



**IBA TOOLKIT ON INSOLVENCY AND ARBITRATION**  
**QUESTIONNAIRE**  
**NATIONAL REPORT OF GHANA**

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## IMPACT OF NATIONAL INSOLVENCY ON DOMESTIC OR FOREIGN ARBITRATION

[These questions relate to the effects that insolvency proceedings initiated in a national jurisdiction produce on arbitration commitments (foreign as well as national/local) involving the insolvent party.]

### Part I: Impact of Insolvency Proceedings on the Ability to Commence or Continue Arbitration

**1. Does the law of Ghana contain any provision on the effect that the opening of insolvency proceedings produces on arbitration? If so, what is the source of the provision or provisions providing for the effects? That is, are the effects provided by the insolvency legislation as part of the consequences produced by the opening of insolvency proceedings? Or, are they provided by the arbitration legislation or law as a matter concerning the arbitrability of disputes, the capacity of the parties to arbitrate, the validity and effectiveness of arbitration agreements, or any other arbitration-specific category?**

1. The Corporate Insolvency and Restructuring Act, 2020 (Act 1015) (“CIRA”) governs insolvency proceedings of companies and other bodies corporate in Ghana.
2. Under the CIRA, there are three forms of insolvency proceedings i.e., administration, restructuring and official liquidation. The commencement of administration proceedings stays only proceedings in court.<sup>1</sup> However, the CIRA is generally silent on the effects of administration and restructuring proceedings on arbitration. Nonetheless, the enforcement of certain rights could be limited during arbitration when administration proceedings are commenced against a company who is a part of the arbitration.
3. According to the CIRA, the owner or lessor of property is restricted from taking possession of the property or otherwise recover the property that was used or occupied by the company or is in the company's possession. So, by extension, an arbitration proceeding in respect of property possession may have to be stayed if administration proceedings are commenced against the company. On the other hand, the CIRA is clear that during an official liquidation, except in the case of proceedings by a secured creditor to realize a security, all civil proceedings against a company must be stayed.<sup>2</sup> Although civil proceedings have not been defined, it can be interpreted to include both proceedings in court and arbitration.

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<sup>1</sup> CIRA, Section 32, accessible in English at < <https://rgd.gov.gh/docs/Act%201015-2.pdf> > accessed 4 April 2024.

<sup>2</sup> CIRA, Section 87(1).

- 2. Does the insolvency legislation in Ghana provide for the concentration of disputes concerning the insolvent debtor before the insolvency court (*vis attractiva concursus*)? If so,**
- a. Which disputes fall under the rules on *vis attractiva concursus*?**
  - b. Are disputes in arbitration or subject to an arbitration agreement covered by the *vis attractiva concursus*?**

4. Disputes in arbitration are not concentrated in the court during administration proceedings. Only court proceedings are stayed during administration.<sup>3</sup> In restructuring, certain disputes (specified in the restructuring agreement) involving the insolvent corporate body may be concentrated in the court. The restructuring agreement, agreed upon by the creditors and the company, specifies the nature and degree of any moratorium during the restructuring proceedings.<sup>4</sup> In official liquidation proceedings, all proceedings are concentrated in the court, except proceedings by secured creditors to realize their security.<sup>5</sup>

- 3. What are the effects (if any) of the opening of insolvency proceedings in Ghana on the possibility to commence or continue arbitration proceedings?**

**In answering this question, please address separately each of the following points:**

- a. Does the law draw any distinction between arbitration proceedings where the insolvent party acts as defendant and as claimant?**

5. The opening of insolvency proceedings has the following effects on arbitration proceedings. In administration, arbitration proceedings are not stayed unless it is in relation to recovery of possession in property matters. Thus, it is possible to commence or continue arbitration proceedings.<sup>6</sup> In restructuring, arbitration proceedings may be stayed to the extent agreed upon in the restructuring agreement by the creditors and the company.<sup>7</sup> In official liquidation, all arbitration and other legal proceedings are stayed.<sup>8</sup>

6. In all cases, the opening of insolvency proceedings will have the effects described above irrespective of the procedural position of the insolvent debtor.

