

GUIDE TO ARBITRATION PLACES (GAP)

SENEGAL

CHAPTER PREPARED BY

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VERSION: 28 FEBRUARY 2022 (v01.01)

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

IN-HOUSE AND CORPORATE COUNSEL SUMMARY

Senegal has a real potential to become a key place of arbitration in light of its modern arbitration law, the existence of an experienced and well-established arbitration centre, the Dakar Arbitration, Mediation and Conciliation Centre (*Centre d'Arbitrage, de Médiation et de Conciliation de Dakar*, or "CAMC") as well as the consistency of the jurisprudence of its courts on arbitration-related matters.

Senegal is a member of the Organisation for the Harmonisation of Business Law in Africa ("OHADA") since 14 June 1994.¹ The purpose of the OHADA Treaty is to harmonize business laws and promote arbitration as a means of resolving disputes across its Member States in order to provide legal and judicial security for investors and companies. OHADA's legislative power is exercised through the adoption of "Uniform Acts", which are directly applicable within its Member States. Uniform Acts regulate several areas of business law including commercial law, securities, companies' law, mediation and arbitration. The OHADA Uniform Act on Arbitration ("UAA") constitutes the arbitration law in Senegal.² It is implemented by the Senegalese national laws including the Act 98-30 of 14 April 1998 on arbitration, Decree No. 64-572 of 30 July 1964 and its further amendments relating to Code of Civil Procedure, the Decree No. 2019-951 of 27 May 2019 designating the competent national courts for state cooperation in arbitration proceedings under the UAA and the CCJA Arbitration Rules. It is worth mentioning that the Senegalese national laws relating to the arbitration must comply with the UAA rules and in case of contradiction, the UAA rules shall prevail.

One of OHADA's key institutions is the Common Court of Justice and Arbitration ("CCJA Court"), a supranational Court which controls the interpretation and the application of Uniform Acts by Member States' courts.

The CCJA also includes an arbitration Centre ("CCJA Arbitration Centre"). CCJA Arbitration Centre has its own Arbitration rules which are completed by provisions of OHADA Treaty.³

The CCJA Court provides administrative support to the CCJA arbitration proceedings and has jurisdiction on arbitration-related matters relating to CCJA arbitration proceedings. In addition to the CCJA Arbitration rules, proceedings before the CCJA Court are subject to CCJA proceedings rules dated 18 April 1996 as revised in January 2014 (*Règlement de procédure de la CCJA*), CCJA Internal Regulations on arbitration matters dated 2 June 1999 (*Règlement intérieur de la CCJA en matière d'arbitrage*), including their appendices, and the schedule of arbitration fees, in their version in force on the date of the commencement of the arbitral procedure.⁴

In addition to the CCJA Arbitration Centre, Senegal has a local arbitration centre: the Dakar Arbitration, Mediation and Conciliation Centre (*Centre d'Arbitrage, de Médiation et de Conciliation de Dakar*, or "CAMC"). This is a well-functioning arbitration centre with 20 years of experience. The CAMC has its own Arbitration Rules dated 24 November 2015 which replace the old rules dated 12 June 2006. The CAMC is based in Dakar with local branches in Senegal including Saint-Louis, Kaolack, Thiès, Ziguinchor and Tambacounda.⁵

¹ OHADA is an international organization created in 1993 and comprising seventeen Member States including Benin, Burkina Faso, Cameroon, Comoros, Congo (Brazzaville), Ivory Coast, Gabon, Guinea, Guinea Bissau, Equatorial Guinea, Mali, Niger, Central African Republic, Democratic Republic of Congo, Senegal, Chad, and Togo.

² Article 35 of the UAA

³ See Articles 21-26 of the OHADA Treaty of 17 October 1993 as revised in 2008

⁴ Article 10.1 of CCJA Arbitration rules

⁵ The CAMC was created in 1998 by the Dakar Chamber of Commerce, Industry and Agriculture (*Chambre de commerce, d'industrie et d'agriculture de Dakar*) according to the Decree No. 98-493 of 5 June 1998 relating to the creation of arbitration centres in Senegal

Key places of arbitration in the jurisdiction?	Dakar, as the capital of Senegal is the key place for international arbitration.
Civil law / Common law environment? (if mixed or other, please specify)	Civil law.
Confidentiality of arbitrations?	There are no specific provisions under the UAA addressing this issue. According to the CCJA and CAMC Arbitrations rules, arbitral proceedings are confidential. ⁶ However, under the CCJA Arbitration rules, the Secretary General of the CCJA Arbitration Centre may publish extracts from arbitral awards without mentioning elements which would enable the parties to be identified (article 14).
Requirement to retain (local) counsel?	<p>There are no specific provisions under the UAA addressing this issue.</p> <p>Practicing as counsel in arbitrations seated in Senegal is restricted to the qualified advocates in Senegal or within the West African Economic and Monetary Union ("WAEMU")⁷ according to the WAEMU Regulation N° 005 /2014/ CM/ UEMOA on the Harmonisation of the Rules Governing the Profession of Lawyer within the WAEMU Region.⁸ This provision is not mandatory and may be subject to contrary provisions provided by national laws or arbitration rules.</p> <p>Parties to arbitrations seated in Senegal have free choice as to their counsel and do not have to retain an attorney:</p> <ul style="list-style-type: none"> a) The default position under the WAEMU rules is that counsel appearing in arbitrations seated in Senegal must be qualified advocates in Senegal or within the WEAMU.⁹ b) However, that provision is subject to any alternative provision under national laws or arbitration rules and the CCJA rules provide that parties may freely determine the qualification of their representatives before the tribunal (article 19 of CCJA Arbitration rules).¹⁰ c) if there is a referral to the CCJA, then only lawyers admitted to practice law in OHADA Member States can appear before the CCJA.

