GUINEA

Law and Practice

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CABINET D'AVOCATS

1. Introductory

1.1 Forms of Corporate/Business Organisations

In Guinea, the main types of business organisations are governed by the Uniform Act on Commercial Companies and Economic Interest Groups (*Acte Uniforme relatif au Droit des Sociétés Commerciales et du Groupement d'interet économique*, or AUSCGIE) adopted on 30 January 2014. The principal forms of corporate/business organisations available in Guinea are as follows.

- General partnership (*société en nom collectif*, or SNC) – partners have unlimited liability for the company's debts. All partners are involved in the management of the company and their liability extends to their personal assets.
- Limited partnership (*société en commandite simple*, or SCS) – includes both limited and unlimited liability partners. The unlimited liability partners (general partners) manage the company and are personally liable for the company's debts, whereas the limited liability partners (limited partners) contribute capital and share profits but do not participate in management.
- Limited liability company (*société à responsabilité limitée*, or SARL) – suitable for SMEs, whereby the liability of each partner is limited to their contributions. It requires a minimum of one partner and a maximum of 50, with relatively simple management and administrative structures.
- Public limited company (*société anonyme*, or SA) – appropriate for larger businesses, whereby shareholders' liability is limited to their shareholdings. This type of company can be listed on a stock exchange, requires at least one shareholder, and has a more complex management structure (with a board of directors).
- Simplified joint stock company (*société par actions simplifiée*, or SAS) – offers flexibility and is governed by the shareholders' agreement. Liability is limited to the amount of shares held. It is particularly suitable for joint ventures and start-ups, owing to its adaptable structure.
- Branch (*succursale*) – a branch of a foreign company operating in Guinea. It is not a separate legal entity but, rather, an extension of the parent company and must register with the local authorities.
- Joint venture (*groupement d'intérêt économique*, or GIE) – allows members to pool their resources without creating a new legal entity, thereby facilitating co-operation between businesses while allowing them to retain their legal autonomy. It is mainly used for specific projects or sectors where collaboration is beneficial.

1.2 Sources of Corporate Governance Requirements

The principal sources of corporate governance requirements for companies in Guinea are as follows.

OHADA Uniform Acts

The Organisation for the Harmonisation of Business Law in Africa (*Organisation pour l'Harmonisation en Afrique du Droit des Affaires*, or OHADA) provides a comprehensive set of uniform acts that are applicable across its member states, including Guinea. The AUSCGIE is particularly significant. It governs corporate structures, management practices, and governance standards, ensuring a consistent legal framework throughout the region. The AUSCGIE includes detailed provisions on the formation, operation, and dissolution of companies, as well

as specific requirements for corporate governance – for example, the roles and responsibilities of corporate bodies, decision-making processes, and transparency measures.

National Laws

In addition to the OHADA Uniform Acts, several Guinean national laws and regulations influence corporate governance. Key among these is the Economic Activities Code, which regulates economic activities within the country, setting standards for corporate behaviour and governance. Additionally, the Ordinary Law L/2022/0010/CNT on Local Content promotes local participation in various industries, impacting corporate governance by encouraging companies to integrate local stakeholders and resources into their operations. These national laws complement the OHADA framework by addressing specific economic and social contexts within Guinea.

Company By-Laws

Companies in Guinea are also governed by their internal by-laws, which must align both with OHADA acts and national laws. These by-laws are crucial, as they detail the specific governance structure of each company, define the roles and responsibilities of directors and officers, and set out the rights and obligations of shareholders. By-laws ensure that each company adheres to governance practices that are tailored to its unique operational needs, providing a framework for internal management and decision-making that complements the broader legal requirements.

1.3 Corporate Governance Requirements for Companies With Publicly Traded Shares

The corporate governance requirements for companies with publicly traded shares in Guinea are based on the AUSCGIE and are compulsory. The key requirements are as follows.

Board of Directors

Public limited companies (s *ociétés anonymes faisant appel public à l'épargne*, or APE) must have a board of directors comprising at least three and no more than 15 members. This limit can only be exceeded in the case of mergers, where the board may include directors from the merged companies up to a maximum of 20 directors. New directors can only be appointed if the number of directors falls below 15 due to death, dismissal, or resignation. The articles of association may specify the exact number of directors within these limits.

Procedure and Publicity for Meetings

The procedure for convening and conducting meetings is governed by Articles 831 onwards of the AUSCGIE. Shareholders and the public (investors) must be informed through notices published in authorised legal journals or by sending a notice to each shareholder by registered mail, fax, or email, provided prior consent is given.

Capital Increase

Any increase in capital must be verified by credit institutions and comply with Articles 838-839 of the AUSCGIE. This includes verifying assets and liabilities and ensuring the successful completion of the transaction within specified timeframes.

Financial Statement Publication

Publicly traded companies must publish their financial statements, the decision on the allocation of results, and consolidated financial statements (if applicable) in authorised journals within 45 days following approval by the Ordinary General Meeting (OGM). Semi-annual activity and results tables must also be published within

four months following the first half of the financial year.

2. Corporate Governance Context

2.1 Hot Topics in Corporate Governance

In 2023, corporate governance in Guinea was focused on Local Content Policies (LCPs) aimed at promoting inclusive resource-based development. Key legislative changes under these policies are as follows.

The law mandates that companies ensure at least 50% of managerial positions and 85% of the technical workforce are held by local Guinean nationals by the seventh year of operation. This initiative aims to integrate locals into high-level and technical roles within industries, thereby enhancing local engagement and decision-making. Companies are required to invest in comprehensive training programs focused on skill development and technology transfer for the Guinean workforce. The objective is to reduce dependency on foreign labour by boosting the skills and capabilities of local employees, thereby fostering a more self-sufficient and competitive workforce.

New regulations have tightened the process for obtaining work permits for foreign nationals. Companies must now provide concrete proof of the unavailability of local expertise before hiring from abroad. This measure is designed to prioritise employment opportunities for Guinean citizens and ensure that foreign labour is utilised only when absolutely necessary.

These legislative measures are critical in shaping the corporate governance landscape in Guinea for 2024. They not only aim to bolster local employment and capacity building but also enhance economic sustainability. By ensuring that the benefits of foreign investments and operations in local industries are more equitably distributed, these policies seek to create a more inclusive economic environment in Guinea.

2.2 Environmental, Social and Governance (ESG) Considerations

In Guinea, companies face several key issues and requirements related to ESG reporting. These requirements are designed to promote sustainable development and ensure that companies operate responsibly. The main points are as follows.

Environmental Impact Assessments (EIAs)

Companies are required to conduct comprehensive Environmental Impact Assessments (EIAs) to evaluate the environmental and social impacts of their operations, especially for projects likely to have significant environmental effects. This process helps identify potential adverse impacts and plan appropriate mitigation measures.

Compliance With Environmental Laws and International Conventions

Companies must adhere to national environmental laws and international conventions to which Guinea is a party. This includes regulations on pollution control, waste management, and biodiversity conservation, ensuring that operations do not harm the environment.

Engagement With Local Communities and Stakeholders

Active engagement with local communities and stakeholders is mandatory. Companies must implement strategies to mitigate adverse social impacts, such as resettlement and compensation for affected communities. This fosters good relationships and minimises conflicts.

