Democratic Republic of the Congo


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I. LITIGATION

1 Preliminaries

1.1 What type of legal system has your jurisdiction got? Are there any rules that govern civil procedure in your jurisdiction?

The legal system of the Democratic Republic of the Congo (DRC) is based on Romano-Germanic Law. Civil procedure is mainly governed by the Decree of 7 March 1960 on the Code of Civil Procedure, some chapters of which have been amended by the Uniform Act Organizing Simplified Recovery Procedures and Measures of Execution after the country's accession to the Organisation for the Harmonisation of Business Law in Africa (OHADA). The Framework Law of 11 April 2013 on the Organization, Functioning and Jurisdiction of Courts in the Court system also contains rules governing civil procedure.

1.2 How is the civil court system in your jurisdiction structured? What are the various levels of appeal and are there any specialist courts?

DRC's Constitution establishes a three-tiered Court system: the Constitutional Court; Administrative Courts headed by the State Council; and first instance Courts under the supervision of the Higher Court (*Court de Cassation*). Civil Courts are a part of the Court system and are subject to the principle of distinction between material, territorial and personal jurisdiction and also one of hierarchy. Appeals against a decision of a Tribunal or Court are made to the next higher Court. For example: a judgment rendered in the first instance by a Peace Tribunal will be appealed to a Higher Court; the judgment rendered in the first instance by the latter will be appealed to a Court of Appeal; and the judgment rendered in the first instance by a Court of Appeal will be challenged before the *Cour de Cassation*. There are specialised Courts, including Courts for children.

1.3 What are the main stages in civil proceedings in your jurisdiction? What is their underlying timeframe (please include a brief description of any expedited trial procedures)?

Civil procedure has the following main stages: referral to the Court and service of summons on the parties to the proceedings, preparation of the case by means of an adversarial exchange of written arguments (conclusions) and documents, pleading, oral or written opinion of the Public Prosecutor's Office, assessment and issue of the decision, appeal in the event of an adverse ruling, or opposition in the event of a default judgment.

The summons period is eight calendar days between summons and appearance, in addition to one day per 100 kilometres of distance. For persons who have no domicile or residence in the Democratic Republic of the Congo, this period is three months. In urgent cases, the president of the Court seized may shorten these time limits.

Theoretically, the preparation of the case, i.e., the preparation and communication of the files between the parties for their pleadings, may not exceed two months.

In theory, the ruling must be issued within 30 days of the assessment, however, this period may be extended by 15 days upon the authorisation of the President of the Court.

Defendants convicted by a default judgment may file an opposition within 15 days of service, in addition to one day per 100 kilometres of distance. Where service has not been performed at the defendant's personal address, the opposition may be filed within 15 days, in addition to the time limits for distance, from the party concerned becoming aware of the service. If it has not been proven that the defendant was aware of the service, the defendant may file the opposition within 15 days, in addition to the time limits for distance, which follow the first act of enforcement of which he was personally aware.

The time limit for appeal is 30 days, starting from the day of service of the ruling and from the day on which the opposition against a default judgment is no longer admissible.

1.4 What is your jurisdiction's local judiciary's approach to exclusive jurisdiction clauses?

In principle, this clause does not apply to the extent that the rules of substantive and personal jurisdiction are public policy. Although, according to Case Law, territorial jurisdiction rules organise the operation of a public service and are therefore, by their very nature, public policy, it is recognised that in cases where they are only intended to regulate the parties' purported interest relationships, they may be waived by mutual agreement between the parties. This is the case for rules designating the competent Court according to the domicile or residence of the defendant or the place where a personal obligation was agreed or performed, provided that public policy is not an issue.

1.5 What are the costs of civil court proceedings in your jurisdiction? Who bears these costs? Are there any rules on costs budgeting?

