

## Ivory Coast Investment Climate and the Legal Guarantees granted to Foreign Investors in case of Investment Dispute with the Host State of Ivory Coast

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**Abstract:** *The increasing importance of international investment has been accompanied by the rapid development of a largely new field of international law, defining the obligations of host states toward foreign investors and creating procedures for resolving disputes in connection with those obligations. When an investor feels that its rights have been violated, it can bring a complaint about redress before an international arbitration tribunal. Investors have choices regarding the placement of their resources, but one key to any investment decision is the issue of security.*

*Without security measures for investors and their investments the relations between foreign investors and host state can be difficult in case of breach of contract or infringement of their rights, foreign investors have no chance to claims these torts because all State will claim is sovereign immunity.*

*One of the principal purposes of the global investment protection regime is to reduce this investor insecurity, increase investment, and reduce poverty, especially in the developing world. In front of this situation, many developed countries and also developing countries have elaborated some investments protection measures in order for investors to freely and safely make investments in the host state.*

*The State of Ivory Coast, located in West of Africa with a territory of 322462 km square for a population of 23.919.000 is one of these developing countries which have provided some investment protection measures, some guarantees for all foreign investors and their investments in case of dispute.*

*The aim of this paper is to present Ivory Coast Investment climate through many opportunities and key sectors of investments and then to put in light the legal guarantees granted to a foreign investor in order to protect themselves and their investments.*

**Key Words:** *Ivory Coast, key sectors of Investment, Investor, and Investment disputes, Host State, Legal Guarantees*

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### I. Introduction

Three broad categories of cross-border investment can be distinguished: portfolio investment, direct investment, and indirect investment<sup>1</sup>. Portfolio investments include publicly traded securities, such as stocks and bonds of foreign companies. Foreign direct investment (FDI) typically consists of medium-and long-term infusions of cash, equipment, expertise, or other assets in another country, into either ongoing enterprises or new companies created for the purpose of carrying on some business. The flow of direct investment across borders grew exponentially during the last decades of the twentieth century.<sup>2</sup> The increasing importance of international investment has been accompanied by the rapid development of a largely new field of international law, defining the obligations of host states toward foreign investors and creating procedures for resolving disputes in connection with those obligations. When an investor feels that its rights have been violated, it can bring a complaint for redress before an international arbitration tribunal. Investors have choices regarding the placement of their resources, but one key to any investment decision is the issue of security. One of the principal purposes of the global investment protection regime is to reduce this investor insecurity, increase investment, and reduce poverty, especially in the developing world. In front of this situation, many developed countries and also developing countries have elaborated some investments protection measures in order for investors to freely and safely make investments in host state. The State of Ivory Coast is one of these country which have provided some investment protection measures, some guarantees for all foreign investors and their investments. Ivory

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<sup>1</sup> Bernardo M. Cremades, Promoting and Protecting International Investments, Int'l Arb. L.Rev.

<sup>2</sup> Ibrahim-Shihata, Legal Treatment of Foreign Investment: The World Bank Guidelines 2

Coast is located in West Africa. Independent since August 1960, its area is 322462 km square with a population of 23.919.000 and the country GDP is above 48 billion dollars. Ivory Coast political capital is YAMOOUSSOUKRO and its economic capital and largest city is ABIDJAN. Recently ranked first sub-Saharan country<sup>3</sup> the most attractive for investments, Ivory Coast provides many guarantees to foreign investors in case of investment disputes. What are the guarantees granted to foreign investors in case of investment disputes with the host state of Ivory Coast?

In order to answer this question, our study will turn around a conceptual analysis(I), then show Ivory Coast investment climate(II) before talking about the legal guarantees granted to foreign investors by the State of Ivory Coast (III).

## I-CONCEPTUAL ANALYSIS

International investment law is designed to promote and protect foreign investors and their investments (A) in case of disputes with the host States (B) in which they made such investments.

### A- Investors and Investments disputes

#### 1-Investors

An investor is any person who commits capital with the expectation of financial returns. Investors utilize investments in order to grow their money and/or provide an income during retirement, such as with an annuity. A wide variety of investment vehicles exist including (but not limited to) stocks, bonds, commodities, mutual funds, exchange-traded funds (ETFs), options, futures, foreign exchange, gold, silver, retirement plans and real estate. Investors typically perform technical and/or fundamental analysis to determine favorable investment opportunities and generally prefer to minimize risk while maximizing returns<sup>4</sup>. Investors have varying risk tolerances, capital, styles, preferences, and timeframes. For instance, some investors prefer very low-risk investments that will lead to conservative gains, such as certificates of deposits and certain bond products.

