

# ANGOLA

CHAPTER PREPARED BY

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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        | ● |

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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

Angola has one of the largest and fastest-growing economies in Africa, and in recent years it has experienced a remarkable increase in international transactions and foreign investment. Ergo, the country has been undertaking important developments aiming at modernizing its legal system so that it may echo contemporary practice and facilitate international arbitration.

In particular, the openness displayed towards arbitration is clearly evidenced in numerous sectorial regimes (such as the ones ruling petroleum activities and private investment), which foresee arbitration as the mechanism for resolution of the disputes that may arise under their context.

In what concerns its default legal framework, and despite the fact that a revision may already be due, Angola has a pro-arbitration law (largely inspired by the former Portuguese legal regime and the UNCITRAL Model Law), that – in line with most modern arbitration laws – embraces well-established principles and rules of international arbitration.

In 2017, Angola took an important step towards becoming an even more arbitration-friendly jurisdiction by acceding to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the “New York Convention”), which represented a statement that the country is eager to stand by international canons when dealing with foreign arbitral awards, which also accords a certain degree of comfort to foreign investors.

In essence, from the point of view of its legal framework, the Angolan law is fit to allow domestic or international arbitration proceedings in accordance with modern standards, and the local legal community has been showing a growing interest in the use of alternative means of resolution of disputes. Nonetheless, the arbitral practice in Angola is still at a very initial phase; the lack of publicly available jurisprudence and the slow pace of State courts still warrant some caution.

Key places of arbitration in the jurisdiction?	Luanda.
Civil law/common law environment? (if mixed or other, specify)	Civil law environment.
Confidentiality of arbitrations?	The Angolan Voluntary Arbitration Law (“ <b>AAL</b> ”) does not include any rules regarding the confidentiality of arbitral proceedings. Confidentiality clauses may be included in arbitration agreements with a view to avoiding the disclosure of details of the dispute, including the parties and the arbitrators. Such clauses, however, do not have the effect of preventing a party from relying on an award to protect its interests or enforce its rights. Nor are they binding on third parties.
Requirement to retain (local) counsel?	Pursuant to Article 19 of the AAL, parties may be represented by themselves (their legal representatives/officers) or by a lawyer. However, the Angolan law setting forth the regime applicable to the legal profession prescribes that the representation of parties before all courts, including arbitral tribunals, is deemed an act reserved to lawyers admitted to the Angolan Bar Association. Thus, it has been understood that only such lawyers – admitted to the Angolan Bar – may act as counsel for parties in the context of

	domestic arbitrations and international arbitrations seated in Angola.
Ability to present party employee witness testimony?	Article 21 of the AAL provides that all kinds of evidence that are legally admitted by general civil law in Angola may be used in arbitration (either by request of the parties or by the initiative of the tribunal). However, the AAL is silent on a person's ability to act as a witness as it is regarding the admissibility of written statements. Consequently, these matters are subject to party autonomy and, failing an express choice, to the tribunal's determination.
Ability to hold meetings and/or hearings outside of the seat and/or remotely?	Yes. Pursuant to Article 17(2) of the AAL, the arbitral tribunal may meet at any place it deems appropriate to hold hearings, unless otherwise agreed by the parties.
Availability of interest as a remedy?	The AAL does not set forth specific rules regarding the award of interest, since this is a substantive matter under Angolan law.
Ability to claim for reasonable costs incurred for the arbitration?	Yes. Parties may claim before the arbitral tribunal for costs incurred in the scope of the arbitration. Pursuant to Article 27(5) of the AAL, the award must contain a decision on the costs of the proceedings and their allocation among the parties.
Restrictions regarding contingency fee arrangements and/or third-party funding?	The Code of Ethics of the Angolan Bar Association forbids the use of contingency fee arrangements where the attorney's remuneration is dependent on the outcome of the case. Third-party funding is not regulated under Angolan law, and there are no specific restrictions to its use.
Party to the New York Convention?	Yes. The Angolan National Assembly approved the accession of the country to the New York Convention by means of resolution No. 38/2016. The resolution was approved on 16 June 2016 and published in the Official Gazette on 12 August 2016. The Convention was then ratified by the President of the Republic of Angola through a letter of accession dated 5 December 2016, published in the Official Gazette on 19 December 2016 and such instrument was deposited with the Secretary-General of the United Nations on 6 March 2017. The New York Convention came into force in Angola on 4 June 2017, ninety (90) days after the referred deposit, Angola having become the 157th Contracting State. Under the principle of reciprocity set forth in Article I.(3), the Republic of Angola made a reservation pursuant to which the Convention will only apply to the recognition and enforcement of awards issued in the territory of another Contracting State.
Party to the ICSID Convention?	Angola is not yet party to the ICSID Convention. However, in April 2020, the Angolan Council of Ministers approved the accession to this Convention, with the ratification being expected soon.
Compatibility with the Delos Rules?	The Delos Rules are compatible with the AAL, which, in line with the UNCITRAL Model Law, allows the parties to agree on the applicable procedural rules (directly or by reference to an institution to conduct the arbitration). Moreover, the Delos Rules impose the set

	of major principles that, under the AAL, must be observed in any proceedings to which the latter applies.
Default time-limitation period for civil actions (including contractual)?	<p>The general statute of limitation period in contractual issues is of 20 years, according to Article 309 of the Angolan Civil Code. The Angolan Civil Code also foresees some special periods, as follows:</p> <ul style="list-style-type: none"> <li>(i) 5 years (Article 310 of the Angolan Civil Code), when the debt originates from: <ul style="list-style-type: none"> <li>i. Perpetual or lifelong rent annuities;</li> <li>ii. Rents payable by the tenant, even if paid all at the same time;</li> <li>iii. Conventional or legal interest, albeit gross, and dividends of corporations;</li> <li>iv. Shares of amortization of capital payable with interest;</li> <li>v. Overdue alimony;</li> <li>vi. Any other periodically renewable benefits.</li> </ul> </li> <li>(ii) 6 months (Article 316 of the Angolan Civil Code), regarding credits arising from food, beverages and accommodation due to establishments providing for the same (such as hotels, restaurants, etc.).</li> <li>(iii) 2 years (Article 317 of the Angolan Civil Code), when the debt originates from, <i>inter alia</i>, services provided by liberal professionals and the expenses incurred by the latter.</li> </ul> <p>Concerning tort liability, the general rule is that the aggrieved party must bring any action within three years from the moment said party became aware of his/her right to be compensated, irrespective of his/her knowledge of the identity of the agent or the exact amount of the damage suffered. In any event, regardless of the time upon which the aggrieved party became aware of his/her right to be compensated, there is a 20-year absolute time limit to bring an action for damages suffered, starting from the date upon which the damage took place (as per Article 498 of the Angolan Civil Code). In cases where the actions are considered a crime, the statute of limitation of civil liability (if shorter) will be extended in accordance with the period applicable to the crime in question.</p>
Other key points to note?	ϕ
World Bank, <i>Enforcing Contracts: Doing Business</i> score for 2020, if available?	28.1
World Justice Project, <i>Rule of Law Index: Civil Justice</i> score for 2020, if available?	0.44

## ARBITRATION PRACTITIONER SUMMARY

The default legal framework for arbitration to be conducted in Angola is basically established in Law 16/03, of 25 July 2003, the Voluntary Arbitration Law (“**AAL**”), presently in force, and in Decree 4/06, of 27 February 2006. The latter act sets forth the procedures for authorising the setting-up of arbitral institutions.

