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Ghana

INTERNATIONAL ARBITRATION

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This country-specific Q&A provides an overview of international arbitration laws and regulations applicable in Ghana.

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GHANA
INTERNATIONAL ARBITRATION

1. What legislation applies to arbitration in your country? Are there any mandatory laws?

In Ghana, the Alternative Dispute Resolution Act, 2010 (Act 798) is the main legislation governing arbitration between private persons. Broadly, Act 798 provides for the resolution of disputes by arbitration, mediation, and customary arbitration (which is exclusive to the Ghanaian legal system). Relating to foreign investor-state arbitration, the Ghana Investment Promotion Centre Act, 2013 (Act 865) governs the terms of international investment arbitration. Generally, arbitration is voluntary and based on the principle that the parties must voluntarily submit their disputes to arbitration. However, under specialised legislations, Ghana has a regime which mandates parties to compulsorily submit to arbitration despite the absence of an arbitration agreement. For instance, under the Labour Act, 2003 (Act 651), a party to an industrial dispute is mandated to resort to compulsory arbitration seven (7) days after a strike or lockout begins, if the dispute remains unresolved. Under the Banks and Specialised Deposit-Taking Institutions Act, 2016 (Act 930), a person who desires to challenge a decision of the Bank of Ghana on official administration, liquidation and receivership is mandated to do so by arbitration.

2. Is your country a signatory to the New York Convention? Are there any reservations to the general obligations of the Convention?

Ghana acceded to the New York Convention (the "Convention") on 9th April 1968 without registering any reservations to the general obligations. Considering that Ghana follows a dualist system for the incorporation of international law into its municipal law, the Convention was incorporated into Ghanaian municipal law by the Alternative Dispute Resolution Act, 2010 (Act 798).

3. What other arbitration-related treaties and conventions is your country a party to?

Ghana is also a party to the International Convention for the Settlement of Investment Disputes which entered into force for Ghana on 14th October 1966.

4. Is the law governing international arbitration in your country based on the UNCITRAL Model Law? Are there significant differences between the two?

The Alternative Dispute Resolution Act, 2010 (Act 798) is the law that governs both domestic and international arbitration within Ghana. While the provisions of Act 798 are similar to several provisions of the UNCITRAL Model Law, there are some significant departures in Act 798. For instance, in defining the scope of its application, Act 798 does not adopt the provisions of the Model Law on the definition of "international arbitration". Rather, Act 798 defines its scope of application in relation to subject matter jurisdiction. Thus, the Act expressly excludes the following subject matter: (a) matters relating to the national or public interest; (b) the environment; (c) the enforcement and interpretation of the 1992 Constitution of Ghana; and (d) any other matter which is incapable of settlement by arbitration. Moreover, Act 798 permits a party who is dissatisfied with the decision of an arbitral tribunal on its own jurisdiction, to apply to the High Court of Ghana for a review of the arbitral tribunal's decision. This is a significant departure from the Model Law. Additionally, Act 798 permits the High Court to determine preliminary points of law that arises during the arbitration and substantially affects the rights of the parties. This level of interference by the Courts in the arbitral process is not permitted under the Model Law.

5. Are there any impending plans to reform the arbitration laws in your country?

There are currently no bills pending in the Parliament of Ghana that propose to alter the arbitration laws in

Ghana.

6. What arbitral institutions (if any) exist in your country? When were their rules last amended? Are any amendments being considered?

The two main arbitral institutions in existence in Ghana are the Ghana Arbitration Centre and the Ghana ADR Hub. The Ghana Arbitration Centre says it updates its institution rules yearly. The latest rules of the Ghana ADR Hub were published in 2020. Under the Alternative Dispute Resolution Act 2010 (Act 798), the Alternative Dispute Resolution Centre was established, and its arbitration rules are stipulated under the second schedule of Act 798. However, the Centre has not yet been set up and neither have the arbitration rules been updated.

7. Is there a specialist arbitration court in your country?

Currently, there is no specialist arbitration court in Ghana. The High Court of Ghana is the court of first instance for disputes arising from the application and enforcement of the provisions of the Alternative Dispute Resolution Act, 2010 (Act 798).

