

IBA ARBITRATION COMMITTEE

Recognition and Enforcement of Arbitral Awards Subcommittee

COUNTRY REPORT ON LOCAL REQUIREMENTS FOR THE EXTENSION OF AN ARBITRATION CLAUSE TO, AND ENFORCEMENT OF AN ARBITRAL AWARD AGAINST, A NON-SIGNATORY

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In completing this survey, we ask the respondents to consider the question of non-signatories in a broad manner. That is, please consider situations where (i) a party applies to a court to compel arbitration against a non-signatory, (ii) the arbitral tribunal extended the arbitration clause to a non-signatory, and the non-signatory, or another party to the arbitration, seeks to resist enforcement, or to set aside the award, on the basis that the arbitration clause should not have been extended to the non-signatory, and (iii) where the award creditor attempts to enforce the award against a non-signatory that was not a party to the arbitral proceedings and the award.

Ethiopia			
I. General		(Yes/ No /NA)	Comments, if any.
I.1	Must international arbitration agreements be in writing under the law of the country for which you are reporting?	Yes	<p>The Ethiopian Arbitration and Conciliation, Working Procedure Proclamation No. 1237/2021 (“the Arbitration Law”) requires an arbitration agreement to be made in writing. The arbitration agreement is deemed to have been made in writing where its content is recorded, signed by all parties and two witnesses even where it was made orally, by conduct or any other means.</p> <p>In addition, an arbitration agreement concluded by electronics media shall be deemed to have been made in written form where it is accessible for use when the information is needed. Electronic</p>

			communication includes an exchange of information between the contracting parties through email or the act sending, receiving, and storing of information through electronic, magnetic, optical or similar means.
1.2	<p>Please describe the basic requirements for a valid international arbitration agreement in the country for which you are reporting and cite the relevant legislative, regulatory, or jurisprudential basis for these requirements.</p> <p>[Please provide your response in the comments column and limit it to one paragraph.]</p>		<p>The general contract law under the 1960's Ethiopian Civil Code, under Articles 1678 Seq., provides that an agreement shall fulfill the elements of consent, capacity, and lawful object. In addition, the Arbitration Law provides that a valid arbitration agreement shall consist of the following:</p> <ul style="list-style-type: none"> • The contracting parties shall give their consent and have the capacity to enter into an arbitration agreement. • The Arbitration agreement shall be made in writing (Article 6 of the Arbitration Agreement). • The subject matter of the arbitration shall be arbitrable (Article 7 of the Arbitration Law lists matters that shall not be submitted for arbitration).
1.3	<p>In the country for which you are reporting, do courts/arbitral tribunals generally decide the issue of the scope rationae personae of the arbitration clause (or, in other words, the issue of who are the parties to the arbitration agreement, including the issue of extending the arbitration agreement to a non-signatory) on the basis of a specific applicable law or on the sole basis of a factual analysis of the case without reference to an applicable law?</p>	Yes	Arbitral tribunals and courts have jurisdiction to decide the issue of extension of the arbitration agreement to a non-signatory on the basis of the factual analysis of the case and laws governing extension of arbitration agreements to non-signatories.

1.3a	<p>If courts/arbitral tribunals generally decide the issue on the basis of a specific applicable law, what law do they apply to decide the issue?</p> <p>[For example, the applicable law could be:</p> <ul style="list-style-type: none"> • The law of the seat of arbitration. • The governing law of the contract. • The law of the place where the award might ultimately be sought to be enforced. • Transnational norms/international law. • The law reached at through a conflict of laws analysis.] <p>[Please provide your response in the comments column, provide any citation to relevant legislation or jurisprudence, and limit your response to one paragraph.]</p>		<p>The Arbitration Law, under its Article 10, provides that the arbitration agreement and the proceedings shall be governed by the arbitration law chosen by the contracting parties. The arbitration tribunal is also obliged to apply the substantive law chosen by the contracting parties to international arbitration.</p> <p>The Arbitration Law, under its Article 41, provides that unless specifically agreed otherwise, any choice of law made by agreement of the parties shall be deemed to be the substantive law of that country, excluding the rules of conflict of laws. In case the contracting parties fail to choose the substantive law by agreement, the tribunal may choose a substantive law close and relevant to the subject matter of the dispute. However, where the issue does not have an element of international arbitration, Ethiopian law shall apply. Apart from the law chosen by the contracting parties, the tribunal may render an arbitral award based on equity or known commercial practices where such power is expressly given to the tribunal by the contracting parties.</p>
1.3b	<p>Does the legislation of your jurisdiction contain any directive in this respect?</p> <p>[Please provide your response in the comments column and limit it to one paragraph.]</p>	Yes	<p>There is no clear stipulation in the Arbitration Law or other pertinent legislation addressing the extension of an arbitration clause to non-signatories or not. General principles of contract law (Ethiopian Civil Code), under Article 1731, provides that provisions of a contract lawfully formed shall only binding on the parties. Thus, non-signatory individuals are not bound by any of the provisions of an agreement unless (1) there has been a delegation of obligation and assignment of rights agreements were made involving</p>

