



Arbitration Guide
IBA Arbitration Committee

GHANA

February 2017

Kwadwo Ntrakwah
Akosua Asiama

Ntakwah and Co.
F37 Abafun Crescent
Labone, Accra
Ghana
kwadwontr@ntrakwahandco.com
akosua@ntrakwahandco.com

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I. Background

(i) How prevalent is the use of arbitration in your jurisdiction? What are seen as the principal advantages and disadvantages of arbitration?

Arbitration is increasingly becoming a common mode of dispute resolution in Ghana, especially for large-value international disputes. Some of the principal advantages are as follows:

- a. Confidentiality and flexibility of arbitration proceedings;
- b. Awards are final and binding and not subject to appeals on the merits;
- c. Arbitration is seen as faster compared to litigation. Albeit this depends on the complexity of the dispute and the willingness of the parties to cooperate in the process.

Some of the principal disadvantages are as follows:

- a. Cost;
- b. Inherent delays in the enforcement of awards through the courts.

(ii) Is most arbitration institutional or ad hoc? Domestic or international? Which institutions and/or rules are most commonly used?

Arbitration is mostly institutional and domestic. With domestic arbitration, the Ghana Arbitration Centre and its rules are mostly used. With international arbitration the International Court of Arbitration of the International Chamber of Commerce (ICC) and the London Court of International Arbitration are mostly used.

(iii) What types of disputes are typically arbitrated?

Corporate and Commercial disputes are typically arbitrated.

(iv) How long do arbitral proceedings usually last in your country?

Six months to one year depending on the complexity of the matter and the willingness of the parties to cooperate in the process.

(v) Are there any restrictions on whether foreign nationals can act as counsel or arbitrators in arbitrations in your jurisdiction?

There are no restrictions on foreign nationals acting as arbitrators or arbitration counsel in arbitrations in Ghana. There are however restrictions on foreign lawyers practising in Ghana.

II. Arbitration Laws

- (i) **What law governs arbitration proceedings with their seat in your jurisdiction? Is the law the same for domestic and international arbitrations? Is the national arbitration law based on the UNCITRAL Model Law?**

The Alternative Dispute Resolution Act 2010, Act 798 (The Alternative Dispute Resolution Act). The same law applies for domestic and international arbitrations. The national arbitration law is based on the UNCITRAL Model Law.

- (ii) **Is there a distinction in your arbitration law between domestic and international arbitration? If so, what are the main differences?**

No. The Arbitration Act applies to both domestic and international arbitration

- (iii) **What international treaties relating to arbitration have been adopted (eg New York Convention, Geneva Convention, Washington Convention, Panama Convention)?**

Ghana has adopted the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention), Geneva Convention and the Convention on the Settlement of Investment Disputes between States and Nationals of Other States

- (iv) **Is there any rule in your domestic arbitration law that provides the arbitral tribunal with guidance as to which substantive law to apply to the merits of the dispute?**

Yes. The Alternative Dispute Resolution Act requires that an Arbitrator decide the dispute:

- a. in accordance with the law chosen by the parties as applicable to the substance of the dispute, or
- b. in accordance with such other considerations as are agreed by the parties or determined by the arbitrator.

Where to the extent that no law has been chosen or agreed on, the Alternative Dispute Resolution Act requires the Arbitrator to apply the law determined by the conflict of laws rules, which the arbitrator considers applicable.

III. Arbitration Agreements

- (i) **Are there any legal requirements relating to the form and content of an arbitration agreement? What provisions are required for an arbitration agreement to be binding and enforceable? Are there additional recommended provisions?**

Yes. The main requirement is that it must be in writing. There are additional recommended provisions and they are attached as the fifth schedule to the Alternative Dispute Resolution Act.

- (ii) **What is the approach of courts towards the enforcement of agreements to arbitrate? Are there particular circumstances when an arbitration agreement will not be enforced?**

The courts are now more inclined to enforce agreements to arbitrate. An arbitration agreement may not be enforced where the underlying contract is one that requires parliamentary approval and parliamentary approval was not sought before signing the underlying contract.

