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Institutional Arbitration in the Resolution of Commercial Disputes in Cameroon: A Case Study of GICAM-CMAG

Eposi Juliette Vefonge[1]

[1] Department of English Law, Faculty of Laws and Political Science, University of Buea, Cameroon

Correspondence: Eposi Juliette Vefonge, Department of English Law, Faculty of Laws and Political Science, University of Buea, Cameroon.

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Abstract

This paper examines the effectiveness of GICAM-CMAG as an arbitral institution in resolving commercial disputes in Cameroon. Institutional arbitration is one of the forms of ADR mechanisms, where parties refer their disputes to and are governed by the rules and procedures of the said institution. Even though it has standard rules which renders an arbitral award binding, it lacks an appellate jurisdiction, which acts as a hindrance to the unsatisfied party to review the case, thus an eventual resort to litigation. However, since the creation of OHADA in 1993, most people are ignorant of the existence of an arbitral institution and most of its rules are in French language causing a difficulty to business persons to better understand the arbitral proceedings like the OHADA Treaty and CMAG Rules. The main objective of this work is to elaborate some resolution mechanisms in resolving commercial disputes and to examine how effective is CMAG in resolving commercial disputes in Cameroon. To attain this objective, the study adopts content analysis of laws especially the CMAG Rules, alongside other legal instruments governing arbitration in Cameroon. Findings of the study reveals that CMAG is an arbitral institution which administers mediation and arbitration procedures, organizes practical training, seminars and conferences. It has created its own internal rules to govern its arbitral proceedings both at the national and international level. Thus, it is apparent to conclude that, even though CMAG has been instrumental since its creation, due to Language barrier and the lack of an appellate jurisdiction, it has acted as a limitation to its functioning. As such the study recommends for an official translation of its rules, the creation of an appellate jurisdiction, and an intensive awareness about the existence of the mediation and arbitration center and its procedural rules in resolving commercial disputes in Cameroon.

Keywords: institutional arbitration, resolution, commercial disputes, Cameroon

1. Institutional Arbitration

1.1 Concept at the Global Level

Generally, International trade is a highly progressive phenomenon. This is only natural as opportunities to expand into new markets abroad have been made available through reduced obstacles to trade, and through development in communities and progress in the transport sector. It is now possible for multinational companies to expand and increase their revenues by widening their horizon and accessing markets all over the world. This globalization does not however come only with new possibilities; it also results in new problems and difficulties.

Historically, arbitral procedure was not governed by legal rules as it is presently. Arbitration was (and in some instances still remains) a mechanism for dispute resolution adopted by members of various trade and specialist associations.[1] In these associations commercial men enlisted the assistance of other (usually senior) members of the same trade association, to resolve disputes which arose in the course of their business relationship. The dispute was resolved in accordance with the practices of the particular trade association.[2] With the rapid growth of International trade the amount of international commercial disputes has increased. Due to congestion and delay in litigation; most parties to a commercial dispute prefer to resort to an alternative dispute method and there was also a need for a unifying law to govern these disputes in Africa. In this perspective, international arbitration rules, mechanisms and institutions have been developed.[3] This lead to the signing of the Port-Louis Treaty in 1993, which created the Organization for the Harmonization of Business Law in Africa (OHADA, French acronym for Organization pour L'Harmonisation en Afrique du Droit des Affaires).[4] Alternative dispute resolution (ADR), typically denotes a wide range of disputes resolution processes and techniques that act as a means for disagreeing parties to come to an agreement short of litigation: a collective term for the ways that parties can settle disputes, with the help of a third party.[5] However, ADR is also increasingly being adopted as a tool to help settle disputes alongside the court system itself.[6] Additionally, parties to merger and acquisition transactions are increasingly turning to ADR to resolve post acquisition disputes.[7] ADR typically includes negotiation, conciliation, mediation and arbitration. Arbitration is coined out as the most preferred method in dispute resolution that is why, *Fouchard,* [8]*describes* it as "an apparently rudimentary method of settling disputes, since it consists of submitting them to ordinary individuals whose only qualification is that of being chosen by the parties". It is not difficult to visualize the 'rudimentary' nature of the arbitral process in its early days. Two merchants in dispute over the quality of goods delivered, would turn to a third (neutral party), whom they knew and trusted for a decision on that dispute and would agree to abide by that decision without further question.

