

15 Questions About Arbitration in Sao Tome and Principe

Having in mind the recently approved law of Arbitration we answer to 15 relevant questions about arbitration in Sao Tome and Principe.

1. What is the applicable law on arbitration?

Both domestic and international arbitration are governed by the Arbitration Law, Law no 9/2006, of 2 November 2006.

2. What are the requirements and the types of arbitration agreements?

Arbitration is only admitted for disputes relating non-disposable rights. The arbitration agreement must be executed in writing and should not be contrary to the principles of the Constitution and of the Civil Code, must not pertain to non-disposable rights or to disputes mandatory submitted to arbitration or to court decisions.

There are two types of arbitration agreement: **(i) arbitration compromise**, which is executed for an existing dispute; **(ii) the arbitration clause**, which is established before any litigation under a determined contractual or non-contractual relation. The *arbitration compromise* must determine precisely the object of the litigation and the *arbitration clause* must specify the legal relation to which the litigation concerns.

3. Can the State and other public legal entities execute arbitration agreements?

Yes, the State and the public legal entities may execute arbitration agreements in the following circumstances: **(i)** when authorized by special law; **(ii)** for disputes regarding private civil law (which includes commercial relations).

4. Who can be elected as arbitrator?

Only individual persons enjoying full legal capacity can be elected as arbitrator(s). The parties are free to elect the arbitrator(s). The impediments of the Judges set forth in the Civil Procedure Code are applicable to the arbitrators.

When the parties fail to appoint an arbitrator, the Arbitration Law provides for a default procedure, consisting of the appointment of the defaulting arbitrator by the president of the First Instance Court. Such an appointment may not be challenged.

5. Can the parties elect the rules applicable to the dispute?

Yes, the parties may provide for the dispute to be resolved under the law or under *ex aequo et bono*. If the parties fail to determine the rules applicable to the dispute on the arbitral agreement or in a document signed up to the acceptance of the last arbitrator, the dispute must be resolved under the law.

6. Is an award preliminary or interim relief permitted?

The Arbitration Law does not provide for the award of preliminary relief or interim measures by the arbitral tribunal. Notwithstanding the omission of the Law, in other countries (notably under the Portuguese law) it has been sustained that the arbitrators may not award such measures whenever powers of authority are required.

7. Does the law provide for a timeframe for reaching to a decision?

Yes, the Arbitration Law determines that in case of omission of the parties a decision should be reached in 1 month from the election of the last arbitrator.

8. What procedure rules are applicable?

The parties may freely agree on the proceeding rules or otherwise agree to choose the arbitration rules of an institutionalized arbitration entity. Notwithstanding, there are some principles that must be followed in every stage of the proceedings: **(i)** parties must be treated with absolute equality; **(ii)** the defendant must be

summoned to present defense; **(iii)** in all stages of the proceedings the adversary system must be observed; and **(iv)** both parties shall be given the opportunity to present their case, either orally or in writing, before the final award is rendered.

9. What rules of evidence apply to arbitral proceedings?

The parties are free to determine the rules regarding evidence matters. In accordance to Arbitration Law, any evidence admitted by the Civil Procedure Law may be presented before an arbitral tribunal.

10. What is the arbitration tribunal authority regarding disclosure of documents?

The Arbitration Law does not provide for a legal regime of disclosure. However, where a party or a third party refuses the necessary cooperation in presenting evidence withheld by such party, the counterparty may, with permission of the arbitral tribunal, request a judicial court to make the evidence and to send the results to the arbitral tribunal.

11. What are the requirements of arbitral awards?

The arbitral final award must: **(i)** be written, **(ii)** be reasoned, **(iii)** identify the parties, **(iv)** refer to the arbitration agreement and the scope of the dispute, **(v)** identify the arbitrators, the place of the arbitration and the place and date that the award was rendered; **(vi)** bear the signature of the arbitrators, and identify the arbitrators who could or did not want to sign the award.

12. Can the parties appeal an arbitral award?

Yes, the parties can not waive their right of appeal of an arbitration deemed null and void.

13. On what basis is the appeal of arbitral awards admitted?

A party may file an appeal before a judicial court and the arbitral award may be annulled by the Courts when: **i)** the dispute can not be subject of settlement by arbitration; **ii)** the decision was rendered by a tribunal without jurisdiction or

irregularly constituted; **iii)** there was a breach of the mandatory principles of the arbitral procedure (see Q&A 8); **iv)** the decision is not reasoned, or does not contain the number of signatures of at least the majority of the arbitrators and the dissenting opinions duly identified; or **v)** when the arbitral tribunal took into consideration issues which it should not have or did not decide issues which it should have decided.

14. How can an arbitral award be enforced?

A domestic arbitral award (those issued in Sao Tome and Principe under the Arbitration Law) has the force of an enforceable order issued by a judicial court and can be enforced by the Court of First Instance.

An arbitral award issued by a foreign arbitral court governed by foreign laws has to be duly recognized by the Appeal National Court under the procedure set forth in the Civil Procedure Code. Sao Tome and Principe has not yet signed and implemented the New York Convention of 1958, regarding the enforcement of arbitral decisions issued by foreign arbitral courts.

15. Are arbitral proceedings confidential?

There is no specific provision regarding confidentiality of the arbitral proceedings. However, unless the parties have provided otherwise or the deposit of the award is provided in another way, the original of the award shall be deposited with the registry of the court of the place of arbitration, and the sessions are not public. Further, if the arbitral award has to be enforced the Court it will be public on the same way the enforcement procedure is public.

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