

THE GAMBIA

DELOS GUIDE TO ARBITRATION PLACES (GAP)

CHAPTER PREPARED BY

LOUBNA FARAGE
OF FARAGE ANDREWS LAW PRACTICE

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JURISDICTION INDICATIVE TRAFFIC LIGHTS

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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 all responsibility in this regard.

IN-HOUSE AND CORPORATE COUNSEL SUMMARY

The Gambia is a generally arbitration friendly jurisdiction that has adopted pro-arbitration laws (most importantly the [Alternative Dispute Resolution Act 2005](#) (“**ADR Act 2005**”)), the spirit of which have been respected by its judiciary and administration. That said, as a consequence of the country’s relatively small size, the jurisdiction does not benefit from of surfeit of arbitration related practice and precedent, meaning that arbitration in The Gambia may give rise to issues that are novel in the jurisdiction. Many of the cases thus far which required arbitration involved construction disputes between contractor and client or supply agreements between supplier and purchaser.

Key places of arbitration in the jurisdiction	Banjul.
Civil law / Common law environment?	Primarily a common law jurisdiction, although customary law and sharia law are applicable to issues of land, inheritance and family law in many circumstances.
Confidentiality of arbitrations?	Yes, subject to certain exceptions.
Requirement to retain (local) counsel?	No, parties may be represented by any person of their choice.
Ability to present party employee witness testimony?	Yes.
Ability to hold meetings and/or hearings outside of the seat?	Permitted unless the parties agree otherwise.
Availability of interest as a remedy?	Yes.
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?	No, but the ADR Act 2005 (ss. 52-53) provides for the recognition and enforcement of awards irrespective of the country in which they were made.
Other key points to note	Φ
WJP Civil Justice score (2017-2018)	Φ

ARBITRATION PRACTITIONER SUMMARY

Date of arbitration law?	29 July 2005, with an amendment on 27 June 2006 .
UNCITRAL Model Law? If so, any key changes thereto?	<p>The ADR Act 2005 addresses numerous forms of alternative dispute resolution, and both domestic and international arbitration, but to the extent it addresses international arbitration it is largely based on the 1985 UNCITRAL model law, with inter alia the following differences:</p> <ul style="list-style-type: none"> – Public policy as a ground for setting aside/refusing recognition or enforcement is partially defined; – The limitation period for an application for setting aside an award on the (public policy) basis that it “was induced or affected by fraud, corruption or gross irregularity” runs from when such ground was, or could reasonably have been, discovered; – There is provision for the appointment of an umpire, an individual who largely takes over the role of the tribunal in the event of a deadlock; – The substantive law governs the formalities required for the award; and – There are relatively detailed provisions on costs.
Availability of specialised courts or judges at the key seat(s) in the jurisdiction for handling arbitration-related matters?	No.
Availability of <i>ex parte</i> pre-arbitration interim measures?	Yes.
Courts’ attitude towards the competence-competence principle?	The ADR Act 2005 (s. 30) enshrines the competence-competence principle, and there is no Gambian case law available in connection with this.
Grounds for annulment of awards additional to those based on the criteria for the recognition and enforcement of awards under the New York Convention?	No, but the ADR Act 2005 (s. 53(3)) indicates that matters in conflict with public policy include an award being “ <i>induced or affected by fraud, corruption or gross irregularity</i> ” or “ <i>a breach of the rules of natural justice</i> ” occurring during the proceedings or in connection with the making of the award.
Courts’ attitude towards the recognition and enforcement of foreign awards annulled at the seat of the arbitration?	The ADR Act 2005 (s. 53(1)(a)(v)) provides that Gambian courts may refuse to recognise or enforce an award that was annulled at the seat of the arbitration. There is no Gambian case law available in this regard.
Other key points to note?	The ADR Act 2005 (s. 55) explicitly allows parties to an “ <i>an international commercial agreement</i> ” to adopt “ <i>the UNCITRAL Arbitration Rules [...] or any other international arbitration rules</i> ” to the exclusion of the provisions of the ADR Act 2005 itself.

JURISDICTION DETAILED ANALYSIS

1. The legal framework of the jurisdiction

1.1 Is the arbitration law based on the UNCITRAL Model Law?

Yes, it is substantially based on the 1985 version of the UNCITRAL Model Law, to the extent it addresses international commercial arbitration. It notably also addresses domestic arbitration, conciliation and mediation.

