

CÔTE D'IVOIRE

CHAPTER PREPARED BY

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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 | ● |

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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

Côte d'Ivoire is a dynamic country in the field of arbitration, both domestic and international. It provides a legal framework friendly for arbitration proceedings. Indeed, the Ivorian arbitration law is mainly based on the OHADA Uniform Act on Arbitration Law (hereinafter "UAA").¹ The latter is completed by an Ivorian ordinance determining the intervention of national courts in arbitration issues such as competent course during arbitration proceedings, recognition, and enforcement of arbitral awards, setting aside of arbitral awards, intervention of the public prosecutor.²

The Headquarters of the Arbitration Centre of the Common Court of Justice and Arbitration (CCJA) of OHADA are situated in Côte d'Ivoire and there is also a major national arbitration centre, the Court of Arbitration of Côte d'Ivoire (hereinafter "CACI"). As a young arbitration institution, the prospects of the CACI are rather promising.

Thus, in Côte d'Ivoire, it is possible to have access to both institutional arbitrations organized under the auspices of the CCJA and the CACI through their respective Rules of Arbitration (hereinafter "the CCJA Arbitration Rules" and "the CACI RA"), as well as to ad hoc arbitration.

Key places of arbitration in the jurisdiction?	In Côte d'Ivoire, Abidjan, is the economic capital and headquarter of CCJA and CACI, and the main place of arbitration.
Civil law / Common law environment? (if mixed or other, specify)	Civil law. Ivorian law is of civil law tradition, of Romano-Germanic inspiration
Confidentiality of arbitrations?	UAA requires the secrecy of the deliberations of the of the deliberations of the arbitral tribunal, ³ from which the requirement of confidentiality is inferred. In fact, even if none provision of UAA deals directly with confidentiality, some authors consider it as general principle of OHADA arbitration. ⁴ Unlike the UAA, article 14 of CCJA Arbitration Rules and article 3 of the CACI arbitration rules ensures the confidentiality of the arbitration proceedings organised under their respective auspices. ⁵ This confidentiality applies throughout the arbitration proceedings, including the arbitral award. It is binding on the arbitral tribunal, the parties and, where applicable, the arbitration body. Nevertheless, according to article 14 paragraph 2 of CCJA Arbitration Rules, the parties can agree that the proceedings are not confidential. Paragraph 3 of the same provision states that, for academic reasons, the General Secretary of CCJA can publish some excerpts of awards.

¹ Article 1, UAA.

² Ordinance n° 2012-158 9 February 2012 determining the intervention of national courts in arbitral proceedings.

³ Article 18, UAA (french version).

⁴ Jean-Marie TCHAKOUA, « Arbitrage selon l'Acte uniforme relatif au droit de l'arbitrage », in Paul-Gérard Pougoué, *Encyclopédie du droit OHADA*, Lexisnexis, 2011, pp. 236-292, sp. n° 152-153.

⁵ Article 3, CACI arbitration rules.

Requirement to retain (local) counsel?	<p>The parties to an arbitration proceeding may be assisted by any person, there is no requirement regarding the nationality of the latter.</p> <p>In institutional arbitration, the parties are only obliged to communicate the identity and the details of their counsel to the General Secretariat of the arbitration institution.⁶</p>
Ability to present party employee witness testimony?	<p>The UAA implicitly admits this by stating that evidence may be adduced by any legally admissible means. Similarly, the CACI and the CCJA Arbitration Rules do not provide any restrictions regarding the witnesses, notably the relationship between an employee with his employer or any hierarchical superior. However, the arbitral tribunal has jurisdiction to assess the relevance of their testimony</p>
Ability to hold meetings and/or hearings outside of the seat and/or remotely?	<p>The UAA does not provide an express answer to this question. It asserts that the arbitral award is made in accordance with the procedure and form agreed by the parties.⁷ However, the arbitration rules of the CACI provides that the arbitral tribunal may hold hearings or meetings at any place.⁸</p>
Availability of interest as a remedy?	<p>Interests are a matter of the applicable substantive law. Accrued interests applied under article 1154 Civil Code requirement do not breach Ivoirian public policy.</p>
Ability to claim for reasonable costs incurred for the arbitration?	<p>The arbitral tribunal has discretion in respect of the allocation of costs but must take into consideration the circumstances of the case.</p>
Restrictions regarding contingency fee arrangements and/or third-party funding?	<p>Even contingency fee agreement is not codified, Ivoirian lawyers should not enter to it, knowing that it is forbidden for judicial proceedings. Third party funding is not codified in Ivoirian law, but in consideration to the impecuniosity of many parties bound by arbitration agreements, it could be increasingly used in the next years.</p>
Party to the New York Convention?	<p>Côte d'Ivoire signed the New York Convention on 1 February 1991.</p>
Party to the ICSID Convention?	<p>Côte d'Ivoire signed the ICSID Convention on 30 June 1965 and deposited the instrument of ratification on 16 February 1966. The Convention entered into force on 14 October 1966.⁹</p>
Compatibility with the Delos Rules?	<p>The Delos Rules should be regarded as compatible with the UAA provisions.</p>