Arbitration process provides many advantages such as the humble cost of proceedings, time saving, a less formal character of procedure, the subsequent relaxation of rules or evidence and provide parties more practical, efficient and neutral dispute resolution when compared to state court litigation.[9] There are several types of arbitration which are ad hoc arbitration, contractual arbitration, statutory arbitration and institutional arbitration. Ad Hoc Arbitration refers to a scenario where the arbitration process is determined between the parties themselves like appointment of arbitrators, applicable rules, and other pertinent aspects; contractual arbitration is when parties to a contract agree to resolve future disputes via binding arbitration rather than in court or otherwise; statutory arbitration refers to a scenario where arbitration is conducted in accordance with the provisions of special act that specifically provides for arbitration in respect of disputes arising on matters covered by that act; institutional arbitration is defined as a permanent organization with a set of its own arbitration rules regulating the services provided by the organization and other procedural aspects of arbitration. By virtue of the party autonomy, parties have to make an early decision regarding whether their international arbitration should be "institutional" or "ad hoc" or any other form of arbitration. Arbitration can be "binding" or "non-binding". Binding arbitration means the parties have waived their right to a trial, agree to accept the arbitrator's decision as final and, usually, there is no right of appeal of the decision. Where there is a binding arbitration clause in a contract, the matter must proceed to arbitration and there is no trial. Non-binding arbitration means the parties can request a trial if they don't accept the arbitrator's decision. Some courts will impose costs and fines if the court decision is not more favorable than that awarded in arbitration. Thus, non-binding arbitration is increasingly rare.[10] Arbitral hearings and the parties' submissions or tribunals' awards are virtually closed to the

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[1] Examples of such trade associations are the London Metal Exchange. Available at http://www.lme.co.uk/who.asp accessed on the 23 April 2021; The Federation of Oils, Feeds & Fats Associations available at http://www.fosfa.org/contracts/cont_arb_intro.htm accessed on the 23 April 2021; and The London Maritime Arbitrators Association at http://www.lmaa.org.uk/intro.asp accessed on the 23 April 2021.

[2] An example is the 'look, sniff arbitration' common in resolving disputes related to the grains and feeds trade associations.

[3] Arbitration law differs from country to country. Most of the developed countries have arbitration laws that permit and regulate both national and international commercial arbitration. Some countries enacted their own laws as the procedures of arbitration and some adopted commonly accepted rules and procedures as a model law. Such as Australia, Bulgaria, Canada, Russia and Turkey adopted UNCITRAL Model Law.

[4] Current Member States include: Benin, Burkina Faso, Cameroon, Central African Republic, Chad, Union of Comoros, Congo, Cote d'Ivoire, Gabon, Guinea, Guinea-Bissau, Equatorial Guinea, Mali, Niger, Senegal and Togo.

[5] Australian Securities and Investments Commission at http://www.Asic.gov.au accessed on the 25 April 2021.

[6] J. Pirie et. al. (2000). Alternative *dispute resolution: skills, science, and the law.* Toronto, Ontario: Irwin Law, 5.

[7] Litvak, Jeff; Miller, Brent. *"Using Due Diligence and Alternative Dispute Resolutions to Resolve Post-Acquisition Disputes".*

[8] Philippe Fouchard. (1965). *L'Arbitrage Commercial International*, (Litec) 31.

[9] www.allenandallen.com Arbitration: advantages and disadvantages. Accessed on the 23 April 2021.

[10] Marc N. (2020). Forms of Alternative Dispute Resolution.

public and confidential.[1]

International arbitration is governed not only by the parties' private agreement but also by a number of international arbitration conventions that apply independently of the parties' agreements. The main goal of this conventions and treaties is to promote international arbitration and help to enforce arbitration awards, such as the 1923 Geneva Protocol,[2] and the 1927 Geneva Convention.[3] These conventions were followed by the New York Convention, or the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958[4]. The New York Convention was drafted under the auspices of the United Nations and has been ratified by more than 150 countries, including most major countries involved in significant international trade and economic transactions.[5] The United Nations Commission on International Trade Law (UNCITRAL Arbitration Rules) Adopted by resolution of the General Assembly of the United Nations in December 1976.[6] Another important convention is the 1961 European Convention on International Commercial Arbitration. This Convention was mainly drafted for arbitration between parties from European States. It was signed on the 21st April 1961 and came into force in 1964. Today, 31 States have signed and ratified the convention. The Washington Convention of 1965 is also an important convention on international arbitration,[7] together with some international rules like The UNCITRAL Model Law (Mode Law) adopted by the United Nations Commission on International Trade law in June 1985[8] and revisions to the Model law (the Revised Model Law) adopted in December 2006. The International Centre for the settlement of Investment Dispute (ICSID), also handles arbitration, but it is particularly focused on investor-state dispute settlement and hears relatively few cases.

Institutional Arbitration which is the main focus of the study simply refers to a situation where the parties submit their disputes to an arbitration procedure, which is conducted under the auspices of or administered or directed by an existing institution,[9] wherein, only the rules of the institution apply.[10] For example: the International Chamber Of Commerce (ICC) in France, the American Arbitration Association (AAA) in the United States, The London Court of International Arbitration (LCIA) in the United Kingdom etc. There are approximately 1200 institutions worldwide which offer arbitration services, and some will deal with a particular trade or industry. Often the contract between the parties will contain an arbitration clause which will designate an institution as the arbitration administrator.

