

THE SETTLEMENT OF INVESTMENT DISPUTES BY ARBITRATION AND MEDIATION WITHIN THE OHADA AREA

Douala-Cameroon
16 and 17 January
2020

GICAM Conference
Room

Under the scientific supervision
of

Gaston KENFACK DOUJANI
Président of the APAA

With the support of :



Union of Central African Lawyers

Media Support:



A. CONTEXT AND JUSTIFICATION OF THE SYMPOSIUM

Investment arbitration or Investor State Arbitration is one of the main mechanisms for resolving disputes between Foreign Investor(s) and host state(s).

It should be noted that in recent years investment arbitration has been the subject of much criticism. Several states consider it, as an imbalanced mechanism only in favour of foreign investors. Investment arbitration is therefore at the centre of many movements and sharp criticisms.

It is in the light of these criticisms that the United Nations Commission on International Trade Law (UNCITRAL) decide to undertake, on the occasion of its 50th session held in Vienna (Austria) from the 3 to 21 July 2017, work on a possible reform of the **Investor-State Dispute Settlement (ISDS)** system.

In spite of the criticisms directed against Investor State Arbitration, the OHADA, nevertheless included Investment arbitration in the materiel scope of its arbitration system at the time of the reform of the system on November 23 and 24, 2017.

Therefore, in a context marked by discussions on the reform of the Investor State Dispute Settlement (ISDS) system and the introduction of Investment arbitration in the materiel scope of OHADA arbitration, it is important that States, practitioners and other Africans primarily concerned by this dispute settlement mechanism, understand the issues related to ISDS reform and know how to better organize their defence when they are involved in arbitration proceedings concerning foreign rather than local investments.

B. SPECIFIC OBJECTIVES OF THE SYMPOSIUM

The purpose of the symposium is to expose the issues related to ISDS reform but also to see how the new OHADA instruments related to arbitration and mediation can contribute to the effective resolution of investment disputes in the OHADA area. More specifically, the symposium aims to:

1. Present the framework for the settlement of investment disputes in the OHADA area;
2. Expose the issues related to the ISDS reform;

3. Demonstrate the importance of training in the settlement of investment disputes in particular, and in ADR in general

C. TARGET AUDIENCE

The present symposium is for:

1. Senior Government officers in charge of State litigation and African legal bodies governed by public law dealings or called to deal with international litigation;
2. Judges, Lawyers, Court officers;
3. Economic operators;
4. In house-lawyers
5. Researchers, students specialising in the area of international litigation.

D. ANIMATION OF THE SYMPOSIUM

The symposium is organised with the support of the Organization for the Harmonisation of Business Law in Africa (OHADA), the United Nations Commission for International Trade Law (UNCITRAL), the African Legal Support Facility (ALSF), the French Cooperation, with the assistance of OHADA Bars Conference, the Associations of Central Africa Lawyers.

The Permanent Secretary of the OHADA, the President of the Common Court of Justice and Arbitration of the OHADA, the Director General of the ERSUMA, the Secretary General of the UNCITRAL, a representative of the International Centre for the Settlement of Investment Disputes (ICSID) are one of the speakers of the symposium. Well-known African and non-African arbitration institutions will also be part of this symposium.

The Symposium will be animated by one of the best specialists of international arbitration, mainly investments arbitration and mediation recognised for their experience in international arbitration and mediation proceedings involving states, state-owned entities, international organizations and private entities.

E. PLACE AND DATES OF THE SYMPOSIUM

The symposium will take place in Douala (Cameroun), GICAM Conference room on the 16 and 17 January 2020.

F. PROVISIONAL AGENDA

16 JANUARY 2020

- 09 : 00 – 09 : 45 Protocol ceremony
APAA, PS-OHADA,UNITRAL Secretary, French Cooperation, ALSF, President of the GICAM, Ministry of Finance and Ministry of Justice
- 10 : 00 - 10: 20 Introductory report, **Pr. Emmanuel Sibidi Emmanuel**, The Permanent Secretary of OHADA

OPENING SESSION

- 10: 25 – 10 : 40 **OHADA arbitration**
Moderator: Dr Boubacar Sidiki DIARRAH, High Judge, Director of legal Affairs OHADA
Speakers
The innovations contained in the OHADA Uniform Act on Arbitration, Dr **Achille NGWANZA**, Member of the International Court of Arbitration of ICC, Partner Jus Africa, President of the CFA's OHADA working group
Investment arbitration within OHADA space (legal framework and implementation) **Dr Gaston KENFACK DOUJANI** (HDR), President of APAA
- 10 : 40-10 : 55
- 10 : 55 - 11 : 15 Question & Answer Session