Other investors, however, are more inclined to take on additional risk in an attempt to make a larger profit. These investors might invest in currencies, emerging markets or stocks. A distinction can be made between the terms "investor" and "trader" in that investors typically hold positions for years to decades (also called a "position trader" or "buy and hold investor") while traders generally hold positions for shorter periods. Scalp traders, for example, hold positions for as little as a few seconds. Swing traders, on the other hand, seek positions that are held from several days to several weeks.<sup>5</sup> In the majority of cases, the investors are a company but at times individuals also act as investors<sup>6</sup>. An investor can be a natural person or a legal person. The investor nationality is very important because it determines from which treaties it may benefit<sup>7</sup>. Another definition of the term "investor" is provided by the Danish Model BIT. The term "investor" means with respect to each Contracting Party: [...]

Any entity established in accordance with, and recognized as a legal person by the law of that Contracting Party, such as companies, firms, associations, development finance institutions, foundations or similar entities [...]<sup>8</sup>

#### 2-Investments disputes

There is no legal definition for the term Investment but some multilateral treaties typically define the term 'Investment' and provide for ICSID jurisdiction. Examples are the NAFTA, which defines 'investment' as (a) an enterprise; (b) an equity security of an enterprise; (c) a debt security of an enterprise(i) where the enterprise is an affiliate of the investor or (ii) where the original maturity of the debt security is at least three years, but does not include a debt security, regardless of original maturity, of a state enterprise; (d) a loan to an enterprise (i) where the enterprise is an affiliate of the investor, or(ii) where the original maturity of the loan is at least three years, but does not include a loan, regardless of original maturity, to a state enterprise; (e) an interest in an enterprise that entitles the owner to share in income or profits of the enterprise; (f) an interest in an enterprise that entitles the owner to share in the assets of that enterprise on dissolution, other than a debt security or a loan excluded from subparagraph (c) or (d) (g) real estate or other property, tangible or intangible, acquired in the expectation or used for the purpose of economic benefit or other business purposes; and (h) interests arising from the commitment of capital or other resources in the territory of a party to economic activity in such territory, such as under(i) contracts involving the presence of an investors property in the territory of the party, including turnkey or construction contract, or concessions, or (ii) contracts where remuneration depends

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<sup>3</sup> Nielsen's Africa Prospects Indicator.

<sup>4</sup> [Investor Definition Investopedia](http://www.investopedia.com/terms/i/investor) <http://www.investopedia.com/terms/i/investor>.

<sup>5</sup> [Investor Definition Investopedia](http://www.investopedia.com/terms/i/investor) <http://www.investopedia.com/terms/i/investor>.

<sup>6</sup> For this reason, it is most appropriate to refer to investors in general not as 'she' or 'he' but as 'it'.

<sup>7</sup> Exceptionally, the status of foreign investor may be extended to permanent residents. See Article 201 NAFTA; Article 1(7)(a) (i) ECT. Some treaties require domicile in addition to nationality.

<sup>8</sup> The Scope of New Investment Laws Instruments' transnational Corporations(1995) 4:3 32

substantially on the production, revenues or profits of an enterprise; but investment does not mean, (i) claims to money that arise solely from (i) commercial contracts for the sale of goods or services by a national or enterprise in the territory of a party to an enterprise in the territory of another party, or (ii) the extension of credit in connection with a commercial transaction, such as trade financing, other than a loan covered by subparagraph (d); or (j) any other claims to money, that do not involve the kinds of interests set out in subparagraphs (a) through (h).<sup>9</sup>

The Energy Charter Treaty also defines investments as every kind of asset, owned or controlled directly or indirectly by an investor and include: (a) tangible and intangible, and movable and immovable, property, and any property rights such as leases, mortgages, liens, and pledges; (b) a company or business enterprise, or shares stock, or other forms of equity participation in a company or business enterprise, and bonds and other debt of a company or business enterprise; (c) claims to money and claims to performance pursuant to contract to have an economic value and associated with an Investment; (d) Intellectual property; (e) Returns; (f) any right conferred by law or contract or by virtue of any licenses and permits granted pursuant to law to undertake any Economic Activity in the Energy Sector<sup>10</sup>.

