

GHANA

DELOS GUIDE TO ARBITRATION PLACES (GAP)

CHAPTER PREPARED BY

NANAAMA BOTCHWAY, ABLA MASOPERH AND ACHIAA AKOLOUR DEBRAH
OF N. DOWUONA & COMPANY

n. dowuona & company
legal and strategic advisory services

FOR FURTHER INFORMATION

[GAP TABLE OF CONTENTS](#) | [GAP TRAFFIC LIGHTS FOR ALL JURISDICTIONS](#) | [FULL GAP ONLINE](#)

[GAP COMBINED SUMMARIES FOR IN-HOUSE AND CORPORATE COUNSEL](#)

[GAP COMBINED SUMMARIES FOR ARBITRATION PRACTITIONERS](#)

[EN DELOS MODEL CLAUSES & LIST OF SAFE SEATS](#)

[ES DELOS CLÁUSULAS MODELO & LISTA DE SEDES SEGURAS](#)

[FR DELOS CLAUSES TYPES & LISTE DE SIÈGES SÛRS](#)

SAFESEATS@DELOSDR.ORG | DELOSDR.ORG

JURISDICTION INDICATIVE TRAFFIC LIGHTS

1. Law ●
 - a. Framework ●
 - b. Adherence to international treaties ●
 - c. Limited court intervention ●
 - d. Arbitrator immunity from civil liability ●
2. Judiciary ●
3. Legal expertise ●
4. Rights of representation ●
5. Accessibility and safety ●
6. Ethics ●

VERSION: 29 MAY 2018

There have not been any material changes requiring an update to this chapter (including the traffic lights) since the date of the latest version. Nonetheless, please note that this chapter does not constitute legal advice and its authors, the contributing law firm and Delos Dispute Resolution decline all responsibility in this regard.

IN-HOUSE AND CORPORATE COUNSEL SUMMARY

Arbitration is quickly becoming the preferred method of settling disputes arising under commercial contracts in Ghana. The state's efforts to promote alternatives to litigation as the primary means of resolving disputes led to the repeal of the Arbitration Act, 1961 (Act 38) and its replacement with the Alternative Dispute Resolution Act, 2010 (Act 798) (the "**ADR Act**"). The ADR Act provides a modern framework which governs the commencement and conduct of arbitral proceedings as well as the enforcement of foreign and domestic arbitral awards in Ghana. Recognising the expediency of arbitration over litigation, several legislations in Ghana also encourage and/or require the settlement of disputes by arbitration as well other ADR methods. It must be noted that matters relating to national or public interest, the environment, the enforcement and interpretation of the Constitution, and any other matter that by law cannot be settled by an alternative dispute resolution method are all outside the scope of the ADR Act. The Ghana Arbitration Centre is the most widely-used arbitration centre in Ghana. Other centres include the Ghana Association of Certified Mediators and Arbitrators, the National Labour Commission and the Marian Dispute Resolution Centre. Ghana is a Common Law jurisdiction and it has incorporated into the ADR Act, the rules of the New York Convention, which it acceded to on 9th April 1968.

The ADR Act generally leaves the decision on most issues concerning the arbitral proceedings to the parties to determine and provides default rules that are applicable where the parties neglect or fail to agree on a matter. Under the ADR Act, unless otherwise agreed by the parties, the arbitration proceedings shall be private and arbitrators are required to keep the arbitration as well as the arbitral award confidential subject to the consent of the parties and the provisions of law. There is no requirement to retain local counsel but, unless the parties otherwise agree, a party may be represented by counsel or any other person chosen by the party. Parties are permitted to present employee witness testimony; however, before the hearing, a party is required to give the arbitrator and the other party personal particulars of the witnesses that the party intends calling and the substance of the testimony of each witness. The parties may also agree on the place where proceedings or hearings are to be held and in the absence of an agreement, the tribunal shall determine the venue for meetings or hearings, taking into account the convenience of the parties and circumstances of the case. The ADR Act makes provision for expedited arbitration proceedings under which parties may choose a fast track route to resolving their dispute.

The tribunal has the power to award interest as part of an arbitral award and may impose simple or compound interest at a rate determined by it in accordance with the terms of the contract and the applicable law. A party may claim and the tribunal may include reasonable expenses in any award it renders. Unless the parties agree otherwise, all expenses of the arbitration shall be paid for equally by the parties. There are no restrictions against contingency fee arrangements and/or third-party funding under the laws of Ghana.

