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# Ghana



Augustine B. Kidisil



Paa Kwame Larbi Asare



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## Templars

### 1 Making Construction Projects

**1.1** What are the standard types of construction contract in your jurisdiction? Do you have: (i) any contracts which place both design and construction obligations upon contractors; (ii) any forms of design-only contract; and/or (iii) any arrangement known as management contracting, with one main managing contractor and with the construction work done by a series of package contractors? (NB For ease of reference throughout the chapter, we refer to 'construction contracts' as an abbreviation for construction and engineering contracts.)

The demands of the project inform the type of construction contract parties opt for. However, the most frequently used forms are Engineering Procurement and Construction Contracts (EPCs), and the design-and-build contracts which largely mitigate the risks of an employer and give the contractor the responsibility for design and construction. These forms are popular because they reduce the costs involved in engaging a separate designer and contractor. They also reduce the potential for disagreements or conflicts which could stall the project or degenerate into disputes. In these contract forms, the parties may agree to permit sub-contracting, with or without the input of the employer, where the contractor is liable to the employer for the negligence and defaults of the sub-contractors.

**1.2** How prevalent is collaborative contracting (e.g. alliance contracting and partnering) in your jurisdiction? To the extent applicable, what forms of collaborative contracts are commonly used?

Collaborative contracting is developing in the construction industry in Ghana, but it is not prevalent. The passing of the Public Private Partnership Act, 2020 (Act 1039) has led to an increase in collaborative contracting between state agencies and private enterprises.

**1.3** What industry standard forms of construction contract are most commonly used in your jurisdiction?

The most used standard-form contracts are the International Federation of Consulting Engineers (FIDIC) contracts.

However, other specialised standard-form contracts, such as the NEC3 suite of contracts, are used in the construction industry.

**1.4** Are there any standard forms of construction contract that are used on projects involving public works?

The nature of the construction demands will dictate which type of contract is adopted for the project. However, the FIDIC contracts remain the more frequently used standard-form contract. However, it is not uncommon to find bespoke contracts used for novel projects involving public works. In recent years, donor funding has influenced the choice of construction contract by favouring the prevalent contract form used by the donor agencies and its partner contractors.

**1.5** What (if any) legal requirements are there to create a legally binding contract (e.g. in common law jurisdictions, offer, acceptance, consideration and intention to create legal relations are usually required)? Are there any mandatory law requirements which need to be reflected in a construction contract (e.g. provision for adjudication or any need for the contract to be evidenced in writing)?

Ghana is a common law jurisdiction, and as such, the typical requirements for the formation of a binding contract generally apply in Ghana. Thus, for a contract to be binding and enforceable on the parties, the elements of an offer, acceptance, consideration, and the intention to create legal relations must exist. However, the Contracts Act, 1960 (Act 25) has modified the requirement for consideration by providing that where a party makes a promise to keep an offer open for a specified time, the law regards this promise as a binding contract, even though the recipient of that promise has not provided consideration. Moreover, in certain circumstances, the courts consider that that legal obligations may be created based on a finding of promissory estoppel. Essentially, if one party makes a representation on which the other party relies to his detriment, the courts are likely to find the existence of a legal relationship depending on the peculiar circumstances of that case. While there are no mandatory legal requirements specific to construction contracts, the Contracts Act, 1960 (Act 25) has special formality provisions relating to guarantee contracts which are essential

for the financial arrangements typical in construction transactions. Thus, a guarantee is void under Ghanaian law unless it is signed by the guarantor, whether the contract guarantees the due payment of a debt or the due performance of any other obligation in the sense of performance bonds.

In respect of construction contracts entered into with the Government of Ghana, the recent amendment of the Contract Act, 1960 (Act) has imposed two requirements on the capacity of public officials to execute contracts on behalf of the government and the imposition of compound interest on sums owed by the government under a contract. The amendment relating to execution serves as notice to contracting parties that only the sector minister, an authorised representative of such minister, or a person authorised by law may validly execute a contract on behalf of the Government of Ghana. The amendment also excludes compound interest, thereby limiting ‘contractual freedom’ on the interest chargeable on amounts owed by the Government of Ghana under a contract. The law specifically states that sums owed by the government under any contract may only attract simple interest.

