

# ETHIOPIA

CHAPTER PREPARED BY

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## JURISDICTION INDICATIVE TRAFFIC LIGHTS ‡

- |  |   |
|--|---|
| 1. Law                                       | ● |
| a. Framework                                 | ● |
| b. Adherence to international treaties       | ● |
| c. Limited court intervention                | ● |
| d. Arbitrator immunity from civil liability  | ● |
| 2. Judiciary                                 | ● |
| 3. Legal expertise                           | ● |
| 4. Rights of representation                  | ● |
| 5. Accessibility and safety                  | ● |
| 6. Ethics                                    | ● |
| Evolution of above compared to previous year | ● |
| 7. Tech friendliness                         | ● |
| 8. Compatibility with the Delos Rules        | ● |

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There have not been any material changes requiring an update to this chapter (including the traffic lights) since the date of the latest version. Nonetheless, please note that this chapter does not constitute legal advice and its authors, the contributing law firm and Delos Dispute Resolution decline any and all responsibility.

## IN-HOUSE AND CORPORATE COUNSEL SUMMARY

Key places of arbitration in the jurisdiction?	Addis Ababa. Despite the less robust arbitration practice, Ethiopia aspires and has issued legislation, in this regard, to establish an arbitration-friendly environment.
Civil law/common law environment? (if mixed or other, specify)	Ethiopia is mainly a civil law system. However, the procedural rules, mainly the Civil Procedure code of Ethiopia has also been influenced by the common law system.
Confidentiality of arbitrations?	Yes, unless provided otherwise by law or agreement, the Arbitration Law requires that the arbitral proceedings and the arbitral award are to be kept confidential.
Requirement to retain (local) counsel?	There is no requirement to retain local counsel. Moreover, should counsel not be retained, a party can be self-represented.
Ability to present party employee witness testimony?	There is no restriction on presenting party employee witness testimony.
Ability to hold meetings and/or hearings outside of the seat and/or remotely?	It is possible conduct the arbitration in another place outside of the seat, as may be necessary, for the purpose of consultation, hearing witnesses, receiving testimony of experts, and inspecting property and documents.  The parties may agree and determine the place of arbitration. However, if the contracting parties fail to agree on the place of arbitration, the determination of the seat/place of arbitration will be made by the arbitration tribunal, considering the specific factors and context of the matter.
Availability of interest as a remedy?	Under Ethiopian law, arbitrators are allowed to award interest as a remedy.
Ability to claim for reasonable costs incurred for the arbitration?	Yes.
Restrictions regarding contingency fee arrangements and/or third-party funding?	None.
Party to the New York Convention?	Yes.
Party to the ICSID Convention?	No.
Compatibility with the Delos Rules?	Compatible.
Default time-limitation period for civil actions (including contractual)?	It depends on the substantive law governing the underlying contract upon which the right arises on. For instance, if the applicable law is Ethiopian law and the cause of action arises from law of obligations, the general period of limitation is 10 years.

Other key points to note?	ϕ
World Bank, Enforcing Contracts: <i>Doing Business</i> score for 2020, if available?	62.8
World Justice Project, Rule of Law Index: <i>Civil Justice</i> score for 2020, if available?	0.42

## ARBITRATION PRACTITIONER SUMMARY

Date of arbitration law?	02 April 2021.
UNCITRAL Model Law? If so, any key changes thereto?	<p>UNCITRAL Model Law (2006 version)</p> <p>The new Arbitration Law is largely similar to the UNCITRAL Model Law with just minor additions including a more detailed regulation of the substantive and procedural rules governing arbitrations. The new Law provides detailed rules and regulations with respect to determination of the law applicable to arbitration agreements, appointment of arbitrators, rights and obligation of arbitrators, and similar concepts. More interestingly, the new Arbitration Law provides clauses on confidentiality and the intervention of third parties in arbitration.</p>
Availability of specialised courts or judges at the key seat(s) in the jurisdiction for handling arbitration-related matters?	No. There are no specialised courts or judges for handling arbitration related matters.
Availability of <i>ex parte</i> pre-arbitration interim measures?	Yes, <i>ex parte</i> pre-arbitration interim measures can be requested when seeking to have the arbitral tribunal constituted pursuant to the Civil Procedure Code. As such when filing a case before a court during the appointment of an arbitrator, a party may include the request for an interim measure. In this instance, the party seeking an interim measure need not give notice to the other party regarding filling of a request for an interim measure.
Courts' attitude towards the competence-competence principle?	<p>Due to the recent introduction of this concept under the new Arbitration Law passed only this year, there is a lack of sufficient practice and, as such, the courts' attitude is yet to be seen.</p> <p>In the previous law, competence-competence was not recognized unless the parties recognized it specifically in their agreement. Accordingly, courts' attitude towards the recognition of competence-competence principle was negative in the past.</p>
May an arbitral tribunal render a ruling on jurisdiction (or other issues) with reasons to follow in a subsequent award?	No. An arbitral tribunal renders a ruling on jurisdiction with reasons provided. Reasons cannot be provided separately.
Grounds for annulment of awards additional to those based on the criteria for the recognition and enforcement of awards under the New York Convention?	In addition to those grounds provided for under the New York Convention the Arbitration Law provides that an award may be annulled for arbitrators' failure to " <i>grant the award by maintaining their impartiality and independence or have delivered the award by receiving bribe</i> ".
Do annulment proceedings typically suspend enforcement proceedings?	No. A judgment-debtor seeking to suspend an enforcement proceeding would have to obtain a stay of execution injunction. There are other procedural measures (including an injunction relief) that needs to be taken by the award-debtor before its suspended.

