



**Center for International Mediators
and Arbitrators**
Winter Academy

Arbitration Agreements Pathological Clauses & Drafting Under the Accra Rules

A practical guide to understanding, diagnosing, and drafting enforceable arbitration agreements.





Accra International Arbitration and Mediation Rules



ACCRA ARBITRATION RULES

What is an Arbitration Agreement?

Definition

A contractual provision where parties agree to resolve disputes through arbitration rather than through the courts — a private, binding alternative dispute resolution mechanism.

Arbitration Clause

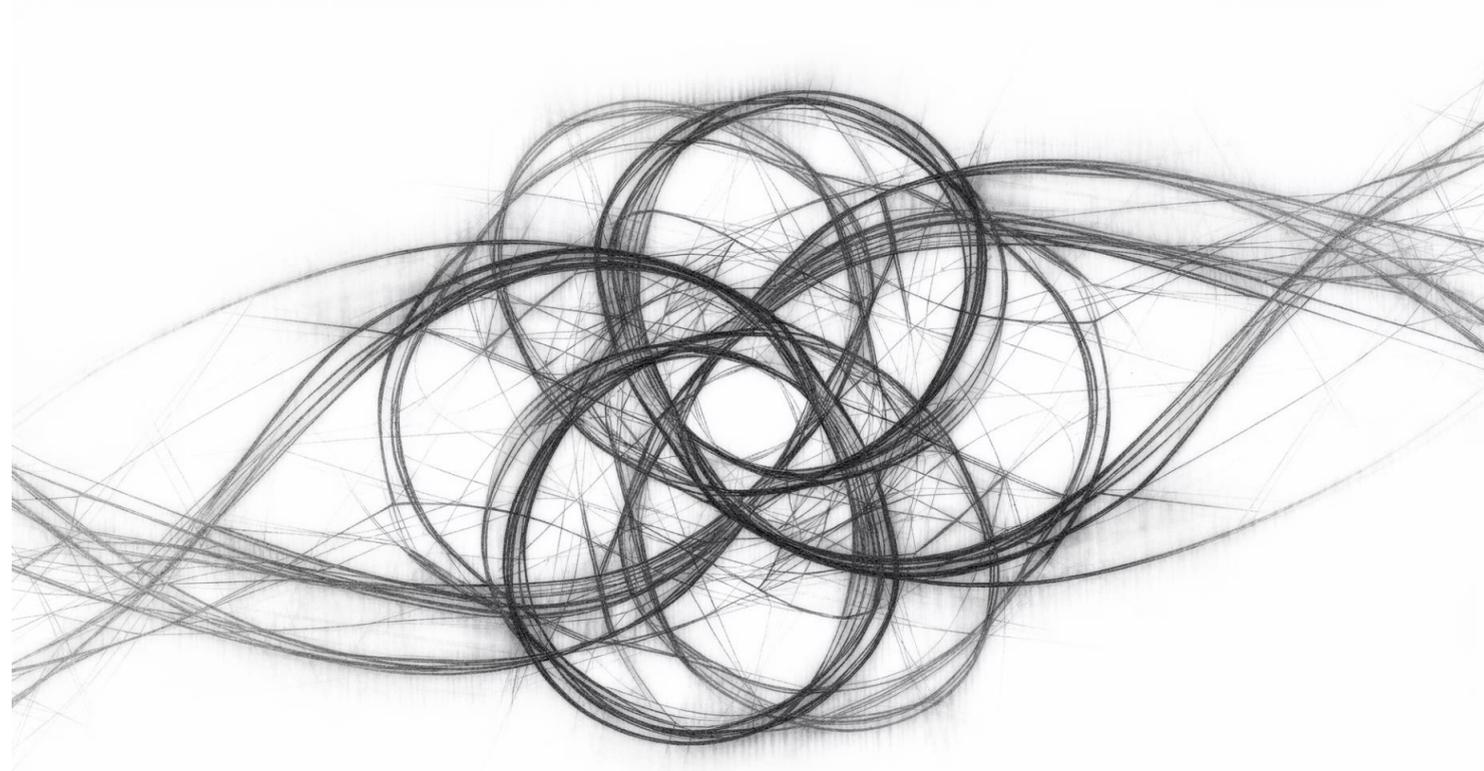
Pre-dispute: Embedded in a contract before any dispute arises. Anticipates and plans for future disagreements.

Submission Agreement

Post-dispute: Entered into after a dispute has arisen, when parties agree to submit an existing controversy to arbitration.

Both types share the same core purpose: ensuring disputes are resolved confidentially, efficiently, and by expert decision-makers — outside the public court system.

Why Drafting Matters: The Cost of Pathological Clauses



A poorly drafted arbitration clause can unravel an entire dispute resolution strategy. What was meant to save time and money instead creates legal chaos.

Ambiguous Seat of Arbitration

Leads to jurisdictional battles between national courts before arbitration even begins.

