



# HERBERT SMITH FREEHILLS GUIDE ON DISPUTES RESOLUTION IN AFRICA FINDS DISPUTES IN AFRICA INCREASINGLY HANDLED 'ONSHORE'

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Firm news

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Increasingly disputes involving African parties are being resolved in Africa, through regional African arbitral institutions or local courts, rather than through foreign litigation or arbitration outside the Continent, according to Herbert Smith Freehills in its Guide to Dispute Resolution in Africa.

The third edition of the publication, launched today, has found that historically the majority of disputes have been resolved 'offshore' through foreign litigation or through arbitration under a set of international arbitral rules with an 'offshore' seat. But, since the last edition of the Guide was published in 2016, there is a clear trend towards formal dispute resolution in Africa and our lawyers predict this trend will only continue.

*"Historically, the majority of disputes in Africa have been solved through commercial settlement, with companies and States alike preferring negotiation over the uncertainties of litigation or arbitration. But with the sharp increase in foreign investment across an array of sectors and across the continent, the scope for formal dispute resolution in Africa has risen sharply,"* said Jonathan Ripley-Evans, a Director in our Johannesburg office, who has led the publication of the Guide together with Laurence Franc-Menget, a Partner in the firm's Paris office.

Laurence added: *"Even where litigation or arbitration takes place outside Africa, onshore litigation may still be required when seeking to enforce an international judgment or arbitral award against assets held in an African jurisdiction, or when dealing with local regulators. As such, a sound understanding of the legal systems pervading Africa and the specific laws governing the resolution of disputes within each of the 54 jurisdictions is essential and this is the purpose of this guide."*

Africa's legal landscape comprises a patchwork of legal systems. This guide, which is the first-of-its-kind, sets out dispute resolution procedures and trends in every one of Africa's 54 diverse jurisdictions. Using questionnaires that it had prepared for the previous editions, the firm draws on the combined experience of its Africa disputes lawyers from its London, Paris and Johannesburg offices, together with experienced local counsel in each jurisdiction.

Some other key developments highlighted by the report include:

- As demand for arbitration services have increased, many legislative reforms have taken place in African Countries in order to establish themselves as safe arbitral seats. This is most notable in South Africa, Ethiopia, Ghana and Tanzania, who have all enacted new arbitration laws
- The New York convention is now ratified in 42 of Africa's 54 jurisdictions meaning enforcement of arbitral awards in those jurisdictions should be more straightforward. Since the last edition of this Guide, the New York Convention has entered into force in Angola, Cabo Verde, Ethiopia, Malawi, Seychelles, Sierra Leone and Sudan.
- Since the outbreak of COVID-19, there has been an unprecedented need for access to digital technology. There have been significant improvements in connectivity and there are many ongoing projects to increase Africa's digital infrastructure.
- AfCFTA has been signed by 54 countries and ratified by 28. The purpose of the AfCFTA is both to increase intra-African trade by the creation of a common market and also enhance the competitiveness of African countries in the global market.

*"As Africa's investment star continues to rise, it is inevitable that this will bring with it a need to resolve disputes - whether through formal processes or commercial settlement. This guide is the first port of call not just for those facing disputes in Africa, but for anyone who is considering investing in unfamiliar territory and would like to better understand the legal landscape of that country,"* added Laurence.

To view the full guide, please click [here](#).

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