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Effectiveness of the Recognition and Enforcement of the OHADA`S Arbitral Award

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ABSTRACT: OHADA is amongst an international organization which consists of arbitral tribunal within some regions in Africa in handling international investment and commercial disputes. Henceforth, the purpose of this study is to examine the effectivity of the enforcement of arbitral awards under the perspectives of OHADA arbitration rules. The study axed through qualitative approach by interpreting legal rules, analyzing cases and commenting the weakness of the charter in terms of enforcement and recognition of arbitral awards. The decision of OHADA arbitral tribunal shall contain intrinsically legal binding to member countries, however it leads problematics as the enforcement and recognition rules may be different in every country involved. Hence, the study interpreted the legal rules concerning enforcement and recognition of arbitral awards and the effectiveness of the rules. In addition it exerted also the challenges and significant recommendation for improving arbitration rules relating to enforcement of the awards. It is found that the weakness of the arbitral awards locates on refusal of concerned State to enforce the awards under the domestic law due to conflict of interest.

KEYWORDS: Enforcement, Arbitral award, OHADA, res judicata and exequatur

1 INTRODUCTION

Arbitration mechanism has been an effective alternative dispute settlement mechanism on investment or commercial matters, which is formed through the compromise of disputing parties to solve disputes by their arbitrators or appointed by the arbitral institution. Historically, the Geneva protocol in 1923 was a first international convention which has contributed to international arbitration among member countries,[1] and more importantly is the establishment of principle covering recognition and enforcement of arbitral awards.[2] This said protocol was amended in 1927 which is almost considered as superseded by the New York Convention.[3] Since arbitration is deemed as an efficient, impartial and reliable alternative commercial dispute resolution; as a result, many international,[4] regional arbitration rule and institutions were borne.[5]

Indeed, arbitration mechanism is different from the litigation [6]as it is constituted by the arbitrators chosen initiatively by the parties on disputes or appointed by the organization on behalf of the disputing parties. The arbitration is maybe formed by one arbitrator, three or more in compliance with arbitration institution rules chosen by the disputing parties; nevertheless the arbitral award constitutes legal effect to parties. This is the reason why this research examines the enforcement of arbitral award in the perspective of OHADA arbitration rules. The Arbitral award is defined by the New Yok convention on recognition and enforcement arbitral award as decision from arbitral tribunal, "it shall not include only award made by arbitrators appointed for each case but also these

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[1] See, Serhat Eskyoruk, "harmonization on the performance of international Arbitral Awards." Ankara Bar Review, Vol.3, no.2, July 2010, p.61-74.

[2] See, Ibid

[3] See, Ibid

[4] By the influence of the Geneva Convention, the New York convention, Washington convention and other international were established in order to settle occurred disputes through arbitration mechanism by willingness of disputing parties. Recently the increase of business environment through investment and commerce, and especially the implication of private persons and private companies made the trend of regional countries to establishing an ad hoc institution to facilitate settlement of disputes between them.

[5] After the international conventions on arbitration, many regions in every continent have established a regional arbitration institution in order to facilitate dispute settlement mechanism among them, such in America, EU, Asia and Africa. The law and institution on commercial and investment arbitration is aimed at facilitating the matters occurred between contracting persons, and in addition to attract foreign investment as the more there is reliable alternative disputes settlement institutions, the more the private persons are attracting to invest because their rights are guaranteed by the existing institutions, the risk of losses is low during operation of business to foreign countries.

[6] State national or international court with permanent judges, rather than arbitration

made by permanent arbitral bodies to which the parties have submitted" whereas OHADA defined in its article 1: "The OHADA treaty[7] is generally a regional commercial arbitration institutions in West and Central Africa initiative to harmonize business law which is targeted at establishing an international alternative dispute resolution in sub-Saharan Africa[8], the institution is targeted at facilitating and promoting both domestic and foreign investment in the signatory states through setting aside of Uniform act[9] and common court of justice and arbitration law.[10] Except OHADA, there are also many regional institutions in Africa which handle investment and commercial issues, but this excerpt of research focuses mainly on OHADA arbitration rules.

