

Disputes with African partners

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Despite all precautions, disputes arise, and their handling has its own particularities. Contracts with African state-owned enterprises and states raise the question of sovereign immunity, which waiver clauses address only imperfectly. The enforcement of arbitral awards and judgments in African countries is uneven, despite the accession of most of them to the New York Convention. The area of the Organisation pour l'harmonisation en Afrique du droit des affaires (Organisation for the Harmonisation of Business Law in Africa, OHADA) has its own court and its own arbitration centre, whose value for French-speaking practitioners Part J has described.¹ The assets of African states abroad, including in Switzerland, are subject to attachment by creditors holding awards, in proceedings with which the Geneva courts are familiar, as Part F has described.

Geneva practice recommends choosing arbitration, in Geneva, Paris or London, under a known governing law, providing for security outside the country — escrow accounts, bank guarantees, political risk insurance — and favouring negotiation, often facilitated by personal relationships and by the Geneva institutions, before any litigation. A dispute won against an African state is rarely recovered in full. A dispute avoided through a negotiated restructuring preserves the relationship and access to the market. The Geneva traders that restructured the debts of Chad and Congo, described in Chapter III, have learned this lesson.

1 Notes

1. OHADA, “History” (ohada.org) and Wikipédia (fr), article “Organisation pour l’harmonisation en Afrique du droit des affaires”: organisation “created by the treaty of 17 October 1993 at Port-Louis (Mauritius), amended by the Quebec treaty of 17 October 2008”, 17 member states; Common Court of Justice and Arbitration established in Abidjan, court of final appeal for the interpretation of the uniform acts, which “houses an institutional arbitration centre under its Rules of 11 March 1999”; uniform act on arbitration law adopted in Ouagadougou on 11 March 1999; Permanent Secretariat in Yaoundé, ERSUMA in Porto-Novo. ↩

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