Regular ESG Reporting

Companies are expected to regularly report on their environmental and social performance. These reports should detail contributions to environmental conservation, social responsibility, and governance practices. Transparency in reporting helps build trust with stakeholders and the public.

Capacity Building

Companies are encouraged to enhance the capabilities of local institutions and communities in managing environmental and social issues effectively. This involves contributing to capacity-building initiatives, thereby ensuring sustainable development and long-term benefits for the local communities.

Monitoring and Evaluation

Continuous monitoring and evaluation of environmental and social impacts is crucial. Companies need robust mechanisms to ensure compliance with environmental standards and the effectiveness of mitigation measures.

Transparency and Accountability

Transparency in environmental and social governance is essential. Companies must ensure that their ESG activities are transparent, including the public disclosure of their ESG reports and impact assessments. This fosters accountability and informed decision-making.

3. Management of the Company

3.1 Bodies or Functions Involved in Governance and Management

The principal bodies involved in the governance and management of a company under OHADA corporate law vary depending on the form of the company. What follows is an overview of two common forms, the SA and the SARL.

- SA – the principal bodies or functions involved in the governance and management of an SA are as follows.
  - (a) General Assembly of Shareholders – the highest decision-making body whereby shareholders exercise their rights to make decisions on corporate matters. Responsibilities include approving financial statements, appointing and removing directors, and making key strategic decisions.
  - (b) Board of directors – responsible for the strategic management of the company, overseeing general operations, and ensuring that the company meets its financial and operational goals. The board of directors acts on behalf of the shareholders and is accountable to them. The board typically consists of a group of individuals elected by the shareholders.
  - (c) Management team – led by the CEO or general manager (*directeur général*). The management team is responsible for overseeing the daily operations of the company, implementing strategies approved by the board, and ensuring effective operational performance.
  - (d) Statutory auditors – independent auditors appointed by the shareholders are responsible for auditing the company's accounts and providing an independent assessment of the financial statements so as to ensure accuracy and compliance with financial regulations and standards.
  - (e) Special committees – the establishment of committees such as the audit committee, risk committee, and compensation committee depends on the size and complexity of the company. These committees report to the board and provide oversight

in their respective areas, ensuring specialised focus and enhanced governance.

- SARL – the principal bodies or functions involved in the governance and management of an SARL are as follows.
  - (a) General Assembly of Shareholders – functions similarly to that in an SA, serving as the highest decision-making body whereby shareholders make key corporate decisions. Responsibilities include approving financial statements and appointing or removing the managing director (*gérant*).
  - (b) Management team – led by the managing director. The management team oversees the daily operations of the company, implements the strategies approved by the general assembly, and ensures effective operational performance.

In both the SA and the SARL, the governance structure ensures that there is a clear separation of powers and responsibilities among the different bodies.

3.2 Decisions Made by Particular Bodies

What follows is a breakdown of the types of decisions typically made by each governing body in an SA and SARL, and the decisions reserved specifically for a particular body.

- SA – the types of decisions made by particular bodies in an SA are as follows.
  - (a) General Assembly of Shareholders – in an SA, the General Assembly of Shareholders can convene in various forms to make different types of decisions. The OGM approves financial statements, decides on the appropriation of net income, appoints board members and auditors, and reviews auditors' reports. The Extraordinary General Meeting (EGM) is authorised to:
    - (i) amend the by-laws;
    - (ii) approve mergers, demergers, conversions, and partial contributions of assets;
    - (iii) relocate the registered office; and
    - (iv) dissolve or extend the company's duration.

Any decision that requires a change to the company's legal structure or by-laws, such as increasing shareholder liabilities, must be made by the EGM, but only with shareholder agreement. Special meetings convene shareholders of a specific class to approve or disapprove general meeting decisions that modify their rights, with changes becoming final only after special meeting approval.

  - (a) Board of directors – the board of directors in an SA is responsible for strategic decisions, determining the company's business direction, and ensuring the implementation of strategic goals as per Article 435 of the AUSCGIE. It handles high-level strategic decisions related to the overall direction of the company. The board also manages operational oversight, conducting controls and verifications, consulting experts, and setting up committees for specific issues. It can move the registered office within the same state, subject to ratification. The board is tasked with routine decision-making within the company's strategic framework.
- SARL – the types of decisions made by particular bodies in an SA are as follows.
  - (a) General Assembly of Shareholders – in an SARL, the General Assembly of Shareholders plays a crucial role during the Annual General Meeting (AGM). It approves financial statements, the management report, and the inventory. For

resolutions to be valid, they must gather a majority of shareholders representing at least half of the share capital. This assembly handles the annual financial and operational decisions, including the approval of key financial documents and reports.

(b) Management team – the management team in an SARL is led by the managing director (*gérant*), who is responsible for daily operations. The managing director implements strategies approved by the General Assembly of Shareholders and ensures effective operational performance. This role involves day-to-day operational management and the execution of strategies.

In summary, in an SA, the General Assembly of Shareholders and the board of directors have distinct roles and reserved decision-making powers. The General Assembly of Shareholders handles routine operational and financial approvals, structural and legal changes, and specific shareholder class rights. The board focuses on strategic direction and operational oversight.

In an SARL, the General Assembly of Shareholders addresses major financial approvals during the AGM, while the managing director oversees daily operations and implements approved strategies. Each body's decisions are reserved based on their roles and the legal framework provided by OHADA corporate law.

3.3 Decision-Making Processes

The decision-making processes of the General Assembly of Shareholders and the board of directors are as follows.

- The General Assembly of Shareholders can convene in the following ways to make decisions.
  - (a) Ordinary General Meeting – the OGM is convened by the board of directors or the general manager at least once a year to approve the financial statements. The agenda, set by the convening authority, typically includes the approval of financial statements, allocation of profits, and the appointment of auditors. A quorum is achieved when shareholders representing at least one-fifth of the shares are present or represented. Resolutions are passed by a simple majority of the votes cast by shareholders present or represented.
  - (b) Extraordinary General Meeting – the EGM is convened by the board of directors or the general manager to amend the articles of association or make significant corporate changes. The agenda includes amendments to the articles of association, increase or reduction of capital, and the merger or dissolution of the company. A quorum is achieved when shareholders representing at least a quarter of the shares are present or represented. Resolutions are passed by a two-thirds majority of the votes cast by shareholders present or represented.
- The board of directors meets as often as necessary, but at least quarterly. Meetings are convened by the chair or, in their absence, by the vice-chair or another designated director. The agenda, set by the chair, typically includes financial oversight, strategic decisions, and corporate governance issues. A quorum is achieved when at least half of the directors are present. Resolutions are passed by a majority of the votes cast by directors present. In the event of a tie, the chair has the casting vote.

In summary, the decision-making processes of the General Assembly of Shareholders and the board of directors are structured to ensure effective governance and compliance with statutory requirements. The OGM focuses on routine corporate matters, requiring a quorum of one-fifth of the shares and passing resolutions by a simple majority. The EGM addresses significant changes, with a higher quorum requirement of a quarter of the shares and resolutions passed by a two-thirds majority. The board of directors meets regularly, with a quorum of at least half the directors, passing resolutions by a majority vote. This structured approach ensures that both routine and significant corporate decisions are made efficiently and with appropriate shareholder and director involvement.

