

GUINEA

DELOS GUIDE TO ARBITRATION PLACES (GAP)

CHAPTER PREPARED BY

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FOR FURTHER INFORMATION

[GAP TABLE OF CONTENTS](#) | [GAP TRAFFIC LIGHTS FOR ALL JURISDICTIONS](#) | [FULL GAP ONLINE](#)

[GAP COMBINED SUMMARIES FOR IN-HOUSE AND CORPORATE COUNSEL](#)

[GAP COMBINED SUMMARIES FOR ARBITRATION PRACTITIONERS](#)

[EN DELOS MODEL CLAUSES & LIST OF SAFE SEATS](#)

[ES DELOS CLÁUSULAS MODELO & LISTA DE SEDES SEGURAS](#)

[FR DELOS CLAUSES TYPES & LISTE DE SIÈGES SÛRS](#)

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JURISDICTION INDICATIVE TRAFFIC LIGHTS

1. Law ●
 - a. Framework ●
 - b. Adherence to international treaties ●
 - c. Limited court intervention ●
 - d. Arbitrator immunity from civil liability ●
2. Judiciary ●
3. Legal expertise ●
4. Rights of representation ●
5. Accessibility and safety ●
6. Ethics ●

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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 Republic of Guinea is a member of the Organization for the Harmonization of Business Law in Africa (“OHADA”). OHADA provides for a uniform system of business law directly applicable in its Member States through “Uniform Acts” (Uniform Acts are sets of material rules adopted to regulate a specific legal field (i.e., commercial contracts) which are designed to apply in all OHADA States once they have been adopted by the OHADA’s Council of Ministers). There are currently ten Uniform Acts, all largely inspired by French law, covering matters such as corporate law, securities, bankruptcy and arbitration. The Uniform Act on Arbitration sets out the basic rules applicable to arbitrations having their seat in an OHADA Member State.

Parties seeking to arbitrate under OHADA may choose between ad hoc arbitration under the Uniform Act on arbitration, and institutional arbitration according to the Arbitration Rules of the Common Court of Justice and Arbitration (“CCJA”), located in Abidjan (Ivory Coast), which is the key place for arbitration hearings. CCJA also serves as OHADA supra-national court to enforce uniformity in judgements and recognition of process and can be seized as a last resort.

In addition, since August 17, 1998, the Republic of Guinea benefits from its own national arbitration institution, namely the Chamber of Arbitration of Republic of Guinea (“CAG”), located in Conakry.

Given that the Republic of Guinea is a member of OHADA, *ad hoc* arbitrations are governed by the Uniform Act on Arbitration. Until recently, all OHADA arbitrations were governed by the Uniform Act on Arbitration of March 11th, 1999 (“Uniform Act on Arbitration”). The Uniform Act on Arbitration is based on a combination of the UNCITRAL Model Law of June 1985, the French Code of Civil Procedure, and the Arbitration Rules of the International Chamber of Commerce of 1988. It was last amended on November 23rd, 2017 (the “Revised Arbitration Act”). The Revised Arbitration Act entered into force on March 15, 2018 and shall apply to all arbitrations commenced after that date.

Key places of arbitration in the jurisdiction	Conakry.
Civil law / Common law environment?	Civil law.
Confidentiality of arbitrations?	<p>There are no provisions prescribing confidentiality of arbitrations under Guinean law. Parties wishing their arbitrations to be confidential should therefore expressly so provide in their underlying agreement. This provision will bind the parties, counsels and arbitrators.</p> <p>Article 6 of the Guinean Arbitration Rules provides that the arbitration procedure is confidential. The confidentiality extends to any person participating to the procedure and the arbitral awards cannot be published without consent of all the parties to the arbitration procedure.</p>
Requirement to retain (local) counsel?	<p>There are no provisions relating to the choice of counsel concerning <i>ad hoc</i> arbitrations. Nor are there specific provisions in the CCJA Arbitration Rules. As a consequence, it is possible for the parties to retain outside counsel or to be self-represented.</p> <p>Article 19 of the Guinean Arbitration Rules provides that the parties can retain any counsel of their choice, subject to the communication of the names and addresses of said counsel(s) to the opposing party and to the Secretariat of the Chamber of</p>