⁶ Article 22, CACI arbitration rules ; see also article 20, UAA.

⁷ UAA, November 23, 2017, Article 19.

⁸ CACI Arbitration rules, 23 January 2019, Article 2.

⁹ See to this effect the list of Contracting States and signatories of the Convention available at: <https://icsid.worldbank.org/sites/default/files/ICSID-3-FR.pdf>.

Default time-limitation period for civil actions (including contractual)?	In civil (<i>and contractual</i>) matters, both real and personal actions are prescribed by thirty years in principle. ¹⁰ As an exception, in commercial matters, the limitation period is five years, ¹¹ except in the case of commercial sales where it is two years. ¹² In arbitration law, the limitation periods for each action are fixed by relevant provisions contrary to those provided for in civil matters.
Other key points to note?	∅
World Bank, <i>Enforcing Contracts: Doing Business</i> score for 2020, if available?	According to Doing Business statistics on the economic profile of Côte d'Ivoire, the country has a score of 57.6/100 for enforcing contracts, for the year 2020. ¹³
World Justice Project, <i>Rule of Law Index: Civil Justice</i> score for 2020, if available?	0.46 Côte d'Ivoire ranks 95th/128 globally, and 13th/31 regionally in the World Justice Project's 2020 ranking, Civil Justice factor.

¹⁰ Ivorian civil Code, 1804, Article 2262, , March 2021.

¹¹ OHADA Uniform Act on General Commercial Law, May 16, 2011, Article 16.

¹² OHADA Uniform Act on General Commercial Law, May 16, 2011, Article 301.

¹³ Document on the economy profile of Côte d'Ivoire prepared by Doing Business, available at : <https://www.doingbusiness.org/content/dam/doingBusiness/country/c/cote-divoire/CIV.pdf>, p. 4.

ARBITRATION PRACTITIONER SUMMARY

Arbitration is increasingly seen as the preferred method of resolving contractual disputes. With the reform of 2017, the material scope of OHADA arbitration has been extended to investment arbitration.

In a country that experienced an institutional crisis with all the dysfunctions that this entails, and with a judicial system unfortunately sometimes inadequate to the settlement of disputes arising from international commerce, the role of arbitration as an alternative means of dispute settlement is essential to ensure legal security of trade.¹⁴

Due to the private nature of arbitration, sometimes it is necessary to refer to the national courts. However, the interventions and the matters on which national courts are required are strictly circumscribed by UAA and case law.

Date of arbitration law?	<p>Ivorian arbitration law is contained in the UAA. This Uniform Act was adopted on 11 March 1999 and entered into force on 11 June 1999. The only and last reform of the arbitration law took place on 23 November 2017 and came into force on 15 March 2018.</p> <p>The adoption of this new UAA thus repeals the UAA of 1999, which was applicable until then. This reform is part of a perspective of promotion and consolidation of alternative dispute resolution illustrated by the adoption of a new Uniform Act relating to mediation and a revision of the CCJA arbitration rules. It was also justified by the will to enshrine some solutions elaborated by case law and to overcome some practical difficulties which remained unresolved.</p>
UNCITRAL Model Law? If so, any key changes thereto? 2006 version?	The general arbitration law applicable in Côte d'Ivoire is largely inspired by the UNCITRAL Model Law. However, there are some main differences between the two texts, such as the absence of a definition of "arbitration" in the UAA.
Availability of specialised courts or judges at the key seat(s) in the jurisdiction for handling arbitration-related matters?	There is no specialized jurisdiction in Côte d'Ivoire with jurisdiction to hear disputes related to arbitration.
Availability of <i>ex parte</i> pre-arbitration interim measures?	The state judge can order provisional or protective measures at the request of one of the parties as long as these measures do not involve an examination of the dispute on the merits for which only the arbitral tribunal has jurisdiction. ¹⁵

¹⁴ Abbé YAO, "Premier bilan de l'application des instruments OHADA relatifs à l'arbitrage : Le point de vue des entreprises", in *Revue camerounaise de l'arbitrage*, n° spécial (2), February 2010, p. 200, Ohadata D-11-49.