4. Directors and Officers

4.1 Board Structure

The structure of the board of directors for SAs in Guinea is outlined in Articles 416 to 419 of the AUSCGIE.

Number and Appointment of Directors

An SA can have a board of directors composed of three to 12 members. These directors may or may not be shareholders. If required by the articles of association, directors must own a specified number of shares. The first directors are appointed either by the articles of association or by the constitutive general meeting. Subsequent directors are appointed by the OGM.

Merger Provisions

In the event of a merger, the number of directors can be temporarily increased to include directors from the merged companies, with the total number of directors not exceeding 24. This provision allows for a smooth transition and integration of the management teams of the merging entities.

4.2 Roles of Board Members

The roles and responsibilities of various members of the board of directors in an SA are essential for effective governance and management oversight.

- Chair of the board of directors -he chair presides over both board and general meetings, ensuring the supervision of management. They play a crucial role in monitoring the management of the company, ensuring that strategic goals and operational standards are met. The chair can be revoked by the board at any time, reflecting the board's authority and oversight functions.
- General manager – appointed by the board, the general manager is responsible for the overall management and representation of the company. They hold broad powers within the limits of the company's purpose, operating under the authority of the board and the General Assembly of Shareholders. The board sets the general manager's remuneration and benefits, reflecting their significant role in the company's operations.
- Board of directors – the board of directors determines the company's business direction, oversees its operations, and ensures that strategic goals are met. The board has the authority to delegate specific mandates to its members or create committees for addressing particular issues. Additionally, the board is responsible for preparing summary financial statements and the management report for the General Assembly of Shareholders' approval, thereby ensuring transparency and accountability in the company's financial and operational performance.

In summary, the chair of the board of directors, the general manager, and the board of directors each have distinct roles that contribute to the governance and strategic direction of the company. The chair oversees meetings and ensures management supervision, the general manager handles day-to-day operations within the strategic framework set by the board, and the board of directors provides overall strategic direction and oversight, including financial reporting and the establishment of specific committees for focused governance.

4.3 Board Composition Requirements/ Recommendations

The composition requirements for boards of directors in an SA under OHADA law include specific provisions regarding the number of directors, the role of permanent representatives for legal entities, and the establishment of an audit committee, as follows.

- Number of directors – an SA can have between three and 12 directors, as specified in the articles of association. In the event of a merger, the number of directors may be temporarily increased to accommodate directors from the merged companies, with a maximum limit of 24 directors. This provision ensures flexibility during the integration process.
- Permanent representative of legal entity – when a legal entity is appointed as a director, it must designate a permanent representative to carry out its functions on the board. This representative acts on behalf of the legal entity throughout its mandate. Any changes in the designation of the permanent representative must be promptly notified to the company, ensuring continuous and effective representation.
- Audit committee – for companies making a public appeal for savings, it is mandatory to establish an audit committee. This committee must be composed of non-employee directors, ensuring an independent and objective oversight of the company's financial reporting and internal control systems.

In summary, the composition requirements for boards of directors in an SA under OHADA law emphasize flexibility, representation, and oversight. The number of directors ranges from three to 12, with a temporary increase allowed in case of mergers. Legal entities serving as directors must appoint a permanent representative, and companies that appeal to the public for savings must have an audit committee composed of non-employee directors. These requirements ensure effective governance and accountability within the company.

4.4 Appointment and Removal of Directors/Officers

The appointment of directors in an SA is governed by specific rules. First directors are designated either by the by-laws or during the constitutive general meeting. Subsequent appointments are made by the OGM. Directors must meet any shareholding requirements specified in the articles of association, ensuring they have a vested interest in the company.

Directors can be removed at any time by the OGM. The board also has the authority to revoke the chair and the general manager at any time. However, removal without just cause may result in a claim for damages, highlighting the importance of having justifiable grounds for such actions.

There are specific restrictions on who may be appointed as a director. A person cannot hold more than five directorships in public limited companies within the same member state,

with exceptions for controlled companies. This restriction ensures that directors can dedicate sufficient time and attention to each board they serve on. Additionally, the general manager must be a natural person and cannot hold more than three mandates in public limited companies in Guinea. This limitation helps prevent conflicts of interest and overextension of responsibilities.

In summary, the appointment and removal of directors and officers in an SA are regulated to ensure effective governance and accountability. First directors are designated by the by-laws or constitutive general meeting, while subsequent directors are appointed by the OGM. Directors can be removed by the OGM or by the board, with the latter able to revoke the chair and the general manager. Restrictions on appointments include limits on the number of directorships and mandates to ensure directors and officers can fulfil their duties effectively.

4.5 Rules/Requirements Concerning Independence of Directors

The rules and requirements concerning the independence of directors and potential conflicts of interest are designed to ensure transparency and integrity in corporate governance.

- Incompatibility and independence requirements for auditors – auditors must maintain their independence and are prohibited from engaging in activities that could impair this independence. They cannot hold salaried positions within the company, except in specific teaching or auditing roles. Individuals who are founders, shareholders, company executives, or their close associates are explicitly prohibited from serving as auditors. This ensures that auditors can perform their duties without any undue influence or bias.
- Conflicts of interest – to prevent conflicts of interest, directors and their close associates are prohibited from borrowing from the company or obtaining guarantees from it. Any agreements between the company and its directors or their associates that could potentially create a conflict of interest are subject to stringent regulations. These regulated agreements require prior authorisation from the board of directors. Additionally, such agreements must be disclosed in a special report by the statutory auditor, ensuring that shareholders are informed of any potential conflicts.

In summary, the independence of auditors and the prevention of conflicts of interest among directors are critical aspects of corporate governance. Auditors are required to maintain independence by avoiding activities and positions that could compromise their impartiality. Directors are prohibited from engaging in financial transactions with the company that could create conflicts of interest. Regulated agreements involving directors must receive prior board approval and be disclosed to shareholders through a special report by the statutory auditor, ensuring transparency and accountability in corporate operations.

4.6 Legal Duties of Directors/Officers

The principal legal duties of directors and officers of a company encompass a range of responsibilities designed to ensure that they act in the best interest of the company and its shareholders while complying with legal and regulatory frameworks.

- General responsibilities – directors have the authority to bind the company within the limits set by the AUSCGIE. However, statutory limitations on this authority are not

enforceable against third parties who act in good faith. This means that the company is generally bound by the acts of its directors unless it can prove that the third party knew the act was outside the company's corporate purpose.

- Responsibility towards the company and third parties – directors are liable for any violations of legal or regulatory provisions, breaches of the articles of association, and any faults in their management. Shareholders have the right to initiate a corporate action for liability against directors to seek compensation for any damage caused to the company. This mechanism ensures that directors are held accountable for their actions.
- Specific duties and liabilities – directors face criminal sanctions for knowingly presenting false financial statements or misusing company assets. This is to ensure the integrity and accuracy of the company's financial reporting and the proper use of its resources.
- Conflict of interest – directors and their close associates are prohibited from borrowing from the company or obtaining guarantees for their commitments. This rule is designed to prevent conflicts of interest and ensure that directors do not use their position for personal gain at the expense of the company.
- Duty to act in the best interest of the company – directors must prioritise the company's interests over their own and avoid actions that would benefit themselves to the detriment of the company. This fiduciary duty ensures that directors act with loyalty and care, focusing on the long-term success and stability of the company.