	Arbitration of Guinea. Given that there is no provision to the contrary, the parties may represent themselves.
Ability to present party employee witness testimony?	Article 21-4 of the Guinean Arbitration Rules provides that the arbitral tribunal can decide to hear witnesses, party-appointed experts, or any other person, in the presence or absence of the parties. Given this, it seems possible to produce party employee witness testimony.
Ability to hold meetings and/or hearings outside of the seat?	<p>There are no provisions relating to this subject-matter, neither for for <i>ad hoc</i> arbitrations, nor in the Guinean Arbitration Rules. However, we understand that it may be possible to hold meetings outside the seat of arbitration, with the agreement of all parties to the arbitration procedure.</p> <p>Pursuant to Article 13 of the CCJA Arbitration Rules, an arbitrator acting under the CCJA Arbitration Rules may decide to hold meetings outside the seat of the arbitration, after consulting the parties.</p>
Availability of interest as a remedy?	There is no specific provision relating to the awarding of interests as a remedy.
Ability to claim for reasonable costs incurred for the arbitration?	There is no specific provision relating to the allocation of costs.
Restrictions regarding contingency fee arrangements and/or third-party funding?	To the best of our knowledge, there are no restrictions in Guinea regarding contingency fee arrangements and/or third-party funding.
Party to the New York Convention?	Yes. The Republic of Guinea is party to the NY Convention following its ratification on 23 January 1991. The NY convention entered into force on 23 April 1991.
Other key points to note	
WJP Civil Justice score (2018)	N.A.

ARBITRATION PRACTITIONER SUMMARY

Date of arbitration law?	The OHADA Uniform Act on Arbitration was adopted on 11 March 1999, and last amended on 23 November 2017.
UNCITRAL Model Law? If so, any key changes thereto?	The Uniform Act on Arbitration is modelled after the UNCITRAL Model Law.
Availability of specialised courts or judges at the key seat(s) in the jurisdiction for handling arbitration-related matters?	There is no specialised court or judge for the handling of arbitration-related issues.
Availability of <i>ex parte</i> pre-arbitration interim measures?	Yes.
Courts' attitude towards the competence-competence principle?	<p>Article 13 of the OHADA Edited Arbitration Act provides that Courts may declare themselves incompetent where there is an arbitration agreement, whether an arbitration tribunal has been seized or not, unless the arbitration agreement is manifestly void or manifestly inapplicable. In addition, the Court has to rule on this matter within a 15-day time limit. As a result, Guinean Courts have an obligation to apply this principle.</p> <p>Guinean Courts recognise the competence-competence principle (article 5-4 of the Guinean Arbitration Rules).</p>
Grounds for annulment of awards additional to those based on the criteria for the recognition and enforcement of awards under the New York Convention?	The only difference between the New York Convention and the Edited Arbitration Act, the CCJA Arbitration Rules and the Guinean Arbitration Rules is that the last three texts provide that an action for a nullity of the award is only admissible if the award has breached a rule of international public policy, while the New York Convention refers to the breach of a rule of national public policy.
Courts' attitude towards the recognition and enforcement of foreign awards annulled at the seat of the arbitration?	To the best of our knowledge, no decision has been rendered in relation to this subject-matter by Guinean Courts or by the Common Court of Justice and Arbitration. However, in light of the position under French law, it seems that Guinean courts, when confronted to this situation, would likely decide to recognize and enforce foreign awards annulled at the seat of the arbitration.
Other key points to note?	∅

JURISDICTION DETAILED ANALYSIS

1. The legal framework of the jurisdiction

As a former French colony, the Republic of Guinea's legal environment largely derives from civil law.

Given that the Republic of Guinea is a member of OHADA, *ad hoc* arbitrations are governed by the Uniform Act on Arbitration. Until recently, all OHADA arbitrations were governed by the Uniform Act on Arbitration of March 11th, 1999 ("**Uniform Act on Arbitration**"). The Uniform Act on Arbitration is based on a combination of the UNCITRAL Model Law of June 1985, the French Code of Civil Procedure, and the Arbitration Rules of the International Chamber of Commerce of 1988. It was last amended on 23 November 2017 (the "**Revised Arbitration Act**"). The Revised Arbitration Act entered into force on 15 March 2018 and shall apply to all arbitrations commenced after that date.

Institutional arbitrations in the Republic of Guinea are usually governed by:

- the Arbitration Rules of CCJA, as amended on November 23rd, 2017 (the "**CCJA Arbitration Rules**"); and
- Decree N°A/2016/033/MJ/CAB/16 dated February 8th, 2016, relating to the Arbitration Rules of the Chamber of Arbitration of Guinea (the "**Guinean Arbitration Rules**"). Guinea Arbitration Rules are largely based on the CCJA Arbitration Rules (which is itself derived from the UNCITRAL Model law, as abovementioned).

