

GUIDE TO ARBITRATION PLACES (GAP)

TOGO

CHAPTER PREPARED BY

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JURISDICTION INDICATIVE TRAFFIC LIGHTS

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|--|---|
| 1. Law                                       | ● |
| a. Framework                                 | ● |
| b. Adherence to international treaties       | ● |
| c. Limited court intervention                | ● |
| d. Arbitrator immunity from civil liability  | ● |
| 2. Judiciary                                 | ● |
| 3. Legal expertise                           | ● |
| 4. Rights of representation                  | ● |
| 5. Accessibility and safety                  | ● |
| 6. Ethics                                    | ● |
| Evolution of above compared to previous year | ● |
| 7. Tech friendliness                         | ● |
| 8. Compatibility with the Delos Rules        | ● |

VERSION: 23 JULY 2024 (v01.00)

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

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| Key places of arbitration in the jurisdiction                                   | Lomé.  |
| Civil law / Common law environment? (if mixed or other, specify)                | Civil law.   |
| Confidentiality of arbitrations?  | <p>The OHADA Uniform Act on Arbitration (the "UAA") does not expressly provide for the confidentiality of arbitration proceedings and awards.</p> <p>Some sets of institutional arbitration rules – such as those of the Togolese Court of Arbitration (the "CATO"), of the International Arbitration and Mediation Center (the "CIAM") and of the Common Court of Justice and Arbitration (the "CCJA") – which the Parties may subject themselves to by mutual agreement – provide for confidentiality of arbitral proceedings and awards. Arbitral hearings are usually held in closed session and awards are not published.</p> |
| Requirement to retain (local) counsel?  | No.  |
| Ability to present party employee witness testimony?                            | Even though there is no specific ground for that, based on the freedom of evidence principle, a party may submit witness testimonies of their employees. It lies in the arbitral tribunal's discretion to weigh such evidence.   |
| Ability to hold meetings and/or hearings outside of the seat and/or remotely?   | There is no specific provision dealing with this aspect under the UAA. However, under the CCJA Arbitration Rules, the arbitral tribunal may decide to hold the hearing in any place other than the seat of the arbitration, subject to a prior consultation with the parties (Article 13 of the CCJA Arbitration Rules).   |
| Availability of interest as a remedy?   | No.  |
| Ability to claim for reasonable costs incurred for the arbitration?             | There is no provision under the UAA dealing with this aspect. However, under the CCJA Arbitration Rules, the arbitral tribunal decides which party bears the cost of the arbitration (Article 24 of the CCJA Arbitration Rules).   |
| Restrictions regarding contingency fee arrangements and/or third-party funding? | The Togolese bar association rules prohibit fee arrangements pursuant to which the lawyers' fees are exclusively determined based on the outcome of the dispute. There are no restrictions regarding third-party funding.  |
| Party to the New York Convention?   | No.  |
| Party to the ICSID Convention?  | Yes, as of 10 September 1967.  |

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| Compatibility with the Delos Rules?  | The Delos Rules are generally compatible with Togolese law, to the extent they are compatible with the UAA provisions which are mandatory.   |
| Default time-limitation period for civil actions (including contractual)?                                    | Pursuant to Article 2262 of the Togo Civil Code, both <i>in rem</i> and <i>in personam</i> actions are subject to a 30-year limitation period.<br><br>For commercial actions, Article 16 of the Uniform Act relating to General Commercial Law provides for a 5-year time-limitation period from the day on which the holder of the right to act knew or should have known the facts that gave rise to his action. |
| Other key points to note?  | None.  |
| <a href="#">World Bank, Enforcing Contracts: <i>Doing Business</i></a> score for 2020, if available?         | 62.3   |
| <a href="#">World Justice Project, Rule of Law Index: <i>Civil Justice</i></a> score for 2023, if available? | 0.48   |