In addition, Articles 1525 to 1528 of the Angolan Code of Civil Procedure regulate compulsory arbitration. This regime applies whenever there is a statutory obligation, rather than the option of submitting a dispute to arbitration.

Other statutes and laws refer to arbitration as a legitimate mechanism for resolving specific disputes and providing for specific features applicable to such disputes.

Angolan Private Investment Framework Law (Law 10/2018, of 26 June 2018), for instance, expressly provides in Article 46(4) that disputes arising from private investment contracts may be referred to arbitration. While this statute no longer provides, like its predecessor, that Angolan law will necessarily apply and the arbitration must take place in Angola, it does not apply to investments made prior to its entry into force. Moreover, in practical terms, it is rather doubtful that any Angolan authority would be prepared and willing to have any contract governed by foreign law.

The Petroleum Activities Law (Law 10/04, of 12 November 2004, as amended) provides for arbitration in relation to disputes concerning petroleum activities, which may arise between the Ministry for the petroleum sector and the licensees, or between the National Concessionaire and its associates (Article 89(1)). Such arbitrations must be submitted to the rules set forth in the respective exploration and production licenses and agreements, take place in Angola, be conducted in Portuguese language, and have Angolan law as the applicable substantive law (Articles 89(2) and 89(3)).

Other relevant sectorial legal regimes that also mention the possibility of resorting to arbitration include the following:

- i. the Securities Code, approved by Law No. 22/15 of 31 August 2015, in its articles 131 and 223;
- ii. the Legal Regime of Compensatory Measures, approved by Law No. 20/16 of 29 December 2016, in its article 26; and
- iii. the Law on Public-Private Partnerships, approved by Law No. 11/19 of 14 May 2019, in its article 20.

Date of arbitration law?	The AAL currently in force was approved in 2003.
UNCITRAL Model Law? If so, any key changes thereto?	The AAL is broadly influenced by the 1985 version of the UNCITRAL Model Law. The most relevant differences are detailed below.
Availability of specialised courts or judges at the key seat(s) in the jurisdiction for handling arbitration-related matters?	There is no specific judicial body devoted to handling arbitration-related matters in Angola.
Availability of <i>ex parte</i> pre-arbitration interim measures?	Pursuant to Article 22(2) of the AAL, the parties may resort to state courts directly, either before the commencement of arbitration or after the tribunal has been constituted, which may grant interim measures in respect of the subject-matter of the dispute (without being deemed in breach of the arbitration agreement). These

	<p>measures may be <i>ex parte</i> or not, depending on the specific measure in question or the specific circumstances of the case.</p> <p>In any case, if and when the court grants an interim measure without hearing the respondent, the latter will be allowed to present its defence subsequently.</p>
Courts' attitude towards the competence-competence principle?	<p>The competence-competence principle is accepted in Angola. Article 31 of the AAL expressly sets forth that an arbitral tribunal may rule on its own jurisdiction, even if, to this end, it is necessary to review both the defects of the arbitration agreement or the contract in which such agreement is comprised and the applicability of such agreement to the dispute.</p> <p>Although the AAL does not contain a specific reference to the negative effect of the principle of competence-competence, the same may be inferred from Article 31, which expressly foresees the positive effect of such principle.</p>
May an arbitral tribunal render a ruling on jurisdiction (or other issues) with reasons to follow in a subsequent award?	<p>The AAL does not distinguish between different types of awards, nor does it set forth any specific rules regarding the contents of rulings on jurisdiction. As a general rule, unless the parties agree otherwise, all awards need to immediately set out their grounds.</p>
Grounds for annulment of awards additional to those based on the criteria for the recognition and enforcement of awards under the New York Convention?	<p>Parties may request the annulment of awards by means of a set aside application under Article 34 of the AAL. Pursuant to this provision, the arbitral award may be set-aside on any of the following grounds:</p> <ol style="list-style-type: none"> <li>i. the dispute is not capable of resolution by arbitration;</li> <li>ii. it was rendered by a tribunal lacking jurisdiction;</li> <li>iii. the arbitration agreement has lapsed;</li> <li>iv. it was rendered by an improperly constituted tribunal;</li> <li>v. it fails to contain its grounds;</li> <li>vi. a breach of the principles of fair and equitable treatment, adversarial process, and hearing of the parties, set forth in Article 18 of the AAL, occurred and such breach had a decisive influence on the resolution of the dispute;</li> <li>vii. the tribunal has considered matters which it could not consider or failed to consider matters which it should have considered;</li> <li>viii. when ruling on the basis of equity or according to usages and customs, the Tribunal has not observed the principles of public policy of the Angolan legal system.</li> </ol>
Do annulment proceedings typically suspend enforcement proceedings?	<p>Yes. Pursuant to Article 35(3) of the AAL, the rules on interlocutory appeals (<i>recursos de agravo</i>) set forth in the Angolan Code of Civil Procedure are subsidiarily applicable to the annulment proceedings in all matters that the AAL does not explicitly cover. Therefore, it results from the application of such rules - <i>i.e.</i>, of Articles 740(1) and 734(1) of the Angolan Code of Civil Procedure (applicable by cross-reference to Article 35(3) of the AAL) - that the</p>

	<p>filing of annulment proceedings automatically suspends the right to enforce a final award which decides on the merits of the case.</p>
<p>Courts' attitude towards the recognition and enforcement of foreign awards annulled at the seat of the arbitration?</p>	<p>Angolan law has a pro-arbitration carriage as regards the enforcement of arbitration awards. Nevertheless, as far as we are aware, Angolan courts have never had the opportunity to address whether an award that has been annulled at the seat may be recognized and enforced in Angola.</p>
<p>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?</p>	<p>Article 17(2) of the AAL sets forth that, unless otherwise agreed by the parties, the Arbitral Tribunal may hold meetings at any place deemed appropriate for consultation among its members or carrying out any procedural acts. This provision opens doors to the possibility of holding hearings remotely. However, such possibility is dependent on the non-existence of the parties' agreement on the contrary. Hence, if an arbitral tribunal were to order a hearing to be conducted remotely despite a party's objection, depending on the specific circumstances, such an order could eventually be deemed as a violation of due process and possibly justify the setting aside of the award under the terms of Article 34(1) c) of the AAL.</p>
<p>Key points to note in relation to arbitration with and enforcement of awards against public bodies at the jurisdiction?</p>	<p>Pursuant to Article 1(3) of the AAL, disputes concerning the State and state-owned entities may only be referred to arbitration if (i) the subject matter thereof refers to private law relationships, (ii) it concerns administrative contracts, or (iii) such entities are so authorized by law.</p> <p>It should also be noted that there are certain limits under Angolan law as regards enforceability over assets assigned to the public domain, which may render the enforcement of the award more difficult.</p>
<p>Is the validity of blockchain-based evidence recognised?</p>	<p>Although the AAL does not explicitly recognize the validity of blockchain-based evidence, Article 21 of the AAL provides that all kinds of evidence legally admitted by general civil law in Angola may be used in arbitration (either by request of the parties or by the initiative of the tribunal). Thus, theoretically, there is no objection to presenting electronic evidence (as blockchain evidence, for instance), which is generally accepted in civil proceedings in Angola.</p>
<p>Where an arbitration agreement and/or award is recorded on a blockchain, is it recognised as valid?</p>	<p>The arbitration agreement governed by Angolan law must be in writing. This formal requirement is deemed fulfilled provided the arbitration agreement is documented either in a written instrument signed by the parties or in any correspondence exchanged between them of which written proof exists, namely means of telecommunication. Hence, it is possible to sustain that an arbitration agreement recorded on a blockchain could be recognised as valid under the AAL.</p> <p>Nonetheless, it should be noted that the AAL foresees that the arbitrators must sign all arbitral awards issued within the disputes to which the AAL applies. In this regard, although a law on Electronic Communications and Information Society Services (Law</p>