The official costs of civil proceedings, as set forth in the Interministerial Order that establishes the rates for duties, taxes and charges to be collected by the Ministry of Justice and Human Rights, are as follows: enrolment fees (US$ 3), deposit (US$ 5), service of Court acts (US$ 1 per page), Order of the Court's President (US$ 2). These fees are double for appeals. Opposition or appeal (US$ 1), certificate of non-opposition or non-appeal (US$ 10). Court fees are for the account of the losing party. A prorated fee of 3% on all amounts awarded by way of principal or interest on damages is payable for a certified copy of the decision or the referral for appeal.

1.6 Are there any particular rules about funding litigation in your jurisdiction? Are contingency fee/conditional fee arrangements permissible?

There are no rules about funding litigation; each party bears the costs relating to any proceedings initiated by it, save for duly confirmed indigence. Indigent persons are partially or fully exempted from legal fees and may be represented "*pro deo*" by counsel appointed by the Bar Association. Lawyer's fees proportionate to compensation are permitted in accordance with the lawyer's fees schedule, but contingency fees are not allowed because Counsels are not under an output based obligation.

1.7 Are there any constraints to assigning a claim or cause of action in your jurisdiction? Is it permissible for a non-party to litigation proceedings to finance those proceedings?

The source of financing of Court proceedings is not formally regulated. In any event, proof of payment of the costs inherent in the proceedings must be made out on behalf of the parties to the proceedings.

1.8 Can a party obtain security for/a guarantee over its legal costs?

No, this issue is not regulated in the DRC.

2 Before Commencing Proceedings

2.1 Is there any particular formality with which you must comply before you initiate proceedings?

The payment of deposit fees is required, insofar as, according to the law, no procedural act will be carried out before the deposit is paid and the case will be removed from the roll in the event of non-payment of the required sum by way of supplement. For certain specific procedures, in particular divorce, the action is subject to failure of the spouses to reach a prior conciliation. In some cases, particularly with regard to incompetent persons, the Court is called upon to appoint the person that will act in Court on their behalf.

2.2 What limitation periods apply to different classes of claim for the bringing of proceedings before your civil courts? How are they calculated? Are time limits treated as a substantive or procedural law issue?

As a general rule, all real and personal proceedings have a statute of limitations of 30 years. However, the statute of limitations is six months for proceedings relating to science and arts teachers and trainers for lessons/lectures in any given month, to hotel owners and caterers for accommodation and catering services performed, to workers and labourers for payment of their daily wages, provisions and salaries. The statute of limitations is one year for proceedings relating to medical doctors, surgeons and apothecaries for any consultations, surgeries and medicines performed or sold by them, to merchants for any goods sold by them to non-merchant private persons, to boarding teachers for the boarding of their students and other teachers for the price of any apprenticeship, to domestic servants who offer their services on an annual basis, for the payment of their salary. The statute of limitations is five years for any outstanding alimony or child support, rent, farm prices of rural assets, interest on any loans and generally any amounts payable on an annual basis or within shorter deadlines. These limitations are treated as a matter of form.

3 Commencing Proceedings

3.1 How are civil proceedings commenced (issued and served) in your jurisdiction? What various means of service are there? What is the deemed date of service? How is service effected outside your jurisdiction? Is there a preferred method of service of foreign proceedings in your jurisdiction?

Procedural acts are served, at the request of the most diligent party, by a bailiff or Court clerk, who are agents of the public administration assigned to a Court. Service is made in person or at the person's domicile, by serving the acts directly to the person, a family member or associate, or his/her master or servant. In the case of persons with no known residence in the Democratic Republic of the Congo, but with a known residence abroad, a copy of the service is posted at the main door of the Court where the proceedings are pending and another copy is sent to that known address by registered letter. In the case of persons without a known residence in the country or abroad, the service is made by posting the notice at the door of the Court where the proceedings are pending and published in the Official Gazette or any other publication ordered by the Court ordered.

3.2 Are any pre-action interim remedies available in your jurisdiction? How do you apply for them? What are the main criteria for obtaining these?