In the perspective of OHADA, the decision of the court has its powers in its signatory States, every country has commitment to respect and enforce the deliberation rendered by the arbitral tribunal.[11] Consequently, whichever a country involved in OHADA has rights and commitment to enforce and recognize arbitral award rendered by the arbitrators. The OHADA institution is constituted by the Council of Ministers, Secretary General and judges. The decision in the arbitration tribunal is taken through the deliberation from permanent body or appointed arbitrators.[12] And it binds immediately the disputing parties or if one of them refuses to be bond, the one party shall apply the exequatur to CCJA. Nonetheless the decision can be also annulated by regardless of prerequisite requirement for constitution of the tribunal, irregularity, public policy or immunity of State.

Consequently, this research demands to evoke the mechanism of recognizing and enforcing the arbitral award under the OHADA treaty, the enforcement of decision is accordingly applied in direct way by volunteer of disputing parties. By all means the enforcement can be easily applied while the parties accept to be bound by the deliberation. In the event of one party does not accept directly the arbitral awards, the party can apply the exequatur in order to deal with enforcement of arbitral award rendered by the arbitral tribunal to national court. In other hand, the effectivity of enforcing arbitral wards constitutes an important part of this research in which the power of decision and features of the arbitral award are evoked. Meanwhile the deliberation from OHADA arbitral tribunal is not subject of recourse, because it is deemed as final instance of dispute settlement, and once decision is rendered, it contains legal effect to parties. However, the award is susceptible of recourse for refusal whether it is against the regularity determined by CCJA rules,[13] and last not least, this study examines further the challenges of OHADA arbitral award.

2 METHODS

This study is a sort of qualitative research; the main points are focused on analysis of the legal rules stipulated in the OHADA which are the Uniform act rules and CCJA arbitration rules. These rules comprise all the procedure relating to dispute settlement before OHADA arbitration. The problematic of this research lay down on the analysis of cases, the effectivity of the arbitral award remains challenging commitment of states parties, every country members have different perspectives on the legality of arbitral awards, because the enforcement requirement legal compliance with national law of States members. Hereinafter the study described the common rules under the OHADA, interpreted scrupulously its applicability to country members. In other words, the study pointed out comparatively the fulfilment of commitment in enforcing arbitral award in the OHADA, and fulfillment of commitment under New York convention on enforcement of arbitral wards because most of OHADA countries are signatory of convention. Through those afore-said methods the research found the extent of the challenges in the OHADA, therefore it incites recommendation for reforms that ought to adjust existing arbitration rules of OHADA.

3 DISCUSSION

1. Procedures of enforcing arbitral award under OHADA treaty
   1.1. Disputing Parties` consents

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[7] See,hhttps://www.international-arbitration-attorney.com/wp-content/uploads/arbitrationlaw2001018482.pf

[8] 17 countries have signed and ratified the OHADA treaty in Africa; most of members are French colonies countries. In appearance the structures of OHADA is typically drawn from French legal system law especially the legal structures from French civil law. The country members are Benin, Burkina Faso, Cameroon, Central African Republic, Chad, Comoros, cote d`Ivoire, Democratic republic of Congo, Equatorial Guinea, Gabon, Guinea, Guinea-Bissau, Mali, Niger, Republic of the Congo, Senegal and Togo.

[9] OHADA was established in 1993 and its acts were drafted in 1999 which includes several validated acts as stated in article 2 in the OHADA amended treaty on the harmonization of business law in Africa: General commercial Law, Commercial companies Law and Economic interest Groups, secured transactions Law, debt resolution law, insolvency law, arbitration law, harmonization of corporate Accounting, contracts for the carriage of Goods, cooperative companies law etc.