The term dispute is defined by the International Court of Justice has defined a dispute as ‘a disagreement on a point of law or fact, a conflict of legal views or interest between parties’.<sup>11</sup>

#### B- Host State

Host state can be seen as the country in which investor make investments. All Contracting States and Signatories of the ICSID are bound by it.<sup>12</sup> The time for the status of a state as a contracting state is the date of the registration of the request for arbitration by the Secretary-General of ICSID. A state may give its consent to submit to the ICSID jurisdiction before becoming a contracting state but this consent becomes effective only once the state satisfies the requirements of a contracting state. The host state may deal with foreign investors either through a central state organ, such as a government ministry or through a separate entity. This may be a territorial entity such as a province or municipality, it may also be a specialized government agency such as an investment board or a privatization agency. Acts in violation of international law will be attributed to the central government even if they were committed by a sub-entity of the host state. Under the international law of state responsibility, the state is responsible for all its organs including those of a territorial unit as well as for state entities exercising elements of governmental authority.<sup>13</sup> However, the ICSID Convention through Article 25 allows a sub-entity of the host state to appear in proceedings.

## II-IVORY COAST INVESTMENT CLIMATE

Ivory Coast is a West African country with an area of 322.462km<sup>2</sup> for a population of 23919000 people. Independent since August 7, 1960, the country has two capitals. Abidjan is the economic capital and Yamoussoukro the politic. Apart the important role of investment organization (B) in the promotion of the destination Ivory Coast as a good place for foreign investors, many reasons and key sectors (A) can attract foreign investors in the country.

#### A- Reasons and key sectors of investment

According to an analysis of the CEPICI, the reasons (1) and key sectors (2) that can lead foreign investors to make investments in Ivory Coast are the followings.

##### 1- Reasons for investment

Ivory Coast is a country in full economic and social development. Upon its independence in 1960, it has made economic liberalism and openness to the outside, the basic choices of economic policy. This strategy allowed it to record for many years, a significant economic development.

The socio-political crisis which interrupted the momentum started strongly the foundations of economic growth and social indicators deteriorated.

The economic and human potential remained still intact, while opportunities have become more numerous, due to the will displayed by the authorities to quickly restore the country's economic vitality. Ivory Coast is a multicultural country with more than 60 ethnic groups, as well as international communities from all around the

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<sup>9</sup> NAFTA Article 1139, Investment definition

<sup>10</sup> Energy Charter Treaty Article 1 section 6

<sup>11</sup> See case concerning East Timor, 1995 ICJ Reports 89, 99 and the references to earlier casesthere.

<sup>12</sup> <http://www.worldbank.org/icsid/constate/c-states-en.htm>

<sup>13</sup> See the Articles on Responsibility of States for Internationally Wrongful Acts adopted by the International Law Commission (ILC) in 2001, Art4(1):

The conduct of any State organ shall be considered an act of that State under international law, whether the organ exercises legislative, executive, judicial or any other functions, whatever position it holds in the organization of the State and whatever its character as an organ of the central government or of a territorial unit of the State.

(J Crawford, The International Law Commission's Articles on State Responsibility (2002)94).

world. Despite this diversity of ethnic groups, there is no need to learn a local language since French is the official language, and English is more and more used as the business language. In other words, it's a place that is easy to adapt and acclimate to. The country has two capitals, and Abidjan, the economic capital is one of the biggest West African metropolises, as well as one of the most modern cities in West Africa. In fact you will discover the business district of the Plateau, the residential neighborhood of Cocody or the beautiful mansions of Riviera. The city will keep on amazing you. Thanks to the tropical climate, the country enjoys a beautiful weather all year long. From farewell coast boots passing by scarves and gloves. You will find post-card like beaches, with idyllic landscapes only at an hour and a half drive from Abidjan. For children education there is no need to worry about because you will find international schools of French and American systems. Not only in the capital but also in major cities. The Ivorian culture is rich in its diversity. From North to South, East to West you will discover the customs and traditions enriched by time. A local cuisine that is imprinted with cultural diversity and that is a testimony to the wealth of the land. Ivorian cuisine in West Africa as one of the most diverse. From *aloco* to *attieke*, be sure that you can enjoy the food. For your lifestyle, you are sure to enjoy an exceptional one. The national anthem professes it, Ivory Coast is a country of hospitality, of smiles and laughter. The country just waiting to be discovered and check the following key sectors of investments.