Provisional or protective measures may be requested prior to the examination of the merits of the main action. They are introduced by the same act as the main application. They are justified by urgency and the threat of a delay posing a danger.

3.3 What are the main elements of the claimant's pleadings?

The main elements of the claimant's pleadings are the points of fact and points of law. Regarding the points of fact, the applicant must refer those that are undisputed and establish the disputed facts.

As for the points of law, the applicant must refer to the legal rules applicable, submit any interpretations that support its claim by demonstrating that the established facts are addressed or covered by these legal rules and determine the relevant consequences.

3.4 Can the pleadings be amended? If so, are there any restrictions?

Pleadings cannot be amended after the Judge or the Section seized with the case finds in the hearing that it has jurisdiction and is able to adjudicate on the merits, even if the case is postponed. In any case, material errors may be corrected by the Court clerk before attaching the act to the case file.

3.5 Can the pleadings be withdrawn? If so, at what stage and are there any consequences?

Pleadings can be withdrawn. However, after all pleadings are in, the withdrawal must be mutually agreed between the parties. Withdrawal by plaintiffs may not be admitted by the Court if the defendant opposes it, as the latter could have an interest in bringing a counterclaim.

4 Defending a Claim

4.1 What are the main elements of a statement of defence? Can the defendant bring a counterclaim(s) or defence of set-off?

The main elements of a statement of defence are procedural means, notably dilatory, declinatory and peremptory pleas in exception (which prevent an admission of the claim), and substantive means, notably the challenging of facts (by overturning the evidence submitted to support the challenged facts, or by submitting other facts that contradict the facts as described by the plaintiff), request of additional evidence (e.g., *action ad exhibendum* and a warrant for the production of evidence by entities that are not parties to the proceedings, expert evidence and counter evidence, search of premises, etc.) and challenge of points of fact (by demonstrating that the facts do not fall under the scope of a certain provision or by claiming another rule applicable to the facts). A defendant may submit a counterclaim against a reckless and vexatious main claim or abuse of right.

4.2 What is the time limit within which the statement of defence has to be served?

It varies from case-to-case, under the supervision of the Judge.

4.3 Is there a mechanism in your civil justice system whereby a defendant can pass on or share liability by bringing an action against a third party?

Yes, an impleader can be used, either to hear that the third party will be the guarantor for any awards rendered against the party, or to cause a direct connection between the original plaintiff and the third party or just to achieve a common ruling.

4.4 What happens if the defendant does not defend the claim?

The plaintiff's claims will be upheld if they are judged fairly, and demonstrated.

4.5 Can the defendant dispute the court's jurisdiction?

Yes. Additionally, because the rules on material and personal jurisdiction are public policy, the Court is under an obligation to verify *sua sponte* if the claim brought before it falls within its jurisdiction.

5 Joinder & Consolidation

5.1 Is there a mechanism in your civil justice system whereby a third party can be joined into ongoing proceedings in appropriate circumstances? If so, what are those circumstances?

Yes. Upon the request of one of the parties, the Court may order any third-party to be joined to an ongoing proceeding, either to deliver a joint decision against that third-party and the defendant, or at least to ensure toward that third-party the effectiveness of the force of *res judicata* to be attached to the coming decision.

It is also noteworthy that a third-party may request the Court to join an ongoing proceeding, whenever it considers that its rights and interests are likely to be affected by the decision to be delivered.

5.2 Does your civil justice system allow for the consolidation of two sets of proceedings in appropriate circumstances? If so, what are those circumstances?

Yes. In the event of litispendence and connection. Litispendence is where the same case between the same parties is adjudicated by two Courts with jurisdiction. To avoid two contradictory rulings, one Court must dismiss the case. A connection occurs in a situation where, although the parties and the claim between cases are different, the solution found for one case is liable to contradict the solution found for the other.