- (iii) **Are multi-tier clauses (eg arbitration clauses that require negotiation, mediation and/or adjudication as steps before an arbitration can be commenced) common? Are they enforceable? If so, what are the consequences of commencing an arbitration in disregard of such a provision? Lack of jurisdiction? Non-arbitrability? Other?**

Multi-tier clauses are commonly used especially in the construction sector. They are also enforceable. If arbitration is commenced in disregard of a multi-tier clause, invariably a party may object and an arbitrator will stay proceedings until the pre-arbitration steps are complied with.

- (iv) **What are the requirements for a valid multi-party arbitration agreement?**

All parties must consent in writing to arbitration.

- (v) **Is an agreement conferring on one of the parties a unilateral right to arbitrate enforceable?**

Yes

- (vi) **May arbitration agreements bind non-signatories? If so, under what circumstances?**

No, it will not. Arbitration agreements will not bind a party that has not consented to arbitration

IV. Arbitrability and Jurisdiction

- (i) **Are there types of disputes that may not be arbitrated? Who decides – courts or arbitrators – whether a matter is capable of being submitted to arbitration? Is the lack of arbitrability a matter of jurisdiction or admissibility?**

Yes, there are types of disputes that may not be arbitrated. The Alternative Dispute Resolution Act, stipulates that the Act applies to matters other than those that relate to:

- a. the national or public interest;
- b. the environment;
- c. the enforcement and interpretation of the Constitution; or
- d. any other matter that by law cannot be settled by an alternative dispute resolution method.

The court or the arbitrator can decide on whether a matter is capable of being submitted to arbitration. The lack of arbitrability is a matter of jurisdiction.

- (ii) **What is the procedure for disputes over jurisdiction if court proceedings are initiated despite an arbitration agreement? Do local laws provide time limits for making jurisdictional objections? Do parties waive their right to arbitrate by participating in court proceedings?**

Where a party commences litigation in the courts in Ghana, despite an arbitration agreement, the other party may apply to the court to stay proceedings and refer the action or a part of the action to which the arbitration agreement relates, to arbitration.

No. Local laws do not provide time limits for making jurisdictional objections.

Yes. Parties waive their right to arbitrate by participating in court proceedings to defend an action.

- (iii) **Can arbitrators decide on their own jurisdiction? Is the principle of competence-competence applicable in your jurisdiction? If yes, what is the nature and intrusiveness of the control (if any) exercised by courts on the tribunal's jurisdiction?**

Unless otherwise agreed by the parties, the arbitral tribunal may rule on its own jurisdiction particularly in respect of (a) the existence, scope or validity of the arbitration agreement, (b) the existence or validity of the agreement to which the arbitration agreement relates, (c) whether the matters submitted to arbitration are in

accordance with the arbitration agreement. The arbitrator's decision can be challenged by application to the appointing authority or the High Court for a determination of the arbitrator's jurisdiction.

V. Selection of Arbitrators

(i) How are arbitrators selected? Do courts play a role?

The arbitration agreement will usually set out the procedure for selecting the arbitrators. Where the arbitration agreement does not provide for a procedure for appointing an arbitrator or the parties fail to agree on a procedure for appointing an arbitrator, each party in an arbitration which requires the appointment of three arbitrators, shall appoint one arbitrator and the two appointed arbitrators shall appoint the third arbitrator who shall be the chairperson. In an arbitration, which requires the appointment of a sole arbitrator, if the parties fail to agree on the arbitrator within fourteen days after the receipt of a request for arbitration by one party from the other party, the appointment shall be made by the appointing authority upon a request by a party.

In practice an application may be made to the court to appoint an arbitrator where the parties are unable to agree on an arbitrator.

(ii) What are the requirements in your jurisdiction as to disclosure of conflicts? Do courts play a role in challenges and what is the procedure?

Where a person is requested to be an arbitrator, that person shall disclose in writing any circumstances likely to give reasonable cause to doubt as to the independence or impartiality of that person. From the time of appointment and throughout the arbitral proceedings the arbitrator shall without delay also disclose to the parties in writing any circumstances likely to give reasonable cause to doubt as to his independence or impartiality.

The Courts play a role in challenges. Where a sole arbitrator is appointed by a party, the party challenging the arbitrator may apply to the High Court for the determination of the challenge. The application to the court must be on notice to the other party.

