

Legal 500

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Senegal

International Arbitration

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This country-specific Q&A provides an overview of international arbitration laws and regulations applicable in Senegal.

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Senegal: International Arbitration

1. What legislation applies to arbitration in your country? Are there any mandatory laws?

The legislation applicable to arbitration in our country and:

- The OHADA Uniform Act on Arbitration of 23 November 2017 resulting from an international treaty on the harmonization of business law in Africa, in force in 17 OHADA countries including Senegal. Article 35 provides that this Uniform Act shall take the place of the law relating to arbitration in the States Parties including Senegal;
- Decree No. 98-492 which replaces Articles 795 to 820 of the Code of Civil Procedure; and;
- Law 98-30 of 14 April 1998 (which defines the arbitration laws of Senegal, in accordance with the principles set out in the OHADA Uniform Act on Arbitration.

2. Is your country a signatory to the New York Convention? Are there any reservations to the general obligations of the Convention?

Senegal is a Party to the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards and ratified it in 1994. Senegal has not made any reservations to the general obligations of the Convention.

3. What other arbitration-related treaties and conventions is your country a party to?

Senegal is also a Party to:

- the 1965 Washington Convention on the Settlement of Investment Disputes (ICSID) and;
- the Hague Convention for the Pacific Settlement of International Disputes, which established the Permanent Court of Arbitration (PCA).

4. Is the law governing international arbitration in your country based on the UNCITRAL Model

Law? Are there significant differences between the two?

The Senegalese law on international arbitration is largely based on the UNCITRAL Model Law.

No, there is no difference between the OHADA Uniform Act and the UNCITRAL Model Law on the main provisions.

5. Are there any impending plans to reform the arbitration laws in your country?

There are no imminent plans to reform the arbitration laws in Senegal.

6. What arbitral institutions (if any) exist in your country? When were their rules last amended? Are any amendments being considered?

Yes, there is an arbitral institution in Senegal within the Chamber of Commerce, Industry and Agriculture called the Centre for Arbitration, Mediation and Conciliation (CAMC).

Since its creation, the Regulations have not been amended.

7. Is there a specialist arbitration court in your country?

There is no specialized arbitration court in Senegal.

8. What are the validity requirements for an arbitration agreement under the laws of your country?

The arbitration agreement must be made in writing, or by any other means that allows proof to be adduced, in particular by reference to a document stipulating it.

9. Are arbitration clauses considered separable from the main contract?

Yes, the arbitration agreement is independent of the main

contract

10. Do the courts of your country apply a validation principle under which an arbitration agreement should be considered valid and enforceable if it would be so considered under at least one of the national laws potentially applicable to it?

Senegalese courts are respectful of arbitration clauses provided that it relates to disputes of which the parties have free disposal.

11. Is there anything particular to note in your jurisdiction with regard to multi-party or multi-contract arbitration?

No, there is nothing particular to note in our jurisdiction.

12. In what instances can third parties or non-signatories be bound by an arbitration agreement? Are there any recent court decisions on these issues?

Yes, third parties can be bound by an arbitration agreement, through voluntary intervention, or through forced intervention or amicus curiae proceedings.

13. Are any types of dispute considered non-arbitrable? Has there been any evolution in this regard in recent years?

Non-arbitrable disputes concern family matters, criminal matters and labour law.

No, there has been no change in this regard in recent years.

14. Are there any recent court decisions in your country concerning the choice of law applicable to an arbitration agreement where no such law has been specified by the Parties?

Article 15 of the UAU *"The arbitral tribunal shall decide the merits of the dispute in accordance with the rules of law chosen by the parties. In the absence of a choice by the parties, the arbitral tribunal shall apply the rules of law which it considers most appropriate, taking into account, where applicable, international trade practices"*.

15. How is the law applicable to the substance determined? Is there a specific set of choice of law rules in your country?

As regards the applicable law, the parties retain total freedom of choice, subject to provisions that would be of a public policy nature.

16. In your country, are there any restrictions in the appointment of arbitrators?

Yes, there are restrictions on the appointment of arbitrators. These restrictions are intended to ensure the impartiality and independence of the arbitral tribunal. The main restrictions concern the ethical duties imposed on the referee, which are integrity, impartiality and independence.