## 2- Key sectors of investments

Three key sectors of investment<sup>14</sup> can be identified in Ivory Coast: the industrial sector, the mining, and petroleum sector and the agricultural sector.

Since its independence, the country shows the agricultural sector as the basis of its economy.

In fact, Ivory Coast has achieved remarkable results in agricultural development. For many of its productions (including export), it is ranked at enviable global and African ranks.

Cocoa and coffee crops occupy more than 75% of land devoted to cash crops with a predominance of cocoa (56%). Ivory Coast respectively held the first in the world and the 3rd African rank.

Cotton, oil palm, cashew, and rubber occupy 23% of the areas.

Other cash crops (coconut, banana, etc.) occupy only 2% of the areas.

- **Coffee**

This area offers the following opportunities:

In 2002, coffee production was 300,000 tons with about 440,000 farmer's operator 1,300,000 hectares. It has continued to experience a sharp drop in recent years, reaching its lowest level in 2008. But from 2009 coffee revives its usual level due to good weather conditions and maintenance of orchards. Production in 2009 reached 144,716 tons against 67,610 tons in 2008. Due to good climate conditions. The production in 2009 reached 144 716 Tons against 67 610 Tonnes in 2008.

- **Cocoa**

The annual cocoa production increased by 14.7% and amounted to 1,304,494 tons in 2009 after falling back to 12.8% in 2008. This production comes from about 600,000 farmers operator 2,500,000 hectares with an average yield of about 500 to 600 kg/ha. Cocoa cultivation system most widely used in the forest area is the extensive and small family farm with farm sizes varying between 1 and 1.5 ha.

- **Palm oil**

Two types of operations:

- Industrial operations, benefiting from technical and financial resources. They belong to large agro-industrial groups. The average yield is 10 t / ha.

- The village farms, benefiting from fewer resources, account for 75% of the total area (200,000 hectares) of the Ivorian palm grove. The yield is of the order of 5 to 7t / ha.

In 2004 the production was 1,378,826 tons and 292,278 tons regimes of crude palm oil. In 2009, she was 394431.6 tons of oil representing a growth rate of 9.8%.

- **Hevea**

In rubber production, there are industrial plantations owned by large private and village plantations. Average yields of dry rubber obtained on all plantations are around 1.2 t / ha village plantations and 1.7 t / ha for industrial plantations against 2 to 2.5 t / ha obtained by station research.

The total area is currently around 110,000 ha of which 53% of industrial plantations and 4.7% of village plantations. Rubber production increased by 4.1% and appears to 202,094 tons in 2009 due to the expansion of cultivated areas due to the good prices in recent years.

The trends for these two products are attributable to investments, maintenance of cultivated areas and improved cultural practices.

- **Cotton**

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<sup>14</sup><http://www.cepici.gouv.ci>, key sectors of investment

Cotton, mainly rainfed, is grown on about 300,000 hectares mainly in the Savannah area, occupying 150,000 farmers every year.

Fiber production reached a record level of 177,000 tonnes in 1999/2000 with an average ginning of the order of 43.50% among the best ginning rate in the world.

Today, production revives the good performance by a grant from the state to producers and amounts to 140,611 tons.

- **Sugarcane**

The Ivorian production of sugarcane is primarily industrial. Farms are conducted in pure culture with irrigation. 2009 production experienced an 8.8% increase and appears to 168,414 tons.

This production is the result of two agro-industrial companies.

- **Cashew**

Cashew is grown in the northern half of Ivory Coast. Areas sown are small usually between 0.5-4 ha. Approximately 250,000 farmers cultivate this speculation on a set of 750,000 ha. 2009 production recorded a 9% increase, amounting to 340 318T. However, yields between 240 and 600 kg/ha, are still far from the performance recorded in countries such as Guinea Bissau where it reaches 1200 kg/ha. Against this outperformance is due to the non-widespread use of selected high-performance materials.

- **Pineapple**

The cultivation of pineapple is grown by small farmers and large agro-industrial groups. Small farmers have very little money and settled on small farms (0.5 to 1 ha).

Production in 2009 fall of 21.3% to 77 they produce 60% of exported pineapples. The average yields are 25 to 30 t / ha. Large agro-industrial groups, with substantial material and financial resources, operate generally above 50 ha area. Their high technical level allows them to reach 50 t / ha close to the current varietal potential (60 t / ha).