[10] Legal framework added Uniform act, governs the proceeding towards arbitration mechanism of OHADA in which the arrangement of settlement dispute, designation, formality of awards and other important perquisite of arbitration are set out. In addition the OHADA text was created in 1999 and revised in 2016.

[11] Stated in UAA and CCJA law, available at http://arbitrationblog.kluwerarbitration.com/2018/03/30/new-ohada-arbitration-text-enters-into-force/

[12] In the event of disputes occur among member countries, and a country where the seat of the UAA is intended to apply to any arbitration where the seat of the tribunal is in one of the State Parties.

[13] See article 29 of CCJA

In settlement of international commercial disputes before CCJA, the consent of disputing parties plays paramount condition for constituting the arbitral tribunal, while the parties[14] are willing to resolve dispute before the OHADA arbitral tribunal, they have to agree each other at first and inform the Secretary General upon.[15] By all means, the constitution of arbitral tribunal is generated from willingness of the parties in accordance with the rules of arbitration, as result the arbitration is dependent to parties, once they agreed to recourse through; they have to respect the conditions set aside and the arbitral awards, shall accept the conduct of arbitral proceedings such as an obligation of speed, loyalty and also refrain any assumption from dilatory tactics. Normally the disputing parties while processing to Arbitration they are under the effect of deliberation rendered. Expressly, the consent of the parties for enforcement regular and legal arbitral shall be formed at beginning of the request for arbitration tribunal, as a result parties shall not fail to appear at the hearing on produce reliable burden of proof, the tribunal may continue the proceedings and decide on the basis of the evidence at its dispositions,[16] yet the rules provide flexible way for the disputing parties, there is no disposition of agreement compel any party to consent the binding of the decision rendered, even though the when it is deemed regular, it effects the party directly or through enforcement to national court. The disputing party can consent the award by themselves without any pressure from CCJA or national court.[17] In practice to international arbitration,[18] the consent of the disputing parties is facilitating the procedures since its beginning and especially upon the award is rendered, because every procedures after deliberation of arbitral award are done while the parties voluntarily accept the decision whatever it is if seen regular.

1.2. Procedure of Exequatur

In the principle of international arbitration law, exequatur is defined as enforcement of foreign jurisdiction decision by the national court. The court of contracting state, when seized of an action in a matter in respect of which the parties have made an agreement, shall at the request of the parties, refer to the parties to arbitration, unless it perceives the said agreement is null and void. In international rules on exequatur, it is not easy to enforce decision from another country or international or regional jurisdiction in national state of losing party since the decision has to be conformed with the public policy, in addition the enforcement of the award still face challenges by the fact that State members of OHADA have luck of uniformity of procedures specifically in the OHADA rules in Exequatur do not enshrine the uniform exequatur to all Member state so that procedure will be similar and easy to comply with.[19] And furtherly, it is also difficult to deal with designation of competent Judge because some members of OHADA have not designated any competent Judge to deal with exequatur. To enforce the arbitral award, the competent Judge` States hall issue an order of exequatur, convert the arbitration deliberation into an order enforceable in the state of disputing countries. In absence of volunteer of party to agree each other on the award, they shall request to CCJA for order granting enforcement of the awards to national court of losing party. The order is timely limited, so the national court has to examine the enforcement of the award once the order for an exequatur is stated by. Indeed, every international arbitration institution has its own rule on the exequatur time-limit, such OHADA, the competent state courts are imposed within strict time-limits on recognition and enforcement of the awards. Namely, the competent State court shall rule on request for recognition within period that may not be beyond fifteen days from its referral,[20] however, it is practically challenging to reach sometimes the said time limit since even some member countries have not set out in their national law the time limit for enforcement of arbitral award.[21]

In comparing to other international or regional arbitration rules, this period is deemed short as some other rules state in several months.[22] If the National court of party fails to handle its decision for enforcing or rejecting the arbitral award within the time-limit afore-said, the award will be deemed to be recognized by, assumption which is more radical remedies.[23] However, in processing to revised rules, CCJA shall rule on a request for enforcement within 15 days,[24] and for the decision on provisional or protective measures in the context of proceeding shall be taken in only 3 days.[25] Furtherly, competent courts shall rule on annulment requests

[14] The parties in arbitral tribunal shall not restrain to disputing parties, the revised OHADA rules on arbitration set out voluntary intervention of third party for its interest involved in the dispute. In addition even non-voluntary intervention is admissible although the rules of arbitration do not define it if is necessary for constitution of arbitral tribunal.