Vague Arbitrator Selection

Causes deadlocks in constituting the tribunal and prolonged procedural chaos.

The Irony

Parties end up in court because of their arbitration agreement — the very outcome arbitration was meant to avoid.

Pathological Clauses & Their Pitfalls

These recurring drafting failures have been identified across international arbitration practice as the leading causes of failed or contested arbitration agreements.

1

Missing or Unclear Seat

Omitting the arbitral seat creates confusion over which procedural law governs — courts in multiple jurisdictions may claim authority.

2

No Governing Rules

Failing to specify institutional or ad hoc rules leaves parties without a procedural framework, inviting disputes over every step.

3

Vague Tribunal Composition

Leaving arbitrator number and appointment method unresolved creates a real risk of deadlock before the arbitration starts.

4

Ill-Defined Dispute Scope

Overly broad or narrow scope of disputes covered creates enforcement challenges and satellite litigation on jurisdiction.



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Real-World Example: Ambiguous Clause Consequences

"Disputes shall be resolved by arbitration in a mutually agreed location."

1

The Clause

Parties could not agree on a location. No fallback mechanism existed in the contract.

2

The Dispute

Pre-arbitration litigation erupted in two jurisdictions simultaneously, each party seeking a declaration of the proper seat.

3

The Result

Years of delay, escalating legal costs, and a damaged commercial relationship — all before the merits were ever heard.



Key Lesson: Always specify the seat, applicable rules, and appointment method clearly and without ambiguity. "Mutually agreed" without a fallback is a ticking time bomb.

The Accra Rules: A Modern Framework

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ACCRA ARBITRATION RULES

EFFECTIVE 2024

Accra Arbitration Rules

The Accra Rules were developed to serve African and international disputes with a framework built on efficiency, proportionality, and fairness.

Timetable-Driven Process

Built-in deadlines prevent procedural stalling and ensure momentum toward resolution.

Default Tribunal of 3

Three-arbitrator panel by default, with option to agree on a sole arbitrator for smaller disputes.

Clear Fee Schedules

Transparent cost structures aligned with the value and complexity of the dispute.

Party Autonomy + Safety Nets

Encourages flexibility while providing default mechanisms to prevent deadlocks.

Drafting Under the Accra Rules: The Essentials



Governing Rules

*Explicitly reference the **Accra Arbitration Rules** as the governing procedural framework.*



Tribunal Composition

*State number of arbitrators — **default is 3** under the Accra Rules, or 1 if jointly agreed.*



Confidentiality

Include express confidentiality obligations covering hearings, submissions, and the award itself.



Seat of Arbitration

*Specify **Accra, Ghana** (or another agreed seat) to anchor procedural law and enforcement.*



Language

*Define the language of proceedings explicitly — typically **English** for international matters.*



Interim Measures

Address availability of emergency and interim relief to protect parties pending the final award.

Sample Arbitration Clause (Adapted from Accra Rules)

Model Clause

*"All disputes arising from or in connection with this Agreement shall be referred to and finally resolved by arbitration under the **Accra Arbitration Rules** in force at the time of commencement.*

*The **seat of arbitration** shall be Accra, Ghana. The tribunal shall consist of **three arbitrators** appointed in accordance with the Rules.*

*The **language of arbitration** shall be English. The award shall be **final and binding** upon the parties."*

Why This Clause Works

-  **No Gaps**
Every essential element — rules, seat, tribunal, language, finality — is addressed.
-  **No Ambiguity**
Clear, unambiguous language leaves no room for dispute over jurisdiction or procedure.
-  **Enforceable**
Directly aligned with the Accra Rules, ensuring institutional support from filing to award.

Tips for Effective Arbitration Clause Drafting

Whether using the Accra Rules or another institutional framework, these principles apply universally to all arbitration agreements.



Be Precise

Define seat, rules, language, and arbitrator appointment method. Precision prevents paralysis.



Avoid Vague Terms

Never rely on "mutually agreed" without a fallback. If parties could agree, they wouldn't be in dispute.



Cover Key Provisions

Address costs, confidentiality, and interim relief – these protect parties throughout the process.



Define Dispute Scope

Consider carefully which disputes fall within the clause to avoid unintended exclusions or gaps.



Review Regularly

Update clauses in long-term contracts to reflect evolving best practices and rule amendments.

Conclusion: Draft Smart, Avoid Disputes, Resolve Efficiently

Well-Drafted = Well-Protected

A precise arbitration agreement saves time, money, and relationships before any dispute arises.

Use Modern Rules

The Accra Rules offer a clear, efficient, and enforceable framework

Tailor to Your Transaction

One size does not fit all. Customize your clause to the deal, the parties, and the likely disputes.

Seek Expert Advice

For complex transactions, engage specialist arbitration counsel. Enforceable clauses require expertise.



Remember: *Arbitration is only as good as the agreement that starts it. The clause is not a formality — it is the foundation of your entire dispute resolution strategy.*