<p>Courts' attitude towards the recognition and enforcement of foreign awards annulled at the seat of the arbitration?</p>	<p>Ethiopia has ratified the New York Convention, which provides that set-aside awards may not be enforced before local courts.</p> <p>Accordingly, Ethiopian courts may not recognize and enforce an award that is set aside by a court at the seat of the arbitration. However, there is no precedent known to us on this issue.</p>
<p>If an arbitral tribunal were to order a hearing to be conducted remotely (in whole or in part) despite a party's objection, would such an order affect the recognition or enforceability of an ensuing award in the jurisdiction?</p>	<p>Although conducting a hearing remotely despite a party's objection is not specifically listed as a ground for refusing recognition and enforcement, one of the grounds of refusal under the New York Convention and the local Arbitration Law is if the arbitration procedure contradicts the agreement of the parties or the parties did not have equal rights in appointing arbitrators or presenting their evidence and getting heard in the proceeding. If it was deemed that due process principles were not adhered because hearings were conducted remotely, then the award would be vulnerable to being set-aside.</p>
<p>Key points to note in relation to arbitration with and enforcement of awards against public bodies at the jurisdiction?</p>	<p>Administrative contracts (contract with public bodies concluded for public service) and administrative disputes are non-arbitrable. Such contracts are those that are entered by government entities for the purposes of public utility and includes many contracts for construction of roads, hospitals etc.</p>
<p>Is the validity of blockchain-based evidence recognised?</p>	<p>A new law on electronic transactions and electronic signature recognizes the validity of block chain-based evidence. Implementation and practicality is yet to be tested.</p>
<p>Where an arbitration agreement and/or award is recorded on a blockchain, is it recognised as valid?</p>	<p>A new law on electronic transactions and electronic signatures recognizes an arbitration agreement or an award recorded on a blockchain, but this new law has not yet been tested.</p>
<p>Would a court consider a blockchain arbitration agreement and/or award as originals for the purposes of recognition and enforcement?</p>	<p>A court should, although this has not yet been tested.</p>
<p>Other key points to note?</p>	<p>ϕ</p>

## JURISDICTION DETAILED ANALYSIS

### 1. The legal framework of the jurisdiction

#### 1.1 Is the arbitration law based on the UNCITRAL Model law? 1985 or 2006 version?

Until April 2021, Ethiopia did not have a separate stand-alone arbitration legislation. The arbitration laws of Ethiopia were found scattered in the 1960 Civil Code and the 1965 Civil Procedure Code of the Country, which date back decades.

On the 2nd of April 2021, the new arbitration law was enacted as 'Arbitration and Conciliation Working Procedure Proclamation' proclamation no. 1237/2021 ("Arbitration Law"). This has provided Ethiopia with its first stand-alone legislation with comprehensive governance of different aspects of dispute resolution through arbitration and conciliation.

The Arbitration Law was introduced shortly after Ethiopia ratified the New York Convention on the Recognition and Enforcement of Foreign Arbitral Award ("NYC") on February 13, 2020.

#### 1.2 Key modifications made to the Model Law

The new Arbitration Law of Ethiopia is largely similar to the 2006 UNCITRAL Model Law, with just few additional clauses listed below. These are additions rather than significant modifications.

