

# DELOS GUIDE TO ARBITRATION PLACES (GAP)

2<sup>ND</sup> EDITION

## REFERENCE SHEET ON ARBITRABILITY OF CONSUMER DISPUTES

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**DELOS**  
dispute resolution

## GAP REFERENCE SHEET: ARBITRABILITY OF CONSUMER DISPUTES

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Jurisdiction	Arbitrable?	Commentary
<a href="#">Algeria</a> , by Bennani & Associés	Presumed yes	No restrictions noted.
<a href="#">Angola</a> , by Miranda & Associados	Yes	The general rule is that natural or legal persons may enter into arbitration agreements, minors and persons with diminished capacity being the only exception.
<a href="#">Argentina</a> , by Bomchil	No	Article 1651 of the Civil and Commercial Code determines that the following matters are not arbitrable: ... (c) those involving the rights of users and consumers; (d) adhesion contracts, whatever their purpose is.
<a href="#">Australia</a> , by Squire Patton Boggs	Partially	There is no express restriction on consumers being party to arbitration agreements. However, depending on the circumstances, an arbitration agreement with a consumer (e.g., included as part of a standard form contract or a contract of adhesion) may not be enforceable, either as an unfair contract term or because inclusion of the term amounts to unconscionable conduct.
<a href="#">Austria</a> , by Knoetzl	Partially	Consumers may validly enter into arbitration agreements in relation to consumer disputes, but subject to considerable restrictions: pursuant to section 617 of the Code of Civil Procedure, an arbitration agreement involving a consumer is only valid if it is concluded in a separate document after the dispute has arisen. Foundations ("Privatstiftungen") and minority shareholders of corporations are, in certain circumstances, considered consumers.
<a href="#">Belgium</a> , by Fieldfisher	Partially	When it comes to arbitration agreements entered into with a consumer, the latter benefits from certain protections in accordance with the Belgian Code of Economic Law. Even though this Code does not expressly prohibit arbitration clauses, in practice, courts tend to protect the consumer, by considering that arbitration agreements entered into with consumers before the dispute has arisen are abusive. The consumer will therefore be granted a choice of bringing a dispute before the courts, regardless of any pre-dispute arbitration agreement.
<a href="#">Benin</a> , by Oya	Presumed yes	No restriction noted.
<a href="#">Brazil</a> , by TozziniFreire Advogados	No	Arbitral clauses inserted in consumer contracts are null and void according to Art. 51, VII, of the Code of Consumer Defence and Protection (Law No. 8.078 of September 11, 1990). This provision enables the parties to circumvent the competence-competence principle and go straight to the Judiciary.
<a href="#">Bulgaria</a> , by Kambourov & Partners	No	Since January 2017, disputes involving consumers are non-arbitrable.
<a href="#">Canada</a> , by Borden Ladner Gervais (BLG)	Depends on province	Applicable provincial legislation provides guidance on whether particular matters are arbitrable. In areas such as consumer contracts, some jurisdictions have statutory restrictions with respect

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		to arbitration. In Quebec, for instance, any stipulation that obliges the consumer to refer a dispute to arbitration that restricts the consumer's right to go before a court, in particular by prohibiting the consumer from bringing a class action, or that deprives the consumer of the right to be a member of a group bringing a class action, is prohibited.  Arbitrability in Canada is generally considered a requirement for jurisdiction as opposed to a condition of validity of the arbitration agreement, with the possible exception of arbitration agreements in the consumer protection context where a lack of arbitrability of such disputes may lead to invalidity.
<a href="#">China (Mainland)</a> , by Herbert Smith Freehills	Presumed yes	No restrictions noted.
<a href="#">Côte d'Ivoire</a> , by Dogue - Abbé Yao & Associés	Yes	There are no express restrictions to arbitrability within the OHADA area or in Côte d'Ivoire; Indeed, any natural or legal person may resort to arbitration with respect to any rights on which she has free disposal.
<a href="#">Cyprus</a> , by Christos Georgiades & Associates	Presumed yes	No restrictions noted.
<a href="#">Dominican Republic</a> , by Jimenez Peña	Presumed yes	No restrictions noted.
<a href="#">Egypt</a> , by Zulficar & Partners	Presumed yes	No restrictions noted.
<a href="#">England &amp; Wales (UK)</a> , by White & Case	Partially	Section 91(1) of the 1996 Arbitration Act provides that arbitration agreements relating to claims under £5,000 in consumer contracts are unfair and therefore unenforceable. For claims over £5,000, the arbitration agreement may still be considered unfair and unenforceable if it causes significant imbalance in the parties' rights and obligations under the contract to the detriment of the consumer.
<a href="#">Ethiopia</a> , by Aman Assefa & Associates	No	The Arbitration Law provides that the matters relating to consumer protection are non-arbitrable. The boundaries of this haven't yet been tested in court.
<a href="#">Finland</a> , by Castrén & Snellman	Partially	Consumers are not bound by arbitration agreements concluded before a dispute has arisen.
<a href="#">France</a> , by August Debouzy	Partially	In a ruling of 30 September 2020, the Court of cassation considered the validity of an arbitration agreement in a consumer contract between a French national and a Spanish law firm. It was decided that the provisions of EU law that protect consumers against unfair terms prevail over the "kompetenz-kompetenz" principle. As such, the Court of Cassation confirmed the decision of the Versailles Court of Appeal that had considered that an arbitration clause contained in an agreement for the provision of legal services was an unfair term within the meaning of the EU Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts and thus discarded it. It

