

ISSUE 7

GHANA ARBITRATION AND COMMERCIAL LAW REVIEW

Guidelines for Transitioning Litigation
to Institutional Arbitration under the
Accra Arbitration Rules



CENTER FOR
INTERNATIONAL MEDIATORS
AND ARBITRATORS



LEX MUNDUS
& CENCLA
Arbitrators and Litigators



Guidelines for Transitioning Litigation to Institutional Arbitration under the Accra Arbitration Rules

1. Introduction

A significant proportion of commercial disputes in Ghana commence in court, even where arbitration would offer a faster, confidential, and commercially efficient forum. The law permits a structured transition from litigation to arbitration, even after proceedings have begun.

This guide sets out the legal basis, procedural pathway, and strategic benefits, including the professional and economic advantages to counsel, for converting ongoing litigation into institutional arbitration under the Accra Arbitration Rules, in accordance with the Alternative Dispute Resolution Act, 2010 (Act 798).

2. Legal Foundation for Transition

The transition rests on three settled principles:



Party Autonomy – parties may agree at any time to arbitrate



Judicial Support – courts may stay proceedings in favour of arbitration



Procedural Continuity – arbitration can adopt and build upon court processes

3. Threshold Question: Arbitrability

The transition rests on three settled principles:



The dispute is commercial



It is not excluded by statute or public policy



The remedies sought are capable of arbitral determination

Most commercial disputes are fully arbitrable.

4. The Central Instrument: Submission Agreement

Core Elements:



Clear consent of parties



Reference to the Accra Arbitration Rules



Identification of the pending court proceedings



Agreement on seat, tribunal, and language

Legal Effect:



Confers jurisdiction on the tribunal



Enables immediate procedural transition




Neutralises jurisdictional objections



5. Procedural Step 1: Align the Parties


Transition requires consensus. Counsel must:

 Reframe arbitration as a mutual commercial advantage

Emphasise:


 speed


 confidentiality


 expert adjudication


6. Procedural Step 2: Execute the Submission Agreement

The agreement should address:

 Scope of dispute

 Procedural framework

 Treatment of existing pleadings


 Interim measures

Best Practice:

Adopt court pleadings as initial submissions to avoid duplication.

7. Procedural Step 3: Apply for Stay of Proceedings

A joint application should be filed seeking:

 Stay of proceedings


 Referral to arbitration

Legal Basis:


 Alternative Dispute Resolution Act, 2010 (Act 798)

8. Procedural Step 4: Commence Arbitration

Following the stay:

 File Notice of Arbitration


 Constitute tribunal


 Confirm or refine pleadings

 Establish timetable

9. Procedural Continuity

 Court pleadings may be adopted

 Evidence may be reused

 Interim orders may be preserved


Best Practice:


Efficiency without procedural waste

10. COMMERCIAL AND STRATEGIC BENEFITS

10.1 For Parties

 Faster resolution

 Confidentiality

 Specialist decision-makers

 Flexibility of process

 Final and enforceable outcomes

11. PROFESSIONAL BENEFITS AND EXPERIENCE GAIN FOR COUNSEL

The transition to arbitration is not merely procedural—it is professionally transformative.

11.1 Expanded Revenue Opportunities

Arbitration generates multiple fee streams, including:

-
-  Advisory on dispute conversion

 -  Drafting submission agreements

 -  Arbitral advocacy

 -  Case management strategy

 -  Mediation-arbitration services
-


Unlike litigation, arbitration creates layered professional engagement.




11.2 Access to High-Value Disputes

Arbitration is often used for higher-value commercial disputes

Counsel gain exposure to:


 complex contracts


 cross-border issues


Unlike litigation, arbitration creates layered professional engagement.

11.3 Development of Specialist Advocacy Skills


Arbitral advocacy differs from litigation:

 Greater emphasis on written submissions

 Structured, time-disciplined oral advocacy

 Focus on commercial reasoning and efficiency

This enhances:

 precision


 clarity

 strategic thinking

11.4 Pathway to Arbitrator Appointments

Active participation leads to:

 Recognition by institutions

 Inclusion on arbitrator panels

 Appointment opportunities

11.5 International Exposure

Arbitration connects counsel to:


 foreign parties


 international counsel

 cross-border legal frameworks

This enhances:


 reputation


 mobility


 global practice opportunities

11.6 Diversification of Legal Practice

Counsel expand into:

 arbitration

 mediation


 dispute strategy advisory

Reducing reliance on traditional litigation.

