
UNIFORM ACT ON ARBITRATION WITHIN THE FRAMEWORK OF THE OHADA TREATY

The Council of Ministers of the Organisation for the Harmonization of Business Law in Africa (OHADA),

Mindful of the treaty on the Harmonization of Business Law in Africa, in particular Articles 2 and 5 to 12 thereof;

Mindful of the report of the permanent secretary and the observations of the contracting states,

Mindful of the opinion of the common court of justice and Arbitration dated 3 December 1998;

The contracting states present have deliberated upon and unanimously adopted the uniform Act set out below:

CHAPTER I

SCOPE OF APPLICATION

Article 1

This uniform shall apply to any arbitration case when the seat of the Arbitral tribunal is in one of the member states.

Article 2

Any natural person or corporate body may recourse to arbitration on rights of which he has free disposal

All states and other territorial public bodies as well as public establishments may equally be parties to an arbitration without having the possibility to invoke their own law to united the arbitrarily of the claim, their authority to sign arbitration agreements or the validity of the arbitration agreement.

Article 3.

The arbitration agreement shall be in writing or by any other means permitting it to be evidenced, notably, by reference made to a document stipulating it.

Article 4.

The arbitration agreement is independent of the main contract.

Its validity shall not be affected by the nullity of this contract and it shall be assessed according to the intention of both parties, without necessary reference to a state of law. The parties can always mutually agree to resort to an arbitration agreement, even when a hearing has already been initiated before another court.

CHAPTER II

CONSTITUTION OF THE ARBITRATION TRIBUNAL

Article 5.

Arbitrators shall be appointed, dismissed or replaced in accordance with the agreement of the parties.

Where there is no such arbitration agreement, or where the agreement is not sufficient:

- a) in an arbitration with three arbitrators, each party shall appoint one arbitrator and the two arbitrators thus appointed shall appoint the third arbitrator; if or of the parties fails to appoint an arbitrator within thirty days, or if the two arbitrators fails to agree on the third arbitrator within thirty days from their own appointment, the appointment shall be made upon request of a party, by the competent judge in the member stated,
- b) in an arbitration with a unique arbitrator if the parties are unable to agree on the arbitrator, he shall be appointed, upon request of a party, by the competent judge in the member state.

Article 6:

The function of al arbitrator may only be performed by a natural person

The arbitrator must fully enjoy his rights, must remain independent and impartial vs the parties.

Article 7:

The arbitrator who accepts to perform his function shall communicate his acceptance to the parties by any means in writing.

If the arbitrator knows of any circumstance about himself for which he may be challenged, he shall disclose them to the parties and may only accept his function with the unanimous agreement, in writing, of the parties,

In case of dispute and if the parties have not determined the procedure for challenging an arbitrator, the competent judge in the member state shall rule on the challenge. This decision shall not be subject to any appeal.

Any reasons for challenging an arbitrator must be disclosed without delay by the party who intend to challenge the arbitrator.

The challenge of an arbitrator shall only be admissible for reasons which became known after his appointments has been made.

Article 8:

The arbitral tribunal shall be composed of a sole arbitrator or a panel of three arbitrators.

Where the parties designate the arbitrators in even numbers, the arbitral tribunal shall be completed by one arbitrator, chosen either in accordance with the agreements of the parties, or, in the absence of such agreement, by the arbitrators appointed or, where they are unable to agree on the arbitrator, by the competent court in the member state

The same is true in case of challenge, incapacity, death, resignation or revocation of an arbitrator.

CHAPTER III

THE ARBITRAL TRIBUNAL

Article 9 :

The parties shall be treated with equality and each party shall be given a full opportunity to present his case.

Article 10:

Except where the parties expressly exclude the application of certain provisions of the arbitration rules of an institution submission to this arbitration institution shall mind them to apply the arbitration rules of such institution.

The arbitral tribunal is bound as soon as one of the parties seizes one or all the arbitration in compliance with the arbitration agreement, or, failing such appointment, as soon as one of the parties initiates the procedure for the constitution of the arbitration tribunal.

