Kluwer Arbitration Blog

Enhancing Ghana's ADR Framework: Aligning Arbitration with International Best Practices

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Arbitration has been a preferred method for resolving disputes in international commercial and investment transactions globally. Ghana's Alternative Dispute Resolution Act, 2010 ("**ADR Act**") was enacted to provide a comprehensive legal framework for arbitration, mediation, and other forms of alternative dispute resolution. The arbitration section of the ADR Act aligns with international arbitration standards, particularly the UNCITRAL Model Law on International Commercial Arbitration (1985, amended 2006) and the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (1958). However, with the evolving nature of arbitration and the recent reform of the English Arbitration Act 1996 (which was previously discussed on this Blog here and here), it is crucial to assess whether Ghana's ADR framework remains competitive and effective. Both the English Arbitration Act 1996 and Ghana's ADR Act served as the foundation for their respective countries' arbitration proceedings regulations. They have commonalities, such as codifying arbitration principles, establishing frameworks for award enforcement, and addressing the rights and obligations of parties, but they also contain different elements that reflect their legal systems and approaches to dispute settlement. It is to be noted, however, that there are currently no ongoing parliamentary discussions or active judicial discussions to undertake any reform of Ghana's ADR Act.

This post focuses primarily on arbitration, examines the alignment of the arbitration section of Ghana's ADR Act with international standards, and explores potential reforms to enhance Ghana's arbitration landscape, making it more efficient, investor-friendly, and globally competitive. This post highlights key areas where Ghana's arbitration framework aligns with international best practices. It further identifies gaps and challenges in the current ADR Act and whether Ghana should maintain an integrated ADR Act or enact a standalone Arbitration Act.

Alignment with International Standards

This section outlines how Ghana's ADR Act (Act 798) aligns with evolving international arbitration standards, focusing on three pillars: (A) consistency with the UNCITRAL Model Law, (B) enforcement of foreign arbitral awards under the New York Convention, and (C) comparative

insights from the recently reformed English Arbitration Act.

(A) Consistency with UNCITRAL Model Law (1985, amended 2006)

Firstly, the Ghana ADR Act allows for both arbitration clauses and separate arbitration agreements, as mandated by the UNCITRAL Model Law.

Further, Ghana's ADR Act empowers tribunals to rule on their jurisdiction (s. 24), aligning with UNCITRAL's jurisdictional autonomy principles. The arbitral tribunal has the authority to determine its jurisdiction, particularly concerning: (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 align with the arbitration agreement.

Also, Ghana's ADR Act limits court involvement in arbitration, consistent with the UNCITRAL Model Law's principle of minimal judicial interference.

(B) Enforcement of Foreign Arbitral Awards (New York Convention, 1958)

Ghana is a signatory to the New York Convention and enforces foreign arbitral awards under Section 59 of the ADR Act. Grounds for refusal of enforcement are aligned with Article V of the Convention (e.g., lack of proper notice, invalid arbitration agreement, procedural unfairness).

In some instances, Ghanaian courts have delayed the enforcement of foreign arbitral awards due to procedural hurdles. For example, in the case of *Balkan Energy v The Republic of Ghana, PCA Case No. 2010-7*, there was a dispute before an arbitration tribunal that was formed after a breach of a power purchase agreement between the Government of Ghana and Balkan Energy Limited regarding the Osagyefo Power Barge in 2007. Enforcement proceedings extended over two years due to judicial review applications after the tribunal mandated Ghana to pay Balkan Energy damages of $11.75 million, plus interest and costs.

(C) The Reformed English Arbitration Act and Ghana's ADR Act

It is important to note that Ghana's ADR Act strengthens confidentiality obligations compared to the English Arbitration Act, 2025 ("**English Arbitration Act**"). The English Arbitration Act, however, does not explicitly provide the same level of protection. The English arbitration confidentiality requirement remains an implied duty and not statutory. In Ghana, confidentiality is statutorily provided for under Section 34 of the ADR Act. Except as otherwise agreed to by the parties, the Arbitral Tribunal is mandatorily required to make orders concerning the confidentiality of the arbitration proceedings or any other matters in connection with the arbitration and may take measures for protecting trade secrets and confidential information.

The English Arbitration Act gives arbitrators express powers to summarily dismiss unmeritorious claims, while Ghana's ADR Act lacks such a provision. Ghana may consider, in its arbitration reform, the expanded powers of the tribunal. The duties and powers of an arbitrator under Section

31 do not give the arbitrator the power to dismiss unmeritorious claims summarily. It is important to note that this reform to the English Act aligns the arbitration process with the summary judgment standard used in civil litigation in England, specifically Civil Procedure Rule 24. Both laws expressly state “no real prospect of success” as the main test for summarily dismissing unmeritorious claims or cases. Although Order 14 of C.I 47 of Ghana is similar in substance to that of the England’s Civil Procedure Rule 24, it does not have the specific words. In our bid to reform, Ghana could use the same approach and legislate a test that reflects the current regime of summary judgment in Ghana to achieve the same level of uniformity.