8. What are the validity requirements for an arbitration agreement under the laws of your country?

The formal validity requirement for an arbitration agreement is that it must be in writing. Act 798 adopts a very broad and expansive definition of what counts as “writing”. Thus, an exchange of letters, telex, fax, e-mail or “other means of communication” which records an agreement to submit a dispute for resolution by arbitration will satisfy the requirements of the law. Act 798 also stipulates that in court pleadings, if one party admits or fails to deny an assertion that there exists an arbitration agreement, the writing requirement would be satisfied. The substantive validity requirements are typically determined by the law chosen by the parties to govern the arbitration agreement. In the absence of such a choice, the law of the seat of arbitration is likely to be applied. Suffice it to say that internationally recognized vitiating factors such as capacity to contract, duress, and undue influence will be the focus of such a determination.

9. Are arbitration clauses considered separable from the main contract?

Yes, arbitration clauses are considered separable from the main contract. Unless the parties adopt a contrary provision in the arbitration agreement, an arbitration agreement is irrevocable except by agreement of the parties. Thus, the invalidity, non-existence and ineffectiveness of the main contract does not automatically render the arbitration clause invalid, non-existent or ineffective.

10. Do the courts of your country apply a validation principle under which an arbitration agreement should be considered valid and enforceable if it would be so considered under at least one of the national laws potentially applicable to it?

The approach of the Ghanaian courts in such matters is based on Article V(1)(a) of the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 1958. This means that the courts are likely to apply the law of the country specifically chosen by the parties and in the absence of such a choice, the courts will then consider the law of the seat of arbitration with a view to applying the law that will give effect to the parties’ arbitration agreement.

11. Is there anything particular to note in your jurisdiction with regard to multi-party or multi-contract arbitration?

There are no specific legislative rules that govern multi-party or multi-contract arbitration. However, considering the requirement of fairness, all the parties subject to the arbitration shall be entitled to the same rights. In this regard, the institutional rules of the Ghana Arbitration Centre and the Ghana ADR Hub provide insight on the mode of ensuring equal treatment. For instance, in the case of the appointment of arbitrators, the Ghana ADR Hub provides that in multi-party arbitrations where three (3) arbitrators are to be appointed, each side (not each individual party/person) representing claimants or respondents shall appoint one arbitrator and both party-appointed arbitrators shall then appoint the third arbitrator. The courts and private arbitral tribunals are also expected to confer with multi-party arbitration rules from other jurisdictions which ensure that the fairness requirement is satisfied.

12. In what instances can third parties or non-signatories be bound by an arbitration agreement? Are there any recent court decisions on these issues?

Act 798 does not contain express provisions for adding non-parties or non-signatories to arbitration proceedings. However, the prevailing legal principle governing the question of whether a third party or a non-signatory can be bound by an arbitration agreement is that the authority of an arbitral tribunal is founded upon the consent of the parties to arbitrate. Consequently, the Supreme Court of Ghana has held that a party cannot be required to submit to arbitration when that party has not consented to arbitration. [Republic v. High Court (Commercial Division), Accra ex parte GHACEM (AJ Fanj Construction and Engineering Ltd- Interested Party) (Civil Motion No. J5/29/2018, delivered on 30th May 2018). Be that as it may, a successor or personal representative of a party to an arbitration agreement may be bound to the terms of the agreement. Similarly, a third-party beneficiary under the container contract may be able to enforce the arbitration agreement in pursuance of its right to enforce a benefit under the container agreement.

13. Are any types of dispute considered non-arbitrable? Has there been any evolution in this regard in recent years?

The following matters are non-arbitrable under Act 798: matters relating to the national or public interest; matters relating to the environment; matters relating to the enforcement and interpretation of the 1992 Constitution of Ghana; or any other matter that by law cannot be settled by an alternative dispute resolution method. Typically, felony criminal offences are incapable of settlement by alternative dispute resolution. However, the legislature may expand the list of matters which are incapable of resolution by alternative dispute resolution. Such a move would then significantly limit the scope of arbitration. Interestingly, the current legislative inroads on the issue of arbitrable matters appears to have gone in the opposite direction and widened the scope of arbitrable matters. For instance, the Banks and Specialized Deposit Taking Institutions Act, 2016 (Act 930) has made it compulsory for any bank or financial institution wishing to challenge the decision of the central bank on official administration, liquidation, or revocation of licences to resort to arbitration as the means of dispute resolution. This legislative stance appears to conflict with Act 798 considering that matters relating to the licensing, official administration or liquidation of banks and financial institutions are matters that are of national or at least public interest. Another interesting development is a recent decision by the Court of Appeal where the shareholders of a financial institution challenging the decision of the central bank to revoke the license of the institution argued that they should not be compelled to resort to arbitration because the decision of the central bank violated their constitutional right to own property. The Court of Appeal disagreed. (Dr Papa Kwesi Ndoum & 2 Others v. Bank of Ghana & 2 Others, Suit No. H1/36/2022, delivered on 2nd June 2022.) Although the Court of Appeal did not consider the question of whether matters under Act 930 were matters of public interest and thus non-arbitrable under Act 798, it appears that the evolution in this regard is likely to be more pro-arbitration.

