

GUINEA

CHAPTER PREPARED BY

ABDOURAHIM BODEEN DIALLO, MOUSSA KEITA AND ABDOULAYE DIALLO
OF THIAM & ASSOCIÉS



FOR FURTHER INFORMATION

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

EN [DELOS MODEL CLAUSES](#)

ES [DELOS CLÁUSULAS MODELO](#)

FR [DELOS CLAUSES TYPES](#)

PT [DELOS CLÁUSULAS MODELO](#)

SAFESEATS@DELOSDR.ORG | DELOSDR.ORG

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 | ● |
| Evolution of above compared to previous year | ☰ |
| 7. Tech friendliness | ● |
| 8. Compatibility with the Delos Rules | ● |

VERSION: 8 JULY 2021 (v01.00)

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 any and all responsibility.

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 Revised **Uniform Act on arbitration dated 23 November 2017**, 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 17 August 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 11 March 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 Uniform Arbitration Act**”). The Revised Uniform Arbitration Act entered into force on 23 February 2018 and applies to all arbitrations commenced after that date.

Key places of arbitration in the jurisdiction?	Conakry.
Civil law / Common law environment? (if mixed or other, specify)	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</p>

	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.
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 and/or remotely?	There are no provisions relating to this subject-matter, neither 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. Per 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.
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.
Party to the ICSID Convention?	Yes. The Republic of Guinea is party to the ICSID Convention following its ratification on 04 November 1968. The ICSID convention entered into force on 04 December 1968.
Compatibility with the Delos Rules?	Yes.
Default time-limitation period for civil actions (including contractual)?	Article 1270 of the Civil Code of the Republic of Guinea of 2019 provides that unless otherwise provided by law, the limitation period is 30 years.
Other key points to note?	∅
World Bank, Enforcing Contracts: Doing Business score for 2020, if available?	The Doing Business Score for the year 2020 on enforcing contract is 53.9
World Justice Project, Rule of Law Index: Civil Justice score for 2020, if available?	The Civil Justice score for the year 2020 is 0.42

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? 2006 version?	The Uniform Act on Arbitration is modelled after the UNCITRAL Model Law of June 1985.
Availability of specialised courts or judges at the key seat(s) in the jurisdiction for handling arbitration-related matters?	There is no specialized 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>
May an arbitral tribunal render a ruling on jurisdiction (or other issues) with reasons to follow in a subsequent award?	Yes. Article 11 of the OHADA Edited Arbitration Act provides that the arbitral tribunal is solely competent to rule on its own jurisdiction, including on all questions relating to the existence or validity of the arbitration agreement. A plea of lack of jurisdiction must be raised before any defence on the merits, unless the facts on which it is based have been subsequently disclosed. The arbitral tribunal may rule on its own jurisdiction in the award on the merits or in a partial award subject to an application for setting aside.
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.
Do annulment proceedings typically suspend enforcement proceedings?	Yes. Article 36-1 of the Guinean Arbitration Rules provides that unless provisional enforcement of the award has been ordered by the Arbitral Tribunal, the exercise of the right to annulment shall suspend the enforcement of the arbitral award until the court has ruled.
Courts' attitude towards the recognition and enforcement of foreign awards annulled at the	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

seat of the arbitration?	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.
If an arbitral tribunal were to order a hearing to be conducted remotely (in whole or in part) despite a party's objection, would such an order affect the recognition or enforceability of an ensuing award in the jurisdiction?	Yes. Article 3-1 of the OHADA Edited Arbitration Act provides that arbitration is an agreement by which the parties undertake to submit to arbitration any dispute which may arise or result from a contractual relationship or an agreement by which the parties to a dispute which has already arisen agree to settle it by arbitration. Accordingly, the conditions for conducting a hearing must be agreed by both parties in order to issue a subsequent award that will be enforceable in the jurisdiction.
Key points to note in relation to arbitration with and enforcement of awards against public bodies at the jurisdiction?	Article 2 of the OHADA Edited Arbitration Act provides that any individual or legal person may have recourse to arbitration on the rights of which it has free disposal. States, other territorial public authorities, public institutions and any other legal person of public law may also be parties to arbitration, whatever the legal nature of the contract, without being able to invoke their own right to contest the arbitrability of a dispute, their capacity to enter into an arbitration agreement or the validity of the arbitration agreement. Given the scope of application of the OHADA arbitration rules, enforcement of arbitral awards applies without restriction to public bodies within the jurisdiction.
Is the validity of blockchain-based evidence recognised?	The Revised Uniform Arbitration Act contains no specific provision related to the validity of blockchain-based evidence.
Where an arbitration agreement and/or award is recorded on a blockchain, is it recognised as valid?	The Revised Uniform Arbitration Act contains no specific provision related to the recognition of an arbitration agreement and/or award recorded on a blockchain.
Would a court consider a blockchain arbitration agreement and/or award as originals for the purposes of recognition and enforcement?	The revised Uniform Arbitration Act contains no specific provision as to whether a court would consider an arbitration agreement and/or a block award as originals for the purposes of recognition and enforcement.
Other key points to note?	∅