5.3 Do you have split trials/bifurcation of proceedings?

There can be a split of the heads of the claim if the service of process, the impleaders or counterclaims contain several different claims, independent from one another, where some are requests for service, while others require investigation, preliminary decisions or questioning of third parties, the Judge may, at the request of either party, split the proceedings and void the heads of claim that can be adjudicated on.

6 Duties & Powers of the Courts

6.1 Is there any particular case allocation system before the civil courts in your jurisdiction? How are cases allocated?

According to the Organizational Act 13/011-B, of 11 April 2013, on the Organization, Functioning and Jurisdiction of the Courts in the Judicial System, subject-matter jurisdiction in civil actions is divided as follows:

a. *Tribunaux de paix* (trial Courts): seized with all disputes concerning family law, succession, donations and collective or individual land disputes governed by custom.

   They are also seized with other disputes that may be evaluated, provided their value does not exceed two million

five hundred thousand Congolese francs (CDF2,500,000) (approximately USD1,500).

They also deal with the enforcement of public instruments.

b. *Tribunaux de grande instance* (High Courts): seized with all disputes outside the jurisdiction of trial Courts. However, in proceedings brought before trial Courts, the High Court rules on the merits and in final instance if the defendant has his express agreement recorded by the clerk.

They are responsible for the enforcement of all judicial decisions, with the exception of judgments of the trial Courts, which are within the jurisdiction of the latter.

They also deal with the enforcement of other public instruments;

c. Courts of appeal hear appeals from the High Courts', commercial Courts' and labour Courts' first-instance judgments.

d. The *Cour de Cassation* hears appeals in cassation for violation of duly ratified international treaties, laws and customs against the final rulings and judgments of the Courts of Law in civil, commercial and social matters.

Also, Judges sitting according to the rules of judicial organisation in each Court are seized with litigious matters, and hierarchical appeals are within the competence of the Head of Court sitting in person or by delegation.

6.2 Do the courts in your jurisdiction have any particular case management powers? What interim applications can the parties make? What are the cost consequences?

Congolese Courts have jurisdiction to hear incidental claims, sometimes referred to as interim applications or interim measures. Provisional requests may be precautionary (sealed, sequestered) to have the measures taken, without binding the trial Judge, to alleviate the serious or even unbearable inconveniences that would result from the long wait for a final decision on the merits of the dispute. Such provisional claims may also be ancillary to the main action.

Introduced by subpoena or in the course of proceedings by way of a writ of summons, provisional applications may concern stay of execution of a judicial decision, sequestration of a disputed property, suspension of works, custody of children, alimony, etc.

When submitted, these requests do not have a very particular impact on the cost of the legal proceedings as such.

6.3 What sanctions are the courts in your jurisdiction empowered to impose on a party that disobeys the court's orders or directions?

In civil matters, the Judge, because of his passive role, only applies the rules of procedure and instructions laid down by law.

As such:

- he declares the extinction of proceedings for failure to pay the registrar the provisions required to cover any procedural acts requested;
- he excludes from discussion and ruling any exhibits or legal means not served on the opposing party and produced in the judicial file in violation of the adversarial principle;
- he orders that the case be struck out in the event of failure to appear before the parties are duly notified of the hearing date; or
- he orders that the case be removed from the register if the parties fail to appear on the general roll appeal or if the case is not pleaded on the date of delivery after the general roll appeal.

The Court may order the expert who does not fulfil his mission to pay any unjustified costs and even damages. Absent witnesses may be given a fine and the costs of a new service.

6.4 Do the courts in your jurisdiction have the power to strike out part of a statement of case or dismiss a case entirely? If so, at what stage and in what circumstances?

The Court may reject a case when the case is being investigated or decided after the decision has been taken under deliberation in the event of a lack of subject-matter or territorial jurisdiction, the invalidity of the claim (where the document bringing the proceedings does not contain certain substantial elements prescribed subject to invalidity, in particular the unambiguous identification of the parties, the indication of the Court, the intelligibility of the claim, etc.), lack of standing of the parties, lack of capacity of the person acting in Court, lack of interest, illegality of the claim or the immorality of the case.

