GHANA

INTRODUCTION

The Ghanaian legal system is based on the Constitution (which came into force on 7 January 1993), statutes passed by Parliament, subsidiary legislation made under the power conferred by either the Constitution (Constitutional Instruments) or statute (Legislative Instruments), English common law, doctrines of equity, and rules of customary law.

LITIGATION

1. WHAT IS THE STRUCTURE OF THE LEGAL PROFESSION?

Lawyers in Ghana practise as both barristers and solicitors; there is no split profession. Lawyers provide legal services directly to clients and conduct proceedings in the courts. All lawyers have rights of audience before all trial courts and tribunals in Ghana.

Qualifying as a lawyer in Ghana typically involves three stages of training, namely:

- the academic stage
- the professional education stage
- the pupillage stage

The academic stage involves obtaining a recognised degree in Law. The professional education stage involves completing two years of professional training at the Ghana School of Law. To be admitted to the Ghana School of Law, an applicant must first obtain an LLB qualification from a Ghanaian university. Thereafter, the applicant must sit a competitive entrance examination, and if successful, the applicant is then invited to attend an interview conducted by the General Legal Council. Applicants with an LLB qualification from a non-Ghanaian university must complete a three-month course in Ghanaian legal systems and pass the requisite examination before being admitted onto the two-year professional programme. At the end of the programme, qualifying students are awarded a Qualifying Certificate in Law and are admitted onto the Roll of Lawyers. The pupillage stage involves the completion of a six-month pupillage spent in an authorised pupillage training organisation, usually an established law firm.

Foreign lawyers are permitted to practise in Ghana provided that they have:

- the required qualifications from their home jurisdiction
- a letter of good-standing from their home Bar
- enrolled on and completed the Post Call Law Course at the Ghana School of Law and passed the required examinations, which includes examinations in various disciplines including civil and criminal procedure, evidence, interpretation of deeds and statutes, family law, constitutional and customary law of Ghana

The General Legal Council is the statutory body regulating the profession and deals with complaints against lawyers.

There have recently been several reforms in legal education in Ghana. With effect from October 2015, candidates at the professional stage are required to complete one year of professional training at the Ghana School of Law and then six months internship before being called to the Ghana Bar (following which they would do their pupillage). This new system runs side by side with the old system until the end of June 2016 when the old system will be phased out.

2. WHAT IS THE STRUCTURE OF THE COURT SYSTEM?

Courts in Ghana are divided into the superior courts and the lower courts. The superior courts consist of the:

- Supreme Court
- Court of Appeal
- High Court and Regional Tribunals

The lower courts consist of the:

- Circuit Courts
- Districts Courts
- Juvenile Courts

Circuit and District Courts are vested with original jurisdiction in both criminal and civil proceedings. Civil claims with a value not exceeding GHS 20,000 (approximately USD 5,000) must be initiated in the District Court, and GHS 50,000 (approximately USD 12,500) in the Circuit Court. With respect to the superior courts, the High Court is vested with original jurisdiction in criminal and civil matters. The Regional Tribunals only have criminal jurisdiction, limited to offences involving serious economic fraud against the State. It has concurrent jurisdiction with the High Court in such matters.

Within the High Court, there are also specialised divisions, namely the General Jurisdiction, Criminal, Probate and Administration, Divorce and Matrimonial, Commercial, Finance, Land, Industrial/ Labour, and Human Rights Divisions. The High Court has supervisory jurisdiction over the lower courts.

Criminal appeals from the Circuit, District, and Juvenile Courts are heard by the High Court. Civil appeals from the Circuit Court are heard by the Court of Appeal. Appeals from the High Court and Regional Tribunals are heard by the Court of Appeal. Appeals from decisions of the Court of Appeal are heard by the Supreme Court, which is the final appellate court, and its decisions are binding on all the lower courts. The Supreme Court is also vested with supervisory jurisdiction over the superior courts and has original jurisdiction in matters relating to the enforcement or interpretation of the Constitution.