Round table 1: The administration of investment arbitration by some arbitration centres

- 11:15 -13 : 15
Moderator: Dr Sylvie BEBOHI EBONGO, Attorney at Law, Member of Paris Bar, Admitted to Cameroonian Bar, Arbitrator, Representative of APAA in Europe
Presentation of ICSID system
Speakers
Investment Arbitration before the CCJA, **Narcisse AKA**, Secretary General of CCJA
Investment Arbitration before the MARC, **DIPNA GUNOO**, Head of MARC
Investment Arbitration before the GICAM Mediation and Arbitration Centre (GMAC) by **Marie-Andrée NGWE**, President of the Permanent Committee of the GMAC
Investment Arbitration before the KIAC by **Dr Fidèle MASENGO**, Secretary General of KIAC-Rwanda
Investment arbitration before the CRCICA, **Dr Ismail SELIM**, Director of CRCICA

Investment arbitration before the SCC, **Annette MAGNUSON**, Secretary General of the Stockholm arbitration centre

Investment arbitration in Nigeria, **Shola OSHODI-JOHN**, Nigerian Institute of Chartered Arbitrators (NICArb)

13 : 15 - 13 : 30 Question & Answer Session

13 : 30 - 14 : 45 Lunch

Round Table 2: Mediation in the OHADA space: An opportunity for the settlement of investments disputes?

Moderator: ANNA JOUBIN-BRET, General Secretary of the UNCITRAL

14 : 45 - 16 : 30

Presentation of the United Nations Convention on International Settlement Agreements resulting from mediation (the Singapore Convention) and the UNCITRAL Model law on international Commercial Mediation and international settlement Agreements resulting from Mediation (2018)

Speakers

The contribution of mediation in the settlement of investment disputes within the OHADA area, **Pr Boniface Banamba**, University Lecturer, University of Yaounde II, Former Director of legal affairs at the Cameroon autonomous sinking funds (CAA)

The practice of Mediation in other central African Countries, **Patrice MONTHE**, Attorney at Law, Former President of the Cameroonian Bar Association, President of the Association of Central African Lawyers

The experience of investment mediation

- Point of view of a mediation centre, **Bintou BOLI DJIBO**, Permanent Secretary of CAMC-O
- Point of view of a francophone practitioner within the OHADA area, Mamadou **KONATE**, Attorney at Law Paris and Mali Bars, Former Minister of Justice of Mali, Secretary General of APAA
- Point of view of a practitioner out of the OHADA area **Thierry NGOGA GABUKA** Attorney at Law, Arbitrator, Mediator, Legal line partners, former Secretary General of KIAC- Rwanda
- Companies point of view, **Patrick Hermann ZANGUE**, international business lawyer, Head of regulatory department and special projects litigation branch ENEO, Field officer APAA

16 : 30 -16 : 45 Question & Answer session

Round Table 3: Training, cooperation between practitioners and assistance to parties in ADR

16 : 45 - 18 : 30 Pm

Moderator: Pr. MAYATTA MBAYE NDIAYE, Director General of ERSUMA

Presentation of the mission of ERSUMA

Speakers

The teaching of ADR in Cameroonian Universities, **Pr. Alain KENMOGNE SIMO**, Law Professor, Full Professor, Head of the Department of Business and corporate law Faculty of law and political sciences of the University of Yaoundé II-Soa (Cameroon)

The teaching of ADR from the point of view of an Anglo Saxon practitioner, **Julius NKAFU**, FCIARB, Arbitrator, Mediator, Barrister Great James Chambers London, UK.