⁶ Article 14 of the CCJA Arbitration rules and article 9 of CAMC Arbitration rules

⁷ WAEMU is an international regional organisation established with the Treaty signed in Dakar on 10 January 1994 by the Heads of State and Government of seven West African countries using the CFA Franc (XOF Currency) in common. The Member States are Benin, Burkina Faso, Côte d'Ivoire, Mali, Niger, Senegal and Togo. The purpose of the WAEMU is to achieve the economic integration of the member economies by establishing common market, common external tariff, common currency as well as free flow of persons, freedom of establishment and freedom to provide services for the nationals of its states members within the WAEMU Region.

⁸ Article 3

⁹ Article 3 of the WAEMU Regulation N° 005 /2014/ CM/ UEMOA on the Harmonisation of the Rules governing the Profession of Lawyer within the WAEMU Region

¹⁰ The CCJA had also confirmed this in its jurisprudence. See CCJA, Sogefco-SA v. Cotel Congo (Airtel Congo SA), Decision No. 099/2014 du 30 octobre 2014

	d) If there is a referral to the Senegalese courts then only Senegalese qualified lawyers may appear before the court. ¹¹
Ability to present party employee witness testimony?	<p>There are no specific provisions under the UAA, the CCJA Arbitration Rules or the CAMC Arbitration Rules preventing the parties from submitting witness statements given by their employees.</p> <p>The decision to accept such evidence is however subject to the arbitral tribunal's discretion.¹²</p>
Ability to hold meetings and/or hearings outside of the seat and/or remotely?	<p>There are no specific provisions under the UAA.</p> <p>Under the CCJA Arbitration rules, the arbitral tribunal may decide to hold hearings outside of the seat, subject to prior consultation with the parties.¹³</p> <p>Under the CAMC Arbitration rules, the arbitral tribunal may decide to hold hearings outside of the seat.¹⁴</p>
Availability of interest as a remedy?	<p>Neither the UAA nor the CCJA/CAMC Arbitration Rules limit the availability of interest as a remedy.</p> <p>This question is generally governed by the law applicable to the merits. Under Senegalese substantive law, arbitrators may grant moratory interests on monetary claims.¹⁵</p>
Ability to claim for reasonable costs incurred for the arbitration?	<p>There is no specific rule under the UAA. Consequently, the arbitral tribunal has discretion in respect of the allocation of costs.</p> <p>Under the CCJA Arbitration rules, the arbitral tribunal decides which of the parties is responsible for payment of the arbitration costs or in what proportion those are to be shared between the parties considering any relevant circumstances, including the extent to which each party has conducted the arbitration proceedings quickly and efficiently in terms of cost.¹⁶</p> <p>Under the CAMC Arbitration rules, the arbitral tribunal decides which of the parties is responsible for payment of these costs or in what proportion these should be allocated between the parties.</p>
Restrictions regarding contingency fee arrangements and/or third-party funding?	<p>Contingency fees: Senegalese law does not contain express provisions regarding the use of contingency or alternative fee arrangements. It is only provided that fees of lawyers must be fixed by written agreement between the lawyer and its client.¹⁷</p> <p>Third-party funding: There is no specific provisions relating to this issue under Senegalese law. In addition, neither the CCJA/CAMC</p>

¹¹ Article 4 of Act No. 84-09 of January 4, 1984 creating the Bar Association 1984¹¹.

¹² Article 14 of the UAA; Article 23 of the CAMC Arbitration rules; Article 19.2 of CCJA Arbitration Rules.

¹³ Article 13

¹⁴ Article 18

¹⁵ Article 8 of Code of Civil and Commercial Obligations

¹⁶ Article 24

¹⁷ Article 15 of Act No. 84-09 of 4 January 1984 on the establishment of the Bar Association

	Arbitration rules nor the UAA contain specific provisions addressing third-party funding.
Party to the New York Convention?	Yes. Senegal acceded to the New York Convention on 17 October 1994 and the Convention entered into force in Senegal on 15 January 1995.
Party to the ICSID Convention?	Yes.
Compatibility with the Delos Rules?	Yes.
Default time-limitation period for civil actions (including contractual)?	The default time-limitation period for civil actions is for ten (10) years. (Article 222 of The Code of Civil and Commercial obligations).
Other key points to note	ϕ
World Bank, Enforcing Contracts: Doing Business score for 2020, if available?	In 2020, the country ranks 132 out of 190 countries with the score of 50.6.
World Justice Project, Rule of Law Index: Civil Justice score for 2020, if available?	In 2020, the country ranks 52 out of 126 countries with the score of 0.55.

ARBITRATION PRACTITIONER SUMMARY

The UAA constitutes a modern arbitration law which is in line international standards. Its provisions are consistent with the fundamental principles of international arbitration and main features of the UNCITRAL Model Law. In addition, Senegal has ratified the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, signed in New York on 10 June 1958 (the “NYC”).

The drafting of the UAA has also been enriched by the diversity of its member countries which speak different languages and operate on different legal system.

The arbitration-related matters which require the assistance of State Courts are handled by the Senegalese Courts and by the CCJA.