JURISDICTION DETAILED ANALYSIS

1. The legal framework of the jurisdiction

1.1 Is the arbitration law based on the UNCITRAL Model Law? 1985 or 2006 version? If yes, what key modifications if any have been made to it? If no, what form does the arbitration law take?

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 11 March 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 Uniform Arbitration Act**"). The Revised Uniform Arbitration Act entered into force on 23 February 2018 and applies 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 23 November 2017 (the "**CCJA Arbitration Rules**"); and
- Decree N°A/2016/033/MJ/CAB/16 dated 8 February 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 Uniform 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 In the absence of an express designation of a ‘seat’ in the arbitration agreement, how do the courts deal with references therein to a ‘venue’ or ‘place’ of arbitration?

The courts will seek to demonstrate the common will of the parties as to the seat of the arbitration, through all the clusters of indices listed. If the arbitral tribunal is constituted without incident, the courts, in the name of the principle of competence-competence, will want to attribute this responsibility to the latter.

2.3 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 Uniform 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.

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

According to Article 3-1(4) of the Revised Uniform 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.

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

The article 1098 of the Civil Code, provides that: *“We can stipulate for others.*

One of the contracting parties, the stipulating party, can make the other, the promisor, promise to perform for the benefit of a third party, the beneficiary. The beneficiary may be a future person but must be precisely designated or determinable at the time of the execution of the promise. The beneficiary has a direct right to the benefit against the promisor from the moment of the stipulation.

Nevertheless, the stipulator may freely revoke the stipulation as long as the beneficiary has not accepted it. The stipulation becomes irrevocable at the moment when the acceptance reaches the stipulator or the promisor”.

Based on this article, a third-party can only be bound by an arbitration agreement to the extent that it has agreed to the arbitration agreement.

2.6 Are there restrictions to arbitrability? In the affirmative:

2.6.1 Do these restrictions relate to specific domains (such as anti-trust, employment 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; and
- 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.

2.6.2 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 Uniform 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 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 anti-suit injunctions/anti-arbitration injunctions or orders, 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 foreign counsel or be self-represented?

The Revised Uniform 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 be of a gravity such as to 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 Uniform 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 Uniform 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? If so, are they willing to consider *ex parte* requests?

Pursuant to Article 13 of the Revised Uniform 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 Uniform 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, provided that such measures do not concern 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 sequestered (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.

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 Uniform 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, and can hearings and/or meetings be held remotely, even if a party objects?

There are no provisions relating to this subject matter in the Revised Uniform 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? In the affirmative, under what conditions?

With respect to interim measures, Article 14 of the Revised Uniform 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? For example, are there any restrictions to the presentation of testimony by a party employee?

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

4.6 Liability

4.6.1 Do arbitrators benefit from immunity from civil liability?

The Revised Uniform 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 Uniform 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? If yes, under what conditions?

Under article 25(3) of the Revised Uniform 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)? If yes, what are the grounds for appeal?

Article 25 of the Revised Uniform 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 Uniform Arbitration Act, enforcement and execution of foreign awards intervene under the same conditions as those provided for local awards.