776 T.

- **Banana**

Current production is mainly provided by large agro-industrial groups representing banana multinationals. These groups practice intensive culture with important ways: Irrigation system installation, the supply of inputs (fertilizers and pesticides) and can come into compliance with the new regulations on international trade.

Production has almost doubled over the period from 1997 to 2004 from 116,000 tons/year to 229,000 tons/year on increasingly smaller areas (100.00 ha in 1977-6000 ha since 1999). In 2009, she recorded a 2.8% shrinkage and stands at 285,602 T.

Both speculations face the lack of investment, but especially to the strong competition from Latin American countries.

- **Ornamental horticultural products**

The current Ivorian ornamental horticulture with respect to green plants (1,200 tonnes), cut flowers (2,000 tonnes) and foliage. The sector has developed through private initiatives. There are two categories of traders: large farmers to the number of 17 720 hectares in the open and 20 hectares in shade houses and small producers in number 43, grouped together in a cooperative called FLORACI operating about 140 hectares. The annual export is estimated at 1,300 tons. Ornamental horticulture is practiced in the southern half especially in the vicinity of Abidjan.

Secondly, Ivory Coast has many mineral resources. The mining and petroleum sector is experiencing a resurgence of activity. With more than 1% of the Ivorian GDP, mines are a sector in the making. In addition to manganese is by far the most exploited mining resources, including 2 gold deposits only 10 are operated, nickel, diamonds, iron, cobalt, and tantalite are part of an ambitious 2,010-year plan -2012 in preparation since 2009. The Ivorian government aspires annual output of 21 tons of gold, one million carats of diamonds, 24 million tons of iron...

This area is full of important and diverse opportunities:

- Draft Nickel and iron Biankouma and Touba
- Operation of the Ity gold mine in Zouan Hounien

- **Oil**

With its oil and gas reserves estimated at 100 million barrels and 30 billion m<sup>3</sup>, respectively, the hydrocarbon sector begins to take an important place in the Ivorian economy. This sector is a source of growth and provides opportunities for investment.

Exploration / Production

- Eight (8) exploration blocks still available.

Refining

- Extension of the refinery in Abidjan (an increase of 30% of the current capacity);

- Construction of multi-sea pipeline products.

Storage / Transport

- Increased gas storage capacity;
- Construction of a pipeline of petroleum products Abidjan-Bouaké.

#### Distribution

- Extension of the natural gas distribution network in the industry;
- Construction of gas stations in the shadows.

The last one is the industrial sector. The promotion of the private sector is a cross-action, which involves many departments, each capable of contributing to the improvement of the business environment, and thereby to promote the emergence of a strong private sector, dynamic and competitive. Ivory Coast has a highly profitable portfolio. These include:

#### **Non agro-industrial sector**

- Construction materials
- Recycling unit waste plastics for the manufacture of packaging,
- Recycling Unit cardboard and paper,
- Paper production unit based cellulosic waste
- Recycling Unit Used broken glasses,
- Manufacturing unit hollow and pressed glass,

#### **Dies pharmaceutical and para**

- Production unit extracts of African flavors "Project Afriparfum"
- Culture Development Unit and the use of spirulina "South Project"
- Production unit of Ivorian food fortification "Project Foralivoire"
- Pharmaceutical excipients Unit "Project Medexip"
- Mobile unit extraction of essential oils from medicinal plants "Project Mobilhuile"

#### **The capital goods sector**

- Industrial Production Unit sulfuric acid.

#### **The mining industry**

#### **Improving product quality and control standards**

#### **Availability of raw materials in general**

Below is briefly introduce the investment climate in Cote d'Ivoire throughout the reasons why foreign investors have to make an investment in the country and the key sectors in which such investments can be a benefit for them.