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<sup>3</sup> CIRA, Section 32.

<sup>4</sup> CIRA, Section 51(1)(b).

<sup>5</sup> CIRA, Section 87.

<sup>6</sup> CIRA, Section 32.

<sup>7</sup> CIRA, Section 51(1)(b).

<sup>8</sup> CIRA, Section 87.

**b. Does the law draw any distinction between insolvency proceedings aimed at the liquidation of the company and proceedings aimed at the financial restructuring or rehabilitation of the company?**

7. Administration and restructuring proceedings aim to financially rehabilitate a distressed company. Administration proceedings have no direct effect on arbitration proceedings, although in property recovery matters, the arbitration proceedings may be stayed. However, in a restructuring proceeding, the creditors and the debtor may agree to stay arbitration proceedings in the restructuring agreement. The opening of official liquidation, on the other hand, stays all legal proceedings, including arbitration proceedings.

**c. Does the law draw any distinction based on the subject matter or relief sought in the arbitration?**

8. The law requiring a stay of proceedings during insolvency proceedings is broad and does not make any distinction based on the subject matter or relief sought in the arbitration. The main consideration is whether the insolvency proceedings are aimed at restructuring the business or liquidating the company, as discussed above. It does not matter whether the subject matter of the arbitration is a simple commercial issue or one inherently related to the insolvency itself.<sup>9</sup>

**d. Do these effects (if any) also extend to pre-insolvency proceedings or restructuring proceedings which do not require a declaration of insolvency?**

9. The effects do not extend to pre-insolvency or restructuring proceedings.

**e. Does the law draw any distinction between arbitration proceedings which are pending at the time of the opening of insolvency proceedings and arbitration proceedings which commence after the opening of insolvency proceedings?**

10. The law does not make any distinction on the effect of insolvency proceedings based on the time of their commencement.

**f. Does the law regulating the effect of insolvency on arbitration make any distinction between voluntary and compulsory insolvency proceedings?**

11. The law does not make any distinction between voluntary and compulsory insolvency proceedings.

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<sup>9</sup> CIRA, Section 32.

**g. Do those effects intend to apply extraterritorially, i.e. to every arbitration regardless of the location of the seat in Ghana or abroad?**

12. The law does not make any distinction on foreign and local arbitration proceedings in the application of the effect of insolvency proceedings.

**h. When do the effects (if any) of insolvency on arbitration become operative (e.g., from the time of the opening of insolvency proceedings, the declaration by the court, its publication or service of process through other means on the affected parties or even the arbitrators, etc.)?**

13. A stay of arbitration proceedings features primarily in restructuring and official liquidation proceedings. In restructuring, the restructuring agreement would specify the time the stay of proceedings would become operative. In official liquidation proceedings, however, the stay of proceedings operates from the commencement of the winding-up proceedings.<sup>10</sup> In practice where there are pending proceedings, the liquidator will have to apply to the court for an order to stay further proceedings in the court.

**4. Does the law of the jurisdiction permit relief from the effects above? If so, what procedures must be followed in order to proceed with an arbitration?**

**a. Can an interested party seek to intervene in the insolvency proceeding in order to proceed with arbitration?**

**b. What considerations will the insolvency court take into account in making the decision of whether to send the matter to arbitration?**

14. When the law provides for a stay of proceedings, an interested party can seek the court's permission to initiate or continue arbitration proceedings. This is done by bringing an application to the court. The court holds the discretion to grant or deny the application for leave to proceed with the arbitration.<sup>11</sup> To the knowledge of the authors there is no established case law yet on the criteria/factors used by courts to decide on whether to lift the stay.

<sup>10</sup> CIRA, Section 87.

<sup>11</sup> CIRA, Section 32, 87 and 12(c).