17. Are there any default requirements as to the selection of a tribunal?

The arbitral tribunal is composed of one or three arbitrators who are freely appointed by the parties.

18. Can the local courts intervene in the selection of arbitrators? If so, how?

The president of the regional court in whose jurisdiction the arbitration proceedings are taking place may intervene in the selection of arbitrators. Indeed, in the absence of an agreement between the parties, the president of the regional court is competent to appoint the arbitrators based on the list of arbitrators. The same applies in the event of an appointment made necessary due to the recusal, incapacity, death, resignation or dismissal of an arbitrator.

19. Can the appointment of an arbitrator be challenged? What are the grounds for such challenge? What is the procedure for such challenge?

Yes, the appointment of an arbitrator can be challenged. The parties have the right to challenge an arbitrator suspected of bias or lack of independence. The recusal of an arbitrator is allowed only for a cause revealed after his appointment.

The party who wishes to contest the appointment of an arbitrator must do so within 30 days of the discovery of the ground for challenge. The objection must be in writing

and substantiated. It must be notified to the other party and to the other members of the arbitral tribunal.

The decision of the competent court rejecting the request for recusal may only be appealed to the Common Court of Justice and Arbitration.

20. Have there been any recent developments concerning the duty of independence and impartiality of the arbitrators, including the duty of disclosure?

Yes, in 2017 the Uniform Act on Arbitration reinforced the requirement of independence and impartiality of arbitrators. Indeed, Article 7 provides that *"The arbitrator must have the full exercise of his civil rights and remain independent and impartial vis-à-vis the parties"*.

With regard to the obligation to disclose, the arbitrator is required to disclose any circumstance likely to create in the minds of the parties a legitimate doubt as to his independence and impartiality from the stage of his appointment and throughout the proceedings.

21. What happens in the case of a truncated tribunal? Is the tribunal able to continue with the proceedings?

The Uniform Act is silent on this point

Can the court continue the proceedings?

Yes, if the parties mutually agree to continue, the procedure can continue.

22. Are arbitrators immune from liability?

No, the parties do not enjoy immunity from liability.

The arbitrator has specific obligations throughout and after the arbitral proceedings. During the proceeding, it is essential that the arbitrator actively participate in order to fulfill his or her mission to resolve the dispute between the parties.

The general framework of the arbitrator's activities is defined by the arbitration contract, which makes it first and foremost a matter of contractual civil liability. However, certain obligations of the arbitrator may apply outside of this contract, giving rise to tort liability. In addition, the arbitrator may also be held criminally liable in the event of offences such as bribery, fraud or receiving stolen goods.

23. Is the principle of competence-competence recognised in your country?

Arbitrators have the power to decide on their own jurisdiction. According to Article 11 of the AAU: *"The arbitral tribunal shall have exclusive jurisdiction to rule on its own jurisdiction, including on all questions relating to the existence or validity of the arbitration agreement. The objection of lack of jurisdiction must be raised before any defence on the merits, unless the facts on which it is based have subsequently come to light. The arbitral tribunal may render a decision on its own jurisdiction either in the award on the merits or in a partial award subject to an action for annulment"*.

24. What is the approach of local courts towards a party commencing litigation in apparent breach of an arbitration agreement?

When a dispute covered by an arbitration agreement is brought before a court of law, the court must, if one of the parties so requests, declare that it has no jurisdiction. (Article 13 of the AAU).

However, the existence of an arbitration agreement does not preclude a court from ordering interim measures of protection by a court, at the request of a party and in cases of recognized and substantiated urgency, provided that such measures do not relate to the merits of the dispute for which only the arbitral tribunal has jurisdiction. »

In the event of legal proceedings initiated despite the existence of an arbitration agreement, the court must continue to deal with the dispute. The opposing party must request the competent local judge to stay the court proceedings on the basis of the arbitration agreement. If that party participates in the court proceedings by presenting a defence, it de facto waives its right to arbitration.

25. What happens when a respondent fails to participate in the arbitration? Can the local courts compel participation?

If the respondent does not present its defence without invoking a legitimate reason, the arbitral tribunal shall continue the arbitral proceedings.

This issue is not provided for in the Uniform Act.

26. Can third parties voluntarily join arbitration proceedings? If all parties agree to the intervention, is the tribunal bound by this agreement? If all parties do not agree to the intervention, can the tribunal allow for it?