In summary, directors and officers have a range of legal duties that are critical for good corporate governance. They have the authority to bind the company within statutory limits and are liable for legal violations and management faults. Specific duties include ensuring the accuracy of financial statements and avoiding conflicts of interest. Directors must always act in the best interest of the company, prioritising its success and integrity over personal gain.

4.7 Responsibility/Accountability of Directors

Directors have a primary duty to act in the best interest of the company as a whole. They must also consider the interests of shareholders and third parties in certain situations. Directors are responsible for their actions while performing their duties and must ensure that they act in the company's best interest, showing loyalty and care in decision-making.

Shareholders have the right to take legal action on behalf of the company if directors fail in their duties. This allows shareholders to seek compensation or corrective measures when directors' actions harm the company.

Directors can also be held personally liable to third parties for any harm caused by their actions, ensuring accountability and responsibility beyond the company's internal affairs. Although the primary duty of directors is to the company, they must also consider the interests of shareholders and third parties. This broader consideration helps maintain trust and integrity in the company's operations and governance.

In summary, directors owe their duties to the company, but they must also consider the interests of shareholders and third parties. This comprehensive approach ensures that directors act responsibly and accountably, balancing the interests of the company, its shareholders, and other stakeholders.

4.8 Consequences and Enforcement of Breach of Directors' Duties

Directors' duties breaches can be enforced through corporate actions initiated by corporate officers or shareholders. The consequences of such breaches include civil liabilities and criminal penalties.

- Enforcement of breach – corporate officers or shareholders can bring corporate actions to enforce directors' duties. Shareholders have the right to initiate actions on behalf of the company to seek compensation for damages caused by directors' breaches. Any damages awarded as a result of these actions go to the company, rather than to the individual shareholders, thus ensuring that the company is made whole.
- Consequences of a breach – directors are individually responsible for faults committed in their functions. When multiple directors are involved in a breach, their liability is joint and several, meaning that each director can be held responsible for the entire damage.

Criminal penalties apply for serious offences, such as presenting false financial statements and misusing company assets. These penalties serve to deter misconduct and ensure that directors uphold their legal and fiduciary responsibilities.

In summary, breaches of directors' duties are enforced through corporate actions initiated by corporate officers or shareholders. Shareholders can seek compensation on behalf of the company for any damage caused by directors' misconduct. Directors who breach their duties face significant consequences, including civil liabilities and criminal penalties, with joint and several liability applying if multiple directors are involved in the breach.

4.9 Other Bases for Claims/Enforcement Against Directors/Officers

In addition to breaches of fiduciary duties, there are other bases for claims or enforcement against directors or officers in Guinea, as follows.

- Violations of legislative or regulatory provisions – directors can be held liable for breaches of legislative or regulatory provisions. This liability can result in both civil and criminal penalties, depending on the nature and severity of the violation. Directors must ensure that the company complies with all applicable laws and regulations to avoid such liabilities.
- Misuse of company assets – directors who misuse company assets for personal purposes face criminal penalties. This misuse constitutes a serious breach of trust and can lead to significant legal consequences, including fines and imprisonment. It is crucial for directors to use company assets solely for legitimate business purposes.
- Limitation on liability – the liability of directors can be limited under specific conditions. By way of example, directors may be indemnified or insured against certain liabilities. However, this limitation does not absolve directors of their responsibility for faults committed. Directors remain individually responsible for their actions and cannot escape liability for serious misconduct or breaches of duty.

In summary, directors in Guinea can face claims or enforcement actions for violations of legislative or regulatory provisions and misuse of company assets, in addition to breaches of fiduciary duties. These actions can result in civil and criminal penalties. Although there are mechanisms to limit directors' liability, such as indemnification or insurance, directors remain individually

responsible for their faults and cannot avoid liability for serious misconduct. This ensures accountability and adherence to corporate governance standards.

4.10 Approvals and Restrictions Concerning Payments to Directors/Officers

The process for approving the payment of remuneration, fees, or benefits to directors and officers is clearly defined to ensure transparency and accountability.

- Managers – the remuneration of managers is determined by the shareholders through a majority vote. This process ensures that the compensation packages are subject to shareholder approval, reflecting the interests of the company's owners.
- Directors – the remuneration of directors is decided by the general assembly of shareholders. Once approved, the distribution of these fees among the directors is managed by the board of directors. This two-step process ensures that both the amount and the allocation of directors' fees are transparent and subject to oversight.
- General manager – the remuneration of the general manager is set by the board of directors. If the general manager is also a director, this remuneration must receive additional approval to prevent any conflicts of interest. This requirement ensures that the compensation of key executives is carefully scrutinized and aligned with the company's performance and objectives.

There are specific restrictions on the remuneration of directors to prevent excessive or unauthorized payments. Directors cannot receive remuneration beyond the specified limits set by the company's bylaws or shareholder resolutions. Any decisions made in violation of these limits are considered null and void. This restriction helps maintain a fair and reasonable compensation structure and prevents misuse of company funds.

Failure to comply with the approval requirements for remuneration can have serious consequences, as follows.

- Nullification of decisions – any remuneration decisions made without the proper approvals are null and void. This means that unauthorized payments can be reversed, and the company may demand repayment of any excess amounts paid.
- Legal and financial penalties – directors and officers who fail to comply with the approval processes may face legal and financial penalties. This includes potential claims from shareholders for breach of fiduciary duty and possible sanctions under corporate governance laws.
- Reputational damage – non-compliance with remuneration approval requirements can lead to significant reputational damage. This can affect the company's relationship with its shareholders, investors, and the public, potentially leading to a loss of trust and confidence in the company's governance practices.

In summary, the remuneration, fees, and benefits payable to directors and officers are subject to specific approvals and restrictions to ensure transparency and accountability. Managers' and directors' remuneration requires approval by shareholders, while the general manager's remuneration is set by the board and requires additional approval if the general manager is also a director. Directors are restricted from receiving remuneration beyond specified limits, and

any violations render the decisions null and void. Non-compliance can result in nullified decisions, legal and financial penalties, and reputational damage, emphasising the importance of adhering to these approval processes.

4.11 Disclosure of Payments to Directors/Officers

Companies are required to make specific public disclosures regarding the remuneration, fees, or benefits payable to directors and officers. The annual report must include detailed information on all forms of compensation paid to corporate officers. Additionally, any significant agreements involving directors, general managers, or major shareholders must be disclosed in a special report by the statutory auditor and approved by the General Assembly of Shareholders. These disclosure requirements promote transparency, accountability, and shareholder oversight in corporate governance.

Annual Report (Article 831-3)

A company must include detailed information on the remuneration and benefits paid to each corporate officer in its annual report. This encompasses the total amount of remuneration paid, any allocation of shares, debt securities, or other financial instruments, and other benefits provided such as bonuses, stock options, and retirement benefits. The annual report provides shareholders and the public with transparency regarding the compensation of directors and officers, thereby ensuring accountability and alignment with the company's performance.

Special Report (Articles 438 and 441)

Any agreements between the company and its directors, general managers, or major shareholders must be disclosed in a special report prepared by the statutory auditor. This report is presented to the General Assembly of Shareholders for approval and includes details of any transactions or agreements that may present a conflict of interest, the nature and terms of these agreements, and any financial arrangements and benefits provided. The requirement for a special report ensures that all material transactions involving directors, officers, or major shareholders are transparent and subject to shareholder approval, protecting the interests of the company and its shareholders.