Date of arbitration law?	The UAA was adopted on 23 November 2017 and came into force on 15 March 2018. This Act repealed the Uniform Act on Arbitration dated 11 March 1999.
UNCITRAL Model Law? If so, any key changes thereto? 2006 version?	No. The UAA is not based on the UNCITRAL Model Law. However, its provisions are consistent with the fundamental principles of international arbitration and main features of the UNCITRAL Model Law.
Availability of specialised courts or judges at the key seat(s) in the jurisdiction for handling arbitration-related matters?	<p>There are no specialized courts or judges in Senegal for arbitration-related matters. However, the UAA refers to the competent national courts for many arbitration-related issues, which act in support of arbitral proceedings. In this regard, Senegal enacted a Decree No. 2019-951 of 27 May 2019 designating the competent national courts for state cooperation in arbitration proceedings under the UAA and the CCJA Arbitration Rules. According to this Decree, national courts have jurisdiction over arbitration-related matters as follows:</p> <p>The President of the Court of first instance (<i>Président du Tribunal de Grande Instance</i>) over (1) appointment of arbitrators in case of absence of agreements between parties, (2) appointment of arbitrator(s) when there is a recusal, incapacity, death, resignation or removal of an arbitrator in case of absence of agreements, (3) extension of the duration of arbitration proceedings in the absence of agreements between parties (4) lack of loyalty of one party during the conclusion of arbitration agreement, (5) interim measures, (6) support to administration of evidence, (7) preventive seizures and judicial sureties, as provided by the UAA and according to the Code of Civil Procedure. The President of the Court of first instance has, in addition, jurisdiction over issues of (1) interim/conservatory measures during the proceedings except preventive seizures and securities especially ordered by Courts,¹⁸ (2) interim measures as provided by the CCJA Arbitration rules and according to the Code of Civil Procedure.</p>

¹⁸ Under Senegalese law, Courts may allow securities to the creditor (for instance, mortgage), as an interim measure, on the immovable property of the debtor.

	<p>The Court of first instance (<i>Tribunal de grande instance</i>) over issues of additional arbitral awards after its issuance in case the arbitral tribunal can no longer be reconvened, and absent any agreement between the parties to appoint a new arbitral tribunal.</p> <p>The Court of Appeal (<i>Cour d'Appel</i>) over issues of annulment of arbitral awards.</p> <p>The President of the Court of the First Instance over the exequatur of arbitral awards.</p>
Availability of <i>ex parte</i> pre-arbitration interim measures?	<p>The courts may grant <i>ex parte</i> interim measures.</p> <p>(Article 14 of UAA; Article 10-1 of CCJA Arbitration rules; Article 25 of CAMC Arbitration rules.)</p>
Courts' attitude towards the competence-competence principle?	<p>The arbitral tribunal alone is competent to rule on its own jurisdiction.¹⁹</p> <p>The CCJA has always affirmed in the last resort its attachment to the principle of competence-competence in the presence of an arbitration agreement overturning certain decisions of national courts, including those of Senegalese courts that had declared themselves competent.²⁰ It firmly emphasises the principle according to which it is up to the arbitral tribunals to rule on their competence enshrined in Article 11 of the UAA.</p>
May an arbitral tribunal render a ruling on jurisdiction (or other issue) with reasons to follow in a subsequent award?	<p>As far as a ruling on jurisdiction is considered as an award, it must contain the reasons on which it is based</p> <p>(Article 20 of the UAA).</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>Pursuant to the Article 26 of the UAA, annulment grounds are the following:</p> <ul style="list-style-type: none"> a) if the arbitral tribunal has ruled without an arbitration agreement or based on an agreement that is void or expired; b) if the arbitral tribunal was irregularly composed, or the sole arbitrator was irregularly appointed; c) if the arbitral tribunal ruled without conforming to the mandate with which it has been entrusted; d) if the principle of due process has not been respected; e) if the arbitral award is contrary to international public policy; or f) if the award fails to state the reasons on which it is based. <p>The last ground (f) for annulment is additional to the grounds of the NYC.</p>

¹⁹ Article 11 of UAA, article 10.4 of CCJA arbitration rules and article 29 of CAMC Arbitration Rules.

²⁰ CCCJA, Liquidation Société Cim Sahel Energie S.A C/ Société « Les Ciments Du Sahel » Dite Cds S.A., Decision No. 047/2015 of 27 April 2015 ; CCJA, Société ACCOR AFRIQUE (SAS) & Cst v. Etat Togolais, Decision No. 064/2020 of 27 February 2020

Do annulment proceedings typically suspend enforcement proceedings?	Annulment proceedings suspend enforcement proceedings except in the case where provisional enforcement of the award has been ordered by the arbitral tribunal. (Article 28 of the UAA).
Courts' attitude towards the recognition and enforcement of foreign awards annulled at the seat of the arbitration?	There are no specific provisions under the UAA addressing this issue. There is also no published case law on this issue rendered by the CCJA or Senegalese Courts. However, the UAA provides general principle under which when the arbitral award is rendered on the basis of rules different from those provided for in the UAA, the award shall be recognized in the Member States under the conditions provided for by international conventions possibly applicable. The CCJA and Senegalese Courts have strictly interpreted and applied this provision. ²¹ Under the NYC which is applicable in Senegal, the Court may not enforce the award that has been set aside by the courts at the seat of arbitration if the applicant proves that the award which is the subject of the application for recognition and enforcement has been set aside. ²²
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?	There are no specific provisions under the UAA addressing this issue. There is also no published case law on this issue rendered by the CCJA or Senegalese Courts. To recognise and enforce arbitral awards, Senegalese courts will make sure that a certain number of requirements are complied with, including, the respect of a party's right to be heard. If parts of the hearings were to be conducted remotely in the absence of the objecting party, that may affect its right to be heard. The judge might refuse to recognize or enforce a decision rendered in a such context. (Articles 787 and 790 of the Civil Procedure Code).
Key points to note in relation to arbitration with and enforcement of awards against public bodies at the jurisdiction?	States, other local authorities, public entities and any other legal person under public law may be a party to an arbitration, regardless of the legal nature of the contract, without being able to invoke their own rules to object to the arbitrability of the dispute, to their capacity to submit to arbitration or to the validity of the arbitration agreement. (Article 2 of the UAA). Compulsory execution and protective measures shall not apply to the State, including local authorities. They have immunity from execution. Where forced execution ²³ and precautionary measures are undertaken against legal persons other than those listed above and

²¹ CCJA, Société VODACOM International LIMITED c/ Société Congolese Wireless Network SPRL, Decision No. 003/2017 of 26 February 2017 ; Supreme Court (of Senegal), Bocar Samba Dieye v. Ascot Commodities, Decision No. SA / JJ/108/RG/17 of 20 December 2017.

