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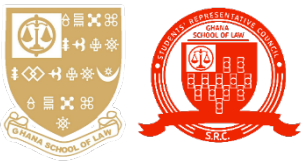

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IS AN ARBITRATION MANAGEMENT CONFERENCE MANDATORY OR DIRECTORY?

AN ANALYSIS OF SECTION 29 OF GHANA'S ALTERNATIVE DISPUTE RESOLUTION ACT, 2010 (ACT 798)

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IS AN ARBITRATION MANAGEMENT CONFERENCE MANDATORY OR DIRECTORY? AN ANALYSIS OF SECTION 29 OF GHANA'S ALTERNATIVE DISPUTE RESOLUTION ACT, 2010 (ACT 798)

Prince Kanokanga* and Regina Apaloo**

ABSTRACT

In Ghana as elsewhere, the practice of arbitration is recognised. The Alternative Dispute Resolution Act, 2010 ("the ADR Act") provides not only for the resolution of arbitration disputes but also for mediation and customary arbitration. It is not the purpose of this article to discuss issues about mediation and customary arbitration. There is an increase in arbitration disputes, hence, the need for arbitration. The article analyses section 29 of the ADR Act which provides for the holding of an 'arbitration management conference'. The analysis contained herein will define arbitration and an arbitration management conference. It also seeks to answer the question of whether an arbitration management conference is mandatory or directory in Ghana. In answering this critical question, an exploration of the concept of "party autonomy" will be made. Taken together, it will be observed that in practice, it is rare for an arbitration to proceed without the holding of an arbitration management conference to determine the nature of the claims and counterclaims, the date, time, place and estimated duration of any hearings as well as issues relating to discovery, production of documents, the rules of evidence, and the communication and receipt of the facts, exhibits, witnesses and related issues. Additionally, the issues of costs and the arbitrator's remuneration, the applicable arbitration rules, the language(s) to be used, the place of arbitration, and interim relief are also discussed.

Beginning with an introduction on the subject, we proceed to define what arbitration is and more importantly what an arbitration management conference is. After this, the focus of the article shifts to the conduct of an arbitration management conference. It discusses what happens during an arbitration management conference, such as, a tribunal imposing its authority on the arbitral process, becoming acquainted with the parties, and making

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disclosures to the parties regarding issues that may give rise to doubts about independence and or impartiality. The nitty-gritty issue of whether an arbitration management conference is mandatory or directory remains the crux of this treatise. A discussion on this pertinent question is answered in the conclusion.

1.0 INTRODUCTION

With the promulgation of the ADR Act on 30 May 2010, there has been heightened awareness of Alternative Dispute Resolution ("ADR") in Ghana.[1] ADR is a 'democratization imperative through the multiple door principles of access to justice.'[2]

The ADR Act regulates the collectively recognised ADR methods of resolving disputes, which include arbitration, mediation, and customary arbitration, rather than the normal trial process.[3]

The ADR Act is by and large modelled on the Model Law on International Commercial Arbitration ("Model Law") adopted by the United Nations Commission on International Trade Law (UNCITRAL) on 21 June 1985. The UNCITRAL Model Law aims to harmonise and modernise national arbitration legislation.[4] Another significant thing about the ADR Act is that it gave effect to the Recognition and Enforcement of Foreign Arbitral Awards adopted in New York on 10 June 1958 (the New York Convention).[5]

The Supreme Court in *De Simone Ltd v Olam Ghana Ltd* held that 'it is quite convenient to make reference to the relevant provisions of the model law which have been incorporated in national laws, and to see how the courts in the various countries have applied them.'[6]

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[1] See Edward Torgbor, *'Ghana Outdoors: The New Alternative Dispute Resolution Act 2010 (Act 798): A Brief Appraisal' (2011) 77 Arbitration: The International Journal of Arbitration, Mediation and Dispute Management 211 – 219*, Emilia Onyema, *'The New Ghana ADR Act 2010: A Critical Overview'* (2012) 28 Arbitration International 101 – 124.