Finally, it is noteworthy that the Republic of Guinea ratified the Convention on the Settlement of Investment Disputes between States and Nationals of Other States, of March 18, 1965, and the Rules of Procedure for Arbitration Proceedings may apply when the conditions set forth by the relevant legal instrument are met. The Republic of Guinea has also ratified all texts from the United Nations Commission on International Trade Law (UNCITRAL) relating to arbitration, including:

- the United Nations Convention on Transparency in Treaty-based Investor-State Arbitration (New York, 2014) (the "Mauritius Convention on Transparency"); and
- the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 1958) (the "New York Convention").

2. The arbitration agreement

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

Pursuant to Article 4 of the Revised Arbitration Act, the arbitration agreement is independent from the rest of the contract in which it is set forth. Its validity shall not be affected by the nullity of the underlying contract and shall be determined by reference to the intention of the Parties without the need to refer to a state law. Parties always have the possibility to resort to arbitration even when proceedings have already been initiated in a state court.

The Guinean Arbitration Rules contain no provisions relating to the law governing the arbitration agreement. Indeed, the Guinean Arbitration Rules only refers to the law governing the merits of the dispute. Thus, article 24 of the Guinean Arbitration Rules provides that in a domestic arbitration, the Guinean and OHADA Laws in force shall govern the dispute. In an international arbitration, the arbitrator shall apply the law on which the Parties have agreed, and where the parties have made no such choice, the arbitrator shall determine the dispute on the basis of the laws that it deems appropriate, while taking into consideration the provisions of the relevant agreement and international trade practice.

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

Pursuant to Article 4 of the Revised Arbitration Act, the arbitration agreement is independent from the rest of the contract in which it is set forth. Its validity shall not be affected by the nullity of the underlying contract and shall be determined by reference to the intention of the Parties without the need to refer to a state law.

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

According to Article 3-1(4) of the Revised Arbitration Act, the arbitration agreement must be made in writing or by any other means that may be used to prove its existence and contents, in particular by reference to a document stipulating it.

There are no other formal requirements for an enforceable arbitration agreement.

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?

A third-party can only be bound by an arbitration agreement to the extent that it has agreed to the arbitration agreement (Article 659 of the Guinean Civil Code relating to the concept of "*stipulation pour autrui*").

2.5 Are there restrictions to arbitrability? In the affirmative:

2.5.1 Do these restrictions relate to specific domains (such as IP, corporate law etc.)?

Certain subject-matters cannot be referred to arbitration:

- people's status and family law, given that it is impossible for parties to resort to arbitration for marriage, divorce, or paternity suits. However, the financial consequences relating to the people's status, such as maintenance obligation or quota of the maintenance allowance, can be subject to arbitration;
- criminal matters are not arbitrable. However, the monetary compensation owed to the victim of a criminal offence recognized in a judgment of a criminal court can be subject to arbitration; and

2.5.2 Do these restrictions relate to specific persons (i.e. State entities, consumers etc.)?

Disputes related to the powers of a public authority, and specifically, the validity of a right or a situation arising from a decision of a public authority, may not be subject to arbitration.

3. Intervention of domestic courts

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

Article 13 of the Revised Arbitration Act provides that courts may declare themselves incompetent where there is an arbitration agreement, whether an arbitration tribunal has been seized or not, unless the arbitration agreement is manifestly void or manifestly inapplicable. In addition, the Court has to rule on this matter within a 15-day time limit. As a result, Guinean Courts have an obligation to apply this principle.

In practice, Guinean courts will stay litigation if there is a valid arbitration agreement covering the dispute.

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

In the presence of a valid arbitration agreement, Guinean courts generally welcome favourably injunctions by arbitrators enjoining them to stay litigation proceedings.

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)

Generally, Guinean courts intervene only in relation to matters of jurisdiction, provisional measures and enforcement of awards.

4. The conduct of the proceedings

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

The Revised Arbitration Act does not contain any provision relating to the choice of counsel. Therefore, it is possible for the parties to retain outside counsel or to be self-represented.

Noteworthy, Article 19 of the Guinean Arbitration Rules provides that the parties can retain any counsel of their choice, subject to the communication of the names and addresses of said counsel(s) to the opposing party and to the Secretariat of the Chamber of Arbitration of Guinea. Given that there is no provision to the contrary, the parties may represent themselves.