²² Article V (1) (e)

²³ Under OHADA law, forced execution occurs in case of absence of voluntary execution by the debtor and refers to execution carried out before the Court by the creditor to compel the defaulting debtor to honour his obligations towards the creditor (article 28 of Uniform Act organizing simplified recovery procedures and enforcement measures).

	<p>are of such a nature as to seriously affect the continuity of public service, the judge may, in order to prevent or put an end to the disturbance, take all appropriate measures.</p> <p>(Article 30 of Uniform Act organizing simplified recovery procedures and enforcement measures); Article 194 Paragraph 2 of the Act No. 2002-12 of April 15, 2002 repealing and replacing the provisions of paragraph 2 of Article 194 of the Code of Civil and Commercial Obligations relating to immunity from execution).</p>
Is the validity of blockchain-based evidence recognised?	<p>As an electronic evidence, blockchain-based evidence is considered and recognized under Senegalese law.</p> <p>(Article 5 of the OHADA Uniform Act on general commercial law; article 37 of Act No. 2008-08 of 25 January 2008 on electronic transactions).</p>
Would a court consider a blockchain arbitration agreement and/or award as originals for the purposes of recognition and enforcement?	<p>Yes. Blockchain arbitration agreements and awards would be recognized as originals for the purposes of recognition and enforcement.</p> <p>(Articles 3-1; 31 of the UAA; Article 792 of the Civil Procedure Code; Article 19 of Act No. 2008-08 of January 25, 2008 on the electronic transactions)</p>
Other key points to note?	φ

JURISDICTION DETAILED ANALYSIS²⁴

1. The legal framework of the jurisdiction

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

The UAA is not based on the UNCITRAL Model Law. However, its provisions are consistent with the fundamental principles of international commercial arbitration and main features of the UNCITRAL Model Law.

1.2 When was the arbitration law last revised?

The UAA was revised in November 2017. The new Act entered into force on 15 March 2018.

2. The arbitration agreement

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

Under the UAA, the arbitration agreement shall be interpreted in accordance with the common will of the parties, without reference to a national law.

On the basis of this provision, the CCJA Court may freely determine the law governing the arbitration agreement including by referring to the UAA as well as relevant general principles of law. This situation is illustrated in a CCJA case between an OHADA State and a private company where the Court has referred to the UAA provision recognizing the capacity of public persons to arbitrate. The Court specifically stated that the representatives of the private entity having been able to legitimately believe in the powers of the Minister in charge of Finance who was also the Monetary Authority of the Republic of Equatorial Guinea, the latter was ill-advised to invoke its own regulations to contest the validity of the arbitration agreement.²⁵

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?

There is no specific provision addressing this issue under the UAA. The latter shall however apply to any arbitration when the seat of the arbitral tribunal is in one of the OHADA States Parties.

Under CCJA Arbitration rules, in case of absence of express designation of a 'seat' the arbitration agreements may be determined by a subsequent agreement. Failing that, the seat is fixed by a decision of the Court taken before the file is transmitted to the arbitral tribunal.²⁶

Under CAMC arbitration rules, in case of absence of express designation of a 'seat' by parties in the arbitration agreement or in a subsequent agreement, Dakar is the seat by default.²⁷

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

Yes, under the UAA, the arbitration agreement is independent from the main contract. The validity of the arbitration agreement is not affected by the nullity of this contract.²⁸

²⁴ The authors are grateful to [Yaye Diabaté](#) for her valuable help in the preparation of this chapter.

²⁵ CCJA, République De Guinée Equatoriale et La Communauté Economique et Monétaire de l'Afrique Centrale (CEMAC) v. La Commercial Bank Guinea Ecuatorial (CBGE), Decision No. 012/2011, of 29 November 2011

²⁶ Article 13 of CCJA Arbitration rules

²⁷ Article 17 of CAMC arbitration rules

²⁸ Article 4 of the UAA

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

To be enforceable, the arbitration agreement must be made in writing or by any other means that may be used to prove its existence and contents, in particular by reference to a document containing the agreement.²⁹

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?

In principle, arbitration agreements only bind the persons who are party to it.

An extension of arbitration agreements to non-signatory parties remains possible in the case, for instance, of a group of contracts or a group of companies subject to some legal conditions.³⁰

2.6 Are there restrictions to arbitrability? In the affirmative:

Yes. Natural or legal persons can only resort to arbitration over rights on which they have the free disposal.³¹

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

There are no specific matters expressly excluded from arbitration under UAA.

The UAA only refers to rights which parties may freely dispose.

According to provisions of article 826-2 of Act 98-30 of 14 April 1998 on arbitration, parties cannot resort to arbitrations on issues of donations and legacies of food, housing and clothing, on the separations between husband and wife, divorces, status issues, and more generally in all matters that are of interest to public order.

Anti-trust and employment are matters that are of interest to public order and therefore cannot be subject to arbitration.

The CCJA arbitration rules limits the scope of arbitration to a contractual dispute,³² whilst CAMC arbitration rules does not provided restrictions to specific matters.