5. Shareholders

5.1 Relationship Between Companies and Shareholders

The relationship between a company and its shareholders is governed by several key provisions, which ensure that shareholders' rights are protected and that they can actively participate in the company's governance.

- Dividends – each share entitles its holder to a proportional dividend based on the capital it represents. This means that shareholders receive a share of the company's profits corresponding to their ownership stake.
- Pre-emptive rights – shareholders have a pre-emptive right to subscribe to new shares issued to increase the company's capital. This right is proportional to their existing shareholding and is negotiable under the same conditions as the share itself during the subscription period. This provision protects shareholders from dilution of their ownership interest.
- Waiver of pre-emptive rights – the pre-emptive right can only be waived by a decision of the General Assembly of Shareholders, which must act under the quorum and majority conditions required for an EGM. This ensures

that such significant decisions require broad shareholder consent.
- Negotiability of shares – shares become negotiable only after the company's registration with the Trade Register or after the notation of any modification following a capital increase. This rule ensures that shares can be freely traded only when the company's legal status is formalised and updated.
- General assembly participation – shareholders' right to participate in general assemblies is evidenced by the accounting registration of shares in the name of the shareholder or a registered intermediary acting on their behalf. This registration verifies shareholders' entitlement to vote and engage in corporate governance decisions.

In summary, the relationship between a company and its shareholders is structured to ensure fair treatment and active participation in the company's affairs. Shareholders are entitled to proportional dividends and pre-emptive rights on new share issuances, with any waiver of these rights requiring substantial consent. Shares are negotiable after the company is registered, and participation in general assemblies is secured through proper share registration.

5.2 Role of Shareholders in Company Management

Shareholders play a significant role in the governance of a company, primarily through their voting rights and participation in general meetings. However, their direct involvement in the day-to-day management of the company is limited.

Voting Rights

Shareholders have the right to participate in the voting on collective decisions, unless otherwise provided by the AUSCGIE. This enables them to influence major decisions such as the election of directors, approval of financial statements, and significant corporate actions such as mergers or acquisitions.

Proxy Representation

Shareholders can be represented by a proxy under certain conditions set by the AUSCGIE or the by-laws. This provision allows shareholders who cannot attend meetings in person to still exercise their voting rights and participate in decision-making processes.

Control of Majority Abuse

Collective decisions that constitute an abuse of majority power are void. Abuse of majority occurs when majority shareholders vote for a decision solely in their own interest to the detriment of minority shareholders without any justification of interest for the company. This rule protects minority shareholders from unfair treatment and ensures that decisions are made in the best interest of the company as a whole.

Decision-Making in General Meetings

Ordinary and extraordinary decisions are made in general meetings or by written consultation, with specific conditions for each type of company. Ordinary decisions typically involve routine matters such as the approval of financial statements and the election of directors. Extraordinary decisions, which require a higher quorum and majority, involve significant changes like amendments to the articles of association, capital increases or decreases, and mergers or dissolutions.

While shareholders have substantial influence through their voting rights and participation in general meetings, they do not directly manage the company's day-to-day operations. They can vote on major decisions, be represented by proxies, and are protected against majority

abuse. Decision-making is structured through OGMs and EGMs, ensuring that shareholders have a say in critical corporate matters while management retains the responsibility for daily operations.

5.3 Shareholder Meetings

Shareholder meetings are essential for the governance of a company, ensuring that shareholders can participate in decision-making processes. The rules governing these meetings include provisions for annual general meetings, the convening of meetings, quorum and voting requirements, and the conduct of meetings.

Annual General Meetings

AGM must be held within six months following the close of the financial year to approve the management report, inventory, and financial statements. The OGM must be held at least once a year. If the AGM is not held within this period, the public prosecutor or any shareholder can request the court to order the managers to convene the assembly.

Convening of Meetings

Meetings are convened by the board of directors or the general administrator. If they fail to do so, the meeting can be convened by the auditor, a court-appointed representative, or shareholders representing at least one-tenth of the capital. Notice of the meeting must be announced through a legally authorized journal or by registered mail, fax, or email, provided prior written consent is given.

Quorum and Voting

For an OGM, a quorum is valid if shareholders present or represented hold at least a quarter of the voting shares on the first call. No quorum is required on the second call, and decisions are made by a majority of the votes cast. For an EGM, a quorum is valid if shareholders present or represented hold at least half of the shares on the first call and a quarter on the second call. A third call may be made within two months, with a quorum of a quarter of the shares.

Conduct of Meetings

Meetings are chaired by the chair of the board, the president of the board of directors, or the general administrator. In their absence, the shareholder with the most shares present or the oldest shareholder chairs the meeting. Two shareholders with the most shares present or represented are appointed as scrutineers. An attendance sheet is maintained with the names and addresses of each shareholder present or represented, signed by all present at the beginning of the session. The sheet must be certified as sincere and true by the scrutineers, thereby ensuring transparency and order.

5.4 Shareholder Claims

Shareholders in Guinea have several legal bases for claims against the company or its directors, as provided by the New Criminal Code of Guinea, particularly for offences that infringe on their rights or compromise the integrity of corporate governance. Sanctions for these offences include imprisonment, fines, and bans on exercising certain functions, thereby safeguarding shareholders' interests and promoting responsible corporate conduct.

Obstruction of Rights

Obstructing a shareholder's right to participate in a general meeting is a serious offence. It is punishable by imprisonment of one to five years and a fine of GNF20 million to GNF200 million. This provision ensures that shareholders' rights to attend and vote at meetings are upheld.

Irregular Issuance of Shares

The irregular issuance of shares during a capital increase is punishable by imprisonment of one to five years and a fine of GNF20 million to GNF200 million. This measure aims to prevent unauthorised or illegal alterations to the company's share capital, thereby protecting the interests of existing shareholders.

Providing Inaccurate Information

Providing inaccurate information in the context of a capital increase is also punishable by imprisonment of one to five years and a fine of GNF20 million to GNF200 million. Accurate information is crucial for shareholders making informed decisions, particularly regarding capital increases.

Failure to Appoint or Convene Auditors

Failure to appoint or convene auditors to a general meeting is punishable by imprisonment of six months to one year and a fine of GNF6 million to GNF50 million. Auditors play a key role in ensuring the accuracy of the company's financial statements and overall transparency.

5.5 Disclosure by Shareholders in Publicly Traded Companies

The AUSCGIE addresses disclosure and other obligations on shareholders in publicly traded companies, including in relation to the ultimate beneficial owners.

Shareholders are subject to the following disclosure obligations.

- Article 830 – the chair of the board of directors, the CEO, the general manager, the deputy general manager, and directors of a company whose shares are admitted to trading on a stock exchange are required to convert their shares into registered shares within one month of acquiring their positions. This ensures transparency about significant positions and shareholdings.
- Article 831-1 – shareholders must register their shares in the company's records or with an authorised intermediary at least three working days before a general meeting to justify their right to participate. This ensures that the company has up-to-date information on its shareholders.
- Article 832 – shareholders and investors must be informed about the issuance of new shares or other securities giving access to capital, including the terms of issuance, through a notice published in authorised legal journals or by registered mail if the shares are nominative. This promotes transparency and informs shareholders of significant changes affecting their investments.
- Article 831-2 – the chair of the board of directors must report on the composition of the board, the conditions of preparation and organisation of the board's work, and the internal control and risk management procedures implemented by the company. This report is to be attached to the documents provided to shareholders before general meetings, thereby ensuring they are informed about the company's governance and management practices.