**5. Can the insolvency courts give an order to stop arbitration proceedings (e.g., an anti-arbitration injunction)? If so, does it depend on the seat of the arbitration being in the jurisdiction or abroad?**

15. The court has power to stay civil proceedings on the commencement of official liquidation or winding-up proceedings. Although there is no express provision in the law in relation to arbitration, an argument could be made that the reference to “civil proceedings” is broad enough to include arbitration.<sup>12</sup>

**6. Can the insolvency administrator or the insolvency court terminate or suspend the effectiveness of contracts that contain arbitration agreements concluded by the insolvent party before the opening of insolvency proceedings? If so, on what basis?**

16. The law does not expressly give the power to an administrator, restructuring officer or liquidator to terminate or suspend contracts during insolvency proceedings. However, during official liquidation or winding-up proceedings, the liquidator has the right to disclaim any property which will not benefit the creditors. The disclaimer will not affect the rights or liabilities of any person except where it is necessary to release the company and the property of the company from liability.<sup>13</sup>

**7. What is the effect (if any) on the arbitration agreement of the decision of the insolvency administrator or insolvency court to terminate/disclaim the contract that contains such arbitration agreement?**

17. According to the law, an arbitration agreement is considered separate from the contract that includes it. As a result, if an administrator, restructuring officer, or liquidator terminates a contract that contains an arbitration agreement, the arbitration agreement itself remains valid even after the termination of the contract.<sup>14</sup>

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<sup>12</sup> CIRA, Section 87(1) and (2).

<sup>13</sup> CIRA, Section 128.

<sup>14</sup> Alternative Dispute Resolution Act (ADR Act) (first enacted on 31 May 2010), Section 3, accessible in English at < <https://www.wipo.int/wipolex/en/legislation/details/15113>> accessed 4 April 2024.

**8. Can the insolvency administrator or the insolvency court terminate or suspend the effectiveness of arbitration agreements themselves? If so, on what basis? What is the effect of such decision on pending arbitration proceedings derived from the arbitration agreement in question?**

18. Arbitration agreements are generally binding and cannot be revoked unless the parties agree otherwise.<sup>15</sup> In insolvency proceedings, an administrator, restructuring officer, or liquidator takes on the powers of the company's directors.<sup>16</sup> Since directors do not have the authority to unilaterally terminate an arbitration agreement, an administrator, restructuring officer, or liquidator also lacks the power to unilaterally terminate such an agreement.

**9. Does the insolvency regime require the alleged creditor to take any step in the insolvency process to be able to commence or continue with the arbitration (e.g., file the claim within the insolvency proceedings for verification/registration/ proof)?**

**a. If an alleged creditor files its claim with the insolvency proceedings and the claim is refused, does the existence of an arbitration agreement mean that an arbitral tribunal would have jurisdiction to decide on the existence and amount of the claim, so that it can be eventually submitted to the insolvency proceedings?**

**b. Does the filing of the claim with the insolvency proceedings amount to a submission of the jurisdiction of the insolvency court and a waiver of the arbitration agreement?**

19. The insolvency regime does not expressly provide for arbitration. Therefore, there is no provision in CIRA which requires a creditor to take a step such as filing a proof of debt before commencing or continuing arbitration during insolvency proceedings. However, a creditor is required to submit a proof of debt for verification and admission by the liquidator in order to participate in distributions.

20. The creditor may apply to the court to challenge the decision of the liquidator if the liquidator rejects the proof of debt.<sup>17</sup> Also, the creditor may seek the leave of the court to initiate arbitration proceedings to determine the dispute.<sup>18</sup>

21. Submitting proof of debt in liquidation proceedings does not constitute a waiver of the arbitration agreement.

<sup>15</sup> ADR Act, Section 3(1).

<sup>16</sup> CIRA, Section 10(1)(e), (6) and 90.

<sup>17</sup> CIRA, Section 99(1).

<sup>18</sup> CIRA, Section 93.