1. This Arbitration Law extends to dispute resolution through conciliation. The scope of application of the Arbitration Law extends to both local and international arbitrations.
2. The Arbitration Law lists a number of areas of dispute that are not arbitrable. Non-arbitrable cases, for example, include matters on tax, crime, land, and administrative contracts.
3. The Arbitration Law has incorporated provisions on laws applicable to arbitration agreements. It provides that parties the arbitration agreement and proceeding will primarily be governed by the law of their choice, unless it is impossible to implement the agreement on its own, or where it violates the mandatory provisions of the Arbitration Law. In such instances where the chosen law is inapplicable and where the parties have failed to choose applicable law and the seat of the arbitration is chosen to be Ethiopia, then the Arbitration Law will govern the arbitration agreement and the proceedings.
4. Rights and obligations of an arbitrator are specified in detail under the Arbitration Law. The Law recognizes the right of arbitrators to be receive fees and get reimbursed for expenses. It also requires arbitrators to notify if they have any conflict of interest, requires them to undertake their function efficiently and take prompt action to prevent unnecessary delay, and prevent them from accepting any gift etc.
5. The Law recognizes the establishment and regulation of arbitration centres. It gives a legal cognizance to arbitration centres, which may be established either by the government or by private parties. These centres are to be regulated and supervised by the Federal Attorney General Office.
6. The Law stipulates that the tribunal may determine the modes of payment of costs for the arbitration and arbitrators' service fees. An appeal may be lodged to the First Instance courts against the decision of the tribunal on cost and arbitrators fees' related matters.
7. An opportunity to appeal against the decision of the tribunal is provided under the Law. Unless the parties agree to the contrary, an application at the cassation bench of the Federal Supreme Court can be submitted where there is a fundamental or basic error of law.
8. The Arbitration Law includes additional specific rules regarding the arbitration proceedings such as, the request for arbitration and the manner of delivery of the notice of arbitration, which are ordinarily found

in institutional rules. More interestingly, it provides clauses on confidentiality and the intervention of third parties in arbitration.

### **1.3 When was the arbitration law last revised?**

The Arbitration Law was enacted in April 2021 and it has not been revised since.

## **2. The arbitration agreement**

### **2.1 How do the courts in the jurisdiction determine the law governing the arbitration agreement?**

The new Arbitration Law clearly recognizes arbitration agreements as separable from the substantive contract in which they are found, it follows that the explicit choice of the law of the arbitration agreement (as distinct from the law governing the substantive contract) will be considered. The Law provides that the arbitration agreement and proceedings will primarily be governed by the law chosen by the parties, unless it is impossible to implement the agreement on its own, or where it violates the mandatory provisions of the Arbitration Law. In such instances where the chosen law is inapplicable and where the parties have failed to choose applicable law and the seat of the arbitration is chosen to be Ethiopia, then the Arbitration Law will govern the arbitration agreement and the proceedings.

### **2.2 In the absence of an express designation of a 'seat' in the arbitration agreement, how do the courts deal with references therein to a 'venue' or 'place' of arbitration?**

In the absence of an express designation of a 'seat' in the arbitration agreement, how do the courts deal with references therein to a 'venue' or 'place' of arbitration?

Absent an explicit choice of law of the arbitration agreement, where parties have chosen Ethiopia as the legal seat of arbitration, the applicable law of the arbitration agreement will be Ethiopian law. Where parties make a reference only to 'venue' or 'place' of arbitration without specifying the legal seat of the arbitration, the arbitral tribunal is given the mandate to determine a place that is closest to the circumstances of the case. While we are not aware of any precedent to this effect, we anticipate that the arbitral tribunal may look beyond mere references to 'venue' and or 'place' of the arbitration and look for a solution from the wider circumstances of the dispute, including but not limited to issues such as the place where the contract was entered into or was to be executed or the place where the immovable property is located (if relevant). However, we have to emphasize that there is no jurisprudence on this as yet.

### **2.3 Is the arbitration agreement considered to be independent from the rest of the contract in which it is set forth?**

Yes, Article 19 of the Arbitration Law expressly states that an arbitration agreement is separate and exists independently of the main agreement. As such, and as a matter of principle, nullity of the main contract will not affect the validity or otherwise of the arbitration agreement. Of course, issues that relate to the arbitration agreement itself could result in its nullity.

### **2.4 What are formal requirements (if any) for an enforceable arbitration agreement?**

The Arbitration Law requires arbitration agreements to meet certain formality requirements such as: the arbitration agreement shall be recorded in writing, signed by the parties and attested by two witnesses. Those requirements will be considered met where the arbitration agreement is recorded electronically and such content is accessible and capable of being retained for subsequent references. Further, the contracting parties and the witnesses can sign by electronic signature.

### **2.5 To what extent, if at all, can a third party to the contract containing the arbitration agreement be bound by said arbitration agreement?**

A third party to an arbitration agreement may be bound by consent.