Yes, third parties may voluntarily intervene in an arbitration proceeding.

Yes, the court is bound by this agreement.

The court may authorize the intervention of a third party provided that:

- Active participation
- Common interest
- Conduct of the parties

See: CCJA Chamber No.1, Case No. 041/2010, dated 10 June 2010 Planor Afrique v. Société Atlantique Telecom SA

27. What interim measures are available? Will local courts issue interim measures pending the constitution of the tribunal?

Arbitrators have the option of awarding interim measures or other forms of preliminary relief. These measures must be related to the subject matter of the dispute and may include orders to preserve assets, deposit money with a third party, or sale of perishable property. At the request of either party, the arbitral tribunal may also issue interim or protective measures, with the exception of precautionary seizures and judicial securities, which remain within the jurisdiction of the state courts (Article 14 AUA).

Will the local courts take interim measures pending the constitution of the court?

Courts may grant interim measures in support of arbitration prior to the constitution of the arbitral tribunal, if urgent measures are necessary to protect vital interests related to the dispute. Once the arbitral tribunal has been constituted, the interim measures will be confirmed or reversed by the arbitral tribunal.

28. Are anti-suit and/or anti-arbitration injunctions available and enforceable in your country?

The Uniform Act is silent on this point.

29. Are there particular rules governing evidentiary matters in arbitration? Will the local courts in your jurisdiction play any role in the obtaining of evidence? Can local courts compel witnesses to participate in arbitration proceedings?

The arbitral tribunal may require the parties to provide factual explanations and to present, by any legally permissible means, such evidence as it deems necessary to resolve the dispute. He may only include in his decision the elements, explanations or documents that the parties have had the opportunity to discuss in an adversarial manner.

If necessary, the arbitral tribunal may, after consulting the parties or at their request, appoint one or more experts to report to it on specific points and to hear them at the hearing (Article 14 AAU).

In addition, parties and arbitral tribunals may adopt the International Bar Association (IBA) Rules on the Taking of Evidence in International Arbitration ("IBA Rules") to govern arbitration proceedings.

Will the local courts in your jurisdiction play a role in obtaining evidence?

If the assistance of the judicial authorities is necessary for the taking of evidence, the arbitral tribunal may, on its own initiative or on request, seek the assistance of the competent court in the State Party (Article 14 AUA).

Can local courts compel witnesses to participate in arbitration proceedings?

The Uniform Act is silent on this point.

30. What ethical codes and other professional standards, if any, apply to counsel and arbitrators conducting proceedings in your country?

The main ethical duties of arbitrators are integrity, impartiality and independence (Article 7 AAU).

In addition, general rules of conduct on conflicts of interest are in place, often based on the ethical standards of the courts and bar associations. Recently, the IBA Guidelines on Conflicts of Interest in International Arbitration have begun to be adopted as best practices.

31. In your country, are there any rules with respect to the confidentiality of arbitration proceedings?

Yes, there are rules that advocate the respect of discretion in arbitration proceedings. Article 9 of the rules of the Dakar Arbitration Centre reaffirms the overarching principle of confidentiality.

Hearings are not public, and arbitrators shall not disclose to third parties the decisions made during the arbitration proceedings.

32. How are the costs of arbitration proceedings estimated and allocated? Can pre- and post-award interest be included on the principal claim and costs incurred?

The Uniform Act is silent on this point. On the other hand, articles 45 to 48 of the Rules of the Dakar Arbitration Center provides that the costs and expenses are determined by reference to a scale of costs and expenses established by the Board of Directors of the Dakar Arbitration Center, but the court takes into account various elements such as the administrative costs of the institution that manages the arbitration, the institution's fees, the costs of legal representation

The costs are in principle divided between the parties to the dispute. However, the parties may request that the costs of the arbitration be borne by the unsuccessful party.

The court may consider various elements depending on the circumstances of the dispute.

Therefore, pre- and post-award interest may be included in the principal claim and costs incurred.

33. What legal requirements are there in your country for the recognition and enforcement of an award? Is there a requirement that the award be reasoned, i.e. substantiated and motivated?