1.2 Concept at the National Level

In Cameroon, Arbitration is a recognized and preferred form of dispute resolution for most commercially focused enterprises. Cameroon is one of the sixteen states who are members of the organization for the Harmonization of Business law in Africa (OHADA). The OHADA states adopted the Uniform Act, 1999 on Arbitration which sets out the basic rules applicable to any arbitration within these states, and is based on the UNCITRAL model law. Thus, Institutional Arbitration which is our focus is conducted in accordance with institutional rules.[11] Cameroon has three arbitration centers which are Centre d'arbitrage du CPAM in Yaoundé,

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[1] Kyriaki Noussia. (2010). *Confidentiality in Commercial International Arbitration: A Comparative Analysis of the Position under English, US, German and French Law* (1st edn). Springer, 9.

[2] The Geneva Protocol on Arbitration Clauses of 1923 was drawn up on the initiative of the International Chamber of Commerce (ICC) and under the auspices of the League of Nations and signed at Geneva on 24th September 1923.

[3] This Convention for the Execution of Foreign Arbitral Awards followed on from the Geneva Protocol and was signed at Geneva on 26th September 1927: League of Nations Treaty Series (1929-30), Vol XCII. P 302.

[4] The Convention on the Recognition and Enforcement of Foreign Arbitral Awards done at New York on the 10 June 1958. *United Nations Treaty Series* (1959), vol 330. 3. No 4739. The text of the Convention is set out in Appendix B.

[5] Jason Fry. (2010). *Recognition And Enforcement Of Foreign Arbitral Awards: A Global Commentary on The New York Convention Foreword* (Herbert Kronke, Patricia Nacimiento, Dirk Otto &Nicola Christine Port eds.)

[6] The UNCITRAL Rules (Resolution 31/98 adopted by the General Assembly on 15 December 1976). These Rules are set out in Appendix D.

[7] 'The Washington Convention on the Settlement of Investment Disputes between States and Nationals of Other States', done at Washington, 18 March 1965. United Nations Treaty Series (1966), Vol. 575,160, No 8359.

[8] The Model Law on International commercial Arbitration, adopted by the United Nations Commission on International Trade Law on 21 June 1985. The text of this is set out in Appendix A.

[9] Julian D. M. Lew et al. (2003). *Comparative International Commercial Arbitration*. Kluwer Law International, the Hague, 124.

[10] See Ralph H. Folsom et al. (2009). *International Business Transactions in a nutshell* at 327 West.

[11] Jeffrey Waincymer. (2012). *Procedure and Evidence in International Arbitration* (1st edn. WK 2012), 211.

African Intellectual property Organization in Yaoundé, and Centre d'arbitrage du GICAM (Groupement Interpatronal du Cameroun) now referred to as CMAG (Centre de mediation et d'arbitration du GICAM) in Douala, and is the foremost arbitration institute. The GICAM Arbitration Centre was created in 1997 to meet the need for quality dispute resolution as called for by the business sector. As already mentioned, about institutional arbitration, the GICAM Arbitration Centre administers arbitration procedures according to its Arbitration Rules and its proceedings are confidential. It is governed by law No. 90/053 of December 19, 1990, on freedom of association. GICAM brings together professional groups and individual companies; as such, it currently has more than 1000 members.[1]

Despite the impressive structure of the above provisions of the law, there are still some irregularities in the resolution of commercial disputes in Cameroon (GICAM-GICAM), like the inadequate drafting of certain provisions in the Arbitration Rules. There is therefore the need for Cameroon to develop and implement strategies that could better safeguard arbitral proceedings in Cameroon.

This research therefore, aims at strengthening the understanding of the effectiveness in the resolution of commercial disputes by arbitral institutions in Cameroon, (GICAM-CMAG). It is addressed to state authorities, Non-Governmental Organizations, Legal Practitioners, Scholars and individuals concerned with the resolution of commercial disputes in Cameroon.

2. Theoretical Framework

To have a better grasp and understanding of the concept of commercial resolution in Cameroon, it is important to examine modern jurisprudential theories of law.

As per Ronald Dworkin,[2] a contemporary jurist and H.L.A. Hart's successor in the Oxford Chair of Jurisprudence, jurisprudential theories should aim at showing the main point of law. In his view, different jurisprudential theories constitute alternative "interpretations" of the point of having law.

Reiterating this method of thinking, Juan M. Elegido[3] also argues that besides developing a global interpretation of what is the point of having law, a jurist must provide an account of what is the point of using each specific legal concept (e.g. what is the point of having rights?) or legal practice (e.g. what is the point of following precedents in the way in which it is done in common law?).

It has been accepted by many legal writers such as Alan Redfem &Martin Hunter[4] that parties go through the trouble and expense of taking their disputes before an arbitral tribunal with the expectation that, unless a settlement is reached along the way, the proceedings will end with an award. The parties also expect the award to be final and binding on them.

According to Professor Julian Lew,[5] the identification of the legal nature of arbitration 'allegedly holds the key to the identification of the legal and non- legal yardsticks available to arbitrators in international trade disputes'. Following this premise, consequently, every arbitration is subject to the law where it takes place.