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?

As a general rule, any presumed arbitrator shall inform the parties of any circumstance likely to create in their mind a legitimate doubt as to his independence and impartiality and may accept his mission only with their unanimous and written consent (Article 7 of the Revised Arbitration Act).

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

Pursuant to Article 6 of the Revised Arbitration Act, Courts intervene to assist in the constitution of the arbitration tribunal when the parties failed to appoint the members of the arbitral Tribunal, and in the event that an appointment is required because of recusal, incapacity, death, resignation or dismissal of an arbitrator.

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

Pursuant to Article 13 of the Revised Arbitration Act, domestic courts may, in cases of urgency and pursuant to a reasoned decision, or when a measure shall have to be enforced in a non-member State of OHADA, order interim measures as long as the measures do not require examining the merits of the claim, for which only the arbitration tribunal is competent.

Article 14 of the Revised Arbitration Act provides the possibility for the arbitral tribunal, upon the request of one of the parties, to issue interim or protective measures, excluding assets seizures and judicial guarantees, which remain the exclusive competence of State court jurisdictions (the first-degree judges and mainly the President of the court intervening in matters of interim).

Pursuant to Article 20 of the Guinean Arbitrations Rules, any party can, before the transmission of the file to the arbitration tribunal, ask the competent State judicial authority to order interim measures.

In practice, as the interim measures rendered by the arbitral tribunal are subject to *exequatur*, it is recommended to the parties to apply directly to the State judge who, despite referral to the arbitral tribunal, may still intervene to order provisional or protective measures, provided that the said measures do not deal with the merits of the case.

In case of emergency, the state judge may order provisional measures before the arbitral tribunal is seized. For instance, the court may take precautionary measures such as seizures or even the sale of seized articles

when they are perishable, in which case the sale price will be sequestrated (other measure) or measures to preserve the means of evidence, like ordering expertise etc.

The available provisional measures are the ones provided by the Uniform Act Organizing Simplified Recovery Procedures and Measures of Execution (such as preventive seizure, seizure for sale, seizure-award, etc.) and the Code of Civil, Economic and Administrative Procedure of the Republic of Guinea.

Interim measures are also permitted under the CCJA Arbitration Rules.

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

Yes, in practice, Guinean courts are willing to consider *ex parte* requests.

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

4.5.1 Does it provide for the confidentiality of arbitration proceedings?

There are no provisions prescribing confidentiality of arbitrations under Guinean law. Parties wishing their *ad hoc* arbitrations to be confidential should therefore expressly so provide in their underlying agreement. This provision will bind the parties, counsels and arbitrators.

By contrast, institutional arbitrations are confidential, as provided for in Article 14 of the CCJA Arbitration Rules and Article 6 of the Guinean Arbitration rules.

4.5.2 Does it regulate the length of arbitration proceedings?

Article 12 of the Revised Arbitration Act provides that if the arbitration agreement does not provide for a time limit for the arbitration, the assignment of the arbitrators may not exceed six months as from the date when the last of them accepted the assignment. However, the legal or agreed duration may be extended either by agreement of the parties, upon request by one of the parties or by the arbitration tribunal, or by the competent judge in the Member State.

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

There are no provisions relating to this subject matter in the Revised Arbitration Act. The Guinean Arbitration Rules does not contain such rule either. However, we understand that it may be possible to hold meetings outside the seat of arbitration, with the agreement of all parties to the arbitration procedure.

4.5.4 Does it allow for arbitrators to issue interim measures?

With respect to interim measures, Article 14 of the Revised Arbitration Act provides the possibility for the arbitral tribunal, upon request of one of the parties, to issue interim or protective measures, to the exclusion of good seizures and judicial guarantees.

The CCJA Arbitration Rules and the Guinean Arbitration Rules contain specific provisions as to interim measures.

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

The Revised Arbitration Act contains no specific provision related to the admission or exclusion of evidence.

4.5.6 Does it make it mandatory to hold a hearing?

The Revised Arbitration Act contains no specific provision related to the obligation to hold a hearing.

4.5.7 Does it prescribe principles governing the awarding of interest?

The Revised Arbitration Act contains no specific provision related to the awarding of interest.

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

The Revised Arbitration Act contains no specific provision related to the allocation of arbitration costs.