(iii) Are there limitations on who may serve as an arbitrator? Do arbitrators have ethical duties? If so, what is their source and generally what are they?

There are no limitations on who may serve as an arbitrator. Arbitrators have ethical duties. The Alternative Dispute Resolution Act requires Arbitrators to be fair and impartial to the parties and to give each party the opportunity to present its case. In addition the arbitrator must avoid unnecessary delay and expenses and adopt measures that will expedite the resolution of the dispute.

- (iv) **Are there specific rules or codes of conduct concerning conflicts of interest for arbitrators? Are the IBA Guidelines on Conflicts of Interest in International Arbitration followed?**

There are no specific rules or codes of conduct concerning conflicts of interest for arbitrators. The IBA Guidelines on Conflicts of Interest in International Arbitration are sometimes used.

VI. Interim Measures

- (i) **Can arbitrators issue interim measures or other forms of preliminary relief? What types of interim measures can arbitrators issue? Is there a requirement as to the form of the tribunal's decision (order or award)? Are interim measures issued by arbitrators enforceable in courts?**

An arbitrator may at the request of a party grant any interim relief that the arbitrator considers necessary for the protection or preservation of property. An interim relief may be in the form of an interim award and the arbitrator may require the payment of costs for such a relief.

Interim reliefs issued by arbitrators are enforceable in courts.

- (ii) **Will courts grant provisional relief in support of arbitrations? If so, under what circumstances? May such measures be ordered after the constitution of the arbitral tribunal? Will any court ordered provisional relief remain in force following the constitution of the arbitral tribunal?**

Yes. The courts will grant provisional relief in support of arbitrations under the following circumstances:

- a. for the taking of evidence of witnesses;
- b. for the preservation of evidence;
- c. in respect of the determination of any question or issue affecting any property right which is the subject of the proceedings or in respect of which any question in the proceedings arise for the inspection, preservation or taking of samples or the observation of an experiment conducted upon a property;
- d. for the sale of any goods the subject of the proceedings; and
- e. for the granting of an interim injunction or the appointment of a receiver.

Such measures may be ordered after the constitution of the arbitral tribunal.

The Court can direct that its orders cease to have effect in whole or in part upon a decision to that effect by the arbitrator or other institution vested with power to act in relation to the subject matter of the order.

- (iii) **To what extent may courts grant evidentiary assistance/provisional relief in support of the arbitration? Do such measures require the tribunal's consent if the latter is in place?**

The courts may grant evidentiary assistance/provisional relief in support of the arbitration. Where the case is one of urgency the Court may on the application of a party to arbitral proceedings make orders, as it considers necessary for the purpose of preserving evidence or assets. If the case is not one of urgency, such measures will require the tribunal's consent if the latter is in place or the parties must provide their agreement in writing. In any case the Court shall act if the arbitrator or other institution vested with power is unable for the time being to act effectively.

VII. Disclosure/Discovery

- (i) **What is the general approach to disclosure or discovery in arbitration? What types of disclosure/discovery are typically permitted?**

The extent of disclosure or discovery in arbitration depends on the arbitrators involved, counsel in the matter and the complexity of the case. At the arbitration management conference, the arbitrator is to determine the need for discovery, production of documents or the issue of interrogatories and to establish how this should be done. Typically parties disclose only documents on which they intend to rely to prove their case.

- (ii) **What, if any, limits are there on the permissible scope of disclosure or discovery?**

The tribunal can require the parties to disclose documents in their possession.

- (iii) **Are there special rules for handling electronically stored information?**

There are no special rules for handling electronically stored information.

VIII. Confidentiality

- (i) **Are arbitrations confidential? What are the rules regarding confidentiality?**

Yes, arbitrations are confidential. Except as otherwise agreed by the parties or provided by law the arbitrator is to ensure the confidentiality of the arbitration. In addition, the award shall not be made public without the consent of the parties.

- (ii) **Are there any provisions in your arbitration law as to the arbitral tribunal's power to protect trade secrets and confidential information?**

No.