[2] Henry Murigi, '*Contending with the Schools of Thought on ADR before and during Arraignments: A Departure from the Old Cultural Order'* (2021) 9 Alternative Dispute Resolution 202.
See, Richard Frimpong Oppong, *The Government of Ghana and International Arbitration* (Wildy, Simmonds & Hill 2017); Ayo Ayoola-Amale, *Alternative Dispute Resolution (ADR) and Justice in Ghana* (LAP Lambert Academic Publishing 2018

[3] Bakhita Koblavie & Christopher Nyinevi, *A Review of the Legislative Reform of Customary Arbitration in Ghana* (2019) 45 Commonwealth Law Bulletin 587 – 607; Adenike Aiyedun and Ada Ordor, *'Integrating the Traditional with the Contemporary in Dispute Resolution in Africa'* (2016) 20 Law, Democracy & Development 154-173.

[4] Carl-August Fleischhauer, *'UNCITRAL and International Commercial Dispute Settlement'* (1983) 38 Arbitration Journal 9 – 13; Gerold Herrmann, *'UNCITRAL Model Law – its Background, Salient Features and Purposes'* (1985) 1 Arbitration International 6 – 39; Michael Kerr, *Arbitration and the Court: The UNCITRAL Model Law* (1985) 34 International and Comparative Quarterly 1 – 24; Saturnino Lucio, *'The UNCITRAL Model Law on International Law'* (1986) 17 University of Miami Inter-American Law Review 313 – 322.

[5] Alternative Dispute Resolution, Act 2010 (Act 789), s 59(1)(c).

[6] [2018] GHASC 22.

Because the Model law is a collaborative effort among nations to facilitate the resolution of international commercial disputes through arbitration,[7] expressions to which a meaning has been assigned in the Model Law should equally bear the same meaning in the interpretation of the ADR Act in Ghana.

Without a doubt, it can be said that the Ghanaian judiciary recognises the importance of arbitration and generally will issue a stay of proceedings in favour of arbitration where there is a valid arbitration agreement, and will recognise and enforce both domestic and international arbitration awards.[8]

The present article aims to analyse section 29 of the ADR Act, which provides for the holding of an *'arbitration management conference'.* Additionally, the article seeks to answer the question of whether an arbitration management conference is mandatory or directory.

2.0 WHAT IS ARBITRATION?

Arbitration is a recognised ADR process where the parties agree in writing to refer any dispute(s), controversies or claims to a neutral third party, chosen directly or indirectly by the parties for a final determination.[9]

It is a condition precedent that 'for there to be a reference to arbitration there must exist a dispute.'[10] It is trite that arbitration is founded on contract.[11] Thus, at the heart of arbitration is the concept of *consent.*[12] Fittingly, one commentator has observed that, '[l]ike consummated romance, arbitration rests on consent.'[13]

In arbitration, instead of parties' dispute being heard in court, thus, publicly,[14] the dispute is determined privately and consensually outside of the court system by an arbitral tribunal which may include a sole arbitrator or a panel of arbitrators.

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[7] *Corporation Transnacional de Inversiones, SA de CV v STET International, SpA* [1999] Carswell Ont 2977.
[8] *Jesuit Fathers of Ghana Society v Patience Belinda Kofie & Others* [2020] DLCA 10039; *Carbon Commodities DMCC v Trust Link* [2021] DLCA 11553; *Dutch African Trading Company BV (DATC) v West African-Mills Company Ltd* [2022] DLCA 11307.
[9] Thomas Carbonneau, *'The Exercise of Contract Freedom in Making of Arbitration Agreements'* (2003) 36 Vanderbilt Journal of Transnational Law 1189 – 1196.

[10] Andrew Tweeddale and Keren Tweeddale, *A Practical Approach to Arbitration Law* (Blackstone Press 2002).

[11] Gary Born, *International Commercial Arbitration: Commentary and Materials* (Kluwer Law International 2001) 560.

[12] *PT First Media TBK (formerly known as PT Broadband Multimedia TBK) v Astro Nusantara International BV & Others and another appeal* [2014] 1 SLR 198, 372.

[13] William Park, *Non-Signatories and International Contracts: an Arbitrator's Dilemma* in Lawrence Newman and Richard Hill (eds), *The Leading Arbitrator's Guide to International Arbitration* (Juris 2008) 553.

[14] Ronald Bernstein et al (eds), *Handbook of Arbitration Practice* (Sweet & Maxwell 1988) 9.

Arbitration can be conducted on an ad hoc basis,[15] or administered by a permanent arbitration institution[16]or appointing authority, such as the Ghana ADR Hub, Ghana Arbitration Centre (GAC), Ghana Association of Certified Mediators and Arbitrators (GHACMA) and the Marian Conflict Resolution Centre (MCRC).