3. WHAT ARE THE TIME LIMITS FOR BRINGING CIVIL CLAIMS?

Statutory limitation periods apply to civil actions, and vary depending on the cause of action.

The limitation period is 12 years for an action:

- on an instrument under seal, other than for the recovery of arrears of an annuity charged on movable property, or a principal sum of money or arrears of interest in respect of a sum of money secured by a mortgage or any other charge
- to enforce an award, where the arbitration agreement is under seal
- to recover a sum of money due to a registered company by a member of the company under the company's regulations
- to recover tax due and payable to the commissioner of the Internal Revenue Service, or duty due and payable to the Controller of Customs and Excise
- on an enforceable judgment
- to recover the proceeds of the sale of land

The limitation period is six years for an action:

- founded on contract or torts other than negligence, nuisance or breach of duty
- to enforce a recognisance to enforce an award, where the arbitration is under an enactment other than the Arbitration Act
- to recover a sum of money recoverable by virtue of an enactment
- to recover seamen's wages which are not enforceable *in rem*
- for an account in respect of a matter which arose more than six years before the commencement of the action
- for arrears of interest in respect of a debt

The limitation period is three years for an action:

- claiming damages for negligence, nuisance or breach of duty
- for damages for the benefit of the dependants of a deceased person

The limitation period is two years for an action:

- claiming damages for defamation, including libel and slander
- to recover a contribution against one or more concurrent wrongdoers
- to recover a penalty or forfeiture, or a sum of money by way of penalty or forfeiture, recoverable under an enactment

Limitation periods are suspended during periods of disability.

4. ARE COMMUNICATIONS BETWEEN A LAWYER AND HIS/HER CLIENT PRIVILEGED (IE PROTECTED FROM DISCLOSURE TO A COURT/ TRIBUNAL AND OPPOSING PARTIES)?

Communications between a lawyer and his or her client are privileged and therefore protected from disclosure to a court, tribunal or opposing parties. This privilege includes communications between: (a) the client or a representative of the client and the lawyer or a representative of the lawyer; (b) the lawyer and a representative of the lawyer; and (c) the lawyer or a representative of the lawyer and a lawyer representing another person in a matter of common interest with the client or a representative of the lawyer (section 100(2) Evidence Act 1975). Privilege can be claimed by the client, the client's guardian or committee, the personal representative of a deceased client, or the successor in interest of a client who was an artificial person, the person who was the client's lawyer at the time of the communication, or the representative of the lawyer.

There are exceptions to lawyer-client privilege and these are:

- if, apart from the communication, sufficient evidence has been introduced to support a finding of fact that the services of the lawyer were sought or obtained to enable or aid a person to commit or plan to commit a crime or intentional tort
- a communication relevant to an issue between parties who claim an interest in property through the same deceased client of the lawyer
- a communication relevant to an issue of breach of duty by a lawyer to a client of the lawyer, or a client to the lawyer of the client, a communication relevant to the formalities of the execution of a written document by a client, where the lawyer or a representative of the lawyer is an attesting witness to its execution
- a communication relevant to a matter of common interest between two or more clients, if the communication was made by any of them to a lawyer sought by them in common, when offered in a proceeding between any of the clients. In such circumstances privilege is held by the clients.

5. HOW ARE CIVIL PROCEEDINGS COMMENCED, AND WHAT IS THE TYPICAL PROCEDURE WHICH IS THEN FOLLOWED?

Generally, civil proceedings are commenced by filing a writ of summons (writ). It must be accompanied by a statement of claim (claim). A defendant who is served with the writ and claim has to file a notice of appearance to the writ within eight days and a statement of defence (defence) in answer to the claim within 14 days. The plaintiff has seven days after the service of the defence to file a reply. Within 14 days of the close of pleadings, there must be automatic and mutual discovery of relevant documents.

