



MINISTÈRE DE L'ÉCONOMIE
ET DES FINANCES
RÉPUBLIQUE DU BÉNIN

Protecting minority investors

 **DOING
BUSINESS**
in **BENIN**



July 2021

APTEEx
Agence de Promotion des
Investissements et des Exportations

Agenda

Objectives

Discuss questions governed by Benin's domestic legislation to:

- 1 Clarify on the legal basis for the given questions
- 2 Clarify on the interpretation of the legal basis
- 3 Clarify on application of the law – in cases of ambiguity

Agenda

Questions to be discussed

Ease of shareholder suits index

Can the plaintiff obtain any documents from the defendant and witnesses at trial?

Can the plaintiff request categories of documents from the defendant without identifying specific ones?

Is the level of proof required for civil suits lower than that of criminal cases?

Can shareholder plaintiffs recover their legal expenses from the company?

1. Documents available to the plaintiff during trial

Ease of shareholder suits index

Question: *Can the plaintiff obtain any documents from the defendant and witnesses at trial?*

Response recorded in DB 2021: Documents that directly prove specific facts in the plaintiff's claim

Response claimed by Benin: Any information relevant to the subject matter of the claim

Legal basis cited by the World Bank: Articles 121 & 209 – 219 of the Civil Procedure Code (Code de Procédure Civile Commerciale Sociale Administrative – CPCCSAC)

Legal basis cited by Benin: Articles 10 - 12 & 209 – 219 of the Civil Procedure Code (Code de Procédure Civile Commerciale Sociale Administrative – CPCCSAC) and more precisely Article 215, paragraph 2 of the Civil Procedure Code (Code de Procédure Civile Commerciale Sociale Administrative – CPCCSAC) as modified by the Law of Modernization of the Justice

Benin's argument:

- Benin argues that based on the legal texts cited, the plaintiff can obtain any documents from the defendant and witnesses at trial and is not limited to just the documents that directly prove specific facts in the plaintiff's claim.
- Paragraph 2 of Article 215 allows the possibility of the plaintiff to request the judge to order the production of any document relevant to the subject matter of the claim

2. Requesting documents by category rather than name

Ease of shareholder suits index

Question: *Can the plaintiff request categories of documents from the defendant without identifying specific ones?*

Response recorded in DB 2021: No

Response claimed by Benin: Yes

Legal basis cited by the World Bank: Article 215 of the Civil Procedure Code (Code de Procédure Civile Commerciale Sociale Administrative – CPCCSAC)

Legal basis cited by Benin: Articles 10 - 12 & 215, paragraph 2 of the Civil Procedure Code (Code de Procédure Civile Commerciale Sociale Administrative – CPCCSAC) as modified by the Law of Modernization of the Justice

Benin's argument:

- Benin argues that though the production of evidence must always be ordered by a judge, this is upon the request of one of the parties in the case (the plaintiff or the defendant).
- Paragraph 2 of Article 215 allows the possibility of the plaintiff to request the judge to order the production of evidence, **without providing specific details.**
- The judge independently assesses the relevance of all requests for evidence.

3. The level of proof in civil vs criminal cases

Ease of shareholder suits index

Question: *Is the level of proof required for civil suits lower than that of criminal cases?*

Response recorded in DB 2021: No

Level of proof in civil cases: Intimate conviction and preponderance of probabilities.

Level of proof in criminal cases: Intimate conviction and preponderance of probabilities.

Response claimed by Benin: Yes

Level of proof in civil cases: Intimate conviction and preponderance of probabilities.

Level of proof in criminal cases: Beyond any reasonable doubt

Legal basis cited by the World Bank: Articles 768-1 of the Civil Procedure Code (Code de Procédure Civile Commerciale Sociale Administrative – CPCCSAC) modified by the Law of Modernization of the Justice.