## ARBITRATION PRACTITIONER SUMMARY

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| Date of arbitration law?   | The UAA was adopted on 11 March 1999 and last revised on 23 November 2017.   |
| UNCITRAL Model Law? If so, any key changes thereto? 2006 version?  | The UAA is not based on the UNCITRAL Model Law strictly speaking, but most of the core principles underlying the Model Law are applied under the UAA.  |
| Availability of specialised courts or judges at the key seat(s) in the jurisdiction for handling arbitration-related matters?                          | The UAA refers to the competent national courts for many arbitration-related matters. In Togo, pursuant to the statute No. 2016/033 of 22 November 2016, this competent judge is the President of the court of the CCJA, although the latter does not specialize in arbitration-related matters.   |
| Availability of <i>ex parte</i> pre-arbitration interim measures?  | <p>The courts may grant <i>ex parte</i> interim measures. According to Article 13 of the UAA, the existence of an arbitration agreement shall not prevent a court, at the request of one party, to order interim or conservatory measures, in the event of recognised urgency or where the measures shall be executed in a State which is not a party to OHADA to the extent these measures do not imply an examination of the dispute on the merits for which only the arbitral tribunal is competent.</p> <p>Also, pursuant to Article 10 of the CCJA Arbitration Rules, before the file is forwarded to the arbitrator, and, in exceptional circumstances even thereafter, where the urgent nature of the interim and conservatory measures requested would not allow the arbitrator to rule promptly, the parties may apply to any competent judicial authority for such measures.</p> |
| Courts' attitude towards the competence-competence principle?  | In general, the courts abide by the competence-competence principle and hence the exclusive jurisdiction of the arbitral tribunal to rule on its own jurisdiction.   |
| May an arbitral tribunal render a ruling on jurisdiction (or other issues) with reasons to follow in a subsequent award?                               | Yes. Article 11-3 of the UAA specifically provides that an arbitral tribunal may rule on its own jurisdiction in the final award or in an interim award. There is no rule that prevents the tribunal to render the reasons in a subsequent award.  |
| 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>Under Article 26 of the UAA, the grounds for annulment of an arbitral award are the following:</p> <ul style="list-style-type: none"> <li>• The arbitral tribunal ruled without an arbitration agreement or based on an agreement that is void or expired;</li> <li>• The arbitral tribunal was irregularly constituted or the sole arbitrator was irregularly appointed;</li> <li>• The arbitral tribunal did not rule in compliance with its conferred mandate;</li> <li>• The adversarial process was not complied with;</li> <li>• The award violates international public order; and</li> </ul>  |

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|   | <ul style="list-style-type: none"> <li>The award was rendered without stating any reasons (this latter ground comes in addition of the grounds stated in the New York Convention – to which Togo is not a party).</li> </ul>   |
| Do annulment proceedings typically suspend enforcement proceedings?   | Yes, upon request from the parties, unless a 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?   | <p>The question is unsettled. Pursuant to Article 34 of the UAA, "arbitral awards rendered on the basis of other rules than the present Uniform Act are recognised in the State Parties, according to the requirements set forth under the applicable international conventions and, failing so, according to the same requirements as set forth in the present Uniform Act".</p> <p>Togo is not a party to the New York Convention. Accordingly, safe for the application of any other international convention, pursuant to Article 34 of the UAA, recognition and enforcement of foreign awards shall also be governed by the UAA. Yet, the UAA does not specify whether awards annulled at the seat are enforceable or not, and we are not aware of any case law that has ruled on this issue yet.</p> |
| If an arbitral tribunal were to order a hearing to be conducted remotely (in whole or in part) despite a party's objection, would such an order affect the recognition or enforceability of an ensuing award in the jurisdiction? | There is no specific provision dealing with this issue under neither the UAA nor Togolese law.   |
| Key points to note in relation to arbitration with and enforcement of awards against public bodies at the jurisdiction?   | In accordance with Article 2 of the UAA, States and other local governments as well as State-owned entities may be parties to an arbitration, regardless of the legal nature of the contract, without being able to invoke their own law to challenge the arbitrability of a dispute. In practice, it can be difficult to enforce awards against public bodies.  |
| Is the validity of blockchain-based evidence recognised?  | There is no provision dealing with blockchain-related evidence, neither under the UAA nor under Togolese law. Blockchain-based evidence is however used in practice.   |
| Where an arbitration agreement and/or award is recorded on a blockchain, is it recognised as valid?   | There is no provision addressing this specific question in the UAA.  |
| Would a court consider a blockchain arbitration agreement and/or award as originals for the purposes of recognition and enforcement?  | This is yet to be determined although this question is unlikely to be drawn to the attention of the Togolese courts any time soon.   |
| Other key points to note?   | ∅  |

## 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?

No.