Article 30 of the Uniform Act on Arbitration provides that the enforcement of an arbitral award may only be made by way of exequatur. In addition, with regard to foreign arbitral awards, they are recognized and enforced in accordance with the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, to which Senegal is a Party.

34. What is the estimated timeframe for the recognition and enforcement of an award? May a party bring a motion for the recognition and enforcement of an award on an ex parte basis?

The recognition and enforcement of the arbitral award must be carried out within a period that may not exceed fifteen (15) days from the date of referral to the state court (Article 31 AUA)

No, the adversarial principle prohibits the recognition and enforcement of ex parte awards.

35. Does the arbitration law of your country provide a different standard of review for recognition and enforcement of a foreign award compared with a domestic award?

No.

36. Does the law impose limits on the available remedies? Are some remedies not enforceable by the local courts?

The limits on remedies are the same as those set out in the 1958 New York Convention. Appeals must be made to the Court of Appeal.

37. Can arbitration awards be appealed or challenged in local courts? What are the grounds and procedure?

Arbitral awards may not be appealed against or cassated unless the parties have expressly provided for it. On the other hand, there are possible remedies such as the appeal for annulment, the application for revision and the third party opposition.

The decision of the competent court in the State Party on the action for annulment may only be appealed to the Court of Cassation before the Common Court of Justice and Arbitration. The arbitral award may be the subject of a third-party appeal by any person before the court of the State Party which would have had jurisdiction in the absence of arbitration and when this award prejudices his rights.

It may also be the subject of an application for review before the arbitral tribunal on account of the discovery of a fact which is likely to have a decisive influence on the resolution of the dispute and which, before the award was

pronounced, was unknown to the arbitral tribunal and to the party requesting the review. When the arbitral tribunal can no longer be convened, the application for review is brought before the court of the State Party which would have had jurisdiction in the absence of arbitration (Article 25)

A party who intends to appeal against an award made by an arbitral tribunal must submit a request to the court within the time limit by means of an application, which the Court notifies the opposing party (Article 29 of the AAU).

38. Can the parties waive any rights of appeal or challenge to an award by agreement before the dispute arises (such as in the arbitration clause)?

Article 25 paragraph 3 of the AAU provides that the parties may agree to waive the action for annulment of the arbitral award provided that it is not contrary to international public policy.

Consequently, the parties may waive their right to appeal against an arbitral award if it does not violate international public policy.

39. In what instances can third parties or non-signatories be bound by an award? To what extent might a third party challenge the recognition of an award?

Third parties may be bound by an award in the event of voluntary intervention or in the event of forced intervention.

Third parties or non-signatories may also be bound by an arbitral award if it causes them prejudice.

The arbitral award may be the subject of a third-party appeal by any person before the court of the State Party which would have had jurisdiction in the absence of arbitration and when this award prejudices his rights. (Article 25 AAU)

40. Have there been any recent court decisions in your jurisdiction considering third party funding in connection with arbitration proceedings?

There are no recent court decisions in Senegal regarding third-party funding in arbitration proceedings.

41. Is emergency arbitrator relief available in your country? Are decisions made by emergency arbitrators readily enforceable?

Yes, emergency referees are available in Senegal.

The legal framework for arbitration in Senegal is mainly governed by the OHADA Uniform Act on Arbitration (AAU), which allows for the appointment of emergency arbitrators when needed.

Decisions made by emergency arbitrators are generally enforceable, provided that they comply with the procedures established by the AAU.

42. Are there arbitral laws or arbitration institutional rules in your country providing for simplified or expedited procedures for claims under a certain value? Are they often used?

Regarding simplified or accelerated procedures, the Revised OHADA Uniform Act on Arbitration, which entered into force on December 15, 2017, provides provisions that make it possible to simplify and accelerate arbitral procedures. Article 13 AAU. These procedures are often used for disputes of lesser financial importance in order to reduce costs and delays. The Dakar Center for Arbitration, Mediation and Conciliation (CAMC) also offers institutional rules that include expedited procedures for claims below a certain amount. These procedures are becoming increasingly popular due to their efficiency and ability to relieve congestion in state courts.

43. Is diversity in the choice of arbitrators and counsel (e.g. gender, age, origin) actively promoted in your country? If so, how?

In Senegal, diversity in the choice of arbitrators and boards is increasingly encouraged, although further efforts are needed to achieve balanced representation.