2.6.2 Do these restrictions relate 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?

Pursuant to Article 13 of the UAA, when a dispute for which an arbitral tribunal is seized pursuant to an arbitration agreement is brought before a State court, the latter must, if one of the parties so requests, declare that it lacks jurisdiction.

If the arbitral tribunal has not yet been seized or if no request for arbitration has been formulated, the State court must also declare itself incompetent unless the arbitration agreement is manifestly void or manifestly inapplicable to the case. In this case, the competent State court decides on its competence, by a final decision,

²⁹ Article 3-1 of the UAA

³⁰ CCJA, Joseph Roger c/ Fofana Patrice, Decision No. 024/2010 of 8 April 2010

³¹ Article 2 of the UAA

³² Article 21 of the OHADA Treaty of 17 October 1993 as revised in 2008.

(" *decision rendue en dernier ressort*") within a maximum period of fifteen (15) days. The court's decision cannot be the subject of an appeal before the CCJA under the conditions laid down in its Rules of Procedure.

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

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

No difference. The same rules as mentioned in 3.1 would apply.

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

There are no specific provisions addressing this issue under the UAA.

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

As far as we know, there is no case law regarding the injunctions of arbitrators to halt or withdraw a pending litigation proceedings in Senegal.

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

We have not found specific provision or case law on anti-suit injunction issues under the UAA and before Senegalese courts.

4. The conduct of the proceedings

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

Under the UAA, there are no specific provisions addressing this issue.

Parties can however retain foreign counsel or be self-represented under CCJA and CAMC Arbitration rules.³³

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?

Under UAA, the arbitrator who accepts his mission must communicate his acceptance to the parties by any means in writing. Such acceptance should also include an independence and impartiality declaration of the arbitrator.

Any arbitrator who is approached shall inform the parties of any circumstances likely to create in their minds a legitimate doubt as to his independence and impartiality and may accept his mission only with their unanimous written agreement.

From the date of his appointment and throughout the arbitral proceedings, the arbitrator shall promptly disclose such circumstances to the parties.³⁴

If the parties have not agreed on the procedure for challenging arbitrators, the President of the Court of First Instance shall decide the challenge within thirty (30) days of the parties and the arbitrator having been heard or duly summoned. If the competent court fails to rule within the above-mentioned time limit, it shall be relieved of jurisdiction and the challenge may be brought before the CCJA by the most diligent party.³⁵

³³ Article 19.1 of the CCJA Arbitration Rules; Article 6 of CAMC Arbitration rules.

³⁴ Article 7 of the UAA

³⁵ Article 8 al. 1 of the UAA

The challenge of an arbitrator already confirmed shall be allowed only for a cause revealed after his or her appointment.³⁶

An arbitrator's failure to disclose relevant information is sufficient for the court to accept a challenge against the arbitrator. It is up to the parties to assess the facts revealed by the arbitrator and to exercise, if any, their right to challenge the arbitrator. In the 2017 case CCJA, 2e ch., Wanmo Martin v. Nguessi Jean Pierre and al., Decision No. n° 151 /2017 of 29 June 2017, the CCJA stated that it is settled case law that an arbitrator must disclose any circumstances likely to affect his or her judgment and cause the parties to reasonably doubt his or her impartiality and independence, which are the very essence of the arbitral function.

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

In the absence of agreement, the arbitral tribunal shall be supplemented by the arbitrators appointed or, failing agreement between them, the President of the Court of First Instance. The same shall apply in the case of an appointment made necessary by reason of the challenge, incapacity, death, resignation or removal of an arbitrator.

If the parties fail to agree on the appointment procedure or if their stipulations are inadequate:

- in the case of arbitration by three arbitrators, each party shall appoint one arbitrator and the two arbitrators so appointed shall choose the third arbitrator; if a party fails to appoint an arbitrator within thirty (30) days from the receipt of a request to do so from the other party, or if the two arbitrators do not agree on the choice of the third arbitrator within thirty (30) days from their appointment, the appointment shall be made, at the request of a party, by the President of the Court of First Instance;
- in the case of arbitration by a sole arbitrator, if the parties cannot agree on the choice of arbitrator, the arbitrator shall be appointed, at the request of a party, by the President of the Court of First Instance.

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

Pursuant to the article 13 of the UAA, the existence of an arbitration agreement shall not prevent a State court, at the request of a party, in a case of recognized and substantiated urgency, from ordering interim measures of protection, provided that such measures do not involve an examination of the substance of the dispute for which only the arbitral tribunal has jurisdiction.

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

Yes. Pursuant to the combined provisions of article 1 of Decree No. 2019-951 of 27 May 2019 designating the competent national courts for state cooperation in arbitration proceedings and article 820-1 of the Senegalese Code of Civil Procedure of Courts may consider *ex parte* request and order any urgent measures when circumstances require that they not be taken contradictorily.

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

The UAA regulates the conduct of the arbitration. It provides for compliance with the preliminary stage of dispute resolution when the parties have provided for it in the arbitration agreement (i.e. pre-arbitral steps).³⁷

³⁶ Article 8 al. 4 of the UAA

³⁷ Article 8.1 of the UAA

It also provides that the parties must be treated equally, and each party must be given full opportunity to assert its rights.³⁸

According to the UAA, reliance on an arbitration institution commits the parties to apply the arbitration rules of the arbitration institution, unless the parties have expressly agreed to depart from certain provisions of the rules in agreement with the arbitration institution.³⁹

The UAA also includes provisions related to the jurisdiction of the arbitral tribunal (competence-competence principle),⁴⁰ the time limit for the arbitral tribunal's mission⁴¹ and the modalities of determination of law applicable to the merits.⁴² It also set out principles of loyalty (*principe de loyauté*)⁴³ as well as principle of celerity (*principe de célérité*).⁴⁴

4.5.1 Does it provide for the confidentiality of arbitration proceedings?

The UAA does not expressly provide for the confidentiality of arbitration proceedings. It only provides that the deliberations of the arbitral tribunal shall be confidential.⁴⁵

Under the CCJA Arbitration rules, arbitral proceedings are confidential as well as the work of the CCJA relating to the conduct of the arbitral proceedings including meetings of the Court relating to the administration of the arbitration. This confidentiality covers the documents submitted to the Court or drawn up by it in the course of the proceedings it administers.