##### 1.1.1 If yes, what key modifications if any have been made to it?

The arbitration law is not based on the UNCITRAL Model Law. However, all the core principles underlying the UNCITRAL Model Law (*e.g.*, the binding nature of the arbitration agreement, the competence-competence principle, etc.) can be found in the Uniform Act on Arbitration (the “**UAA**”), which, as further detailed below, constitutes the arbitration law of Togo.

##### 1.1.2 If no, what form does the arbitration law take?

The Togolese Republic is a member of the Organization for the Harmonization of Business Law in Africa (“**OHADA**”). The OHADA system provides for a uniform set of rules in various branches of commercial law that are directly applicable to its Member States. As of the date of this publication, ten Uniform Acts have been enacted and adopted by the OHADA’s Council of Ministers. They are applied in the OHADA region and are largely based on French law. Their respective subject matters cover commercial law, bankruptcy, arbitration, financial and commercial accounting, securities, and enforcement proceedings.

The UAA applies to arbitrations seated in any Member State of the OHADA.

In addition to the institutions developed within the framework of the OHADA system, such as the Common Court of Justice and Arbitration (the “**CCJA**”) located in Abidjan, Ivory Coast, Togo has created the Court of Arbitration of Togo (“**CATO**”) by enacting Law No. 89-39 of 28 November 1989 instituting a Court of Arbitration to provide arbitration facilities for commercial disputes in the region. On 1 January 2011, the CATO Rules were adopted in conformity with Law No. 89-39 and the UAA. This chapter will refer to certain features of the CATO Rules, where these can provide helpful comparison with the Delos Arbitration Rules.

Togo is not a signatory to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 10 June 1958 (the “**New York Convention**”). The provisions of the UAA therefore govern the recognition and enforcement of arbitral awards issued with respect to arbitrations seated in OHADA Member States. In addition, pursuant to Article 34 of the UAA, the arbitral awards seated abroad are recognized and enforced according to provisions of international conventions (such as the New York Convention when the State party is a signatory). In the absence of such conventions, these arbitral awards are recognized and enforced in accordance with the provision of the UAA.

Togo is a signatory to the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (the “**ICSID Convention**”), which it ratified on 11 August 1967. The ICSID Convention entered into force in Togo on 10 September 1967.

In addition to these international instruments, Article 8 of the Togolese Code of Investments provides that disputes between an investor and the State (or between States) arising out of the interpretation or the application of the provisions of that Code shall be submitted to the national courts or to international arbitration.

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

On 23 and 24 November 2017, OHADA’s Council of Ministers adopted the revised Uniform Act on Mediation, the revised UAA, and the revised Rules of Arbitration of the CCJA (“**CCJA Arbitration Rules**”). The objective of the revision was to modernize the arbitration framework by enhancing the transparency and effectiveness

of arbitrations conducted in OHADA Member States. Unless otherwise specified herein, this chapter will focus on the revised UAA.

## **2. The arbitration agreement**

Articles 3 and 4 of the UAA govern the arbitration agreement. Article 3 provides that an arbitration may be initiated either based on a contractual arbitration agreement or on an instrument concerning the protection of investments containing a univocal agreement from the State to arbitrate, such as a treaty or the Togolese Code of Investments.

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

The UAA does not specifically provide for a method to determine the law governing the arbitration agreement. In addition, since Togo has not ratified the New York Convention, the conflict of laws rules provided by Article V.1 (a) thereof do not apply to determine the law governing the arbitration agreement.