Although the AUSCGIE does not explicitly outline separate articles specifically addressing the disclosure obligations related to the ultimate beneficial owners in a detailed manner comparable to those addressing the general shareholders' disclosure obligations, the requirements for transparency and accountability in Articles 830 and 832 implicitly contribute to disclosing beneficial ownership by enforcing the registration and disclosure of significant shareholdings and the identities of those in control.

These provisions collectively establish the obligations for shareholders and directors to disclose relevant information, ensuring transparency and enabling shareholders to make informed decisions about their investments and participate effectively in corporate governance.

6. Corporate Reporting and Other Disclosures

6.1 Financial Reporting

Companies must adhere to various comprehensive annual and periodic financial reporting requirements to ensure transparency, accountability, and compliance with regulatory standards. Non-compliance with these requirements can lead to significant penalties, underscoring the importance of accurate and timely financial reporting to promote transparency and accountability. What follows is a summary of the key reporting obligations.

Annual Financial Statements

The board of directors or managers must prepare summary financial statements, including the balance sheet and the management report. These documents must be approved by the OGM within six months of the financial year-end.

The financial statements must be approved by the General Assembly of Shareholders. Failure to approve the financial statements can result in sanctions, including fines and potential dissolution of the company.

Semi-annual Reports

Companies are required to publish an activity and results table within four months following the first half of the financial year. This table should include Key Performance Indicators and financial results in order to provide an interim overview of the company's performance.

Consolidated Financial Statements

Companies that control other entities must prepare and publish consolidated financial statements. These consolidated statements must be verified by statutory auditors and an attestation must be included in the publication to ensure their accuracy and reliability.

Filing with the Companies Registry

Companies must file their annual financial statements and the decision on the allocation of results with the Companies Registry within one month following approval by the General Assembly of Shareholders. This filing ensures that the company's financial information is publicly accessible and up to date.

Companies are also required to publish legal announcements in authorised journals. These public notices include information about general meetings, changes in the articles of association, and other significant corporate events, ensuring that stakeholders are informed about important developments.

Penalties for Non-compliance

Companies that fail to comply with these reporting requirements may face various sanctions, including fines, court-ordered compliance, and potential dissolution. Directors may also be held personally liable for non-compliance, emphasising the importance of adherence to financial reporting obligations.

6.2 Disclosure of Corporate Governance Arrangements

Requirements for disclosing corporate governance arrangements include the following.

- Report on board composition – the chair of the board of directors must report on the composition of the board, the conditions of preparation and organisation of the board's work, and the internal control and risk management procedures implemented by the company. This report is to be attached to the documents provided to shareholders before general meetings, thereby ensuring they are informed about the company's governance and management practices.
- Report on remuneration and benefits – the chair of the board of directors must prepare a report detailing the remuneration and benefits of corporate officers, including the allocation of capital securities, debt securities, or securities giving access to capital or entitling them to the allocation of debt securities. This report is to be made available to shareholders before the general meeting.

These provisions collectively ensure that companies disclose their corporate governance arrangements, providing shareholders with essential information about the company's governance structure, board composition, and the remuneration of corporate officers. This transparency helps shareholders make informed decisions and enhances corporate accountability.

6.3 Companies Registry Filings

Companies in Guinea are required to make several filings with the Companies Registry to ensure transparency and regulatory compliance. Non-compliance can lead to severe consequences, including court intervention to rectify the situation, joint liability for founders and management, and penal sanctions for obstructing audits or failing to communicate necessary documents. These measures enforce compliance and protect the interests of stakeholders.

The key requirements and consequences of failing to comply are as follows.

Incorporation and Corporate Changes

Companies must file their articles of association (by-laws) and any amendments with the Companies Registry, including any changes in the company's structure. A declaration of regularity and compliance must be filed by the management, administration, and direction members when the by-laws are modified. These filings are published in the National Bulletin of the Trade Registry, ensuring public access to these records.

Annual Financial Statements

Commercial companies must file their annual financial statements with the Companies Registry within one month following their approval by the competent body. This includes the balance sheet, income statement, financial resources and usage table, and the annexed statement of the elapsed financial year. If the documents are not approved, a copy of the competent body's decision must be filed within the same period. These financial statements can also be filed electronically and are publicly accessible once filed.

Public Notices

Legal announcements must be published in the official journal, authorised journals, the National Bulletin of the Trade Registry, or national daily newspapers with a valid subscription. Notices must include the company's name, form, capital amount, registered office address, and registration number to ensure that significant corporate events are communicated to the public.

Consequences of Non-compliance

If a required formality is omitted or improperly executed and the company does not rectify the situation within one month of being notified,

any interested party can request the competent court to appoint a representative to carry out the necessary formality. A copy of the court decision to rectify any formality must be filed with the Trade Registry. Founders and initial management members are jointly liable for damages caused by the absence of a mandatory mention in the by-laws or the omission/irregularity of a prescribed formality. Company directors or any person in the service of the company who knowingly obstructs the audits or controls of the auditors or refuses to communicate necessary documents will face penal sanctions, including fines and imprisonment.

7. Audit, Risk and Internal Controls

7.1 Appointment of External Auditors

The AUSCGIE specifies several provisions that address the requirements for appointing an external auditor in connection with a company's financial statements and the key requirements governing the relationship between the company and the auditor. The appointment of an external auditor is mandatory for both non-public and public companies, with specific provisions for the number of auditors required. The auditor's term, the process for appointment, and the extension of their mandate are well-defined to ensure continuous oversight. Auditors have extensive responsibilities, as described in this section.

Appointment of an External Auditor

Companies that do not publicly solicit savings are required to appoint one auditor and one deputy. Companies that do publicly solicit savings must appoint at least two auditors and two deputies. The first auditor and their deputies are appointed either in the statutes or by the constitutive general meeting. During the company's life, the auditor and their deputies are appointed by the OGM.

The term of office for the auditor appointed in the statutes or by the constitutive general meeting is two fiscal years. If appointed by the OGM, the term is six fiscal years. The auditor's term ends at the conclusion of the OGM that rules on the accounts for the second fiscal year if appointed initially, or the sixth fiscal year if appointed subsequently.

If the General Assembly of Shareholders fails to appoint an auditor, any shareholder can request the competent jurisdiction to appoint one. The mandate thus conferred ends when the General Assembly of Shareholders proceeds with the appointment. If the General Assembly of Shareholders fails to renew or replace the auditor at the end of their mandate, and unless the auditor expressly refuses, their mission is extended until the next OGM.

Obligations and Responsibilities of the Auditor

The auditor must express an opinion indicating that the financial statements are regular and sincere and give a true and fair view of the company's financial position and results. The auditor reports to the OGM based on the probative elements obtained, either:

- concluding the financial statements are regular and sincere; or
- expressing reservations or an adverse opinion; or
- stating the impossibility of forming an opinion.