1.1.1 If yes, what key modifications if any have been made to it?

The principal modifications are:

- i. Public policy as a ground for setting aside, refusing recognition or refusing enforcement is partially defined in that the following are considered to be contrary to such policy:
 - an award being “*induced or affected by fraud, corruption or gross irregularity*”; or
 - “*a breach of the rules of natural justice*” occurring during the proceedings or in connection with the making of the award.¹
- ii. The limitation period for an application for setting aside an award on the (public policy) basis that it “*was induced or affected by fraud, corruption or gross irregularity*”, runs from when such ground was, or could reasonably have been, discovered;²
- iii. There are detailed provisions for the appointment of an umpire. Such individual is only required where a tribunal contains an even number of individuals that is greater than two and the arbitration agreement provides for an umpire (*i.e.* rarely). In the event of a deadlock the umpire largely takes over the role of the tribunal;³
- iv. With the parties’ consent, a court can refer a matter to arbitration in the absence of an arbitration agreement;⁴
- v. If the tribunal president is replaced, hearings must be reheard unless the parties agree otherwise;⁵
- vi. The substantive law governs the formalities required for the award;⁶ and
- vii. There are relatively detailed provisions on costs, which provide for costs to partially follow the event, and for the tribunal to request advances on costs.⁷

Notably, “*notwithstanding the provisions of [the ADR Act 2005]*” parties may opt into “*the UNCITRAL Arbitration Rules [...] or any other international arbitration rules*”.⁸ This allows the modifications made to the UNCITRAL Model Law in the ADR Act 2005 to be largely bypassed should the parties wish to do so.

¹ ADR Act 2005, ss. 49(7), 53(3).

² ADR Act 2005, s. 49(4).

³ ADR Act 2005, ss. 20-27.

⁴ ADR Act 2005, s. 9(1).

⁵ ADR Act 2005, s. 19(2).

⁶ ADR Act 2005, s. 46.

⁷ ADR Act 2005, ss. 50-51.

⁸ ADR Act 2005, s. 55.

1.1.2 If no, what form does the arbitration law take?

N/A.

1.2 When was the arbitration law last revised?

June 2006.

2. The arbitration agreement**2.1 How do the courts in the jurisdiction determine the law governing the arbitration agreement?**

Courts determine the governing law principally by reference to the arbitration agreement, and, if it is included in a broader contract (as is usually case) by reference to the law governing that contract, unless such contract specifies that a different law governs the arbitration clause.

If the parties do not agree on the law governing the arbitration before the dispute arises as per the above, they may do so during the case management conference.

Finally, if the parties do not agree in this regard, or they contest the interpretation of the arbitration agreement, the arbitral tribunal will decide the matter.

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

Yes.⁹

2.3 What are the formal requirements (if any) for an enforceable arbitration agreement?

The agreement must be in writing, which is deemed to include:

- “[T]he form of an arbitration clause in [a] contract or [...] the form of a separate agreement”; or
- An inference drawn from “an exchange of points of claim or defence in which the existence of an arbitration agreement is alleged by one party and not denied by the other”; or
- “[A] reference in a contract to a document containing an arbitration clause [...] provided that the reference is such as to make that clause part of the contract.”¹⁰

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

An arbitration agreement cannot be binding without a party's consent.

However, in court proceedings, such a third party could jointly consent, with the parties to the arbitration agreement, to the relevant dispute being referred to arbitration that would include said third party.¹¹

2.5 Are there restrictions to arbitrability? In the affirmative:

Yes, per s. 5(1) of the ADR Act 2005, notably where the arbitration agreement is contrary to public policy. The Gambia otherwise allows for arbitration of most disputes, defining a dispute as any “dispute or difference involving any civil cause or matter or arising in any other way”.¹²

⁹ ADR Act 2005, s. 30(2).

¹⁰ ADR Act 2005, s. 11.

¹¹ ADR Act 2005, s. 9(1).

¹² ADR Act 2005, s. 2.

3. Intervention of domestic courts

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

Yes, a court before which proceedings are brought in a matter which is the subject of an arbitration agreement shall, if a party so requests no later than when submitting its first statement on the substance of the dispute, stay those proceedings and refer the parties to arbitration (unless it considers the arbitration agreement to be void, or that there is no arbitrable dispute between the parties).¹³ This provision applies irrespective of whether the place of arbitration is within or outside the jurisdiction.¹⁴

3.2 How do courts treat injunctions by arbitrators enjoining parties to stay litigation proceedings?

The courts do not have to stay proceedings to abide by an injunction issued by an arbitral tribunal, albeit there is no case-law addressing this issue.

3.3 On what ground(s) can the courts intervene in arbitrations seated outside of the jurisdiction? (Relates to the anti-suit injunction but not only)

The courts have relatively wide powers to issue interim injunctions in support of arbitration, including to preserve/sell goods, order security, and freeze assets.¹⁵ Said powers may also be exercised in support of arbitrations seated outside of The Gambia.¹⁶

4. The conduct of the proceedings

4.1 Can parties retain outside counsel or be self-represented?

Parties may be represented by any person of their choice or represent themselves.¹⁷

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?