¹⁵ Article 13 paragraph 4 UAA. See also CCJA, 27 avr. 2015, *Société United Bank for Africa (UBA) c/ Société Beneficial Life Insurance (BLI)* ; CCJA, 29 avr. 2015, *Liquidation société CIM Sahel Energie SA c/ Les Ciments Sahel dite CDS SA*, *The Paris Journal of International Arbitration*. 2017-1, p. 125, commented by Achille Ngwanza ; CCJA, 23 juill. 2015, *Sodima SA devenue SANIA-Cie SA c/ DRAMERA Mamadou*, *The Paris Journal of International Arbitration* 2017-1, p. 138, commented by A. Ngwanza.

Courts' attitude towards the competence-competence principle?	This principle, enshrined by the UAA, is applied by the state judge; the arbitral tribunal rules on its own jurisdiction. After two decades of application of UAA, globally the OHADA jurisprudence complied with the obligation to respect the jurisdiction of arbitral tribunal. ¹⁶
May an arbitral tribunal render a ruling on jurisdiction (or other issue) with reasons to follow in a subsequent award?	Yes, an arbitral tribunal is alone competent to rule on its own jurisdiction with reasons to follow in a subsequent award. ¹⁷
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?	Except where provisional enforcement has been ordered by the arbitral tribunal, an application for annulment of the arbitral award shall stay the enforcement of the award, until such time that the competent jurisdiction in the Member State, or the Common Court of Justice and Arbitration, as the case may be, has rendered a decision. ¹⁸
Courts' attitude towards the recognition and enforcement of foreign awards annulled at the seat of the arbitration?	To date, there is no known decision related to the enforcement of awards set aside at the seat of arbitration. Nevertheless, nothing under current arbitration law prevents the recognition and enforcement of foreign awards annulled at the seat of arbitration. ¹⁹
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 the ensuing award in the jurisdiction?	This situation is not expressly provided for in the texts. However, it should be made clear that the arbitral proceedings shall be governed by the will of the parties, unless the parties waive their right to do so and the arbitral tribunal conducts the proceedings as it deems appropriate. ²⁰ Moreover, the arbitral award may be affected if it is established that the rights of defence of the party in question have been disregarded or that he has not acted in accordance with the terms of reference entrusted to him. ²¹
Key points to note in relation to arbitration with and enforcement of awards against public bodies at the jurisdiction?	Arbitration against public bodies is permitted in Côte d'Ivoire in application of Art. 2 of the UAA. They can be party to an arbitration. ²² However, the enforcement of arbitral awards involving them can be problematic. Indeed, in application of their immunity from execution, it may be difficult or even impossible to compel them to

¹⁶ See for example, CCJA, 2e ch., arrêt n°82/2014, 22 May 2014, available at : www.ohada.com, Ohadata J-15-173.

¹⁷ UAA, November 23, 2017, Article 11 *in fine*.

¹⁸ UAA, November 23, 2017, Article 28.

¹⁹ UAA, November 23, 2017, Article 31 (1) & (2).

²⁰ UAA, November 23, 2017, Article 14 (1) & (2).

²¹ UAA, November 23, 2017, Article 26 paras. b & c.

²² UAA, November 23, 2017, Article 2.

	enforce an arbitral award. ²³ The enforcement can be made against specific assets, or by set-off of debt.
Is the validity of blockchain-based evidence recognized?	This issue is not covered by positive law. The evidence admissible before the arbitral tribunal shall be which are legally admissible and the Civil Code provides for five modes of proof: confession, writing, oath, testimony, presumption of facts. Blockchain is a technology for storing and transmitting information, taking the form of a database. which has the particularity of being shared simultaneously with all its users and does not depend on any central body. To date, there is no legal framework for this technology, and it so happens that by the way it works, it may give rise to apprehensions about the protection of public order. It will be for the arbitral tribunal to make a sovereign assessment of it.
Where an arbitration agreement and/or award is recorded on a blockchain, is it recognized as valid?	ϕ
Would a court consider a blockchain arbitration agreement and/or award as originals for the purposes of recognition and enforcement?	ϕ
Other key points to note?	In the OHADA area, institutional arbitration and <i>ad hoc</i> arbitration coexist. In addition to national arbitration bodies, the CCJA administers, through its Arbitration Centre, arbitral proceedings. The existence of an institutional arbitration under the CCJA has raised questions as to whether the institutional arbitration would be subject to the provisions of the UAA if the seat of the arbitral tribunal is located in the OHADA area. The positive reply to such a question seems logical based on article 1 of the UAA determining its scope <i>ratione loci</i> . However, the CCJA provides a negative answer to this question. In 2008, the CCJA stated that the UAA is not included among the legal acts provided for at Article 10 of the Arbitration Rules that are applicable to specific institutional arbitration under the CCJA, ²⁴ namely the provisions of Title IV of the OHADA Treaty, the CCJA Arbitration Rules, the Rules of Procedure of the CCJA, the annexes thereto, and the Schedule of Arbitration Costs as in force on the date of commencement of the arbitration proceedings. Based on this assumption the institutional arbitration of the CCJA appears as derogating to the ordinary law of arbitration to which Côte d'Ivoire and the other member States of OHADA are subject.