**1.6 In your jurisdiction please identify whether there is a concept of what is known as a “letter of intent”, in which an employer can give either a legally binding or non-legally binding indication of willingness either to enter into a contract later or to commit itself to meet certain costs to be incurred by the contractor whether or not a full contract is ever concluded.**

The Ghanaian Courts recognise the legal concept of the pre-contract arrangement in a ‘letter of intent’ (LOI). However, whether the LOI is binding or non-binding depends on the language used in it. In one instance, the Court of Appeal found obligations under an LOI to be binding because the employer made representations after the LOI which caused the contractor to incur losses in reliance on those representations. The Court of Appeal adopted what it referred to as ‘the commercial approach to the interpretation of contracts’ and held that despite an exclusion of liability clause in the LOI, the employer would be liable for the costs the contractor incurred by procuring equipment into Ghana for certification requested by the employer post-issuance of the LOI.

**1.7 Are there any statutory or standard types of insurance which it would be commonplace or compulsory to have in place when carrying out construction work? For example, is there employer’s liability insurance for contractors in respect of death and personal injury, or is there a requirement for the contractor to have contractors’ all-risk insurance?**

The Insurance Act, 2021 (Act 1061) requires commercial building insurance to be obtained in connection with the construction of the building to cover matters such as loss or damage caused to a person. The commercial building insurance must also provide cover for legal costs connected with defending a claim of loss or damage including the costs of investigating and settling such a claim. The law makes it mandatory for commercial building insurance to cover against the hazards of collapse, fire, earthquake, storm, and flood. Post-Construction, the law also requires that public liability insurance must be maintained for commercial buildings. For public liability insurance, the insurance contract must cover matters such as bodily injury or property damage that occurs during the policy period arising out the business activities of the insured entity. A failure to secure these insurance contracts is a criminal offence under Ghanaian law.

**1.8 Are there any statutory requirements in relation to construction contracts in terms of: (a) labour (i.e. the legal status of those working on site as employees or as self-employed sub-contractors); (b) tax (payment of income tax of employees); and/or (c) health and safety?**

The major legislation that regulates employment relations is the Labour Act, 2003 (Act 651). In determining whether a person is considered an employee or an independent contractor, the Ghanaian courts look to the terms of the contract and the obligations undertaken by either party. In practice, there is a trend where contractors engage the services of employment agencies who are the legal employers of workers required on the site. Thus, the employment agency will be engaged as an independent contractor who will be paid fees. If the workers are considered employees under the terms of their contract, the Employer has the obligation of paying their pension contributions. In circumstances where the employer fails to perform its obligations in respect of pension contributions, the directors of the company are liable to criminal prosecution by the state. The employer also has the obligation to withhold employees’ taxes as stipulated under the Income Tax Act. The employer also has a statutory duty to ensure that its employees work under satisfactory, safe and healthy conditions. This includes an obligation to provide personal protective equipment, and the necessary information and training.

**1.9 Are there any codes, regulations and/or other statutory requirements in relation to building and fire safety which apply to construction contracts?**

There are regulations which prescribe the standards and statutory requirements in relation to building and fire safety which apply to construction projects. For instance, the Ministry of Works and Housing produced the Ghana Building Regulations in 1996 (L.I. 1630) to regulate the erection, alteration, or extension of a building. Since then, the Ghana Standards Authority in 2018 produced the Ghana Building Code to ensure uniformity of standards for the regulation and compliance of stakeholders in the building construction industry, in terms of public health, general safety, fire protection, structural efficiency and integrity, and environmental integrity and sustainability.