2.1 Jurisdictional Theory

The jurisdictional (or territoriality) theory highlights the dominance and control exercised by the sovereign state in regulating any arbitration proceeding conducted within its territorial jurisdiction through its national laws and courts. This theory highlights the supervisory power exercised by the sovereign state over the disputing parties' right to enter into an arbitration agreement, the arbitration proceedings, the powers exercised by the arbitrator in the arbitral reference and the eventual arbitral award. According to Dr Mann[6], this theory gives significant importance to the law of the seat or place of arbitration, the *lex loci arbitri*.[7] Following this premise, consequently, every arbitration is subject to the law where it takes place. This theory serves as a guide to ensure

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1 www.pefop.iiep.unesco.org >actors >groupement Interpatronal du Cameroun. (accessed on the 14/03/2021).

2 R. Dworkin. (1986). *Law's Empire*. Oxford, 90.

3 J.M. Elegido. (1994). *Jurisprudence*. Lagos: Spectrum Books Ltd., 7.

4 A. Redfern & M. Hunter. (2004). *Law and Practice of International Commercial Arbitration*. London: Thomson Sweet &Maxwell 4th edition, 416.

5 Julian D. M. Lew. (1986). *Determination of Arbitrators' Jurisdiction and the Public Policy Limitations on That Jurisdiction*. London, 73 et seq.

6 See generally Francis A. Mann, *Lex Facit Arbitrum*, 2(3) Alternative Dispute Resolution International, p. 245 (1983); see also M. Mustill, "*Transnational Arbitration in English Law",* 37 Current L. Probs. 133, 142(1984).

7 *Lex Loci Arbitri* is the latin term for "law of the place where arbitration is to take place" in the conflict of laws: see William W. Park. (2008). *The Lex Loci Arbitri and International Commercial Arbitration*. Cambridge University Press, p. 21.

an effective resolution of commercial dispute because it requires an arbitrator to carry out arbitration proceedings in accordance with the will of the parties' to the extent that the *lex fori* [1]allows.

2.2 Contractual Theory

The proponents of the contractual theory like Merlin and Foelix[2] assert that arbitration is based on the agreement between the parties. They explore the nature of arbitration from a contractual view. The arbitrator, upon accepting appointment becomes an agent of the disputing parties and the disputing parties become the principal. Accordingly, an arbitration agreement between the parties is regarded as a contract which expressly states the parties' wish to have their disputes resolved by means of international commercial arbitration. The proponents of the contractual theory believe that the settlement of the dispute in arbitration should be influenced by the concept of *pacta sunt servanda,*[3] binding the parties to perform the arbitration agreement made between them without state's pressure. This simply means that, upon the occurrence of a commercial dispute there has been an arbitration agreement which stipulates that upon a dispute, they will resort to arbitration. This serves as a guide to ascertain the validity of an arbitration agreement or contract upon commencing arbitral proceedings in Cameroon.

In most jurisdiction, the mechanism of international commercial arbitration is undeniably designed based on contractual theory. Recognizing the business people's desire to have a more flexible and informal method of dispute settlement, most courts tend to follow the contractual theory and interpret the relationship between parties and arbitrators as a contract. For instance, in England, in the case of *Cereals S.A. v. Tradax Export S.A.,*[4] where the court, first of all held that a contractual relationship existed between the parties and the arbitrators. Secondly, the court stated that the arbitrators became parties to the arbitration agreement as soon as they accepted the appointment. The court observed that; "It is the arbitration contract that the arbitrators become parties too, by accepting appointments under it. All parties to the arbitration are, as a matter of the contract, bound by the terms of the arbitration contract". A similar idea was also upheld in a recent case[5] about the issue of remuneration. The court decided that the arbitrators were entitled to reasonable remuneration. This entitlement was based on a trilateral contract between the two parties and the arbitrators. The implied terms of this kind of trilateral contract requires arbitrators to "conduct the arbitration with due diligence and at a reasonable fee", by using all reasonable means in entering on and proceeding with the reference.

2.3 Autonomous Theory (sui juris)

The autonomous or *sui juris* theory originally developed by Professor Rubellin- Devichi in 1965,[6] takes a different approach from the earlier juridical theories which looked at the role of (international) arbitration within the existing structure of national legal systems and its relationship with the law of the seat. She examined international arbitration as a system on its own, detached from any particular national legal system on the presumption that arbitration evolves in an emancipated legal regime. This theory postulates that commercial people (the users of the mechanism of arbitration) have led the development of the practice, procedure and law of arbitration (as a type of *lex mercatoria*). It suggests that states and arbitration institutions modify their laws and rules to meet the requirements of the international commercial community. Thus, arbitration is autonomous in nature.[7] This serves as a guide to ascertain the effectiveness of GICAM rules in the resolution of commercial disputes in Cameroon.