The arbitration agreement is binding and enforceable as between the contracting parties only. The principle of privity of contracts is also embodied in Article 1675 and Article 1952 of the law of obligations under Book IV, Title XII of the 1960 Civil Code of Ethiopia wherein it is noted that a contract shall produce effect only as between the contracting parties. In line with this principle, Article 40 of the Arbitration Law foresees the possibility whereby interested third parties to an arbitration proceeding or third parties whom the parties wish to enjoin in the proceeding could be made a party, but on condition that the parties to the arbitration proceeding and the relevant third party give their respective consent. In such a scenario, third parties could be bound by an arbitration agreement. In certain limited circumstances and without necessitating the consent of all parties involved as would be the case in an ordinary circumstance, the application of the provisions of the Civil Code regarding promises and stipulations made by third parties; assignment of obligatory rights, subrogation, delegation and assignment of obligations could be exceptions to the rule of privity of contracts and arbitration agreements. If the third parties agree to benefit from the rights arising under these contracts, then it is assumed that it has agreed to the rest of the terms of the contract including to the arbitration agreement.

There are of course nuances in the application of exceptional scenarios.

## **2.6 Are there restrictions to arbitrability?**

There are certain restrictions on the types of issues that can be submitted to arbitration and these restrictions are based on specific domains and, to an extent, specific persons. The Arbitration Law provides that the following matters are non-arbitrable:

- Divorce, adoption, guardianship, tutorship and succession cases
- Criminal cases
- Tax cases
- Judgment on bankruptcy
- Decisions on dissolution of business organizations
- All land cases including leases [residential and commercial leases]
- Trade competition and consumer protection
- Except where it is explicitly permitted by law, administrative contracts signed by public bodies, and connected with an activity of public service or designated as administrative are not arbitrable as a matter of principle. Such contracts are those that are entered by government entities for the purposes of public utility and include many contracts for construction of roads, hospitals etc...
- Administrative disputes falling under the powers given to relevant administrative organs by law
- The Arbitration Law also anticipates future restrictions to arbitrability by referring broadly to “other cases that is not arbitrable by law”

It is yet to be tested how courts would interpret and entertain issues arising in the context of non-arbitrability of disputes, but we expect that this issue will be highly contentious. By way of an example, although labour law related disputes have long been the exclusive purview of the Government with specifically established labour boards and courts, such disputes are not designated by the Arbitration Law as non-arbitrable. Although the labour law itself provides that labour disputes can indeed be resolved through arbitration or conciliation, it reserves a right to appeal to the respective labour board or courts of law. In the context of labour disputes, whether parties to an arbitration agreement can waive their right to appeal to the respective labour board or court is yet to be seen and there is no jurisprudence on this yet.

## **3. Intervention of domestic courts**

### **3.1 Will the courts stay litigation if there is a valid arbitration agreement covering the dispute?**

Yes, irrespective of whether the seat of the arbitration is within or outside of the jurisdiction. However, Ethiopian courts will not of their own volition stay a court proceeding on the account of the dispute being covered by an arbitration agreement. A party who prefers such a dispute to be decided through arbitration needs to raise a preliminary objection against the jurisdiction of the court. Accordingly, if a party brings a suit

to an Ethiopian court and the arbitration agreement is raised as a preliminary objection by the defendant, the court shall dismiss or stay the suit in favour of arbitration. However, failing to raise the arbitration agreement as a preliminary objection shall ensure the arbitration agreement to be considered as void and ineffective, which shall thereafter enable the court to hear the case. [Article 8 (1) & (2)]

### **3.2 How do courts treat injunctions by arbitrators enjoining parties to refrain from initiating, halt or withdraw litigation proceedings?**

Under the Arbitration Law, arbitrators have the power to issue interim measures. However, such power does not extend to enjoining parties to refrain from initiating, halt or withdraw litigation proceedings and the courts will not accept any such injunctions from arbitrators.

### **3.3 On what ground(s) can the courts intervene in arbitrations seated outside of the jurisdiction? (Relates to anti-suit injunctions/anti-arbitration injunctions or orders, but not only)**

Ethiopian courts may intervene in arbitrations seated outside of Ethiopia, in the following manner:

- i. If one of the parties to the arbitration seeks an interim measure from the court in Ethiopia; [Articles 3(2), 9, 27]. The grounds for taking a provisional interim measure are (i) the likelihood of irreparable damage to the applicant, if an order is not issued, as balanced against (ii) the impact of the order on the person against whom the order is sought.
- ii. If an application to set aside an award is filed with the court and if the courts in Ethiopia could have assumed jurisdiction on the substance of the matter in the absence of a valid arbitration agreement. The courts' power will then extend to set aside the award rendered by a tribunal seated outside of Ethiopia. [Article 50]