	<p>No. 23/11, of 20 June) has already been enacted, until this date, the regulation aimed at defining the terms related to electronic signatures and their equivalence to autograph signatures has not yet been published. This may constitute a reason for difficulties to be raised in what regards the validity of awards recorded on a blockchain.</p>
<p>Would a court consider a blockchain arbitration agreement and/or award as originals for the purposes of recognition and enforcement?</p>	<p>Although this issue has never been assessed by the national courts, to the best of our knowledge, a blockchain arbitration agreement and/or award would most likely not be considered as a duly authenticated original for the purposes of recognition and enforcement in Angola.</p>
<p>Other key points to note?</p>	<p>∅</p>



## JURISDICTION DETAILED ANALYSIS

### 1. The legal framework of the jurisdiction

#### 1.1 Is the arbitration law based on the UNCITRAL Model law? 1985 or 2006 version?

The current Angolan Voluntary Arbitration Law (“AAL”) is mainly based on the old Portuguese Arbitration Law (Law 31/1986 of 29 August) and largely influenced by the 1985 version of the UNCITRAL Model Law.

The main differences between the AAL and the UNCITRAL Model Law are the following:

- i. The AAL does not contain provisions on definitions, and, contrary to the UNCITRAL Model Law, it does not set forth rules on interpretation;
- ii. Unlike the UNCITRAL Model Law, the AAL is not limited to international commercial arbitration, but also extends to domestic arbitration;
- iii. The AAL adopts the disposable rights criterion in regard to arbitrability;
- iv. The AAL conditions the arbitration to the existence of a written agreement, sanctioning the lack of said formal requirement with the invalidity of the arbitration agreement;
- v. The AAL sets forth specific rules as regards the representation of the parties, specifying that parties may be represented by themselves or by legal attorneys;
- vi. Contrary to the UNCITRAL Model Law, the AAL sets forth that the arbitral tribunal should be formed by an odd number of arbitrators. Failing determination by the parties, the tribunal shall be constituted by three arbitrators;
- vii. The AAL does not address the issue of preliminary decisions, nor does it distinguish between different types of awards;
- viii. The AAL permits, as a general rule, the appeal on the merits in domestic arbitrations, unless the parties have agreed otherwise.;
- ix. Under the AAL, the submission agreement will elapse and the arbitration agreement will cease to have effect regarding an ongoing dispute if the final award is not rendered within the applicable time limit;<sup>1</sup>
- x. The AAL does not set forth any rules regarding the enforcement of foreign awards. The requirements for obtaining the recognition and enforcement of foreign arbitral awards in Angola, as well as the procedure to follow, are governed by Articles 1094 *et seq.* of the Angolan Code of Civil Procedure. Where the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards applies, the grounds set forth therein shall be considered.

#### 1.2 When was the arbitration law last revised?

The AAL currently in force was approved in 2003 and has not been revised since.

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<sup>1</sup> Unless otherwise agreed by the parties (in the arbitration agreement – including reference to any institutional rules – or subsequently by written agreement until the first arbitrator’s acceptance), the time limit to render the award shall be six months from the date of acceptance by the last arbitrator to be appointed (Article 25(1) of the AAL). Pursuant to Article 25(2) of the AAL, the parties may, by written agreement, extend the agreed time limit or, in the absence of agreement, the default time limit set forth in the AAL. In light of this provision, it may be considered that the power of the arbitral tribunal to extend such limit can be agreed by the parties in the “terms of reference” (in principle, as long as there is a written agreement between the parties foreseeing such possibility, no obstacles shall arise). In any case, it is important to highlight that, pursuant to Article 25(3) of the AAL, arbitrators who, with no justified grounds, prevent the arbitral award from being rendered within the agreed/default time limit shall, under the law, be liable for any losses caused.

## 2. The arbitration agreement

### 2.1 How do the courts in the jurisdiction determine the law governing the arbitration agreement?

The AAL is silent on this matter. Indeed, there is no specific conflict rule setting forth the criteria that should be followed in order to determine the law applicable to the arbitration agreement. Moreover, as far as we are aware, the issue has never been assessed by Angolan courts.

Thus, the answer to this question must be found by comparison to similar legal systems.

In this regard, in Portugal, during the time Law 31/1986 of 29 August was in force – *i.e.*, said country's old Voluntary Arbitration Law (a statute which was also silent on the law governing the arbitration agreements and was the main source of the ALL) –, some commentators considered that, in cases where the parties to a contract had failed to express a choice in respect of the law applicable to the arbitration agreement contained therein, the same should be governed by the law of the State of the seat of arbitration. However, most courts and commentators defended that, in such cases, the arbitration agreement should be governed by the law applicable to the contract in which the arbitration clause was contained (to be assessed under the rules of private international law).<sup>2</sup>

As previously mentioned, to the best of our knowledge, this issue has never been assessed by Angolan courts. Nonetheless, considering the close proximity between the Angolan and Portuguese legal systems (as well as the fact that the AAL is largely based on the old Portuguese Voluntary Arbitration Law), the same view should be taken.

### 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?

If parties fail to determine where the arbitration should take place (be seated), the choice will be left to the tribunal's discretion.<sup>3</sup> If the arbitration is conducted under any institutional rules, the place of arbitration will be determined according to such rules.

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

Yes. The AAL expressly adopts the doctrine of separability in its Article 4(2), by stating that the nullity of a contract that includes an arbitration agreement will not entail the nullity of the arbitration agreement.

Article 4(2) of the AAL incorporates, however, an important limitation to the principle of separability. It allows an arbitration agreement to be deemed null and void whenever there is evidence that the contract considered null and void would not have been concluded without said arbitration agreement.

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

The arbitration agreement must be in writing.<sup>4</sup> This formal requirement is deemed fulfilled provided the arbitration agreement is documented either in a written instrument signed by the parties or in correspondence exchanged between the parties of which there is evidence.<sup>5</sup>

It should further be noted that the AAL allows arbitration agreements to be incorporated in a contractual document that is not signed by both parties, simply by reference to general terms and conditions or another

<sup>2</sup> LEBRE DE FREITAS, "Algumas implicações da natureza da convenção de arbitragem", in *Estudos em Homenagem à Professora Isabel de Magalhães Collaço*, vol. II (2002) 639; and LUÍS DE LIMA PINHEIRO, "Convenção de arbitragem (aspectos internos e transnacionais)", ROA 64 (2004) 125-200 (in *Homenagem ao Prof. Doutor André Gonçalves Pereira*, 1095-1153, Coimbra, 2006).

<sup>3</sup> Article 17(1) of the AAL.

<sup>4</sup> Article 3(1) of the AAL.

<sup>5</sup> Article 3(2) of the AAL.

contract. Pursuant to Article 3(2) of the AAL, the written form requirement is deemed to have been met whenever the written instrument or correspondence actually contains the arbitration agreement or incorporates the arbitration agreement by reference to another written document evidencing the same.

Under Angolan law, the validity of such clauses is governed by general principles of contract law and may specifically be governed by the Standard Contractual Clauses Law (Law 4/03, of 18 February 2003 or “SCCL”), which generally applies to contracts where there has been no prior individual negotiation. As per the SCCL, only clauses accepted by the adhering party, and the contents of which have actually been communicated and explained to such party, will be considered as enforceable.