- (iii) **Are there any provisions in your arbitration law as to rules of privilege?**

Yes. The Alternative Dispute Resolution Act stipulates that an arbitrator in taking evidence shall take into account applicable principles of legal privilege.

IX. Evidence and Hearings

- (i) **Is it common that parties and arbitral tribunals adopt the IBA Rules on the Taking of Evidence in International Arbitration to govern arbitration proceedings? If so, are the Rules generally adopted as such or does the tribunal retain discretion to depart from them?**

Yes. In international arbitrations, the IBA rules are usually adopted as a guide. The tribunal however retains the discretion to depart from them.

- (ii) **Are there any limits to arbitral tribunals' discretion to govern the hearings?**

Yes. The parties have the right to agree on any matter of procedure and if they do this can limit the arbitral tribunal's discretion.

- (iii) **How is witness testimony presented? Is the use of witness statements with cross examination common? Are oral direct examinations common? Do arbitrators question witnesses?**

The use of witness statements with cross-examination is common. Oral direct examinations are not common. Arbitrators may question witnesses.

- (iv) **Are there any rules on who can or cannot appear as a witness? Are there any mandatory rules on oath or affirmation?**

There are no rules on who can or cannot appear as a witness. There are no mandatory rules on oath or affirmation. It is at the discretion of the arbitrator in that an arbitrator may direct a party or witness to give evidence on oath or affirmation and may for that purpose administer the oath or affirmation.

- (v) **Are there any differences between the testimony of a witness specially connected with one of the parties (eg legal representative) and the testimony of unrelated witnesses?**

No. The arbitrator is the judge of relevance and materiality of evidence and he must conform to the rules of natural justice in that regard.

- (vi) **How is expert testimony presented? Are there any formal requirements regarding independence and/or impartiality of expert witnesses?**

There are no formal requirements relating to how expert testimony is presented. Expert testimony is typically by way of a written report. Each party is given the opportunity to cross-examine the expert at the hearing.

- (vii) **Is it common that arbitral tribunals appoint experts beside those that may have been appointed by the parties? How is the evidence provided by the expert appointed by the arbitral tribunal considered in comparison with the evidence provided by party-appointed experts? Are there any requirements in your jurisdiction that experts be selected from a particular list?**

The arbitral tribunal has the power to appoint an independent expert. But it is not common for the arbitral tribunal to appoint experts besides those appointed by the parties. There are no requirements that experts must be selected from a particular list.

- (viii) **Is witness conferencing ('hot-tubbing') used? If so, how is it typically handled?**

No. 'Hot-tubbing' is not used in Ghana.

- (ix) **Are there any rules or requirements in your jurisdiction as to the use of arbitral secretaries? Is the use of arbitral secretaries common?**

There are no rules or requirements as to the use of arbitral secretaries. The use of arbitral secretaries is common.

X. Awards

- (i) **Are there formal requirements for an award to be valid? Are there any limitations on the types of permissible relief?**

The parties are free to agree on the form of the award and in the absence of such an agreement, the ADR Act requires that:

- a. the award shall be in writing; and
- b. the arbitrator shall sign the award, state the date and place where the award was made and state in writing the reasons for the award.

An arbitrator may within the scope of the arbitration agreement grant any relief that the arbitrator considers just and equitable including specific performance.

- (ii) **Can arbitrators award punitive or exemplary damages? Can they award interest? Compound interest?**

There is no express rule as to whether Arbitrators can award punitive or exemplary damages. Arbitrators can award interest. The arbitrator can grant the appropriate pre-award or post award relief at simple or compound interest under the terms of the contract and applicable law.

(iii) Are interim or partial awards enforceable?

Yes interim and partial awards are enforceable

(iv) Are arbitrators allowed to issue dissenting opinions to the award? What are the rules, if any, that apply to the form and content of dissenting opinions?

There is no specific reference to dissenting opinions in the Alternative Dispute Resolution Act. However, under the Alternative Dispute Resolution Act where there are three or more arbitrators any award or decision of the tribunal shall be by the majority of the arbitrators.

(v) Are awards by consent permitted? If so, under what circumstances? By what means other than an award can proceedings be terminated?