14. Are there any recent court decisions in your country concerning the choice of law applicable to an arbitration agreement where no such law has been specified by the Parties?

If the parties do not specify the law which should apply to the arbitration agreement, the courts are likely to conclude that the law of the seat of arbitration would be applicable to the arbitration agreement. This approach was adopted by the High Court of Ghana in the case of Dutch African Trading Co. BV v. West African-Mills Co. Ltd (Suit No. H1/46/2021, delivered on 20th January 2022).

15. How is the law applicable to the substance determined? Is there a specific set of choice of law rules in your country?

The first point of recourse to determine the law applicable to the substance/merits of the dispute is the law chosen by the parties explicitly in the contract/container agreement. However, if the parties do not expressly indicate the applicable law for the merits of the dispute, Act 798 gives the arbitrator the discretion to choose the conflict of law rules which should be applicable. Thus, there is no specific set of choice of law rules stipulated under Act 798. However, in general, the Ghanaian courts usually apply the parties' choice of law or, in exceptional cases, the law of the country with which the contract has its most real and closest connection.

16. Have the courts in your country applied the UNIDROIT or any other transnational

principles as the substantive law? If so, in what circumstances have such principles been applied?

We are not aware of any decision by the Ghanaian courts applying the UNIDROIT principles as the law applicable to the substantive law of an arbitration. However, it is likely that if the parties in their contract expressly refer to the UNIDROIT for the determination of the substantive dispute, then the principles may be applied.

17. In your country, are there any restrictions in the appointment of arbitrators?

Act 798 does not provide any legislative restrictions on the power of the parties to appoint an arbitrator. The law empowers the parties to agree on the procedure for appointing arbitrators. Thus, the parties may impose any restrictions if they consider such restrictions to be valuable. For instance, restrictions on subject matter expertise may be adopted by parties in their arbitration agreements. However, the overriding consideration is the independence and impartiality of the arbitrator having regard to: the personal, proprietary, fiduciary or financial interest of the arbitrator in the matter to which the arbitration relates; the relationship of the arbitrator to a party or counsel of a party to the arbitration; the nationalities of the parties; and other relevant considerations.

18. Are there any default requirements as to the selection of a tribunal?

The parties are at liberty to decide on the procedure for selecting the arbitrators. In the case of a 3-member tribunal, each party may appoint one arbitrator and the two arbitrators will appoint the last arbitrator. And in the case of a sole arbitrator, the appointing authority (usually the arbitration institution) will appoint the arbitrator. However, both the Ghana ADR Hub and the Ghana Arbitration Centre adopt the default provision of appointing a sole arbitrator if the parties' agreement does not provide for terms for the selection of an arbitrator.

19. Can the local courts intervene in the selection of arbitrators? If so, how?

No, the power to appoint arbitrators is vested in the parties themselves and in their default, in the appointing authority.

20. Can the appointment of an arbitrator be challenged? What are the grounds for such challenge? What is the procedure for such challenge?

Yes, a party may challenge the appointment of an arbitrator on the following grounds: (a) circumstances exist that give rise to reasonable cause to doubt the arbitrator's independence or impartiality; or (b) the arbitrator does not possess the qualification agreed on by the parties. The parties may decide on the procedure for challenging the appointment of an arbitrator. In the absence of such agreement, the challenging party must submit a written complaint to the tribunal or the appointing authority setting out the reasons for the challenge. This written complaint must be submitted within 15 days of being notified of the constitution of the tribunal or after becoming aware of circumstances that justify the challenge of the appointment of the arbitrator. If the other party also agrees to the challenge against the arbitrator, the arbitrator's appointment automatically terminates. But if the arbitrator being challenged does not recuse themselves, and the other party also does not agree to the challenge, then the tribunal will determine the challenge (if the tribunal consists of more than one arbitrator). But in the case of a sole arbitrator, it depends on who appointed the arbitrator. If the appointing authority appointed the arbitrator, then the appointing authority will determine the challenge against the arbitrator. But if a party appointed the arbitrator, then the party challenging the appointment can apply to the High Court to determine the challenge.

