conferred on it by the parties.

4.5.4 Does it allow for arbitrators to issue interim measures?

Article 14 of the UAA provides the possibility for the arbitral tribunal, upon request of one of the parties, to issue interim or protective measures, to the exclusion of good seizures and judicial guarantees.

(CCJA Note: pursuant to Article 10-1 of the CCJA Arbitration Rules, unless otherwise provided, the arbitration agreement automatically confers jurisdiction on the arbitral tribunal to rule on any provisional or protective application during the course of the arbitral proceedings, to the exclusion of conservatory attachments and judicial guarantees. The awards issued in the context above are subject to requests for immediate exequatur, if exequatur is necessary for the enforcement of these provisional or conservatory measures.)

4.5.5 Does it regulate the arbitrators' right to admit/exclude evidence?

The UAA does not contain any provision relating to the right to admit or exclude evidence by the arbitrator.

(CCJA Note: pursuant to Article 19 of the CCJA Arbitration Rules, the arbitral tribunal is empowered to determine the admissibility of evidence, to take evidence and to assess freely such evidence.)

4.5.6 Does it make it mandatory to hold a hearing?

The UAA does not contain any provision relating to a mandatory hearing.

(CCJA Note: no rule making a hearing mandatory either.)

4.5.7 Does it prescribe principles governing the awarding of interest?

The UAA does not provide for any rules regarding the awarding of interest.

4.5.8 Does it prescribe principles governing the allocation of arbitration costs?

The UAA does not contain any provision relating to the allocation of arbitration costs.

(CCJA Note: Arbitration costs: there is a schedule which indicates the administrative costs and the compensation ranges of the arbitral tribunal according to the issue of the dispute. Provision for arbitration costs: they are due in equal shares by the claimant(s) and the defendant(s). However, they may be paid in full by each of the parties for the main claim and the counterclaim, in the event that the other party fails to meet them (Article 11.2 of the CCJA Arbitration Rules). The provisions thus fixed must be paid in full to the Court before the file is handed over to the arbitrator.)

4.6 Liability

4.6.1 Do arbitrators benefit from immunity from civil liability?

The Beninese arbitration set of rules (ad hoc and institutional arbitrations rules) only deal with the independence, challenges and replacement of arbitrators.

They do not provide for liability of arbitrators and there is no criminal or civil sanction provided for failure to comply with the obligation of independence or failure to disclose circumstances relevant to an appointment for example.

As a result, we understand parties are free to determine whether the arbitrators may be held liable in the exercise of their mission.

While waiting a judicial decision on this matter, the default position should be that arbitrators are protected from civil liability in the normal exercise of their powers, notably because functional immunity is the principle governing the exercise of jurisdictional powers. However, given that no case law exists yet, to the best of our knowledge, arbitrators would be well advised to provide in their contract of arbitration, elective terms of liability or to subscribe insurance against their potential civil lawsuit and liability.

4.6.2 Criminal liability of arbitrators

Arbitrators may be held criminally liable for actions they have committed in the course of arbitration proceedings, provided that they qualify as criminal offenses pursuant to Beninese criminal law. In particular, one article of the Beninese Criminal Code expressly refers to arbitrators, namely Article 345, which relates to corruption. Is sentenced by four (4) years to ten (10) years of imprisonment and a financial penalty equal to three times the value of the "*promises accepted*" ("*promesses agréées*")[5] (between the parties) or things received or requested (without the said fine being less than two hundred thousand (200,000) CFA Francs), anyone, who, being an arbitrator, has solicited or accepted offers or promises or received gifts or presents, or other benefits to rule a decision or give a favorable or unfavorable opinion to a party.

4.6.3 Are there any concerns arising from potential criminal liability for any of the participants in an arbitration proceeding?

The Beninese arbitration set of rules (*ad hoc* and institutional arbitrations rules) do not offer any provisions on this issue.

