

GHANA ARBITRATION AND COMMERCIAL LAW REVIEW

Commercial Mediation in Ghana under the
Accra Arbitration Rules



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Abstract

Commercial mediation in Ghana has steadily gained recognition as a viable alternative to litigation and arbitration, particularly under the framework of the Alternative Dispute Resolution Act, 2010 (Act 798). The emergence of the Accra Arbitration Rules introduces a more structured institutional pathway for mediation, integrating procedural flexibility with enforceability safeguards. This article examines the legal foundations, procedural architecture, and practical application of commercial mediation under the Accra Arbitration Rules. It argues that the Rules provide a credible platform for the institutionalisation of mediation in Ghana's commercial dispute resolution ecosystem, while identifying gaps and proposing reforms to enhance efficiency, enforceability, and practitioner uptake.

Keywords

Commercial mediation; Ghana; Accra Arbitration Rules; ADR; settlement agreements; institutional mediation; Act 798; dispute resolution.

1. Introduction

The increasing complexity of commercial transactions in Ghana—particularly in banking, construction, telecommunications, and cross-border trade—has necessitated more efficient dispute resolution mechanisms. Litigation, while authoritative, is often encumbered by delay, publicity, and cost. Arbitration offers finality but may not always preserve commercial relationships.

Mediation, by contrast, provides a confidential, flexible, and interest-based process, enabling parties to reach mutually beneficial outcomes. The Accra Arbitration Rules represent a significant institutional development, offering a structured framework within which mediation can be conducted alongside arbitration.


This article situates commercial mediation within Ghana’s legal framework and critically analyses its operation under the Accra Arbitration Rules.





2. Legal Foundation of Commercial Mediation in Ghana

2.1 Statutory Basis


Commercial mediation in Ghana is primarily governed by the Alternative Dispute Resolution Act, 2010 (Act 798), which:


-  Recognises mediation as a formal dispute resolution process;

 -  Provides for voluntary participation and party autonomy;

 -  Establishes the binding nature of settlement agreements, enforceable as contracts or consent judgments.
-


Under Act 798:

-  A mediated settlement agreement may be filed in court and enforced as a judgment;


 -  Mediators are bound by duties of neutrality, confidentiality, and independence.
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2.2 Institutionalisation under the Accra Arbitration Rules

The Accra Arbitration Rules extend the statutory framework by:

 Embedding mediation within an institutional ADR structure;

 Allowing for mediation as a standalone process or in conjunction with arbitration (Med-Arb or Arb-Med-Arb models);

 Providing administrative oversight through a central registry.


This marks a transition from ad hoc mediation to institutionally administered mediation, enhancing credibility and procedural discipline.


3. Nature and Characteristics of Commercial Mediation


3.1 Party Autonomy

Commercial mediation under the Accra framework is characterised by:

 Parties retain control over:

 Selection of the mediator;


 Procedural rules (subject to institutional guidance);

 Procedural rules (subject to institutional guidance);

3.2 Confidentiality

Confidentiality is a cornerstone:


 All communications during mediation are without prejudice;

 Statements made cannot be used in subsequent arbitral or judicial proceedings.

3.3 Flexibility and Informality

Unlike litigation or arbitration:


 Rules of evidence are relaxed;


 Proceedings are tailored to the commercial context;


 Solutions may extend beyond strict legal rights.

3.4 Preservation of Commercial Relationships

Mediation emphasises:

 Continuity of business relationships;

 Win-win outcomes;


 Reduction of adversarial tension.


4. Procedural Framework under the Accra Arbitration Rules


While the Accra Arbitration Rules do not yet codify a standalone mediation schedule, they provide a functional mediation pathway through institutional practice.

4.1 Commencement of Mediation

Mediation may be initiated by:


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-  A contractual ADR clause;


 -  Post-dispute agreement between parties;

 -  Referral from ongoing arbitration proceedings.
-


4.2 Appointment of Mediator


The institution may:

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-  Appoint a mediator upon party request; or

 -  Facilitate party nomination and confirmation.
-


Best practice requires:


-
-  Independence and impartiality;

 -  Disclosure of conflicts of interest.
-


4.3 Conduct of Proceedings


Typical stages include:

 Preliminary conference

 Exchange of position statements

 Joint sessions

 Private caucuses


 Negotiation and settlement drafting

The mediator's role is facilitative, not adjudicative.




4.4 Settlement Agreement

Where agreement is reached:

 Terms are reduced into writing;

 Signed by parties and mediator;

May be converted into:

 a consent arbitral award, or

 a court judgment under Act 798.




5. Integration with Arbitration: The Med-Arb Model

A notable strength of the Accra Arbitration Rules is the facilitation of hybrid processes, including:


5.1 Med-Arb

Mediation is attempted first;

 If unsuccessful, arbitration proceeds

5.2 Arb-Med-Arb

Arbitration is commenced;


 Proceedings are suspended for mediation;

 Settlement is recorded as an arbitral award

This approach enhances:

 Efficiency


 Enforceability

 Procedural continuity

6. Advantages of Commercial Mediation under the Accra Framework

6.1 Speed and Cost Efficiency

Mediation significantly reduces:

 Time to resolution;

 Legal and administrative costs.

6.2 Confidentiality and Reputation Protection


Parties avoid:

 Public exposure;

 Commercial reputational damage.

6.3 Enforceability

Settlement agreements benefit from:

 Contractual enforceability;


 Judicial recognition under Act 798;


 Potential conversion into arbitral awards.

