

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.

Tanzania			
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	Section 10 of the Arbitration Act [Cap 15 RE 2020] (Arbitration Act) requires arbitration agreements to be in writing.
I.2	Please describe the basic requirements for a valid international arbitration agreement in the country for which you are		As previously stated, Section 10 of the Arbitration Act mandates that arbitration agreements must be in writing. It also specifies what constitutes being “in writing”:

	<p>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>	<ul style="list-style-type: none"> a) An agreement is considered in writing if it is documented, regardless of whether it is signed by the parties. b) Agreements made through written communications, such as emails or letters, are also deemed to be in writing. c) Agreements being made in some medium, other than writing, which refers to terms in writing. d) An agreement is considered evidenced in writing if one party records it, or if a third party records it with the parties' authority. e) In legal proceedings, an exchange of written submissions alleging an agreement, if not denied by the other party, constitutes an agreement in writing between them.
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>	<p>The Arbitration Act in Tanzania was enacted in 2020 and the practice of the law and jurisprudence on its provisions is still in a nascent stage.</p> <p>In the case of <i>I&M Bank (T) Limited v Bayview Properties Limited & Another [2022] TZHCComD 299 (I&M Bank)</i>, the High Court addressed a scenario where a third party, who did not participate in the arbitral proceedings, felt affected by the final award and sought to be joined as a party to the petition challenging the award.</p> <p>The court reaffirmed the fundamental principle that an arbitration agreement is a contract binding only on the parties to the agreement. However, there are limited circumstances where third parties, not party to the original agreement, may be bound by or benefit from it. These situations include instances where there is an assignment or transfer of contractual rights or cause of action to a third party.</p> <p>The courts, it appears, will rely on a factual analysis of each case to determine the parties to the arbitration agreement.</p>

I.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>Considering that an arbitration agreement is binding on the signatories to such agreement, the court will first look at the governing law of the contract. Where the governing law is unclear, the courts will look at the law of the seat of arbitration.</p> <p>Section 83(2)(a)(i) of the Arbitration Act provides that an award, whether foreign or domestic, shall not be enforced if a party furnishes to the court proof that it lacked the capacity to enter into an arbitration agreement, or it was not properly represented.</p> <p>Section 83(2)(a)(ii) of the Arbitration Act provides that an award, whether foreign or domestic, shall not be enforced if the arbitration agreement is not valid under the law to which the parties have subjected it or, failing any indication of that law, under the law of the state where the arbitral award was made.</p>
I.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>		<p>In addition to what has been stated above, Section 53(1) of the Arbitration Act provides that the tribunal shall decide the dispute in accordance with the law chosen by the parties as applicable to the substance of the dispute.</p>
I.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>		<p>Section 34 of the Arbitration Act establishes the competence-competence principle, granting the tribunal the authority to decide on its substantive jurisdiction. However, the Arbitration Act also provides for a party to challenge the tribunal's jurisdiction.</p>
I.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</p>	<p>i) No</p>	

arbitration clause to non-signatories, or (ii) could permit the extension of an arbitration clause to non-signatories?

ii) Yes

[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>1.5a</p>	<p>If your answer to question <u>L.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>		<p>An arbitration agreement is defined as “<i>an agreement by the parties to submit to arbitration all or certain disputes which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not.</i>”</p> <p>As provided in question 1.2 above, a signature is not a prerequisite for a valid arbitration agreement. This would, theoretically, permit the extension of the arbitration clause to non-signatories.</p> <p>Furthermore, the wording of Section 14(1) of the Arbitration Act implies that a third party can claim through or under a party to the arbitration agreement. The section provides:</p> <p><i>“A court, before which an action is brought in a matter which is the subject of an arbitration agreement shall, where a party to the arbitration agreement <u>or any person claiming through or under him</u>, so applies not later than the date of submitting his first statement of claim on the substance of the dispute, and notwithstanding any judgment, decree or order of the superior court, refer the parties to arbitration unless it finds that prima facie no valid arbitration agreement exists.”</i></p> <p>This is further supported by Section 65(1) of the Arbitration Act which provides that an award, unless agreed otherwise, is “<i>final and binding to both parties and <u>to any person claiming through or under them.</u></i>”</p>
<p>1.6</p>	<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>	<p>i) Yes ii) Yes</p>	