Key places of arbitration in the jurisdiction	Accra
Civil law / Common law environment?	Common law.
Confidentiality of arbitrations?	Yes. Unless otherwise agreed by the parties or otherwise provided by law, arbitration proceedings and the arbitral award are confidential.
Requirement to retain (local) counsel?	None. A party may be represented by counsel or any other person, unless the parties agree otherwise.
Ability to present party employee	Yes. Parties are permitted to present employee witness

witness testimony?	testimony.
Ability to hold meetings and/or hearings outside of the seat?	Yes. The parties may agree to hold meetings or hearings outside the seat.
Availability of interest as a remedy?	Yes. The tribunal may grant a monetary award at simple or compound interest in accordance with the terms of the contract and the applicable law.
Ability to claim for reasonable costs incurred for the arbitration?	Yes. A party may claim and the tribunal may include reasonable expenses in the award against a party.
Restrictions regarding contingency fee arrangements and/or third-party funding?	None. Contingency fee arrangements and/or third-party funding are not restricted under the laws of Ghana.
Party to the New York Convention?	Yes. Ghana acceded to the New York Convention on April 9, 1968.
Other key points to note	<ul style="list-style-type: none"> • Non-arbitrable matters include matters relating to national or public interest, the environment, the enforcement and interpretation of the Constitution, and any other matter that by law cannot be settled by an alternative dispute resolution method. • The ADR Act makes provision for expedited arbitration proceedings under which parties may choose as a fast track to resolving their dispute.
WJP Civil Justice score (2017-2018)	0.59. Ghana is ranked 1 out of 18 in Sub-Saharan Africa and 43 out of 113 globally.

ARBITRATION PRACTITIONER SUMMARY

The ADR Act became effective on May 31, 2010, when it received presidential assent. It replaced the Arbitration Act, 1961 (Act 38) and formalised other forms of dispute resolution, other than arbitration, that hitherto, did not have legislative recognition. The ADR Act contains several provisions that are consistent with the UNCITRAL Model Law, but UNCITRAL does not consider the ADR Act to be an enactment of the UNCITRAL Model Law.

The ADR Act is indeed broader in scope than the UNCITRAL Model Law and contains provisions on certain matters on which the latter is silent. Key differences include the fact that the ADR Act extends to all matters, both domestic and international, other than those considered to be non-arbitrable under the ADR Act and includes provisions on mediation and customary arbitration. Another notable difference is the power granted under the ADR Act to the arbitral tribunal to subpoena witnesses, which is absent under the UNCITRAL Model Law. Further, the power of a court to intervene in arbitration proceedings is potentially wider under the ADR Act, than under the UNCITRAL Model Law. For instance, unlike the UNCITRAL Model Law, there is no provision in the ADR Act that expressly limits the intervention of courts in arbitration proceedings. Also, whereas under the UNCITRAL Model Law, the decision of a court, with regards to any application by a party challenging the appointment of an arbitrator or the arbitral tribunal's ruling on its jurisdiction, is not subject to appeal, the ADR Act does not contain any such limitation on decisions of the High Court with regards to such matters; except that the High Court's decision regarding the review of an arbitral tribunal's ruling on its jurisdiction may only be appealed against with leave of the High Court.

Additionally, unless otherwise agreed by parties, section 40 (1) of the ADR Act mandates the High Court to determine any question of law, arising in the course of arbitration proceedings, that is submitted by a party to the arbitration – no such authority is conferred under the UNCITRAL Model Law.

There are no specialised arbitration courts in Ghana; however, there are judges who specialise in arbitration law and are equipped to handle arbitration-related matters; hence, matters involving arbitration may be referred to them, although not exclusively. Ex-parte pre-arbitration interim reliefs may be granted in urgent cases, where the court deems it necessary for the purpose of preserving evidence or property. Unless, otherwise agreed by the parties, the arbitral tribunal must hold a case management conference within 14 days of being constituted.

In practice, the courts respect an arbitral tribunal's competence to rule on questions concerning its jurisdiction, although, the courts may review the decision of the arbitrators on an application made to it by a dissatisfied party, or in an application to set aside an arbitral award. In addition to the criteria listed in the New York Convention, an arbitral award may be annulled where the applicant satisfies the court that (a) the law applicable to the arbitration agreement is not valid; or (b) an arbitrator has an interest in the subject matter of arbitration which the arbitrator failed to disclose; or (c) the award was induced by fraud or corruption. An application to set aside an arbitral award may not be made after 3 months from the date on which the applicant received the award unless the court otherwise orders.

Leave must be sought from the High Court to enforce an arbitral award in the same manner as a judgment or order of the High Court. Ghanaian courts will not recognise or enforce a foreign arbitral award that has been annulled at the seat of arbitration or has an appeal pending against it in any court under the law applicable to the arbitration or if the court finds that the arbitration panel lacked substantive jurisdiction to make the award. A foreign arbitral award may also not be recognised or enforced if the court is not satisfied that (a) the arbitral award was made by a competent authority under the laws of the country in which the award was made; and (b) there is a reciprocal arrangement between Ghana and the country in which the award was made; or the award was made under the New York Convention or under any other international convention on arbitration ratified by the Ghanaian Parliament.