## **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 AAL does not contain any provision on the possibility of an arbitration agreement being binding on a third party (*i.e.*, an entity not party to such an agreement).

As per Article 406(2) of the Angolan Civil Code, which embodies the principle of privity of contracts and applies to arbitration agreements in the absence of a specific provision to the contrary, contracts only have effects between the parties. Unless a third party subsequently, validly, and effectively adheres to the arbitration agreement, claims against such a third party submitted to an arbitral tribunal will not be admissible. Nor will it be admissible to invoke an arbitration agreement against a third party that has lodged a claim before a judicial court if such a third party has not accepted to be bound by the said arbitration agreement.

However, there are exceptions to this principle, however. Pursuant to Article 5(2) of the AAL, unless the parties agree otherwise, an arbitration agreement will not lapse and the proceedings before the arbitral tribunal will not be terminated by reason of death or extinction of the parties. The *locus standi* (*i.e.*, the standing to sue or to be sued) of a party in the arbitration may be passed onto its successors.

Under Angolan civil law, rights or obligations under a main contract may be transferred to third parties, unless otherwise agreed. When applied to arbitration agreements, this results in an automatic transfer to the transferee of the standing of the transferor in the arbitration agreement. This is the case, for instance, of the assignment of an entire contract, or specific rights or interests. Although these provisions do not refer explicitly to the arbitration agreement, commentators have sustained that the arbitration agreement is an accessory part of the assigned substantive right thus being automatically transferred to the assignee, pursuant to Article 582 of the Angolan Civil Code. Exceptions to the automatic transfer occur when parties have excluded the assignment of the arbitration agreement or entered into the arbitration agreement on an *intuitus personae* basis.

Automatic transfers of arbitration agreements may further occur in cases of legal or contractual subrogation. Subrogation exists where a third party replaces a contracting party – e.g., by paying a debt of said party, for instance pursuant to a guarantee. In these cases, the third party will be bound by the arbitration agreement and allowed to invoke it before the counterpart.<sup>6</sup>

## **2.6 Are there restrictions to arbitrability? In the affirmative:**

Angolan Law includes provisions on both subjective and objective arbitrability.

<sup>6</sup> Article 582 of the Civil Code (applicable to subrogation cases by cross-reference to Article 594 of the same statute), sets forth that, provided that there is no convention of the parties to the contrary, the assignment of a credit/obligation implies the transmission, to the transferee, of the guarantees and other accessories of the transmitted credit/obligation which are not inseparable from the person of the transferor. It is widely considered by doctrine and jurisprudence that an arbitration agreement shall be considered for this purpose as one of the elements of the credit/obligation. As such, in light of the abovementioned provision, in cases where a third party replaces a contracting party, the former shall be subrogated to the rights resulting therefrom, unless there is a prior agreement to the contrary between the creditor and the debtor (about this topic: MARIANA FRANÇA GOUVEIA, “Curso de Resolução Alternativa de Litígios: Negociação. Mediação. Arbitragem. Julgados de Paz”, 3rd Edition, Almedina, 2014, p. 157).

As a general rule, arbitration agreements may be concluded between any natural or legal persons who have the capacity to enter into a valid contract and may refer to any dispute relating to disposable rights which are not exclusively submitted by law to a judicial court.<sup>7</sup>

However, there are specific restrictions to arbitrability both related to specific domains of the law and to specific parties, as outlined below.

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

Angolan law adopts the disposable rights criterion with regard to objective arbitrability; hence, as a general rule, any dispute relating to disposable rights which are not exclusively submitted by law to a judicial court or compulsory arbitration may be referred to voluntary arbitration.

In light of this criterion, most courts and commentators have considered the following:

- Matters such as nationality, marital status and parenthood, concerning clear non-disposable rights, may not be resolved through arbitration.
- Internal corporate disputes may, in principle, be referred to arbitration. Nonetheless, there are cases where specific decisions on internal corporate disputes may affect all shareholders and/or third parties. In such cases, difficulties may be raised due to the fact that arbitration only binds the ones who participate in the same. Ergo, disputes concerning the validity of companies' resolutions (related with overall interests of the companies or which may affect the rights of third parties) should only be arbitrable provided that specific requirements aimed at protecting the will of all affected parties are met.<sup>8</sup>
- Bankruptcy matters are typically non-arbitrable.
- In what regards industrial property issues, all disputes concerning solely economic rights may be arbitrated. However, disputes on moral rights – namely on the validity of industrial property titles subject to registration – cannot be arbitrated.<sup>9</sup>
- Disputes on property rental may be resolved through arbitration. However, issues related with the eviction of the tenant from the property and the termination of the rental contract by the landlord cannot be arbitrated.
- Also excluded from arbitration are disputes involving tax and criminal law cases, which must necessarily be submitted to the courts of law.

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

The general rule is that natural or legal persons may enter into arbitration agreements, minors and persons with diminished capacity being the only exception.<sup>10</sup>

Notwithstanding, pursuant to Article 1(3) of the AAL, disputes concerning the State and state-owned entities may only be referred to arbitration if (i) the subject matter thereof refers to private law relationships, (ii) it concerns administrative contracts, or (iii) such entities are so authorized by law.

On 15 May 2006, the Angolan Government enacted Resolution 34/06 whereby it declares the commitment of the Angolan Government to strengthen State and state entities engagement in arbitration by proposing the inclusion of alternative dispute resolution mechanisms in the contracts between the State or state entities and private parties, and in contracts entered into between state entities.

<sup>7</sup> Article 1(1) of the AAL.

<sup>8</sup> ANTÓNIO SAMPAIO CAMELO, "Arbitragem de Litígios Societários", in Revista Internacional de Arbitragem e Conciliação, Ano IV-2011, p. 7 et seq.

<sup>9</sup> Article 66(1) of Law 3/92 of 28 February expressly mentions that the nullity of a patent, deposit of a model or design, trademark registration, reward, name or insignia may only be declared by courts of law.

<sup>10</sup> Article 1(2) of the AAL.

### **3. Intervention of domestic courts**

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

##### **3.1.1 If the place of the arbitration is inside of the jurisdiction?**

Pursuant to Articles 493(2) and 494(1)(h) of the Angolan Code of Civil Procedure, judicial courts are prevented from hearing a case where violation of an arbitration agreement has been invoked. Although the negative effect of the principle of competence-competence is not expressly written in the law, unless the agreement is manifestly null and void, the Court should dismiss the case without prejudice and refer the matter to arbitration.

Consequently, the allegation and evidence of the existence of an arbitration agreement between the parties shall in principle suffice for the court to dismiss the proceedings and refer the parties to arbitration.

##### **3.1.2 If the place of the arbitration is outside of the jurisdiction?**

Angolan courts enforce an arbitration agreement regardless of where the arbitration is seated. As such, our comments and conclusions regarding the preceding question are equally valid if the place of the arbitration is outside of the jurisdiction.

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

Anti-suit injunctions are not addressed in the AAL, and – as far as we are aware – they have also never been addressed by Angolan courts in an arbitration context.

#### **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)**

Angolan courts are not likely to interfere with arbitrations seated outside Angola. Their intervention in these cases would be limited to decide on interim measures requested by a party to the arbitration agreement (depending on the circumstances, they may, for example, grant an injunction for the preservation of documents or assets), to recognize and enforce an award issued by the arbitral tribunal or, in general, provide assistance to the arbitral tribunal.