11.7 Intellectual and Professional Growth

Arbitration requires:

 deeper contractual analysis

 procedural innovation


 strategic problem-solving


This produces:


a more commercially astute and globally competitive lawyer

11.8 Market Positioning Advantage

Counsel who master arbitration:

-
-  become preferred advisors in commercial transactions


 -  influence contract drafting and dispute clauses


 -  position themselves at the front-end of dispute prevention and resolution
-





12. Key Risks and Risk Management Framework


Risk:

-
-  Poor drafting of arbitration agreements or submission instruments


 -  Jurisdictional and validity challenges


 -  Delay in transitioning proceedings from court to arbitration


 -  Duplication of effort and increased costs


 -  Resistance from parties or counsel


Mitigation Strategy:

-
-  Adopt standardised, well-vetted templates and ensure expert legal review

 -  Ensure clear, informed, and unequivocal consent of all parties, with proper drafting of arbitration clauses


 -  Initiate the transition at the earliest procedural stage and adopt a proactive case management approach

 -  Leverage and adapt existing court pleadings and evidence where appropriate to ensure procedural efficiency


 -  Emphasise the commercial advantages of arbitration, including speed, confidentiality, and enforceability


Key Insight –CanMediation be integrated into Arbitration?

Yes. Integrating mediation into arbitration may serve a strategic supporting role; offering a flexible and efficient pathway to settlement while preserving commercial relationships. Under the Accra Arbitration Rules may be deployed before or during arbitral proceedings, without prejudice to parties' rights. The process typically involves:


 Agreement to mediate and appointment of a mediator;

 Exchange of brief position statements;

 Joint session to define issues;

 Private caucuses;


 Negotiation; and


 Settlement agreement or consent award.


Properly utilized, mediation enables commercially sensible outcomes beyond strict legal rights. Counsel should treat mediation as a deliberate advocacy tool, not a concession. This requires preparation of case theory, clear settlement parameters, and alignment with the broader arbitration strategy. When effectively integrated—including through hybrid models such as arb-med-arb—mediation could reduce time, cost, and risk, while enhancing control and enforceability of outcomes.


13. ROLE OF COUNSEL

Counsel must:

-
-  Identify suitable cases


 -  Lead negotiations toward arbitration


 -  Draft robust submission agreements


 -  Manage efficient arbitral proceedings

14. FUTURE PRACTICE DIRECTION

To maximise arbitration use:

-
-  Embed arbitration clauses at contract stage

 -  Promote early transition from litigation

 -  Develop institutional familiarity

15. CONCLUSION

Transitioning litigation to arbitration under the Accra framework is:



legally permissible



procedurally efficient



commercially advantageous

For counsel, it represents:

a powerful expansion of practice, income, and professional standing

FINAL INSIGHT

Finally, note that a settlement agreement is a contractual arrangement between the parties by which they voluntarily resolve their dispute on agreed terms. It is binding as a matter of contract law and enforceable through ordinary court proceedings (e.g. an action for breach of contract). It is private, flexible in form, and does not require the involvement of a tribunal once concluded.

On the converse, a consent award, by contrast, is a formal arbitral award issued by the tribunal that records the parties' agreed settlement. It carries the legal status of an arbitral award, making it directly enforceable under applicable arbitration laws and international instruments such as the New York Convention. Unlike a settlement agreement, it benefits from enhanced enforceability across jurisdictions, finality, and limited grounds for challenge.

Can the settlement agreement may be adopted as a consent award?

Yes. The settlement agreement may be adopted as a consent award, provided the arbitration is properly constituted and the parties so request.

How it is done:

1. Ensure an existing arbitration

There must be a valid arbitration agreement and a constituted tribunal (or one capable of being constituted).