#### **B- Investments organization in Ivory Coast**

The Centre of Investments Promotion in Cote d'Ivoire (CEPICI) is the only one organization habilitated to assure the promotion of investments. The CEPICI is the one-stop shop for direct investment in Ivory Coast, and, it brings together, coordinates and streamlines all government initiatives and actions for the promotion of investment and private sector development<sup>15</sup>. Under the authority and supervision of the President of the Republic, the Investment Promotion Centre in Côte d'Ivoire (CEPICI) is a public institution of administrative nature. The CEPICI missions are cross-cutting which gives it a role dedicated to supporting the private sector and the interface between it and the State, in order to increase private investment in Ivory Coast. The role and missions of the center consist of:

Ensure, through its one-stop shop for investment:

- Facilitation of administrative formalities relating to the creation, operation, transmission or expansion of businesses. Administrations and organizations involved in these procedures are, for this purpose, grouped within the CEPICI;
- contribution to the reduction of cost and time for these procedures;
- receiving and processing applications from investors for the benefit of the advantages of the Investment Code;
- receiving and processing applications from investors for obtaining industrial land;

2. To instruct, to issue and revoke approvals for investment;

3. To ensure the promotion and attraction of domestic and foreign direct investment in Ivory Coast, through:

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<sup>15</sup>Article 4 of Decree No. 2012-867 of 06 September 2012 on establishing CEPICI

- the organization, both in Ivory Coast and abroad, of fairs and business promotion events;
- promoting public-private partnership with national and foreign investors;
- research and identification of investors and the development of partnerships;
- participation in the promotion of investment in Ivory Coast in connection with the embassies and consulates of Ivory Coast and abroad;
- the business communication and marketing actions of Ivory Coast as a destination for investment;
- reconciliation of foreign investors with developers of Small and Medium Enterprises / Small and Medium Industries to promote national development thereof;
- the establishment of an amusement device of Diaspora investments;
- the creation and implementation of a monitoring and evaluation system of all investments that received the benefits of the Investment Code;
- Ensure generally, in relation to the government and public and private bodies, the implementation of the provisions of the Investment Code.

4. Contribute to all actions that contribute to the improvement of the business environment and make proposals to the Government;

5. To contribute to the implementation, as Agent execution, programs of the Government and development partners to support the private sector in Côte d'Ivoire;

6. To be a meeting platform for exchange and dialogue between the public and the private sector to initiate and make proposals to the Government to address the concerns of the private sector.

CEPICI was awarded on September 24, 2015, in New York, the prize of the Best Investment Promotion Agency of the Year 2015 or "Investment Promotion Agency of the Year" by Africa Investor.

### III-LEGAL GUARANTEES GRANTED TO FOREIGN INVESTORS

When foreign investors make investments in a state, they need some securities measures, some legal guarantees for their investments in that state. Besides the Convention on the Settlement of Investment Disputes (B), the State of Ivory Coast offers some guarantees to foreign investors through its Investment code (A).

A- Ivory Coast investment Code: jurisdiction of Ivorian courts or arbitral tribunal

The first investment code was established in 1995<sup>16</sup> then modified in 2012 by an ordonnance<sup>17</sup> of the president. The investment code states the Ivorian court or arbitral tribunal have jurisdiction for all disputes between the State of Ivory Coast and all foreign investors if the parties cannot find an amicable settlement and haven't decided to apply a special procedure to settle the dispute; and that settlement shall be made following the investment treaties concluded between the State of Ivory Coast and the foreign investor country.<sup>18</sup>

#### 1-Ivorian Court Jurisdiction

Even if there are not too many investment disputes cases solved by Ivorian Court, two important cases can talk about. In fact, when the court has been seized in an investment dispute between the State of Ivory Coast and a foreign company<sup>19</sup>, the judge declared receivable the appeal of the Societe PRODEXI-CI. In another case, the judge has rejected the appeal of Societe SICAFCA-CI Vs Societe J. ARON and Company.

Following article 20 of Ivorian investment code in case of investments disputes between the State of Cote d'Ivoire and foreign investors, the parties have the possibility to settle the dispute amicably. That was the case when The Government of Cote d'Ivoire, Western Wireless International Ivory Coast LLC, Modern Africa Two LLC, and Wireless Communications Technology Inc. were pleased to announce that on May 17, 2007, they have signed a Settlement and Release Agreement with each of the above-mentioned companies and that their investment dispute relating to Ivorian telecommunications company Cora de Comstar SA ("Cora") has been amicably settled to the satisfaction of each party.<sup>20</sup>

Besides the Court, the Arbitral tribunal also can settle a dispute between the State of Ivory Coast and a foreign investor pursuant investments protection treaties between the State of Ivory Coast and the country of that

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<sup>16</sup> LOI N° 95-620 DU 3 AOUT 1995 PORTANT CODE DES INVESTISSEMENTS

<sup>17</sup> ORDONNANCE N° 2012 – 487 DU 07 JUIN 2012 PORTANT CODE DES INVESTISSEMENTS

<sup>18</sup> Article 20 ,COTE D'IVOIRE INVESTMENT CODE

<sup>19</sup> Cour d'Appel d'Abidjan, arrêt N 486 du 20 Avril 2004, Societe PRODEXI-CI Vs Societe RAIMUND COMMODITIES INC, Actualités Juridiques, n 48 2005.P.126.note Komoin François.