**1.10 Is the employer legally permitted to retain part of the purchase price for the works as a retention to be released either in whole or in part when: (a) the works are substantially complete; and/or (b) any agreed defects liability period is complete?**

It is not uncommon for the employer to retain part of the contract price for defect liability or until substantial completion of the work. Until recently, the industry practice was for the employer to retain 5% of each invoice raised as retention money for defect liability. The new trend is to tie payments to the completion of certain milestones, while retaining a portion of the contract price to cater for defect liability. Factors that may influence the percentage retained include the nature of the project and the source of the funding. Key payment milestones include mobilisation, testing, and the issuance of a certificate of completion. This contractual arrangement is usually balanced for the benefit of the employer. For the employer, it ensures that a substantial part of the construction project is completed, and the contractor has the incentive to correct any identified defects during the defect liability period.



**1.11 Is it permissible/common for there to be performance bonds (provided by banks and others) to guarantee the contractor's performance? Are there any restrictions on the nature of such bonds? Are there any grounds on which a call on such bonds may be restrained (e.g. by interim injunction); and, if so, how often is such relief generally granted in your jurisdiction? Would such bonds typically provide for payment on demand (without pre-condition) or only upon default of the contractor?**

It is now common practice for employers to require performance bonds issued by banks and insurance companies. The bond is usually 10% of the contract price. The performance bonds are typically issued for payment on demand without the right of challenge by the bank or the insurance company. Thus, once the performance bond meets the formal legal requirement of being in writing, it is usually enforceable in Ghanaian courts. However, there are certain instances where contractors (in some cases, the guarantor) have challenged the call on the performance bond on the grounds of fraud, and successfully obtained an interlocutory injunction against the payment of the bond, pending the determination of the case.

**1.12 Is it permissible/common for there to be company guarantees provided to guarantee the performance of subsidiary companies? Are there any restrictions on the nature of such guarantees?**

Parent company guarantees are usually not the primary security for the performance of a contractor's obligations. However, it may be accepted where the parent company is incorporated in Ghana and has identifiable assets in Ghana. There are no restrictions on the nature of such guarantees as they are purely contractual. Typically, entities undertaking infrastructure projects incorporate special purpose vehicles as a private limited liability company for the construction project. Thus, in certain circumstances, a parent company guarantee may be required if the business exigencies of the project make it necessary.

**1.13 Is it possible and/or usual for contractors to have retention of title rights in relation to goods and supplies used in the works? Is it permissible for contractors to claim that, until they have been paid, they retain title and the right to remove goods and materials supplied from the site?**

The right of the contractor to retain title in relation to goods and supplies is largely contingent on the nature of goods and materials supplied. Under Ghanaian law, where properties or fixtures become a part of the land considering the degree of annexation, it may be difficult for the contractor to enforce the right to retention in respect of such material. The right of retention may be better enforced in respect of goods and supplies that are easily removed from the land or property in question.

## 2 Supervising Construction Contracts

**2.1 Is it common for construction contracts to be supervised on behalf of the employer by a third party (e.g. an engineer)? Does any such third party have a duty to act impartially between the contractor and the employer? If so, what is the nature of such duty (e.g. is it absolute or qualified)? What (if any) recourse does a party to a construction contract have in the event that the third party breaches such duty?**

Employers often engage the services of a third party with requisite expertise to supervise the project and act as an 'umpire'

between the employer and contractor. The supervisor/project manager's duty to act impartially arises under common law. In reality, the scope of this duty to be impartial may be impaired by the appointing procedure and source of remuneration.

The employer, having appointed the project manager, retains the right to bring an action against him for breach of duty or negligence except where the project manager is jointly appointed by the parties, in which case the contractor can also maintain a claim against him. It is also common for the supervisor to be appointed by the project financier, and the obligations of impartiality and liability for breach of duty apply in much the same way.