Article 11:

The arbitration tribunal shall rule on its own jurisdiction including any questions with respect to the existence or validity of the arbitration agreement.

A plea for lack of jurisdiction of the arbitral tribunal shall be raised before the time of submission of the statement of defense on the substance except where the facts on which they are based were discovered later.

The arbitral tribunal may rule on its own jurisdiction in the award on the substance or in a partial award subject to recourse for nullity.

Article 12:

Where the arbitration agreement does not determine a time limit, the assignment of the arbitrators may not exceed six months as from the date when the last of them accepted the assignment.

The legal or agreed time limit may be extended either by agreement of the parties, or at the request of one of them or of the arbitration tribunal, by the competent judge in the state party.

Article 13:

When a dispute of which an arbitral tribunal has been seized by virtue of an arbitration agreement is brought before a state court, the said court shall, if one of the parties makes a request to this effect, declare having jurisdiction.

In any case, the state court cannot automatically declare its incompetence.

However the existence of an arbitration agreement shall be an obstacle to the fact that at the request of one party, a court in case of emergency and with reasons, given, or when a measure shall have to be enforced in a non-member state of OHADA, order, interim measures as long as the measures do not require an examination of the claim on the substance, for which only the arbitral tribunal is competent.

Article 14:

The parties may directly or by reference to arbitration rules determine the arbitration procedure, they may also subject this procedure to a procedural law of their choice.

Where there is no such agreement, the arbitral tribunal may conduct the arbitration as it considers appropriate.

To support the parties shall have the responsibility to allege and adduce evidence to establish their claims.

The arbitrators may invite the parties to furnish them with factual explanation and to present to them by any means legally admissible, evidence which they believe will provide a solution to the claim.

Any explanation or documents invoked or produced by the parties and retained as evidence must have been the subject of an adversary procedure.

They cannot base their ruling on evidence they established on their own without having invited the parties to present their remarks.

If the aid of judicial authorities is necessary for the production of evidence, the arbitral tribunal may automatically or on application, request the assistance of the competent judge in the member state.

A party who, knowingly, abstains from stating without undue delay an irregularity and pursues the arbitration, is deemed to have raised his right to object to it.

Unless agreed otherwise, the arbitration shall equally be empowered to rule on all points of law concerning the verification of writing and fraud.

Article 15:

The arbitrators shall decide on the substance of the dispute in compliance with the rules of law chosen by the parties or, in the absence of such a choice, according to those chosen by them as the most appropriate taking into account , where necessary, the international trade usages.

They may also decide as conciliator when the parties have authorized them to do so

Article 16:

The arbitration proceedings shall end by the expiration of the time limit for arbitration, except where there is an extension of time agreed by the parties or ordered.

It may equally be terminated in case of acknowledgement of claim, withdrawal of claim, agreement by the parties to terminate proceedings or final award.

Article 17:

The arbitral tribunal shall determine the date on which the dispute shall be deliberated upon.

After this date, no other claim may be raised.

No remarks may be presented, neither can any piece of evidence be produced except on the express request, in writing of the arbitral tribunal.

Article 18:

The deliberations of the arbitral tribunal shall be secret.

CHAPTER IV

THE (ARBITRAL) AWARD

Article 19:

The (arbitration) award shall be made following the procedure and form agreed upon by the parties.

Where there is no such agreement, the award shall be made by majority vote then the tribunal is composed of three arbitrators.

Article 20:

The (arbitration) award shall contain:

- The full name of the arbitrator or arbitrators;
- the date of the award,
- the seat of the arbitration tribunal;
- the full names and company names of the parties, as well as their residence or registered office,
- where necessary, the full names of advocates or any person having represented or assisted the parties.
- The statement of the respective claims of the parties, their arguments as well as the stages of the procedure.

Reasons upon which the award is based shall be given.

Article 21:

The arbitral award shall be signed by the arbitrator or arbitrators.

However, where a minority of them refuses to sign the award, mention shall be made of such refusal and the award shall have the same effect as if it had been signed by all the arbitrators.

Article 22:

The award shall discharge the arbitrator of the dispute. The arbitrator shall nevertheless have the power to interpret the award or to redrew clerical errors and omissions effecting the award.