21. Have there been any recent developments concerning the duty of independence and impartiality of the arbitrators

In a recent decision of the High Court of Ghana, a party to an arbitration (a mining company) filed an application to remove the entire arbitral tribunal alleging the partiality of the arbitrators. The High Court Judge disagreed with the applicant and held that there was no sufficient reason to doubt the impartiality of the arbitrators. The High Court held that a difference in opinion on the applicable legal principles did not demonstrate the impartiality of an arbitrator. (Adamus Resources Ltd. v. African Champions Industries Ltd. & 3 Others, Suit No. CM/MISC/0740/2021, delivered on 21st January 2022.)

22. Have there been any recent decisions

in your concerning arbitrators' duties of disclosure, e.g., similar to the UK Supreme Court Judgment in Halliburton v Chubb?

In 2019, the High Court applied the general principles on an arbitrator's duty of disclosure and held that in an arbitration between a private company and a state agency, the arbitrator was not bound to disclose to the parties the fact that his daughter was a senior policy advisor to the President of Ghana. The Court reasoned that the relationship did not affect the independence and impartiality of the arbitrator. (*Agricult Ghana Limited and 2 others v. Ghana Cocoa Board Suit No. CM/MISC/0749/2019 delivered on 9th May 2019*)

23. What happens in the case of a truncated tribunal? Is the tribunal able to continue with the proceedings?

The general approach under Act 798 in the case of a truncated tribunal is that the parties have the choice to either fill the vacancy by re-appointment of arbitrator or to continue the arbitration proceedings without a re-appointment. If the truncation was caused by the death or resignation of an arbitrator, then the position of the arbitrator automatically becomes vacant. However, if the truncation was caused by an arbitrator who withdraws from office or fails to sit within a reasonable time, then the authority of that arbitrator is revoked leading to a situation of vacancy on the arbitral tribunal. When a vacancy arises either as a result of death, resignation or revocation of an arbitrator, the parties may agree on the following matters: first, if a new arbitrator should be appointed to replace the vacancy; second, how a re-appointment should be done if the parties agree on re-appointment; and third, the parties whether the previous proceedings should be adopted. If the parties are unable to reach an agreement on the first two issues, the appointing authority in respect of that arbitration is given the power to appoint a replacement arbitrator. In the case of the third issue, if the parties are unable to reach an agreement, then the replacement arbitrator shall be the one to decide whether to adopt the previous proceedings. The law does not set any factors or circumstances that the replacement arbitrator must consider in making their decision.

24. Are arbitrators immune from liability?

An arbitrator is generally not liable for any act or omission in connection with an arbitration, unless it is established that they acted in bad faith or engaged in a deliberate wrongdoing. The immunity granted to arbitrators under Act 798 is extended to an employee or an agent of the arbitrator.

25. Is the principle of competence-competence recognized in your country?

Yes. The arbitral tribunal has the power to rule on its own jurisdiction especially in relation to: (a) the existence, scope, or validity of the arbitration agreement; (b) the existence or validity of the substantive or container agreement; and (c) whether the matters submitted to arbitration are in accordance with the arbitration agreement. A party who intends to object to the arbitral tribunal's jurisdiction must do so before they take any step to contest the case on its merits. If the jurisdictional objection arises during the arbitration, then the objecting party must raise the objection immediately after the alleged jurisdictional infraction. In either case, the arbitrators have the discretion to entertain a jurisdictional objection later than the statutorily prescribed time.

26. What is the approach of local courts towards a party commencing litigation in apparent breach of an arbitration agreement?

Under the law, the Court is obligated to refer the dispute to arbitration if the court finds there is in place an arbitration agreement in relation to the dispute. If the other party (the defendant) does not file an application to refer the dispute to arbitration, the High Court may on its own stay the court proceedings and refer the dispute to arbitration.

27. How are arbitral proceedings commenced in your country? Are there any key provisions under the arbitration laws relating to limitation periods or time bars of which the parties should be aware?

Under Act 798, a party to a dispute that is subject to an arbitration agreement may commence arbitration proceedings by referring the dispute to the relevant person (ad hoc arbitration) or arbitration institution. The institutional rules or the procedural rules adopted by the parties will determine the procedure for the conduct of the arbitration. There is no time bar under Act 798 specifically restraining the period within which an arbitration agreement may be enforced. Such considerations will generally be regulated by the provisions of the Limitation Act, 1972 (NRCD 54) which stipulates the limitation periods for the enforcement of several causes of action. For instance, there a six (6)

year limitation period for actions to enforce contracts. There is a six (6) year limitation period for enforcement of arbitral awards rendered in an arbitration under an enactment other than Act 798, and twelve (12) years for awards where the arbitration agreement is under seal.