**10. In the event of a contract concluded by the insolvent party and a creditor prior to the opening of the insolvency proceedings, is an arbitration agreement contained in that contract enforceable in relation to an action commenced by the insolvency administrator to avoid that transaction based on grounds provided by insolvency law (insolvency *actio pauliana* or setting aside action)?**

22. During official liquidation or winding-up proceedings, a liquidator has the power to initiate or defend any legal proceeding to recover any property of an insolvent company that was transferred to third-party under any of the following transaction.<sup>19</sup> A transaction that was:

- made with the intent to defraud creditors or for fraudulent purposes;<sup>20</sup>
- a debt repayment to a creditor within twenty-one (21) days prior to the presentation of petition for winding up and the making of the winding-up order;<sup>21</sup>
- undervalued and occurred within two (2) years leading to the winding-up order, or between two (2) and ten (10) years before the winding-up order when the company was insolvent;<sup>22</sup> and
- a payment or a loan provided by the company under circumstances in which the court would have ordered the lender to reimburse the company and the payment was made within ten (10) years preceding the winding-up order.<sup>23</sup>

23. During the official liquidation or winding-up process of a company, all civil proceedings are stayed. However, it may be possible to initiate or continue arbitration proceedings with the permission of the court. Hence, a party has the option to apply for the enforcement of an arbitration agreement in an action where a liquidator or official trustee seeks to invalidate certain transactions. To the knowledge of the authors there is no case law addressing the arbitrability of these actions.

**11. Can the insolvency administrator conclude new arbitration agreements after the opening of insolvency proceedings?**

24. During administration or restructuring of an insolvent company, an administrator or restructuring officer may exercise any power, that the company or any of the officers of the company could exercise if the company were not in administration or restructuring.<sup>24</sup> Also, during official liquidation, the liquidator has the power to do any act necessary for winding-up the affairs of the company and the distribution of the assets of the company.<sup>25</sup> The exercise of

<sup>19</sup> CIRA, Section 102(2).

<sup>20</sup> CIRA, Section 117.

<sup>21</sup> CIRA, Section 122(1).

<sup>22</sup> CIRA, Section 123(1).

<sup>23</sup> CIRA, Section 124.

<sup>24</sup> CIRA, Section 10(1)(e) and (6).

<sup>25</sup> CIRA, Section 97(n).



this power includes concluding new arbitration agreements after the opening of insolvency proceedings.

**12. Do the effects of insolvency on arbitration (if any) operate after a creditors' arrangement has been agreed and approved by the competent authority?**

25. A restructuring agreement is approved by the creditors and executed by the company and the restructuring officer.<sup>26</sup> When a restructuring agreement is executed, administration of the company and restructuring proceedings begin.<sup>27</sup>
26. As noted earlier, except for court proceedings which are stayed during administration of a company, no other proceeding is stayed. However, in a restructuring agreement, the company's creditors may specify the nature and extent of a moratorium on legal proceedings. This moratorium applies while the company is in restructuring.

**13. Are any or all the rules regulating the effects of insolvency on arbitration mandatory? That is, can an agreement between the insolvent party and one or more of its creditors (e.g., the parties to the arbitration) exclude the application of those rules?**

27. The effects of insolvency proceedings on arbitration are mandatory. An insolvent party and creditors cannot contract out of it.

**14. Are arbitrators seated in the jurisdiction bound by the rules discussed above in considering whether to proceed with an arbitration?**

28. The impact of insolvency proceedings on arbitration, as mentioned earlier, affects both arbitrators and parties in the same manner.

**15. Does the court's personal jurisdiction over the party to the arbitration that is *not* in insolvency make any difference with respect to the effectiveness of the insolvency court's position on the arbitration?**

29. The High Court of Ghana has supervisory jurisdiction over any arbitration seated in Ghana as well as insolvency proceedings commenced under CIRA. So, the personal jurisdiction of the party to the arbitration that is not in insolvency makes no difference to the power of the court in the insolvency proceedings.

<sup>26</sup> CIRA, Section 45(1) and (3).

<sup>27</sup> CIRA, Section 2(2)(a) and 45(1).