Application for directions must be filed within one month after pleadings have closed. At the direction stage, the issues for trial are set down and the mode of trial is determined. The Ghanaian civil procedure rules were amended in March 2015 to include a

requirement for parties to file witness statements, and therefore at the directions stage, the court sets timelines for the parties to file their witness statements. The court may also set a date(s) for a case management conference and/or for pre-trial review. Once the witness statements are filed, the parties attend the case management conference and/or a pre-trial review where the judge gives further directions on the management of the case. If a trial date has not been fixed by the judge, the registrar issues a notice to the parties specifying a date on which the matter will be tried.

Within the Commercial Division of the High Court, there is mandatory judicial mediation after the close of pleadings (see question 31 below).

Although all civil proceedings are required to be commenced by the filing of writs, the law recognises two other specialised originating processes, namely originating notices of motion and petitions, which are used where a statute specifically provides for commencing actions by those processes.

6. WHAT IS THE EXTENT OF PRE-TRIAL EXCHANGE OF EVIDENCE, AND HOW IS EVIDENCE PRESENTED AT TRIAL?

As noted above, parties are required within 14 days of the close of pleadings to undertake automatic and mutual discovery, ie the exchange of lists of documents between them without the necessity of appearing before the court. A party's list must set out all documents which are or have been in his/her possession, custody or relating to any matter in question between them in the action. The list of documents must include a notice of inspection stating a time and venue for the other party to inspect the documents. However, the practice has been that photocopies of the relevant documents are attached to the list with a verifying affidavit. If a party fails to undertake automatic discovery, the other party may apply to the court for an order for discovery.

The previous procedure in the Ghanaian courts was for witnesses to give oral evidence at trial. However, due to the new requirement for parties to file witness statements setting out the oral evidence which they wish to rely on at trial, witnesses are no longer required to give evidence orally. A witness is now only required to tender his/her witness statement at trial, which is treated by the court as the witness' evidence-in-chief. The other party can, however, cross-examine the witness based on the witness statement tendered. Subject to the court's discretion, re-examination is directed to the clarification or explanation of matters referred to in cross-examination.

Judges are allowed to question witnesses directly. A witness cannot be recalled without the leave of the court.

On any application in any cause or matter, evidence may be given by affidavit. The court may, on the application of any party, order the attendance for cross-examination of the person making the affidavit and where, after an order has been made, the person in question does not attend, that person's affidavit must not be used as evidence without leave of the court.

The court or any other party may also call an expert witness. The matters to be submitted to the expert are usually agreed between the parties and the court, or set down by the court where they cannot agree. The expert submits a written report to the court and the parties on the matters referred to him, and he may be cross-examined by any party in the suit.

7. TO WHAT EXTENT ARE THE PARTIES ABLE TO CONTROL THE PROCEDURE AND THE TIMETABLE? HOW QUICK IS THE PROCESS?

The courts manage their case lists, and judges have considerable powers with respect to scheduling of cases, control over the issues on which evidence is permitted and the way in which evidence is introduced.

The timetable is guided by the Civil Procedure Rules. Before or during the trial, the material disputes between parties may be settled in court and reduced to "issues for trial". The Civil Procedure Rules allow for interlocutory applications between the issue of a writ and the trial, which often delays matters. In many instances cases that go to full trial take as long as a year or more from issue of the writ. This may be significantly longer if there are interlocutory applications which are then appealed – see question 11 below.

8. WHAT INTERIM REMEDIES ARE AVAILABLE TO PRESERVE THE PARTIES' INTERESTS PENDING JUDGMENT?

The court may, at any time, preserve a party's interest in a case upon that party's application for the relevant interim remedy pending trial and judgment. The available interim remedies include an order for interlocutory injunction and the detention, custody or preservation of any property which is the subject matter of the suit and is within the court's jurisdiction. An application for an interlocutory injunction may be made before or after trial irrespective of whether the claim for an injunction is included in the writ.

The court may, rather than grant the application for an injunction, order an early trial to finally determine the matters in issue.