For business people, time is money, and in general, commercial parties prefer a speedy resolution of their cases over ponderous and lengthy litigation. Thus, some reasons why parties opt for arbitration as opposed to litigation, include the cost of litigation and the delays of the courts.[17]

Oswal and Krishnan observed that:

> Arbitration across the globe is based on certain fundamental principles, which include, inter alia, party autonomy in choosing arbitrators, the
>
> process of arbitration and laws, finality of arbitral awards, and minimum judicial interference.[18]

3.0 WHAT IS ARBITRATION MANAGEMENT CONFERENCE?

The concept of Case Management Conference ("CMC") is not unique to litigation,[19] as it also extends to arbitration. Unless otherwise agreed to by the parties, section 29 of the ADR Act *mandates* that an arbitral tribunal should within fourteen days of being appointed and upon giving seven days written notice to the parties, conduct an arbitration management conference with the parties and/or their representatives in person or through electronic or telecommunication media.[20]

The purpose of CMC, also known as preliminary arbitration meeting[21] is two-fold. Its primary aim is to assist disputants resolve their disputes amicably by determining the procedural timetable and the rules to be followed in the proceedings. The secondary aim is to, if the parties have not agreed on any procedural timetables or institutional rules, determine and

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[15] Ulrich Schroeter, *'Ad Hoc or Institutional Arbitration - A Clear Cut Distinction? A Closer Look at Borderline Cases'* (2017) 10 Contemporary Asian Arbitration Journal 141 – 199.

[16] Kariuki Muigua, *'Arbitration Law and the Right of Appeal in Kenya'* (2021) 2 African Journal of Arbitration and Mediation 1, 2.

[17] *Conforce (Pvt) Ltd v City of Harare* 2000 (1) ZLR 445 (H); Peter Ramsden, *McKenzie's Law of Building and Engineering Contracts and Arbitration* (7th ed, Juta & Co 2014) 231.

[18] Arjit Oswal and Balaji Sai Krishnan, *Public Policy as a Ground to Set Aside Arbitral Award in India* (2016) Arbitration International 651, 651.

[19] The High Court (Civil Procedure) Rules 2004 were amended by the insertion of Rule 7A in terms of the High Court (Civil Procedure) (Amendment) Rules 2014.

[20] Act 789 (n 5), s 29(1); See also, the Ghana ADR Hub and Mediation Rules 2020, art 19(3).

[21] Mark Hamsher and Patrick O'Donovan, *'Pre-hearing Procedure in LMMA Arbitrations' (2004) 70 Arbitration: The International Journal of Arbitration, Mediation and Dispute Management* 284 – 289.

implement a procedural timeline, to the greatest extent achievable. This includes defining issues for drawing up terms of reference, and making arrangements concerning the date and venue of the hearings without further ado.[22]

The arbitrator at an arbitration management conference should not be a mere observer but an active participant.[23] Thus, a case management conference is not a 'hearing' in terms of which the parties and/or their representatives lead evidence[24] or make oral submissions. This 'conference' is purely to put things in place for a smooth and successful hearing.[25] In conducting the arbitration management conference, the arbitrator should treat the parties equally, as the system of equal treatment of parties underpins the system of justice generally.[26]

Section 29 of the ADR Act was designed for the efficient management of arbitration.[27] It identifies the nature of the claims, counterclaims and defences thereto which the parties make or raise against each other.[28] The date, time, place and estimated duration of any hearings[29] as well as any issue pertaining to discovery, production of documents or the interrogatories are also decided on.[30]

At the arbitration management conference, the issue of the law, the rules of evidence and the burden of proof that apply to the proceedings are discussed.[31] There is an exchange of declaration regarding facts, exhibits, witnesses and related issues.[32] At a preliminary arbitration conference, the discussion may cover the need to resolve issues of liability and damages, whether these should be discussed separately, and whether the parties' summary of evidence should be presented orally or in writing .[33]

An arbitrator and parties could discuss the nature and form of an arbitral award.[34] In the absence of a discussion on the form of an arbitral award[35], section 49 of the ADR Act applies.