**2.2 Are employers free to provide in the contract that they will pay the contractor when they, the employer, have themselves been paid; i.e. can the employer include in the contract what is known as a "pay when paid" clause?**

The inclusion of a 'pay when paid' clause is purely contractual. Although rare, an employer may require a contractor to pre-finance a project and claim payment after it has been paid.

**2.3 Are the parties free to agree in advance a fixed sum (known as liquidated damages) which will be paid by the contractor to the employer in the event of particular breaches, e.g. liquidated damages for late completion? If such arrangements are permitted, are there any restrictions on what can be agreed? E.g. does the sum to be paid have to be a genuine pre-estimate of loss, or can the contractor be bound to pay a sum which is wholly unrelated to the amount of financial loss likely to be suffered by the employer? Will the courts in your jurisdiction ever look to revise an agreed rate of liquidated damages; and, if so, in what circumstances?**

There is no restriction on the inclusion of liquidated damages in a construction contract. The Ghanaian courts are, however, reluctant to enforce 'penalty clauses' which permit an affected party to recover damages considerably greater than the actual loss incurred. However, where the lump sum pre-fixed as liquidated damages is a genuine pre-estimate of loss, the courts will uphold payment of such amounts.

With specific reference to construction contracts involving the Government of Ghana, the inclusion of compound interest on liquidated damages is unenforceable.

## 3 Common Issues on Construction Contracts

**3.1 Is the employer entitled to vary the works to be performed under the contract? Is there any limit on that right?**

There is no industry-specific law for construction contracts in Ghana, so the general contractual rules often apply, with modifications provided under specific contract types. A construction contract may impose a mutual variation obligation, or may permit the employer to vary some aspects of the work (often of a minute nature) by notice to the contractor.

Generally, a variation which substantially alters the agreed scope or character of the contract may result in a termination of the entire contract by the contractor, or an amendment of the existing contract to provide for an extension of time or additional payment.

**3.2 Can work be omitted from the contract? If it is omitted, can the employer carry out the omitted work himself or procure a third party to perform it?**

The terms of the contract will determine the employer's right to omit work from the contract, or outsource of the omitted work. One factor that may influence the exercise of such right is the cost model of the project, i.e., variable cost or lump sum. Under a lump sum model, the contractor is entitled, but not legally guaranteed, to carry out the entire contract.

In addition, the effect of the omission on the entire project must be considered. Where the omission materially affects the character of the contract, or the intended performance by the employer will interfere with the main contract, the contractor may terminate the contract for cause.

**3.3 Are there terms which will/can be implied into a construction contract (e.g. a fitness for purpose obligation, or duty to act in good faith)?**

Terms may be implied into construction contracts based on industry usage/custom, conduct of the parties, or by operation of law. However, there is no set of agreed terms that are implied in construction contracts under Ghanaian law.

Fitness for purpose and duty of care are often implied into construction contracts, and are derived from the express contractual term that the contractor is deemed suitably qualified to carry out the works for which it was contracted.

**3.4 If the contractor is delayed by two concurrent events, one the fault of the contractor and one the fault or risk of the employer, is the contractor entitled to: (a) an extension of time; and/or (b) the costs arising from that concurrent delay?**

The rule on concurrency is not codified under Ghanaian law, and is often resolved in accordance with the terms of the contract. In most cases, a contractor is entitled to an extension of time for concurrent delays, however, compensation may not be payable unless it is contractual.

**3.5 Is there a statutory time limit beyond which the parties to a construction contract may no longer bring claims against each other? How long is that period and when does time start to run?**

As there is no industry-specific limit for construction contracts, the six-year statute of limitation for contracts applies to construction contracts. Time starts to run from the date the cause of action accrued.

Specific time limits may apply to different causes of action arising from a construction contract. For example, a claim under negligence is statute-barred after the expiration of three years from the date the cause of action accrued. However, a court may extend the statutory time limit on stated grounds.

Additionally, parties to a construction contract may benefit from the exceptions provided under the law by bringing an action for equitable reliefs, such as specific performance of a contract. Similarly, where, under a construction contract, a party makes a written acknowledgment of a debt or makes a part payment, the time limit is extended.