5. The award

5.1 Can parties waive the requirement for an award to provide reasons?

Pursuant to Article 26 of the UAA, we understand that parties cannot waive this right because the lack of reasons is one of the grounds for an action for annulment of the arbitral award.

(CCJA Note: pursuant to Article 22(2) and Article 29.2 of the CCJA Arbitration Rules, the arbitral award must state the reasons for it. The parties cannot waive this right because the lack of reasons is one of the grounds for an action for annulment of the arbitral award.)

5.2 Can parties waive the right to seek the annulment of the award?

Pursuant to Article 25 of the UAA, the parties may agree to waive the right to have the arbitral award set aside, provided that it is not contrary to international public policy.

(CCJA Note: pursuant to Article 29.2 of the CCJA Arbitration Rules, the parties may agree to waive the right to have the arbitral award set aside, provided that it is not contrary to international public policy.)

5.3 What atypical mandatory requirements apply to the rendering of a valid award rendered at a seat in the jurisdiction?

There are no atypical mandatory requirements applying to the rendering of a valid award rendered in the jurisdiction.

5.4 Is it possible to appeal an award (as opposed to seeking its annulment)?

The Beninese arbitration set of rules (*i.e. ad hoc* and institutional arbitration rules) do not provide for the possibility to appeal an award.

5.5 What procedures exist for the recognition and enforcement of awards, what time-limits apply and is there a distinction to be made between local and foreign awards?

There is no distinction to be made between local and foreign awards.

[5] Terms used in the Beninese Criminal Code.

Pursuant to Article 30 of the UAA, the awards are subject to enforcement ("*exécution forcée*") only by virtue of an exequatur decision issued by the competent court in the State Party. Pursuant to Article 1168 of the CCCSAAP, unless otherwise provided, requests for exequatur of arbitral awards are brought before the President of the court where the execution of the award will be undertaken. In practice, commercial arbitration issues are brought before the President of the Commercial Court.

In addition, pursuant to Article 31 of the UAA, the proceeding is as follows:

- the recognition and exequatur of the arbitral award presume that the party relying on it establishes the existence of the arbitral award. The existence of the arbitral award shall be established by the production of its original award accompanied by the arbitration agreement or copies of these documents meeting the conditions required to establish their authenticity;
- the recognition and the exequatur shall be denied if the award is manifestly contrary to an international public policy rule;
- the state court, seized by a request for recognition or exequatur, shall render a decision within a period not exceeding fifteen (15) days from the date of its seizure. If at the expiry of this period, the court has not rendered its decision, the exequatur is deemed to have been granted;
- when the exequatur has been granted, or in case of silence from the court seized by the request for exequatur within the fifteen (15) day period as mentioned above, the most diligent party may seize the Registrar-in-Chief or the competent authority of the Member State in order to fix the executory formula upon the original of the award. The exequatur procedure of exequatur is not contradictory.

(CCJA Note: pursuant to Article 30 of the CCJA Arbitration Rules, the award is enforceable as soon as it is rendered. The exequatur shall be requested by application to the President of the CCJA, and a copy addressed to the Secretary General. The exequatur shall be granted within 15 days of the filing of the request, by an ordinance of the President of the CCJA or the judge delegated for that purpose and shall make the award enforceable in the States Parties. This is a default proceeding.)

5.6 Does the introduction of annulment or appeal proceedings automatically suspend the exercise of the right to enforce an award?

Pursuant to Article 28 of the UAA, except where the provisional enforcement of the award has been ordered by the arbitral tribunal, the exercise of the annulment action shall stay enforcement of the award until the competent court in the Member State, or the CCJA, as the case may be, has ruled on the application for annulment.

5.7 When a foreign award has been annulled at its seat, does such annulment preclude the award from being enforced in the jurisdiction?

The question of whether Beninese courts are bound by the foreign court's decision to set the award aside is not finally settled to the best of our knowledge.