2. Joint request by the parties

The parties submit a written joint application to the tribunal requesting that their settlement be recorded as an award on agreed terms.

3. Submission of settlement terms

The signed settlement agreement (or its terms) is provided to the tribunal.

4. Tribunal's review

The tribunal confirms that:

-
- it has jurisdiction;
-
- the settlement is clear and final; and
-
- the terms are not unlawful or contrary to public policy
-

5. Issuance of consent award

The tribunal issues an award on agreed terms (consent award), incorporating or reflecting the settlement.

6. Legal effect

The consent award becomes final and binding, enforceable as an arbitral award (including under the New York Convention where applicable).

Practice Advise:

Counsel should ensure the settlement expressly states the parties' intention to have it converted into a consent award, and that confidentiality and enforceability provisions are carefully aligned with the arbitral framework.





Relevant Precedents

1. SUBMISSION AGREEMENT FOR REFERENCE TO ARBITRATION

SUBMISSION AGREEMENT

THIS AGREEMENT is made this _ day of __ 2026

BETWEEN:

[CLAIMANT NAME], of [Address]

(hereinafter referred to as “the Claimant”)

RECITALS

1. The Parties are engaged in a dispute arising out of [brief description of contract/transaction].
2. The said dispute is presently the subject of proceedings before the High Court of Ghana, Suit No. __ (the “Court Proceedings”).
3. The Parties have agreed to refer the dispute to arbitration in accordance with the Accra Arbitration Rules.

OPERATIVE CLAUSES

1. Reference to Arbitration

The Parties hereby agree to submit the dispute in the Court Proceedings to final and binding arbitration.

2. Applicable Rules

The arbitration shall be conducted in accordance with the Accra Arbitration Rules.

3. Seat of Arbitration

The arbitration shall be conducted in accordance with the Accra Arbitration Rules.

4. Tribunal

The tribunal shall consist of [one/three] arbitrator(s), appointed in accordance with the said Rules.

5. Language

The language of the arbitration shall be English..

6. Scope of Reference

The tribunal shall determine all issues, claims, counterclaims, and defences arising in or connected with the Court Proceedings.

7. Adoption of Pleadings

The Parties agree that pleadings filed in the Court Proceedings may, subject to directions of the tribunal, be adopted in the arbitration..

8. Stay of Proceedings

The Parties shall jointly apply to the Court for a stay of the Court Proceedings.

9. Finality

The award of the tribunal shall be final and binding on the Parties.

10. Governing Law

This Agreement shall be governed by the laws of Ghana, including the Alternative Dispute Resolution Act, 2010 (Act 798).

SIGNED by the Parties:

.....
Claimant

.....
Respondent

2. JOINT APPLICATION FOR STAY OF PROCEEDINGS

**IN THE HIGH COURT OF JUSTICE
[COMMERCIAL DIVISION] – ACCRA**

SUIT NO: __

BETWEEN:

**[CLAIMANT]
— Plaintiff**

AND

**[RESPONDENT]
— Defendant**

JOINT MOTION FOR STAY OF PROCEEDINGS AND REFERRAL TO ARBITRATION

**TAKE NOTICE that Counsel for the Parties shall move this Honourable
Court for:**

1. An Order staying further proceedings in this suit;
2. An Order referring the dispute herein to arbitration pursuant to the Alternative Dispute Resolution Act, 2010 (Act 798);
3. Any further Orders as this Honourable Court may deem fit.

GROUNDS

1. The Parties have mutually agreed to submit the dispute to arbitration.
2. A Submission Agreement has been duly executed.
3. The interests of justice favour the resolution of this dispute by arbitration.

Dated this _ day of __ 2026

.....
Counsel for Plaintiff

.....
Counsel for Defendant



3. NOTICE OF ARBITRATION

NOTICE OF ARBITRATION

TO: [Respondent Name & Address]

1. INTRODUCTION

The Claimant hereby gives notice of arbitration pursuant to the Submission Agreement dated _ and in accordance with the Accra Arbitration Rules.

2. PARTIES

Claimant: [Details]

Respondent: [Details]

3. NATURE OF DISPUTE

A dispute has arisen concerning [brief description], previously the subject of High Court Suit No. __.