²³ Uniform Act organizing simplified recovery procedures and enforcement measures, 1 June 1998, Article 30. According to this article "*Compulsory execution and protective measures shall not apply to persons who enjoy immunity from execution. However, any debt which is certain, due and owed by state corporations or firms, regardless of their legal form and mission, shall give rise to a set-off against debts which are also certain, due and owed them, subject to an agreement of reciprocity*".

²⁴ CCJA, judgment no. 045/2008, 17 July 2008, available online in the case law collection of www.ohada.com.

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? What key modifications if any have been made to it?

In Côte d'Ivoire, arbitration law is derived from the UAA. The UAA is inspired by both the UNCITRAL Model Law and French law. However, it is worth noting the originality of the UAA in many respects.

One of the most salient specificities of UAA is the fact it enshrines time limits for any intervention of national courts related arbitration issues.²⁵

The arbitration law applicable in Côte d'Ivoire is a harmonized law in the community of the seventeen (17) member states of OHADA.

OHADA arbitration was originally designed for commercial disputes.²⁶ However, to date, the substantive scope of arbitration law has been extended to investment disputes.²⁷

The scope *ratione loci* of the law of arbitration extends only to the OHADA area. Outside the OHADA member states, it is no longer intended to apply even if the arbitration proceedings are organized under the auspices of an arbitration body located in the OHADA area.

Finally, the criterion of arbitrability of the arbitration law applicable in Côte d'Ivoire is based on the free disposition of rights. In other words, for a dispute to be arbitrable in Côte d'Ivoire, it must concern rights over which the holder has absolute control, the capacity to alienate or waive.

1.2 When was the arbitration law last revised?

The UAA was reformed on 23 November 2017, and the new version came into force on 15 March 2018.

The focus of this reform was to expand the basis for arbitration. Previously, the arbitration agreement was the sole basis for recourse to arbitration. Today, a bilateral or multilateral investment treaty or an Investment Code can validly provide a basis for recourse to arbitration.²⁸

Secondly, the reform has clarified the contents of the arbitration by adopting new provisions relating to the definition of the forms of the arbitration agreement, namely the arbitration clause and the arbitration agreement.²⁹

The new UAA reinforce provisions relating to general principles for the conduct of proceedings such as independence, celerity, and fairness to guarantee a fair arbitral trial.³⁰

The time limit for enforcement has been limited to fifteen (15) days to achieve a rapid recognition and enforcement arbitral awards.³¹

²⁵ For a developed analysis, see E. Loquin, *OHADA*, « L'accélération de la procédure d'arbitrage », *Journal du droit international*, 2019-2, p. 343.

²⁶ OHADA Treaty, 21 March 2010, Article 1.

²⁷ UAA, November 23, 2017, Article 3.

²⁸ *Idem*.

²⁹ Article 3-1, UAA.

³⁰ Article 14, UAA.

³¹ Article 31, UAA.

The new UAA has clearly determined the time limit for setting aside an award, that is set in principle three (03) months, to guarantee the effectiveness of the award and the expediency of the setting aside procedure.³²

The waiver to any action for setting aside the award has to be also seen as an innovation.³³

Ultimately, the reform aims at reinforcing the legal security and the attractiveness of arbitration law in the OHADA area, and especially in Côte d'Ivoire.

2. The arbitration agreement

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

The courts determine the law governing arbitration agreement in Côte d'Ivoire according to the seat of arbitration. When the seat of arbitration is in a city in Côte d'Ivoire or any other city in an OHADA member state, the law governing the arbitration agreement is determined according to the principle set out in article 4 of the UAA. Thus, all questions relating to the existence and validity of the arbitration agreement will be decided by the arbitral tribunal according to the common intention of the parties³⁴ without necessary reference to any state law.³⁵

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?