			<p>the non-signatory; (2) requested to intervene in a court proceeding by showing a cause of action; or (3) the contracting parties apply to the tribunal for the intervention of third parties.</p> <p>Article 40 of the Arbitration Law provides for two instances where non-signatory third parties may intervene:</p> <ul style="list-style-type: none"> a. Subject to the consent of the contracting parties, where a third party whose interest could be affected by the arbitral award submits an intervention application to the tribunal before the arbitral award is rendered; and b. Where the contracting parties apply to the tribunal for the intervention of third parties in the proceedings with the intention of holding the latter liable to them or requiring such parties to pay them compensation. <p>In such scenarios, the tribunal will decide on the intervention request to extend the arbitration agreement to these non-signatory individuals, as long as such third-parties consent to such intervention.</p>
1.4	<p>Is the question of whether parties agree to arbitrate ultimately decided by arbitrators as opposed to courts in the country for which you are reporting? Please cite the relevant legislative, regulatory, or jurisprudential basis for your answer.</p> <p>[Please provide your response in the comments column and limit it to one paragraph.]</p>	Yes	<p>The question of whether parties agree to arbitrate is ultimately decided by arbitrators. The Arbitration Law, under its Article 19, provides that the tribunal shall have the power to determine the existence or non-existence of a valid arbitration agreement between the contracting parties including as to whether it has jurisdiction to hear the case or not.</p>
1.5	<p>Is there anything in the <u>legislation</u> of the country for which you are reporting that (i) could preclude the extension of an arbitration clause to non-signatories, or (ii) could permit the extension of an arbitration clause to non-signatories?</p> <p>[Note that the answer to this question is designed to provide the reader with a quick yes or no answer, plus to flag the key legal criteria. The series of questions in Section II provide the reader with a more detailed discussion of relevant legal theories, jurisprudence, and examples.]</p>	Yes	

I.5a	<p>If your answer to question <u>I.5</u> is yes, please cite and describe the applicable rules contained in any relevant legislation or regulations.</p> <p>[Please provide your response in the comments column and limit it to one paragraph.]</p>		Same comments as above under I.3b.
I.6	<p>Is there anything in the <u>jurisprudence</u> of the country for which you are reporting that (i) could preclude the extension of an arbitration clause to non-signatories, or (ii) could permit the extension of an arbitration clause to non-signatories?</p> <p>[Note that the answer to this question is designed to provide the reader with a quick yes or no answer, plus to flag the key legal criteria. The series of questions in Section II provide the reader with a more detailed discussion of the relevant legal theories, jurisprudence, and examples.]</p>	Yes	
I.6a	<p>If your answer to question <u>I.6</u> is yes, please cite and describe the applicable tests or rules applied by the courts of the country for which you are reporting.</p> <p>[Please provide your response in the comments column and limit it to one paragraph.]</p>		The Ethiopian Federal Supreme Court Cassation Division held that the general principles of contract law shall apply to an arbitration agreement whereby an arbitration agreement deems to be valid where the contracting parties gives their consent, have capacity to enter into a contract, lawful object of the agreement, and form of the agreement, if required by law. As such, the agreement shall only bind the parties to the arbitration agreement (Federal Supreme Court Cassation Decision Volume 9, File No. 38794, dated April 2, 2009).
II. Specific Legal Theories Concerning Non-Signatories		(Yes/ No /NA)	Additional comments, if any.
II.1	Can the assignment or assumption of a contract containing an international arbitration agreement commit the non-signatory assignee to international arbitration in the country for which	Yes	