[15] See, article 5 of UAA, any party wishing to have recourse to the arbitration shall submit his request to S-G for arbitration of the court in respective of terms and conditions laid down in the rules.

[16] See Section 14 of UAA.

[17] See, article 20 of CCJA rules

[18] See, Peine Lalive 'EnforcingAwards, International Arbitration, 60 Years of ICC Arbitration A Look att Futue' 9CC publishing, Paris, 1984) p, 11

[19] The reason might be, every country has different internal rules and public policy, therefore the OHADA has to respect this underlined in order to avoid infringement of arbitration jurisdiction to state immunity.

[20] See, article 31 of the arbitration Act.

[21] Example the case Cameroon, there is no time limit for application of enforcement in National competent judicial organization

[22] See, as examples ICSID and UNCTRAL rules.

[23] See, Ibid [n17]

[24] See, article 30.2 of the CCJA rules.

[25] See, Ibid

within three months of the date of receipt of the application,[26] but if this time limit is not reached, the challenge of the award might be brought before the CCJA, which, in addition, is calculated to render its decision within six months.[27] Nevertheless, a six month time limit will most likely be a challenge for the CCJA, which has tended in the past to take one or two years to render its decisions, and in addition because of lack sanction for the CCJA`s failure to meet six-month time limit, it is likely inclined to ineffectiveness of practicing the arbitration rules.

Comparatively, since almost all states in OHADA are signatory of New York convention on recognition and enforcement of arbitral awards, they are also bond by this convention. While international conventions, particularly the New York Convention of 1958, aims to make uniform the recognition and enforcement of international arbitration awards, it seems that there are still gaps left for national laws. Apart from the various applications of the New York Convention rules and the grounds for refusal of arbitration awards, there are different applications on enforcement procedures. Article 3 of the Convention states: "Each Contracting State shall recognize arbitral awards as binding and enforce them in accordance with the rules of procedure of the territory where the award is relied upon." Therefore, the procedure of recognition and enforcement in a forum state will be under the procedural rules of that state. There are detailed forms of procedures for the recognition and enforcement of arbitral awards which may vary from country to country. Some of the countries adopt the New York Convention directly; some of them require additional procedural steps. It is argued that one of the main shortcomings of the New York Convention is "the obvious lack of an efficient, universal enforcement procedure. Therefore, the parties of the arbitration should cautiously consider the forum country and international conventions. There are solutions offered to the referred lack of harmonization on the enforcement of arbitration awards. It has been argued that there can be a model law on implementing the New York Convention relating to the enforcement procedure of an arbitral award 96 or a supplementary convention to the New York Convention or a fresh convention. It should be noted that a new convention for the recognition and enforcement of international awards or a supplementary convention will need to be signed and ratified by the countries, which might be problematic in practice.[28]

2. Insusceptibility of recourse

The specificity of OHADA arbitral award is that the CCJA`s decision considered as final, there is no possible recourse to highest instance for an opposition of award. But for the case of dispute settled from good office, conciliation or mediation before the OHADA, in this event, after failing through, the disputing parties could apply Arbitration judgement, meanwhile the arbitration in this case is considered as court of appeal, However in the event that disputing parties directly apply for arbitration, the possibility for appeal is limited except for the case of refusal of the award set aside thereafter. According to rules governing arbitration mechanism in the OHADA, the arbitral award from CCJA is final; it is no possibility for recourse to highest level, by means the award is immediately applied to disputing parties when its regularity is ascertained. But remedies for irregularity of procedures are granted by the said rules by demand of applicant, implicated that reexamination of the dispute is susceptible second times to the CCJA with legal acceptable burden of proof provided by the applicant.