However, Article 4 of the UAA expressly states that the validity of the arbitration agreement is not affected by the nullity of the underlying agreement and must be determined pursuant to the common intention of the parties, without any reference to any national law.

The latter article suggests that a Togolese court reviewing the validity of an arbitration agreement will not need to conduct a conflict of laws analysis to determine the law governing the arbitration agreement's validity and existence. Rather, its assessment of the existence and validity of the arbitration agreement will be based exclusively on the parties' intention as evidenced in the record. However, we are not aware of a decision by Togolese Courts applying this provision.

### **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?**

In the absence of an express designation of a 'seat' in the arbitration agreement and in the event that the parties fail to agree on one, the parties are invited by the arbitral tribunal to submit arguments justifying their respective preference. In the event of an arbitration subject to the CCJA Arbitration Rules, Article 13 thereof provides that if the seat of arbitration is not defined or otherwise agreed upon by the parties, it shall be determined by a decision of the CCJA that is issued before the arbitration file is transmitted to the arbitral tribunal. "Venue" or "place" of arbitration would not be dealt differently than for "seat".

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

Article 4 of the UAA expressly provides that the arbitration agreement is independent from the rest of the contract in which it is set forth. Its validity shall not be affected by the nullity of the underlying contract and shall be determined by reference to the intention of the Parties without the need to refer to a state law.

The CATO Rules contain a similar provision. Indeed, Article 9(4) of the CATO Rules provides that unless the parties have agreed otherwise, the alleged nullity or inexistence of the agreement that contains the arbitration agreement does not entail the nullity of the arbitration agreement if the latter is itself deemed valid by the arbitral tribunal.

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

Article 3-1 of the UAA provides that an arbitration agreement can either take the form of an arbitration agreement inserted in a contract, or of a specific arbitration contract ("*compromis d'arbitrage*" in French). Irrespective of the option chosen, the arbitration agreement must be in writing or in any other manner which would allow it to be evidenced, such as through an incorporation by reference.

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

The UAA does not address the issue of the extension of an arbitration agreement to non-signatories. To our knowledge, as of today, the question is also yet to be addressed by case law (by the CCJA itself or local courts of the OHADA Member States).

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

Article 2 of the UAA provides that “Any person, whether an individual or a corporation, may have recourse to arbitration with respect to the rights of which one may freely dispose of. States, local authorities and public entities may be parties to an arbitration although they are not allowed to rely on their domestic law to challenge the arbitrability of a dispute, their right to arbitrate or the validity of the arbitration agreement”.

Accordingly, only those matters that relate to rights that cannot be freely disposed of are not arbitrable. By contrast, commercial, civil, administrative matters may be the subject of an arbitration, and public entities may take part in an arbitration dispute.

### **2.6.1 Do these restrictions relate to specific domains?**

Under Togolese law, subject-matters which cannot be referred to arbitration are the rights of which the natural or the legal person does not have free disposal. Therefore, matters of people’s status and family law, as well as criminal law, are not arbitrable.

Also, in practice, Togolese judges have traditionally been reluctant to recognize the arbitrability of employment matters, but recent case law has evolved in application of OHADA law.

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

No. Any person may be a party to arbitration proceedings (Article 2 of the UAA).

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

The UAA provides for the intervention of state judges as supporting judges at different stages of the arbitral proceedings. In ad hoc arbitrations, Article 6 provides that the state judge may intervene in the composition of the arbitral tribunal when the parties do not agree on the appointment of the sole arbitrator or the third arbitrator (three-arbitrator arbitration), when a party refuses to appoint an arbitrator or when an arbitrator is challenged.

In the course of the proceedings, the state judge may issue interim or protective measures. (Article 13 of the UAA). At the end of the arbitration proceedings, the domestic judge rules upon applications for enforcement and hears any annulment applications against the award.

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

Domestic courts of the OHADA Member States have the obligation to observe the “competence-competence” principle and hence to decline jurisdiction in the presence of an arbitration agreement, except where (i) the arbitration has not been initiated and (ii) the arbitration agreement is manifestly null or inapplicable (Article 13 of the UAA). In such a case, Article 13 of the UAA further provides that the domestic courts must issue a final decision on their jurisdiction within fifteen (15) days. The said decision may only be subject to a recourse before the CCJA (no possible appeal before the domestic courts).

