

Arbitration in Mozambican Law

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El presente artículo pretende señalar las características principales de las leyes reguladoras del procedimiento arbitral en Mozambique. Según lo establecido por la ley de Mozambique, las partes gozan del derecho a escoger la ley reguladora del contrato así como la ley reguladora del 'arbitraje'. Este procedimiento tiene como fin resolver disputas o conflictos entre las partes, en conexión con el contrato, cuando se encuentren cumplidas ciertas condiciones tal y como se especifica en el presente artículo. Tras un profundo análisis del contenido de la ley de Mozambique en relación con el procedimiento arbitral, podemos concluir que el legislador ha concebido el procedimiento tanto a nivel nacional como internacional, como un procedimiento alternativo para la resolución de conflictos entre las partes, con el objetivo de incrementar la inversión extranjera en el país.

1. Introduction

In Mozambique, arbitral tribunals are foreseen in the 2004 Constitution of the Republic of Mozambique side by side with administrative courts, labour courts, tax courts, customs courts, admiralty courts and community courts (Article 223(2)).

Under Mozambican Law, as a general principle, the parties may choose the governing law of a contract and the dispute resolution mechanism, namely arbitration, to solve the disputes arising out of or in connection with a contract, provided that certain conditions are met, as explained below.

In fact, arbitration has been encouraged by the Mozambican legislator, especially in sectorial laws with the purpose of increasing foreign investment in the country.

2. The Mozambican Arbitration Law

Mozambican Law no. 11/99 of July 8 ("Arbitration Law" or "LACM") foresees and rules the possibility of choosing arbitration as a dispute resolution mechanism, which is applicable, as in many other modern arbitration statutes, to arbitrations located in Mozambique (Article 68 of the LACM).

The *Mozambican Arbitration Law* follows and adopts, in many issues, the solutions set forth in the United Nations Commission on International Trade Model Law (UNCITRAL) and in modern national arbitration laws.

The title of the LACM concerning *Arbitration* contains, apart from general rules covering the object and scope of arbitration, the matter of arbitrability, the competence of competence of the arbitral tribunal and the exceptional intervention of judicial courts in arbitrations (Chapter I), rules applicable to the arbitration agreement (Chapter II), rules regarding arbitrators and the arbitral tribunal (Chapter III), rules related to arbitral proceedings and the conduct of arbitration (Chapter IV), rules applicable to the arbitral award (Chapter V), rules regarding the challenge of the arbitral award (Chapter VI), rules related to enforcement of the arbitral award (Chapter VII) and rules applicable to international commercial arbitration (Chapter VIII).

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Similarly to other arbitration laws, Mozambican Arbitration Law distinguishes two main types of arbitration: domestic arbitration and international commercial arbitration, the latter being governed by a few special rules (Articles 52 to 59 of the LACM) and, in the absence of special rules, by the provisions governing domestic arbitration (Article 53 of the LACM).

Pursuant to the terms of Article 52 of the Arbitration Law, international commercial arbitration is applicable if '*interests of international trade are at stake*'⁽²⁾ and, notably, when:

- a) parties to an arbitration agreement are, at the moment of entering into the arbitration agreement, domiciled in two different countries;