Legal basis cited by Benin: Article 5 of the AUDCG, Articles 768-1 of the Civil Procedure Code (Code de Procédure Civile Commerciale Sociale Administrative -CPCCSAC) modified by the Law of Modernization of the Justice, Article 17 of the Constitution of Benin, Article 7 of the African Charter on Human and Peoples' Rights, Point III of the preliminary title of the Beninese code of penal procedure.

Benin's argument:

- The notion of « level of proof » or « standard of proof » is not explicitly defined in Civil law systems such as Benin.
- However, in **commercial (and civil) matters** there is « **free evaluation of evidence** » (la preuve est libre) and the judge sovereignly examines the evidence – which is equivalent to a standard of proof of « preponderance of probabilities ».
- On the other hand, **the standard of proof applied in criminal cases** is « **beyond any reasonable doubt** ». The burden of proof here rests with the plaintiff who must overturn the presumption of innocence of the defendant, who must be acquitted if even a single piece of evidence casts doubt on their guilt.

3. The level of proof in civil vs criminal cases

Illustrative examples

Case type: Civil

Jurisdiction: Supreme Court of Benin

Date: 22 June, 2018

Context: The matter was regarding the seizure of assets of a company – Marlan’s Cotton Industries (MCI-SA) by the Centre of Securitization of Payments and Recovery (CSPR-GIE) against non-payment of a loan.

Result: In accordance with a preponderance of probabilities system, the court used its **sovereign powers of appreciation** to judge that the papers produced by CSPR-GIE were insufficient to prove the existence of the debts of MCI-SA, and thus rejected its appeal against the suspension of the seizures of the assets of MCI-SA.

Source: <https://juricaf.org/arret/BENIN-COURSUPREME-20180622-43>

Case type: Criminal

Jurisdiction: Court of Appeals of Cotonou

Date: 14 December, 1990

Context: The matter was regarding the reception of funds in the context of the exercise of a mandate.

Result: The evidence was insufficient to unequivocally prove the case of the plaintiff. Hence, the Appeals Court overturned the acquittal of the Correctional Court on the grounds that it was not sufficiently motivated, but also acquitted the defendant on the basis of benefit of doubt, and that the claims of the plaintiff were unfounded.

Source: <https://juricaf.org/arret/BENIN-COURDAPPELDECOTONOU-19901214-22>

Case type: Criminal

Jurisdiction: Supreme Court of Benin

Date: 22 December, 2017

Context: The matter was regarding a conviction for international high-risk drug trafficking and was brought before the Supreme court for annulment on the grounds of violation of the law, lack of legal basis, contradiction of reasons and distortion of the facts.

Result: Given the high level of proof required in criminal cases (beyond any reasonable doubt) the judgement of the lower court was overturned and the defendants were acquitted on the basis of benefit of the doubt.

Source: <https://juricaf.org/arret/BENIN-COURSUPREME-20171222-47>

4. Recovery of legal expenses by the plaintiff

Ease of shareholder suits index

Question: *Can shareholder plaintiffs recover their legal expenses from the company?*

Response recorded in DB 2021: Yes, if successful

Response claimed by Benin: Yes, regardless of the outcome

Legal basis cited by the World Bank: Articles 713 – 720 of the Civil Procedure Code (Code de Procédure Civile Commerciale Sociale Administrative – CPCCSAC); Article 171 of the AUSCGIE.

Legal basis cited by Benin: Article 714 of the Civil Procedure Code (Code de Procédure Civile Commerciale Sociale Administrative – CPCCSAC), Article 171 of the AUSCGIE.

Benin's argument:

- According to Article 714 of the CPCCSAC and Article 171 of the AUSCGIE, the fees and honorariums arising from collective lawsuits, in cases where multiple shareholders are involved, are paid by the company.

APPENDIX

Selected extracts from the Beninese Code of Civil Procedure

Original and translation

ORIGINAL TEXT

SECTION IV DES PREUVES

Article 10 : Il incombe à chaque partie de prouver, conformément à la loi, les faits allégués au soutien de sa prétention.