### **4. The conduct of the proceedings**

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

Pursuant to Article 19 of the AAL, the parties may be represented or assisted by duly empowered lawyers.

It has been discussed if the parties may be represented by persons other than lawyers. The only existing published comments to the AAL, by relevant local authors,<sup>11</sup> sustain that, in light of the aforementioned provision, parties may only be represented by themselves (their legal representatives/officers) or by a lawyer.

In 2017 a new law was enacted – Law 8/17, of March 13 – establishing the legal regime for the activity of lawyers. Such law came to clarify in its article 20 that legal representation before any court, including arbitral tribunals, is considered to be an act inherent to the legal profession and is, as such, reserved to lawyers admitted to the Angolan Bar Association (as per Article 3.2).

According to the authors referred to above, only lawyers admitted to the Angolan Bar Association may act as counsel for the parties within arbitral proceedings, both in domestic arbitrations and in international

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<sup>11</sup> LINO DIAMVUTU, MANUEL GONÇALVES e SOFIA VALE, “Lei da Arbitragem Voluntária Comentada”, Faculdade de Direito da Universidade Agostinho Neto, Luanda, 2014, p. 110 *et seq.*

arbitrations seated in Angola. That said, the same authors go on to admit that such Angolan lawyers may be assisted by foreign lawyers, in accordance with a professional relationship entered into among them.

To the best of our knowledge the issue has since been raised within arbitration proceedings with at least some arbitrators preventing foreign counsel from participating in proceedings. A 2018 decision from the Angolan Supreme Court may have opened the door to foreign practitioners being able to act as counsel in arbitration proceedings,<sup>12</sup> but the matter is highly sensitive in light of the wording of the law.

#### **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 justify this outcome?**

The grounds justifying the challenge of an arbitrator correspond to the ones set forth in Article 12(2) of the Model Law, and are the following:<sup>13</sup>

- i. circumstances that give rise to justifiable doubts as to his or her impartiality or independence,
- ii. if the arbitrator does not possess the qualifications agreed to by the parties.

A party may only challenge an arbitrator it has appointed or in the appointment of which it has participated for circumstances it becomes aware of after the appointment has been made.<sup>14</sup>

The default rule set forth in the AAL is that the motion for challenge of an arbitrator must be submitted to the arbitral tribunal by the challenging party within 8 days of becoming aware of the constitution of the Arbitral Tribunal, or of the date on which such party became aware of any relevant circumstance identified above. The arbitral tribunal will decide on the challenge provided that the arbitrator does not withdraw as a consequence of the submission and/or the counterpart does not accept the arbitrator's withdrawal.

Similarly to the Model Law, the AAL allows the unsuccessful party in a challenge procedure to continue its challenge in the courts. Under Article 10(5), such party will have 15 days to request to the default authority indicated in Article 14 (*i.e.*, the President of the Provincial Court of the place set for the arbitration or, if no such place has been set, that of the residence of the applicant, or the Provincial Court of Luanda if the residence of the applicant is abroad) to decide on the challenge.

The decision on the challenge should be made by means of a fact-specific analysis of the case. An arbitrator's failure to disclose circumstances that may give rise to justifiable doubts may be considered in the analysis. Nevertheless, it does not, by itself, constitute a sufficient reason for the acceptance of the challenge.

Unfortunately, there is little or no relevant known case law allowing to conclude how local courts apply these principles.

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

If the parties fail to appoint the arbitrators, the default appointing Authority will be the President of the Provincial Court of the seat of arbitration or, failing an agreement on the seat of arbitration, the Provincial

<sup>12</sup> Within an international arbitration seated in Luanda, the National Council of the Angolan Bar Association was asked to appreciate the validity of the mandate of a foreign attorney who had been empowered to represent one of the parties therein. Consequently, it issued a deliberation setting forth that only lawyers admitted to the Angolan Bar Association could act as counsel for the parties within arbitral proceedings, both in domestic arbitrations and in international arbitrations seated in Angola. Such deliberation was subsequently challenged by means of an appeal filed with the Angolan Supreme Court. On 6 March 2018, within Proceedings No. 377/14, the Supreme Court rendered its judgment, deciding that the deliberation issued by the Angolan Bar Association should be deemed as unacceptable, to the extent that it «restricted the parties' right to define the terms of the arbitration proceedings and violated the principle of effective judicial protection».

<sup>13</sup> Article 10(2) of the AAL.

<sup>14</sup> Article 10(3) of the AAL.

Court of the applicant's domicile, or the President of the Provincial Court of Luanda if the applicant is a foreign entity.

Should a party refuse to appoint its arbitrator(s), the appointment will be made by means of the abovementioned default mechanism.<sup>15</sup> The compliant party may request the default appointment as of 30 days after the date of the notice of arbitration.<sup>16</sup>

The default mechanism is also applicable if the default appointment refers to the chairperson. In this case, either party may request the appointment as of 30 days after the appointment of the last of the party-appointed arbitrators in whom the duty to make the joint appointment is vested.

#### **4.4 Do courts have the power to issue interim measures in connection with arbitrations? If so, are they willing to consider *ex parte* requests?**

Yes. The parties may resort to state courts directly, either before the commencement of arbitration or after the tribunal has been constituted, which may grant interim measures in respect of the subject-matter of the dispute (without being deemed in breach of the arbitration agreement).<sup>17</sup> In such cases, the type of relief available will be that provided for in the Angolan Code of Civil Procedure.

The interim measures may be requested before the main action is brought or when an ongoing procedure is pending, always being dependent on the main action.<sup>18</sup>

#### **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 AAL contains no rules with respect to confidentiality of the proceedings.

Confidentiality clauses may be included in arbitration agreements with a view to avoiding the disclosure of details of the dispute, including the parties and the arbitrators. Such clauses do not have the effect of preventing a party from relying on an award to protect its interests or enforce its rights. Nor are they binding on third parties.

A case in which an award may become part of the public domain is that of legal proceedings initiated for purposes of annulment, of appeal against or enforcement of an award. The court proceedings on such issues are not held *in camera*, even if the arbitration agreement includes a confidentiality clause.

Moreover, the default rule set forth in the AAL<sup>19</sup> is that, unless otherwise agreed by the parties, the final award is deposited with the Provincial Court of the seat of arbitration. This, in theory, allows awards to be accessed.

##### **4.5.2 Does it regulate the length of arbitration proceedings?**

Unless otherwise agreed by the parties (in the arbitration agreement or subsequently by written agreement until the first arbitrator's acceptance), the time limit to render the award shall be six months from the date of acceptance by the last arbitrator to be appointed.<sup>20</sup>

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<sup>15</sup> Article 14(1) of the AAL.

<sup>16</sup> Article 14(2) of the AAL.

<sup>17</sup> Article 22(2) of the AAL.

<sup>18</sup> Article 384(1) of the Angolan Code of Civil Procedure.

<sup>19</sup> Article 30(4) of the AAL.

<sup>20</sup> Article 25(1) of the AAL.

The parties may freely agree, in writing, extensions to the time limit for the rendering of the award.<sup>21</sup>

If the final award is not rendered within the applicable time limit, the submission agreement will elapse and the arbitration agreement will cease to have effect regarding the dispute in question. This means that in order to settle such dispute parties may no longer resort to arbitration unless a new submission agreement is entered into.

**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?**

Under article 17(2) of the AAL, the arbitral tribunal may, unless otherwise agreed by the parties, meet at any place it considers appropriate to hold hearings and/or meetings.