	you are reporting? Or is the legislation and jurisprudence in the country for which you are reporting silent on the issue?		
II.1.a	<p>If your answer to question <u>II.1</u> is yes, please:</p> <ul style="list-style-type: none"> • Cite and describe the applicable rules contained in any relevant legislation or regulations. • Provide examples from your country’s jurisprudence highlighting which parties are ultimately bound, and the circumstances under which they are likely to be bound. <p>[Please provide your response in the comments column and limit it to one paragraph.]</p>		The Civil Code allows for the assignment of rights and obligations under a contract, including those containing an arbitration agreement, subject to the requirements of the law. An assignee who has agreed to the assignment is bound by the terms of the contract, including the arbitration agreement, and is considered a party by substituting the assignor.
II.1.b	<p>If your answer to question <u>II.1</u> is no, please:</p> <ul style="list-style-type: none"> • Cite and describe the applicable rules contained in any relevant legislation or regulations. • Provide examples from your country’s jurisprudence highlighting which parties are ultimately bound, and the circumstances under which they are likely to be bound. 	N/A	
II.2	Can incorporation by reference (i.e., where a contract incorporates an arbitration clause contained in a separate document) commit a non-signatory party to international arbitration in the country for which you are reporting? Or is the legislation and jurisprudence in the country for which you are reporting silent on the issue?	Yes	
II.2.a	If your answer to question <u>II.2</u> is yes, please:		The law is silent on the incorporation by reference of arbitration clauses binding non-signatories. In practice, however, an arbitration clause referenced in other contracts, such as general terms and conditions or a framework contract, is considered an integral part of the main contract.

	<ul style="list-style-type: none"> • Cite and describe the applicable rules contained in any relevant legislation or regulations. • Provide examples from your country’s jurisprudence highlighting which parties are ultimately bound, and the circumstances under which they are likely to be bound. <p>[Please provide your response in the comments column and limit it to one paragraph.]</p>		
II.2.b	<p>If your answer to question <u>II.2</u> is no, please:</p> <ul style="list-style-type: none"> • Cite and describe the applicable rules contained in any relevant legislation or regulations. • Provide examples from your country’s jurisprudence highlighting which parties are ultimately bound, and the circumstances under which they are likely to be bound. <p>[Please provide your response in the comments column and limit it to one paragraph.]</p>	N/A	
II.3	<p>Can an arbitration clause commit a non-signatory third-party beneficiary of a contract to international arbitration in the country in which you are reporting? Or is the legislation and jurisprudence in the country for which you are reporting silent on the issue?</p>	Yes	

II.3.a	<p>If your answer to question <u>II.3</u> is yes, please:</p> <ul style="list-style-type: none"> • Cite and describe the applicable rules contained in any relevant legislation or regulations. • Provide examples from your country’s jurisprudence highlighting which parties are ultimately bound, and the circumstances under which they are likely to be bound. <p>[Please provide your response in the comments column and limit it to one paragraph.]</p>		<p>Article 1961 of the Civil Code provides that a third-party beneficiary acquires the rights conferred by the contract. In a similar manner, third parties acquire other terms of the contract including the arbitration clause. The other contracting party may also raise any defense against the non-signatory that it would have against the assignor, including the presence of an arbitration agreement.</p>
II.3.b	<p>If your answer to question <u>II.3</u> is no, please:</p> <ul style="list-style-type: none"> • Cite and describe the applicable rules contained in any relevant legislation or regulations. • Provide examples from your country’s jurisprudence highlighting which parties are ultimately bound, and the circumstances under which they are likely to be bound. <p>[Please provide your response in the comments column and limit it to one paragraph.]</p>	N/A	
II.4	<p>Can a theory of agency (i.e., where an agreement containing an arbitration clause has been entered into by a person who expressly or impliedly did so as a representative of a non-signatory) commit a non-signatory party to international arbitration in the country for which you are reporting? Or is the legislation and jurisprudence in the country for which you are reporting silent on the issue?</p>	Yes	
II.4.a	<p>If your answer to question <u>II.4</u> is yes, please:</p>		<p>Under Ethiopian law, agents act for and on behalf of the principal. The principal, not the agent, is a party to the act performed by the agent, so long as the agent acted within the scope of its authority. As a</p>