Where he has omitted to rule or part of the claim, he may do it by an additional award.

In one case or the other mentioned above, the request must be made within 30 days from the date of notification of the award. The tribunal shall have a period of 45 days to give a ruling.

If the arbitral tribunal can no longer be reconvened, the competent judge in the member state shall give such a ruling.

Article 23:

As soon as the award is made, the dispute so settled is “mes judicata”

Article 24

The arbitrators may grant provisional enforcement of the award where the provisional enforcement has been requested, or may reject the request, with reasons given.

CHAPTER V

RECOURSE AGAINST THE ARBITRAL AWARD

Article 25:

The award shall not be subject to any opposition, appeal or judgment setting it aside.

It may be subject to a petition for nullity, which must be lodged with the competent judge in the member state.

The decision of the competent judge in the member state can only be set aside by the common court of justice and arbitration.

The award may be subject to opposition before the arbitral tribunal by any third party, he has a natural person of a corporate body, who had not been called and when the award is damaging to his rights.

It may also be the object of an application for revision before the arbitral tribunal by reason of the discovery of a fact capable of having a decisive influence and which, before the making of the award, was unknown to both the arbitral tribunal and the party applying for revision.

Article 26:

Recourse for nullity is only admissible in the following cases:

- Where the arbitral tribunal has ruled without an arbitration agreement or on an agreement which is void or has expired;
- Where the arbitral tribunal was irregularly composed or the role arbitrator was irregularly appointed;
- Where the arbitral tribunal has given a ruling without conforming to the assignment it has been conferred;

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- Where the principle of adversary procedure has not been observed;
 - Where the arbitral tribunal has isolated an international public policy rule of the states signatories of the treaty;
 - Where no reasons are given for the award.

Article 27:

The petition for nullity is admissible as soon as the award is made, it ceases to be admissible if it has not been made within one month of notification of the award furnished with an exequatur.

Article 28:

Except where the provisional enforcement of the award has been ordered by the arbitral tribunal, the exercise of the recourse for nullity shall stay execution of the award until such time that the competent judge in the member state makes a ruling.

The judge shall also have jurisdiction to rule on a dispute concerning provisional enforcement.

Article 29:

In case of annulment of the award, the earliest party, if he so wishes, shall initiate another arbitration proceedings in accordance with this Uniform Act.

CHAPTER VI

RECOGNITION AND ENFORCEMENT OF ARBITRAL AWARDS

Article 30:

The award can only be subject to compulsory enforcements by virtue of an exequatur awarded by the competent judge in the member state.

Article 31:

Recognition and exequatur of the award presuppose the fact that the party wishing to rely on it shall establish the existence of the award.

The existence of the award is established by the production of the original award accompanied by the arbitration agreement or copies of these documents satisfying the conditions required for their authenticity.

Where the documents are not written in French the party shall have to produce a translation certified by a translator registered on the list of experts established by competent courts.

The recognition and exequatur shall be refused where the award is manifestly contrary to international public policy or the member states.

Article 32:

The ruling refusing the exequatur of the award can only be set aside by the common court of justice and arbitration.

The ruling granting the exequatur shall not be subject to any recourse.

However petition for nullity of the award shall, as a matter of law, and with in the limits of the seizing of the competent judge in the member state, mean recourse against the ruling allowing exequatur by the court.

Article 33:

The rejection of the petition for nullity shall, as a matter of law, mean validation of the award as well as the ruling granting the exequatur.

Article 34:

Awards made on the basis of rules different from those provided by this uniform act shall be recognized as binding within the member states under the conditions provided by international agreements possibly applicable and , failing which under the same conditions as those provided in this uniform act.

CHAPTER VII

FINAL PROVISIONS

Article 35

This uniform act shall be the law governing any arbitration in the member states.

This act is only applicable to arbitration proceedings, arising after its entry into force.

Article 36:

This uniform act shall be published in the official Gazette of OHBLA and the contracting states it shall enter into force in accordance with the provisions of article 9 of the treaty relative to the harmonization of Business law in Africa