3. Annulation of arbitral awards

3.1. Legal reasons for refusal of the award.

In principal of international arbitration law, the award shall be implemented without any delay, nevertheless when National court deems it null and void; it may be refused at the request of the losing party against whom it is invoked, only if that party furnishes to the competent authority where the recognition and enforcement is sought. In the rules of OHADA arbitration law, the refusal may be targeted by one of disputing parties, may be from the national court of losing party and may be also by third party to whom its interest is hindered by the award rendered by the court by enforcement of award. Therefore, these persons have rights to refuse the enforcement of the award through different groups of grounds by which the enforcement and recognition of the award may be revoked. The first reason is procedural grounds, and is related to the right of the losing party to a fair arbitration. The second is burden of proof is on the party who claims procedural irregularity. And third might be drawn from State immunity. As a result, the CCJA rules set aside the requirement of proof of the grounds for refusal from the party who opposes the enforcement under the arbitration rules in OHADA.

Expressly the State court may decide not to enforce an arbitral award in exceptional event which the deliberated award is rather defective to State or in its irregularity, therefore it is possible for refusal while it figures some incapacity, invalid under the law of national state of subject party; the party against whom the award is invoked was not given proper notice of the appointment of the arbitrator or of the arbitration proceedings or was otherwise unable to present his case meanwhile the lack of contradictory rights in front the CCJA; the award deals with a difference not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration; the composition of the arbitral authority or the

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[26] See article art 27 of the Arbitration Act, this time limit is newly adopted in the revised act of OHADA so that the procedure of enforcement of arbitral award would be quick into national court of party. It also looks very ambitious in comparing to other such Paris Court appeal take on average 12-18 months.

[27] See, art 27 of arbitration act.

[28] See, [n1]

arbitral procedure was not in accordance with the agreement of the parties or the agreement is not in accordance with the law of country; the award has not yet become binding of the parties, or has been set aside or suspended by a competent authority of the country under the law of which the award was made.

In further the award also may be refused in the competent authority in the country of where recognition and enforcement is sought finds the subject matter of the difference is not capable of settlement by arbitration under the law of the country; or the recognition of the award is contrary to public policy[29] of the alleged State. When reason for refusal is about the irregularity of procedures, reexamination of dispute can be requested before the CCJA, however when it is contrary to law of the country or the public policy, the national court can handle the refusal of the award, therefore the refusal of awards for unconformity with law of country and public policy may not be similar because country members or country involved in arbitration tribunal before OHADA may have different legal system and policy. Talking only about OHADA country, some are common law and some are civil law system, consequently the system might be different. More detailed, the reasons for refusing the award might be vast; it is still challenges for strict enforcement the arbitral award issued by the CCJA.

As matter of fact, there is no legal basis for refusal based on state immunity, but the issue occurs occasionally on enforcement of international arbitration as CCJA. The immunity may be stated through jurisdiction power means the claimant may object the national court to access to arbitral tribunal, but the CCJA rules allow freely the claimant to access to arbitral jurisdiction by written agreement. In other hand, Immunity from execution of the award when defendant is State agency who is not willing to abide by voluntarily, however the New York convention mentioned that each contracting state has to accept and execute the enforcement of the award, meanwhile whichever the defendant is, the award always has an effect to be enforced.