3. Legal Instruments Governing Arbitration in Cameroon

These are national, regional, and global instruments on arbitration that the State of Cameroon has enacted, signed, and ratified to help regulate arbitration procedures more especially in conflict arising from commercial disagreement. The legal instruments to be examined in this area will be in respect to arbitration and the settlement of disputes in Cameroon which will range from the national, regional, and global levels.

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[1] *Lex fori* is the latin term for "the law of the court in which a proceeding is brought": see https://www.merriam-webster.com, legal definition of lex fori. Accessed on the 5 august 2021.

[2] Hong-lin Yu. (2008). *A Theoretical Overview of the Foundations of International Commercial Arbitration*, 265.

[3] *Pacta Sunt Servanda* is the Latin term for "agreements must be kept": see I.I. Lukashuk. (2017). *The Principle of Pacta Sunt Servanda and The Nature of Obligation under International Law*. Cambridge University press, p. 2.

[4] See Cie Europeene de Cereals S.A. v. Tradax Export S.A., (1986) 2 Lioyd's Rep. 301 (UK).

[5] See K/S Norjarl A/S v. Hyundai Heavy Industries Co. Ltd., (1991) 3 ALL ER 211 (CA) (U.K).

[6] Hong-lin Yu. (2008). *A Theoretical Overview of the Foundations of International Commercial Arbitration*, 278.

[7] See generally, J Rubellin-Devichi. (1965). *L'arbitrage: Nature juridique: Droit Interne et Droit International Prive,* in Librairie Generale De Droit Et De Jurisprudence, 365.

3.1 National Instruments Regulating Arbitration

Arbitration is a recognized form of dispute resolution in Cameroon and is the most favored procedure of dispute resolution for most commercial enterprise. Interestingly, the Cameroon constitution has stated that duly approved or ratified treaties and international agreements shall be following their publication, override national laws, provided the other party implements the said treaty or agreement.[1] This constitutional provision has made it possible for the state of Cameroon to apply both national, regional, and international laws on arbitration.

3.1.1 The Law Instituting a Judge in Charge of Litigation Related to the Execution of Judgment

This law has helped to fill the gap that existed and resolve the problem pose due to the bi-jurial nature of Cameroon. This gap existed in cases where the question of the competent judge laid down the basic conditions for recognizing a foreign decision that arises. In resolving this lapse, the lawmakers in the Republic of Cameroon enacted *law No. 2003/009 of 10 July 2003* to designate the competent judges stated in the Uniform Act on Arbitration within the framework of the organization for the harmonization of business law in Africa (OHADA) treaty and to lay down circumstances for referring cases to them.[2]

Before the 10 of July 2003, the competent jurisdiction for recognition and an application and enforcement of the foreign arbitral award was practice differently in both the English and French-speaking Region of Cameroon. For example, in the French-speaking region, it was the President of the Court of First Instance or a Magistrate delegated by him that has the competent forum for an application for exequatur for an arbitral award. While in the English speaking Region, recourse was gotten from the Pre 1900 laws from her majesty court of England as stated in section 11 of the Southern Cameroon high Court Rule (SCHCL) of 1955.[3]

However, to regulate arbitration and to unify the procedure for exequatur in the Republic of Cameroon, the authoritative lawmakers enacted *Law No. 2003 of 10 July 2003* whereby, the President of the Court of First Instance or a magistrate delegated by him is competent to hear and decide over an application for exequatur in the Republic of Cameroon.

To facilitate arbitration, the state of Cameroon sort to respect international standards more especially those instituted by the ICSID with regarding the designation of the competent jurisdiction to grant an exequatur for an ICSID award to ensure forceful execution. In complying with this requirement, the Cameroonian legislator enacted *Law No. 75/18 of 18th December 1975* which designated the Supreme Court of Cameroon as the competent court to grant exequatur on ICSID awards because of their judicial execution in Cameroon. Also, law No 2002/ 004 of 19th April 2002 institutes the investment charter in the Republic of Cameroon and stipulates in its section 11, how a state can consent to submit before the ICSID in advance through its investment laws.

3.1.2 The Law Regulating Employment Contracts and Disputes in Cameroon

Settlement of dispute is also governed by the Cameroon Labour Code[4] regulating contract of employment. The labour code regulates the terms of a contract, obligations of the parties in the contract, settlement of labour dispute, and sanctions for breach of contract by either of the contracting parties.[5] The labour code provides for arbitration in its *articles 161 to 165. Section 158 (1)* called on the disputing parties to immediately notify the competent labour and social insurance inspector of the dispute, subsection 4 talks of an amicable settlement between the parties facilitated by the competent labour and social insurance inspector. While subsection 3 sanction any disputing party who fails to be present at the venue. The labour code emphasizes the need for arbitration when the conciliation process fails to resolve a labour dispute and call for an arbitration board to be established in each appeal court of the Republic of Cameroon.[6]

3.2 Regional Instruments Regulating Arbitration

Regional instruments regulating arbitration have been signed and ratified by the Republic of Cameroon, to give effect to the agreement to arbitrate, the organization of the arbitration process, conclusiveness, and enforceability of arbitration awards.