In addition, the parties and their counsel, arbitrators, experts and all persons involved in the arbitration proceedings shall be bound to respect the confidentiality of information and documents produced in the course of the arbitration as well as regarding the arbitral award unless otherwise agreed by parties.

The Secretary General may publish extracts from arbitral awards without mentioning information identifying the parties.⁴⁶

Under CAMC rules, arbitration proceedings are confidential.⁴⁷ In addition, the arbitrators cannot publish awards without the consent of the Centre and the agreement of parties.⁴⁸

4.5.2 Does it regulate the length of arbitration proceedings?

The UAA provides that the mission of the arbitral tribunal may not exceed six (6) months from the day on which the last of the arbitrators accepted his appointment, if the arbitration agreement does not set a time limit.⁴⁹

³⁸ Article 9 of the UAA

³⁹ Article 10 of the UAA

⁴⁰ Article 11 of the UAA

⁴¹ Article 12 of the UAA

⁴² Article 14

⁴³ Article 14

⁴⁴ Article 14

⁴⁵ Article 18 of the UAA

⁴⁶ Article 14 of CCJA Arbitration Rules.

⁴⁷ Article 9

⁴⁸ Article 9

⁴⁹ Article 12 of the UAA and 34 of CAMC Arbitration rules

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

The parties are free to agree on the place of arbitration. In the absence of such agreement, the place of arbitration shall be determined by the arbitral tribunal which shall pay regard to the circumstances of the case, including the suitability of the place for the parties.

The arbitral tribunal may, unless otherwise agreed by the parties, meet at any place it considers appropriate for an oral hearing, for hearing witnesses, experts or the parties.⁵⁰

The UAA does not address specially the issue of remote hearings. However, a remote hearing ordered by arbitral tribunal despite a party's objection may affect parties right to be heard and an arbitral award rendered in such a context may not be recognised and enforced by Courts.⁵¹

4.5.4 Does it allow for arbitrators to issue interim measures?

Yes. The UAA allows for arbitrators to issue interim measures after the constitution of the arbitral tribunal.⁵²

The arbitral tribunal may, at the request of either party, issue interim measures of protection, excluding protective attachments and securities especially ordered by judges ("*sûretés judiciaires*"),⁵³ which remain within the jurisdiction of the State courts.⁵⁴

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

The arbitral tribunal is empowered to determine the admissibility of evidence, to take evidence and to assess freely such evidence.⁵⁵ There are no restrictions under the UAA to the presentation of testimony by a party employee.

4.5.6 Does it make it mandatory to hold a hearing?

There are no specific provisions under the UAA addressing this issue.

Under CCJA arbitration rules, the arbitral tribunal shall hear the parties adversely if one of them so requests. Failing this, it may decide on its own motion to hear the parties.⁵⁶

Under CAMC arbitration rules, the arbitral tribunal shall hear the parties adversely if one of them so requests or if the tribunal deems appropriate. Failing this, the tribunal may decide to render its award on the only basis of materials provided by parties.⁵⁷

4.5.7 Does it prescribe principles governing the awarding of interest?

Neither the UAA nor the CCJA/CAMC arbitration rules limit the availability of interest as a remedy.

This question is generally governed by the law applicable to the merits. Under Senegalese substantive law, arbitrators may grant moratory interests on monetary claims.

⁵⁰ Article 14 of the UAA; Article 13 of CCJA Arbitration Rules

⁵¹ Articles 787 and 790 of the Civil Procedure Code

⁵² Article 14 of the UAA

⁵³ Under Senegalese law, Courts may allow securities to the creditor (for instance, mortgage), as an interim measure, on the immovable property of the debtor.

⁵⁴ Article 14 of the UAA

⁵⁵ Article 14 in fine of the UAA

⁵⁶ Article 19

⁵⁷ Article 22

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

The UAA does not provide expressly for principles governing the allocation of arbitration costs. But, the CCJA arbitration Rules prescribe it. According to the latter:

The Arbitral Tribunal shall fix the costs of the arbitration in the arbitral award and decide which of the parties shall bear them or in what proportion they shall be shared between the parties, taking into account the relevant circumstances. The costs of the arbitration shall include:

- the fees of the arbitrator and the administrative costs fixed by the Court, the costs of the arbitrator, if any, the costs of the operation of the Arbitral Tribunal, the fees and expenses of experts in the case of expert opinions. The arbitrators' fees and the Court's administrative costs shall be fixed in accordance with the CCJA scale of fees;
- the normal costs incurred by the parties for their defence, according to the assessment made by the Arbitral Tribunal of the requests made on this point by the parties.⁵⁸

If the circumstances of the case make it exceptionally necessary, the Court may fix the arbitrator's fees at a higher or lower amount than that which would result from the application of the scale, either ex officio or at the reasoned request of the arbitrator.⁵⁹

Any fixing of fees without the endorsement of the CCJA shall be null and void.⁶⁰

4.6 Liability

4.6.1 Do arbitrators benefit from immunity from civil liability?

There are no specific provisions under the UAA conferring any immunity to arbitrators.