**Part II: Considerations with Respect to the Arbitration Proceeding Where a Party Is Subject to Insolvency Proceedings**

**16. Will the insolvency administrator take part in the arbitration exclusively or will the insolvent party in some instances continue to have procedural capacity to participate in the arbitration in its own name (debtor in possession)?**

**a. If the insolvency administrator takes part in the arbitration, does she step into the shoes of (ie, replace) the insolvent party or can the insolvent party continue to appear in its own name? [in the latter option, what are the roles of the insolvency administrator and the insolvent debtor?]**

30. During administration and restructuring, an administrator and restructuring officer assumes control of the business, property and affairs of the company, and may exercise any of the powers of the company's officers.<sup>28</sup> Specifically, an administrator has the power to conduct legal proceedings involving the insolvent company.<sup>29</sup> In the exercise of this power, the administrator must sue in the name of the company.<sup>30</sup> In official liquidation, a liquidator may bring or defend an action in the name and on behalf of the company.<sup>31</sup>

31. Therefore, where the law does not stay arbitration proceedings during insolvency proceedings, an administrator, restructuring officer and liquidator will participate in the arbitration proceedings in the name of the company.

**17. Do the considerations of confidentiality that apply in a non-insolvency scenario vary as a consequence of the opening of insolvency proceedings against one of the parties to the arbitration? For instance, are there any restrictions on the information that the insolvency administrator can share with the insolvency court or with the creditors in the insolvency concerning the conduct, status or content of the arbitration? Or can the creditors appear in the arbitration as parties interested in the outcome of the proceedings?**

32. The confidentiality of arbitration proceedings would not be affected by the commencement of insolvency proceedings. Arbitration proceedings are confidential except when the parties to the arbitration agree or the law provides otherwise.<sup>32</sup> Thus, unless any exceptions apply, creditors cannot appear in the arbitration as parties interested.

<sup>28</sup> CIRA, Section 10(1)(a) and (e).

<sup>29</sup> CIRA, Section 11(2)(a).

<sup>30</sup> CIRA, Section 11(4).

<sup>31</sup> CIRA, Section 97(a).

<sup>32</sup> ADR Act, Section 34(5).

**18. Does the name of a party change as a consequence of the opening of insolvency proceedings over it?**

33. The law does not require a company to change its name as a result of the opening of insolvency proceedings. However, during administration, the law requires the company to include the words "in administration" after its name in all documents that establish a legal obligation for as long as the company remains in administration.<sup>33</sup> Similarly, a company in official liquidation shall affix "in official liquidation" after its name.<sup>34</sup>

**19. Is the insolvency administrator (or the debtor in possession) empowered to reach a settlement in the arbitration, or is the insolvency court required to authorise any settlement for it to be effective?**

34. The administrator can initiate, continue, discontinue and defend legal proceedings.<sup>35</sup> This power includes the power to enter a settlement agreement without requiring the authorization of the insolvency court.

**20. Can an arbitral tribunal adopt interim measures concerning a party subject to insolvency proceedings?**

35. The arbitral tribunal can adopt interim measures concerning a party subject to insolvency proceedings. However, in the case of winding-up of the company, the liquidator can commence or continue arbitration subject to the permission of the court. In the absence of such permission, the arbitral tribunal would not be able to adopt interim measures as no further proceedings would be permitted.

**21. Does the opening of insolvency proceedings in Ghana affect the validity of interim measures adopted against the insolvent party by an arbitral tribunal prior to the opening of the insolvency proceedings?**

36. Interim measures adopted prior to the commencement of insolvency proceedings do not automatically become invalid. It may be subject to a direction of the court by either the liquidator or administrator. However, judicial steps to enforce those interim measures would be considered as civil proceedings under the law. As such, in the case of winding-up, this will require the permission of the court.

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<sup>33</sup> CIRA, Section 76(1).

<sup>34</sup> CIRA, Section 143(1).

<sup>35</sup> CIRA, Section 11(2)(a).

**22. Is the capacity of the insolvent party to settle the dispute in the arbitration affected by the opening of insolvency proceedings in the jurisdiction?**

37. Once insolvency proceedings begin, the administrator (in administration) or the liquidator (in official liquidation/ winding-up) has the duty to take control of the affairs of the company, including the duty to protect the assets of the company by commencing or settling disputes. Therefore, any settlement would need to be agreed by the administrator or liquidator.