**3.6 What is the general approach of the courts in your jurisdiction to contractual time limits to bringing claims under a construction contract and requirements as to the form and substance of notices? Are such provisions generally upheld?**

Parties to a contract have the liberty to determine time limits for claims, and the courts will enforce such terms, if they are consistent with the statutory limitation period. The form and substance of notice of claims are contractual and the courts would usually uphold the parties' terms.

**3.7 Which party usually bears the risk of unforeseen ground conditions under construction contracts in your jurisdiction?**

Unforeseen ground conditions are not codified under Ghanaian law and are often determined under the contract. Where ground conditions are material to the contract, the parties may impose a term that requires mutual testing prior to the commencement of the project. In such instance, any unforeseen risk discovered after this mutual testing will entitle the contractor to compensation for additional corrective works or may result in mutual termination of the contract and payment of *quantum meruit* to the contractor for work already done.

In other instances, where the contract is silent on ground conditions, the contractor may be saddled with the cost of corrective work. Conversely, if the employer makes a representation on the fitness of ground conditions for the project, the contractor can bring an action for misrepresentation.

**3.8 Which party usually bears the risk of a change in law affecting the completion of the works under construction contracts in your jurisdiction?**

Changes in law are usually dealt with contractually. Standardised construction contracts impose the obligation on each party to bear the risk of a change in law affecting the completion of a project. The risk is often monetary, but in rare cases where the change in law prevents continuation of the project, the contractor may be entitled to compensation on *quantum meruit* basis.

In sectors prone to frequently changing legislations, contractors may insist on 'legislative protection' clauses which provide cost and time relief (in the form of extensions) for changes in law affecting project timelines. The majority of the structured construction projects include provisions which allow the contractor to vary cost, timeline and scope where a change of law affects the previously agreed terms of the construction contract.

**3.9 Which party usually owns the intellectual property in relation to the design and operation of the property?**

Generally, the employer owns the intellectual property to the design and operation of the property under a construction contract. Also, in instances where an employer requests bespoke work, the construction contract will include terms expressly vesting the intellectual property in the employer, and this is often factored into the pricing of a contract.

**3.10 Is the contractor ever entitled to suspend works?**

In the absence of express provision in a construction contract or legal restriction on suspension, a contractor can suspend works by notifying the employer in writing.

**3.11 Are there any grounds which automatically or usually entitle a party to terminate the contract? Are there any legal requirements as to how the terminating party's grounds for termination must be set out (e.g. in a termination notice)?**

Grounds for the automatic termination of a contract are contractual. Fraud and insolvency events are often stated as grounds for automatic termination of a construction contract. A party may also terminate on written advance notice (usually between one and three months) where the other party materially breaches the terms of a contract and fails to remedy such breach after notice of breach is served, and on expiry of the remedy period provided by the non-defaulting party. There are no legal requirements on the form of the termination notice.

**3.12 Do construction contracts in your jurisdiction commonly provide that the employer can terminate at any time and for any reason? If so, would an employer exercising that right need to pay the contractor's profit on the part of the works that remains unperformed as at termination?**

Construction contracts usually provide for termination for convenience clauses, with some variations. Some contracts provide for early termination, usually exercisable within the initial project phases, while others provide for termination for convenience clauses subsisting through the project life span. A key determinant for the inclusion of these clauses is the cost of exercising such right (i.e., compensation payable to the contractor, which in some cases may be the full contract amount or cost-plus financing).

The courts act as the final arbiter in determining what is fair compensation for termination for convenience. The Ghanaian High Court, in the interpretation of NEC 3 contracts, recognised the standard-form contract compensation model as reasonable in compensating a contractor for termination for convenience.