28. In what circumstances is it possible for a state or state entity to invoke state immunity in connection with the commencement of arbitration proceedings?

There are no specific provisions which make state entities immune from arbitration proceedings in Ghana. However, a state entity may be able to avoid the arbitration proceedings if it is established that the matter relates to national or public interest, or borders on the enforcement of the Ghanaian constitution.

29. What happens when a respondent fails to participate in the arbitration? Can the local courts compel participation?

Where a party fails to participate in an arbitration proceeding without providing a good reason, the tribunal can proceed with the arbitration in the absence of the party. There are no specific laws empowering the court to compel a party to participate in the arbitration.

30. Can third parties voluntarily join arbitration proceedings? If all parties agree to the intervention, is the tribunal bound by this agreement? If all parties do not agree to the intervention, can the tribunal allow for it?

While Act 798 does not specifically provide for this issue, the law establishes the arbitration agreement as the foundation of the arbitration and the authority of the arbitration tribunal. The law also recognizes the autonomy of the parties to agree on matters of procedure. Thus, a third party who is not a party to the arbitration agreement cannot voluntarily join arbitration proceedings without the consent of the parties. And where the parties agree to the intervention the tribunal is not bound to accept the intervention. If the parties do not agree to the intervention, the tribunal will not allow it.

31. Can local courts order third parties to participate in arbitration proceedings in your country?

Act 798 does not give the Ghanaian courts the power to order third parties to participate in arbitration proceedings. The arbitration agreement provides the foundation for the authority of the court to compel arbitration. Thus, the Courts will only enforce arbitration and compel parties who are subject to the arbitration agreement to participate in arbitration proceedings. This excludes third parties and non-signatories from the jurisdiction of the court to compel arbitration.

32. What interim measures are available? Will local courts issue interim measures pending the constitution of the tribunal?

The arbitral tribunal has the power to make any interim awards it considers necessary for the protection and preservation of property. The interim reliefs that are granted by the arbitral tribunal may be in the form of an interim award. The Ghanaian courts are also empowered by Act 798 to grant interim measures to support the arbitral proceedings. These interim measures may be granted prior to a reference to arbitration or during the arbitration if a party applies to the High Court for interim measures. These measures may include: (a) orders related to taking of evidence of witnesses; (b) preservation of evidence; (c) sale of any goods that are the subject of the arbitration; (d) security for costs; and (e) injunctions. In cases of urgency, Act 798 allows a party to apply to the court for emergency relief even if an arbitration tribunal has not yet been constituted.

33. Are anti-suit and/or anti-arbitration injunctions available and enforceable in your country?

Yes. A party may file an application in the High Court (in the form of an anti-suit injunction) demanding that the court stay its judicial proceedings and refer the parties to arbitration on the grounds that the dispute is covered by an arbitration agreement. The Ghanaian courts may grant an order/injunction preventing the initiation or continuation of arbitration proceedings in appropriate cases.

34. Are there particular rules governing evidentiary matters in arbitration? Will the local courts in your jurisdiction play any role in the obtaining of evidence? Can local courts compel witnesses to participate in

arbitration proceedings?

Generally, the parties have the freedom to agree on matters of evidence in arbitration. This means the parties may agree to adopt any system of evidential rules that they find acceptable. This may also play out in the institutional arbitration rules the parties adopt for the conduct of their arbitration. In the absence of such party choice, Act 798 gives the arbitrator the mandate to decide on matters of evidence. As part of the arbitrator's mandate to decide matters of evidence, the arbitrator may determine the application or non-application of the strict rules of evidence on admissibility, relevance and weight of evidence, and documents to be provided. The arbitrator is also given the power to subpoena witnesses at the request of a party. However, any of the parties may file an application in the High Court for any orders relating to evidence during the arbitration proceedings.

35. What ethical codes and other professional standards, if any, apply to counsel and arbitrators conducting proceedings in your country?

Act 798 requires the arbitrators to be fair and impartial to the parties and give every party the opportunity to fully present its case. Aside Act 798, lawyers and arbitrators (who are usually lawyers) are subject to the ethical and professional standards set out in the Legal Profession (Professional Conduct and Etiquette) Rules, 2020 (LI 2423) and the Legal Profession Act, 190 (Act 32).

