

ISSUE 6

GHANA ARBITRATION AND COMMERCIAL LAW REVIEW

A CIMA GUIDE TO ARBITRATION IN GHANA



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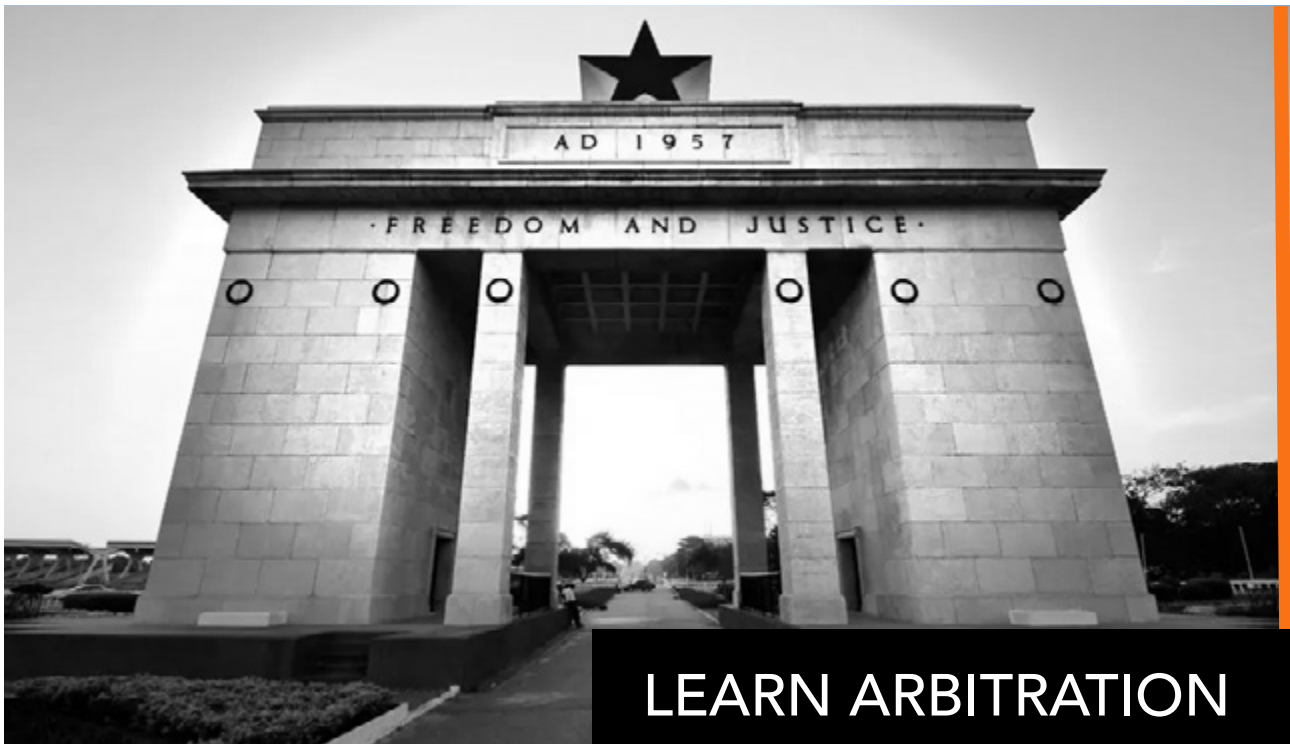
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ARBITRATION GUIDE – GHANA

I. BACKGROUND

(i) Use of Arbitration in Ghana

Question:

To what extent is arbitration utilised in Ghana, and what are its main advantages and limitations?

Answer:

Arbitration is increasingly adopted in Ghana, particularly for high-value and cross-border commercial disputes. Its key advantages include procedural flexibility, confidentiality, finality of awards, and relative speed compared to litigation—subject to case complexity and party cooperation.

However, arbitration may involve significant costs, and enforcement of awards through the courts can introduce delays.

(ii) Nature of Arbitration Practice

Question:

Is arbitration in Ghana primarily institutional or ad hoc, and is it mainly domestic or international? Which rules or institutions are commonly applied?

Answer:

Arbitration in Ghana is predominantly institutional and domestic. The Ghana Arbitration Centre Rules and the Accra Arbitration Rules are both increasingly or progressively used by parties for domestic arbitration. In international cases, parties commonly adopt the rules of the ICC or LCIA.

(iii) Types of Arbitrable Disputes

Question:

What categories of disputes are typically resolved through arbitration?

Answer:

Arbitration is mainly used for corporate and commercial disputes.



(iv) Duration of Proceedings

Question:

To what extent is arbitration utilised in Ghana, and what are its main advantages and limitations?

Answer:

Arbitration is increasingly adopted in Ghana, particularly for high-value and cross-border commercial disputes. Its key advantages include procedural flexibility, confidentiality, finality of awards, and relative speed compared to litigation—subject to case complexity and party cooperation.

(v) Participation of Foreign Nationals

Question:

Are foreign nationals permitted to act as arbitrators or counsel in arbitrations seated in Ghana?

Answer:

Foreign nationals may serve as arbitrators or arbitration counsel. However, restrictions apply to the practice of law by foreign lawyers within Ghana.



II. ARBITRATION LAWS

(i) Governing Law

Question:

What legal framework governs arbitration in Ghana, and does it apply equally to domestic and international arbitration? Is it based on the UNCITRAL Model Law?

Answer:

Arbitration is governed by the Alternative Dispute Resolution Act, 2010 (Act 798), which applies uniformly to both domestic and international arbitrations. The Act is modelled on the UNCITRAL Model Law.

