



CLAIMS & SETTLEMENT OF DISPUTES

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LEARNING OBJECTIVES

By the end of the session, participants will be able to:

- Explain the difference between a 'claim' and a 'dispute'.
- Explain the main categories of dispute resolution.
- Describe alternative methods of resolving disputes in contract administration

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Claims

- A claim is a request from either the Purchaser or Supplier for entitlement under the contract that has not been fulfilled
- Claims might result from;
 - unforeseen cost
 - disputes over the interpretation of contract clauses
 - disputes about the contract price
 - breaches of contract
 - adjustment of contract performance duration

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Reasons Why A Supplier May Submit Claims For Additional Payment

- Delayed payment by Procurement Entity
- When the Supplier is requested by Procurement Entity to deliver the goods to a farther destination than originally indicated in the contract
- A law ,Regulation or other Administrative Act is promulgated or amended by the government, which results in an increase in the price of the goods
- An increase in the price as a result of alteration of the specification by the Procurement Entity

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Disputes

A “dispute” in a contract is a disagreement about:

- **Money due to either party;**
- **Time for performance**
- **Performance standards**
- **Interpretation of contract terms and conditions**

A disagreement becomes a dispute when it is not possible for the parties to resolve it without resort to a formal resolution mechanism.

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Settlement of Disputes

Methods for resolving disputes in the order which they should be used are:

- **Avoidance**
- **Discussion**
- **Negotiation**
- **Mediation**
- **Adjudication**
- **Arbitration**
- **Litigation**

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Settlement of Disputes

Generally there are four main avenues for dispute resolution

- Negotiation
- Alternative Dispute Resolution(ADR)
- Arbitration
- Litigation

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Negotiations

What is negotiations:

- Discussion aimed at reaching an agreement
- Action or process of transferring legal ownership.

the intention of the negotiations is to reach a mutually acceptable solution, where both sides consider they have gained the best possible result in the circumstances.

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Negotiation

- **Advantages of Negotiations:**
- It is free from any procedural formalities
- The costs of any third-party involvement are usually avoided (except in the case of an independent advisor)
- A solution acceptable to all parties may be achieved on an amicable basis

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Negotiation

- **Disadvantages of Negotiation:**
- It may be that:
- there will not be any result in a settlement;
 - the process of resolving a problem may continue over a long period, which
 - may lead to acrimony between the parties, preventing effective communication.

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Negotiation

- If, after twenty eight (28) days from the commencement of,
- such informal negotiations, the Purchaser and the Supplier,
- have been unable to resolve amicably a Contract dispute,
- either party may require that the dispute be referred for
- resolution to the formal mechanisms specified in the Special Conditions of Contract

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ADR

ADR law in Ghana is the Ghana Alternative Dispute Resolution Act 2010, Act 798.

The various procedures under ADR are:

- **Mediation/ conciliation**
- **Adjudication**
- **Dispute review board/ Dispute advisor**

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Mediation

- It is a private voluntary dispute resolution mechanism in which a neutral mediator assists the parties in reaching a mutually acceptable solution to the dispute.
- Mediators have no authority to impose a judgment. They work with the parties jointly and in private sessions, assessing strengths and weaknesses of the parties' positions, areas of common ground , and the possibility of creative forward- looking solutions
- If there is a settlement as a result of the mediation, it is normal practice for the parties to record the terms in writing

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Adjudication

- The Adjudicator is an expert in the subject matter of the contract.

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Dispute Review Board/Dispute Advisor

- This is a more formalized version of mediation
- Dispute review board comprises a group of experts at the beginning of a contract, before disputes arise, to develop cooperation between Purchaser and Seller and to advise on controversial matters that may arise.
- It is intended for large complex contracts

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Advantages of using ADR

- Keep cost of dispute to a minimum
- Speedy resolution
- Confidentiality, avoiding the publicity of a court hearing
- The parties retain control over the procedure and outcome
- Maintain and improve communication between the parties

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Arbitration

Merits

- Carried out by experts
- Specifically organized
- Shorter time for decision

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Litigation

Merits

- Available to everybody
- Free process

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Demerits

- Slow and long process
- Judges sometimes lack technical expertise of the subject matter of dispute