In this regard, Article 9 of the Arbitration Law states that as far as matters falling under the arbitration agreement are concerned, the contracting parties may request an Ethiopian court for interim measures to be taken either before the initiation of or during the arbitration proceedings. However, the Arbitration Law also states that such involvement of the court shall not be considered as a violation of the arbitration agreement by the contracting parties. [Article 9]

## **4. The conduct of the proceedings**

### **4.1 Can parties retain foreign counsel or be self-represented?**

Self-representation is permitted under Ethiopian law. The Arbitration Law indicates that parties may be represented by a person of their choice or an attorney. However, the Arbitration Law lacks clarity regarding the ability of a foreign counsel to represent clients before an arbitration tribunal seated in Ethiopia. While the Ethiopian Investment Regulation No. 474/2020 exclusively reserves attorney and legal consultancy services for domestic professionals, it does not expressly forbid foreign counsel from representing clients in Ethiopia on a non-regular basis. A recent update in this regard is that a new legislation tabled for the approval by the House of People's Representatives ("Parliament") has included a provision which allows foreign counsel to team up with Ethiopian attorneys for the purpose of representing clients in Ethiopia if the subject matter of the dispute is meant to be governed by a foreign law. Nevertheless, this can only be ascertained upon the promulgation of the draft legislation.

### **4.2 How strictly do courts control arbitrators' independence and impartiality? For example, does an arbitrator's failure to disclose suffice for the court to accept a challenge or do courts require that the undisclosed circumstances justify this outcome?**

Courts strictly control arbitrators' independence and impartiality. In instances where a court appoints an arbitrator, it takes into account the impartiality and independence of the arbitrator as well as professional competence in relation to the dispute. An arbitrator is also required to promptly notify any conflict of interest which interferes with, or casts reasonable doubt on, his/her impartiality and independence.

An objection against the appointment of an arbitrator may also be made if there are circumstances, which create justifiable doubts as to the impartiality and independence of the arbitrator. Although the Law does not provide specific instances that warrant grounds for challenge, one such instance is clearly the failure to disclose issues that affects independence and impartiality of an arbitrator.

Lack of independence and impartiality of arbitrators is also recognized as a ground for setting aside an award or refusing recognition and enforcement.

#### **4.3 On what grounds do courts intervene to assist in the constitution of the arbitral tribunal (in case of ad hoc arbitration)?**

Parties have the discretion to agree on the procedure of the appointment of the arbitrators or the appointment of arbitrators by arbitration centres or even a third party. Where such agreements are lacking and in cases of *ad hoc* arbitrations, however, the First Instance Court may appoint arbitrators upon the request of one of the parties if:

- one of the contracting parties fail to appoint the co-arbitrator within 30 days from the date of receipt of the notice by the other party, or
- where the two arbitrators fail to agree on the appointment of the third arbitrator within 30 days from the date of their appointment, or
- where the contracting parties fail to agree, in the case of a sole arbitrator.

#### **4.4 Do courts have the power to issue interim measures in connection with arbitrations? If so, are they willing to consider *ex parte* requests?**

Yes. Ethiopian courts may grant an interim measure even when one of the parties is not on notice of the measure being sought.

There is insufficient jurisprudence regarding interim measures on the basis of the Arbitration Law. However, previous practice under the Civil Procedure code indicates that a party requesting an interim measure from an Ethiopian court needs to take either of the following alternatives:

- i. Filing a case before the court requesting for appointment of an arbitrator by the court if the other party chooses either not to endorse the arbitrator proposed by the plaintiff in case of an *ad hoc* arbitration by sole arbitrator or fails to appoint a co-arbitrator from his or her side in case of ad hoc arbitration by three members' arbitrators. Together with the request for the appointment of an arbitrator, the party may annex the request for an interim measure; or
- ii. Filing an application before the tribunal for an interim measure. The party may request a court for assistance in order to ensure enforcement of the tribunal's order on interim measure.

Ethiopian courts usually consider a party's request for an interim measure *ex parte* particularly in the context of "i" above.

#### **4.5 Other than arbitrators' duty to be independent and impartial, does the law regulate the conduct of the arbitration?**

##### **4.5.1 Does it provide for the confidentiality of arbitration proceedings?**

Yes. Article 39 of the Arbitration Law provides that the proceedings and arbitral award shall be kept confidential unless and otherwise provided by law or agreement.