36. In your country, are there any rules with respect to the confidentiality of arbitration proceedings?

Yes, the ADR Act imposes a duty on the arbitrators to ensure that the matters conducted in arbitration are kept confidential, unless disclosure is otherwise compelled by law. The law also stipulates that the arbitral award shall remain private unless the parties consent to its disclosure to the public.

37. Are there any recent decisions in your country regarding the use of evidence acquired illegally in arbitration proceedings (e.g. 'hacked evidence' obtained through unauthorized access to an electronic system)?

We are not aware of any decision on the use of illegally obtained evidence in arbitration. However, the Supreme Court has outlined a general test for the admissibility of illegally obtained evidence in courts, which is likely to be adopted in arbitration proceedings. The general test in determining whether such evidence is admissible is whether its admission or exclusion will bring the administration of justice into disrepute. The Supreme Court held that if while the matter is pending or the dispute is raging, a party illegally obtains evidence to support its case, the court will not admit such evidence. (*Raphael Cubagee v. Michael Yeboah Asare Civil Appeal No: J6/04/2017 delivered on 28th February 2018*)

38. How are the costs of arbitration proceedings estimated and allocated?

The costs of arbitration proceedings are generally assessed by the arbitrator who determines how much costs should be paid, and which party should pay the costs. However, the parties may agree on the costs at the arbitration management conference if the arbitration agreement does not already include a provision on the costs of arbitration.

39. Can pre- and post-award interest be included on the principal claim and costs incurred?

The tribunal has the power to grant pre-award or post-award relief at simple or compound interest under the terms of the contract and the applicable law.

40. What legal requirements are there in your country for the recognition and enforcement of an award? Is there a requirement that the award be reasoned, i.e. substantiated and motivated?

Unless the parties agree otherwise, an arbitration tribunal rendering an award must state the reasons for the award. Once the award is made, it is binding on the parties and final. To enforce the award, the successful party must apply to the High Court for leave to enforce the arbitral award as a judgment of the court. The court may refuse to enforce the arbitral award if the arbitrator lacked substantive jurisdiction to make the award. After the High Court enters the terms of the award as its judgment, the award will be enforced in the same way as a judgment of the court. The unsuccessful party may exercise the right to challenge the enforcement of the award on stated grounds (similar to Article V of the New York Convention).

41. What is the estimated timeframe for the recognition and enforcement of an award? May a party bring a motion for the recognition and enforcement of an award on an ex parte basis?

A successful party may enforce the arbitral award by first applying to the High Court for leave to enforce the award. This motion must be on notice to the other party. On average, it takes about 14 to 28 calendar days for recognition and enforcement of an arbitral award in Ghana. However, if there is a challenge to the enforcement of the arbitration award, or there is an appeal from the decision of the High Court on the recognition and enforcement of the award, then the estimated timeframe would be considerably longer.

42. Does the arbitration law of your country provide a different standard of review for recognition and enforcement of a foreign award compared with a domestic award?

Generally, the standard of review for the enforcement of an arbitral award (whether domestic or foreign) is largely based on the conditions in Article V of the New York Convention. However, when enforcing a foreign arbitral award, there are additional legal requirements that the applicant must meet. The applicant must demonstrate that the award was made by a competent authority under the laws of the seat of arbitration and that there is no appeal pending against the award in any court. The applicant must also demonstrate that there is either a reciprocal arrangement between Ghana and the foreign country or that the award was made under the New York Convention or under any other international convention on arbitration ratified by Parliament of Ghana. The applicant must produce the original award or a duly authenticated copy of the award, and the arbitration agreement or a duly authenticated copy of the arbitration agreement. Where the applicant relies on a document which is not originally in English language, the applicant must provide a certified true English translation. Notwithstanding all the above requirements, the courts may refuse to enforce a foreign award if it is satisfied that: (a) the award has been annulled in the country in which it was made; (b) the party against whom the award is invoked was not given sufficient notice to enable it present its 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 beyond the scope of the matters submitted for arbitration.

43. Does the law impose limits on the available remedies? Are some remedies not enforceable by the local courts

The law does not provide a limit on the remedies available in arbitration or enforceable by the courts. The overriding consideration is whether the arbitral tribunal had jurisdiction to grant the said relief in the arbitration. Thus, under Act 798, the arbitrators are empowered to grant any relief – within the scope of the arbitration agreement – that the arbitrator considers just and equitable, including specific performance.