Under CCJA arbitration proceedings, the OHADA Treaty grants diplomatic privileges and immunities to arbitrators appointed or confirmed by the CCJA.⁶¹ As a result, arbitrators benefit from immunity from civil liability during the performance of their duties. According to the Vienna Convention on Diplomatic Relations, 18 April 1961, which is ratified by Senegal, the diplomatic immunity includes the immunity from civil liability.⁶²

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

The UAA does not expressly provide for the criminal liability of arbitrators.

However, according to the Senegalese criminal Code, an arbitrator who renders a decision favorable or unfavorable to one party with counterpart of offers or promises, solicited or received gifts or donations shall be punished by imprisonment from two to ten years and a fine double the value of the agreed promises or goods received or requested, without the said fine being less than XOF 150,000.⁶³

Under CCJA arbitration proceedings, arbitrators nominated or confirmed by the CCJA have diplomatic immunity during the performance of their duties⁶⁴. According to the Vienna Convention on Diplomatic

⁵⁸ Article 24 of CCJA arbitration rules.

⁵⁹ Article 24 of CCJA arbitration rules.

⁶⁰ Article 24 of CCJA arbitration rules.

⁶¹ Article 49 of OHADA Treaty.

⁶² Article 31

⁶³ Article 159 of Act No. 65-60 of the 21 July 1965 relating to the Criminal Code.

⁶⁴ Article 49 of the OHADA Treaty

Relations, 18 April 1961, which is ratified by Senegal, the diplomatic immunity includes the immunity from criminal liability.⁶⁵

5. The award

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

The UAA lays down the obligation to provide reasons for any arbitral award.⁶⁶ Consequently, parties cannot not waive this requirement.

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

The parties may agree to waive the action for setting aside the arbitral award provided that it is not contrary to international public policy.⁶⁷ In addition, the parties must clearly and unequivocally state their intention to waive this right.⁶⁸

The concept of international public policy has not been specially defined neither by the UAA nor Senegalese law. According to the CCJA case law, an arbitral award that does not respect the res judicata authority of a Court decision shall be null and void on the grounds that it is contrary to international public policy.⁶⁹ In addition, the Senegalese Supreme Court has considered that an arbitration agreement containing a waiver of right to seek the annulment of the award is not contrary to Senegalese public order.⁷⁰

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

There are no specific requirements that should be noted.

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

The arbitral award is not subject to appeal.⁷¹

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?

Arbitral awards shall be enforceable in Senegal by virtue of an exequatur decision⁷². The exequatur procedures depend on the nature of the award (local or foreign award) and the Center under which aegis the award has been rendered or if this an award relating to ad hoc arbitration.

Local awards including awards rendered under the aegis of CAMC Arbitration rules shall be enforceable only by virtue of an exequatur decision rendered by the President of the tribunal of first instance.⁷³ The decision refusing exequatur is only subject to appeal before CCJA Court whilst the decision granting exequatur is not subject to any appeal.⁷⁴ The decision of the CCJA Court rendered against the decision of Senegalese courts refusing exequatur should receive from the administrator of the registrar of the Supreme Court

⁶⁵ Article 31

⁶⁶ Articles 20 of the UAA

⁶⁷ Article 25 al.3 of the UAA

⁶⁸ CCJA, Etat du Mali c. Societe Groupe Tomota, Decision No. 033/2015 of 24 January 2014

⁶⁹ CCJA, République du Benin v. Société Générale de Surveillance SA (SGS), Decision No. 068/2020 of 27 February 2020.

⁷⁰ Supreme Court (of Senegal), Etat du Senegal v. Express Navigation, Decision No. 46 of 3 July 1985

⁷¹ Article 25 al. 1 of the UAA

⁷² Article 30 of the UAA

⁷³ Article 30 of the UAA; Article 789 of Code of Civil Procedure

⁷⁴ Article 32 of the UAA

(*Administrateur du greffe de la Cour Suprême*), under the supervision of the President of the Supreme Court, an executory formula (*formule exécutoire*) to be enforceable in Senegal.⁷⁵

The party concerned shall establish the existence of the arbitral award by producing the original together with the arbitration agreement or copies of such documents which meet the requirements of authenticity.⁷⁶

These documents shall be drawn up in French where the exequatur is requested, otherwise the party shall produce a translation certified by a translator registered on the list of experts drawn up by the Court of First instance (*Tribunal de Grande Instance*).⁷⁷

Regarding the time limits, the Court of First instance hearing a petition for recognition or exequatur shall give a ruling within a period not exceeding fifteen (15) days from the date of referral to it. Where, on the expiry of this period, the court has not made its order, exequatur shall be deemed to have been granted.⁷⁸

Where exequatur is granted, or where the court seized of the application for exequatur is silent within the fifteen (15) day time limit as indicated above, the most diligent party shall refer the matter to the Chief Registrar or the President of the Court of First Instance for the apposition of the executory formula to the minute of the award.⁷⁹

Awards rendered under the aegis of the International Centre for Settlement of Investment Disputes shall be enforced by the virtue of an exequatur decision rendered by the Court of First Instance of Dakar (*Tribunal de Grande Instance de Dakar*).⁸⁰

Awards rendered under the aegis of the CCJA Arbitration Centre shall be enforced by a Decision of the CCJA Court.⁸¹ The latter should receive from the administrator of the registrar of the Supreme Court, under the supervision of the President of the Supreme Court, an executory formula to be enforceable in Senegal.⁸²

The recognition and enforcement of the foreign arbitral awards shall be governed by any international conventions (notably the NYC) which may be applicable and, if no such convention applies, under the conditions provided by the UAA,⁸³ which are completed by the Code of Civil Procedure.⁸⁴

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

The introduction of annulment proceedings suspends automatically the exercise of the right to enforce an award, until the Court of Appeal or the CCJA, as the case may be, has ruled unless provisional enforcement of the award has been ordered by the Arbitral Tribunal.⁸⁵

⁷⁵ Article 1 of the Decree no. 2016-1447 of September 27, 2016 designating the National Authority responsible for appending the executory formula to the judgments of the CCJA and the awards that have received the exequatur of this Court or, as the case may be, of its President

⁷⁶ Article 31 paragraphs 1 and 2 of the UAA

⁷⁷ Article 31 of the UAA; article 789 of Code of Civil Procedure

⁷⁸ Article 31 paragraph 5 of the UAA

⁷⁹ Article 31 paragraph 6 of the UAA.