##### **4.5.2 Does it regulate the length of arbitration proceedings?**

The Arbitration Law does not specify the exact length of an arbitration proceeding. However, Article 13 (4) of the Arbitration Law states that an arbitrator shall perform his or her function efficiently and take prompt

action to prevent any unnecessary delay in the arbitration proceeding. Moreover, delay in performance without good cause has been constituted as one of the grounds constituting the removal of an arbitrator. [Article 16]

**4.5.3 Does it regulate the place where hearings and/or meetings may be held, and can hearings and/or meetings be held remotely, even if a party objects?**

No, the Arbitration Law does not regulate the location of hearings/meetings. The Arbitration Law states that, unless agreed otherwise by the parties, the arbitral tribunal may conduct the arbitration, in another place than the seat. In this regard, the decision to conduct the arbitration in a place other than the seat shall be made for the purpose of consultation, hearing witnesses, receiving testimony of experts, and inspecting property and documents, as may be necessary. Unless agreed by the parties, it is the decision of the arbitral tribunal to determine as to where exactly the hearings and/or meetings shall be held. [Article 30 (3)]

Hearings may also be conducted remotely if agreed by the parties. If one party objects and if the remote hearing has affected the due process of the proceedings (by curtailing the right of the party to be heard, to present its witnesses or cross-examine the other party's witnesses, etc...), then remote hearing should not be allowed as it will make the award vulnerable to set-aside.

**4.5.4 Does it allow for arbitrators to issue interim measures? In the affirmative, under what conditions?**

Yes. Unless agreed otherwise by the parties, the arbitral tribunal may issue interim measures further to a request by one of the parties as long as the tribunal deems the interim measure as necessary. As set out under Article 21 of the Arbitration Law, the major conditions factors for a provisional interim measure are: (i) the likelihood of irreparable damage to the applicant, if an order is not issued; as balanced against (ii) the impact of the order on the person against whom the order is sought. In this regard, a person requesting the provisional interim measure may be required by the arbitral tribunal to provide sufficient security to cover the damage that may be caused by the order to the respondent to the application. Furthermore, if it is believed that the interim measure was inappropriate or should not have been granted under the circumstance, the party that requested the interim measure may be liable to pay compensation for the damage caused by the interim measure. [Articles 21(3), 21(4) and 22(6)]

**4.5.5 Does it regulate the arbitrators' right to admit/exclude evidence? For example, are there any restrictions to the presentation of testimony by a party employee?**

No. The parties may determine the rules of procedure to be applied by the arbitral tribunal. Failing such determination, the arbitral tribunal shall determine the rules of procedure including matters relating to the admissibility, relevance and evaluation of evidence. Thus, unless agreed otherwise by the parties, the arbitral tribunal is entrusted with the power of determining the process of admitting or excluding evidence. [Articles 29 (1) & (2)]

**4.5.6 Does it make it mandatory to hold a hearing?**

No. While the Arbitration Law dictates that the parties to the dispute may agree otherwise in the agreement, the arbitral tribunal has the discretion as to whether or not to hold a hearing.

**4.5.7 Does it prescribe principles governing the awarding of interest?**

The Arbitration Law does not dictate the principles governing the awarding of interest. The awarding of interest depends on the relevant applicable law governing the arbitration agreement. Hence, the awarding of interest, being a matter of the applicable substantive law, must be permitted in other legislation other than the Arbitration Law. [Article 46]

#### **4.5.8 Does it prescribe principles governing the allocation of arbitration costs?**

Unless agreed otherwise by the parties, Article 46 (1) of the Arbitration Law stipulates that the tribunal may determine the modes of payment of costs for the arbitration and arbitrators' service fees. An appeal may be lodged to the First Instance courts against the decision of the tribunal on cost and arbitrators fees' related matters.

### **4.6 Liability**

#### **4.6.1 Do arbitrators benefit from immunity from civil liability?**

The Arbitration Law does not specifically provide for the immunity of arbitrators from civil liability. However, under the general civil law principles, reasonable practitioners' standard is set to determine fault of professionals to attribute civil liability. Accordingly, arbitrators are in general immune from civil liability unless they are engaged in negligence and wilful misconduct in exercising their duty as an arbitrator.

#### **4.6.2 Are there any concerns arising from potential criminal liability for any of the participants in an arbitration proceeding?**

The Arbitration Law does not address the issue of potential criminal liability of participants in an arbitration proceeding. However, it should be noted that criminal liability may arise under the criminal laws in cases where parties are engaged in criminal acts such as fraud, corruption and collusion, etc.

## **5. The award**

### **5.1 Can parties waive the requirement for an award to provide reasons?**

Yes. As per Article 44 of the Arbitration Law, there are two instances where the requirement to provide reasons for the award may be waived:

1. By agreement of the parties. The contracting parties may agree that the reasons for the award will not be disclosed.
2. If the parties resolve their dispute by agreement and the arbitral proceeding is terminated accordingly, the award granted based on mutual consent need not provide reasons.