4. Enforcing arbitral awards

4.1. Legal binding decision

The tribunal arbitral is amongst a method of disputes resolution constituting legal binding; the aim of arbitration is to provide a final and binding award for the parties in dispute. Once the arbitral award is deliberated, the parties are at once bond, and as the arbitration process has term, therefore any delay for enforcement of the decision are figured out. The rules of procedure are typically drawn from the influence of New York convention and International commercial arbitration.[30] Accordingly, each contracting State shall recognize an agreement in writing under which the parties undertake to submit to may arise between them in respect of a defined legal relationship, whether contractual or not, concerning a subject matter capable of settlement arbitration.[31] However, not every arbitration institution deal with the enforcement of arbitral award, some only grant that decision rendered shall be implemented without any undue delay.[32] Indeed any arbitration body does guarantee that disputing parties will carry out the legal effect of arbitral award, yet if a party does not respect it voluntarily, the court assistance may be requested in order to covert the arbitral award into a judgment.[33] Consequently as OHADA is a regional arbitral tribunal, it has its rules drafted in Uniform Act of Arbitration law and Common Court of Justice and Arbitration law. Accordingly, upon adoption, all AHODA rules are automatically applicable to all members included arbitral award rendered. In the arbitration before OHADA, CCJA handles the ad hoc and charges the arbitration under its auspices in complies with its rules of Arbitration.[34] The arbitral award shall be in following with the requirement asserted by the rules of procedures so that it fulfills the requisite to have legal effect to disputing parties, any regardless of the procedures may affect the enforcement it to disputing parties.[35] For an arbitral tribunal constituted by more than 03 arbitrators, decision is rendered by the majority of them; in the event of absent majority the president of arbitral tribunal alone takes the decision. In the case of minority of arbitrators refuse to sign the arbitral, the majority can sign and the refusal of the minority to sign does not affect the validity of awards.[36] While the award is deliberated, it has force and made pursuant to the provisions of the said rules shall have the final force in the territory of each State Party, in the same manner as decisions made by the courts of the State, it may be subject

[29] The violation of public policy has long been a ground for refusing recognition or enforcement of awards. The concept of public policy may differ from state to state and from time to time, reflecting the changing values of society. For instance, public policy is defined as essential to the moral, political or economic. The public policy exception to enforcement is an acknowledgement of the right of the court's ultimate control over the arbitral process. There is conflict between national interests and the finality of foreign awards.

[30] See, arbitration rules in New York convention, see also arbitration rules of the United Nations Commissions on International Trade Law (Adopted by the General Assembly on December 15,1976) (UNICTRAL Arbitration Rules), International Chamber of Commerce Arbitration Rules in 1998 (ICC Arbitration Rules)

[31] See, Article II.2 of New York Convention

[32] See, London Court of International Arbitration rules in its article 26.9

[33] See, Serhat Eskyoruk [n1] P.63-64

[34] See, article 11 of CCJA rules

[35] See, article 19 of UAA

[36] See article.22.3 CCJA law

to enforcement in the territory of one any of the States Parties.[37]Stipulated in the UAA that the arbitral shall contains full names of arbitrator(s) who made the award; the date of the award; the seat of arbitral award; the full names or company name of the parties as well as, their residence or registered office; where applicable, full names of counsel or any person who presented or assisted the parties and summary of the respective claims and defenses of the parties, their submissions as well as the stages of proceedings.[38] The form of arbitral award has to contain these afore-mentioned requirements so that it follows the formality and has effect immediately to disputing parties, and once it is rendered, it has force of ***res judicata*** effect with respect to dispute which it decides.[39] The proof and reasons ascertained the regularity of award shall be set aside so that its legal effect is accepted by the party or national court of the losing party. In other hand, further conditions are required for arbitral award; principle of impartiality has to be respected in arbitral tribunal, the time limit and any others. Almost 20 years of establishment of OHADA arbitration institutions, many international affairs have been submitted, most of disputing affairs were settled under the auspices of CCJA and the parties accepted to be bounded by the arbitral awards.[40] However the court cannot constrain any party to be bound by the decision, the party who does not honor decision may be discourage from its business or some advantages in its international operation among countries in OHADA.[41] Further, for maintaining the legal binding of the arbitral award, the process to join national court is also required in order to guarantee the interest of the party.