44. Can arbitration awards be appealed or challenged in local courts? What are the grounds and procedure?

An arbitration award is final, and there is no right of appeal against it. However, a dissatisfied party has the right to apply to the High Court to set aside the award. The applicant must satisfy the court that one of the following grounds exists: (a) a party to the arbitration was under some disability or incapacity; (b) the law applicable to the arbitration agreement is not valid; (c) the applicant was not given notice of the appointment of the arbitrator or of the proceedings or was unable to present its case; (d) the award deals with a dispute which falls outside the scope of the arbitration agreement or outside the main agreement, but the Court will not set aside any part of the award that falls within the agreement; (e) there was failure to conform to the agreed procedure by the parties; (f) the arbitrator has an interest in the subject matter of arbitration which the arbitrator failed to disclose; (g) the subject matter of the dispute was not arbitrable; or (h) the award was induced by fraud or corruption. The applicant must apply to set aside the award within 3 months from the date of receipt of the award. The court may, however, extend this time limit if the applicant provides a justifiable reason.

45. Can the parties waive any rights of appeal or challenge to an award by agreement before the dispute arises (such as in the arbitration clause)?

There is generally no right of appeal against an arbitral award. Additionally, the right to apply to the High Court to set aside the award is imposed by the ADR Act, which does not provide the parties with the option to waive the right to challenge the arbitral award.

46. To what extent might a state or state entity successfully raise a defence of state or sovereign immunity at the enforcement stage?

The ADR Act does not provide for state or sovereign immunity from arbitration proceedings or the enforcement of arbitration awards. However, the state entity may succeed if it establishes that the subject matter of the arbitration was not arbitrable because it borders on national or public interest.

47. In what instances can third parties or non-signatories be bound by an award? To what extent might a third party challenge the recognition of an award?

The arbitration agreement is the foundation of the authority of the arbitral tribunal. Thus, an arbitral award that is granted pursuant to that arbitration agreement cannot purport to bind third parties who are not subject to that arbitration agreement. Accordingly, third parties are generally not bound by arbitral awards, unless they claim their interest through any of the parties to the arbitration. For instance, this may include successors, agents, or personal representatives. However, the principles for the enforcement of judgment of the court generally apply to enforcement of arbitral awards once the High Court grants leave to the successful party to enforce the award. Thus, a third party can enforce an award (entered as a judgment) as if it was a party if an order was made in its favour.

48. Have there been any recent court decisions in your jurisdiction considering third party funding in connection with arbitration proceedings?

There are no recent decisions on third party funding in connection with arbitration proceedings.

49. Is emergency arbitrator relief available in your country? Are decisions made by emergency arbitrators readily enforceable?

The ADR Act does not provide for emergency arbitrator relief. However, a party may exercise this option if the institutional rules adopted by the parties makes provision for emergency arbitrator relief. In such circumstances, it is likely that the Ghanaian courts would consider the decision of the emergency arbitrator as deriving its authority from the arbitration agreement. For instance, the arbitration rules of the Ghana ADR Hub (2020) makes provision for emergency arbitrator relief.

50. Are there arbitral laws or arbitration institutional rules in your country providing for simplified or expedited procedures for claims under a certain value? Are they often used?

The ADR Act gives parties the liberty to adopt the Expedited Arbitration Proceedings Rules of the Ghana ADR Centre established under the law. Although the Ghana ADR Centre is yet to be operationalised, the parties may adopt its arbitration rules including the expedited arbitration rules. Thus, where the claim is less than USD 100,000 or its cedi equivalent, a party may request that the arbitration institution adopts the rules for an expedited arbitration. However, the arbitration rules of the Ghana ADR Centre allow a party to also request for expedited proceedings even if the claim exceeds USD 100,000. The Ghana Arbitration Centre also makes provision for expedited arbitration (where the arbitration is concluded in 24 hours with room for extension) in its arbitration rules but, it does not set a monetary cap for such proceedings.

51. Is diversity in the choice of arbitrators and counsel (e.g. gender, age, origin) actively promoted in your country? If so, how?

There is healthy diversity in the choice of arbitrators and counsel for arbitration disputes in Ghana. Most of the arbitration institutions list a selection of arbitrators that span various gender, age, and background. Thus, parties are afforded the option to select from a wide array of arbitration practitioners of various backgrounds.

52. Have there been any recent court decisions in your country considering the setting aside of an award that has been enforced in another jurisdiction or vice versa?

There are no recent decisions on setting aside an award which has been enforced in another jurisdiction.

53. Have there been any recent court decisions in your country considering the issue of corruption? What standard do local

courts apply for proving of corruption? Which party bears the burden of proving corruption?