Where a party seeking to enforce a foreign arbitral award relies on a document that is not in the English Language, that party is required to produce a certified true translation of that document in English to the court. Further, the party seeking to enforce a foreign arbitral award must produce the original award and arbitration agreement or duly authenticated copies of both to the court. The copies must be authenticated in a manner prescribed by the law of the country in which it was made.

Notably, the 1996 Act allows for arbitral awards to be appealed to the English courts on a point of law, where the parties have not agreed otherwise – this is a peculiarity of the 1996 Act not reflected in the Model Law.

Date of arbitration law?	31 May 2010.
UNCITRAL Model Law? If so, any key changes thereto?	No. The ADR Act is not considered by UNCITRAL to be an enactment of the UNCITRAL Model Law. Part 1 of the Act is however, largely based on the UNCITRAL Model Law. Key differences include wider scope of application of the ADR Act, provisions on mediation and customary arbitration under the ADR Act, absence of express provisions restricting intervention of courts and empowerment of arbitral tribunals to subpoena witnesses.
Availability of specialised courts or judges at the key seat(s) in the jurisdiction for handling arbitration-related matters?	No specialised courts on arbitration are available; however, there are judges capable of handling arbitration-related matters.
Availability of <i>ex parte</i> pre-arbitration interim measures?	Yes, but only in urgent cases, where the court deems it necessary for the purpose of preserving evidence or property.
Courts' attitude towards the competence-competence principle?	The principle is recognised by the courts, but a decision on the jurisdiction of the arbitral tribunal may be reviewed by the courts on an application made to it by a dissatisfied party, or in an application to set aside an arbitral award.
Grounds for annulment of awards additional to those based on the criteria for the recognition and enforcement of awards under the New York Convention?	Additional grounds include (i) where the law applicable to the arbitration agreement is not valid; (ii) where an arbitrator fails to disclose his interest in the subject matter of arbitration; or (iii) the award was induced by fraud or corruption.
Courts' attitude towards the recognition and enforcement of foreign awards annulled at the seat of the arbitration?	An annulled foreign arbitral award (at the seat of the arbitration) will not be enforced by Ghanaian courts.

Other key points to note?

- Unless, otherwise agreed by the parties, an arbitral tribunal must hold a case management conference within 14 days of being constituted.
 - An application to set aside an arbitral award may not be made after 3 months from the date on which the applicant received the award unless the court otherwise orders.
 - In an application to recognise and enforce an arbitral award, documents that are not in English must be translated and certified before production in court. The original award and the arbitration agreement or validly authenticated copies of both must also be produced in court.
-

JURISDICTION DETAILED ANALYSIS

1. The legal framework of the jurisdiction

1.1 Is the arbitration law based on the UNCITRAL Model Law? If yes, what key modifications if any have been made to it? If no, what form does the arbitration law take?

Part 1 of the ADR Act is largely based on the UNCITRAL Model Law, but the entire Act is much broader in scope. As such, UNCITRAL does not consider the ADR Act to be an enactment of the UNCITRAL Model Law.¹ Key differences between the ADR Act and the UNCITRAL Model Law include:

- (a) the broad application of the ADR Act to both commercial and non-commercial matters, other than those considered to be non-arbitrable, whether domestic or international;²
- (b) provisions under the ADR Act on mediation and customary arbitration;³
- (c) the absence of any provision in the ADR Act that expressly limits the intrusiveness of the courts in arbitration. The ADR Act gives expansive powers to the court, under certain circumstances to intervene in the arbitral process;⁴
- (d) the power granted under the ADR Act to the arbitral tribunal to subpoena witnesses;
- (e) the modification by the ADR Act of Article 28(3) of the UNCITRAL Model Law which provides for the application of rules of equity subject to agreement by the parties and consent of the parties. Under the ADR Act, disputes may be resolved on the basis of the applicable substantive law as well as the rules of equity, that is, what the tribunal believes to be just and fair.⁵ Thus, the ADR Act eliminates the requirement to obtain the consent of the parties on the applicability of the rules of equity; and
- (f) the joint mandate given under the ADR Act to parties and arbitrators to determine the procedures and rules to be used for an arbitration.⁶ This is unlike the UNCITRAL Model Law which simply states that the parties are free to decide procedure. The inclusion of arbitrators under the Act in determining rules and procedure brings to question autonomy of the parties in dictating how the arbitral process is to be conducted.

1.2 When was the arbitration law last revised?

Since its coming into force on May 31, 2010, no amendments have been made to the ADR Act.