3.2.1 OHADA Uniform Act on Arbitration (UAA)

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[1] See Section 45 of the Cameroon Constitution, 1996.

[2] Law no. 2003/009 of 10 July 2003 as amended by Law No.2007/ 001 of April 2007 to institutes a judge in charge of litigation related to the execution of judgment.

[3] In this regard, the English Arbitration Act 1889 was applicable in Anglophone Cameroon.

[4] Law No. 92/007 of 14 August 1992 relating to the labour Code of the Republic of Cameroon.

[5] *Ibid.*

[6] Article 161 (1) of the Labour Code, 1992.

The Uniform Act on Arbitration is an important legal instrument regulating Commercial Arbitration in Cameroon. The UA on Arbitration covers a variety of rules governing arbitration and remedies such as punitive damages, specific performance, restitution, monetary compensation, injunction, rectification, interest, and cost. It also contains rules of supra-nationalism since it provides for a direct and compulsory application of the UA in the member country and their dominion over the provision of domestic law, whether prior or subsequent. The OHADA UA on Arbitration has instituted rules and procedures on arbitration that member states are supposed to follow. Unfortunately, some of these provisions are not compulsory on states who may choose to apply different rules to apply institutional arbitration. Also, the national law on the arbitration may be applicable instead of the provisions in the UA on Arbitration this is in respect to the advisory opinion of the CCJA that the UA on Arbitration should be interpreted as overriding the current national laws on arbitration but subject to any provision of such national laws that do not contradict the Uniform Act enacted by CCJA Decision of 001/2001/EP, 30th April 2001.

The OHADA Uniform Act on Arbitration further states that the state, as well as state-owned entities, may comprise parties to an arbitration process but without being able to rely on their national regulations to challenge the arbitrability of the dispute. For example, to argue on the capacity to be parties to the arbitration process or challenge the validity of the arbitration agreement. As per the composition of the arbitral tribunal, the UA on Arbitration makes it clear that the tribunal shall be composed of either a sole arbitrator or three arbitrators. According to article 6, only a natural individual may be an arbitrator, the Uniform act also necessitates all arbitrators to be sovereign and neutral as regards the parties. Also, an arbitrator may be a challenge throughout the proceedings if he is perceived as lacking individuality and neutrality. If the parties have not provided for a different process in such a case, the court will give a concluding decision.

3.3 International Instruments Regulating Arbitration in Cameroon

Importantly, the Republic of Cameroon has ratified other legal instruments at the global level, with regards to the settlement of commercial disputes using arbitration such as;

- The Arbitration Rules of UNCITRAL
- The New York Convention on arbitration, and
- The Convention on the Settlement of Investment Disputes between States and Nationals of Other States.

3.4 Institutional Organs Regulating Arbitration in Cameroon

For a proper administration of arbitration, Cameroon has been a party to several institutions aimed at fostering investment activities by providing appropriate disputes settlement provisions. At the national level, the main institutions in consideration in this study are, the Centre de mediation et d'Arbitration de Groupement Inter-patronal du Cameroun (GICAM-CMAG) and Centre of Arbitration and Mediation of the Cameroon Chamber of Commerce, Industry, Mines, and Crafts (CCIMC).

The activities in CMAG are governed by CMAG rules. The creation of the CMAG rules is to serve as a mechanism and guidance in the resolution of business disputes. It has as aim to promote the practice of arbitration and mediation in the business community. This instrument provides the structure and internal rules in the resolution of commercial dispute under CMAG. It also pin points the steps on how the arbitral tribunal is constituted, the aspect of independence and impartiality of arbitrators[1], the seat of the tribunal and the language to be used during the proceedings, and most especially the aspect of confidentiality which runs from the beginning to the end of the proceeding.

3.4.1 Ethical Charter of Arbitrators

The purpose of this charter is to facilitate the smooth running of arbitration proceedings.[2] It is an integral part of the rules binding on the parties when they choose to submit their dispute to CMAG. It is also binding on the arbitrators. CMAG is responsible for ensuring its proper application. Thus, anyone who notices the violation of a principle enacted by this Charter is invited to report it immediately to CMAG. The violation of a provision of this Charter by an arbitrator intervening in the context of an arbitration under the aegis of the CMAG may result, according to the assessment of the Center, the dismissal of this arbitrator in accordance with the provisions of article 10(5) of the arbitration rules and/ or the temporary or definitive withdrawal of the arbitrator from the lists of the Center, without prejudice to any possible legal action.

The guiding principles under this charter is that, the arbitration players or participants must act with conscience, loyalty, diligence, competence, integrity, and courtesy. For arbitrators also falling within a regulated profession,

[1] Article 10(1) of the CMAG Rules, 2019, p. 8.