Yes. Awards by consent are permitted. If during the proceedings the parties settle the dispute, the arbitrator shall terminate the proceedings and with the agreement of the parties, record the settlement in the form of an arbitral award on agreed terms.

Apart from an award, proceedings may be terminated if the parties by agreement decide to withdraw the matter from arbitration.

(vi) What powers, if any, do arbitrators have to correct or interpret an award?

The arbitrator, at the request of a party or on the arbitrator's own volition:

- a. correct an award in order to remove any clerical, typographical, technical or computation error in the award;
- b. make an additional award in respect of a claim presented to the arbitrator but omitted from the award.

XI. Costs

(i) Who bears the costs of arbitration? Is it always the unsuccessful party who bears the costs?

Unless the parties have agreed otherwise, the unsuccessful party usually bears the cost of the arbitration.

(ii) What are the elements of costs that are typically awarded?

Typically awarded costs include the arbitrator's fees and expenses, counsel's fees and the cost of supervision by an arbitral institution (where applicable).

- (iii) **Does the arbitral tribunal have jurisdiction to decide on its own costs and expenses? If not, who does?**

Yes, the arbitral tribunal has jurisdiction to decide on its own cost and expenses.

- (iv) **Does the arbitral tribunal have discretion to apportion the costs between the parties? If so, on what basis?**

Yes, the arbitral tribunal has the discretion to apportion the cost between the parties if it determines that apportionment is reasonable, taking into consideration the circumstances of the dispute - for example where a party is not successful on all its claims.

- (v) **Do courts have the power to review the tribunal's decision on costs? If so, under what conditions?**

No. The courts do not have the power to review the tribunal's decision on cost.

XII. Challenges to Awards

- (i) **How may awards be challenged and on what grounds? Are there time limitations for challenging awards? What is the average duration of challenge proceedings? Do challenge proceedings stay any enforcement proceedings? If yes, is it possible nevertheless to obtain leave to enforce? Under what conditions?**

Awards may be challenged by an application to the High Court made by a party to the arbitration and the award may be set aside by the Court only where the applicant satisfies the Court that:

- a. A party to the arbitration was under some disability or incapacity;
- b. The law applicable to the arbitration agreement is not valid;
- c. The applicant was not given notice of the appointment of the arbitrator or of the proceedings or was unable to present the applicant's case;
- d. The award deals with a dispute not within the scope of the arbitration agreement or outside the agreement except that the Court shall not set aside any part of the award that falls within the agreement;
- e. There has been failure to conform to the agreed procedure by the parties;

- f. The arbitrator has an interest in the subject matter of the arbitration which the arbitrator failed to disclose.

There are time limitations for challenging awards. Act 798 says that an application to set aside an award may not be made after three (3) months from the date on which the applicant received the award unless the Court for justifiable cause orders otherwise.

Challenge proceedings on average take about 8 months.

Challenge proceedings do not stay enforcement proceedings. An application for stay of execution must be made in addition to the challenge proceedings.

- (ii) May the parties waive the right to challenge an arbitration award? If yes, what are the requirements for such an agreement to be valid?**

A party may decide not to challenge an award and thus the timeframe within which a party can apply to set aside an award will lapse.

- (iii) Can awards be appealed in your country? If so, what are the grounds for appeal? How many levels of appeal are there?**

No, an award cannot be appealed against.

- (iv) May courts remand an award to the tribunal? Under what conditions? What powers does the tribunal have in relation to an award so remanded?**

Yes. Under Ghana's High Court Civil Procedure rules, the court may remit an award to the tribunal in any of the following cases:

- a. If the award has left undetermined some of the matters referred to arbitration or if it has determined matters not referred to arbitration;
- b. If the award is so indefinite as to be incapable of execution; or
- c. If an error with regard to the legality of the award is apparent on the face of the award.

XIII. Recognition and Enforcement of Awards

- (i) What is the process for the recognition and enforcement of awards? What are the grounds for opposing enforcement? Which is the competent court? Does such opposition stay the enforcement? If yes, is it possible nevertheless to obtain leave to enforce? Under what circumstances?**

An application on notice must be made to the High Court for the enforcement of an award. The applicant must exhibit the original award or produce a copy of the award authenticated in the manner prescribed by the law of the country in which it was made as well as the agreement pursuant to which the award was made.