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

The arbitration agreement prevails.



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

The arbitration agreement prevails even though there is no specific ground in the UAA. General principles of international law will apply.

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

There is no provision dealing with this aspect under either the UAA or Togolese law, and we are unaware of relevant case law thereon.

### **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)**

There is no provision dealing with this aspect under either the UAA or Togolese law, and we are unaware of relevant case law thereon.

## **4. The conduct of proceeding**

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

There is no provision dealing with this aspect under either the UAA or Togolese law. Parties may be self-represented or retain local and/or foreign counsel.

### **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 Article 7 of the UAA, the arbitrator must remain independent and impartial towards the parties, and consequently disclose any circumstance that might create a legitimate doubt as to his or her independence and impartiality in the parties' mind. In case of a dispute regarding the alleged violation by an arbitrator of his or her obligation, the competent domestic court must issue a decision within 30 days (save as otherwise provided by the parties), failing which the domestic court will lose jurisdiction to the benefit of the CCJA.

In its decision of 29 June 2017 (CCJA, 2<sup>nd</sup> ch., Wanmo Martin v. Nguessi, Case No. 151/2017), the CCJA stated that it is established case law that arbitrators must disclose any circumstance 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 to 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)?**

Article 6 of the UAA vests the domestic courts with the power to act in support of the constitution of the arbitral tribunal when such constitution is blocked by the refusal of a party to designate its own appointed-arbitrator, or if the parties are unable to agree on the designation of the sole arbitrator or of the third arbitrator (in the event of failure by the parties to appoint their own arbitrator or failure by the two-appointed arbitrators to agree upon the third arbitrator).

Article 6 of the UAA further provides that any court decision regarding the appointment of an arbitrator should be rendered within fifteen (15) days, save where the relevant Member State's national law provides for a shorter time-period. This ensures a speedy constitution of arbitral tribunals even if a party seeks to frustrate the process. In an additional effort to speed up the constitution of the arbitral tribunal, decisions from domestic courts in this respect are also not subject to any appeal, whether before the domestic courts or the CCJA.

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

Courts have the power to issue interim measures in relation to arbitrations. Pursuant to Article 13 of the UAA, the existence of an arbitration agreement does not prevent the parties from requesting interim or conservatory measures from the relevant domestic courts, if urgency so requires. In this regard, Article 13 clarifies that a court's decision to grant any such measure shall not equate to an assessment of the merits of the dispute, for which the arbitral tribunal has exclusive jurisdiction.

Unlike other arbitration laws, Article 13 of the UAA does not preclude courts from ordering conservatory and interim measures after the arbitral tribunal's constitution. As a result, even once the arbitration tribunal has been constituted, the parties remain free to request interim and conservatory measures from domestic courts, provided that such request is justified by urgency.

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

Yes:

- Article 7 of the UAA: arbitrator's duty to complete his or her mission, unless he or she demonstrates an impediment or a legitimate reason for abstention or resignation; arbitrator's duty to have the full exercise of his or her civil rights;
- Article 9 of the UAA: arbitrator's duty to treat the parties equally;
- Article 12 of the UAA: arbitral tribunal's duty to complete his or her mission within six (6) months, save for prorogation or the arbitration clause providing otherwise;
- Article 14 of the UAA: arbitral tribunal's power to rule over any forgery claim, unless otherwise provided for by the parties; arbitral tribunal's power to appoint experts and to issue interim and conservatory measures.

It is worth mentioning that the UAA also provides for the competence-competence principle (Articles 11 and 13) and the determination of applicable law (Article 14).

##### **4.5.1 Does it provide for the confidentiality of arbitration proceedings?**

The UAA does not provide for the confidentiality of arbitration proceedings. Accordingly, it falls on the parties to agree on the degree of confidentiality governing their arbitration, by expressly providing for such confidentiality in their arbitration agreement or by making a choice of arbitration rules providing for confidentiality.