**3.13 Is the concept of *force majeure* or frustration known in your jurisdiction? What remedy does this give the affected party? Is it usual/possible to argue successfully that a contract which has become uneconomic is grounds for a claim for *force majeure*?**

The concepts of *force majeure* or frustration are well established under Ghanaian law. The former is subject to common law doctrines while the consequences of frustration are codified under the Contracts Act. The law permits a severance of the frustrated parts of a contract from a contract, which has been applied in some construction contracts.

*Force majeure* is not defined under Ghanaian law, but it is generally interpreted as unforeseen circumstances which prevent the performance of a contract; i.e., pandemics, wars and natural disasters. However, events such as lockouts, and supply chain challenges which may constitute a *force majeure*, are often negotiated on a case-by-case basis. Similarly, the period for continuance of a *force majeure* event which may entitle an affected party to terminate a contract may differ for each contract.

The Ghanaian courts have adopted the common law approach that a change in economic viability of a contract is not generally sufficient grounds for a *force majeure* claim in itself.

**3.14 Are parties, who are not parties to the contract, entitled to claim the benefit of any contractual right which is made for their benefit? E.g. is the second or subsequent owner of a building able to claim against the contractor pursuant to the original construction contracts in relation to defects in the building?**

The law generally excludes a third party from benefitting under a contract unless such third party is specifically designated as a beneficiary. The Ghanaian courts have further developed the doctrine that foreseeable third parties may claim under a contract in limited circumstances. In a construction contract, this may include a project financier, first purchasers, or tenants with an interest in the building during the defect liability period.

To strictly limit enforcement of these exceptions on privity, standard-form construction contracts expressly exclude the application of the statutory provision on foreseeable third parties.

**3.15 On construction and engineering projects in your jurisdiction, how common is the use of direct agreements or collateral warranties (i.e. agreements between the contractor and parties other than the employer with an interest in the project, e.g. funders, other stakeholders, and forward purchasers)?**

Lender funding accounts for the majority of engineering and construction projects in Ghana, and this translates to the prevalence of direct agreements or collateral warranties with project financiers. In specialised or capital-intensive construction contracts, a direct agreement incorporating the terms of the main construction contract is entered into between the contractor and project financier. Such direct agreement may, in addition to the standard collateral warranties, grant 'employer-like' powers to a project manager appointed by the lender. Construction contracts may also adopt a separate deed of warranty for anchor tenants and forward purchasers.

**3.16 Can one party (P1) to a construction contract, who owes money to the other (P2), set off against the sums due to P2 the sums P2 owes to P1? Are there any limits on the rights of set-off?**

The right of set-off arises out of contract and as an equitable right of the contracting parties. It is common for parties to include a right of set-off in their construction contracts, but this is often limited to undisputed debts. A set-off cannot be made against future debt or disputed debt. Most construction contracts generally limit the right of set-off, as this may be abused by the employer in a staggered payment model or by the contractor in an advance payment situation.

**3.17 Do parties to construction contracts owe a duty of care to each other either in contract or under any other legal doctrine? If the duty of care is extra-contractual, can such duty exist concurrently with any contractual obligations and liabilities?**

Parties to a construction contract owe a duty of care to each other. This is often an express term, however, in some instances, it has been implied into the terms of a construction contract as an industry custom. The contractual duty of care is often applied concurrently with the duty of care in tort for negligent acts of a contracting party.

**3.18 Where the terms of a construction contract are ambiguous, are there rules which will settle how that ambiguity is interpreted?**

Where an ambiguity arises, the general rules of contractual interpretation apply with the purposive approach being favoured by the Ghanaian courts. The courts adopt a 'commercial approach' to the interpretation of contracts, to give effect to the intention of the parties.

**3.19 Are there any terms which, if included in a construction contract, would be unenforceable?**

The courts will not enforce a term of any contract which is contrary to public policy or statute. Of commercial importance is the reluctance of the Ghanaian courts to enforce penalty clauses in contracts which permit an affected party to recover a lump sum considerably greater than its loss.