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>		<p>Please see our response to question I.3 above.</p> <p>The court in the case of I&M Bank held that while an arbitration agreement is a contract binding only on the parties to the agreement, there are limited circumstances where third parties, not party to the original agreement, may be bound by or benefit from it. These situations include instances where there is an assignment or transfer of contractual rights or cause of action to a third party.</p>
II. Specific Legal Theories Concerning Non-Signatories		(Yes/No /NA)	Additional comments, if any.
II.1	<p>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 you are reporting? Or is the legislation and jurisprudence in the country for which you are reporting silent on the issue?</p>	<p>Yes</p>	
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>		<p>Please see our response to questions I.3 and I.5.a above.</p> <p>In addition, The High Court in the case of <i>Coface South Africa Insurance Co. Ltd v Kamal Steel Limited [2021] TZHC ComD 3363</i> restated the principle of privity of contract by stating, “<i>the right to sue under a contract, therefore, is a reserved right, available only to a person who is a party to the contract... However, there is an exception or rather a relaxation to the doctrine of privity, in particular, when there is an assignment of contractual rights. An assignment of contract occurs when a party to an existing contract (the "assignor") hands off the contract's obligations and benefits to another party (the "assignee").</i>”</p>

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. 	NA	
II.2	<p>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?</p>	Yes	
II.2.a	<p>If your answer to question <u>II.2</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>Please see our response to question I.2 above.</p> <p>Section 10(4) of the Arbitration Act states that the reference to terms which are in writing containing an arbitration clause constitutes an arbitration agreement. Furthermore, it is important to note that a signature is not a requirement to a valid arbitration agreement.</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. 	NA	

	<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.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>	No	
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>	NA	
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 see our response to questions I.5.a and II.1.a above.</p> <p>The only way a non-signatory beneficiary may be able to benefit from the arbitration agreement is if one of the parties to the agreement specifies such right.</p>

	[Please provide your response in the comments column and limit it to one paragraph.]		
II.4	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?	Yes	
II.4.a	<p>If your answer to question <u>II.4</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>Please see our response to question I.5.a above.</p> <p>In addition, Section 178 of the Law of Contract Act [Cap 345 RE 2019] provides contracts entered into by an agent and obligations resulting from the actions of an agent can be enforced and will have the same legal effects as if they were made or done by the principal.</p>

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>	NA	
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>	Yes	
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. • 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>Signing of a contract is not a condition to a valid arbitration agreement, as provided in question I.2 above. Therefore, a non-signatory party who benefits from, and acts in accordance with a contract, could potentially be considered as being bound by it and any arbitration clause it contains.</p> <p>In the case of <i>IBM Tanzania Limited v Sunheralex Consulting Co. Ltd [2021] TZHCComD 3433</i>, the High Court considered the effect of the parties performing on a draft contract, that had not yet been executed. The High Court stated that:</p> <p><i>“Essentially, the lack of a signature would suggest that the parties had not yet reached the point where they wished to be bound. But that is not always the case where there is evidence to the contrary. Courts do not just look at one aspect but look at all the evidence relating to the intention of the parties, including their conduct.”</i></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>	NA	
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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>	Yes	
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>		Please see our response to questions I.2 and II.5.a above.
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>	NA	
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>As provided in questions I.2 and I.5.a above, only parties to an arbitration agreement can institute a claim under it.</p> <p>This, however, does not prevent a party from piercing the corporate veil when a party seeks to enforce the decree during the execution stage. This was restated in the case of <i>Bank of India (Tanzania) Limited v Fomcom International Limited [2019] TZHC ComD 152</i> where it was held:</p> <p><i>“...upon incorporation, a company becomes a separate entity from its shareholders, directors and officers who own and/or act for the company. However, the principle has nonetheless its exceptions, and the Court when called upon to act can in actual fact intervene by piercing or lifting of a corporate veil. And in so doing, the Court will consider among other things, where the person/s controlling a company have acted fraudulently, the company is considered as "sham" or where a company is used to avoid an existing legal duty, before lifting the corporate veil.”</i></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>	Yes	
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>		<p>Under the principle of “subrogation”, a non-signatory party may acquire the rights of a creditor, including those arising from an arbitration agreement, against the debtor upon payment made by the non-signatory to satisfy the debtor's debt. Additionally, a non-signatory insurer may acquire the rights and claims (including in arbitration) of the insured party against its contracting party upon the insurer's payment of the insurance indemnity to the insured.</p>
III. Enforcement of an Arbitral Award against a Non-Signatory		(Yes/No/NA)	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>	NA	

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> <p>[Please provide your response in the comments column and limit it to one paragraph.]</p>	NA	
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>	NA	
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>	NA	

IV. Miscellaneous		(Yes/No/NA)	Additional comments, if any.
IV.1	<p>Is there anything else that a party considering the issue of the extension of an arbitration clause to 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	
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	