5. Challenges of the enforcement of OHADA`s arbitral award in comparing with international arbitral tribunal within member countries

There is several investment and commercial disputes resolution rules and institutions in Africa but in this research the most discussed are these which are standing parallel with OHADA. As a result, to compare the efficiency of OHADA arbitral awards with UNCITRAL and ICSID as they are common use in almost countries around the world, most of country in OHADA have agreed those afore mentioned international institutions in parallel and as alternative disputes settlement body for issues. And further, it is necessary also to point either these institutions are interdependent in its decisions. In terms of rending decision before CCJA, despite the arbitration process is so speed, yet the arbitrators appointed by the court are private judges, by consequence the risk on partiality and confidentiality is unexpected.[42] Practically the enforcement of arbitral award face incredibly a difficulty, and despite the time limit is theoretically asserted short, yet it takes time to enforce the award in the national state because State judge may not agree with decision taken by arbitrators, they may even take revenge act to against the arbitrators when the issue comes to state agency, however the concept of tacit exequatur deems to waive this trend.[43]

Furtherly, CCJA judiciary consists of seven judges elected, and the lists of candidates are nominated by OHADA member States. This factor could hamper the arbitration proceedings by the fact that a State disqualifies its judicial representative from the CCJA court, therefore s State judicial presentative may preside over proceedings brought by the State to annul an award rendered against his country.

Even to determine arbitration fees is sometimes engender a conflict of interest in the OHADA arbitration, the international arbitrators perceive that the more the fees is lower, the more they have no incentives to join an arbitration tribunal appointment in the CCJA. However when the arbitration fees are lower, the disputing parties may be incited to bring their case in the OHADA instead.

As follows is an example of challenging award rendered by the CCJA*:*

> "The case of *Getma v Guinea* (19 November 2015) provides an example of all of these concerns playing out. In this case, on the application of the Republic of Guinea (an OHADA Member State) the CCJA annulled a US$42.2 million award against Guinea in favour of Getma (a subsidiary of a French group). The ground for annulment was that the arbitrators had exceeded their mandate by entering a side agreement with the parties to increase the tribunal's fees to US$250,000, exceeding the US$66,000 cap imposed by the CCJA in its supervisory capacity. There have been a number of concerns raised over this decision. It is considered a draconian response and unfairly prejudicial to parties who had spent a significant amount of money conducting the arbitration. In ignoring that Guinea and Getma had agreed to the fee arrangement, it fails to respect party autonomy – a principle on which international arbitration is founded. The cap the CCJA imposed on the arbitrators' fees is viewed as very low. Also of concern is the tribunal's claim that when it was appointed, it had received

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[37] See Ibid. article 27

[38] See, Ibid. article 20

[39] See, Ibid. article 21, see also article 22.2 of CCJA law

[40]recourse N.003/2008/PC/ du 06 Fevrier 2008, issue between « Banque D`Antlatique de Cote D`Ivoire So-called BACI vs Banque Internationale pour le commerce et l`Industrie de la cote d`Ivoire so-called BICICI » http://biblio.ohada.org/pmb/opac_css/doc_num.php?explnum_id=3772

[41] See Serhat Eskyoruk [n1], the way used to in order to enforce the arbitral awards as it is legal binding in the event of one party refuse to abide by arbitration rules.