Article 30 of the Revised Uniform 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 Uniform 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 Uniform 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 type of 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 laws or regulations relating to, or restrictions to, the use of contingency or alternative fee arrangements or third-party funding at the jurisdiction? If so, what is the practical and/or legal impact of such laws, regulations or restrictions?

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

7. Arbitration and Technology

7.1 Is the validity of blockchain-based evidence recognised?

The Revised Uniform Arbitration Act contains no specific provision related to the validity of blockchain-based evidence.

7.2 Where an arbitration agreement and/or award is recorded on a blockchain, is it recognised as valid?

The Revised Uniform Arbitration Act contains no specific provision related to the recognition of an arbitration agreement and/or award recorded on a blockchain.

7.3 Would a court consider a blockchain arbitration agreement and/or award as originals for the purposes of recognition and enforcement?

The revised Uniform Arbitration Act contains no specific provision as to whether a court would consider an arbitration agreement and/or a block award as originals for the purposes of recognition and enforcement.

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).

7.4 Would a court consider an award that has been electronically signed (by inserting the image of a signature) or more securely digitally signed (by using encrypted electronic keys authenticated by a third-party certificate) as an original for the purposes of recognition and enforcement?

The revised Uniform Arbitration Act contains no specific provision as to whether a court Would consider an award that has been electronically signed or more securely digitally signed as an original for the purposes of recognition and enforcement.

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

It seems unlikely that there will be any significant reform in the next couple of years as the Revised Uniform Arbitration Act has entered into force two years ago. In addition, the procedure for amending an OHADA Uniform Act is very cumbersome, and the adoption of a new text will require the consent of all OHADA Member States.

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 8 February 2016.

9. Compatibility of the Delos Rules with local arbitration law

There is compatibility in the dispute handling process between the delos rules and local arbitration law, which are among others:

- a- like the Rules of Delos, recourse to arbitration under local arbitration law is subject to an arbitration agreement, which may take the form of an arbitration clause.
- b- both aim at a simplified, rapid and impartial procedure;
- c- like the local arbitration law, the Delos rules give the arbitral tribunal the possibility to make partial or final awards;
- d- a draft arbitral award is submitted in both cases to the directors of the Tribunal. In the DELOS rules, the Tribunal submits its draft award within a specific time limit to DELOS. With regard to local arbitration law, the draft award is submitted to the CGA secretariat. In both cases, the tribunal's administrators may make comments. Upon receipt of any comments, it will be at the sole and absolute discretion of the Tribunal to decide whether or not to include such comments in the Award;
- e- any arbitral award, in both cases, must be made in writing. The Tribunal shall set out in writing the reasons for the decisions made in the Award, unless the parties have agreed otherwise;
- f- the arbitral award, in the delos rules as well as in the local arbitration law, has a binding character for the parties. The arbitral award is binding on the parties, who undertake to comply with it without delay by adhering to these rules.

10. Further reading

φ

ARBITRATION INFRASTRUCTURE IN THE JURISDICTION

Leading national, regional and international arbitral institutions based out of the jurisdiction, <i>i.e.</i> with offices and a case team?	Common Court of Justice and Arbitration (" CCJA "), ⁴ located in Abidjan, Cote d'Ivoire.
Main arbitration hearing facilities for in-person hearings?	Chamber of Arbitration of Republic of Guinea (" CAG "), ⁵ located in Conakry.
Main reprographics facilities in reasonable proximity to the above main arbitration hearing facilities?	∅
Leading local providers of court reporting services, and regional or international providers with offices in the jurisdiction?	∅
Leading local interpreters for simultaneous interpretation between English and the local language, if it is not English?	Nomad, ⁶ Sita Guinée, ⁷ Traducom Guinée, ⁸ TBC Sarl. ⁹
Other leading arbitral bodies with offices in the jurisdiction?	∅

⁴ <http://www.ohada.com/presentation-droit-ohada/categorie/7/cour-commune-de-justice-et-d-arbitrage-ccja.html>.

⁵ There is no website for the CAG and we couldn't get an e-mail address.

⁶ <https://nomadlingo.com/fr>.

⁷ (+224) 622 53 13 68

⁸ (+224) 622 00 52 82 / (+224) 657 05 13 23

⁹ (+224) 660 81 24 88 / (+224) 620 72 48 65