Article 11 : Le juge a le pouvoir d'ordonner d'office toutes les mesures d'instruction légalement admissibles.

Article 12 : Les parties sont tenues d'apporter leur concours aux mesures d'instruction.

Il appartient au juge de tirer toute conséquence d'une abstention ou d'un refus des parties.

Si une partie détient un élément de preuve, le juge peut, à la requête de l'autre partie, lui enjoindre de le produire, à peine d'astreinte. Il peut également à la requête de l'une des parties, demander, sous la même peine, la production de tous documents détenus par des tiers s'il n'existe pas d'empêchement légitime.

ENGLISH TRANSLATION

SECTION IV EVIDENCE

Article 10: It is incumbent upon each party to prove, in accordance with the law, the facts alleged in support of its claim.

Article 11: The judge has the power to order ex officio all legally admissible measures of inquiry.

Article 12: The parties are obliged to cooperate in the investigative measures. It is up to the judge to draw all the consequences of an abstention or refusal by the parties.

If a party has evidence, the judge may, at the request of the other party, order it to produce it, under penalty of a fine. He may also, at the request of one of the parties, request, under the same penalty, the production of all documents held by third parties if there is no legitimate impediment.

Source: http://data.over-blog-kiwi.com/0/57/30/82/201309/ob_4353be_code-de-procedure-civile-beninois-vote.pdf

Selected extracts from the Beninese Code of Civil Procedure

Original and translation

ORIGINAL TEXT

Article 209 : La partie qui ne restitue pas les pièces qui lui ont été communiquées en original peut y être contrainte éventuellement sous astreinte.

Article 210 : L'astreinte peut être liquidée par le juge qui l'a prononcée.

Paragraphe 2 : De l'obtention des pièces détenues par un tiers

Article 211 : Lorsqu'au cours d'une instance, une partie entend faire état d'un acte auquel elle n'a pas été partie ou d'une pièce détenue par un tiers dont elle ne peut obtenir une expédition ou la production, elle peut demander au juge saisi de l'affaire d'ordonner la délivrance de l'expédition ou la production de la pièce.

Article 212 : La demande est faite sans forme. Le juge, s'il estime cette demande fondée, ordonne la délivrance ou la production de l'acte ou de la pièce, en original, en copie ou en extrait selon le cas, dans les conditions et sous les garanties qu'il fixe, au besoin à peine d'astreinte.

ENGLISH TRANSLATION

Article 209: The party who does not provide the documents that have been requested from them in original may be forced to do so, possibly under a fine.

Article 210: The fine may be liquidated by the judge who pronounced it.

Paragraph 2: Obtaining documents held by a third party

Article 211: When, in the course of proceedings, a party intends to refer to a document to which he was not a party or to a document held by a third party of which he cannot obtain a copy or the production, he may request the judge hearing the case to order the delivery of the copy or the production of the document.

Article 212: The request is made without form. The judge, if he considers the request to be well-founded, shall order the delivery or production of the original, copy or extract of the document, as the case may be, under the conditions and under the guarantees which he shall determine, if necessary under penalty of a fine.

Source: http://data.over-blog-kiwi.com/0/57/30/82/201309/ob_4353be_code-de-procedure-civile-beninois-vote.pdf

Selected extracts from the Beninese Code of Civil Procedure

Original and translation

ORIGINAL TEXT

Article 213 : La décision du juge est exécutoire par provision, sur minute.

Article 214 : En cas de difficulté, ou s'il est invoqué quelque empêchement légitime, le juge qui a ordonné la délivrance ou la production peut, sur la demande sans forme qui lui en serait faite, rétracter ou modifier sa décision. Le tiers peut interjeter appel de la nouvelle décision dans les quinze (15) jours de son prononcé.

Paragraphe 3 : De la production des pièces détenues par une partie

ENGLISH TRANSLATION

Article 213: The decision of the judge is enforceable by provision, on the record.