2. The arbitration agreement

2.1 How do the courts in the jurisdiction determine the law governing the arbitration agreement?

Section 54 of the Courts Act, 1993 (Act 459) and section 48 (1) of the ADR Act, mandate Ghanaian courts to recognise and apply the system of law designated by the parties to an agreement as the governing law of the agreement. Under the ADR Act, where the parties fail to designate the governing law of the agreement,

¹ Ghana is not included in the list of countries, maintained by UNCITRAL, whose arbitration legislations are considered to be an enactment of the UNCITRAL Model Law. The list is available at http://www.uncitral.org/uncitral/en/uncitral_texts/arbitration/1985Model_arbitration_status.html.

² Section 1 of the ADR Act.

³ Parts 2 and 3 of the ADR Act.

⁴ Sections 6, 7, 16 (3) (b), 18 and 19 of the ADR Act.

⁵ Section 50 of the ADR Act.

⁶ Section 5(2) of Alternative Dispute Resolution Act, 2010 (Act 798).

the court shall determine the governing law according to the conflict of laws rules it considers applicable.⁷ In practice, where the governing law is not expressly stated and cannot be inferred from the agreement, Ghanaian courts will apply the system of law with which the agreement has its closest and most real connection.⁸ Depending on the particular circumstances of the case, this may or may not be linked to the seat of the arbitration. The court will take into consideration all relevant factors such as where the contract was made, the parties to the contract and where the contract is to be executed in determining the governing law.

2.2 Is the arbitration agreement considered to be independent from the rest of the contract in which it is set forth?

The ADR Act provides that, unless otherwise agreed by the parties, an arbitration agreement which forms or is intended to form part of another agreement, shall not be regarded as invalid, non-existent or ineffective because that other agreement is invalid or did not come into existence or has become ineffective and shall for that purpose be treated as a distinct agreement.⁹ Thus, under the ADR Act, the arbitration clause or agreement is considered to be independent from the rest of the substantive contract.

Nevertheless, the Supreme Court in the case of *Attorney General v. Balkan Energy Ghana Ltd And 2 Ors.*¹⁰ took a contrary position in relation to the provision of the ADR Act and held *inter alia* as follows:

"An international commercial arbitration draws its life from the transaction whose dispute-resolution it deals with. We therefore have difficulty in conceiving of it as a transaction separate and independent from the transaction that has generated the dispute it is required to resolve."

In the opinion of the author, this decision of the Supreme Court is inconsistent with the provisions of the ADR Act relating to separability of the arbitration clause. Given the clear language of the ADR Act on the separability of an arbitration clause from the agreement which it is intended to form part of, the Supreme Court's decision in the Balkan Energy case can only, respectfully, be regarded as having been held per incuriam.

2.3 What are the formal requirements (if any) for an enforceable arbitration agreement?

Under the ADR Act, an arbitration agreement shall not be enforced unless the following requirements are satisfied:

- the parties consent to the agreement;
- parties have legal capacity;
- the agreement is reduced into writing;¹¹ and
- the subject matter is arbitrable.

A provision to submit to arbitration can be in the form of:

- an arbitration clause in the agreement;
- a separate agreement;
- any other modern electronic means of communication; or
- an exchange of pleadings where an assertion of an arbitration agreement is not denied.

⁷ Section 48 (1), (2) and (3) of the ADR Act.

⁸ This principle was established in the Court of Appeal case of *Societe Generale de Compensation v Ackerman* (1972) 1 GLR 413.

⁹ Section 3 of the ADR Act.

¹⁰ *Attorney General v. Balkan Energy Ghana Ltd And 2 Ors.* [2012] 2 SCGLR 998.

¹¹ Section 2(3) of the ADR Act.

2.4 To what extent, if at all, can a third party to the contract containing the arbitration agreement be bound by said arbitration agreement?

The ADR Act is silent on whether a third party to a contract can be bound by an arbitration agreement contained in a contract. Since the ADR Act only provides that parties to an arbitration agreement can resolve their dispute by arbitration, it implies that a person who is not a party to the arbitration agreement cannot generally be bound by the arbitration proceedings.¹² However, an exchange of e-mails or other electronic means of communication in which a third person agrees to be part of or bound by the arbitration agreement, is sufficient to join that person to the proceedings.¹³ On the other hand, by virtue of section 5 (1) of the Contracts Act, 1960 (Act 25), where a provision in a contract purports to confer a benefit on a person who is not a party to the contract, that provision may be enforced or relied on by that person as if the person was a party to the contract. It is therefore submitted that a third-party beneficiary to a contract should be able to enforce an arbitration agreement as if he is a party to that agreement, if the contract confers such a right on him.¹⁴

2.5 Are there restrictions to arbitrability? In the affirmative: Do these restrictions relate to specific domains (such as IP, Corporate law etc.)? Do these restrictions relate to specific persons (i.e. state entities, consumers)?