Pursuant to Article 18 of the UAA, the deliberations of the arbitral tribunal must however remain confidential.

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

Yes. According to Article 12 of the UAA, unless otherwise provided by the arbitration agreements, the proceedings shall last no longer than six (6) months. This duration can however be extended pursuant to the parties' agreement or at the request of a party to the competent judge of the relevant OHADA Member State.

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

Pursuant to Article 14 of the UAAI, the parties are free to determine where the hearings and/or meetings may be held and whether they may be held remotely. In the absence of an agreement between the parties, the arbitral tribunal is vested with the power to proceed as it sees fit.

##### **4.5.4 Does it allow for arbitrators to issue interim measures?**

Yes. Under Article 14 of the UAA, the arbitral tribunal may, at the request of a party, order interim or conservatory measures, except for conservatory seizures and judicial securities which remain within the

domestic courts' exclusive jurisdiction. This provision does not specify the conditions pursuant to which such measures are granted by the arbitral tribunal.

**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?**

Article 14 of the UAA provides that the arbitral tribunal may invite the parties to provide him or her factual clarifications and to submit, by any legally admissible means, evidence that he or she deems necessary to the resolution of the dispute. It further specifies that, if necessary, the arbitral tribunal may, after consulting the parties or at their request, appoint one or several experts tasked with providing him or her with a report on issues that he or she determines and hear them at the hearing.

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

There is no provision addressing this specific question in the UAA.

Under Article 19 of the CCJA rules, the arbitral tribunal shall hear the parties if requested by any of them or by the tribunal's own motion. Nonetheless, the arbitral tribunal may decide the case solely on the basis of the documents filed by the parties if the parties so request or accept.

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

No. Neither the UAA nor the CCJA Arbitration Rules include provisions with respect to the awarding of interest.

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

There is no provision in the UAA regarding arbitration costs.

By contrast, Article 24 of the CCJA Arbitration Rules provides that the final award should include, in addition to the decision on the merits of the case, a decision regarding the allocation of the arbitration costs.

**4.6 Liability**

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

There is no provision on this issue in the UAA.

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

There is no specific criminal provision as to the liability of the arbitrator or the other participants in an arbitration proceedings in the UAA. Therefore, the provisions of Togolese criminal code apply to the alleged wrongful conduct of the participants to the arbitration proceedings.

**5. The award**

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

Under the UAA, there is an obligation for the award to provide reasons (article 20 of the UAA). This obligation cannot be waived.

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

These options are contractual. There are no specific conditions.

**5.3 What atypical mandatory requirements apply to an award rendered at a seat in the jurisdiction?**

None.

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

No. Under Article 25 of the UAA, an arbitral award cannot be challenged through appeal.

It can only be subject to a setting aside proceedings before the domestic courts of the seat of arbitration.

In domestic arbitration, the arbitral award can also be subject to a third-party opposition by any party not involved in the dispute and whose rights have been prejudiced by the award. Any third-party opposition must be filed before the domestic court that would have had jurisdiction in the absence of an arbitration agreement.

**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 recognition and enforcement of arbitral awards in Togo are governed by Articles 30 to 34 of the UAA.

The party wishing to obtain the recognition and enforcement of its award in Togo must request and obtain the exequatur thereof. The competent judge to grant the exequatur is the president of the court of first instance of the place where the enforcement of the award is sought, or, where applicable, the court of the defendant's domicile.

The applicant shall provide the proof of existence of the arbitral award by producing the original thereof together with the arbitration agreement or copies of such documents which meet the requirements of authenticity. Pursuant to Article 31, these documents shall be accompanied by a French certified translation in the event that the award and arbitration agreement are not in French (official language of Togo). Recognition and enforcement of the award will be denied if the award manifestly contravenes an international public policy rule.

With regards to the time limits, the president of the court of first instance shall issue its decision regarding the exequatur application within a time-period not exceeding fifteen (15) days. If upon expiry of this time-period a decision has still not been issued, the exequatur of the award shall be deemed granted.