This issue has not been regulated in the UUA.

Nevertheless, according to Article 13 of the Arbitration Rules of the CCJA Arbitration Centre, if not fixed by the parties, the seat of the arbitration shall be fixed by a decision of the Court taken before the file is transmitted to the arbitral tribunal.

Furthermore, according to Article 2 of the CACI Arbitration Rules, unless otherwise agreed by the parties, the seat of the arbitral tribunal (or of the arbitration) shall in principle be fixed in Abidjan or in any other place where CACI has a delegation.

In the case of an ad hoc arbitration, before the commencement of the arbitration proceedings, the parties must necessarily agree on the seat of the arbitration.

Moreover, the courts have no jurisdiction in this matter. They do not have to investigate whether the parties have designated the seat of the arbitration. This is a matter for the arbitration centre, the arbitral tribunal or the parties themselves.

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

Yes.³⁶ The nullity of the main contract does not affect the validity of the arbitration agreement. Similarly, the termination of the contract containing the arbitration clause does not affect its existence or validity.³⁷

³² Article 27, UAA.

³³ Article 25, UAA.

³⁴ Article 11, UAA.

³⁵ Article 4, UAA.

³⁶ UAA, November 23, 2017, Article 4.

³⁷ CCJA, judgment n°082/2014, May 22, 2014, available online in the case law collection of www.ohada.com.

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

The arbitration agreement must be in writing or by any other means capable of proof, including a reference to a document setting out the agreement.³⁸

This implies that the UAA does not impose any formal requirements as to the validity of the arbitration agreement. The arbitration agreement is consensual.

The CCJA accepts that an arbitration agreement may be oral if the party invoking it is able to prove it. The requirement that the arbitration agreement be in writing is therefore merely an evidence issue and not of the validity of the arbitral award.³⁹

The absence of any form requirement does not, however, reflect the fact that judges do not have to assess the validity of the arbitration agreement. As an agreement, it must result from the common will of the parties and must comply with the classic validity requirements recognized in the general law of contracts.

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?

This question relates to the extension of the arbitration agreement. Even the UAA does not deal with this matter, but the CCJA has issued two decisions on it.

In the first one, the OHADA High Court ruled that the arbitration clause inserted into the main contract shall be applied to its index contained in a separate document.⁴⁰

For the High Court : *"Whereas, in the present case, the Memorandum of Understanding concluded on 10 January 1996 between MACACI and Mr M.J.P. provided, on the one hand, in its point 5.3, "that the sale on the European market of the articles produced by MACACI as defined in article 1.3 will be the subject of an exclusive marketing contract attached hereto" and, on the other hand, in its point 6.4 entitled "arbitration clause", that "the parties agree to submit any dispute or challenge that may arise from the application or interpretation of this agreement to a procedure that on the same day, the same two signatories to the said Memorandum of Understanding concluded the exclusive marketing contract provided for in point 5.3 above of the Memorandum of Understanding, of which it constitutes, according to the terms of the Memorandum of Understanding, an index; that the Memorandum of Understanding and the exclusive marketing contract which is the annex thereto are thus closely linked and form a whole; that it follows that the arbitration clause provided for in the Memorandum of Understanding is applicable both to the Memorandum of Understanding and to the index thereto"*

The rule that could be drawn from such a decision is that since the contractual rider or index is part of the original or main contract, the arbitration clause included in the former is valid for the contracts taken for its application.

In the second case involving different parties, the judges ruled that due to the fact the litigious contracts were interdependent, the arbitration inserted in one of them shall be extended to the other.⁴¹

For the High Court : *"Whereas this arbitration clause attributing jurisdiction to the CACI to settle "any dispute that may arise from the interpretation, performance and termination of this contract" is binding on the appeal judges as well as on the disputing parties, including in particular Mr FOFANA Patrice, the defendant in the appeal, who, although not a signatory to the said contract necessarily finds in the object and in the execution of the latter, the very basis of his real or alleged quality of pursuing creditor or, at the very least, of agent supposed to be committed*

³⁸ UAA, November 23, 2017, Article 3-1.

³⁹ CCJA, judgment no. 039/2014, 17 April 2014, available online in the case law collection at www.ohada.com.