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[22] Davison Kanokanga, *Commercial Arbitration in Zimbabwe* (Juta & Co 2020) 99.
[23] *Marijeni v Mufudze & Others* 2000 (2) ZLR 498 (H).
[24] Evidence is a very important part of domestic and international litigation because it helps to determine the truth about disputed issues of fact. See generally, Robert Pietrowski, *'Evidence in International Arbitration'* (2006) 22 Arbitration International 373 – 410; Jeffrey Waincymer, *Procedure and Evidence in International Arbitration* (Wolters Kluwer 2012); Michal Malacka, *'Evidence in International Commercial Arbitration'* (2013) 13 International and Comparative Law Review 97 – 104; Nathan O'Malley, *Rules of Evidence in International Arbitration: An Annotated Guide* (OUP 2013).
[25] Kanokanga (n 22) 111.
[26] Alan Redfern and Martin Hunter, *Law and Practice of International Commercial Arbitration* (Sweet & Maxwell 2004) 185.
[27] Thomas Webster and Michael Bühler, *Handbook of ICC Arbitration: Commentary, Precedents, Materials* (Sweet & Maxwell 2014) 24-1.
[28] Act 789 (n 5), s 29(1)(a).
[29] Ibid, s 29(1)(b).
[30] Ibid, s 29(1)(c).
[31] Ibid, s 29(1)(d).
[32] Ibid, s 29(1)(e).
[33] Ibid, s 29(1)(f).
[34] Ibid, s 29(1)(g).
[35] Ibid, s 29(1)(h).

Lastly, the issue of costs and the arbitrator's fees are discussed,[36] and in general any other issue relating to the Arbitration[37] such as applicable arbitration rules, the language(s) to be used,[38] the place of arbitration,[39] issues of communication,[40] jurisdiction,[41] representation[42] and interim relief.[43]

The decisions of an arbitrator at an arbitration management conference should be in writing and should be served on the parties and/or their representatives.[44] It should be borne in mind that once an arbitrator has accepted an appointment to arbitrate, a tripartite contract is formed.[45]

Therefore, where an arbitrator and the parties agree on a procedural timetable or schedule for the conduct of the arbitration, the parties are bound by the terms of the agreement. The parties cannot directly or indirectly disavow that process or resile from that which was agreed to at an arbitration management conference.[46] It should be noted that an arbitrator may hold further arbitration management conferences where necessary upon notice to the parties.[47]

3.1 Conducting an Arbitration Management Conference?

There is no prescribed manner in which an arbitration management conference should be conducted. An arbitrator may request that disputants and or their representatives submit to the tribunal a case management proposal in advance of a case management conference.

Kanokanga & Kanokanga [48]observed that:

> It is not uncommon for the presiding arbitrator, in an arbitration with more than two arbitrators, to dispatch a letter to the parties or their representatives advising on the date, time and location of the preliminary meeting.

Generally, the letter dispatched to the parties and the co-arbitrators also serve as the meeting agenda.[49] The notice which is generally in the form of an email and/or a letter sent by the presiding arbitrator in an arbitration with more than two arbitrators or by a sole arbitrator

[36] Ibid, s 29(1)(i).
[37] Ibid, s 29(1)(j).
[38] Ibid, s 32.
[39] Ibid, s 11.
[40] Kanokanga (n 22) 101.
[41] Act 789 (n 5), s 24.
[42] Ibid, s 42.
[43] Ibid, s 38.
[44] Ibid, s 29(2).
[45] Emilia Onyema, *International Commercial Arbitration and the Arbitrator's Contract* (Routledge 2010) 34 -
[46] *Filta-Matix (Pty) Ltd v Freudenberg and Others* 1998 (1) SA 606 (SCA) 614B-C; *National Union of Metalworkers of SA and Others v Driveline Technologies (Pty) Ltd & Another* (2000) 21 ILJ 142 (LAC) [20] – [21].
[47]Act 789 (n 5), s 29(3).
[48] Davison Kanokanga and Prince Kanokanga UNCITRAL Model Law on International Commercial Arbitration: A Commentary on the Zimbabwean Arbitration Act [Chapter 7:15] (Juta & Co 2022) 214.
[49] Ibid.

giving the parties seven days' written notice to conduct the arbitration management conference in essence 'tells the parties what they should be prepared to discuss and decide' at the arbitration management conference.[50]

One commentator has observed that:

> This meeting allows the arbitrator to begin to impose their authority on the arbitral process, to become acquainted with the parties, to disclose to the parties if there is anything which might reasonably raise doubts as to their independence or impartiality in the conduct of the arbitral proceedings, and to define and shape the entire arbitral process. These preliminaries [are] held to ensure that the arbitral tribunal and the parties have a common understanding of how the arbitration is to be conducted and also make possible the establishment of a carefully designed framework for the conduct of the arbitration.[51]