Here are some key points:

- **Regional and International Initiatives:** Senegal, as a member of OHADA, benefits from regional initiatives aimed at promoting diversity in arbitration. OHADA encourages the appointment of arbitrators of different backgrounds and genders to reflect the diversity of the parties involved.
- **Arbitration Institutions:** The Centre for Arbitration, Mediation and Conciliation of Dakar (CAMC) highlights diversity in its panels

of arbitrators. They strive to appoint arbitrators of different genders, ages, and backgrounds to ensure fair representation.

- **Awareness and Training:** Training and awareness programmes are organised to encourage the participation of women and young professionals in the field of refereeing. These initiatives aim to create a diverse pool of future referees and advisors.
- **Professional Organizations Engagement:** Professional organizations, such as the Senegalese Bar Association, play a crucial role in promoting diversity and supporting initiatives to include more women and youth in arbitration processes.

These efforts show a growing willingness to promote diversity in the field of refereeing in Senegal. However, there is still a long way to go to achieve true parity and equitable representation.

44. Have there been any recent court decisions in your country considering the setting aside of an award that has been enforced in another jurisdiction or vice versa?

Yes, there have recently been court decisions in Senegal concerning the annulment of arbitral awards enforced in other jurisdictions.

For example, the Paris Court of Appeal rejected a request to set aside an arbitral award rendered against Senegal in a case involving allegations of illegality surrounding the investment (case Ibrahim Abdoukhalil v. State of Senegal, Paris Court of Appeal, 12 October 2021).

45. Have there been any recent court decisions in your country considering the issue of corruption? What standard do local courts apply for proving of corruption? Which party bears the burden of proving corruption?

Yes, Senegal has seen several notable court decisions regarding corruption.

In Senegal, the means of proof to establish corruption are provided for in the Code of Civil and Commercial Obligations. Courts require clear and convincing evidence to establish guilt. The constituent elements of the offence of corruption are defined by articles 159 and 160 of the Senegalese Penal Code. Senegal is a Party to the United Nations Convention against Corruption and the African

Union Convention on Prevention and Corruption. It is the responsibility of the applicant to provide evidence to demonstrate that the fact of corruption is proven. The Senegalese State has set up the National Office for the Fight against Fraud and Corruption (OFNAC) in charge of prosecuting acts of fraud and corruption.

46. What measures, if any, have arbitral institutions in your country taken in response to the COVID-19 pandemic?

In the first instance, the Dakar Arbitration Centre had to comply with the Senegalese government's decision to suspend hearings, while at the same time extending deadlines, suspending enforcement of court rulings and suspending procedural deadlines.

Secondly, the resumption of hearings was subject to compliance with sanitary rules, restricted access to hearing venues, wearing of masks and social distancing.

47. Have arbitral institutions in your country implemented reforms towards greater use of technology and a more cost-effective conduct of arbitrations? Have there been any recent developments regarding virtual hearings?

No, to our knowledge, the Centre d'Arbitrage de Médiation et de Conciliation de Dakar (CAMC) has not implemented any reforms aimed at making greater use of technology and conducting arbitrations more cost-effectively.

Moreover, at the recent justice conference in Senegal in 2024, the modernization of the justice system using digital technology was advocated to improve accessibility.

48. Have there been any recent developments in your jurisdiction with regard to disputes on climate change and/or human rights?

Yes, there have been recent developments in jurisdictions regarding human rights disputes. On the other hand, as far as climate change is concerned, there has not yet been any recent development.

49. Do the courts in your jurisdiction consider international economic sanctions as part of their international public policy? Have there been any

recent decisions in your country considering the impact of sanctions on international arbitration proceedings?

Yes, the Senegalese courts consider international economic sanctions to be part of their international public policy. However, there is no case law of recent decisions specific to Senegal that directly address the impact of economic sanctions on international arbitration proceedings.

50. Has your country implemented any rules or regulations regarding the use of artificial intelligence, generative artificial intelligence or large language models in the context of international arbitration?

Currently, Senegal does not have specific regulations regarding the use of artificial intelligence (AI), generative AI, or large language models in the context of international arbitration.

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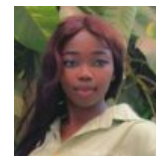
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