4.6 Liability

The Revised Arbitration Act does not provide for liability of arbitrators. As a result, parties are free to determine whether the arbitrators may be held liable in the exercise of their mission.

Pending a judicial decision in the OHADA on this matter, the default position should be that arbitrators are protected from civil liability in the normal exercise of their powers because functional immunity is the principle governing the exercise of jurisdictional powers. However, given that no case law exists yet, to the best of our knowledge, arbitrators would be well advised to provide in their contract of arbitration, elective terms of liability or to subscribe insurance against their potential civil law suit and liability.

There is no provision relating to the liability of arbitrations in the Guinean Arbitration Rules. In the absence of provisions, we understand that, as is the case for ad hoc arbitrations, there is a possibility of a choice between responsibility or irresponsibility of the arbitrators in the exercise of their mission.

Finally, specific provisions apply in respect of CCJA arbitrations.

5. The award

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

No, neither the Revised Arbitration Act, the CCJA Arbitration Rules, nor the Guinean Arbitration Rules allow parties to waive the requirement for an award to provide reasons.

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

Under article 25(3) of the Revised Arbitration Act, the parties may expressly waive the right to file an application to set aside, save where this waiver is contrary to international public policy.

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

There are no atypical mandatory requirements applying to the rendering of a valid award rendered in the jurisdiction.

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

Article 25 of the Revised Arbitration Act provides that the arbitration award cannot be appealed. The same rule applies to institutional arbitrations.

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

As a preliminary remark, it is important to point out that, on the basis of Article 34 of the Revised Arbitration Act, enforcement and execution of foreign awards intervene under the same conditions as those provided for local awards.

Article 30 of the Revised Arbitration Act provides that the award can only be subject to mandatory enforcement by virtue of an *exequatur* awarded by the competent judge in the Member State.

Furthermore, Article 31 of the Revised Arbitration Act provides that the recognition and *exequatur* of the award requires that the party wishing to rely on it establishes the existence of the award, in particular, by the production of the original award accompanied by the arbitration agreement or copies of these documents satisfying the conditions required for their authenticity. When the documents are not written in French, the

party shall produce a translation certified by a translator registered on the list of experts established by the competent court. The competent court must render its decision within fifteen days from the date on which it has been seized. At the expiration of this time limit, and absent any decision by the court, the *exequatur* shall be considered granted. When the *exequatur* is granted, one of the party seizes the clerk or the competent authority of the Member State so that they will affix the *exequatur* mention over the decision.

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

Article 28 of the Revised Arbitration Act provides that except where the provisional enforcement of the award has been ordered by the arbitration Tribunal, the enforcement of the award shall be stayed until such time that the competent judge in the Member State has ruled on the setting aside application.

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

In France, a jurisdiction on which Guinean law is based, the French *Cour de cassation* held, in the famous *Norsolor*,¹ *Hilmarton*,² and *Putrabali*³ cases, that French courts may recognise and enforce foreign awards in spite of their having been annulled by the courts at the seat of the arbitration.

To the best of our knowledge, no decision has been rendered by Guinean courts in relation to this subject-matter. However, in light of the position under French law, it seems that Guinean courts, when confronted to this situation, would likely decide to recognise and enforce foreign awards annulled at the seat of the arbitration.

5.8 Are foreign awards readily enforceable in practice?

It depends on the quality of the parties involved. When a State body/party is involved, foreign awards may not be readily enforceable in practice. Otherwise, in any other cases, foreign awards are readily enforceable.

6. Funding arrangements

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

To the best of our knowledge, there are no restrictions in Guinea regarding contingency fee arrangements and/or third-party funding.

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

Given that the Revised Arbitration Act just recently entered into force (on 15 March 2018), we do not expect any significant other reform of arbitration law at the OHADA level in the near future.

The situation is the same regarding the Guinean Arbitration Rules, which is also relatively recent, resulting from the Decree N°A/2016/033/MJ/CAB/16 dated February 8th, 2016.

¹ Société Pablak Ticaret Limited Sirketi v. Norsolor S.A., French Cour de Cassation, 9 November 1984 (Arrêt n° 730).

² Société Hilmarton Ltd. v. Société Omnium de Traitement et de Valorisation (OTV), French Cour de Cassation, 23 March 1994 (Arrêt n° 484 P).

³ Société PT Putrabali Adyamulia v. Société Rena Holding et Société Moguntia Est Epices, French Cour de Cassation, 29 June 2007 (Arrêt n° 1021 FP-P+B+I).