⁴⁰ CCJA, arrêt n° 012/2005, 24 February 2005, *Société de manufacture de Côte d'Ivoire dite MACACI c/ MAY Jean-Pierre, Le juris Ohada n°2/2005*, p. 9 ; *Recueil de jurisprudence de la CCJA n°5*, January-June, 2005, volume 2, p. 27.

⁴¹ CCJA, Arrêt n° 024/2010, 08 April 2010, *Joseph Roger c/ Fofana Patrice*, available at www.ohada.com, Ohadata J-13-194.

by third party architects, moreover not clearly identified by him in the present case, in order to obtain a commission on the market defined by the aforementioned contract; that by ignoring the said clause, the Court of Appeal, by ruling as it did, exposed its decision to cassation"

It could be said that as soon as a contract creates rights for a non-signatory third party, the arbitration clause contained therein may be applicable to it. Thus, the basis of the High's Court's decision here was that although M. FOFANA Patrice was not one of the signatories he is bound by the arbitration agreement since he is implied in the execution of the said contract as the pursuing creditor.

2.6 Are there restrictions to arbitrability? In the affirmative:

The general law of arbitration applicable in Côte d'Ivoire is intended to apply to any type of arbitration, whether domestic or international.

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

There are no express restrictions to arbitrability within OHADA area and mainly in Côte d'Ivoire; Indeed, any natural or legal person may resort to arbitration with respect to any rights on which she has free disposal.

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

No.

3. Intervention of domestic courts

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

Yes, if an arbitral tribunal has already been seized, the state judge who would otherwise be deemed competent, must declare himself incompetent.⁴² The lack of jurisdiction of the courts in arbitration is a consequence of the arbitration agreement. When an application is lodged before him, the Ivorian judge shall affirm that the arbitration clause prohibits any jurisdiction of the courts of law.⁴³

However, in the presence of an arbitration agreement, the lack of jurisdiction of the state judge is subject to an exception. This exception consists of the manifest nullity or inapplicability of the arbitration agreement. This exception makes it possible to avoid arbitration proceedings that are deemed to failure because of the manifest nullity of the arbitration agreement.

The existence of the arbitration agreement also does not preclude the interim measures that may be taken by the state courts, provided that this does not involve an examination of the merits of the dispute. This is the case of the when the judge pronounces interim relief, before or during arbitral proceedings.⁴⁴

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

There are no known precedents of courts addressing anti-suit injunctions issued by arbitral tribunals in Côte d'Ivoire.

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)

⁴² Article 13, UAA.

⁴³ Abidjan Court of appeal, Judgment No. 1032, 30 July 2002, available online in the case law collection at www.ohada.com.

⁴⁴ Court of appeal du Littoral-Doula (CAMEROON), judgment n°39/REF, 08 January 1997, available online in the case law collection of www.ohada.com.

In case of interim measures for example.

4. The conduct of proceeding

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

Both options are available and left to the freedom of the parties.

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 justify this outcome?

Arbitrators have a duty of independence and impartiality. They must promptly inform the parties of any circumstances that might create a legitimate doubt in their minds as to their impartiality and independence.⁴⁵ Thus, it is up to the party invoking the arbitrator's lack of impartiality or independence to challenge the arbitrator before the state court. The time limit granted to the national judge to rule is thirty (30) days. Failing that, the challenge shall be brought before the CCJA by the most diligent party.⁴⁶

In case a failure of disclosure is not sufficient to challenge an arbitrator, the undisclosed circumstances can justify it if they seem relevant. To the contrary, if an arbitrator refuses to answer the questions of a party regarding his relationship with the counsel of the other party, this is considered as a lack of independence.⁴⁷

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

The national courts intervene for all issues pertaining the constitution of the arbitral tribunal in *ad hoc* arbitration.

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.⁴⁸ Before the arbitral tribunal is seized of the dispute, the parties may have recourse to the national judge.⁴⁹ After the constitution of the arbitral tribunal, such an approach is possible, but may rarely be adopted as the arbitral tribunal can itself issue interim measure.

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

Yes.

4.5.1 Does it provide for the confidentiality of arbitration proceedings?

Although UAA enshrines only the secrecy of the deliberations of the arbitral tribunal, it is not disputed that confidentiality is a general principle of Arbitration proceedings.⁵⁰

4.5.2 Does it regulate the length of arbitration proceedings?

⁴⁵ UAA, 23 November 2017, Article 7.

⁴⁶ UAA, 23 November 2017, Article 8.

⁴⁷ Court of Appel of Douala, 19 December 2004, *The Paris Journal of International Arbitration* 2015-3, pp. 525-527, commented by Achille Ngwanza.