⁸⁰ Article 794 bis of Code of Civil Procedure

⁸¹ Article 30 of the CCJA Arbitration rules

⁸² Article 1 of the Decree no. 2016-1447 of September 27, 2016 designating the National Authority responsible for appending the executory formula to the judgments of the Common Court of Justice and Arbitration and the awards that have received the exequatur of this Court or, as the case may be, of its President.

⁸³ Article 34 of the UAA

⁸⁴ See Articles 787-894 of the Code of civil procedure of Senegal relating to the exequatur of foreign awards.

⁸⁵ Article 28 of the UAA.

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

There is no specific provision under the UAA.

Under Article V (1) (e) NYC, the Court may not enforce the award that has been set aside by the courts at the seat of arbitration if the applicant proves that the award which is the subject of the application for recognition and enforcement has been set aside.

5.8 Are foreign awards readily enforceable in practice?

Yes. Foreign awards are readily enforceable in practice in Senegal (provided the applicable enforcement procedure has been complied with).

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?

Senegalese law does not provide expressly for the use of contingency or alternative fee arrangements or third-party funding at the jurisdiction. It is only provided that fees of lawyers are fixed by written agreement between the lawyer and his client.⁸⁶

In practice, fixed fees (*honoraires de base*) are combined with contingency or alternative fees depending on the outcome of the proceedings (*honoraires de résultat*).

7. Arbitration and technology

7.1 Is the validity of blockchain-based evidence recognised?

As an electronic evidence, blockchain-based evidence is recognised as valid under Senegalese law.⁸⁷

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

Yes. Arbitration agreements and award recorded on a blockchain would be recognized as valid.

The UAA explicitly states that the proof of arbitration agreement would be established by writing or by any other form evidencing its existence.

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

In addition, electronic writing is recognised equally than the writing in hard copy under Senegalese law⁸⁸.

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

The Code of Civil Procedure and the UAA recognise that for recognition and enforcement purposes, the existence of the arbitral award shall be established by copies of these documents meeting the conditions required to establish their authenticity.⁸⁹

⁸⁶ Article 15 of Act No. 84-09 of 4 January 1984 on the establishment of the Bar Association.

⁸⁷ Articles 5 of the OHADA Uniform Act on general commercial law Article 37 of Act No. 2008-08 of 25 January 2008 on electronic transactions.

⁸⁸ Articles 3-1, 31 and 19 of the UAA; Article 19 of Act No. 2008-08 of January 25, 2008 on the electronic transaction.

⁸⁹ Article 792 of the Civil Procedure Code and 31 of the UAA.

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?

Courts consider an award that has been electronically signed or digitally signed as an original for purposes of recognition and enforcement.

According to combined provisions of UAA and the Civil Procedure Code, the existence of the arbitral award shall be established by copies of these documents meeting the conditions required to establish their authenticity including electronically signed or digitally signed award.

In addition, electronic signature is recognised under Senegalese law.⁹⁰

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

As far as we know, there is no significant reform of the arbitration law in the near future.

9. Compatibility of the Delos Rules with local arbitration law

The UAA and Delos arbitration rules should be considered as compatible including on provisions relating to the powers of arbitral tribunals and regarding the modalities under which awards are rendered.⁹¹

10. Further reading

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⁹⁰ Article 792 of the Civil Procedure Code and article 31 of the UAA; Article 41 of Act No. 2008-08 of January 25, 2008 on the electronic transactions.

⁹¹ See articles 7 (Delos arbitration rules) and 11, 14 and 15 (UAA) regarding the powers of arbitral tribunal and articles 8 (Delos arbitration) and 19 to 24 (UAA).

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?	∅
Main arbitration hearing facilities for in-person hearings?	Dakar Centre for Arbitration and Mediation has arbitration hearing facilities for in-person hearings in its Dakar office as well as in its with local branches within the country.
Main reprographics facilities in reasonable proximity to the above main arbitration providers with offices in the jurisdiction?	<p>Yes. There are reprographics facilities in reasonable proximity to Dakar Centre for Arbitration and Mediation:</p> <p>Gainde Fatma Company Rue de Thiong en face de Delta Medical Telephone: 00 221 76 339 55 87 / Email: gaindefatma@gmail.com</p> <p>Yaye Daba Multiservice 1 Place de l'indépendance Telephone : 342 842 33 42 / Email : dabamultiservice@gmail.com</p> <p>Interprest LLC 1 Place de l'indépendance Telephone: 33 823 14 08 / Emails: sakho@interprest-sn.com and manager@interprest-sn.com</p>
Leading local providers of court reporting services, and regional or international providers with offices in the jurisdiction?	∅
Leading local interpreters for simultaneous interpretation between English and the local language, if it is not English?	<p>Amel Kane Independent Consultant Dakar, Senegal Telephone: 00 221 78 113 51 51 / Email: jomjamkan@gmail.com</p> <p>Agence Sentrados Jean Sebastien Dakar, Senegal Telephone: 77 312 90 90 / Email: contact@sentrados.com</p>
Other leading arbitral bodies with offices in the jurisdiction?	∅