**Part III: Ability to Enforce an Arbitration Award in Insolvency Proceedings**

**23. Does the opening of insolvency trigger a general prohibition of individual enforcement actions by creditors against the insolvent estate?<sup>36</sup>**

38. During administration, a person shall not commence or continue an enforcement process in relation to an insolvent company's property except with the court's permission.<sup>37</sup> In restructuring, a creditor cannot proceed with an enforcement process without the leave of the court.<sup>38</sup> In official liquidation, a secured creditor can realize their security without leave of the court.<sup>39</sup> Thus, for companies, the commencement of administration and restructuring triggers a general prohibition of individual enforcement actions by creditors. However, this is not the case in official liquidation.

**24. What is the status of a claim that is being pursued in arbitration but has not yet reached a final award? Will that claim be converted to a different status once the arbitration award has been rendered and/or becomes enforceable?**

39. A claim being pursued through arbitration, before reaching a final award, does not enjoy any special status in Ghana's insolvency regime. As previously stated, a creditor must submit proof of debt, allowing the creditor to participate in distributions if verified and accepted by the liquidator. However, it is important to note that a liquidator can reach a compromise on various types of claims, whether present or future, certain or contingent, ascertained or sounding only in damages involving the company and any other person.<sup>40</sup>

40. If the arbitration proceeds to the final award, the award may be submitted as verifiable proof of debt. Any enforcement of the award during the liquidation process would be considered civil proceedings, which would require the court's permission.

<sup>36</sup> The expression "individual enforcement actions" refers to actions commenced outside of the insolvency proceedings for the enforcement of a credit.

<sup>37</sup> CIRA, Section 33.

<sup>38</sup> CIRA, Section 51(1)(c) and 52(1).

<sup>39</sup> CIRA, Section 93 CIRA.

<sup>40</sup> CIRA, Section 97(f)(iii).

**25. Is a credit contained in an arbitration award a valid proof of credit (ie, valid title) for the purposes of the insolvency proceedings? If it is a foreign award, will it need to be recognised under the New York Convention for it to be accepted or is there any other requirement that needs to be satisfied?**

41. There is no express statutory provision on the matter, but an arbitration award would generally be considered as verifiable proof of debt for insolvency proceedings. It is doubtful whether a foreign arbitral award would need to be recognized under the New York Convention before a liquidator will accept it as verifiable proof of debt.

**26. Are any or all the rules regulating the effect of insolvency on arbitration considered part of public policy?**

42. What constitutes public policy is a question to be determined by the court on a case-by-case basis. In relation to insolvency and arbitration, there is no authority on the point. However, an argument may be made that insolvency proceedings would not be covered under the public policy exception considering that the ADR Act expressly saves the existence of an arbitration agreement even after dissolution of a company or the appointment of a liquidator.

**27. Is the principle of *par conditio creditorum* part of public policy? If so, is public policy linked to the equal treatment of creditors from a substantive point of view (i.e., proportion of their credit that is satisfied in the insolvency process) or does it extend to the equal treatment of creditors from a procedural point of view (e.g., prohibiting individual proceedings [e.g., arbitration] outside the insolvency process)?<sup>41</sup>**

43. There is no judicial pronouncement on the principle of *par conditio creditorum* as being part of Ghana public policy. Under the law, the liquidator must rank debts in classes. The debts are classified from debts in respect of post-commencement financing to debt in respect of ordinary shareholders (Class A – G). Consequently, a liquidator has the duty to ensure that debts within one class are treated simultaneously and equally.<sup>42</sup>

<sup>41</sup> If the equality of creditors is part of public policy only from a substantive point of view, an award rendered by a foreign arbitral tribunal despite the prohibition of arbitration might still be effective in the insolvency proceedings because the award creditor will still abide by the *pari passu* distribution in insolvency. If, on the contrary, the public policy consideration of equality of creditors also extends to its procedural dimension, i.e. every creditor should have its claim decided under the same procedure, an award rendered in breach/disregard of such procedures might not be effective in the insolvency proceedings.

<sup>42</sup> CIRA, Section 130(2)(b).