Article 214: In case of difficulty, or if any legitimate impediment is invoked, the judge who ordered the delivery or production may, upon request without form, retract or modify his decision. The third party may appeal the new decision within fifteen (15) days of its pronouncement.

Paragraph 3: Production of documents held by a party

Source (s): http://data.over-blog-kiwi.com/0/57/30/82/201309/ob_4353be_code-de-procedure-civile-beninois-vote.pdf
<https://www.tribunalcommercecotonou.bj/documentation/textes-nationaux/1896-loi-n-2020-08-du-23-avril-2020-portant-modernisation-de-la-justice/file>

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Selected extracts from the Beninese Code of Civil Procedure

Original and translation

ORIGINAL TEXT

Article 215 (modifié par la loi de la Modernisation de la Justice) : Les demandes de production des éléments de preuve détenus par les parties sont faites, et leur production a lieu, conformément aux dispositions des articles 211 et 212, le cas échéant sous peine d'astreinte.

Paragraphe 4 : De la communication de pièces au ministère public.

L'article 215 est complété d'un deuxième, troisième, et quatrième alinéas ainsi qu'il suit:

« Le juge saisi peut ordonner à une partie ou à un tiers, la communication de documents susceptibles de contenir la preuve d'un fait pertinent, même sans que leur nature soit indiquée avec précision.

Dans ce cas, le tiers peut faire valoir ses observations par écrit ou solliciter d'être entendu en chambre du conseil.

Les parties sont autorisées à prendre connaissance de celles-ci et à y répondre.

Lorsque le document doit être produit en copie, le jugement indique, en outre, l'identité de l'autorité qui doit en certifier l'exactitude ainsi que, le cas échéant, la provision à verser par la partie demanderesse sur l'incident, entre les mains du greffier ».

ENGLISH TRANSLATION

Article 215 (modified by the Law of Modernization of the Justice) : Requests for the production of evidence held by the parties shall be made, and their production shall take place, in accordance with the provisions of articles 211 and 212, under penalty of a fine if necessary.

Paragraph 4: Communication of documents to the Public Prosecutor's Office.

A second, third and fourth paragraph is added to article 215 as follows
"The judge seized of the case may order a party or a third party to disclose documents that may contain evidence of a relevant fact, even if their nature is not precisely indicated.

In this case, the third party may submit his observations in writing or request to be heard in chambers.

The parties are allowed to take cognizance of these observations and to respond to them.

When the document must be copied, the judgment also indicates the identity of the authority who must certify its accuracy and, if applicable, the advance to be paid by the plaintiff on the incident, into the hands of the clerk of the court".

Source (s): http://data.over-blog-kiwi.com/0/57/30/82/201309/ob_4353be_code-de-procedure-civile-beninois-vote.pdf

<https://www.tribunalcommercecotonou.bj/documentation/textes-nationaux/1896-loi-n-2020-08-du-23-avril-2020-portant-modernisation-de-la-justice/file>

Selected extracts from the Beninese Code of Civil Procedure

Original and translation

ORIGINAL TEXT

Article 216 : Dans toutes les causes, le ministère public peut demander communication des pièces ou copie du dossier de la procédure à charge d'en faire retour sous huitaine.

La communication est faite à la diligence du juge par transmission d'une photocopie des éléments sollicités.

Article 217 : Lorsqu'il y a eu communication, le ministère public doit être avisé de la date de l'audience.

Paragraphe 5 : Du dépôt et du retrait de pièce

Article 218 : Les pièces que les parties déposent au dossier doivent l'être en original ou en copies certifiées conformes à l'original.

Le juge saisi de l'affaire peut, à tout moment, se faire représenter l'original de la pièce déposée.

Article 219 : En aucun cas, les pièces ou leurs copies ne doivent être retirées du dossier.

ENGLISH TRANSLATION

Article 216: In all cases, the Public Prosecutor's Office may request communication of documents or copies of the file of the proceedings on the condition that they are returned within a week.

The communication is made at the diligence of the judge by transmission of a photocopy of the requested elements.