**4.5.4 Does it allow for arbitrators to issue interim measures? In the affirmative, under what conditions?**

Pursuant to Article 22(1) of the AAL, inspired in Article 17 of the Model Law, unless otherwise agreed by the parties, arbitral tribunals may, at the request of a party, grant interim measures in respect of the subject-matter of the dispute. Said provision, however, does not address the type of interim measures that the tribunal may order.

In principle, an interim measure will only be granted provided that the applicant alleges and proves two requirements: the *periculum in mora* and the *fumus bonus iuris*.

**4.5.5 Does it regulate the arbitrators' right to admit/exclude evidence? For example, are there any restrictions to the presentation of testimony by a party employee?**

Pursuant to Article 21 of the AAL, all kinds of evidence that are legally admitted by general civil law in Angola – as it is the case of witness evidence – may be used in arbitration (either by request of the parties, or by initiative of the tribunal).

As such, the arbitrators shall admit the presentation of all evidence which is admitted by law (*i.e.* documents, witnesses, experts and inspections).

The AAL is silent, however, on a person's ability to act as a witness as it is regarding the admissibility of written statements. These matters are consequently subject to party autonomy and failing an express choice, to the tribunal's determination.

**4.5.6 Does it make it mandatory to hold a hearing?**

The AAL is silent on the tribunal's duty to hold an oral hearing and its contents. Consequently, it will be for the parties to decide or ultimately for the arbitrators, in case parties fail to do so.

**4.5.7 Does it prescribe principles governing the awarding of interest?**

The AAL does not prescribe principles governing the awarding of interest as, under Angolan law, that is a substantive matter.

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

The parties have to agree in writing the terms according to which the arbitration costs and fees are to be determined. Such terms may be spelt out directly in the arbitration agreement or indirectly by reference to the rules or criteria that are to be applied for that purpose.<sup>22</sup> The award must contain a decision on the costs

<sup>21</sup> Article 25(2) of the AAL.

<sup>22</sup> Article 23 of the AAL.



of the proceedings and their allocation among the parties; however, Article 27(5) of the AAL establishes no principles towards allocation.<sup>23</sup>

## 4.6 Liability

### 4.6.1 Do arbitrators benefit from immunity from civil liability?

Although the Angolan law does not provide for the immunity of arbitrators, since arbitral tribunals are considered to perform a jurisdictional function, they cannot be held liable for damages resulting from their decisions.

Notwithstanding the above, the AAL expressly foresees two situations where an arbitrator can be held liable for his or her conduct in the proceedings. The first is the situation where an arbitrator has accepted the appointment and unjustifiably withdraws from office;<sup>24</sup> and the second is that of an arbitrator who, without any justifiable reason, delays rendering the award.<sup>25</sup>

Liability for breach of the general duties of impartiality, independence and good faith must also be deemed as admissible.<sup>26</sup>

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

There are no specific concerns with regards to potential criminal liability of any of the participants in the arbitral proceedings.

## 5. The award

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

If the parties so agree, the award will not need to state the reasons on which it is based. Reasons are also not required in case the parties reach an agreement in the course of proceedings and in case of withdrawal.<sup>27</sup>

Additionally, pursuant to Article 27(3) of the AAL, statements of the facts deemed proved shall be deemed as sufficient grounds whenever the tribunal decides *ex aequo et bono*.

### 5.2 Can parties waive the right to seek the annulment of the award? If yes, under what conditions?

The AAL prevents parties from waiving their right of setting aside the award (AAL, Article 34(6)). A waiver excluding any ground to set aside the award as well as a waiver that would not exclude, but would only limit any such grounds, would also be deemed null and void.

### 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 for the rendering of a valid award. The award must be made in writing and include the following contents: (i) identification of the parties; (ii) reference to the arbitration agreement; (iii) the subject-matter of the dispute; (iv) identification of the arbitrator(s); (v) reference to the seat of arbitration; (vi) identification of place and date of the award; (vii) the decision and its reasoning; and

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<sup>23</sup> Article 27(5) of the AAL.

<sup>24</sup> Article 9(3) of the AAL.

<sup>25</sup> Article 25(3) of the AAL.

<sup>26</sup> Article 15 of the AAL.

<sup>27</sup> Article 27(2) of the AAL.

(viii) the signature of the arbitrators.<sup>28</sup> In any case, as mentioned above, if the parties so agree, the award will not need to state the reasons on which it is based.

#### **5.4 Is it possible to appeal an award (as opposed to seeking its annulment)? If yes, what are the grounds for appeal?**

The AAL contains distinct provisions for domestic and international arbitration.

An appeal on the merits is admissible for domestic arbitration provided that the parties have not waived their right thereto.<sup>29</sup>

In domestic arbitration, the parties are allowed to waive their right to appeal on the merits of the awards.<sup>30</sup> However, both parties have to waive such right. Waiver by one of the parties only is inadmissible. If the parties agree that the tribunal is to decide *ex aequo et bono*, their right to appeal on the merits of the award is deemed to be automatically waived.<sup>31</sup>

Differently, for international arbitration, the rule is that awards are final and binding on the parties, and are not subject to appeal, unless the parties agree otherwise and provide for the rules applicable to the appeal.<sup>32</sup> Should the parties agree on subjecting the award to appeal, they are further required to agree on the terms and conditions of such appeal.

Pursuant to Article 36(1) of the AAL, arbitral awards are subject to the same appeals as if they had been rendered by a Provincial Court. This provision shall be construed as referring both to type of appeal and grounds for appeal, this meaning that an appeal due to the tribunal failing to or inappropriately applying the applicable law will be admissible.

#### **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?**

The procedure for obtaining the recognition and enforcement of foreign arbitral awards in Angola is governed by Articles 1094 *et seq.* of the Angolan Code of Civil Procedure, without prejudice to the provisions of the New York Convention, to which Angola adhered in 2016.<sup>33</sup> No specific time-limits apply.

According to this procedure, the party that wishes to have a foreign arbitral award recognized in Angola must file an application for recognition before the Civil and Administrative Chamber of the Supreme Court, together with (i) the original or a copy of the arbitral award (duly certified and legalized) and (ii) the original or a copy of the document containing the arbitration agreement (also duly certified and legalized).<sup>34</sup>

Following submission, the court will summon the defendant to present its arguments against the claim within 10 days after service. The applicant is then granted 8 days (from the last day of the deadline for the presentation of the defence or opposition) to respond to the facts and arguments brought forward by the defendant.

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<sup>28</sup> Article 27 of the AAL.

<sup>29</sup> Article 36(1) of the AAL.

<sup>30</sup> Article 36(1) of the AAL.

<sup>31</sup> Article 36(3) of the AAL.

<sup>32</sup> Article 44 of the AAL.

<sup>33</sup> The Angolan National Assembly approved the accession of the country to the New York Convention by means of resolution No. 38/2016. The resolution was approved on 16 June 2016 and published in the official gazette on 12 August 2016. The Convention was then ratified by the president of the Republic of Angola through a letter of accession dated 5 December 2016, published in the Official Gazette on 19 December 2016 and such instrument was deposited with the Secretary-General of the United Nations on 6 March 2017. The New York Convention came into force in Angola on 4 June 2017, ninety (90) days after the referred deposit.

<sup>34</sup> If the arbitral award / agreement is written in a foreign language, a certified translation, executed by an official or sworn translator or by a diplomatic or consular agent, shall be required.