[2] Appendix 1 of the CMAG Rules, "*Ethical Charter of Arbitration*", 2019.

this Charter applies to them in addition to their professional obligations. The arbitrators intervening in the context of an arbitration conducted under the aegis of the CMAG undertake to ensure respect for the CMAG Arbitration Rules. They must exercise their mission in compliance with the laws and regulations of the State. Under this Charter the following points are examined;

- **Guiding principles:**

Arbitrators must act with conscience, loyalty, diligence, competence, integrity, and courtesy. For arbitrators who also belong to a regulated profession, this charter applies to them in addition to their professional obligations. Arbitrators intervening in the context of an arbitration conducted under the aegis of the CMAG undertake to respect and enforce the Rules of Arbitration of the CMAG. The arbitrators must carry out their mission in compliance with the laws and regulations of the state, particularly in tax matters, and to this end provide all useful documentation to the center.

- **Commitment and competence:**

The arbitrator is in a relationship of trust with the parties who have entrusted him with the task of settling their dispute(s). He is the guarantor of the smooth running of the arbitration procedure. The proposed arbitrator should only accept the mission proposed to him if he has the necessary legal and/ or technical competence with regard to the dispute and if he has ensured of its availability to arbitrate within the time limits provided for by the Arbitration Rules and in any event, within reasonable time limits having regard to the circumstances and the complexity of the dispute, chosen for his personal qualities. He is required to personally accomplish his mission in the arbitration procedure by taking care to avoid an excessive increase in the costs of the arbitration, in particular with regard to the interests at stake. He undertakes to fulfil his mission until its end.

- **Respect for Confidentiality:**

The arbitrator is bound to respect confidentiality in accordance within the terms of the arbitration Rules and, if applicable, the minutes of the scoping meeting provided for in Article 14 of the said Rules.[1] This confidentiality also relates to the very existence of the arbitration procedure. The arbitrator ensures that his conditions o exercise and the means of communication used are capable of ensuring the confidentiality of the arbitration procedure, in particular vis-à-vis his staff, associates and collaborators, permanent and occasional. The arbitrator must not in any way use the information to which he has had access during the proceedings, either to obtain a personal advantage or for the benefit of a third party, or to prejudice anyone.

- **Insurance:**

Arbitrators must take out a liability insurance policy covering their duties as an arbitrator.[2]

- **The Parties:**

The parties owe the arbitrators the same respect that is due to a judge. During the entire course of the arbitration procedure, they refrain from seeking to come into contact with the arbitrator and do not in any way seek to exert on him the slightest influence or pressure, direct or indirect. The parties shall also refrain from any delaying attitude.

The CMAG scrupulously ensures compliance with both this Charter and its Arbitration Rules. In the event of any discrepancy between the two, the provisions of the Arbitration Rules must prevail. It acts in complete independence vis-à-vis the parties and arbitrators, as well as GICAM and its bodies. It does its best to verify the training, competence and integrity of the arbitrators it appoints.[3]

3.4.2 Standard Arbitration Clauses

This Appendix strives to analyze what is an arbitration clause and how it can be usefully supplemented with the following statements specifying;[4]

a) The law applicable to the arbitration agreement;

b) The law applicable to the substance of the dispute;

c) The language applicable to the arbitration procedure;

d) The seat of the arbitral tribunal;

e) The number of arbitrators.

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1 See Article 14(2) of the CMAG Arbitration Rules, 2019, p. 14.

2 Article 2(4) of the CEMAG Rule, "*Appendix 1 Ethical Charter for Arbitration*", p. 2, 2019.

3 Article 4 of the CMAG Rule, *"Appendix 1 Ethical Charter for Arbitration"*, p. 3, 2019.

4 Appendix II of the CMAG Rules, "*Standard Arbitration Clauses"*, 2019.

A Compromise

The compromise is the convention by which the parties to a dispute that has already arisen agree to settle it by means of arbitration. The compromise assumes that the parties had not taken care to provide in their contract recourse to arbitration. Thus, they can refer the matter to CMAG once a dispute has arisen concerning the said dispute.

The Med-Arb Clause

It allows the parties to combine the mediation and arbitration clause. In case of an event of failure of mediation within the time chosen by the parties, they could resort to arbitration.

3.4.3 Arbitration Cost

This instrument analyses the costs of the arbitration, which includes all the costs includes all the costs incurred by the arbitration procedure, namely the costs of examining the request, the fees of the Arbitral Tribunal, the administrative costs of the Center, and any disbursements incurred by the arbitral tribunal and by the Center in the conduct of their mission.[1] They may also include the disbursements of witnesses, the fees and disbursements of experts, as well as the advice of the parties where justified and reasonable, costs relating to the registration and enforcement of the award.