	<ul style="list-style-type: none"> • Cite and describe the applicable rules contained in any relevant legislation or regulations. • Provide examples from your country’s jurisprudence highlighting which parties are ultimately bound, and the circumstances under which they are likely to be bound. <p>[Please provide your response in the comments column and limit it to one paragraph.]</p>		result, as long as the agent has the authority to enter into an arbitration agreement, the non-signatory principal will be bound by the arbitration.
II.4.b	<p>If your answer to question <u>II.4</u> is no, please:</p> <ul style="list-style-type: none"> • Cite and describe the applicable rules contained in any relevant legislation or regulations. • Provide examples from your country’s jurisprudence highlighting which parties are ultimately bound, and the circumstances under which they are likely to be bound. <p>[Please provide your response in the comments column and limit it to one paragraph.]</p>	N/A	
II.5	<p>Can a theory of estoppel, good faith, or abuse of right (i.e., where a party benefitting from, and acting in accordance with, a contract containing an arbitration clause is estopped from claiming that it is not bound by certain provisions of the contract) commit a non-signatory party to international arbitration in the country for which you are reporting? Or is the legislation and jurisprudence in the country for which you are reporting silent on the issue?</p>	N/A	The law is silent on this issue.
II.5.a	<p>If your answer to question <u>II.5</u> is yes, please:</p> <ul style="list-style-type: none"> • Cite and describe the applicable rules contained in any relevant legislation or regulations. 	N/A	

	<ul style="list-style-type: none"> • Provide examples from your country’s jurisprudence highlighting which parties are ultimately bound, and the circumstances under which they are likely to be bound. <p>[Please provide your response in the comments column and limit it to one paragraph.]</p>		
II.5.b	<p>If your answer to question <u>II.5</u> is no, please:</p> <ul style="list-style-type: none"> • Cite and describe the applicable rules contained in any relevant legislation or regulations. • Provide examples from your country’s jurisprudence highlighting which parties are ultimately bound, and the circumstances under which they are likely to be bound. <p>[Please provide your response in the comments column and limit it to one paragraph.]</p>	N/A	

II.6	<p>Can “implied consent” (i.e., where a party’s active participation in the negotiation, execution, performance and/or termination of a contract containing an arbitration clause provides evidence for its intent to consent to arbitration) commit a non-signatory party to international arbitration in the country for which you are reporting? Or is the legislation and jurisprudence in the country for which you are reporting silent on the issue?</p>	No	
II.6.a	<p>If your answer to question <u>II.6</u> is yes, please:</p> <ul style="list-style-type: none"> • Cite and describe the applicable rules contained in any relevant legislation or regulations. • Provide examples from your country’s jurisprudence highlighting which parties are ultimately bound, and the circumstances under which they are likely to be bound. <p>[Please provide your response in the comments column and limit it to one paragraph.]</p>	N/A	
II.6.b	<p>If your answer to question <u>II.6</u> is no, please:</p> <ul style="list-style-type: none"> • Cite and describe the applicable rules contained in any relevant legislation or regulations. • Provide examples from your country’s jurisprudence highlighting which parties are ultimately bound, and the circumstances under which they are likely to be bound. <p>[Please provide your response in the comments column and limit it to one paragraph.]</p>		<p>Arbitration agreement has to be explicit. The Arbitration Law under Article 6 requires that the arbitration agreement to be in writing and signed by <i>all parties</i>.</p>
II.7	<p>Can piercing the corporate veil or the alter ego doctrine (i.e., where, typically due to misuse or abuse of rights or fraud, the</p>	No	