The auditor's mission is to permanently verify the company's values and accounting documents and ensure the conformity of its accounting to the applicable rules. The auditor verifies

the accuracy and consistency of the information provided in the management report by the board of directors or general administrator with the financial statements and reports this to the AGM.

The auditor ensures that equality among shareholders is respected and, in particular, that all shares of the same category have the same rights. The auditor prepares a report detailing the checks and verifications performed, any modifications deemed necessary for the balance sheet and other accounting documents, and any irregularities and inaccuracies discovered. This report is made available to the chair of the board or the general administrator before the meeting that approves the accounts.

The auditor must report any irregularities and inaccuracies observed during their mission to the next AGM and disclose any criminal acts to the public prosecutor without incurring liability for this disclosure. The auditor and their collaborators are bound by professional secrecy for any information they come across in their functions.

The auditor can carry out checks and verifications at any time of the year and access any documents deemed necessary for their mission. They can be assisted or represented by experts or collaborators under their responsibility. The auditor's fees are borne by the company. The fees are fixed globally, regardless of the number of auditors sharing them – thus ensuring that the audit process is thorough and impartial.

7.2 Requirements for Directors Concerning Management Risk and Internal Controls

Article 829-1 of the AUSCGIE outlines the requirements for directors concerning the management of risk and internal controls within a company. These requirements are aimed at ensuring effective governance and maintaining the integrity of the company's financial and operational processes.

Audit Committee

Companies that seek savings under the AUSCGIE are required to establish an audit committee within the board of directors. The audit committee must consist solely of non-employee directors who do not hold positions such as chair of the board, CEO, or deputy CEO within the company. This set-up ensures the committee's independence and objectivity. The board is responsible for ensuring the competence of the appointed directors by ensuring they have the necessary skills and experience to fulfil their duties effectively.

Primary Missions of the Audit Committee

The audit committee is responsible for examining the accounts and ensuring the appropriateness and permanence of the accounting methods used for the company's consolidated and individual accounts. It also monitors the process of preparing financial information to ensure its accuracy and compliance with relevant standards. This includes verifying that financial statements provide a true and fair view of the company's financial position.

Furthermore, the audit committee monitors the effectiveness of internal control and risk management systems, ensuring that the company has adequate controls in place to mitigate risks and that these controls are functioning effectively. The audit committee also issues an opinion on the auditors proposed for designation by the General Assembly of Shareholders, ensuring that they meet the necessary qualifications and standards to maintain the integrity and independence of the audit process.

Reporting to the Board of Directors

The audit committee regularly reports to the board of directors on the exercise of its missions and is required to inform the board immediately of any difficulties encountered in fulfilling its duties. This ongoing communication ensures that the board is kept informed of any issues that may affect the transparency and effective oversight company's risk management and internal control processes.

Trends and Developments

Contributed by:
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BAO & Fils

BAO & Fils is a business law firm that was established in 1986 in Guinea. It is one of the oldest and most respected firms in the country, with more than 30 years of experience. The firm has played a significant role in shaping the legal framework of the country in various sectors. BAO & Fils is an expert in complex legal matters relating to investments, acquisitions, restructuring, and financing. It provides counsel both in French and English and maintains close collaborations with leading global business law firms from major international financial centres.

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Introduction

Corporate governance in Guinea has been undergoing significant transformation driven by legal reforms, transparency initiatives, and efforts to attract and secure foreign investment. Improving the business environment has been a key objective of the Guinean government, especially since the transition to a democratically elected government in 2010. This article explores the key trends and developments in corporate governance in Guinea, focusing on the legal framework, the role of various corporate bodies, and the impact of recent reforms.

With a population of approximately 12 million, Guinea has endured more than five decades of authoritarian rule and severe economic mismanagement. Since the transition to a democratically elected government in 2010, Guinea has been on a path towards stability and economic viability. The country is rich in natural resources, including a substantial portion of the world's bauxite supply and the world's largest untapped high-grade iron ore deposit. Despite these resources, Guinea has faced challenges related to corruption, inefficient governance, and under-developed infrastructure.

Legal Framework for Corporate Governance

Uniform Act on Commercial Companies and the Economic Interest Group

The primary legal framework governing corporate governance in Guinea is the Uniform Act on Commercial Companies and Economic Interest Groups (*Acte Uniforme relatif au Droit des Sociétés Commerciales et du Groupement d'interet économique*, orAUSCGIE), adopted by the Organisation for the Harmonisation of Business Law in Africa (*Organisation pour l'Harmonisation en Afrique du Droit des Affaires*, or OHADA). This act provides comprehensive regulations for various forms of business organisations including general partnerships (*sociétés en nom collectif*, or SNCs), limited partnerships (*sociétés en commandite simple*, or SCSs), limited liability companies (*sociétés à responsabilité limitée*, or SARLs), public limited companies (*sociétés anonyme*, or SAs), and simplified joint stock companies (*sociétés par actions simplifiée*, or SASs).

Corporate Bodies and Decision-Making Processes

General Assembly of Shareholders

The General Assembly of Shareholders is the highest decision-making body in a company. It meets annually for ordinary sessions and may also convene for extraordinary sessions as necessary.

The Ordinary General Assembly (*Assemblée Générale Ordinaire*, or AGO) is held within six months following the close of the financial year to approve financial statements and conduct regular business. Decisions are made based on majority voting, with each share typically carrying one vote. A quorum of a quarter of the voting shares is required on the first call and no quorum is required on the second call.

The Extraordinary General Assembly (*Assemblée Générale Extraordinaire*, or AGE) convenes for major decisions such as amending the statutes, approving mergers, or dissolving the company. It requires a quorum of at least half the shares on the first call and a quarter on the second call.

Notices are sent at least 15 days in advance and minutes of the meetings are recorded and signed by each attending or represented shareholder.

Board of directors

The board of directors is responsible for the strategic management of the company. Meet-

ings are held as frequently as necessary and are typically convened by the chair. The board meets at least quarterly and a majority of board members must be present for a quorum. Decisions are made by majority vote, with the chair having a casting vote in the event of a tie. Minutes of the meetings are recorded and signed by the chair and another board member. The audit committee, composed of non-executive directors, is responsible for reviewing financial statements, monitoring internal controls, and assessing risk management.

Management team

The management team, led by the CEO or managing director (*directeur général*), is responsible for the day-to-day operations of the company. They make decisions during regular management meetings based on predefined policies or board directives. The strategies approved by the board are then implemented by the management team to ensure alignment with corporate objectives.

Statutory auditors

Statutory auditors play a crucial role in ensuring the accuracy and compliance of financial statements. Companies that seek public investment must appoint two auditors and two alternates for six-year terms. Auditors verify the company's values and accounting documents, report on the accuracy of financial statements, and ensure equality among shareholders.

They report their findings to the General Assembly of Shareholders and are bound by professional secrecy.

Special committees

The board has special committees such as the audit, risk, and compensation committees that focus on specific issues. These committees comprise board members and sometimes external experts. They meet separately from the full board to discuss detailed issues within their scope. Based on their discussions and analyses, they make recommendations to the full board or the General Assembly of Shareholders for approval.

Recent Reforms and Trends

Recent reforms in Guinea have focused on improving transparency, accountability, and corporate governance practices.