In other instances, the award shall state the reasons upon which it is based

### **5.2 Can parties waive the right to seek the annulment of the award? If yes, under what conditions?**

Yes. Although a party may either appeal or set-aside an arbitral award, both the right to appeal and set-aside may be waived by agreement of the parties.

### **5.3 What atypical mandatory requirements apply to the rendering of a valid award rendered at a seat in the jurisdiction?**

This is not applicable.

### **5.4 Is it possible to appeal an award (as opposed to seeking its annulment)? If yes, what are the grounds for appeal?**

No, unless the parties agree for such possibility of an appeal in their agreement [Article 49]. No appeal shall lie to the court from an arbitral award unless such specific agreement has been made.

The grounds for appeal an arbitral award are found in the older law of the Civil Procedure Code (Article 351).

1. the award is inconsistent, uncertain or ambiguous or is on its face wrong in matter of law or fact;

2. the arbitrator omitted to decide matters referred to it;
3. irregularities have occurred in the arbitral proceedings, in particular where the arbitrator:
  - i. failed to inform the parties or one of them of the time or place of the hearing or to comply with the terms of the submission regarding admissibility of evidence; or
  - ii. refused to bear the evidence of a material witness or took evidence in the absence of the parties or of one of them;
4. the arbitrator has been guilty of misconduct, in particular where:
  - i. s/he heard one of the parties and not the other;
  - ii. s/he was unduly influenced by one party, whether by bribes or otherwise; or
  - iii. s/he acquired an interest in the subject-matter of dispute referred to him.

An appeal may be made to the court that has an appellate jurisdiction had the case been heard by regular Court that has jurisdiction over the case. The grounds for appeal and set-aside are distinct, hence not mutually exclusive. Both may be raised at the same time or separately.

#### **5.5 What procedures exist for the recognition and enforcement of awards, what time-limits apply and is there a distinction to be made between local and foreign awards?**

As a governing principle, both local and foreign awards are deemed binding and are to be executed as per the applicable laws.

Any party who seeks the execution recognition and enforcement of an arbitral award by a court shall submit to the court the arbitration agreement, together with the original award (or an authenticated copy of the award). For foreign awards, there is a requirement for authentication in the country where the award is made and in Ethiopia as well. If the award is made in a language different from the working language of the court before which the application for recognition and/or enforcement is presented then the award needs to be translated into the language of the court. In practice, recognition and enforcement proceedings require the opening a new court file.

In terms of timeline, there is no statutory timeline set. The timeline for recognition and enforcement procedure depends on the complexity of the matter. Courts, in practice, employ a ten-year period of limitation.

#### **5.6 Does the introduction of annulment or appeal proceedings automatically suspend the exercise of the right to enforce an award?**

No, annulment or appeal proceedings does not automatically suspend enforcement. There is procedural action that needs to be taken by the party that intends to suspend the enforcement of the award until its objection on the final award is resolved.

The parties in dispute may request for the suspension of an enforcement by seeking a motion for the stay of the enforcement proceeding. The award-debtor must be successful in its motion for the stay of the enforcement before any enforcement proceeding is suspended.

#### **5.7 When a foreign award has been annulled at its seat, does such annulment preclude the award from being enforced in the jurisdiction?**

Yes. Annulment at the seat has the effect of rendering the award null and void, which precludes enforcement in Ethiopia.

## 5.8 Are foreign awards readily enforceable in practice?

Before the ratification of the NYC in 2020, foreign awards were not readily enforceable. Ethiopia's Civil Procedure Code required "reciprocity" as a necessary requirement for any foreign arbitral award to be enforced. This meant that the country in which the foreign award was issued must reciprocally enforce awards made in Ethiopia in order to ensure the enforcement of the award originating in a foreign country. Ethiopian courts interpret the 'reciprocity' requirement to mean the existence of a judicial assistance treaty between the two countries. However, Ethiopia has a judicial assistance treaty only with China and Uganda-which therefore means that only awards from these two countries are enforceable in Ethiopia. As such, choosing a foreign seat, other than China and Uganda, meant that a party risked an enforcement of its foreign award on Ethiopian soil.

The ratification of the NYC means that Ethiopian courts have to automatically recognize and enforce foreign arbitral awards from close to 166 NYC member countries, unless the award is set-aside by the limited grounds listed under the NYC. However, the practices of Ethiopian courts since the ratification and coming into effect of the NYC in November 2020 is yet to be tested.