4. RELIEFS SOUGHT

The Claimant seeks:

- a. [Relief 1]
- b. [Relief 2]
- c. Costs

5. TRIBUNAL

The Claimant proposes:

[Sole arbitrator / nomination of arbitrator]

6. ADMINISTRATION

The Claimant requests that the arbitration be administered under the Accra Arbitration Rules.

Dated this _ day of __ 2026

.....

Counsel for Claimant

4. REQUEST FOR ARBITRATION (INSTITUTIONAL FILING)

REQUEST FOR ARBITRATION

TO: The Registrar
Accra International Arbitration & Mediation Centre

1. PARTIES

Claimant: [Details]

Respondent: [Details]

2. LEGAL BASIS

This request is made pursuant to:

Submission Agreement dated _

The Accra Arbitration Rules

3. SUMMARY OF CLAIM

The dispute concerns [brief summary], with an estimated value of [amount].

4. RELIEFS

[Set out reliefs]

5. DOCUMENTS ATTACHED

1. Submission Agreement
2. Court pleadings
3. Supporting documents

6. PAYMENT

Registration fee has been paid.

Dated this _ day of __ 2026

.....
Counsel for Claimant



5. PROCEDURAL ORDER NO. 1

IN THE ARBITRATION BETWEEN:

**[CLAIMANT]
AND
[RESPONDENT]**

1. CONSTITUTION OF TRIBUNAL

The Tribunal has been duly constituted in accordance with the Accra Arbitration Rules.

2. JURISDICTION

The Tribunal confirms its jurisdiction pursuant to the Submission Agreement.

3. ADOPTION OF COURT MATERIALS

The Parties agree that:

1. Statement of Claim filed in court shall stand as Claimant's Statement of Claim
2. Statement of Defence shall stand accordingly

4. PROCEDURAL TIMETABLE

Defence/Counterclaim: _ days

Reply: _ days

Hearing: [date]

5. EVIDENCE

Documents already filed may be relied upon

Additional evidence may be submitted with leave

6. INTERIM MEASURES

Any interim measures shall be determined by the Tribunal upon application.

7. COSTS

Costs shall be determined in the final award.

Dated this _ day of __ 2026

.....
Arbitrator / Tribunal



Developing Future Arbitrators: CIMA Partner, RAC Delivers Specialist Lecture to HSE Students in Moscow

On 22 January 2026, students of the Master's Programme in International Trade Law and Dispute Resolution at the Higher School of Economics (HSE) participated in a specialised lecture hosted at the Moscow office of CIMA's international partner, the Russian Arbitration Center (RAC) at the Russian Institute of Modern Arbitration (RIMA).

The RAC, widely recognised as one of Russia's leading arbitral institutions, administers complex disputes involving international parties and tribunals. The session provided participants with valuable insight into RIMA's strategic development, its academic and capacity-building initiatives, and the institutional architecture and competitive advantages of the RAC as a modern arbitral centre. Under expert guidance, students also engaged in practical analysis of arbitration clauses, reinforcing core drafting and interpretative skills essential to international practice.

Following the lecture, an interactive question-and-answer session enabled participants to explore contemporary issues in arbitration, including the validity and drafting of arbitration clauses, common drafting pitfalls, the growing relevance of mediation in commercial dispute resolution, and key provisions of the Arbitration Rules 2021 (as amended on 1 November 2021).

CIMA commends the Russian Arbitration Center at RIMA for its continued leadership in advancing arbitration education and practice. Such engagements underscore the importance of cross-border collaboration in shaping the next generation of arbitration practitioners and strengthening the global ADR ecosystem.



CIMA Partners with Russian International Arbitration Congress (RIAC) 2026

The Center for International Mediators and Arbitrators (CIMA) is pleased to support the Russian International Arbitration Congress (RIAC) 2026, a leading global forum for arbitration practitioners, institutions, and industry leaders.

Building on the success of its inaugural 2025 edition, which attracted over 1,500 participants across 40+ events, RIAC continues to distinguish itself through high-level professional dialogue combined with rich cultural engagement

The 2026 Congress will take place from 21–27 September 2026, featuring:

- The Main Conference on 22 September;
- Partner-hosted satellite events from 21 and 23–25 September;
- A diverse programme of networking and cultural activities throughout the week.