6.4 Commercial Practicality

Outcomes may include:

 Payment restructuring

 Continued supply arrangements

 Joint ventures or renegotiated contracts




7. Challenges and Limitations

Despite its advantages, several challenges remain:

7.1 Limited Practitioner Awareness

Many lawyers continue to prioritise litigation or arbitration due to:


 familiarity;

 perceived authority of adjudicative processes.

7.2 Absence of Detailed Mediation Rules

The Accra Arbitration Rules would benefit from:

 a dedicated Mediation Schedule;

 clear timelines and procedural guidance.

7.3 Enforcement Uncertainty in Cross-Border Contexts

While domestic enforcement is clear, international enforcement may require reliance on evolving instruments such as the Singapore Convention on Mediation.

8. Recommendations for Reform

To strengthen commercial mediation under the Accra framework:

1. Adopt a Dedicated Mediation Schedule

With timelines, appointment procedures, and model clauses

2. Introduce Fast-Track Mediation

For low-value or urgent commercial disputes

3. Develop Sector-Specific Protocols

Banking, construction, healthcare, and telecoms

4. Promote Mediation Clauses in Commercial Contracts

Through institutional advocacy and training

5. Enhance Capacity-Building

Through institutional advocacy and training



8. Conclusion

Commercial mediation under the Accra Arbitration Rules represents a significant evolution in Ghana's dispute resolution architecture, bridging the gap between informal negotiation and formal adjudication. While the framework remains partially underdeveloped, its integration with arbitration and alignment with Act 798 position it as a powerful tool for efficient, confidential, and commercially sensible dispute resolution.

With targeted reforms and increased practitioner engagement, mediation under the Accra framework has the potential to become a primary mechanism for resolving commercial disputes in Ghana and across the African region.





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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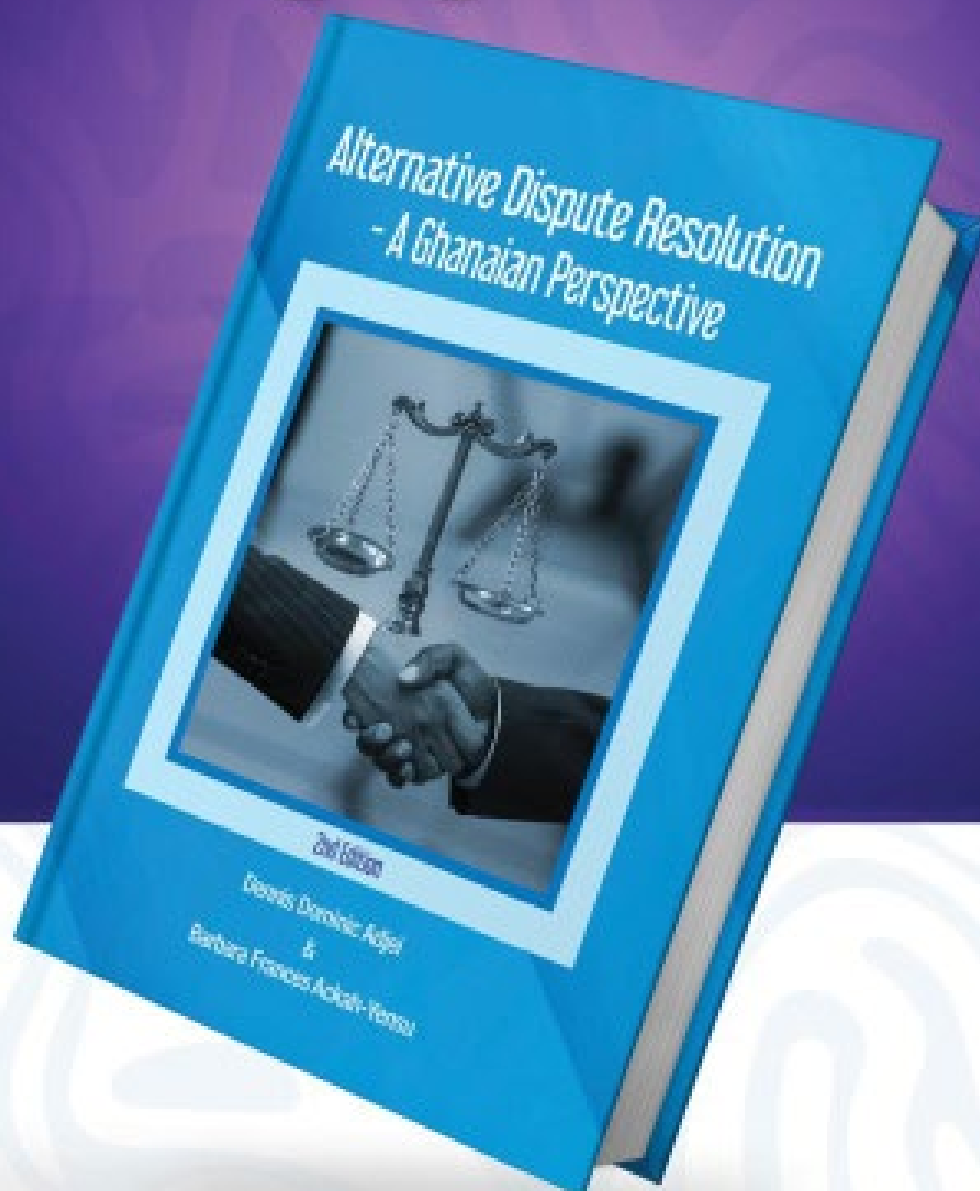


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