Another hurdle for enforcement of arbitral awards has been the existence of multi-tiered review procedures to contest arbitral awards before national courts. There have been precedents whereby award-debtors have tried to frustrate final arbitral awards before Ethiopian courts on different grounds such as appeal, set-aside, and appeal before the Cassation Bench (the court with final adjudicatory powers whose decisions have precedential value).

Cases such as *National Mineral Corp. Pvt. Ltd Co. v. Danni Drilling Pvt. Ltd Co. and Consta Joint Venture v. Chemin de Fer Djibouto-Ethiopien (the Ethiopian-Djibouti Railway)* are examples of such precedents in the past.

The new Arbitration Law has removed one such hurdle by stipulating that parties may agree to opt out of the ability to appeal to the Cassation Bench on a question of law. Unless the parties agree otherwise, the default is that one can appeal against a question/error of law to the Cassation Bench.

## 6. Funding arrangements

### 6.1 Are there laws or regulations relating to, or restrictions to the use of contingency or alternative fee arrangements or third-party funding at the jurisdiction? If so, what is the practical and/or legal impact of such laws, regulations or restrictions?

There are no such legal restrictions. However, such alternative funding mechanisms, with the exception of contingency fee arrangements, are not widely known or practised in Ethiopia.

## 7. Arbitration and technology

### 7.1 Is the validity of blockchain-based evidence recognised?

Asymmetric cryptosystem is recognized as an acceptable and reliable platform for recording and storing digital data. As such, and although the practicality of blockchain-based evidence is yet to be tested, blockchain evidence certified by licensed root certificate providers is acceptable by law.

### 7.2 Where an arbitration agreement and/or award is recorded on a blockchain, is it recognised as valid?

The law accepts blockchain based agreements and awards but given that these technology platforms have been accepted only since 2018, there is no tested precedence nor proper infrastructure in the jurisdiction to make it a reality as yet.

**7.3 Would a court consider a blockchain arbitration agreement and/or award as originals for the purposes of recognition and enforcement?**

Supposedly, and under the Electronic Signature Proclamation and the Electronic Transactions Proclamation, a court would have to accept such documents as original provided they were accompanied by proper certification from a licensed certificate provider.

**7.4 Would a court consider an award that has been electronically signed (by inserting the image of a signature) or more securely digitally signed (by using encrypted electronic keys authenticated by a third-party certificate) as an original for the purposes of recognition and enforcement?**

By law, a court would be required to consider electronically signed or digitally encrypted signature of arbitrators as original although the practice in this regard is yet to unfold and there is no published precedent on this matter.

**8. Is there likely to be any significant reform of the arbitration law in the near future?**

No. Significant reforms such as the ratification of the NYC and the complete revision of the domestic rules on arbitration have come into force in the past 12 months. As such, no further reform is expected.

**9. Compatibility of the Delos Rules with local arbitration law**

The Delos Rules are compatible with the local Arbitration Law, although the Arbitration Law provides a more extensive and detailed rules both on substantive and procedural aspects of arbitration proceedings.

**10. Further Reading**

<https://www.whitecase.com/publications/alert/ethiopia-modernizes-arbitration-framework>

<https://www.lexology.com/library/detail.aspx?g=eead8ca6-5e09-4c2d-9440-5f4b89e80799>

[https://www.aaclo.com/Legal%20Update\\_Special%20Issue\\_02\\_2020\\_Ethiopia%20Ratifies%20the%20New%20York%20Convention.pdf](https://www.aaclo.com/Legal%20Update_Special%20Issue_02_2020_Ethiopia%20Ratifies%20the%20New%20York%20Convention.pdf)

<http://arbitrationblog.kluwerarbitration.com/2018/07/22/fate-finality-clause-ethiopia-2/>

<https://conflictoflaws.net/2020/ethiopias-ratification-of-convention-on-the-recognition-and-enforcement-of-foreign-arbitral-awards-a-reflection/>

## ARBITRATION INFRASTRUCTURE AT THE JURISDICTION

Leading national, regional and international arbitral institutions based out of the jurisdiction, <i>i.e.</i> with offices and a case team?	Addis Ababa Chamber of Commerce and Sectoral Associations (AACCSA) <a href="http://www.addischamber.com">http://www.addischamber.com</a>
Main arbitration hearing facilities for in-person hearings?	ϕ
Main reprographics facilities in reasonable proximity to the above main arbitration providers with offices in the jurisdiction?	ϕ
Leading local providers of court reporting services, and regional or international providers with offices in the jurisdiction?	ϕ
Leading local interpreters for simultaneous interpretation between English and the local language, if it is not English?	ϕ
Other leading arbitral bodies with offices in the jurisdiction?	ϕ