9. WHAT MEANS OF ENFORCEMENT ARE AVAILABLE?

A judgment for the payment of money may be enforced by:

- writs of *fieri facias (fi.fa.)*
- garnishee orders
- charging orders
- appointment of receivers
- writs of sequestration
- insolvency proceedings against an individual
- winding up proceedings against a debtor company

A judgment for the possession of immovable property may be enforced by:

- writ of possession
- committal
- writ of sequestration

A judgment for the delivery of goods or payment of the assessed value may be enforced by:

- writ of delivery to recover goods or their assessed value
- writ of specific delivery with leave of the court
- writ of sequestration

A judgment ordering a person to do or abstain from doing an act may be enforced (subject to personal service of the judgment/ order on the person in default) by:

- writ of sequestration against the property of the person with leave of the court
- writ of sequestration against the property of the directors or other officers, if the person involved is a corporate body
- committal against the person or director or other officer of the corporate body, as the case may be

In practice, it is fairly easy to enforce judgments where the judgment debtor has unencumbered assets and bank accounts that may be proceeded against. However, it is very difficult to enforce judgments where the judgment debtor has no such available assets or where the judgment creditor has no information with respect to available assets and bank accounts. The most common enforcement methods, particularly with respect to money judgments, are *fi.fa*. and garnishee orders.

10. DOES THE COURT HAVE POWER TO ORDER COSTS? ARE FOREIGN CLAIMANTS REQUIRED TO PROVIDE SECURITY FOR COSTS?

The court has the discretion to award costs of and incidental to proceedings and to determine by whom and to what extent the costs are to be paid. The parties or their lawyers may briefly address the court on the question of costs before any such award is made.

The court takes into consideration a wide number of factors, including the expenses incurred by the party, the court fees paid, the length and complexity of the proceedings, the conduct of the parties before and during the proceedings, and any previous orders as to costs made in the proceedings, before making any award for costs.

A plaintiff, whether foreign or Ghanaian, who is ordinarily resident outside Ghana may, on the defendant's application, be required to provide security for the defendant's costs. Thus a foreign claimant ordinarily resident outside Ghana may be required to provide security for costs whereas a foreign claimant ordinary resident in Ghana will not be so required. However, where a plaintiff who is ordinarily resident outside Ghana has assets in Ghana the court is unlikely to make the order for security for costs.

11. ON WHAT GROUNDS CAN THE PARTIES APPEAL, AND WHAT RESTRICTIONS APPLY? IS THERE A RIGHT OF FURTHER APPEAL? TO WHAT EXTENT IS ENFORCEMENT SUSPENDED PENDING AN APPEAL?

In Ghana, the right to appeal is constitutionally guaranteed and there is a general right of appeal against a decision of a court of first instance. Grounds of appeal vary, and range from the omnibus ground, that "the judgment is against the weight of the evidence", to specific grounds of appeal that the party will set out in the notice of appeal. Permission to appeal (leave) is required only under specific circumstances.

Where the first appeal is made to the High Court, for example, from a District Court, a subsequent appeal (second appeal) is heard by the Court of Appeal, and is made as of right. Permission is, however, required from the Court of Appeal for any third appeal to the Supreme Court. Usually, permission to appeal is granted where the Court of Appeal is satisfied that the case involves a substantial question of law or it is in the public interest to grant permission to appeal, or that the appeal has a real chance of success.

Where the first appeal is to the Court of Appeal itself, for example, from a High Court or Circuit Court, the second appeal lies as of right to the Supreme Court, and no permission is required.

If dissatisfied with the decision of the Supreme Court, a party may ask for the court to review its decision. The power of the Supreme Court to review its decision is, however, limited to where a party claims that there are exceptional circumstances which have resulted in a miscarriage of justice, or that there are new and important matters or evidence which, after the exercise of due diligence, were not within the applicant's knowledge or could not have been produced by him during the trial or hearing of the case.

Generally, an appeal does not operate as a stay of the decision of the lower court unless the lower court or the appellate court stays the execution of the judgment.