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		is uncertain whether the solution adopted in this ruling is of general application as there has been no other recent decision on this point. However, it should be stressed that in order to conclude that the arbitration clause was an unfair term, the Versailles Court of Appeal relied heavily on the circumstances of the case, and the specific fact that the clause had not been subject to any negotiation and that it was standardised. As such, it would be premature to conclude, based on this single decision, that any arbitration agreement stipulated in an international consumer contract will be considered by French judges as unfair term under EU law.
<a href="#">The Gambia</a> , by Farage Andrews Law Practice	Presumed yes	No restrictions noted.
<a href="#">Germany</a> , by CMS Hasche Sigle	Partially	Special form requirements apply to arbitration agreements in which one party is a consumer: they must be contained in a standalone document (unless if made with a notary) and signed by the parties by hand or by means of a qualifying electronic signature. Arbitration agreements recorded on a blockchain are recognized in B2B transactions. However, this is not the case if a consumer is party to the transaction.
<a href="#">Greece</a> , by KLC Law Firm	No	Any private law dispute may be referred to arbitration as long as the parties are vested under law with the power to freely dispose of the dispute's subject matter. Accordingly, the following categories of disputes, have been considered to be non-arbitrable: ... consumer-related matters;
<a href="#">Guinea</a> , by Thiam & Associés	Presumed yes	No restrictions noted.
<a href="#">Hong Kong</a> , by Fangda Partners	Partially	Arbitration agreements can be enforced against a consumer under Hong Kong law, provided that the consumer provides their written consent after the differences have arisen, or has themselves had recourse to arbitration to enforce the agreement. The court will also scrutinise the substance of the agreement to determine if the consumer is in fact dealing as a consumer. For example, an experienced businessman who instructs solicitors frequently in the course of their business was not treated as a consumer for the purposes of an arbitration agreement contained in a solicitor's retainer.
<a href="#">India</a> , by PSL – Advocates & Solicitors	Yes	Consumer disputes are settled as being arbitrable.
<a href="#">Indonesia</a> , by KarimSyah Law Firm	Presumed no	The crux of the Arbitration Law is to ensure that where parties have agreed to arbitrate their disputes, the Indonesian courts do not have and may not take jurisdiction over such matters. This right is limited to commercial disputes, being those that the parties have the authority to resolve themselves, thereby giving them the right to delegate that authority to an arbitral tribunal and divest the courts of jurisdiction.