Yes, there are restrictions to arbitrability. Section 1 of the ADR Act provides that cannot be applied in matters relating to:¹⁵

- (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. This would include offences that are regarded as felonies under the criminal laws of Ghana.¹⁶

These matters, which fall outside the scope of the ADR Act in Ghana, do not relate to specific persons. The excluded matters are not defined under the ADR Act and therefore broad interpretations may be given to them to allow the government or other public authorities avoid arbitration agreements which they have entered into on the basis of "*national or public interest.*"

3. Intervention of domestic courts

3.1 Will the courts stay litigation if there is a valid arbitration agreement covering the dispute? If the place of the arbitration is inside of the jurisdiction? If the place of the arbitration is outside of the jurisdiction?

The ADR Act requires that the courts will stay proceedings if there is a valid arbitration agreement whether or not the place of arbitration is Ghana. Where there is an arbitration agreement and a party commences an action in court, the other party may, on notice to the party who commenced the action, apply to the court to refer the matter (or a part of the matter to which the arbitration agreement relates) to

¹² We are not aware of any case that directly deals with whether third parties to an arbitration agreement can be bound by its terms.

¹³ Section 2 of the ADR Act.

¹⁴ Section 5(1) of the Contracts Act provides that "*Any provision in a contract...which purports to confer a benefit on a person who is not a party to the contract, whether as a designated person or as a member of a class of persons, may, subject to the provisions of this Part, be enforced or relied upon by that person as though he were a party to the contract.*"

¹⁵ Relevant sector legislations do not contain a similar provision. However, Article 130 of the 1992 Constitution confers exclusive original jurisdiction on the Supreme Court to determine matters relating to the interpretation and enforcement of the Constitution. This implies that constitutional matters may only be resolved by the Supreme Court of Ghana and not any other judicial or arbitral authority.

¹⁶ Section 73 of the Courts Act.

arbitration.¹⁷ The court is required to stay proceedings and refer the matter to arbitration, if it satisfied that the matter is one in respect of which there is an arbitration agreement and the application for a stay of proceedings has been made; a court will not assume jurisdiction over matters which the parties have agreed to resolve by arbitration.

In the case of *BCM Ghana Limited v. Ashanti Goldfields Limited*,¹⁸ a case involving a contract with an arbitration clause, the Supreme Court stayed litigation giving effect to the parties' wishes as contained in their agreement. In *George Kodua v Interbeton B.V.* [H1/53/2004], the Court of Appeal outlined the broad principles to be applied by courts in determining an application for staying litigation that has been commenced in breach of an arbitration agreement. The court must consider:

- (a) whether there is an arbitration agreement;
- (b) whether the party applying for the stay of the court proceedings is a party to the arbitration agreement;
- (c) whether there are any legal proceedings between the parties;
- (d) whether the applicant has been served with copies of the legal proceedings;
- (e) whether the applicant has not taken any step before challenging the legal proceedings;
- (f) whether the party who commenced the legal action has been served with the application for stay of proceedings; and
- (g) whether the arbitration agreement is not null and void, inoperative or incapable of being performed.

3.2 How do courts treat injunctions by arbitrators enjoining parties to stay litigation proceedings?

The law does not empower arbitrators to issue injunctions enjoining courts to stay litigation proceedings. However, the courts will typically give effect to and respect the wishes of the parties as expressed in their agreement. As mentioned, the ADR Act allows a party to an arbitration agreement to make an application to the court to stay proceedings and the grant of such application, based on the principles established in the Interbeton case above, shall serve as a stay of proceedings in the court.¹⁹

3.3 On what ground(s) can the courts intervene in arbitrations seated outside of the jurisdiction? (Relates to the anti-suit injunction but not only)

Ghanaian courts will intervene in arbitrations seated outside of Ghana where the dispute or contract which is subject to arbitration, falls outside the scope of matters that are arbitrable under the laws of Ghana or where approvals which are a pre-requisite to the execution of the contract have not been obtained by a party. The courts in Ghana have on a number of occasions intervened in agreements involving the Government of Ghana even where the parties chose that the arbitration to be conducted outside Ghana. Such agreements are those that require parliamentary approval under article 181 of the 1992 Constitution of Ghana by reason of them being an international business or economic transaction or loan agreement involving the government of Ghana.²⁰ In the case of *Attorney General v. Balkan Energy Ghana Ltd*,²¹ the Supreme Court intervened and nullified a contract between the government of Ghana and a private party under which the parties had agreed to hold the arbitration outside Ghana.