CIMA looks forward to RIAC 2026



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Shanghai International Economic and Trade Arbitration Center
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Shanghai International Arbitration Center

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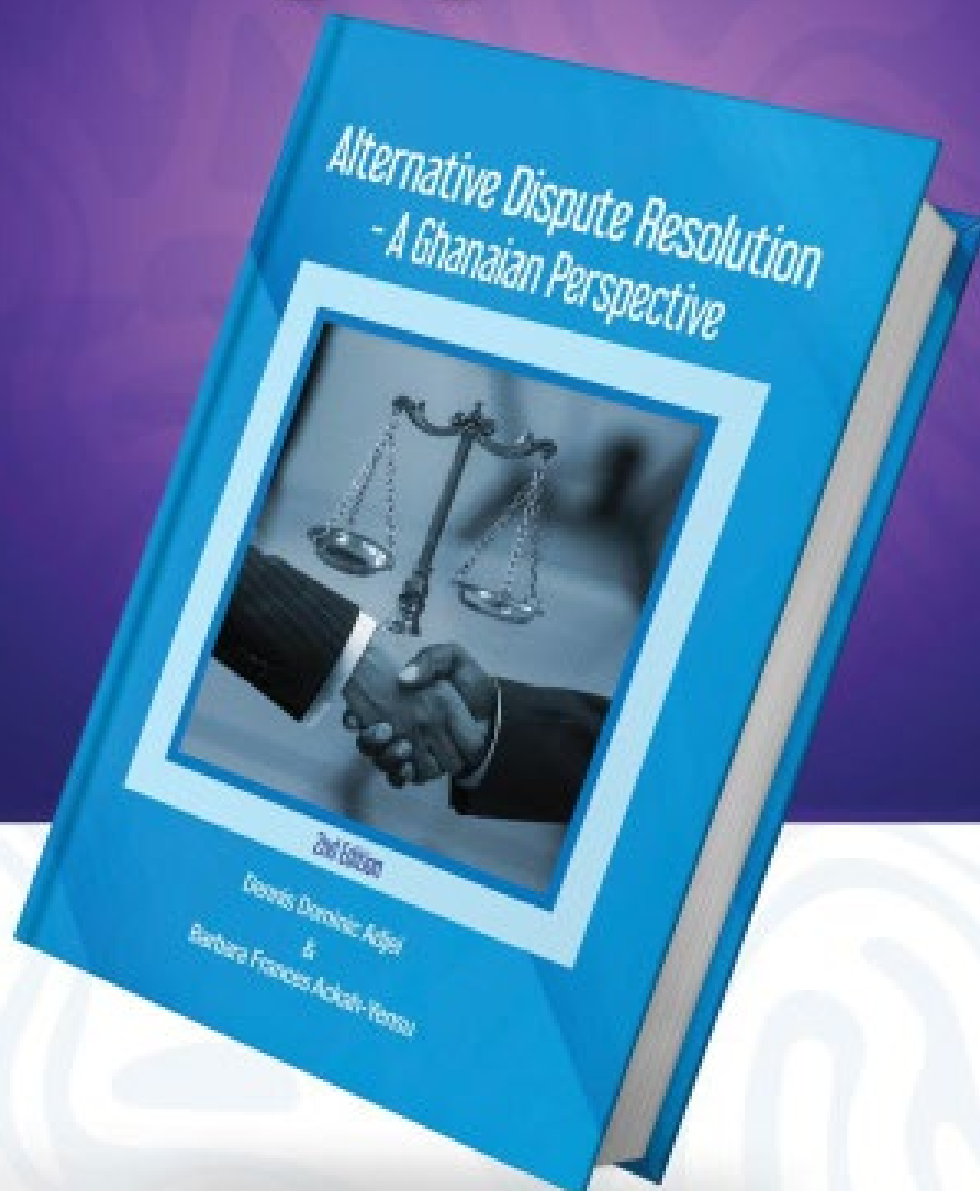


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