6.5 Can the civil courts in your jurisdiction enter summary judgment?

No, this procedure is not provided in the DRC.

6.6 Do the courts in your jurisdiction have any powers to discontinue or stay the proceedings? If so, in what circumstances?

Some preliminary issues within the procedure requires discontinuance or suspension of proceedings. This may happen, for instance, in the event of (i) an appeal against a preliminary decision, (ii) a request for transfer of jurisdiction due to a legitimate suspicion against the Judge in charge of the case, or a motion for his/her disqualification.

7 Disclosure

7.1 What are the basic rules of disclosure in civil proceedings in your jurisdiction? Is it possible to obtain disclosure pre-action? Are there any classes of documents that do not require disclosure? Are there any special rules concerning the disclosure of electronic documents or acceptable practices for conducting e-disclosure, such as predictive coding?

It is worth noting that "Disclosure" is not familiar, as such, to Congolese Civil Procedure Law.

The adversarial nature of civil proceedings requires that the pleadings and any documents on which a party intends to rely, must be served beforehand or communicated to the parties to the proceedings. The Court shall not be seized of a legal claim if the party against whom it was formulated is not duly notified. The documents relevant to the outcome of the proceedings are, namely: contracts; expert reports; minutes of the proceedings; the results of investigations by letters rogatory; or any written documents produced by the parties; and they must be communicated to the Court.

There are no special rules concerning the disclosure of electronic documents, let alone acceptable practices for electronic disclosure in civil proceedings.

7.2 What are the rules on privilege in civil proceedings in your jurisdiction?

There are no rules of privilege in Congolese civil proceedings.

7.3 What are the rules in your jurisdiction with respect to disclosure by third parties?

This procedure is not specially provided for in the DRC.

7.4 What is the court's role in disclosure in civil proceedings in your jurisdiction?

The Court's role is to verify the regularity of all forms of service on the parties to the proceedings.

7.5 Are there any restrictions on the use of documents obtained by disclosure in your jurisdiction?

Documents obtained as a result of a procedure may only be used for the purpose of the dispute or file concerned.

8 Evidence

8.1 What are the basic rules of evidence in your jurisdiction?

Under Congolese law, the regime of legal evidence is mandatory to prove any legal act and any real property right, as well as to establish the status of persons. This evidence is given in writing and is admissible by operation of law. However, even where the law requires legal evidence in principle, in cases where such evidence has not been prepared at the time of the facts, has been destroyed or is not available to the party who intends to invoke it, it may be supplemented by an act of recognition; a written document which may also be received by operation of law.

In other cases, it is the evidence of conviction regime. Parties who invoke material facts, and more specifically, administrative offences, may, in order to prove them, apply for evidentiary measures. The Judge is required to authorise these investigation procedures if he considers that they are such as to establish facts (investigations, search of premises, personal appearance of the parties, expert opinions).

8.2 What types of evidence are admissible, which ones are not? What about expert evidence in particular?

All evidence is admitted, namely literal evidence, testimonial evidence, presumptions, admission of the party and oath, depending on the nature of the facts and rights.

No evidence is received by witnesses against or in addition to the content of a deed and it must be made authentic or private of all things exceeding the sum or value of CDF 2,000.

The Judge is not bound by the expert's findings.

8.3 Are there any particular rules regarding the calling of witnesses of fact? The making of witness statements or depositions?

Witnesses are called before the Court by summons or by voluntary appearance at the invitation of a party to the proceedings.