¹⁷ Sections 6(1) and 7(5) of the ADR Act.

¹⁸ *BCM Ghana Limited v. Ashanti Goldfields Limited* CAJ4/17/2005 judgment delivered on 24/5/2006. The reported facts of this case do not indicate whether it involved a reference to domestic or international arbitration. But the clear principle established in this case, which has been applied and/or cited with approval in subsequent cases, is that courts are required to enforce mandatory dispute resolution clauses in contracts as agreed by the parties.

¹⁹ Section 6(3) of the ADR Act.

²⁰ Article 181 (3) and (5) of the 1992 Constitution.

²¹ *Supra*, note 13.

Under the ADR Act, Ghanaian courts have the power to make orders for the preservation of evidence, preservation or protection of property and the grant of other interim reliefs, unless the parties agree otherwise.²²

4. Conduct of the proceedings

4.1 Can parties retain outside counsel or be self-represented?

Parties can retain outside counsel or be self-represented, unless the parties agree otherwise. If outside counsel is retained by a party, then unless a claim or an answer is filed by counsel, the party who he represents must notify the other party in writing at least 7 days before the arbitral proceedings commence, of the name and address of his appointed counsel.²³

4.2 How strictly do courts control arbitrators' independence and impartiality? For example: does an arbitrator's failure to disclose suffice for the court to accept a challenge or do courts require that the undisclosed circumstances justify this outcome?

Under the ADR Act, an arbitral award may be set aside by a court on the ground that an arbitrator has an interest in the subject matter of the arbitration which the arbitrator failed to disclose.²⁴ There is no requirement for the undisclosed circumstances to justify the outcome of the arbitration proceedings. The independence and impartiality of arbitrators are key to the arbitration proceedings, and hence, where there exist any circumstances likely to give reasonable cause to doubt an arbitrator's independence or impartiality, the arbitrator is required to make a prompt disclosure to the parties.²⁵ This is a continuing obligation that the arbitrator must satisfy from the inception of the case through to the end of the arbitration proceedings.

4.3 On what grounds do courts intervene to assist in the constitution of the arbitral tribunal (in case of ad hoc arbitration)?

Under the ADR Act, parties are at liberty to determine the procedure to be followed in constituting an arbitral tribunal and may designate an appointing authority (which, in practice, may include a court) to appoint an arbitrator in the event of a failure of the agreed procedure.²⁶ The courts are also mandated to determine any application filed by a party challenging the appointment of an arbitrator by the other party.²⁷

4.4 Do courts have the power to issue interim measures in connection with arbitrations? If so, are they willing to consider *ex parte* requests?

The courts are mandated to issue interim measures on an application by a party, with notice to the other party and the arbitral tribunal, and with the arbitral tribunal's permission or the written agreement of the other party.²⁸ Interim measures may only be granted *ex parte* in urgent circumstances where the court deems it necessary for the purpose of preserving evidence or property.²⁹

4.5 Other than arbitrators' duty to be independent and impartial does the law regulate the conduct of the arbitration?

Yes, it does.

²² Section 39 of the ADR Act.

²³ Section 42 of the ADR Act.

²⁴ Section 58 (2) (f) of the ADR Act.

²⁵ Section 15 (4) of the ADR Act.

²⁶ Section 14 of the ADR Act.

²⁷ Section 16 (3) (b) of the ADR Act.

²⁸ Section 39 (2) of the ADR Act.

²⁹ Section 39 (2) of the ADR Act.

4.5.1 Does it provide for the confidentiality of arbitration proceedings?

Yes. Under section 35 of the ADR Act, the arbitrator is required to ensure the confidentiality of the proceedings, unless the parties otherwise agree or a law otherwise provides. Additionally, section 49 (7) of the ADR Act provides that an arbitral award shall not be made public without the consent of the parties.

4.5.2 Does it regulate the length of arbitration proceedings?

No. The ADR Act only requires an arbitration management conference to be held within 14 days of the arbitral tribunal being constituted, unless the parties otherwise agree.³⁰ As part of the arbitration management conference, the parties and the tribunal shall determine, among other things, the dates, times and duration of the arbitration proceedings. The tribunal may hold further arbitration management conferences as and when necessary.

4.5.3 Does it regulate the place where hearings and/or meetings may be held?

No. If not specified in the arbitration agreement, this is decided by the parties and the arbitral tribunal at the arbitration management conference(s) mentioned above.³¹

4.5.4 Does it allow for arbitrators to issue interim measures? In the affirmative, under what conditions?

Yes. The arbitral tribunal may upon a party's request grant any interim relief that the tribunal deems necessary for the purpose of protecting or preserving property. The tribunal may require the payment of costs by the party requesting the interim measure subject to its grant.³²

4.5.5 Does it regulate the arbitrators' right to admit/exclude evidence? For example, are there any restrictions to the presentation of testimony by a party employee?