The duty to disclose conflicts and the challenge procedure are expressly set out in the ADR Act 2005.¹⁸ Such procedure provides that the parties may agree on a procedure for challenging an arbitrator. If the parties do not reach an agreement, the party who intends to challenge an arbitrator shall, within fifteen days after becoming aware of the constitution of the arbitral tribunal, or after becoming aware of the circumstances justifying its challenge, send a written statement of the reasons for the challenge.

The challenge is first decided by the arbitral tribunal, such decision being appealable to the courts within 30 days.

As yet, there is little case law addressing challenges.

¹³ ADR Act 2005, s. 12.

¹⁴ See, for instance, [Musa Jallow v. Netherland Airport Consultants B.V. \(NACO\) \(unreported delivered 17 December 2014\), CSN: HC/727/13/CO/164/D2](#); [BP Investment Group FZE v. Social Security and Housing Finance Corporation \(unreported delivered 7 December 2017\), CSN: HC/439/17/MF/124/F1](#).

¹⁵ ADR Act 2005, s. 13.

¹⁶ See, for instance, [BP Investment Group FZE v. Social Security and Housing Finance Corporation \(unreported delivered 7 December 2017\), CSN: HC/439/17/MF/124/F1](#).

¹⁷ ADR Act 2005, s. 38(5). See, also, s. 33(4).

¹⁸ ADR Act 2005, ss. 16-17.

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

Generally, the courts do not intervene in matters governed by court-referenced arbitration except where such intervention is expressly provided for.

If there are issues related to the constitution of a tribunal they may be resolved by Gambia's Alternative Dispute Resolution Secretariat at the request of a party, or if such assistance is provided for in the arbitration agreement.¹⁹

4.4 Do courts have the power to issue interim measures in connection with arbitrations?

Yes, a party may apply for an interim measure before a court either before or during the arbitration proceedings.²⁰

4.4.1 If so, are they willing to consider *ex parte* requests?

Yes, though, as is the norm, such requests are granted on the condition that the other party be notified in due course, so as to have the opportunity to contest the relevant order.

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

The ADR Act 2005 provides for the determination of the rules of procedure by the parties (including during the case management conference), failing such agreement, they are to be determined by the arbitral tribunal in light of the circumstances.²¹ It also provides for equal treatment of the parties, and for each party to be given full opportunity to present its case.²²

4.5.1 Does it provide for the confidentiality of arbitration proceedings?

Yes, it indicates that "*an arbitration agreement, unless otherwise agreed by the parties, is deemed to provide that the parties shall not publish, disclose, or communicate any information relating to arbitral proceedings under the agreement or to an award made in those proceedings,*" subject to disclosure to advisors and disclosure foreseen in the ADR Act 2005.²³

4.5.2 Does it regulate the length of arbitration proceedings?

No.

4.5.3 Does it regulate the place where hearings and/or meetings may be held?

The ADR Act 2005 provides that, unless otherwise agreed by the parties, the arbitral tribunal may meet at any place it considers appropriate for hearing witnesses, experts or the parties, or for the inspection of goods, other property or documents.²⁴

¹⁹ ADR Act 2005, s. 15(4).

²⁰ ADR Act 2005, s. 13; See, also, [Musa Jallow v. Netherland Airport Consultants B.V. \(NACO\) \(unreported delivered 17 December 2014, CSN: HC/727/13/CO/164/D2\)](#); [BP Investment Group FZE v. Social Security and Housing Finance Corporation \(unreported delivered 7 December 2017\), CSN: HC/439/17/MF/124/F1](#).

²¹ ADR Act 2005, ss. 29, 33.

²² ADR Act 2005, s. 32.

²³ ADR Act 2005, s. 6.

²⁴ ADR Act 2005, s. 34(3).

4.5.4 Does it allow for arbitrators to issue interim measures?

Yes.²⁵

4.5.4.1 In the affirmative, under what conditions?

At the request of a party, or of its own motion, the arbitral tribunal may order any party to take such interim measure of protection as it may consider necessary in respect of the subject matter of the dispute, and require any party to provide appropriate security in connection with any such measure taken.²⁶

4.5.5 Does it regulate the arbitrators' right to admit/exclude evidence?

No. The Tribunal has "*the power to determine the admissibility, relevance, materiality, and weight of any evidence brought before it.*"²⁷

4.5.5.1 For example, are there any restrictions to the presentation of testimony by a party employee?

No.