To draw a parallel with the enforcement of court decisions rendered by foreign State courts, pursuant to Article 1160 of the CCCSAAP, court decisions have the force of *res judicata* in the Republic of Benin if the following conditions are met:

1) the dispute is connected in a distinctive way to the State whose judge was seized and the choice of jurisdiction was not fraudulent;
2) the decision is, according to the law of State where it was made, passed into *res judicata* and enforceable;

3) the parties have been duly summoned, or regularly represented or declared default;

4) the decision does not contain anything contrary to the public policy of the Republic of Benin.

Article 1161 of the CCCSAAP specifies that the court decisions mentioned above may not give place to any forced execution in the Republic of Benin until it has been declared enforceable in the Republic of Benin.

Considering an award that has been annulled at its seat, courts may apply the same reasoning as for foreign courts decisions, since the same guiding principles mentioned above can be applied in arbitration.

Furthermore, Benin has signed the New York Convention. Its Article V(1)(e) states "*Recognition and enforcement of the award may be refused, at the request of the party against whom it is invoked, only if that party furnishes to the competent authority where the recognition and enforcement is sought, proof that: (…) 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".* Beninese courts may also apply this provision to refuse enforcement of an award annulled at its seat, but it is not a mandatory clause.

Nevertheless, in practice, due to the influence of French rules in Benin because of the common colonial past of these two countries, we cannot exclude that Beninese courts would follow the French courts position, for which the annulment of the arbitral award at the seat of arbitration may neither be a ground nor even a significant factor to prevent such award from being recognised or enforced in France, provided that such enforcement is not contrary to the French definition of international public policy. Indeed, in any case, recognition and exequatur are refused if the award is clearly contrary to an international public policy rule (Article 31, paragraph 4 of the UAA).

5.8 Are foreign awards readily enforceable in practice?

In accordance with the Article 30 of the UAA, awards are enforceable in the Republic of Benin only after having received the exequatur by a decision rendered by the President of the court of the place where the enforcement is to be carried out (in practice, commercial arbitration issues are brought before the President of the Commercial Court). It seems there is no distinction between foreign and local awards. In practice, we notice the current President of the Commercial Court of Cotonou is aware of arbitration issues and would not refuse to give exequatur to a foreign award if the award fulfils all the conditions required by the applicable provisions such as the respect of the public order of the Republic of Benin.

(CCJA Note: it seems there is no distinction between foreign and local awards. Pursuant to Article 30 of the CCJA Arbitration Rules, the award is enforceable as soon as it is pronounced. A motion is addressed to the President of the CCJA, with a copy to the Secretary General, requesting exequatur. It shall be granted, within fifteen (15) days of the filing of the application, by an ordinance of the President of the Court or the judge delegated for that purpose and shall make the award enforceable in the States Parties. This is a default proceeding. In practice, to the best of our knowledge, there have not yet been any cases in this regard.)

6. Funding arrangements

6.1 Contingency or alternative fee arrangements

Under the Beninese Bar rules, contingency fee arrangements where the entirety of attorney's remuneration is dependent on the outcome of the case (*quota litis* pacts) are prohibited. Nevertheless, part of the attorney's remuneration can be dependent on the outcome of the case.

6.2 Third-party funding arrangements

There are no specific legal provisions governing third-party funding in *ad hoc* and institutional arbitration. Some stakeholders wanted to take advantage of the reform of the UAA and of the CCJA Arbitration Rules to insert provisions on this subject, but this proposal was not retained.

7. Arbitration and technology

7.1 Is the validity of blockchain-based evidence recognised?

The validity of blockchain-based evidence is not expressly recognised nor prohibited.

7.2 Where an arbitration agreement and/or award is recorded on a blockchain, is it recognised as valid?

Pursuant to Articles 19 (paragraph 1) and 21 (paragraph 1) of the UAA, (i) the arbitration award is rendered in the procedure and according to the agreed forms by the parties, but the (ii) the award has to be signed by the arbitrator(s).