Partly. Arbitrators are at liberty to determine what evidence to admit or exclude upon consideration of any objections made against its admission by a party.³³ However, they are required to take into consideration principles of legal privilege in determining the admissibility of any evidence.³⁴

4.5.6 Does it make it mandatory to hold a hearing?

It is not mandatory to hold an oral hearing. The ADR Act distinguishes between oral hearings and written hearings and provides that unless otherwise agreed by the parties, the arbitral tribunal shall determine whether to hold oral hearings for the presentation of evidence or for argument, or whether the proceedings should be conducted on the basis of documents and other materials.³⁵

4.5.7 Does it prescribe principles governing the awarding of interest?

No concrete principles are prescribed. However, the arbitral tribunal is generally mandated to award monetary reliefs at simple or compound interest in accordance with the contract and the applicable law.³⁶ The rate of interest must also be determined by the tribunal.³⁷

³⁰ Section 29 (1) of the ADR Act.

³¹ Section 29 (1) of the ADR Act.

³² Section 38 of the ADR Act.

³³ Section 35 (2) of the ADR Act.

³⁴ Section 35 (4) of the ADR Act.

³⁵ Section 34 (11) of the ADR Act.

³⁶ Section 48 (7) of the ADR Act.

³⁷ Section 49 (6) of the ADR Act.

4.5.8 Does it prescribe principles governing the allocation of arbitration costs?

Yes. Unless otherwise agreed by the parties or a specific expense against a party is included in the award by the tribunal, the parties shall share liability for the arbitration costs equally.³⁸

4.6 Liability

4.6.1 Do arbitrators benefit from immunity to civil liability?

Arbitrators are not liable for any act or omission in the discharge of their functions except where it can be shown that they have acted in bad faith. This immunity extends to an employee or agent of an arbitrator.³⁹ An arbitrator's immunity does not apply to liability arising out of deliberate wrong doing.⁴⁰

4.6.2 Are there any concerns arising from potential criminal liability for any of the participants in an arbitration proceeding?

The ADR Act itself, does not specify criminal repercussions for any participant of an arbitration as a result of the acts or omissions of that participant under the arbitration proceedings. However, the Criminal and other Offences (Procedure) Act⁴¹ does not exempt any class of persons from liability if a criminal offence has been committed. Therefore, if any of the participants in an arbitration proceeding commits any act that constitutes an offence under the Criminal Offences Act⁴² or any other law of Ghana, they may be subject to criminal prosecution in Ghana, should the commission of such offence come to the knowledge of the appropriate law enforcement agencies.

5. The award

5.1 Can parties waive the requirement for an award to provide reasons?

Yes, the parties can agree that no reasons should be provided by the arbitral tribunal.⁴³

5.2 Can parties waive the right to seek the annulment of the award? If yes, under what conditions?

The ADR Act does not mandate parties to waive their right to seek an annulment of the award. However, a party may not exercise the right to seek an annulment of an award after the expiration of 3 months from the date on which the party received the award, unless the court orders otherwise.

5.3 What atypical mandatory requirements apply to the rendering of a valid award rendered at a seat in the jurisdiction?

The requirements for rendering a valid award under the ADR Act are not unusual. The arbitral tribunal, by a majority decision, must decide the dispute in accordance with the applicable law, taking due consideration of the terms of the contract and the chosen law of the parties, or principles of conflict of law in the absence of a clear choice of law by the parties. A monetary award is required to be made in the same currency as the contract, unless the tribunal decides that another currency is more appropriate. With regards to form, the parties are at liberty to agree on the form of the award. Where no such agreement exists, the award must be in writing, stating the date and place where it was made and the reasons for the award. It must be

³⁸ Section 55 of the ADR Act.

³⁹ Section 23 of ADR Act.

⁴⁰ Section 54 (1) of the ADR Act.

⁴¹ The Criminal and Other Offences (Procedure) Act, 1960 (Act 30).

⁴² The Criminal Offences Act, 1960 (Act 29).

⁴³ Section 49 (3) (c).

signed by all the arbitrators or a majority of the arbitrators stating the reasons for the omission of the signatures of the remaining arbitrator(s).⁴⁴

5.4 Is it possible to appeal an award (as opposed to seeking its annulment)? If yes, what are the grounds for appeal?

No. An arbitral award is not subject to appeal under the ADR Act. Subject to parties' rights to seek an annulment on limited grounds, an arbitral award is final and binding as between the parties and their successors or assigns.⁴⁵

5.5 What procedures exist for the recognition and enforcement of awards, what time-limits apply and is there is a distinction to be made between local and foreign awards?