The court must *ex officio* verify if the award fulfils the necessary requirements. Once it issues its confirmation (recognition) ruling, the foreign award becomes binding in the Angolan territory and shall have the same effects as state court judgements or domestic arbitral awards, thus being enforceable in Angola.

It shall be noted that the statutory requirements which must be met for the award to be confirmed will be (slightly) different depending on whether the award was issued in a State which is a signatory of the New York Convention or not, since Angola made a reservation pursuant to which the New York Convention will only apply to the recognition and enforcement of awards issued in the territory of another signatory State.

As regards awards rendered in the territory of non-signatory states of the New York Convention, recognition will only be granted provided that the following statutory requirements are met:<sup>35</sup>

- i. The authenticity of the document containing the award having been established;
- ii. The award having acquired the force of *res judicata* under the laws of the country in which it was issued (*i.e.*, the law of the seat of arbitration);
- iii. The award arising out of a valid arbitration agreement;
- iv. The same dispute not being pending in Angolan courts, nor having a final decision on the same dispute been rendered by Angolan courts;
- v. The parties having had the opportunity to present their case in the arbitration and having been equally treated by the arbitrators;
- vi. The recognition and enforcement of the award not being contrary to Angola's public policy;
- vii. The award containing a decision that can be understood (a Portuguese translation is often required);
- viii. The award not having been rendered by a corrupted arbitrator, convicted by a court of law;
- ix. The losing party not having produced documentary evidence of which it had no prior knowledge, or could not have used for any other reason during the arbitration, when such documentary evidence is capable of changing the decision of the arbitrators and favour the losing party's interests;
- x. The award not being in contradiction with another *res judicata* award or decision previously rendered by a tribunal or court in a case between the same parties.

In turn, recognition in Angola of arbitral awards rendered in the territory of signatory States shall be subject to the formal requirements and grounds for refusal set forth in Articles IV and V of the New York Convention. Notwithstanding, the procedure to follow will be the one set forth in the Angolan Code of Civil Procedure, as detailed above.

In case of a local arbitral award, recognition proceedings are not necessary, since it has the same effects as state court judgements.<sup>36</sup> Indeed, if the losing party does not comply with the award, the winning party may seek the direct enforcement thereof in a judicial court through judicial enforcement proceedings, subject to no specific time-limit.

<sup>35</sup> Article 1096, and Articles 771(a), 771(c) and 771(g) *ex vi* Article 1100(1) of the Angolan Code of Civil Procedure.

<sup>36</sup> Articles 33 of the AAL and 48(2) of the Angolan Code of Civil Procedure.

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

Pursuant to Article 35(3) of the AAL, the rules on interlocutory appeals (*recursos de agravo*) set forth in the Angolan Code of Civil Procedure are subsidiarily applicable to annulment proceedings in all matters that are not explicitly covered in the AAL.

It results from the application of such rules – *i.e.*, of Articles 740(1) and 734(1) of the Angolan Code of Civil Procedure (applicable by cross-reference to Article 35(3) of the AAL) – that the filing of annulment proceedings automatically suspends the right to enforce a final award which decides on the merits of the case.

An appeal of a final award shall also automatically suspend the right to enforce said award, as per Article 692(1) of the Angolan Code of Civil Procedure, applicable by cross-reference to Article 36 of the AAL.

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

With respect to foreign awards issued in another signatory State of the New York Convention, their recognition and enforcement may be refused, at the request of the party against whom the award is invoked, under the terms of Article V(1)(e) of the New York Convention, provided that such party furnishes to the court proof that the award has been set aside by a court of the country in which that award was made.

In what regards foreign awards issued in countries which are not parties to the New York Convention, the rules contained in such Convention do not apply, and neither the AAL nor the Angolan Code of Civil Procedure contain a provision similar to Article V(1)(e) of the New York Convention.

Nonetheless, considering that Article 1096(1)(b) of the Angolan Code of Civil Procedure sets forth that review and confirmation will not be granted to a foreign award if it has not yet acquired the force of *res judicata* under the laws of the country in which it was issued, *a fortiori*, it must necessarily be interpreted that, in order to be recognized, the award needs to be deemed as final, valid and binding under said law (and, naturally, an award cannot be deemed as final, valid and binding under said law if it has been set aside by a court of the country in which it was made).

Without prejudice to the above, to the best of our knowledge, Angolan courts have never had the opportunity to address the question of whether an award that has been annulled at the seat may be recognized and enforced in Angola.

## 5.8 Are foreign awards readily enforceable in practice?

As detailed above, the grounds for refusal of enforcement of foreign arbitral awards, provided by the Angolan Code of Civil Procedure and by the New York Convention, are very limited and do not allow for a review of the merits of the arbitral decision.<sup>37</sup>

Except for the last paragraph of Article 1096 of the Angolan Code of Civil Procedure, which provides that enforcement may be refused if the court finds that it would lead to a result incompatible with Angola's public policy – and where a wider margin of discretion granted to the court –, the grounds for refusal to recognize awards rendered outside the territory of contracting states of the New York Convention are not, after all, markedly different from the ones listed in article V of the New York Convention. Indeed, most of the requirements foreseen in the Angolan Code of Civil Procedure relate to formal aspects of the award and do not require the state courts to review the merits of the case.

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<sup>37</sup> See answer to question 5.5.

Hence, it results from the adopted legal solution that foreign awards are readily enforceable in Angola. That said, there is no known relevant experience of local courts in enforcing foreign awards.

## **6. Funding arrangements**

### **6.1 Are there laws or regulations relating to, or restrictions to the use of contingency or alternative fee arrangements or third-party funding at the jurisdiction? If so, what is the practical and/or legal impact of such laws, regulations or restrictions?**

The Code of Ethics of the Angolan Bar Association forbids the use of contingency fee arrangements where the attorney's remuneration is dependent on the outcome of the case.<sup>38</sup>

Third-party funding is not regulated under Angolan law and there are no specific restrictions to its use.

## **7. Arbitration and technology**

### **7.1 Is the validity of blockchain-based evidence recognised?**

Although the AAL does not explicitly recognize the validity of blockchain-based evidence, Article 21 of the AAL provides that all kinds of evidence that are legally admitted by general civil law in Angola may be used in arbitration (either by request of the parties, or by initiative of the tribunal). Thus, theoretically, there is no objection to presenting electronic evidence (as blockchain evidence, for instance), which are generally accepted in civil proceedings in Angola.

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

The arbitration agreement governed by Angolan law must be in writing (Article 3(1) of the AAL). This formal requirement is deemed fulfilled provided the arbitration agreement is documented either in a written instrument signed by the parties or in any correspondence exchanged between them of which written proof exists, namely means of telecommunication (Article 3(2) of the AAL).

This provision seems to admit that an agreement shall be considered as having been made in writing if it has been communicated through electronic means (which fall under the scope of "*means of telecommunication*"). Hence, it is defensible that an arbitration agreement recorded on a blockchain shall be recognised as valid under the AAL.

Nonetheless, it should be noted that the AAL foresees that all arbitral awards issued within the disputes to which it applies must be signed by the arbitrators, reason why difficulties may be raised in what regards the validity of awards recorded on a blockchain.

In Angola, Law No. 23/11, of 20 June 2011 (on Electronic Communications and Information Society Services) recognizes the validity of electronic signatures and their equivalence to autograph signatures (Article 28(1)). This law, however, sets forth that the recognition in question should be assessed under the terms and conditions to be defined by the Government, which should regulate the terms of such equivalence. It happens that, almost 9 years after the publication of this statute, the necessary regulation has not yet been issued.