It has been observed that by drafting an agenda the parties and/or their representatives know what to expect in advance, and it may encourage the parties and/or their representatives to agree in advance for the efficiency and effectiveness of the arbitration management conference.[52]

The agenda helps the arbitral tribunal and the parties set up a procedural timetable, which in turn assists the arbitral tribunal render an arbitral award which is final and binding on the parties.[53] The arbitration management conference meeting agenda which is accompanied by the notice for the arbitration management conference also serve as notice to the parties on the conduct of the arbitration, whether it will be in person, telephone or online.

An arbitration management conference can be conducted in person where the arbitrator and the parties and/or their representatives meet physically.[54] Another means may be through telecommunication.[55] In other words it can be conducted via conference call or voice over internet protocol (VOIP).[56] An arbitration management conference may also be conducted through electronic means.[57]

Before deciding to hold an arbitration management conference by any of the recognised methods, an arbitrator has to consider the various issues[58] as the 'attitudes and practices

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[50] Margaret Moses, *The Principles and Practice of International Commercial Arbitration* (CUP 2017) 175.
[51] Kanokanga (n 22) 99.
[52] Moses (n 63) 175.
[53] Kariuki Muigua, *Settling Disputes Through Arbitration in Kenya* (Glenwood Publishers 2017) 122.
[54] Act 789 (n 5), s 29(1).
[55] Ibid, s 29(1).
[56] African Institute of Mediation and Arbitration (AIMA) Rules of Procedure for Arbitration 2017, art 21 (2).
[57] Act 789 (n 5), s 29(1).
[58] Maxi Scherer, *'Remote Hearings in International Arbitration: An Analytical Framework' (2020) 37 Journal of International Arbitration* 407 – 448.

around conducting arbitral hearings remotely that seemed impracticable or impossible a few months ago have fast become the norm.'[59]

Therefore, before deciding to conduct an arbitration management conference,[60] it is essential for an arbitrator to consider whether telecommunication media or electronic media will allow the parties and/or their representatives an adequate, fair and equal opportunity to participate.[61]

Where the arbitration management conference is to be conducted online, the arbitrator must disclose to the parties the most suitable virtual platform[62] for holding the meeting, as well as outline the technical requirements and provide the parties with the necessary login details.[63] The beauty about virtual platforms is that they can be accessed anytime, anywhere. [64]

Where an arbitration management conference is held online, it is generally the responsibility of each party to the dispute to test their virtual platform connectivity before the meeting.[65] It is important for the participants to log in as early as possible and to ensure that they are as far away as possible, from any background noise.[66] If the participants decide that they are going to use their cameras, the cameras should be at a correct angle and if possible away from bright lights or glares from windows.[67]

Just like any other meeting, the participants at an arbitration management conference should not speak at the same time as other participants.[68] They should use physical gestures to indicate that they wish to speak,[69] and at all times, mute their microphones unless speaking.[70]

[59] Austin Ouko, *'The Disruptive Impact of Covid–19 on Arbitration Practice in the East African Region'* (2021) 9 Alternative Dispute Resolution 219, 221.
[60] In practice, it is generally important for the parties to agree by themselves regarding an agreed date which is convenient for them, and to enquire with the arbitrator whether such a date is convenient for all parties.
[61] The Association of Arbitrators (Southern Africa) NPC, *The Association of Arbitrators (Southern Africa) Member's Handbook* (Juta & Co 2022) 96.
[62] Some of the virtual platforms include Google Meet, Microsoft Teams, Skype, WebEx Meetings Zoom etc.
[63] The Association of Arbitrators (Southern Africa) NPC (n 73) 97.
[64] Alex Lo, *'Virtual Hearings and Alternative Arbitral Procedures in the COVID–19 Era: Efficiency, Due Process, and Other Considerations'* (2020) 13 Contemporary Asia Arbitration Journal 85 – 98
[65] The Association of Arbitrators (Southern Africa) NPC (n 61) 99.
[66] ibid.
[67] ibid.
[68] ibid.
[69] ibid.
[70] ibid.