12. TO WHAT EXTENT CAN DOMESTIC AND/OR FOREIGN STATE ENTITIES CLAIM IMMUNITY FROM CIVIL PROCEEDINGS?

Generally, domestic State entities do not have immunity from civil proceedings. However, one may not sue the State for anything done or omitted to be done by a person while discharging or purporting to discharge responsibilities of a judicial nature vested in that person.

There are statutory provisions expressly granting both civil and criminal immunity to foreign diplomats (foreign diplomatic agents). However, there is no express stipulation to the effect that foreign State entities have immunity from civil proceedings.

However, it is a general rule of international law (applicable in Ghana) that a State (or foreign State entity for that matter) is immune from the jurisdiction of another State unless the foreign State has waived its immunity either explicitly or by implication. Thus where a foreign State entity enters into a contract in Ghana, or agrees to submit to the jurisdiction of the Ghanaian courts in a contract, it would be deemed to have waived such immunity and may be sued in Ghana.

13. WHAT PROCEDURES EXIST FOR RECOGNITION AND ENFORCEMENT OF FOREIGN JUDGMENTS?

In Ghana, enforcement of foreign judgments is governed by statute. Judgments of the court of a foreign country are enforced on the basis of reciprocity. The relevant countries and courts are listed by legislative instrument (being Brazil, France, Italy, the United Kingdom, Spain, Israel, Lebanon, Japan, Senegal and the United Arab Republic). The judgment should be from a superior court (not sitting in its appellate capacity).

The judgment is enforceable if it is final and conclusive between the parties. A foreign judgment is final and conclusive although an appeal may be pending against it or it may still be subject to appeal in a court of that foreign country).

The judgment of the foreign court must also be registered within six years after the date of the judgment or where there has been an appeal, after the last judgment given in those proceedings. A foreign judgment will not be registered if at the date of the application, it has been wholly satisfied, or it could not be enforced by execution in the foreign country.

Where the judgment of a foreign court is not enforceable on the basis of reciprocity, fresh proceedings may be instituted in Ghana and the foreign judgment relied upon in evidence.

ARBITRATION

14. IS THE ARBITRATION LAW BASED ON THE UNCITRAL MODEL LAW? IF YES ARE THERE ANY KEY MODIFICATIONS? IF NO, WHAT FORM DOES THE ARBITRATION LAW TAKE?

Arbitration is governed by the Alternative Dispute Resolution Act, 2010 (Act 798) (ADRA) which largely reflects the UNCITRAL Model Law. Provisions under the ADRA relating to the competence of the arbitral tribunal to rule on its own jurisdiction, the powers of the arbitral tribunal to order interim measures, the autonomy of the parties to agree on rules of procedure and the grounds for setting aside an award, amongst others, are based on the UNCITRAL Model Law. There are no key modifications to the UNCITRAL Model Law under the ADRA, although the terms are more comprehensive than the UNCITRAL Model Law. Certain provisions reflect those in the English Arbitration Act 1996.

15. WHAT ARE THE MAIN NATIONAL ARBITRATION INSTITUTIONS?

Ghana has an Alternative Dispute Resolution Centre which serves as the main national arbitration institute. There are, however, private arbitration bodies such as the Ghana Arbitration Centre. There are also the arbitration bodies operating within registered associations such as the Association of Certified Mediators and Arbitrators (GHACMA).

16. ARE THERE ANY RESTRICTIONS ON WHO MAY REPRESENT THE PARTIES TO ARBITRATION?

Unless otherwise agreed by the parties, a party may be represented by counsel or any other person chosen by the party.

17. WHAT ARE THE FORMAL REQUIREMENTS FOR AN ENFORCEABLE ARBITRATION AGREEMENT?

There must be a written agreement by the parties to submit present or future disputes to arbitration. There is persuasive authority to the effect that if there is a document providing that any disputes should be referred to arbitration which the parties have accepted or have confirmed, even if orally, then that document will be deemed as a valid arbitration agreement. Under the High Court Rules, parties to pending court action may also apply to the court to refer the matter to arbitration.