	<p>separate legal form of a non-signatory that uses its dominating authority over a signatory is disregarded so that both are treated as a single entity) commit a non-signatory party to international arbitration in the country for which you are reporting? Or is the legislation and jurisprudence in the country for which you are reporting silent on the issue?</p>		
II.7.a	<p>If your answer to question <u>II.7</u> is yes, please:</p> <ul style="list-style-type: none"> • Cite and describe the applicable rules contained in any relevant legislation or regulations. • Provide examples from your country’s jurisprudence highlighting which parties are ultimately bound, and the circumstances under which they are likely to be bound. <p>[Please provide your response in the comments column and limit it to one paragraph.]</p>		
II.7.b	<p>If your answer to question <u>II.7</u> is no, please:</p> <ul style="list-style-type: none"> • Cite and describe the applicable rules contained in any relevant legislation or regulations. • Provide examples from your country’s jurisprudence highlighting which parties are ultimately bound, and the circumstances under which they are likely to be bound. <p>[Please provide your response in the comments column and limit it to one paragraph.]</p>		<p>Although the Arbitration Law remains silent on whether such principles can be extended to commit non-signatories to arbitration, the piercing the corporate veil or the alter ego doctrine are applicable in Ethiopia as a matter of general principle. However the Arbitration Law requires that all parties to an arbitration agreement sign the agreement, thus extending the principles to bind non-signatories difficult.</p>
II.8	<p>In the country for which you are reporting, are there any other legal theories that can be used to commit a non-signatory to international arbitration?</p>	No	

II.8.a	<p>If your answer to question <u>II.8</u> is yes, please:</p> <ul style="list-style-type: none"> • Cite and describe the applicable rules contained in any relevant legislation or regulations. • Provide examples from your country’s jurisprudence highlighting which parties are ultimately bound, and the circumstances under which they are likely to be bound. <p>[Please provide your response in the comments column and limit it to one paragraph.]</p>	N/A	
III. Enforcement of an Arbitral Award against a Non-Signatory		(Yes/No/N/A)	Additional comments, if any.
III.1	<p>Have there been court cases in the country for which you are reporting where a party has objected to the enforcement of an award, on the basis that the arbitral tribunal extended the arbitration clause to one or more non-signatories?</p>	No	
III.1.a	<p>If your answer to III.1 is <u>yes</u>, please explain which provision(s) of the New York Convention, or any other bilateral or multilateral convention on the enforcement of arbitral awards, was (were) relied upon as the basis for the application/objection.</p> <p>[Please provide your response in the comments column and limit it to one paragraph.]</p>	N/A	
III.1.b	<p>If your answer to III.1 is <u>yes</u>, please explain whether set-aside/enforcement was finally granted or refused, and the court’s reasons for reaching this result.</p>	N/A	

	[Please provide your response in the comments column and limit it to one paragraph.]		
III.2	<p>Have there been court cases in the country for which you are reporting in which the enforcement of an award was requested against a non-signatory third party (a company/individual/state that was a non-signatory to the arbitration agreement and not a party to the arbitral proceedings/award)?</p> <p>[Please provide your response in the comments column and limit it to one paragraph.]</p>	No	
III.2a	<p>If the answer to III.2 is <u>yes</u>, please explain on what legal basis the enforcement was requested.</p> <p>[Please provide your response in the comments column and limit it to one paragraph.]</p>	N/A	
III.2b	<p>If the answer to III.2 is <u>yes</u>, please explain whether the enforcement was finally granted/refused and the court's reasons for reaching this result.</p> <p>[Please provide your response in the comments column and limit it to one paragraph.]</p>	N/A	
IV. Miscellaneous		(Yes/No/NA)	Additional comments, if any.
IV.1	Is there anything else that a party considering the issue of the extension of an arbitration clause to a non-signatory should	No	

	<p>take into account with respect to the country for which you are reporting?</p> <p>[Please provide your response in the comments column and limit it to one paragraph.]</p>		
IV.2	<p>Is there anything else that a party considering trying to enforce a foreign arbitral award against a non-signatory should take into account with respect to the country for which you are reporting?</p> <p>[Please provide your response in the comments column and limit it to one paragraph.]</p>	No	