Contractual freedom makes it possible to issue an award in the form agreed by the parties and at first sight may leave a room to envisage the use of blockchain technology, but the need of the signature of the award by the arbitrators remains.

Furthermore, as legal framework in sub-Saharan Africa, and particularly in Benin, is not yet developed on blockchain, this point is not expressly addressed. Another point, as the practice still favours culture of paper documents, although the slight tendency towards digitization in the applicable procedural provisions, we assume blockchain technology would be very difficult to be accepted.

As a consequence, we assume an arbitration agreement recorded on a blockchain would not be inclined to be considered as valid.

Nevertheless, to the best of our knowledge, the case has not yet arisen in arbitration under Republic of Benin arbitration rules.

7.3 Would a court consider a blockchain arbitration agreement and/or award as originals for the purpose of recognition and enforcement?

As regards the specific issue of the recognition and enforcement of an award rendered under a legal framework which recognises blockchain technology, parties may refer to the UAA dispositions: the use or the absence of use of the blockchain technology is not part of the required conditions.

However, as legal framework in sub-Saharan Africa, and particularly in Benin, is not yet developed on blockchain, this point is not expressly addressed. Another point, as the practice still favours culture of paper documents, although the slight tendency towards digitization in the applicable procedural provisions, we assume blockchain technology would be very difficult to be accepted by the Beninese courts.

As a consequence, we assume a Beninese court would not be inclined to consider a blockchain arbitration agreement and/or award (including (i) an award rendered under OHADA arbitration (UAA or CCJA Arbitration Rules) which has to be signed by the arbitrators, or (ii) an award rendered under another legal framework which recognises blockchain technology) as originals for the purposes of recognition and enforcement.

Nevertheless, to the best of our knowledge, the case has not yet arisen in arbitration under Republic of Benin arbitration rules.

7.4 Would a court consider an award that has been electronically signed (by inserting the image of a signature) or more securely digitally signed (by using encrypted electronic keys authenticated by a third-party certificate) as an original for the purposes of recognition and enforcement?

Awards electronically signed: neither the UAA nor the CCJA Arbitration rules contain provisions about the validity of electronic signature in awards. If the parties expressly provide for it, the court might be more likely to consider it. If the parties have not mentioned anything about the electronic signature, the practice still

favours original signatures, although there is a slight tendency towards digitization in the applicable procedural provisions.

Awards more securely digitally signed: same answer.

8. Is there likely to be any significant reform of the arbitration law in the near future?

It seems unlikely that there will be any significant reform in the UAA in the next couple of years as it has already been subject to revisions in 2017. In addition, the procedure for amending a Uniform Act is very cumbersome, and the adoption of a new text will require the consent of all OHADA Member States (which are currently seventeen (17)).

(CCJA Note: it seems unlikely that there will be any significant reform in the CCJA Arbitration Rules in the next couple of years as it has already been subject to revisions in 2017. In addition, the procedure for amending the CCJA Arbitration Rules is also very cumbersome, and the adoption of a new text will require the consent of all OHADA Member States (which are currently seventeen (17).)

9. Compatibility of the Delos Rules with local arbitration law

The application of Delos Rules may be considered. They will be then necessarily subject to those of the UAA provisions which are mandatory.

10. Further reading

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ARBITRATION INFRASTRUCTURE AT THE JURISDICTION

Leading national, regional and international arbitral institutions based out of the jurisdiction, *i.e* with offices and a case team?	None based out of the jurisdiction.
Main arbitration hearing facilities for in-person hearings?	www.ccibenin.org/service-camec.
Main reprographics facilities in reasonable proximity to the above main arbitration hearing facilities?	No significant data available, apart from conference rooms in hotels.
Leading local providers of court reporting services, and regional or international providers with offices in the jurisdiction?	No significant data available.
Leading local interpreters for simultaneous interpretation between English and the local language, if it is not English?	No significant data available.
Other leading arbitral bodies with offices in the jurisdiction?	www.ccibenin.org/service-camec. www.cabinetvignon.net.