Article 34 of the UAA provides that awards rendered under other rules than the UAA are recognised according to the requirements set by the applicable international conventions and, failing so, according to the provisions of the UAA. Since Togo is not a party to the New York Convention, the recognition and enforcement of foreign awards governed by other rules than the UAA (OHADA law) is rather uncertain.

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

No, the party which seeks to challenge the award shall apply to courts for the suspension of the right to enforce the award. In accordance with Article 29.3 of the CCJA rules, the application to challenge the recognition of the award and its binding and res judicata effects shall be filed as soon as the award is made. The challenge becomes inadmissible if it is not filed within two (2) months of the notification of the award referred to in Article 25 of these rules.

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

Togo is not a party to the New York Convention. Accordingly, safe for the application of any other international convention, pursuant to Article 34 of the UAA, recognition and enforcement of foreign awards

shall also be governed by the UAA. Yet, the UAA does not specify whether awards annulled at the seat are enforceable or not, and we are not aware of any case law that has ruled on this issue yet.

### **5.8 Are foreign awards readily enforceable in practice?**

Yes, under Article 30 of the UAA, awards are enforceable in Togo only after having received the exequatur by the President of the court of the place where the enforcement is sought.

## **6. Funding arrangements**

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

The Togolese bar association rules prohibit fee arrangements pursuant to which lawyers' fees are exclusively determined based on the outcome of the dispute. However, partial contingency fees are possible and to be agreed between a lawyer and its client.

Third-party funding is not codified in the UAA, but it is likely to be accepted.

## **7. Arbitration and technology**

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

Yes, on the basis of the freedom of proof, blockchain-based evidence could be accepted but this is not expressly recognised. The admission of this type of evidence would have to be decided by the Togolese courts. Blockchain-based evidence is however used in practice.

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

There is no provision addressing this specific question in the UAA.

The award should in any case comply with the requirements of Articles 19 and 21 of the UAA, i.e., the signature of all the arbitrators and the respect of the form requirements agreed by the parties if any. If the parties agree to use blockchain to record the award, the award should be recognised as valid as long as the award is signed by the tribunal.

As to the validity of a blockchain arbitration agreement, there is no guidance to consider whether or not this could be valid but the formal requirements of the arbitration agreement (including the fact that it should be in writing and signed by the parties) may leave little space for envisaging the validity of a blockchain arbitration agreement.

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

This is yet to be determined although this question is unlikely to be drawn to the attention of the Togolese courts any time soon.

### **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?**

The UAA or the CCJA Arbitration Rules do not regulate the question of the electronic signature of awards. However, considering that the UAA gives a lot of importance to the procedure agreed by the parties, the court is likely to consider an electronically signed award if the parties agreed to it.

A securely digitally signed award would be better accepted by the Togolese courts as it guarantees even more the authenticity of the signature of the tribunal.

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

It is possible. The OHADA Treaty is currently being revised and a reform is envisaged for provisions related to arbitration.

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

Yes, nothing under the UAA makes the Delos Rules incompatible provided that the formal requirements for the award mentioned above are respected.

**10. Further reading**

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## ARBITRATION INFRASTRUCTURE AT THE JURISDICTION

|   |   |
|---|---|
| Leading national, regional and international arbitral institutions based out of the jurisdiction, <i>i.e.</i> with offices and a case team? | Cour d'Arbitrage et de Médiation du Togo ("CATO"), Lomé; Centre International d'Arbitrage et de Médiation ("CIAM"), Lomé. |
| Main arbitration hearing facilities for in-person hearings?   | Togo Chamber of Commerce office.  |
| Main reprographics facilities in reasonable proximity to the above main arbitration hearing facilities?                                     | No.   |
| Leading local providers of court reporting services, and regional or international providers with offices in the jurisdiction?              | No.   |
| Leading local interpreters for simultaneous interpretation between English and the local language, if it is not English?                    | No.   |
| Other leading arbitral bodies with offices in the jurisdiction?   | No.   |