18. WILL THE COURTS STAY LITIGATION IF THERE IS A VALID ARBITRATION CLAUSE COVERING THE DISPUTE? DOES THE APPROACH DIFFER IN THIS REGARD IF THE SEAT OF THE ARBITRATION IS INSIDE OR OUTSIDE OF THE JURISDICTION?

The Ghanaian courts will stay proceedings and refer a matter to arbitration if there is a valid arbitration agreement covering the dispute before the court. The seat of the arbitration has no impact on the court's decision to stay proceedings.

19. IF THE ARBITRATION AGREEMENT AND ANY RELEVANT RULES ARE SILENT, HOW MANY ARBITRATORS WILL BE APPOINTED, AND WHO IS THE APPOINTING AUTHORITY?

Parties are at liberty to determine the number of arbitrators, except that the number must be an odd number. Where there is no agreement as to the number of arbitrators to be appointed, the tribunal will consist of three arbitrators. In an arbitration which requires the appointment of three arbitrators, each party appoints one arbitrator and the two appointed arbitrators appoint the third arbitrator who shall be the chairperson.

Where a party fails to appoint an arbitrator within 14 days of receiving a request to do so from the other party, or the two appointed arbitrators fail to agree on the third arbitrator within 14 days of the date of their appointment, the appointment is made by the appointing authority upon a request by a party. The appointing authority is any person or authority in whom parties to an arbitration agreement vest power to take any action for or on behalf of the parties, in relation to the arbitration. If there is no appointing authority designated by the parties, the parties may agree on an appointment or either party may apply to the court to make an appointment.

20. WHAT RIGHTS ARE THERE TO CHALLENGE THE APPOINTMENT OF AN ARBITRATOR?

An arbitrator's appointment may be challenged only if: (a) existing circumstances give rise to reasonable cause to doubt the arbitrator's independence or impartiality; or (b) the arbitrator does not possess the pre-requisite qualification(s) agreed between the parties.

The parties to arbitration are at liberty to agree on the procedure for challenging the appointment of an arbitrator, except as otherwise provided in the arbitration agreement. Where the parties have not agreed on a procedure for challenging the appointment of an arbitrator, the party who wishes to make the challenge must submit a written statement of the reasons for the challenge to the arbitrator and any other arbitrators within 15 days of: (a) becoming aware of the constitution of the arbitral tribunal; or (b) becoming aware of the circumstances that justify the challenge of the appointment of an arbitrator. However, a party may not challenge an arbitrator appointed by that party or in whose appointment that party participated, except for reasons which the party becomes aware of subsequent to the appointment.

The challenge will be decided by the arbitral tribunal or, in the case of a sole arbitrator appointed by an appointing authority, the appointing authority. Where the arbitrator is appointed by a party, the party challenging the arbitrator may apply to the High Court for the determination of the challenge. The same method of instigating the challenge applies regardless of whether the arbitration is institutional or *ad hoc*.

21. DOES THE DOMESTIC LAW CONTAIN SUBSTANTIVE REQUIREMENTS FOR THE PROCEDURE TO BE FOLLOWED?

The ADRA allows the parties and arbitrators to determine the procedure and rules that will apply to the arbitration. However, if the arbitration is referred to the Alternative Dispute Resolution Centre, the rules of the Centre set out under the Second Schedule of the ADRA will apply.

22. ON WHAT GROUND CAN THE COURT INTERVENE IN ARBITRATIONS SEATED INSIDE THE JURISDICTION?

The court's role under the ADRA is mainly facilitative, and in some instances complementary, to the arbitrator's role of ensuring effective and efficient determination of the dispute.

However, the court's jurisdiction may be invoked by the parties and in a limited instance by the arbitrator.