Additionally, the Ghanaian courts will not enforce the imposition of compound interest in a construction contract involving the Government of Ghana.

**3.20 Where the construction contract involves an element of design and/or the contract is one for design only, are the designer's obligations absolute or are there limits on the extent of his liability? In particular, does the designer have to give an absolute guarantee in respect of his work?**

In the absence of specialised legislation for construction contracts, implied common law terms apply to a designer's duty of fitness for purpose, and duty to exercise the reasonable skill and care expected of a professional carrying out work in the relevant discipline. Where the design contract is decoupled from the construction contract, there is an implied term of fitness of purpose, but there is no legal requirement for the designer to provide an absolute guarantee.

The appointment procedure of the designer may inform the extent of the designer's liability. The employer may impose a requirement for the designer to provide, as a collateral agreement, a guarantee to the contractor wherein the employer appoints the designer. Conversely, the contractor may require, as a condition for the construction contract, a guarantee from the designer in respect of the work where the employer employs the designer.

**3.21 Does the concept of decennial liability apply in your jurisdiction? If so, what is the nature of such liability and what is the scope of its application?**

The concept of decennial liability or latent defect insurance is not provided in Ghanaian law, but may be included in a construction contract. Latent defect insurance, typically for a 10-year period post-completion, may be included in a construction contract with such terms as to the scope and extent of liability being determined by the parties.

With specific reference to commercial buildings (i.e., schools, hospitals and office spaces) as defined under Ghanaian law, the law requires the owner of a commercial building to insure, and maintain commercial building insurance over the property.

## 4 Dispute Resolution

**4.1 How are construction disputes generally resolved?**

The mode of dispute resolution adopted for the resolution of construction disputes generally depends on the contractual terms adopted by the parties to the construction agreement. Thus, depending on the terms of the contract (whether it is based on FIDIC or NEC3 standard forms), and the business needs of the parties, they may adopt expert determination, negotiation, mediation, dispute adjudication boards, and international commercial arbitration or litigation. In most cases, international arbitration or litigation is treated as a last resort for dispute resolution.

**4.2 Do you have adjudication processes in your jurisdiction (whether statutory or otherwise) or any other forms of interim dispute resolution (e.g. a dispute review board)? If so, please describe the general procedures.**

Statutorily, Ghana does not have legislation that specifically regulates adjudication for construction disputes. Such processes are generally a matter of contractual arrangement. However, there are certain aspects of the transactional process for construction projects which are regulated by statutes which prescribe a dispute resolution method. For instance, the Public Procurement Act 2003 (Act 663), which regulates the public procurement process, provides that a contractor who is aggrieved by a decision of the public procurement entity may seek a review from the procurement entity itself first, and then follow up with a complaint to the Public Procurement Board.

**4.3 Do the construction contracts in your jurisdiction commonly have arbitration clauses? If so, please explain how, in general terms, arbitration works in your jurisdiction.**

While arbitration is normally treated as a last resort, it is generally preferable to litigation for the resolution of construction disputes. The Alternative Dispute Resolution Act, 2010 (Act 798) permits both institutional and *ad hoc* arbitration, where the arbitration agreement selects Ghana as the seat of arbitration. Thus, the parties may either submit the dispute to an arbitral institution and have that dispute administered under the rules of the chosen arbitral institution, or the parties may constitute an arbitral tribunal on an *ad hoc* basis to conduct the arbitration. While the arbitration is pending, and especially before the constitution of an arbitral tribunal, Act 798 allows the parties to seek redress from the High Court for provisional measures and interim orders for the preservation of assets, property and the grant of injunctions.

