

2 May 2024

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## Client Alert

# Ghana Supreme Court Affirms Ghana as Arbitration Friendly Jurisdiction

### Introduction

On Wednesday, 21<sup>st</sup> February 2024, the Supreme Court of Ghana handed down a judgment in Unichem (Ghana) Limited ("**Unichem Ghana**") and Anor versus Metropolis Healthcare (Mauritius) Limited ("**Metropolis Mauritius**") and Metropolis Healthcare (Ghana) Ltd ("**Metropolis Ghana**") unanimously upholding the decision of the Court of Appeal to refer the parties to arbitration in Mauritius despite Unichem's allegations that their signatures on the container agreements were forged.

### Impact of the Case

The Supreme Court's decision confirms the arbitration friendly approach of the Ghanaian Court which makes Ghana a pro-arbitration jurisdiction.

This should give assurance to prospective businesses that the Courts would generally enforce parties' choice of arbitration and ADR in their commercial contracts. The Ghanaian courts are unlikely to determine preliminary questions of jurisdiction, capacity, existence, or validity of the arbitration agreements. Such questions will be referred to the arbitral tribunal for determination under the competence-competence principle.

**Augustine B. Kidisil (Partner) and Paa Kwame Larbi Asare (Senior Associate) from our Ghana Disputes Resolution Practice acted for Metropolis Mauritius and Metropolis Ghana in the Supreme Court.**

### Executive Summary

The case arises from a share purchase transaction in which Metropolis Mauritius acquired shares in Unichem Ghana. The transaction was covered by a Share Purchase Agreement and a Shareholders Agreement ("**Container Agreements**"). The Container Agreements had arbitration clauses requiring parties to submit disputes to a Mauritius-seated arbitration.

Unichem Ghana subsequently sued in the High Court (Commercial Division), Accra, claiming that it never signed the Container Agreements and the signatures of its officers and shareholders appearing in both Container Agreements were forged. Thus, Unichem Ghana claimed that the share purchase transaction was fraudulent. Metropolis applied to the High Court to refer the dispute to arbitration in Mauritius in line the arbitration clauses in the Container Agreements.

The High Court Judge dismissed Metropolis' request for the dispute to be referred to arbitration. The Court made a preliminary finding that the plaintiffs' signatures were forged. Based on that finding, the Judge concluded that no arbitration agreement existed between the parties to warrant a referral of the dispute to arbitration. Metropolis appealed to the Court of Appeal.

The Court of Appeal overturned the decision of the High Court by a majority decision. The majority of the Court of Appeal took the view that the question of the existence of either the Container Agreements or the arbitration agreement was a question which under section 24 of the Alternative Dispute Resolution Act, 2010 (Act 798) should be determined by the arbitral tribunal itself. The dissenting Judge relied on the US Supreme Court decision in the case of *Prima Paint Corp. v. Flood & Conklin Mfg. Co.*, 388 U.S. 395, 18 L. Ed. 2d 1270, 87 S. Ct. 1801 (1967) ("**Prima Paint Case**") and took the view that where there is an allegation of fraud related to the existence of an arbitration agreement, the Court – and not the arbitral tribunal – is the proper forum to determine that preliminary question.

## Supreme Court Decision

On Wednesday, 21<sup>st</sup> February 2024, the Supreme Court (in a unanimous decision) upheld the decision of the majority of the Court of Appeal. The Supreme Court held that, given the clear terms of Sections 3 and 24 of the ADR Act, the "Prima Paint Rule" does not apply in Ghana. The Supreme Court therefore stayed the High Court proceedings and directed the parties to go through arbitration as provided under the terms of the arbitration agreement.

This decision therefore confirms that an arbitral tribunal is competent to determine its jurisdiction even where one of the parties alleges that the container contract (housing the arbitration agreement) was obtained by fraud or is otherwise illegal.