<sup>20</sup> The Government of Cote d'Ivoire,

Western Wireless International Ivory Coast LLC, Modern Africa Two LLC Vs Wireless Communications Technology Inc., Embassy of the Republic of Cote d'Ivoire

investor.<sup>21</sup>

## 2- Jurisdiction of Arbitral Tribunal

The jurisdiction of the arbitral tribunal is established following investment protection treaties concluded between the State of Ivory Coast and the State the foreign investor come from in one hand and in another If there are a pre-establish conciliation and arbitration procedure between the parties.

Ivory Coast has signed about 11 bilateral investment treaties (BITs) but only 4 are still in force, 10 International Investment Agreements (IIAs) that 7 are still in force and also 4 International Related Instruments (IRIs<sup>22</sup>). Among these international investment protection treaties, there are some major like the United Nations Commission on International Trade Law. UNCITRAL Rules on Transparency in Treaty-based investor-state Arbitration concluded on 1 April 2014; the United Nation Conference on Trade and Development (UNCTAD).

Ivory Coast had a specific domestic law on arbitration<sup>23</sup> which has been replaced by the OHADA provisions on arbitration of 1999. According to Dr. Werner Jahnel<sup>24</sup> analysis in an assessment report, no distinction is made between the laws applicable to national or international arbitration in Ivory Coast. However, as shown below, depending on whether the arbitration is administered under the CCJA Rules or an ad hoc arbitration under the Uniform Act on Arbitration (or institutional arbitration other than CCJA arbitration)<sup>25</sup>, very different legal norms apply and different authorities are competent.<sup>26</sup> Ivory Coast is the contracting State of OHADA and all adopted on the same day both the CCJA Rules and a Uniform Act on Arbitration (the “Uniform Act on Arbitration” or the “Uniform Act”) which sets out the fundamental principles of arbitration proceedings thereunder.

The rules of the Uniform Act apply to ad hoc arbitrations where the seat is located in one of the OHADA Contracting States<sup>27</sup> or to institutional arbitration if the arbitration agreement does not refer to CCJA arbitration (“OHADA Uniform Act arbitration”). It must be emphasized that there can be no joint application of the CCJA Rules and of the Uniform Act. The CCJA arbitration system is indeed autonomous and therefore must be strictly separated from OHADA Uniform Act arbitration.<sup>28</sup>

### B-The International Centre for Settlement of Investment Dispute (ICSID)

The primary purpose of the ICSID Convention is to promote foreign investment, it provides facilities for conciliation and arbitration of investment disputes between the Contracting States and nationals of other Contracting States. The ICSID has a large scope of jurisdiction which can also face some restrictions.

#### 1- The scope of ICSID jurisdiction

The opening paragraph of ICSID Convention article 25<sup>29</sup>, defines the scope of ICSID jurisdiction. This scope is relative to the nature of the dispute<sup>30</sup>, to the nationality<sup>31</sup> of parties to the dispute. The key issue for natural

<sup>21</sup> Article 20 Cote d'Ivoire Investment Code

<sup>22</sup> <http://investmentpolicyhub.unctad.org/IIA/CountryBits/50>

<sup>23</sup> Law No 93-671 of 3 August 1993 on Arbitration. Prior to this law, French law was referred to as *ratio scripta* but there was no arbitration law in the Côte d'Ivoire, neither before nor after independence

<sup>24</sup> Dr Werner Jahnel author of Assessment Report of arbitration Centre's in Côte d'Ivoire, Egypt and Mauritius

<sup>25</sup> In case parties have decided a pre-establish arbitration and conciliation procedure; Article 20 Cote d'Ivoire investment code

<sup>26</sup> For a general presentation of the CCJA Rules and the Uniform Act on Arbitration, see for example P. Leboulanger, “Présentation générale des actes sur l'arbitrage”, in P. Fouchard (dir.) L'OHADA et les perspectives de l'arbitrage en Afrique, 2000, pp. 63 to 88.