4.5.6 Does it make it mandatory to hold a hearing?

No, whether to hold a hearing is at the discretion of the arbitral tribunal, subject to the agreement of the parties.²⁸

4.5.7 Does it prescribe principles governing the awarding of interest?

Yes, it provides that, unless the arbitration agreement provides otherwise, or the award directs otherwise, an award of money shall carry interest as from the date of the award and at the same rate as a judgment debt.²⁹

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

The costs of the arbitration are to be borne equally by the parties, unless the award provides for a different apportionment. However, as only the costs of the legal representation of the successful party are considered permitted costs, this results in costs partially following the event.³⁰

More specifically, costs are defined as including:

- the fees of the arbitral tribunal;
- the travel and other expenses incurred by the arbitrators;
- the cost of expert advice and of other assistance required by the arbitral tribunal;
- the travel and other expenses of witnesses to the extent that such expenses are approved by the arbitral tribunal; and
- the costs of legal representation and assistance of the successful party if a claim is made for such costs and the arbitral tribunal determines such costs are reasonable.³¹

²⁵ ADR Act 2005, s. 31.

²⁶ ADR Act 2005, s. 31.

²⁷ ADR Act 2005, s. 33(3).

²⁸ ADR Act 2005, s. 38(1).

²⁹ ADR Act 2005, s. 45(5).

³⁰ ADR Act 2005, s. 50(2); 50(9).

³¹ ADR Act 2005, s. 50(9).

All other expenses, including the costs of the losing party's legal representation, do not constitute costs within the meaning of the ADR Act 2005.³²

4.6 Liability

4.6.1 Do arbitrators benefit from immunity to civil liability?

Yes, arbitrators benefit from immunity to liability in respect to anything done or not done in their capacity as an arbitrator.³³

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

No.

5. The award

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

Yes.³⁴

5.2 Can parties waive the right to seek the annulment of the award?

No.

5.2.1 If yes, under what conditions?

N/A.

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

The rules under the law governing the substance of the dispute also govern the making of the award.³⁵

5.4 Is it possible to appeal an award (as opposed to seeking its annulment)?

No, there is no right to appeal an award. Recourse to a court against an arbitral award may only be made through an application for setting aside.³⁶

5.4.1 If yes, what are the grounds for appeal?

N/A.

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?

The ADR Act 2005 does not provide a procedure for the recognition of awards. Rather, it confirms that an award "*shall be recognised as binding and on application to the High Court, be enforced by entry as a judgment in terms of the award,*" subject to grounds for refusing recognition or enforcement.³⁷ This provision applies irrespective of the country in which the arbitral award was made.³⁸

³² ADR Act 2005, s. 50(3).

³³ ADR Act 2005, s. 28.

³⁴ ADR Act 2005, s. 45(3)(a).

³⁵ ADR Act 2005, s. 46.

³⁶ ADR Act 2005, s. 49.

³⁷ ADR Act 2005, s. 52(1).

³⁸ ADR Act 2005, s. 52(1).

In the particular situation of awards made in the United Kingdom and other Commonwealth countries, the *Reciprocal Enforcement of Judgments Act, 1922* may apply as well, if the jurisdiction in question has implemented reciprocal legislation to allow for the enforcement of judgments made in The Gambia. In the United Kingdom, for instance, the reciprocal legislation is the Administration of Justice Act, 1920. Under the Reciprocal Enforcement of Judgments Act, 1922, a Gambian court may refuse to enforce an award on certain enumerated grounds, including fraud, lack of proper service, and recognition or enforcement being contrary to public policy.

With respect to the New York Convention, please note that, while The Gambia is not a signatory thereto, it has 'domesticated' its provisions at Schedule 2 of the ADR Act 2005,³⁹ which will come into force in the event that The Gambia accedes to the New York Convention. These domesticated provisions will apply to the enforcement of any international award arising out of a contractual relationship made in any New York Convention contracting State, provided that the relevant contracting state has reciprocal legislation recognising the enforcement of arbitral awards made in The Gambia in accordance with the provisions of the New York Convention.

Finally, in terms of formalities, the party relying on an award or applying for its enforcement must supply the duly authenticated original award or a duly certified copy and, a duly certified translation into English, where the award is not made in English.⁴⁰

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

No, this does not occur automatically. However, the courts may adjourn their decision if they consider it proper, and may in such circumstances order the debtor party to provide appropriate security.⁴¹

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

No, but it entitles the courts to refuse its enforcement at their discretion.⁴²

5.8 Are foreign awards readily enforceable in practice?

Yes. To illustrate, in the case of *Luiz Diaz de Losada Construction Company Ltd v the Gambian Government*, the Gambian Supreme Court ordered the enforcement of an ICC award against the Gambian Government.

6. Funding arrangements

6.1 Are there restrictions to the use of contingency or alternative fee arrangements or third-party funding at the jurisdiction?

No.

6.1.1 If so, what is the practical and/or legal impact of such restrictions?

N/A.

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

No.

³⁹ See, also, ss. 1(a) and 56 of the ADR Act 2005.

⁴⁰ ADR Act 2005, s. 52(2).

⁴¹ ADR Act 2005, s. 53(2).

⁴² ADR Act 2005, s. 53(1).