Several rules have been put in place by the GICAM Center of Mediation and Arbitration concerning its costs of arbitration, which is as follows;

- The Center's examination fee is paid by the claimant(s) for the purpose of examining its arbitration claim. In case of a joint claim, each claimant pays an examination fee. It is worth noting that the examination fee not refundable.
- The provision for arbitration costs fixed by the Center is intended to cover the fees of the Arbitral Tribunal as well as its disbursements and the administrative costs of the Center.
- The Center sets the administrative costs for each arbitration according to the scale below or at its discretion for those requests that have not been the subject of a financial estimate. If the circumstances of the case make it exceptionally necessary, the standing committee may set the administrative costs at an amount lower or higher than that resulting from the scale. In addition, the Center may require the payment of additional administrative costs to keep proceedings pending at the joint request of the parties or one of them without objection from the other party.
- The Standing Committee may reduce the remuneration of one or more arbitrators for breach of their duty of diligence. The Center must inform the concerned arbiter(s) in advance and invite him/them to send any remarks within fifteen (15) days.

The issue of arbitration cost or remuneration was seen in the case of *K/S Norjarl A/S v. Hyundai Heavy Industries Co. Ltd*.[2] The court decided that the arbitrators were entitled to reasonable remuneration. This entitlement was based on a trilateral contract between the two parties and the arbitrators. The implied terms of the contract requires arbitrators to conduct the arbitration with due diligence and at a reasonable fee, by using all reasonable means in entering on and proceeding with the reference.

3.4.4 List of Referenced Arbitrators

Appendix IV provides a list of referenced arbitrators at the GICAM Mediation and Arbitration center.[3] This serves as aid to disputing parties who are freed from the stress of searching for arbitrators to serve as adjudicators in their matter.

4. Challenges and Recommendation

4.1 Challenges

Recently, some amendments have been introduced in the sphere of arbitration because to keep pace with changing times, it is necessary to replace old sections which are of no or little relevance in the present times. These changes advanced the process of arbitration as well as brought new challenges with them and it is very necessary to address these challenges as to make arbitration process flow smoothly.

• The main reason behind parties choosing arbitration for dispute resolution is that it gives freedom as parties have the autonomy to choose the arbitrators and the seat of the arbitration. It becomes challenging if the parties

[1] Appendix III of the CMAG Rules, "*Arbitration cost*", 2019.

[2] *K/S Norjarl A/S v. Hyundai Heavy Industries Co. Ltd.,* (1991) 3 ALL ER 211 (CA) (U.K.).

[3] Appendix IV of the CMAG Rules, "*List of Referenced Arbitrators*", 2019.

are ignorant on how to commence the arbitral proceedings which could lead to faulty arbitration clause.

- A challenge coined from time to time is that, arbitration in some international cases becomes a slow and costly process. Although arbitration helps in solving the issue more expediently than court process, in international scenario, here parties from different countries are involved in the case, it tends to move on a slower pace. Most parties are reluctant about the payment of the arbitration fees, especially disputes amongst parties in the same country. This view was also observed by the secretary General of GICAM-CMAG, who propounded that "most parties are not willing pay the arbitration fee as required thus along the line, they either abandon the case or resort to litigation giving rise to several pending cases".
- Enforcement of foreign award is another challenge faced by parties seeking to enforce the foreign award in the ordinary courts. Despite several amendments and judgments on this issue, there is still conflicting views and opinions which makes enforcement of foreign award difficult. Sometimes, the laws of the country which has issued the foreign award and the ordinary court here the award is to be enforced, are so different that it becomes next to impossible to enforce foreign award in the ordinary courts.
- Some arbitrators involve in the arbitration process also lack expertise which can result in faulty awards.

4.1.1 Recommendation

Here, the researcher proposes solutions to the problems raised.

1) Intensive awareness about the existence of the GICAM Mediation and Arbitration Center:

There is an urgent need for the organisation of workshops and if possible a door-to-door awareness about the existence of an arbitral tribunal, in charge of resolving private and international commercial disputes. This will go a long way to create popularity of the institution.

2) Training of arbitrators to specialize on resolving commercial disputes under CMAG:

There is great need to train scholars who have an interest in arbitral institution on resolving specific commercial disputes. This will quench the stress of having a limited number of arbitrators and will thus save time in resolving the dispute. Training should start at school level as opposed to institutional professional courses as is the case with most countries. A good example is the University of Buea which currently offers international commercial arbitration as a course in its Masters of Law Programs.

3) Furthermore, the arbitral institution should be made bilingual or trilingual so that it can provide wider access to many people. The same change should be done to its official documents like the CMAG Rules, for research and study purpose.

4) Opening of more GICAM-CMAG Branches

More so, GICAM should open more agencies in other parts of Cameroon. This will serve as a convenience for people to solve their dispute faster instead of going to Yaoundé or Douala.

5) A statutory body should be created for formulating Rules, Planing and Monitoring the whole ADR System: This researcher greatly proposes that the government creates through the parliament or a presidential decree an institution that will be in charge of supervising the function of ADR practitioners in the various centers in a bid to ensure that they respect the rules of OHADA and the arbitral awards are enforced by the courts.

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