The courts will generally set aside an award which was induced by corruption. The evidential burden rests on the party who seeks to set aside the award. The challenge in such circumstances is that the law does not define what conduct amounts to corruption. Thus, the Ghanaian courts are likely to seek guidance from persuasive authority (preferably common law jurisdictions) on the parameters and the standard of review for proving corruption. But there are no recent decisions which set out the standard for proving corruption.

54. Have there been any recent court decisions in your country considering the judgments of the Court of Justice of the European Union in Slovak Republic v Achmea BV (Case C-284/16), Republic of Moldava v Komstroy LLC (Case C-741/19) and Republiken Polen v PL Holdings Sarl (Case C-109/20) with respect to intra-European investor-state arbitration? Are there any pending decisions?

There are no pending or decided cases considering the above judgments.

55. Have there are been any recent decisions in your country considering the General Court of the European Union's decision Micula & Ors (Joined Cases T-624/15, T-694/15 and T-694.15), ECLI:EU:T:2019:423, dated 18 June 2019? Are there any pending decisions?

There are no pending or decided cases considering the above judgments.

56. What measures, if any, have arbitral institutions in your country taken in response to the COVID-19 pandemic?

On the outbreak of the COVID-19 pandemic, the arbitral institutions adjusted to holding hearings virtually as opposed to in-person hearings, subject to the consent of the parties. This has reduced the potential delay of the arbitration proceedings.

57. Have arbitral institutions in your country implemented reforms towards greater use of technology and a more cost-effective conduct of arbitrations? Have there been any recent developments regarding virtual hearings?

The ADR Act and the institutional rules generally enjoin the tribunal to conduct proceedings in a manner which avoids delays and unnecessary expenses. Currently, most institutions such as the Ghana Arbitration Centre have put measures in place to incorporate the use of state-of-the-art technology in the arbitration process such as real time stenographic recordings and virtual hearings.

58. In your country, does the insolvency of a party affect the enforceability of an arbitration agreement?

No. The insolvency, merger or death of a party does not affect the enforceability of the arbitration agreement. The arbitration agreement will still be enforceable by or against the liquidator, successor, or personal representative of the party.

59. Is your country a Contracting Party to the Energy Charter Treaty? If so, has it expressed any specific views as to the current negotiations on the modernization of the Treaty?

No, Ghana is not a party to the Energy Charter Treaty.

60. Have there been any recent developments in your jurisdiction with regard to disputes on climate change and/or human rights?

There are no recent developments on climate change disputes. Depending on how a climate change dispute is framed, the dispute may not be arbitrable. Under the ADR Act, matters that relate to the environment and the enforcement and interpretation of the constitution (like human rights claims) are not arbitrable. However, the party resisting arbitration must first establish that the dispute is one related to human rights or the environment. The Court of Appeal recently held that the revocation of a bank's licence to operate is not a human rights issue. Thus, an aggrieved bank or its shareholders must submit its complaint to arbitration in accordance with the mandatory provisions of the Banks and

Specialised Deposit-taking Institutions Act, 2016 (Act 930). (*Dr. Papa Kwesi Nduom and 2 others v. Bank of Ghana and 2 others Suit No. H1/36/2022 delivered on 2nd June 2022*)

61. Has your country expressed any specific views concerning the work of the UNCITRAL Working Group III on the future of ISDS?

In October 2021, Ghana addressed the UN General Assembly's Sixth Committee during the consideration of "Report of the United Nations Commission on International Trade Law on the Work of its Fifty-Fourth Session". Ghana made the following key points.

a. Ghana supported the call for Working Group III to be afforded additional time and resources to ensure an expeditious completion of the ISDS reforms.
b. Ghana indicated that because there were plans to develop an investment protocol for the African Continental Free Trade Area (AfCFTA), a reformed instrument on investor-state dispute resolution will enhance trade and development in Africa.

62. Has your country implemented a sanctions regime (either independently, or based on EU law) with regard to the ongoing crisis in Ukraine? Does it provide carve-outs under certain circumstances (i.e., providing legal services, sitting as an arbitrator, enforcement of an award)?

Ghana has not implemented any sanction against any country in relation to the crisis in Ukraine.

63. Do the courts in your jurisdiction consider international economic sanctions as part of their international public policy? Have there been any recent decisions in your country considering the impact of sanctions on international arbitration proceedings?

There are no recent decisions by the Ghanaian courts on the imposition of economic sanctions.

64. Have arbitral institutions in your country taken any specific measures to administer arbitration proceedings involving sanctioned individuals/entities? Do their rules address the issue of sanctions?

No.

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