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		Furthermore, incorporation by reference is not recognized in Indonesia unless it can be shown that the party contesting actually read and agreed to the arbitration clause in the document sought to be incorporated.
<a href="#">Iran</a> , by Gheidi & Associates	Presumed yes	No restrictions noted.
<a href="#">Iraq</a> , by Eversheds Sutherland	Presumed yes	No restrictions noted.
<a href="#">Italy</a> , by Legance	Partially	In relation to consumers, according to the EU Directive 93/13 (transferred into Italian law by the Consumer Code, Art. 33.2.v-bis, Legislative Decree 6 September 2005, no. 26), an arbitration clause inserted in a consumer contract is presumed to be abusive and cannot be efficiently enforced against the consumer against his/her will. However, once the dispute has originated, the consumer and the professional can convene to defer the specific dispute to arbitration, following the standard requirements put forward by Article 807 of the Code of Civil Procedure.
<a href="#">Rep. of Korea</a> , by Rosetta Legal	Yes	Korea does not have any restrictions as to arbitrability in the areas of consumer disputes.
<a href="#">Lebanon</a> , by Obeid Law Firm	Presumed yes	No restrictions noted.
<a href="#">Libya</a> , by MKE Lawyers	Presumed yes	No restrictions noted.
<a href="#">Mauritius</a> , by Peeroo Chambers	Partially	Section 8 of the International Arbitration Act 2008 expressly allows arbitration involving a consumer, provided that the relevant arbitration clause is confirmed after the dispute has arisen by means of a separate written agreement of the parties.
<a href="#">Morocco</a> , by Gide Loyrette Nouel	Presumed yes	No restrictions noted.
<a href="#">New Zealand</a> , by Chapman Tripp	Partially	An arbitration agreement is enforceable against a consumer only if the consumer enters into a separate written agreement with the other party to the contract, after a dispute has arisen out of or in relation to the contract, certifying that the consumer has read and understood the arbitration agreement and agrees to be bound by it (Arbitration Act, s 11(1)).
<a href="#">Nigeria</a> , by Broderick Bozimo & Company	Presumed yes	No restrictions noted.
<a href="#">Norway</a> , by Wikborg Rein	Yes	Certain formality requirements apply to arbitration agreements with consumers.
<a href="#">Peru</a> , by Miranda & Amado	Presumed no	In Peru, only disputes related to rights that can be freely surrendered or waived by the parties may be submitted to arbitration.
<a href="#">The Philippines</a> , by SyCip Salazar Hernandez & Gatmaitan	Presumed yes	No restrictions noted.

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<a href="#">Poland</a> , by Clifford Chance	Partially	In the case of disputes with consumers and labour disputes, the parties may agree to arbitrate only after a dispute has arisen (Articles 1164 and 1164 <sup>1</sup> §1 Code of Civil Procedure).
<a href="#">Portugal</a> , by Morais Leitão, Galvão Teles, Soares da Silva & Associados (MLGTS)	Presumed yes	No restrictions noted.
<a href="#">Romania</a> , by Iordache Partners	Partially	Disputes arising from contracts with consumers, or individuals purchasing goods or services outside of a trade, are in principle arbitrable, in that they adjudicate rights of which the parties may dispose, which is the legal test of arbitrability <i>ratione materiae</i> . However, while this may not be technically an arbitrability point, it is worth noting that exclusive arbitration provisions in consumer contracts may be vulnerable under consumer protection legislation as “abusive terms” (Law 193/2000, which implements the Council Directive 93/13/EEC on consumer contracts).
<a href="#">Russia</a> , by Freshfields Bruckhaus Deringer	Presumed yes	No restrictions noted.
<a href="#">Senegal</a> , by Geni & Kebe	Yes	There are no specific matters expressly excluded from arbitration under the OHADA Uniform Act on Arbitration, which only refers to rights that parties may freely dispose of.
<a href="#">Serbia</a> , by Moravčević Vojnović and Partners in cooperation with Schoenherr	Presumed yes	No restrictions noted.
<a href="#">Singapore</a> , by Mayer Brown	Yes	No restrictions noted.
<a href="#">Spain</a> , by Garrigues	Partially	Arbitration with consumers is regulated by the Royal Decree 1/2007 of 16 November 2007, on the Revised Text of the General Defence of Consumers and Users. (The Arbitration Act will therefore only apply to those issues that are not addressed in the Decree.)
<a href="#">Sweden</a> , by Mannheimer Swartling	Partially	Section 6 of the Arbitration Act includes a restriction to arbitrability with respect to consumers. Pursuant to said section, consumer disputes are arbitrable only if the arbitration agreement was made after the dispute arose. Furthermore, an arbitration agreement may be invalidated or modified under section 36 of the Swedish Contracts Act. This is relevant particularly with respect to vulnerable parties such as consumers or employees, if enforcing the agreement would be considered unreasonable in the circumstances.
<a href="#">Switzerland</a> , by Lévy Kaufmann-Kohler	Yes	No restrictions noted.
<a href="#">Taiwan</a> , by Formosa Transnational	Yes	No restrictions noted.
<a href="#">United Arab Emirates (UAE)</a> , by Al Tamimi & Co.	Presumed yes	No restrictions noted.

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<a href="#">United States of America (USA)</a> by Arent Fox for California, Boies Schiller Flexner for New York and Washington D.C., Hugues Hubbard & Reed for Florida, and Vinson & Elkins for Texas	Yes	The Federal Arbitration Act pre-empts state law - statutory or common law - that prohibits arbitration of a particular type of claim. As a result, although some states have attempted to create rules limiting the ability of corporations to include agreements to arbitrate in consumer contracts, the U.S. Supreme Court has struck down such provisions as contrary to the Federal Arbitration Act's principle of non-discrimination against arbitration agreements.