**28. Are there any other provisions or case law of Ghana concerning the effect of national insolvency on arbitration that have not been mentioned in the previous answers?**

44. The Banks and Specialised Deposit-Taking Institutions Act, 2016 provides for mandatory arbitration as means of redress for grievances over the appointment of a receivership over a bank and specialised deposit-taking institution.<sup>43</sup>

**IMPACT OF FOREIGN INSOLVENCY ON ARBITRATION SEATED IN NATIONAL JURISDICTION**

**[These questions focus on the effects that foreign insolvency proceedings produce on arbitration seated in Ghana concerning the insolvent party]**

**29. Do foreign insolvency proceedings need to be recognised under any formal [local] procedure to produce effects in Ghana?**

45. Ghana has adopted the UNCITRAL Model Law on Cross-Border Insolvency, which has been provided as a schedule to CIRA. Under this law, a foreign representative can apply for the recognition of foreign insolvency proceedings<sup>44</sup> or the foreign court presiding over the foreign insolvency proceeding can apply for assistance.<sup>45</sup>

**30. Has the jurisdiction adopted legislation implementing the UNCITRAL Model Law on Cross-Border Insolvency? If so, does that legislation adopt the Model Law in full, or does it amend any provision of the Model Law related to the effect of insolvency on arbitration?**

46. Ghana has adopted the UNCITRAL Model Law on Cross-Border Insolvency without any amendment in the Corporate Insolvency and Restructuring Act, 2020 (Act 1015).

**31. Does the opening of insolvency proceedings outside of the territory of Ghana produce any effect on arbitrations seated in the jurisdiction? What is the source of the rule or legislation providing for such effects?**

47. The impact on arbitrations upon the opening of insolvency proceedings outside of the territory of Ghana depends on whether the insolvency proceeding is recognised as a foreign main

<sup>43</sup> Banks and Specialised Deposit-Taking Act, 2016, Section 141(1), accessible in English at <<https://www.bog.gov.gh/wp-content/uploads/2019/09/BANKS-AND-SPECIALISED-DEPOSIT-ACT-2016.pdf>> accessed on 4 April 2024.

<sup>44</sup> Schedule of the CIRA, Paragraph 12(1).

<sup>45</sup> Schedule of the CIRA, Paragraph 22.

proceeding. A foreign main proceeding is a foreign proceeding taking place in the state where the debtor has the center of its main interests.<sup>46</sup>

48. Upon the recognition of foreign main proceedings, the initiation or continuation of individual actions or proceedings concerning the assets, rights, obligations or liabilities of the debtor is stayed.<sup>47</sup>

**32. Are arbitrators seated in the jurisdiction required to take into account the rules on recognition of foreign insolvencies (if any) to evaluate the effects of such insolvencies in the arbitration, as described in the previous question?**

49. There is no specific requirement for arbitrators seated in Ghana to consider the rules on recognising foreign insolvencies. The provisions on recognition of foreign insolvencies are specific to the insolvency court. However, because the court's recognition of foreign insolvencies may impact the enforcement of their awards, arbitrators would generally consider the effect of foreign insolvencies in the arbitration.

**33. Are the rules that regulate the effects on arbitration of foreign insolvency proceedings of mandatory application for arbitral tribunals seated in the jurisdiction?**

50. Upon recognition of a foreign insolvency proceeding in Ghana, the law mandatorily stays the commencement or continuation of civil proceedings concerning the assets, rights, obligations or liabilities.<sup>48</sup>

**34. Will an award which does not respect the effects of insolvency provided by the relevant regime in the jurisdiction be set aside?**

51. There is no express provision on this under Ghanaian law, and there has not been a decision on it. However, the argument could be made that an arbitral award which does not respect the effects of insolvency would be contrary to public policy. Thus, it may be set aside.

**35. Are there any other provisions or case law concerning the effect of foreign insolvency on arbitration seated that have not been mentioned in the previous answers?**

52. There are no other provisions or case law concerning the effect of foreign insolvency on arbitration.

<sup>46</sup> Schedule of the CIRA, Paragraph 30(1).

<sup>47</sup> Schedule of the CIRA, Paragraph 17(1)(a).

<sup>48</sup> Schedule of the CIRA, Paragraph 17(1).