In the future, the regulation on electronic signatures should include, as in most legal systems, the applicable terms regarding the validation requisites of secret codes, digitized signatures, biometric keys and digital or cryptographic signatures. Accrediting entities (which accredit and supervise the certifying entities) and certifying entities that, under the terms of the law, will be responsible for certifying the electronic signatures, should also be created.

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<sup>38</sup> Article 54 c) of The Code of Ethics of the Angolan Bar Association.

Notwithstanding, until this date, none of these aspects have been regulated.

In the context of contracts entered into with the State, electronic signatures have been temporarily replaced by electronic confirmation or paper signatures until the solutions for the same are fully operational (as per Article 35(5) of Presidential Decree No. 202/17, of 6 September 2017 – Regulation on the Operation of the National Electronic Contracting System). However, nothing is regulated outside the scope of public procurement.

Thus, in the present context, there is no legal certainty on the legal effects of electronic signatures in Angola (including those contained in arbitral awards), and this shall consequentially affect the validity of awards recorded on the blockchain, provided that the same have been issued within arbitrations governed by the AAL.

Nonetheless, it is important to highlight that this issue has never been assessed by Angolan courts.

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

As mentioned above, Angolan law does not explicitly recognize the validity of blockchain arbitration agreements and/or awards. Moreover, the regulation on the terms related to electronic signatures and their equivalence to autograph signatures has not yet been published. As such, due to the reasons explained above, since there is no legal certainty on the legal effects of electronic signatures in Angola, most likely the courts would reject to enforce a blockchain award issued within an arbitration seated in Angola, to which the AAL applies (regardless of which it could be deemed as an original document or not).

In what concerns arbitration awards rendered within arbitrations seated outside of Angola, their recognition and enforcement will be dependent on the fulfilment of the requirements set forth in the New York Convention or in the Angolan Code of Civil Procedure, depending on whether the award was issued in the territory of a signatory State of the Convention or not.

In this regard, Article IV(a) of the New York Convention provides that a party applying for recognition must supply duly authenticated original awards and agreements or duly certified copies thereof. The Angolan Code of Civil Procedure also foresees that there must not be any doubts on the authenticity of the document in which the award has been recorded.

These provisions do not define the meaning of authentication. However, at least in what concerns the requirement set forth in the New York Convention, commentators have pointed out that the authentication can be defined as the process of confirming the authenticity of arbitrators' signatures,<sup>39</sup> and that Article IV of the New York Convention should be read in conjunction with its Article III, in the sense that if the country of where the award was made permits the issuance of awards in electronic form, there should be no barrier to accepting the award as duly authenticated.<sup>40</sup> Moreover, it has already been defended that, although an electronic document cannot be seen as "original," in relation to electronic data, it can be deemed as an authentic copy, where the authorship of the data can be reliably proven.<sup>41</sup>

Notwithstanding the above, in Angola, as in most civil law jurisdictions, the concept of authenticity is viewed more narrowly and requires a notary public to verify the authenticity of documents. Ergo, although the courts in Angola have never assessed this issue, there are risks that a blockchain arbitration agreement and/or award would not be considered as originals for the purposes of recognition and enforcement.

<sup>39</sup> ICCA, Guide to the Interpretation of the 1958 New York Convention: a Handbook for Judges, 2011 p. 109.

<sup>40</sup> HONG-LIN YU /MOTASSEM NASIR, "Can Online Arbitration Exist Within the Traditional Arbitration Framework?", Journal of International Arbitration, 2003 p. 472.

<sup>41</sup> NADINE LEDERER, "The Enforcement of Cross-Border Online Arbitral Awards and Online Arbitration Agreements. The New York Convention and the Internet: Friends or Foes?", Spain Arbitration Review, 2019 p. 73.

**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?**

Our comments above are identically applicable to this question, regardless of whether the award has been electronically signed or more securely digitally signed.

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

It is not anticipated that there will be a significant reform of the AAL in the near future.

**9. Compatibility of the Delos Rules with local arbitration law**

The Delos Rules are compatible with the AAL, which, in line with the Model Law, allows the parties to agree on the applicable procedural rules. Indeed, pursuant to Article 16 of the AAL, the agreement of the parties may result from the choice of the arbitration rules of an institutional arbitral body or from the choice of this body to conduct the arbitration.

Moreover, the Delos Rules impose the set of principles and rules that, under the AAL, must be observed in any procedure to which it applies; which are the following:

- i. the parties shall be treated with absolute equality;
- ii. in all stages of the proceedings, the adversarial system shall be guaranteed, and the respondent shall be notified to defend itself;
- iii. both parties shall be heard, orally or in writing, before the final award is rendered.

**10. Further Reading**

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## ARBITRATION INFRASTRUCTURE AT THE JURISDICTION

Aimed at promoting institutional arbitration, the Angolan government enacted Decree No. 4/06, of 27 February 2006, which deals with licensing procedures for the constitution of arbitration centres. The Minister of Justice is the entity empowered to authorise the setting-up of such arbitration centres.

Although Decree No. 4/06, of 27 February dates back to 2006, only in 2012 have the arbitration centers listed in the table below been authorized in Angola. Up to this date, these centres have had very little activity, and most of the arbitration cases conducted in Angola continue to be *ad-hoc*.

Leading national, regional and international arbitral institutions based out of the jurisdiction, <i>i.e.</i> , with offices and a case team?	The arbitral institutions acting and based in Angola, as authorized by the Minister of Justice, are the following: (i) "Arbitral Iuris S.A"; (ii) Harmonia – Integrated Centre for the Study and Resolution of Conflicts; (iii) CEFA Arbitration Centre; (iv) Angolan Centre for the Arbitration of Disputes ("CAAL"); (v) Angolan Centre for Mediation and Arbitration ("CMA"); (vi) Centre for the Extrajudicial Resolution of Disputes ("CREL"); and (vii) Arbitration Centre of the Centre for Strategical Studies of Angola ("CEEA").
Main arbitration hearing facilities for in-person hearings?	To date, the only arbitration facilities for in-person hearings are the ones belonging to the above-listed arbitration centres authorized by the Ministry of Justice.
Main reprographics facilities in reasonable proximity to the above main arbitration providers with offices in the jurisdiction?	There are no large-scale reprographics facilities operating in Angola. Reprographics services are usually provided by the universities (in particular, by "Universidade Agostinho Neto", "Universidade Lusíada de Angola" and "Universidade Metodista de Angola", which are all within a radius of less than 10 km from the arbitration centers operating in Angola).
Leading local providers of court reporting services, and regional or international providers with offices in the jurisdiction?	In Angola, the only type of reporters are the official reporters, who are government employees employed by the court system. In other words, there are no independent court-reporting firms to supply the courts with court reporters on a contractor basis.
Leading local interpreters for simultaneous interpretation between English and the local language, if it is not English?	Angola does not have a centralised database of local legal translators/interpreters. However, information on specific interpreters and their language specialisations may be obtained from the Angolan Association of Translators and Interpreters ("Associação dos Tradutores e Intérpretes de Angola"), which currently has more than 20,000 registered members.  Regarding interpretation between English and the local language, the Foreign, Commonwealth & Development Office (FCDO) of the United Kingdom has recently published a list in which it highlights the following interpreters and translators based in Angola (all of them registered with the Ministry of Foreign Affairs): ANGOLINK – Angola Associated Link Lda.; One Language; and YALILIN-The Young Angolan Leaders International Languages Institute.
Other leading arbitral bodies with offices in the jurisdiction?	∅