In relation to interim relief, the court is empowered to make orders:

- for the taking of evidence of witnesses
- for the preservation of evidence
- in respect of the determination of any question or issue affecting any property right which is the subject of the proceedings or in respect of which any question in the proceedings arise
- for the inspection, photographing, preservation, custody or detention of property
- for the taking of samples from or the observation of an experiment conducted upon, a property; and for that purpose authorising any person to enter any premises in the possession or control of a party to the arbitration
- for the sale of any goods which are the subject of the proceedings
- for the granting of an interim injunction or the appointment of a receiver

The court also has the power to:

- determine a challenge to the appointment of a sole arbitrator
- remove an arbitrator
- make a determination regarding the entitlement to fees/ expenses and/or liability of an arbitrator who has resigned
- make a determination regarding the fees payable to an arbitrator

Regarding the conduct of the arbitral proceedings, the court is empowered to:

- make a determination regarding the arbitrator's jurisdiction
- hear a challenge by a party who is subject to arbitration proceedings of which he had not been notified
- appoint a receiver
- determine a preliminary question of law where it is satisfied that the question substantially affects the rights of the other party

In relation to the arbitral award, the court has the power to:

- order the tribunal to deliver the award and determine the fees or expenses payable to the tribunal if the award has been withheld pending payment
- enforce or set aside arbitral awards, both domestic and foreign

23. ON WHAT GROUNDS CAN THE COURT INTERVENE IN ARBITRATIONS SEATED OUTSIDE THE JURISDICTION?

The provisions of the ADRA regulate arbitral proceedings held in Ghana. The provisions on foreign arbitrations under the ADRA refer to foreign arbitral awards and their enforcement in Ghana. It is doubtful whether the courts in Ghana have the jurisdiction to intervene in foreign arbitral proceedings as the above provisions apply to arbitrations within Ghana only (there is no equivalent in the ADRA to section 2(3) of the English Arbitration Act 1996).

24. DO ARBITRATORS HAVE POWERS TO GRANT INTERIM OR CONSERVATORY RELIEF?

Arbitrators have the same power as the High Court to grant interim relief. Arbitrators are also empowered to make interim awards except where the parties have stipulated otherwise in the arbitration agreement.

25. WHEN AND IN WHAT FORM MUST THE AWARD BE DELIVERED?

The ADRA does not stipulate the time within which an award should be made by the arbitrators.

An award must be in writing, signed by the arbitrators and should state the date and place where the award was made, and unless otherwise agreed between the parties, the arbitrators' reasons for making the award. Where there are three or more arbitrators, any award or decision of the tribunal must be made by a majority of the arbitrators.

26. CAN A SUCCESSFUL PARTY RECOVER ITS COSTS?

Unless the parties expressly provide otherwise in their arbitration agreement, or the arbitrator makes a decision on costs in the award against the party, all the expenses of the arbitration will be paid equally by the parties. Furthermore, under the rules of the Alternative Dispute Resolution Centre set out under the Second Schedule of the ADRA, the arbitral tribunal must fix the costs of the arbitration in its award. The term "costs" for this purpose means:

- the fees of the arbitrators and umpire
- the travel and other expenses incurred by the arbitrators
- the costs of expert advice and of other assistance required by the arbitral tribunal
- the travel and other expenses of witnesses to the extent that those expenses were approved by the arbitral tribunal
- the costs for legal representation and assistance of the successful party if these costs were claimed during the arbitral proceedings, and only to the extent that the arbitral tribunal determines that the amount of these costs is reasonable and
- any fees and expenses of the Alternative Dispute Resolution Centre

27. ON WHAT GROUND CAN AN AWARD FROM AN ARBITRATION SEATED IN THE JURISDICTION BE APPEALED TO THE COURT?

Arbitral awards are deemed to be final and binding on all parties and any persons claiming through or under them. The ADRA does not provide for appeals from arbitral awards. However, parties may apply to the High Court to set aside an arbitral award on any of the following grounds:

- a party to the arbitration was under some disability or incapacity
- the law applicable to the arbitration agreement was not valid
- the applicant was not given notice of the appointment of the arbitrator or of the proceedings or was unable to present its case
- the award dealt with a dispute not within the scope of the arbitration agreement or outside the agreement, except that the court will not set aside any part of the award that falls within the agreement