They are heard separately but in the presence of the parties. The witness shall first state his/her identity and his/her links in relation to each party. He/She takes an oath, otherwise the deposition is null and void. The Judge can confront the witnesses. The witness testifies without being allowed to read any written drafts. The testimony is signed by the witness, the Judge and the clerk. If the witness is unwilling or unable to sign, this shall be recorded in the minutes. Absent witnesses may be fined. In the event of a justified impossibility to appear on the date scheduled, the Judge may grant him/her a postponement or receive his/her statement on the spot. The Judge may send a letter rogatory for the purpose of hearing a witness to a foreign Judge.

8.4 Are there any particular rules regarding instructing expert witnesses, preparing expert reports and giving expert evidence in court? Are there any particular rules regarding concurrent expert evidence? Does the expert owe his/her duties to the client or to the court?

Experts are appointed by a judicial decision specifying his/her task and setting the time limit for the submission of the report. The Judge shall select the expert(s) unless the parties agree otherwise at the hearing. Within 15 days of notification of his/her appointment, the expert shall notify each of the parties of the place, time and day of commencement of operations by registered letter. The parties may attend these operations voluntarily and informally.

The experts form one opinion and draw up only one report. However, they shall, in the event of differing opinions, indicate the reasons for the differences without making known the personal opinion of each of them. The report shall be signed by all experts, unless the clerk finds that the report was prevented from being submitted at the time of filing. If they cannot all write, the report is written and signed by the clerk. The experts' signatures shall be preceded by the words "I swear that I have fulfilled my mission in honour and conscience, with accuracy and probity". The Judge may order a new expert report on his own motion if he does not find the report sufficiently clear. If necessary, the Judge may order the expert's appearance as a source of information to enlighten the Court and explain the report. The expert owes his duties to the Court.

9 Judgments & Orders

9.1 What different types of judgments and orders are the civil courts in your jurisdiction empowered to issue and in what circumstances?

Basically, civil Courts are empowered to issue either (i) interim orders, through interlocutory or ex parte proceedings, or (ii) final orders, through proceedings on the merits.

9.2 What powers do your local courts have to make rulings on damages/interests/costs of the litigation?

Civil Courts may only rule on damages/costs of the litigation if they have been claimed by a party to the proceedings as a principal claim or counterclaim for reckless and vexatious principal action or abuse of right. In the absence of any assessment of damages, the Judge shall determine them on the basis of equity.

9.3 How can a domestic/foreign judgment be recognised and enforced?

A national judgment may be applied or enforced where it is given force of *res judicata* or where it is enforceable notwithstanding any appeal. In this case, the enforcement agents carry out the execution of the judgment assisted by the police. A foreign judgment is enforced in accordance with the exequatur procedure.

9.4 What are the rules of appeal against a judgment of a civil court of your jurisdiction?

The appeal needs to be brought before the Court above the Court that issued the challenged judgment. The deadline for lodging an appeal in civil matters is 30 days after service of an adverse judgment and 30 days from the day on which the opposition is no longer admissible, for a judgment rendered in absentia. It shall be made up by the party or by a special proxy, either by a declaration received and recorded by the clerk of the Court of appeal, or by registered mail addressed to the clerk of that Court. No appeal will be declared admissible if the appellant does not file the proper delivery of the decision undertaken. An appeal against a preliminary judgment (rendered for the investigation of the case and which tends to put the trial in a position to receive a final judgment) can only be filed after the final judgment. An appeal against an interlocutory judgment (the one in which the Court orders, before a decision on the points of law, evidence, verification or instruction that prejudges the merits) may be filed before the final judgment.

No further application may be made, at the level of appeal, unless it concerns compensation or is a defence to the main action. Also eligible for appeal are claims for interest, rent, arrears and other incidental payments due since the judgment, as well as compensation for damage suffered since the judgment.

In the event of an appeal against an interlocutory judgment, if the judgment is overturned, the Court of appeal may, by reference, rule on the merits of the case definitively. The same applies if the Court of appeal overturns final judgments, either on formal grounds or for any other reason.

10 Settlement

10.1 Are there any formal mechanisms in your jurisdiction by which parties are encouraged to settle claims or which facilitate the settlement process?