⁴⁸ UAA, 23 November 2017, Article 13 *in fine*.

⁴⁹ UAA, 23 November 2017, Article 13.

⁵⁰ Jean-Marie Tchakoua, « L'arbitrage selon l'Acte uniforme relatif au droit de l'arbitrage », in P.-G. Pougoué (dir), *Encyclopédie du droit OHADA*, Lamy, 2011, pp. 236-292, sp. n° 152-153.

The parties can decide on the duration of the proceedings in their arbitration agreement. Otherwise, the law of arbitration requires that the arbitration proceedings should not exceed six (06) months from the day the last arbitrator accepted his mission.⁵¹

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?

Arbitration law does not specifically regulate where hearings and/or meetings may take place. In practice, hearings and meetings can be held anywhere unless otherwise agreed by the parties.

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

Yes. The arbitral tribunal may, at the request of either party, order provisional or conservatory measures apart from seizures and judicial securities which remain within the jurisdiction of the state courts.⁵²

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?

Yes, the arbitral tribunal invites the parties to provide it with the evidence it deems necessary for the resolution of the dispute. The arbitral tribunal will only accept evidence that has been the subject to an adversarial debate between the parties.⁵³

4.5.6 Does it make it mandatory to hold a hearing?

The UAA is silent on this issue. However, it states that the arbitral award shall be made in accordance with the procedure and form agreed by the parties.⁵⁴

4.5.7 Does it prescribe principles governing the awarding of interest?

The arbitration law applicable in Côte d'Ivoire does not deal with the awarding of interest.

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

No.

4.6 Liability

4.6.1 Do arbitrators benefit from immunity from civil liability?

No. Their civil liability could be engaged by one of the parties, if the arbitral tribunal causes a damage in the framework of its assignment, according to the common rules of contractual liability. Nevertheless, arbitrators acting under the Rules of Arbitration of the CCJA Arbitration benefit from immunity during the course of arbitration proceedings.⁵⁵

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

Yes, participants in any arbitration proceeding may be subject to criminal liability. In addition, arbitrators do not enjoy immunity from criminal liability.

⁵¹ UAA, 23 November 2017, Article 12.

⁵² UAA, 23 November 2017, Article 14 *in fine*.

⁵³ UAA, 23 November 2017, Article 14 (6) & (7).

⁵⁴ UAA, 23 November 2017, Article 19.

⁵⁵ OHADA Treaty, Article 49.

In Ivorian criminal law, there is an adage that says, "criminal holds civil as is". Thus, there is a concern that the arbitral process could be suspended until the criminal judge has cleared his deliberations.

5. The award

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

No. The obligation to give reasons for the award is a rule of public policy⁵⁶ from which the parties may not derogate. In addition, failure to state reasons is one of the grounds for the admissibility of an action to set aside the arbitral award.⁵⁷

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

Yes, the parties may agree to waive the right to apply for the annulment of the arbitral award provided that the award is not contrary to international public policy.⁵⁸

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

The arbitration law applicable in Côte d'Ivoire is silent on this question.

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

No. The arbitral award is not subject to opposition, appeal, or cassation. It can only be the subject of an action for annulment which must be brought before the competent court.⁵⁹

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 the recognition and enforcement of arbitral awards is the procedure for recognition or exequatur.⁶⁰

The state court, seized of a request for recognition or enforcement, shall rule within a period not exceeding fifteen (15) days from the date of the request. If at the end of this period, the court has not issued its order, the exequatur shall be deemed to have been granted.⁶¹

Finally, a distinction must be made between local and foreign awards. Foreign awards shall be recognized under the conditions provided for by international conventions possibly applicable and, in the absence thereof, under the same conditions as those provided in the UAA.⁶²

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

⁵⁶ UAA, 23 November 2017, Article 20.

⁵⁷ UAA, 23 November 2017, Article 26.

⁵⁸ UAA, 23 November 2017, Article 25 (3).

⁵⁹ UAA, 23 November 2017, Article 25 (1) & (2).

⁶⁰ UAA, 23 November 2017, Article 30.

⁶¹ UAA, 23 November 2017, Article 31 (5).

⁶² UAA, 23 November 2017, article 34

The suspension of the exercise of the right to enforcement of the arbitral award is not technically automatic in the event of the commencement of setting aside proceedings. The suspension takes place provided that no interim measure of enforcement has been ordered by the arbitral tribunal.⁶³

There is a close dependency between an action for setting aside and the enforceability of the award. The exercise of the action for setting aside stays the grant of exequatur until the competent jurisdiction has rendered its decision.