Article 217: When there has been communication, the public prosecutor must be notified of the date of the hearing.

Paragraph 5: Filing and withdrawal of documents

Article 218: The documents that the parties deposit in the file must be in original or in certified copies of the original.

The judge hearing the case may, at any time, be shown the original of the document filed.

Article 219: In no case may the documents or their copies be removed from the file.

Source: http://data.over-blog-kiwi.com/0/57/30/82/201309/ob_4353be_code-de-procedure-civile-beninois-vote.pdf

Selected extracts from the Beninese Code of Civil Procedure

Original and translation

ORIGINAL TEXT

CHAPITRE II

DE LA LIQUIDATION DES DEPENS ET DES FRAIS

Article 714 : Dans les affaires ou aucune partie n'a constitué un avocat, la liquidation des dépens et frais est faite par le jugement qui l'adjuge à la demande des parties.

Article 768-1 : (modifié par la loi de modernization de la justice)

Les tribunaux de première instance et les tribunaux de commerce comprennent au moins une chambre des petites créances pour connaître des réclamations de créances dont la valeur principale n'excède pas cinq millions (5.000.000) de francs CFA.

La chambre des petites créances ne peut connaître des affaires intéressant :

- le statut personnel;
- l'état et la capacité des personnes physiques;
- les atteintes à la vie privée et aux droits de la personnalité

La preuve est libre devant la chambre des petites créances.

ENGLISH TRANSLATION

CHAPTER II

LIQUIDATION OF COSTS AND EXPENSES

Article 714: In cases where no party has constituted a lawyer, the liquidation of costs and expenses shall be made by the judgment which awards them at the request of the parties.

Article 768-1 : (modified by the law of modernization of justice)

The courts of first instance and the commercial courts include at least one small claims chamber to hear claims whose principal value does not exceed five million (5,000,000) CFA francs.

The small claims chamber may not hear cases concerning

- personal status
- the status and capacity of natural persons
- violations of privacy and personality rights

Evidence is free before the Small Claims Chamber.

Source (s): http://data.over-blog-kiwi.com/0/57/30/82/201309/ob_4353be_code-de-procedure-civile-beninois-vote.pdf

<https://www.tribunalcommercecotonou.bj/documentation/textes-nationaux/1896-loi-n-2020-08-du-23-avril-2020-portant-modernisation-de-la-justice/file>

Selected extracts from the OHADA Uniform Act on General Commercial Law (AUDCG)

Original and translation

ORIGINAL TEXT

Article 5

Les actes de commerce se prouvent par tous moyens même par voie électronique à l'égard des commerçants. Tout commencement de preuve par écrit autorise le commerçant à prouver par tous moyens contre un non-commerçant. Les livres de commerce tenus en application des dispositions du présent Acte uniforme sont admis par le juge pour constituer une preuve dans les conditions prévues ci-dessus. Les livres de commerce et les états financiers de synthèse constituent des moyens de preuve. Dans le cours d'une contestation, la représentation des livres de commerce et des états financiers de synthèse peut être ordonnée par le juge, même d'office, à l'effet d'en extraire ce qui concerne le litige.

ENGLISH TRANSLATION

Article 5

Commercial acts can be proven by any means, even by electronic means with regard to merchants. Any beginning of proof by writing shall authorize the trader to prove by any means against a non-trading party. Business books kept in accordance with the provisions of this Uniform Act shall be admitted by the judge as evidence under the conditions laid down above. Trade books and summary financial statements shall constitute means of proof. In the course of a dispute, the judge may order the representation of the books of commerce and summary financial statements, even ex officio, in order to extract from them what concerns the dispute.

Source : <http://www.droit-afrique.com/upload/doc/ohada/Ohada-Acte-Uniforme-2010-droit-commercial.pdf>

Selected extracts from the OHADA Uniform Act on the rights of commercial companies and grouping of economic interests (AUSCGIE)

Original and translation

ORIGINAL TEXT

Article 171

Les frais et honoraires occasionnés par l'action sociale, lorsqu'elle est intentée par un ou plusieurs associés, sont avancés par la société.