Yes. This is notably the case of the procedure for prior conciliation on orders for payment and restitution provided for under the Uniform Act on simplified recovery procedures and enforcement procedures.

Also, in the event of a dispute, the Judge may appoint arbitrators' rapporteurs with a mission to hear the parties, and to reconcile them if possible. If the solution proposed by the arbitrators' rapporteurs is accepted by the parties, there is conciliation. The parties may then withdraw their proceedings or obtain a binding judgment giving effect to the parties' agreement.

The law also provides that the expert may attempt to reconcile the parties. And if it succeeds, he/she draws up a record of agreement signed by the parties and himself. The expert files the conciliation report at the registry of the Court that ordered the expert's report. This record is a transaction, but may also be repeated in a consent order, unless the parties withdraw from the action.

II. ALTERNATIVE DISPUTE RESOLUTION

1 General

1.1 What methods of alternative dispute resolution are available and frequently used in your jurisdiction? Arbitration/Mediation/Expert Determination/Tribunals (or other specialist courts)/Ombudsman? (Please provide a brief overview of each available method.)

(1) Arbitration is the only alternative dispute resolution mechanism provided for by the Congolese Code of Civil Procedure (without prejudice to the OHADA Uniform Acts respectively on Arbitration Law and Mediation). It is available for any dispute that may be the subject of a transaction, i.e., on rights within the parties' free disposal. The arbitration agreement must be made in writing and the parties retain the option of referring their dispute to arbitration even if it is already pending before another Court. The parties are responsible for appointing the arbitrators in accordance with their arbitration agreement. If they fail to do so, and in the event of arbitration by three arbitrators, each party shall appoint one arbitrator and the two arbitrators shall choose the third arbitrator; if a party is unable to appoint an arbitrator within 30 days of the other party's request to do so, or if the two arbitrators appointed by the parties fail to appoint the third arbitrator within 30 days of their appointment, the appointment shall be made by the competent Court, namely the High Court. The same Court shall appoint the sole arbitrator if the parties disagree on the choice of arbitrator. The decision of the President of the Court that appoints the arbitrators may not be appealed against. The term of office of the arbitrators shall not exceed six months from the day on which the last arbitrator accepts the appointment. This statutory or agreed period may be extended at the request of one of the parties or the arbitral tribunal by the competent State Court (the High Court). Before the arbitral tribunal, the parties shall appear in person or represented by counsel, or a special power of attorney approved by the arbitrators. They shall act in strict compliance with the adversarial principle. They may order all measures of investigation admitted under civil and commercial law and may hear witnesses under oath. If an investigative measure is ordered, the arbitration period shall be suspended during the execution of the investigative measure. If the assistance of the judicial authorities is necessary for the taking of evidence, the arbitral tribunal may, on its own motion or at the request of a party, seek the assistance of the competent Court. In the event of a motion which the arbitrators are barred from adjudicating on, the arbitrators shall leave the parties to appeal to the Court and the arbitration period shall be suspended until the day on which the arbitrators are informed by the most diligent party that the judgment of the incident has acquired the force of *res judicata*. The arbitrators decide in accordance with the rules of law designated by the parties unless the arbitration agreement gives them the power to decide in equity. The arbitral award is issued by a majority vote, if there are several arbitrators. It binds the parties and is not enforceable against third parties. It has the force of *res judicata* with respect to the dispute that is determined by the Court. The arbitrators may order provisional enforcement of their awards, if the enforcement has been requested, or may refuse provisional enforcement by a reasoned decision. In the absence of any provision, provisional enforcement is automatic, but requires provision of security.

(2) The Commission for the Mediation of Industrial Disputes. It is a mode that allows for an approach to industrial dispute resolution and can effectively resolve the dispute. The Commission is made up of officials to carry out mediation in the event of an industrial dispute. It is neither arbitration, mediation nor conciliation in the technical sense of the terms.