The grounds for opposing enforcement include the following:

- a. the award has been annulled in the country in which it was made;
- b. the party against who the award is invoked was not given sufficient notice to enable the party to present the party's case;
- c. a party lacking capacity was not properly represented;
- d. the award does not deal with the issues submitted to arbitration; and
- e. the award contains a decision beyond the scope of the matters submitted for arbitration.

The High Court is the competent court. In practice a stay may be granted pending the determination of the challenge to the enforcement proceedings.

(ii) If an exequatur is obtained, what is the procedure to be followed to enforce the award? Is the recourse to a court possible at that stage?

Once the local court recognizes the foreign award, it can be enforced in the same manner as a judgment or order of a court. A writ of execution or garnishee order can be issued to compel payment of a money award. An application for the appointment of a receiver can also be made.

Recourse to the court is still possible at this stage as a party can still apply for stay of execution at that stage.

(iii) Are conservatory measures available pending enforcement of the award?

Yes

(iv) What is the attitude of courts towards the enforcement of awards? What is the attitude of courts to the enforcement of foreign awards set aside by the courts at the place of arbitration?

The courts generally enforce awards. The Courts will not enforce a foreign award that has been set aside or annulled by the courts at the place of arbitration.

(v) How long does enforcement typically take? Are there time limits for seeking the enforcement of an award?

It depends on whether the award is contested or not. If the award is contested, then enforcement can take 3-4 years as the losing party has a right of appeal to the Court of Appeal and the Supreme Court of Ghana. Awards like court judgments must be enforced within 6 years from the date they become enforceable.

XIV. Sovereign Immunity

- (i) Do state parties enjoy immunities in your jurisdiction? Under what conditions?**

States enjoy immunity by virtue of the Diplomatic Relations Act, 1962, Act 148.

- (ii) Are there any special rules that apply to the enforcement of an award against a state or state entity?**

Yes. Section 15 of the State Proceedings Act 1998 (Act 555) must be complied with, in that a Registrars Certificate, which has been held by the Supreme Court of Ghana to be a statutory pre condition to a party's right to execution against the state must be obtained.

XV. Investment Treaty Arbitration

- (i) Is your country a party to the Washington Convention on the Settlement of Investment Disputes Between States and Nationals of Other States? Or other multilateral treaties on the protection of investments?**

Ghana is a signatory to the Convention on the Settlement of Investment Disputes (ICSID).

- (ii) Has your country entered into bilateral investment treaties with other countries?**

Ghana has entered into bilateral investment treaties with other countries such as the United Kingdom, Denmark, Germany, Switzerland, Netherlands, and China, amongst others.

XVI. Resources

- (i) What are the main treatises or reference materials that practitioners should consult to learn more about arbitration in your jurisdiction?**

The Alternative Dispute Resolution Act, 2010 is the main reference material on Arbitration in Ghana. There is no country specific practitioner's text.

- (ii) Are there major arbitration educational events or conferences held regularly in your jurisdiction? If so, what are they and when do they take place?**

No. However the Chartered Institute of Arbitrators, ICC, Ghana Arbitration Centre and Corporate Law Institute (Ghana) have held training programs on arbitration in the past.

XVII. Trends and Developments

- (i) Do you think that arbitration has become a real alternative to court proceedings in your country?**

Not entirely. However arbitration is quickly growing in Ghana.

- (ii) What are the trends in relation to other ADR procedures, such as mediation?**

The use of other ADR procedures is growing. In respect of cases before the commercial courts in Ghana, it is now mandatory for the parties to participate in pre-trial mediation (pre-trial settlement conference).

The use of mediation has also been codified in the Alternative Dispute Resolution Act, 2010, Act 798.

- (iii) Are there any noteworthy recent developments in arbitration or ADR?**

The Courts in Ghana have become more supportive of arbitration.

The Supreme Court of Ghana in its November 2015 judgment held among others that the trial of a case on its merits in the High Court despite a prior reference to arbitration under the Arbitration Act, 1961 (now repealed by the Alternative Dispute Resolution Act 2010, (Act 798) was a nullity for lack of jurisdiction.