[42] https://www.ohada.com/actualite/2413/serious-dangers-of-arbitration-for-the-states-wwwohadacom-makes-its-recommendations.html?langue=en

[43] https://www.dentons.com/en/insights/newsletters/2018/may/31/south-africa-newsletter/south-africa-newsletter-may/enforceability-of-arbitral-awards-within-the-ohada-area

assurances from the CCJA in its supervisory capacity that the tribunal would be able to adjust its fees. Last but not least, Guinea's judicial representative sat on the CCJA panel that heard Guinea's application to set aside the award *against it."*

Furtherly, the transparency of the award is further challenges to arbitration rules in CCJA. In the view of international arbitration rules, United Nations conventions on transparency in arbitration[44] deemed as legal tools to assure to the transparency of award in arbitration handling between country members by the fact that the convention binds all signatory states to honor transparency of arbitration proceedings and decisions rendered. Nonetheless not all member states in OHADA have signed the said agreement; only four countries have agreed it[45]`````

4 CONCLUSION

To conclude with, the effectiveness of the recognition and enforcement of OHADA arbitral award is rather reliable referring to the revised rules of arbitration in 2018. Theoretically, perceived that member countries in OHADA seek to standardize the rules of procedures in order to promote a reliable tribunal in settling disputes occurred along the operation of business among them and other countries which rely on OHADA arbitration rules.[46] Disputing parties who are willing to apply arbitration before CCJA have to agree a written agreement forward to General Secretary for arrangement of proceedings includes appointment of arbitrators.[47]Enforcement of arbitral award depends generally to disputing parties; it may be easier and speed in the event that losing party accepts it directly as regular award, adversely, it may take time or overpass the time limit of enforcement determined by the rules in the event of a losing party refuses to be bound by at once, means the process of exequatur in the national court may take time by the fact that the national court may reexamine the regularity of the award with accord to rules in OHADA and its national rules specifically public policy or its interest as sovereign State. When then award is deemed regular, it has legal effect to disputing parties and consists of final instance for dispute resolution body, nevertheless the OHADA rules is granted for grounds of refusal of the award which is rendered erratically.[48]

In other hand, enforcement of arbitral award may face challenges in terms of its proceedings itself because of unclear procedure of the exequatur and even determinations of some terms such "State competent Judge"[49] to handle enforcement arbitral award. The exequatur may be delayed or dismissed by the national court, because it may defend its interest especially when state agency is involved in, it is basically the trend of every State, they defend their interests vastly. It may consider the award as against their public policy in the objective for dismissing its effect over. In the event of losing party refuse to be bound and his national court also does not consider the effect of the award for reason relating to irregularity, the award may not be enforced in spite of the rules set aside the recognition and enforcement, because the OHADA arbitration tribunal could not punish directly a party which refuses unless the national court does support it.

In addition, looking at OHADA rules on recognition and enforcement of Award, almost its members have signed the New York convention on recognition and enforcement of arbitral award, and even some are signatories of United nations in transparency of arbitral award, yet it is still challenging to guarantee the recognition and enforcement, because every state involved shall comply with its national law, should consider and abide by the arbitral decision, and the OHADA should set an Uniform rules for an exequatur with member countries. When parties chose to settle disputes before CCJA for arbitration, they shall respect the legal effect of decision rendered, meanwhile it requires altogether with comfort that the local judiciary will actively support and not to interfere the arbitral process and the decision. And last not least, the importance of respecting enforcement of the arbitral awards, it may assure and incentivize foreign investors to invest and contribute to economic development in member countries, because in the event that a dispute happens, the investors may rely on the OHADA arbitration rules for defending their rights.

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[44] The convention on transparency was adopted on December 10, 2014 and entered into force on October 18, 2017, it applies to arbitration between Host state and Investor based on agreed treaty.

[45] Benin, Cameroon, Gabon and Congo

[46] China is amongst a country out of the agreement but support its existence by the fact Chinese investors invest more in the territory of OHADA countries, so in the event a dispute happens, the OHADA grants the settlement of disputes in favor of the parties with effective proceeding and affordable fees.

[47] See note above, mechanism of appointing arbitrators in according to AUU rules on arbitration.

[48] See, note above, grounds of refusal of arbitral awards in the OHADA rules, New York convention on enforcement of arbitral awards.

[49] See, CHAZAI+PARTNERS, Independent law firm based in Cameroon "focus on the OHADA reform of arbitration law" analysis on OHADA arbitration rules.