(3) A prior conciliation of individual industrial disputes is required by law. Individual industrial disputes are not admissible before the Court unless they have been submitted to the conciliation procedure, at the initiative of one of the parties, before the Labour Inspector. In the event of conciliation, the Judge only intervenes to make the solution given to the dispute by the parties under the mediation of the Labour Inspector enforceable.

In divorce cases, prior conciliation before the President of the Trial Court, as a conciliator, is compulsory. In the event of failure of the conciliation attempt, the divorce proceedings are initiated before the Court.

1.2 What are the laws or rules governing the different methods of alternative dispute resolution?

Arbitration is governed by the revised Uniform Act of 23 November 2017 on the Law of Arbitration (OHADA) and the Congolese Code of Civil Procedure in its provisions (articles 159 to 194) that comply with this Uniform Act.

The Uniform Act on Mediation of 23 November 2017 has expanded the range of MADR available in the DRC. Mediation and prior conciliation in labour matters are regulated by Act No. 015-2002 of 16 October 2002 on the Labor Code, as amended by Act No. 16/010 of 15 July 2016.

Prior conciliation in divorce matters is provided for in Law 87-010 of 1 August 1987 on the Family Code, as amended to date.

1.3 Are there any areas of law in your jurisdiction that cannot use Arbitration/Mediation/Expert Determination/Tribunals/Ombudsman as a means of alternative dispute resolution?

Alternative Dispute Resolution is available only to disputes that can be settled in such a way (e.g. ADR is not allowed to settle any matter of public order).

1.4 Can local courts provide any assistance to parties that wish to invoke the available methods of alternative dispute resolution? For example, will a court – pre or post the constitution of an arbitral tribunal – issue interim or provisional measures of protection (i.e. holding orders pending the final outcome) in support of arbitration proceedings, will the court force parties to arbitrate when they have so agreed, or will the court order parties to mediate or seek expert determination? Is there anything that is particular to your jurisdiction in this context?

Yes. The law provides that the parties who have decided to refer their dispute to arbitration may, until the set-up of the arbitral tribunal, apply to the competent Court for provisional or protective measures in urgent cases (Art. 163. Code of Civil Procedure, Art. 13 in fine of the Uniform Act on Arbitration Law).

Therefore, any agreement on arbitration or any act intended to amend or supplement such an agreement must be recorded in writing. The settlement may be evidenced by a statement entered in the minutes of the arbitrators and signed by the parties. In the event that one of the parties refuses to sign the undertaking or disagrees with its wording, the Court shall, by subpoena, settle the disagreement by judgment, which shall constitute an undertaking. This judgment is not subject to appeal. (Art. 164, Code of Civil Procedure).

Similarly, in the event of a motion that cannot be decided by the arbitral tribunal, the latter shall allow the parties to refer the matter to the competent Court until the motion is definitively decided.

1.5 How binding are the available methods of alternative dispute resolution in nature? For example, are there any rights of appeal from arbitration awards and expert determination decisions, are there any sanctions for refusing to mediate, and do settlement agreements reached at mediation need to be sanctioned by the court? Is there anything that is particular to your jurisdiction in this context?

The binding nature of arbitration as a method of alternative dispute resolution derives, among other things, from the fact that the arbitral award has, as soon as it is rendered, the force of *res judicata* in relation to the dispute it decides. It is not subject to opposition, still less appeal to the Court of Cassation. It may only be the subject of an action for annulment or of a third-party opposition before the same arbitral tribunal or of revision. It is noteworthy that since 3 February 2015, DRC has been a Contracting State to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (however, the Law ratifying the New York Convention provides for that it does not apply to disputes related to immovable property or on a right related to immovable property).

2 Alternative Dispute Resolution Institutions

2.1 What are the major alternative dispute resolution institutions in your jurisdiction?

The major alternative dispute resolution institution in the DRC is the Court of Justice and Arbitration of the OHADA.

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