Local and foreign arbitral awards are enforced by the same procedure – through an application to the High Court for leave to enforce the arbitral award.⁴⁶ For a local arbitral award, leave shall be granted unless it is shown that the arbitral tribunal lacked jurisdiction to render the award.⁴⁷ A party that seeks to enforce a foreign arbitral award must however satisfy certain additional conditions. The party must satisfy the court that:

- (a) the award was made by a competent authority and under the laws of the country in which the award was made;
- (b) a reciprocal arrangement exists between the Republic of Ghana and the country in which the award was made or the award was made under the New York Convention or under any other international convention on arbitration ratified by the Parliament of Ghana;
- (c) the original award and the agreement pursuant to which the award was made or duly authenticated copies of both the award and the agreement have been produced to the court;⁴⁸ and
- (d) there is no appeal pending against the award in any court under the law applicable to the arbitration.⁴⁹

Leave shall be granted to enforce a foreign arbitral award if the above requirements are satisfied and there is no evidence that:

- (a) the award has been annulled in the seat of arbitration;
- (b) the party against whom it is invoked was given insufficient notice to enable the party present his case;
- (c) a party lacking legal capacity was not properly represented;
- (d) the award does not deal with the issues submitted to arbitration; or
- (e) the award contains a decision that is beyond the scope of matters submitted for the arbitration.⁵⁰

Should leave be granted to enforce a domestic or foreign arbitral award, judgment shall be entered in terms of the award and the award shall be enforced in the same manner as a judgment of the court.⁵¹ This implies the use of any of the execution processes permitted under the civil procedure rules of the High Court. An arbitral award made in respect of an agreement not under seal is time-barred after 6 years from the date on which the award became enforceable, and no action may thereafter be brought by a party to

⁴⁴ Section 49 of the ADR Act.

⁴⁵ Section 52 of ADR Act.

⁴⁶ Section 57 (1) of the ADR Act.

⁴⁷ Section 57 (3) of the ADR Act.

⁴⁸ If a party relies on any document that is in a foreign language, an English translated copy, duly certified, must also be provided to the court.

⁴⁹ Section 59 (1) of the ADR Act.

⁵⁰ Section 59 (3) of the ADR Act.

⁵¹ Section 57 (2) of the ADR Act.

enforce the award.⁵² In respect of an arbitration agreement made under seal,⁵³ no action to enforce the award may be brought after 12 years from the date on which the award became enforceable.⁵⁴

5.6 Does the introduction of annulment or appeal proceedings automatically suspend the exercise of the right to enforce an award?

Under the ADR Act, leave to enforce an arbitral award shall be granted if the court is satisfied that there is no appeal pending against the award and that the award has not been annulled.⁵⁵ Given that annulled arbitral awards are not enforceable, it stands to reason, that where annulment or appeal proceedings have been initiated by a party, the court will not grant leave for the award to be enforced until the annulment or proceedings are determined.

5.7 When a foreign award has been annulled at its seat, does such annulment preclude the award from being enforced in the jurisdiction?

Yes. Ghanaian courts will not enforce a foreign arbitral award that has been annulled or appealed at the seat of arbitration.⁵⁶

5.8 Are foreign awards readily enforceable in practice?

In practice, foreign arbitral awards that meet the criteria set out under section 59 of the ADR Act are recognised and readily enforceable. The procedure for enforcing a foreign arbitral award is the same, regardless of whether the party seeking to enforce it relies on the New York Convention or a reciprocal arrangement with Ghana. Ghanaian courts will determine whether the basis for granting leave, as set out in section 59 of the ADR Act have been met and once such leave is granted, the award is enforceable in the same manner as an ordinary judgment of the high court.

5.9 Funding arrangements - Are there restrictions to the use of contingency or alternative fee arrangements or third-party funding at the jurisdiction? If so, what is the practical and/or legal impact of such restrictions?

No. The ADR Act does not restrict the use of contingency or alternative fee arrangements or third-party funding.

5.10 Is there likely to be any significant reform of the arbitration law in the near future?

No, this is not likely. No proposals for reform of the ADR Act have as yet been made.

⁵² Section 4(1)(e) of the Limitations Act, 1972 (NRCD 54), available at: <http://laws.ghanalegal.com/acts/id/374#>.

⁵³ Unlike a simple contract, a contract made under seal, is a specialty contract executed as a deed and for which no consideration is required.

⁵⁴ Section 5 (1) (b) of Limitations Act, supra.

⁵⁵ Sections 59 (1) (e) and 59 (3) of the ADR Act.

⁵⁶ Section 59 (3) of ADR Act.