**4.4 Where the contract provides for international arbitration, do your jurisdiction's courts recognise and enforce international arbitration awards? Please advise of any obstacles (legal or practical) to enforcement.**

Ghana is a signatory to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention). The New York Convention has been incorporated into



Ghanaian law through Act 798. Thus, the Ghanaian Courts recognise and enforce foreign arbitral awards that comply with statutory requirements. A party seeking to enforce a foreign arbitral award must first apply to the High Court for leave of court to enforce the award in the same manner as a judgment of the High Court. In this application, the party seeking to enforce the foreign award must demonstrate that: (a) the award was made by a competent authority under the laws of the country in which the award was made; (b) a reciprocal arrangement exists between Ghana and this country, or that the award was made under the New York Convention; and (c) there is no appeal pending against the award. It is essential to submit an original copy of the award, or an authenticated award, and the arbitration agreement. If this application is granted, the award may be enforced as if it were a judgment of the High Court. However, the High Court will refuse to enforce a foreign arbitration award if: the award has been annulled in the place of arbitration; the challenging party did not receive sufficient notice to enable it to present its case; a party lacking capacity was not properly represented; the award does not deal with the issues submitted to arbitration; or the award contains a decision beyond the scope of the matters submitted for arbitration.

**4.5 Where a contract provides for court proceedings in your jurisdiction, please outline the process adopted, any rights of appeal and a general assessment of how long proceedings are likely to take to arrive at: (a) a decision by the court of first jurisdiction; and (b) a decision by the final court of appeal.**

The High Court of Ghana is typically the court of first instance in circumstances where the contract provides for court proceedings in Ghana. The aggrieved party (the Plaintiff) will issue a writ of summons setting out the reliefs demanded against the defaulting party. During the pendency of the action, the parties would be entitled to apply for orders of injunction, preservation, and security for costs. A dispute in the High Court may last for a period between two to four years. This estimation may vary based on the strategic objectives of either party. Upon delivery of the final judgment by the High Court, a party dissatisfied with the decision of the High Court has a right of appeal to the Court of Appeal within a period of three months. Once the Notice of Appeal is issued, the Registrar of the High Court will issue conditions of appeal which the appellant must satisfy before the record of appeal can be compiled by the Registrar.

Once the record of appeal is ready, it is transmitted to the Court of Appeal, and the appeal timelines for submitting written submissions is kickstarted. In practice, this process may last anywhere between 18 and 24 months. However, the Court of Appeal is not the final court of appeal. The final appellate court is the Supreme Court, which has a similar appellate process to the Court of Appeal. Thus, after the judgment of the court of first instance, it may take about one to three years to obtain a decision from the Supreme Court (the final court of appeal).

**4.6 Where the contract provides for court proceedings in a foreign country, will the judgment of that foreign court be upheld and enforced in your jurisdiction? If the answer depends on the foreign country in question, are there any foreign countries in respect of which enforcement is more straightforward (whether as a result of international treaties or otherwise)?**

Ghana is not a signatory to any international treaties for the enforcement of foreign judgments. Thus, there are two regimes for the enforcement of foreign judgments in Ghana. First, foreign judgments may be enforced under the registration system pursuant to the terms of the Foreign Judgments and Maintenance Orders (Reciprocal Enforcement) Instrument (L.I. 1575). Under L.I. 1575, the judgments of specified foreign courts may be registered and then enforced as a judgment of the High Court in Ghana. The party seeking to enforce the judgment may commence the process by filing an application with the High Court for the registration of the foreign judgment. Anyone aggrieved by the order of registration may apply to set aside the registration of the foreign judgment. The enforcement of judgments of the foreign courts mentioned in L.I. 1575 are more straightforward. Second, the foreign judgments may be enforced in Ghana under the common law approach. Under the common law system, the party seeking to enforce the judgment may have to issue a writ of summons and then sue on the basis of the foreign judgment, which is treated as evidence of the debt. One of the strategic options for speeding up the enforcement of the foreign judgment under common law is to initiate summary judgment proceedings. Essentially, the party enforcing the judgment will be requesting the High Court to grant judgment summarily based on the foreign judgment since the Defendant arguably has no defence to the action. The success of this strategy, however, depends on the defences raised by the party resisting the enforcement of the foreign judgment.



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