4.0 WHETHER AN ARBITRATION MANAGEMENT CONFERENCE IS MANDATORY OR DIRECTORY

Section 29 of the ADR Act affirms the principle of party autonomy.[71] *Kanokanga and Kanokanga* observed that 'Party autonomy is the backbone and cornerstone of arbitration, and provides the 'freedom of the parties to construct their contractual relationship in the way they see fit.' Put differently, 'the Grundnorm of arbitration is party autonomy.'[72]

Therefore, Section 29 of the ADR Act encapsulates the concept of party autonomy. It is a non–mandatory provision of the ADR Act in terms of which the parties have the right to agree on whether to conduct or waive the need for an arbitration management conference. This is evidenced by the words 'unless the parties otherwise decide' which appear in section 29(1) of the ADR Act.

As a general concept, section 29(1) of the ADR Act 'codifies' the right of the parties to agree on any matter of procedure or the conduct of the arbitration including procedure and evidence.[73] Matters of procedure include:

(a) the time and place for holding any part of the proceedings;[74]

(b) the questions that should be put to and answered by the parties and how the questions should be put; [75] and

(c) the documents to be provided by the parties and at what stage of the proceedings,[76] and the application or non-application of the strict rules of evidence as to admissibility, relevance or weight of any material sought to be tendered and how the material should be tendered.[77]

It is pertinent to note that, subject to the ADR Act, an arbitrator can conduct an arbitration in a manner that the arbitrator considers appropriate.[78] An arbitrator as a 'master of its own

[71] Rachel Engle, *'Party Autonomy in International Arbitration: Where Uniformity Gives Way to Predictability* (2002) 15 (2) The Transnational Lawyer 324 – 356; Mia Louise Livingstone, *'Party Autonomy in International Commercial Arbitration: Popular Fallacy or Proven Fact?'* (2008) 25 Journal of International Arbitration 529 – 535; Samuel Anu Fagbemi, *'The Doctrine of Party Autonomy in International Commercial Arbitration: Myth or Reality?'* (2015) 6 Afe Babalola University Journal of Sustainable Development Law & Policy 222 – 246; Moses Oruaze Dickson, *'Party Autonomy and Justice in International Commercial Arbitration* (2017) 60 International Journal of Law and Management 114 – 134; Yifang Gao, *'A Brief Analysis of Party Autonomy in International Commercial Arbitration* (2021) 50 Advances in Social Science, Education and Humanities 123 – 127.

[72] Kanokanga & Kanokanga (n 48) 28 – 29.

[73] (n 40), s 31(3).

[74] Ibid, s 31(4)(a).

[75] Ibid, s 31(4)(b).

[76] Ibid, s 31(4)(c).

[77] Ibid, s 31(4)(d); This provision is similar to the Model Law, art 19(2).

[78] Ibid, s 31(2).

procedure'[79] in the event the parties do not agree, they could exercise their discretion to conduct an arbitral management conference.[80]

The words 'subject to' which appear in section 31(2) of the ADR Act which deals with the duties of an arbitrator, have been interpreted to mean 'except as curtailed by'.[81] Put differently, an arbitrator's discretion[82] in terms of section 31(2) of the ADR Act is 'curtailed by' or 'subject to' the rights of the parties to agree on any matter of procedure.[83]

5.0 CONCLUSION

An arbitration management conference is procedural. It does not delve into the substantive issues of a dispute, but it defines and shapes the entire arbitral process. Generally, the arbitration management conference can be convened by the parties and or the arbitrator before exchanging documents in arbitration to agree on the arbitral roadmap.

It can be convened by conference call, video conference or in person, that is face-to-face. Thus, an arbitration management conference is not mandatory as the parties have autonomy to agree on any issues of procedure and evidence. However, as a matter of practice, one cannot conduct an arbitration without conducting a preliminary meeting to discuss the essential issues concerning the arbitration, including the exchange of documents, the language to be used, the law applicable, the venue of the arbitrator, the tentative dates and time for the hearing, the duration of the hearing, the arbitrator's remuneration, the form of the arbitral award and the deadline for the delivery of the award.

[79] Kanokanga & Kanokanga (n 48) 216.
[80] Act 789 (n 5), s 29(1).
[81] *Commissioner of Police v Wilson* 1981 ZLR 451 (A); *S v Pillay* 1995 (2) ZLR 313 (H).
[82] *Giya v Ribi Trading* 2014 (1) ZLR 103 (H) 109C – D; *Makonye v Ramodimoosi & Others* 2014 (1) ZLR 111 (H) 116.
[83] Act 789 (n 5), s 31(3).