- there has been a failure to conform to the agreed procedure by the parties and/or
- the arbitrator had an interest in the subject matter of arbitration, which he failed to disclose

28. CAN A FOREIGN ARBITRATION AWARD BE APPEALED IN THE LOCAL COURTS? IF SO, ON WHAT GROUNDS?

There are no provisions in the ADRA for filing an appeal against a foreign arbitral award. The Act, however, provides that such an award will not be registered in Ghana for the purposes of enforcement where:

- the award has been annulled in the country in which it was made
- the party against whom the award is invoked was not given sufficient notice to enable the party to present its case
- a party, lacking legal capacity, was not properly represented
- the award does not deal with the issues submitted to arbitration and/or
- the award contains a decision beyond the scope of the matters submitted for arbitration

29. WHAT PROCEDURES EXIST FOR ENFORCEMENT OF: (I) AWARDS RENDERED IN ARBITRATIONS SEATED OUTSIDE OF THE JURISDICTION AND (II) DOMESTIC AWARDS?

Both domestic and foreign awards may be enforced, by leave of the High Court, in the same manner as a judgment or order of the court.

Ghana is a party to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 (the New York Convention). A foreign award made in a country which is a party to the New York Convention can be enforced in Ghana by obtaining the leave of the High Court. Before leave is granted by the High Court, it must be satisfied that:

- the award was made by a competent authority under the laws of the country in which the award was made (a duly authenticated original must be produced) and
- there is no appeal pending against the award in any court under the law applicable to the arbitration

At common law, an action may be brought to enforce a foreign arbitral award. An award made either in a country which has a reciprocal agreement with Ghana, or under any international convention on arbitration to which Ghana is a party and which has been ratified by Parliament, may be enforced by the enforcement procedure provided for in that agreement or convention.

30. ARE FOREIGN AWARDS READILY ENFORCEABLE IN PRACTICE?

Foreign awards are readily enforceable as long as the award complies with the requirements for the enforcement of foreign arbitral awards discussed under question 29 above. In practice, however, a foreign award will only be readily recognised if made in a country which is a party to the New York Convention.

ALTERNATIVE DISPUTE RESOLUTION

31. ARE THE PARTIES TO LITIGATION OR ARBITRATION REQUIRED TO CONSIDER OR SUBMIT TO ANY ALTERNATIVE DISPUTE RESOLUTION BEFORE OR DURING PROCEEDINGS?

Parties to arbitration are not required by law to consider or submit to ADR before or during proceedings, unless an agreement requires that of the parties. For example, a dispute resolution clause in an agreement might require the parties to engage in pre-arbitration ADR. Parties to arbitration can submit to other ADR processes during the arbitral proceedings. Under the ADRA, the arbitrator may, with the agreement of the parties, use mediation or other procedures at any time during the arbitral proceeding to settle the dispute. If the parties settle during the proceedings, the arbitral proceedings are terminated and the settlement is recorded in the form of an arbitral award on agreed terms.

With respect to litigation commenced by writs in the Commercial Division of the High Court, there is a mandatory 30-day pre-trial mediation by a judge, when pleadings close. Only where the mediation fails will the judge set down the issues for trial by another judge.

REFORMS

32. ARE THERE LIKELY TO BE ANY SIGNIFICANT PROCEDURAL REFORMS IN THE NEAR FUTURE?

We are not aware of any significant procedural reforms in the near future. The current rules of the High Court only came into effect on 3 January 2005, and thereafter portions were amended in December 2014, with the amendments coming into force on 15 March 2015. These rules apply to both the High Court and the Circuit Court. New rules governing the Magistrate/District Courts have just been enacted. We are also aware that the Rules of Court Committee has been reviewing the Court of Appeal and Supreme Court Rules but it is difficult to determine whether any amendment to these Rules will actually be made.

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