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

Enforcement of the award in the jurisdiction is subject to recognition and enforcement proceedings. The arbitration law applicable in Côte d'Ivoire requires the existence of the arbitral award for it to be recognized and enforced. The existence of the arbitral award shall be established by the production of the original accompanied by the arbitration agreement or copies of such documents that meet the conditions required for their authenticity.⁶⁴

Nothing prevent a foreign award that has been set aside at its seat could be enforceable in the jurisdiction.

5.8 Are foreign awards readily enforceable in practice?

Generally speaking, yes. It should be noted that foreign awards are recognised under the conditions provided for in any applicable international conventions - the main one being the New York Convention of 1958 - and failing that, under the same conditions as those provided for in Article 31 of the UAA.⁶⁵

The ease of enforcement of a foreign award is therefore dependent on the flexibility of the conditions provided by the law under which it will be recognized.

In Ivorian practice, foreign awards are easily enforceable as long as the conditions for recognition and enforceability are met and they are not contrary to Ivorian public policy.

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?

None of the provisions of UAA or Ivorian law deals with the issue of contingency fee arrangement in arbitration, but it is forbidden for judicial trials. Regarding third-party funding, there is no provision related to it. Due to the impecuniosity of many parties involved in arbitration proceeding, third party funding could be increasingly used in Côte d'Ivoire.

7. Arbitration and technology

7.1 Is the validity of blockchain-based evidence recognised?

This issue is not covered by the law in force.

The evidence admissible before the arbitral tribunal shall be that which are legally admissible. And the Ivorian Civil Code recognises for five modes of proof: confession, writing, oath, testimony, presumption of facts.

⁶³ UAA, 23 November 2017, Article 28.

⁶⁴ UAA, 23 November 2017, Article 31.

⁶⁵ UAA, 23 February 2018, Article 34.

The Blockchain is a technology for storing and transmitting information, taking the form of a database. which has the particularity of being shared simultaneously with all its users and does not depend on any central body.

To date, there is no legal framework for this technology in Côte d'Ivoire. And it appears based on how it works, it may give rise to apprehensions as to the protection of public order. It will be for the arbitral tribunals to make an assessment of it and a case- by-case application as things stand.

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

φ

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

φ

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?

OHADA arbitration law does not deal with either aspect of the issue expressly.

According to Article 19 of the UAA, the arbitral award shall be made in accordance with the procedure and form agreed by the parties. It follows from this that the OHADA legislator does not impose any specific form. Furthermore, Article 21 of the UAA which deals with the obligation of signature of the arbitral award by the arbitrators does not prescribe the forms in which such signature must be drawn up. It follows from these provisions that any legally permissible form of signature that is not vitiated by forgery can be accepted.

Finally, it is important to note that OHADA is planning a future Uniform Act dealing with electronic transactions. The Uniform Act on General Commercial Law even already provides for the admission of electronic signatures in the context of the computerisation of the trade and real estate credit register, the national file, and the regional file.

Therefore, nothing prevents a court to consider an award that have been electronically signed or more securely digitally signed an affirmative answer can be given for both hypotheses, subject to the opinion of the CCJA.

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

For time being no arbitration law reform in the near future has been announced.

Nevertheless, there is an ongoing reform of Ivorian Law related to the national judge in charge of arbitration matters. This reform should enact the exclusive jurisdiction of commercial courts for any arbitration issue.

9. Compatibility of the Delos Rules with local arbitration law

The Delos Rules should be regarded as compatible with the UAA provisions.

10. Further reading

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ARBITRATION INFRASTRUCTURE IN THE JURISDICTION

Leading national, regional and international arbitral institutions based out of the jurisdiction, <i>i.e.</i> with offices and a case team?	φ
Main arbitration hearing facilities for in-person hearings?	Yes. Within the CCJA and CACI arbitration centres, hearings facilities for in-person hearings are available.
Main reprographics facilities in reasonable proximity to the above main arbitration providers with offices in the jurisdiction?	Yes, main reprographics facilities in reasonable proximity to the above arbitration providers with offices in the jurisdiction.
Leading local providers of court reporting services, and regional or international providers with offices in the jurisdiction?	There are various providers available.
Leading local interpreters for simultaneous interpretation between English and the local language, if it is not English?	Yes.
Other leading arbitral bodies with offices in the jurisdiction?	Cour Commune de Juste et d'Arbitrage de l'OHADA (CCJA) . Cour d'Arbitrage de Côte d'Ivoire (CACI) .