Capacity building: one of the mission of the African Legal Support Facility (ALSF), **Charles AFEKU**, Senior Legal Counsel ALSF

Is the cooperation between academics and practitioners of ADR necessary? **Coco KAYUDI**, President of Kinshasa Matete Bar Association, Head of the training Commission of the OHADA Bars Association

Assistance to parties in arbitration, by **Nadia DARWAZEH**, Partner, Head of the Arbitration Clyde and Co Paris, Member of the Paris Bar

18 : 15- 18 :30

Question & Session

End of day 1

17 JANUARY 2020

Round table 4: Ethics in ADR

09 : 00-10 : 10h30

Moderator: Apollinaire Césaire ONDO MVE, President of the CCJA

introduction to the topic

Speakers

Ethics Rules in ADR, **ABBE YAO** Attorney, Former President of Ivory Coast Bar Association, Permanent Secretary of the OHADA Bars Association

Ethic in international arbitration, **Rose Rameau** Member of the International Court of Arbitration of ICC, Arbitrator, Mediator, Attorney specialized in dispute settlement, Partner RAMEAU LAW FIRM, Washington D.C.

Ethics in OHADA arbitration by **Aurelia Sylvia MAFONGO KAMGA**, Barrister at Law Nigeria and Cameroon, ICC YAF Representative Africa, Middle East and Turkey

Corruption in OHADA arbitration and mediation, **YAP ABDOU**, 1st Advocate General at the Supreme Court of Cameroon, Former president of the special Criminal Court in Cameroon

The impact of corruption in investment arbitration, **Thomas KENDRA**, Partner in the international arbitration group of Hogan Lovells Paris, Member of the Paris Bar

10 : 30 – 10 : 45

Coffee Break

Round Table 5: outline solutions developed to reduce criticisms against the Investor-State Dispute Settlement (ISDS) System

10 : 45 – 12 : 45

Moderator: Dr **SADJO OUSMANOU**, President of the Board of the Permanent Arbitration and Mediation Centre of CADEV (CPAM-CADEV, Cameroon)

UNCITRAL proposals, **Anna JOUBIN BRET**, Secretary General of UNCITRAL

ICSID proposals , **Ella ROSENBERG**, Legal Counsel ICSID

African proposals by:

- **CELLOU DIALLO**, Senior Legal Ministry of Investments Guinea
- **MEVOUA Benoît Placide**, Judge, Head of litigation Ministry of Finances Cameroon

Expedited arbitration, situational analysis of the current work within the UNCITRAL Working Group II, **Anna JOUBIN BRET**, General Secretary of UNCITRAL

ADR and disputes related to the extractive industries, **Thierry LAURIOL**, Partner Jeantet, Paris, Manager of the Energy, mining and infrastructure Department, Member of the Paris Bar

12 : 15 - 12 : 30

Question & Answer session

12 :30 - 14 :00

Lunch

Round table 6: The State judge and investment arbitration

14: 15 - 16 : 15

Moderator: **Dominique HASCHER**, Judge Court of Cassation France, President of the comparative Law Society

Introduction to the Topic

Speakers

Esther MOUTNGUI, Judge at the CCJA

François-Xavier MBONO, President of the Court of Appeal West-Cameroon

A Lawyer of the Central African Lawyer's union

Jackson NGNIE KAMGA, Attorney, Former President of the Cameroonian Bar Association, President of the OHADA Bars Association

Pierre LAMAH, President of the Conakry Commercial Court

16 : 15 - 16 :30

Coffee-Break

Round table 7: The Enforcement of arbitral awards in investment arbitration

16 : 30 - 18 : 15

Moderator: **Nadia DARWAZEH**, Partner, Head of the Arbitration Clyde and Co Paris, Member of the Paris Bar

Introduction to the topic

Speakers

OHADA arbitral awards, **Dr Sylvie BEBOHI EBONGO**, Attorney at Law, Arbitrator, Member of Paris Bar, Admitted to Cameroonian Bar, Representative of APAA in Europe

ICSID arbitral awards, **Ella ROSENBERG**, Legal Counsel ICSID

Arbitral awards in France, **Olivier CUPERLIER**, Attorney at Law, Arbitrator, Mediator, Member of Paris Bar,

Arbitral awards in Belgium, **Jean François TOSSENS**, Partner Tossens Goldman Gonne, Arbitrator, Guest Lecturer Catholic University of Leuven, Member of the Brussels Bar

Post arbitration and mediation negotiations, **Alain FENEON**, Honorary lawyer, Arbitrator, Mediator (15 mn)

18 : 15 - 18 : 30

Question & Answer Session

CLOSING SESSION

18 : 30 - 19 : 00

Final Report, **Pr. André AKAM AKAM**, Dean of the Faculty of law and political sciences of the University of Douala

END OF THE COLLOQUIUM

NB : The working languages of the symposium are French and English with simultaneous translation