(ii) Domestic vs International Arbitration

Question:

Does Ghanaian law distinguish between domestic and international arbitration?

Answer:

No. The same statutory framework governs both domestic and international arbitration.



(iii) Applicable Treaties

Question:

Which international arbitration conventions has Ghana ratified?

Answer:

Ghana is a party to:



The New York Convention



The Geneva Convention



The ICSID Convention

(iv) Applicable Substantive Law

Question:

How is the substantive law governing the dispute determined?

Answer:

The tribunal applies:



The law chosen by the parties; or



Any agreed principles or considerations; or

In the absence of agreement, the law determined through applicable conflict of laws rules.

III. ARBITRATION AGREEMENTS

(i) Validity Requirements

Question:

What formal and substantive requirements must an arbitration agreement satisfy to be valid and enforceable?

Answer:

The agreement must be in writing. Additional recommended clauses are provided in the Fifth Schedule of the ADR Act.

(ii) Enforcement by Courts

Question:

How do Ghanaian courts approach the enforcement of arbitration agreements?

Answer:

Courts generally uphold arbitration agreements. However, enforcement may be refused where the underlying contract required parliamentary approval which was not obtained.



(iii) Multi-tier Clauses

Question:

Are escalation clauses (e.g. negotiation or mediation before arbitration) recognised and enforceable?

Answer:

Yes. Such clauses are common, particularly in construction disputes. If arbitration is commenced prematurely, the tribunal may stay proceedings pending compliance with pre-arbitral steps.

(iv) Multi-party Agreements

Question:

What is required for a valid arbitration agreement involving multiple parties?

Answer:

All parties must provide written consent to arbitration.

(v) Unilateral Arbitration Clauses

Question:

Are clauses granting one party a unilateral right to refer disputes to arbitration enforceable?

Answer:

Yes, such clauses are enforceable.

(vi) Non-signatories

Question:

Can arbitration agreements bind non-signatories?

Answer:

No. Arbitration requires consent; non-signatories are not bound.

(vii) Governing Law of Agreement

Question:

How do courts determine the law applicable to the arbitration agreement?

Answer:

Courts apply:

 The law expressly chosen by the parties; or

 Failing that, the law of the arbitral seat.



(viii) Seat vs Venue

Question:

Do Ghanaian courts distinguish between the legal seat and the physical venue of arbitration?

Answer:

Yes. The seat determines the legal framework, while the venue relates only to the location of hearings.

(ix) Emerging Disputes (Blockchain/NFTs)

Question:

Are disputes involving blockchain or NFTs arbitrable?

Answer:

Yes. The seat determines the legal framework, while the venue relates only to the location of hearings.




(x) Inoperability of Agreements

Question:


When may an arbitration agreement be considered inoperative?

Answer:

An agreement may be invalidated where:

 It was induced by fraud or misrepresentation;

 The subject matter is non-arbitrable; or

 A party lacks legal capacity.

IV. ARBITRABILITY AND JURISDICTION (EXTRACT)

(i) Non-arbitrable Matters

Question:

Which disputes are excluded from arbitration, and who determines arbitrability?

Answer:

Non-arbitrable matters include issues relating to public interest, the environment, constitutional interpretation, and matters excluded by law. Both courts and tribunals may determine arbitrability, which is treated as a jurisdictional issue.

XIX. ACCRA ARBITRATION RULES (ADDITIONAL QUESTIONS)

(i) Scope and Application of the Accra Arbitration Rules

Question:

What is the scope of application of the Accra Arbitration Rules, and when do they apply?

Answer:

The Accra Arbitration Rules apply where parties expressly designate them in their arbitration agreement or subsequently agree to their use. They govern the procedural conduct of arbitration, subject always to the mandatory provisions of the lex arbitri (including the ADR Act, 2010 (Act 798) where Ghana is the seat).

(ii) Tribunal Powers and Case Management

Question:

What procedural powers does a tribunal possess under the Accra Arbitration Rules in managing proceedings?

Answer:

The tribunal is vested with broad case management powers, including the authority to determine procedural timetables, limit issues in dispute, direct document production, and adopt efficient hearing formats. The Rules emphasise expedition, proportionality, and procedural fairness, allowing tribunals to tailor proceedings to the complexity of the dispute.

(iii) Consolidation and Joinder

Question:

Do the Accra Arbitration Rules provide for consolidation of proceedings and joinder of additional parties?

Answer:

Yes. The Rules permit consolidation of related arbitrations and the joinder of additional parties, subject to compatibility of arbitration agreements and considerations of procedural fairness. Such mechanisms are designed to avoid inconsistent awards and promote efficiency in multi-party or multi-contract disputes.

(iv) Arb–Med–Arb and Settlement Mechanisms

Question:

Do the Accra Arbitration Rules recognise the integration of mediation within arbitration proceedings?

Answer:

Yes. The Rules expressly permit the suspension of arbitral proceedings to facilitate mediation or other amicable settlement processes. Where settlement is achieved, the tribunal may record the terms as a consent award, thereby ensuring enforceability under the New York Convention framework.

(v) Costs, Fees, and Currency Considerations

Question:

How do the Accra Arbitration Rules address costs, administrative fees, and currency compliance?

Answer:

The Rules provide for structured administrative fees and tribunal costs, typically denominated in local currency (GHS) with indicative foreign currency equivalents where applicable. They also empower the tribunal to allocate costs based on the outcome of the case and the conduct of the parties, while ensuring compliance with Ghana's foreign exchange regulations.



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