<sup>27</sup> Uniform Act on Arbitration, Article 1

<sup>28</sup> The two systems are based on different sources of law, as was noted in the CCJA Decision No 045/2008, SONAPRA v SHB, 17 July 2008, Le Juris Ohada, No 4/2008, p. 60 (also accessible on <http://www.ohada.com/jurisprudence/ohadata/J-09-83.html>). A brief overview of the differences between the two systems can be found in B. Le Bars, *Droit des sociétés et de l'arbitrage international, Pratique en droit de l'Ohada*, 2011, pp. 132 to 134. See also P. Meyer, “Le droit de l'arbitrage dans l'espace OHADA dix ans après l'Acte Uniforme”, in *Revue de l'Arbitrage*, 2010, No 3, p. 481, paragraph 13.

<sup>29</sup> (1) The jurisdiction of the center shall extend to any legal dispute arising directly out of an investment, between a Contracting State designated to the Centre by that State) and a national of another Contracting State, which the parties to the dispute consent in writing to submit to the Centre. When the parties have given their consent, no party may withdraw its consent unilaterally”.

<sup>30</sup> (a) “The dispute must be a legal dispute and arise out of an investment”. Chapter 1 Guide to ICSID Arbitration reports

<sup>31</sup> (b) “the dispute must involve, on the one hand, either a Contracting State or one of its subdivisions or agencies specifically designated to ICSID and, on the other hand, a national of another Contracting State.” Chapter 1 Guide to ICSID Arbitration reports.

See Article 25(2) (a) any natural person who had the nationality of a Contracting State other than the State party to the dispute on the date on which the parties consented to submit such dispute to conciliation or arbitration as well as on the



persons is their country of citizenship while a juridical person must, in general, have the nationality of a Contracting State other than the host State on the date of consent to ICSID arbitration. Finally the consent<sup>32</sup>; it is the cornerstone of the jurisdiction of the Centre, the explicit expression of acceptance of ICSID arbitration<sup>33</sup>. The consent must be in writing and may take in respect of future disputes and in respect of existing disputes. Such scope of ICSID jurisdiction may know some restrictions concerning the kind of disputes the Centre can deal with.

## 2- Restriction to the ICSID jurisdiction

According to Article 25(4) of ICSID Convention: “Any Contracting State may, at the time of ratification, acceptance or approval of this Convention or at any time thereafter, notify the Centre of the class or classes of disputes which it would or would not consider submitting to the jurisdiction of the Centre. The Secretary-General shall forthwith transmit such notification to all Contracting States. Such notification shall not constitute the consent required by paragraph (1)”. Host States and investors may restrict the scope of their agreement to arbitrate disputes before ICSID by stipulating that only certain categories of dispute may be subject to ICSID jurisdiction<sup>34</sup>

## II. Conclusion

Ivory Coast has some attractive sectors in which investor can make investments. The country is safe and is becoming more and more developed. Just some few cases of investment dispute can be listed due to the safety of the country, the effectiveness of the justice and the important role of the investments promotion center. Anyway, in case of investment dispute with the State of Ivory Coast, foreign investors can still claim their rights according to international norms such as the ICSID Convention and national norm like Ivory Coast investment code. This code grant to foreign investors the right to seized Ivorian court and Arbitral tribunal in case of investment dispute with the State of Ivory Coast.

However, some restructuration of the country juridical system and the multiplication of investment promotion and protection organization are needed in order for foreign investors to have more guarantees and securities for their investments in the host State of Ivory Coast.

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date on which the request was registered pursuant to paragraph(3) of article 28 or paragraph(3) of Article 36, but does not include any person who on either date also had the nationality of the Contracting State party to the dispute; and (b) “any juridical person which had the nationality of a Contracting State other than the State party to the dispute on the date on which the parties consented to submit such dispute to conciliation or arbitration and any juridical person which had the nationality of the Contracting State party to the dispute on that date and which, because of foreign control, the parties have agreed should be treated as a national of another Contracting State for the purposes of this Convention”.

<sup>32</sup>(C)“all parties to the dispute must consent in writing to have the investment dispute submitted to ICSID”. Chapter1 Guide to ICSID Arbitration reports.

<sup>33</sup>Report of the Executive Directors of ICSID Centre.

<sup>34</sup>Model clause

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