Secondly, unless specified otherwise, an arbitration agreement is governed by the law of the underlying contract. The English Arbitration Act clarifies this position: the law relevant to an arbitration agreement is the law expressly agreed upon by the parties, or, in the absence of such an agreement, the law of the arbitration seat. The English Arbitration Act further adds an exception to this new default rule for investor-State arbitrations when the arbitration agreement stems from a treaty or non-English legislation. In Ghana, however, if the parties do not indicate which law should govern the arbitration agreement, the courts are likely to rule that the law of the arbitration seat will apply. The Supreme Court of Ghana accepted this approach in the case of *Dutch African Trading Company Bv (Datc) v West African Mills Company Limited (J4/29/2023) [2024] Ghasc 8 (28 February 2024)*. However, a clear statutory provision can be made to render the law of the seat of the arbitration as the choice of law where there is no explicit agreement by the parties. This is key in settling the debate on the law applicable to arbitration agreements.

The English Arbitration Act also broadens the scope of arbitrator immunity, protecting arbitrators from liability for resignation unless the resignation is deemed unreasonable. However, Ghana’s ADR Act excludes the immunity of liability incurred by arbitrators resulting from resignation under Section 31.

Should Ghana Have a Standalone Arbitration Act?

The current ADR Act provides a cohesive system that accommodates arbitration, mediation, and customary dispute resolution under one law, making it accessible and familiar to local practitioners.

Unlike many jurisdictions, Ghana recognizes traditional and informal dispute resolution mechanisms, which help reduce litigation backlog and promote community-based conflict resolution. Businesses and individuals can choose the most suitable dispute resolution method without navigating multiple laws.

A dedicated arbitration law could strengthen Ghana’s position as a preferred seat for international arbitration, providing clearer rules and a stronger enforcement regime. Most leading arbitration jurisdictions (e.g., UK and Singapore) separate arbitration from other ADR methods, making arbitration more robust and investor-friendly.

The Thorny Issue of Artificial Intelligence and Arbitration

Artificial Intelligence (AI) has become an integral part of our personal and professional lives. For a country like Ghana, where arbitration is growing and the adoption of technology is rising, we must stay on top of the trends, especially in the practice of arbitration, if we want to make Ghana an arbitration hub. Leading institutions like Singapore International Arbitration Centre (SIAC), International Chamber of Commerce (ICC), London Court of International Arbitration (LCIA), and among others, have started incorporating AI tools into e-filing and case management systems to improve efficiency.

While we must embrace the use of AI in arbitration in Ghana, being cognizant of the pitfalls is instructive. There have been instances where AI tools such as ChatGPT have hallucinated and produced non-existent case law when used by lawyers. For example, in the recent U.S. case *Wadsworth v. Walmart Inc.*, lawyers submitted a filing citing non-existent cases generated by an internal AI tool. The judge in the case fined the lawyers and removed one of them from the case. Similarly, in *Zhang v Chen, 2024 BCSC 285 (CanLII)*, a Vancouver lawyer submitted a brief in a child custody case to the British Columbia Supreme Court that included non-existent cases generated by ChatGPT. This led to the initiation of an investigation by the Law Society of British Columbia.

It is our considered opinion that Ghana cannot fully benefit from the use of artificial intelligence in arbitration, nor effectively guard against its potential risks, without a clear regulatory framework or professional guidance. We propose that national guidelines be developed to support the ethical and efficient use of AI by arbitration practitioners and institutions. Two central concerns that require attention are confidentiality and the independence of arbitrators. Ghana's ADR Act, under section 34, places a statutory duty on arbitrators to preserve the confidentiality of proceedings. However, the use of AI tools, especially third-party or cloud-based platforms, may expose sensitive information to external risks. Both the CIArb Guideline on the Use of AI in Arbitration (2025) and the SVAMC Guidelines on the Use of AI in Arbitration (2024) highlight the need for due diligence, cautioning against inputting confidential data into AI systems without proper safeguards. They also flag the danger of relying on AI tools that may generate unreliable or unverifiable results.

The CIArb Guideline encourages arbitrators to disclose their intended use of AI to the parties involved, while the SVAMC Guidelines underscore the importance of transparency and caution to preserve the fairness and enforceability of awards. This step would ensure that Ghana keeps pace with global developments while safeguarding the integrity of its arbitral system.

Conclusion

Ghana's ADR Act is generally aligned with international standards but lacks some modern arbitration innovations. Learning from some of England's 2025 reforms to its arbitration act and global trends, Ghana can make strategic updates to its law and regulatory framework to increase efficiency, attract investment, and reduce court intervention in arbitration.

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