Transparency and anti-corruption measures

The Guinean government has introduced several measures to enhance transparency and combat corruption. Notably, the new Mining Code commits to increasing transparency in the mining sector, requiring competitive tendering for contracts and publishing all mining contracts for public scrutiny. Mining companies must sign a code of good conduct and develop corruption monitoring plans.

Additionally, Guinea is committed to full membership in the Extractive Industries Transparency Initiative (EITI), aiming to improve transparency in the oil, gas, and mining industries.

Anti-Corruption Law

Guinea is dedicated to combating corruption, which negatively impacts its economic development. Corruption encompasses various practices and is not uniformly addressed in legal texts. To fulfil this commitment, the country enacted Law L/2017/041/AN on 4 July 2017 for the prevention, detection and punishment of corruption and related offences.

The adoption of the Anti-Corruption Law demonstrates the Guinean government's intention to create a healthy legal environment conducive

to improving the business climate. It promotes transparency and safeguards investors from potential corruption or related activities. It also enables victims of corruption to seek assistance from national and international anti-corruption bodies.

The Anti-Corruption Law of 4 July 2017 governs the legal and institutional framework for corruption in Guinea. It applies to acts of corruption and related offences attributable to:

- any person with public authority, a public or private elective mandate, or a public service delegation involved in managing state or public assets;
- any public or private sector individual or entity; and
- any public or private agent of a foreign state involved in corruption or related offences.

To prevent corruption risks, the law categorises public agents and prohibits state entities from financing political or union activities. Institutions must annually report payments to the state and vice versa. The law also requires companies to disclose audit results revealing corruption to the public prosecutor.

The fight against corruption in Guinea involves the following bodies:

- the National Anti-Corruption Agency (*Agence Nationale de Lutte contre la Corruption*, or ANLC) – responsible for developing and implementing national anti-corruption policies;
- the National Financial Information Processing Unit (*Cellule Nationale de Traitement des Informations Financières*, or CENTIF) – collaborates with the ANLC to combat money laundering and the financing of terrorism related to corruption; and
- the International Criminal Police Organization (INTERPOL) – facilitates international co-operation in preventing and combating criminal activities, including corruption.

Local Content Policies

In order to promote inclusive resource-based development, Guinea has implemented local content policies. These policies include employment quotas, whereby companies are required to ensure that a significant percentage of managerial positions and technical workforce roles are held by Guinean nationals. Additionally, companies must invest in training programmes focused on skill development and technology transfer for the Guinean workforce. New regulations also prioritise local employment by tightening the process for obtaining work permits for foreign nationals.

Corporate Social Responsibility

The 2011 Mining Code of Guinea introduces the country's initial legal structure for corporate social responsibility (CSR). This includes the requirement for mining companies to submit Social and Environmental Impact Plans for approval before commencing operations. Additionally, companies must adhere to a Code of Good Conduct, which entails refraining from corrupt activities and following EITI principles.

Investment Framework

The emergence of a new economic approach in Guinea focuses on attractiveness, efficiency, and the inclusion of the private sector in defining economic policies. This approach is demonstrated by recent legal, judicial and institutional reforms, including the adoption of the new Investment Code on 25 May 2015.

The Investment Code aims to promote the creation, expansion, diversification and modernisation of enterprises in various sectors, including agriculture, manufacturing and services. It also emphasises job creation, attracting foreign capital, and the transfer of technology.

The Investment Code applies to all economic activities across Guinea and is divided into two zones: Zone A (Conakry and surrounding areas) and Zone B (rest of the national territory). Both local and foreign investors are assured equal treatment, the ability to transfer profits abroad, and protection against expropriation except for public utility reasons with fair compensation. The Investment Code offers tax and customs exemptions during the installation phase and reduced tax rates during the production phase, with more favourable terms for investments in Zone B.

The institutional framework includes the Ministry of Private Sector Promotion, the Agency for the Promotion of Private Investment (*Agence de Promotion des Investissements Privés*, or APIP-Guinée), and the Technical Committee for Investment Monitoring (*Comité Technique de Suivi des Investissements*, or CTSI). Investors must comply with local laws, contribute to workforce qualification, prioritise local suppliers, and improve community living conditions. They are also required to submit annual activity reports.

Challenges and Future Outlook

Despite making significant progress, Guinea still faces challenges in corporate governance. Corruption remains widespread, and regulatory procedures are often unclear, leading to corruption and inefficiency. Guinea lacks sufficient infrastructure to support advanced commercial activities, with issues such as electricity shortages and poor road and rail systems.

The business environment continues to be affected by a history of political instability and insecurity, although recent efforts have been made to improve stability. Nonetheless, Guinea's long-term economic outlook is more promising today than it was in past decades.

With its abundant natural resources and ongoing reforms, Guinea has the potential to achieve sustainable economic growth and improve corporate governance standards. The government's commitment to transparency, local content, and CSR – along with international support – will be crucial in realising this potential.

Public-Private Partnership Policy

Guinea has enacted a law to regulate PPPs as part of its strategy to involve the private sector in major projects. This law replaces the 1997 BOT (Build-Operate-Transfer) Law and the public service delegation outlined in the 2012 Public Procurement Code. The objective of this new law is to establish the institutional framework and define the legal rules governing the awarding, control and regulation of PPPs in line with international best practices. It encompasses comprehensive contracts covering the financing, design, construction or transformation, maintenance, operation, or management of infrastructure.

PPPs include public service delegations, partnership contracts, and all agreements, regardless of their name or contractual form (including BOT-type contracts). PPP contracts can benefit from the advantages and exemptions provided in the Investment Code.

The PPP award procedure is based on principles of competition, freedom of access to public procurement, equal treatment of candidates, and transparency of procedures. The rules provide

for the open tender procedure as a principle and, exceptionally, for direct negotiation. The tender procedure selects the service provider through a competition after retaining the most advantageous offer. The direct negotiation procedure involves the contracting authority directly negotiating with a private entity without competition. A "spontaneous offer" is when the private entity initiates a project and conducts preliminary and feasibility studies at its own expense.

Under the lease mode, the operator covers operating costs and is remunerated from sector revenues used for public service management. Concession allows the concessionaire to operate the public service at its own risk and collect user fees. The partnership contract allows the private operator to be remunerated by the public authority independently of user fees.

The implementation and monitoring of PPPs are overseen by several bodies:

- contracting authorities are responsible for implementing PPPs within their competence;
- the Public Procurement Regulatory Authority (Autorité de Régulation des Marchés Publics, or ARMP) ensures and guarantees the independent regulation of PPP procurement procedures;
- the Administration and Control of Major Projects and Public Procurement (Administration et Contrôle des Grands Projets et des Marchés Publics, or ACGPMP) controls the procurement and execution procedures of PPPs; and
- the Minister of Finance verifies before any partnership contract is signed that financial commitments are viable.

Conclusion

Corporate governance in Guinea is experiencing major changes due to legal reforms, transparency initiatives, and local content policies. The AUSCGIE provides a strong framework for corporate governance, ensuring structured decision-making processes for different corporate bodies. Despite ongoing challenges, Guinea's abundant natural resources and dedication to reform offer opportunities for sustainable economic growth and improved corporate governance. Continued efforts to combat corruption, improve infrastructure, and maintain political stability will be crucial in achieving these goals.