ENGLISH TRANSLATION

Article 171

The costs and fees incurred by the social action, when it is initiated by one or more partners, are advanced by the company.

Source : <http://www.droit-afrique.com/upload/doc/ohada/Ohada-Acte-Uniforme-2014-Societes-commerciales-GIE.pdf>

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Selected extracts from the Constitution of Benin

Original and translation

ORIGINAL TEXT

Article 17

Toute personne accusée d'un acte délictueux est présumée innocente jusqu'à ce que sa culpabilité ait été légalement établie au cours d'un procès public durant lequel toutes les garanties nécessaires à sa libre défense lui auront été assurées. Nul ne sera condamné pour des actions ou omissions qui, au moment où elles ont été commises, ne constituaient pas une infraction d'après le droit national. De même, il ne peut être infligé de peine plus forte que celle qui était applicable au moment où l'infraction a été commise.

ENGLISH TRANSLATION

Article 17

Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his free defense. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national law at the time when it was committed. Nor shall a heavier penalty be imposed than that which was applicable at the time the offence was committed.

Source : <https://mjp.univ-perp.fr/constit/bj1990.htm>

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Selected extracts from the Code of Penal Procedure in Benin

Original and translation

ORIGINAL TEXT

Livre préliminaire des principes généraux de la procédure pénale

III – Toute personne suspectée ou poursuivie est présumée innocente tant que sa culpabilité n'a pas été établie. Les atteintes à sa présomption d'innocence sont prévenues, réparées, et réprimées dans les conditions prévues par la loi.

Elle a le droit d'être informée des charges retenues contre elle et d'être assistée d'un défenseur, de se faire examiner par un médecin de son choix, de contacter et de recevoir un membre de sa famille.

Les mesures de contraintes dont cette personne peut faire l'objet sont prises sur décision ou sous le contrôle effectif de l'autorité judiciaire. Elles doivent être strictement limitées aux nécessités de la procédure, proportionnées à la gravité de l'infraction reprochée et ne pas porter atteinte à la dignité de la personne.

Il doit être définitivement statué dans un délai raisonnable sur les faits mis à la charge de cette personne.

ENGLISH TRANSLATION

Preliminary Book of General Principles of Criminal Procedure

III - Any person suspected or prosecuted is presumed innocent until proven guilty. Violations of the presumption of innocence shall be prevented, remedied and punished in accordance with the law.

He/she has the right to be informed of the charges against him/her and to be assisted by a defense counsel, to be examined by a doctor of his/her choice, to contact and receive a member of his/her family.

The measures of constraint to which this person may be subjected are taken by decision or under the effective control of the judicial authority. They must be strictly limited to the needs of the procedure, proportionate to the seriousness of the offence charged and not prejudice the dignity of the person.

A final decision must be taken within a reasonable period of time on the facts of the case against this person.

Source : <https://assemblee-nationale.bj/wp-content/uploads/2020/03/l-2012-15-code-de-procedure-penale.pdf>

Selected extracts from the African Charter on Human and Peoples' Rights

Article 7

1. Every individual shall have the right to have his cause heard. This comprises:
 - a) the right to an appeal to competent national organs against acts of violating his fundamental rights as recognized and guaranteed by conventions, laws, regulations and customs in force;
 - b) the right to be presumed innocent until proved guilty by a competent court or tribunal;
 - c) the right to defense, including the right to be defended by counsel of his choice;
 - d) the right to be tried within a reasonable time by an impartial court or tribunal.
2. No one may be condemned for an act or omission which did not constitute a legally punishable offence at the time it was committed. No penalty may be inflicted for an offence for which no provision was made at the time it was committed. Punishment is personal and can be imposed only on the offender.

Source : <https://www.achpr.org/legalinstruments/detail?id=49>

End