



***The Use of Arbitration as a Mechanism of Dispute Settlement in The
Ethiopian Insurance Industry***

By

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DECLARATION

I, Hawi Fekadu, hereby declare that this thesis is my original work and has not been submitted to any other institutions before. Further, I confirm that all resources used in writing the research have been duly acknowledged.

Declared by *Hawi Fekadu*

January 2026

Approval Sheet by the Board of Examiners

*The Use of Arbitration as a Mechanism of Dispute Settlement
in the Ethiopian Insurance Industry*

Approved by Board of Examiners

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I bear sole responsibility for any errors and the opinions presented here in below.

Acronyms

ACWPP- The Arbitration and Conciliation Working Procedure

ADR- Alternative Dispute Settlement

CC- The Civil Code of Ethiopia

CP- The Civil Procedure Code of Ethiopia

EIC- Ethiopian Insurance Corporation

NICE- National Insurance company of Ethiopia

NYC- The New York convention

UNICITRAL- United Nations Commission on International Trade Law

Abstract

Disputes, particularly in the claim-intensive insurance industry, are unavoidable. Unresolved conflicts create a burden for all stakeholders affecting the whole industry if not the economy in general.

Arbitration has been used for long as an alternative dispute resolution mechanism in Ethiopia and in recent years its use has increased to resolve commercial disputes, particularly the insurance industry uses arbitration by including in its policies. However, the theoretical advantages of arbitration are hardly obtained in real world and the enforcement of arbitration clauses in insurance policies is questionable.

This paper aims to explore and evaluate the effectiveness of Arbitration in the Ethiopian insurance industry as a dispute resolution mechanism by employing a mixed method approach and identify challenges that hinder the effective use of arbitration in the insurance industry finally reaching a conclusion and suggesting possible recommendation.

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Chapter one

1.1 Introduction

One of the vital role players in the economic dynamics of Ethiopia is the insurance industry which facilitates risk transfer and supports investment in various sectors. The insurance sector is showing rapid growth over the years and it is also believed that the awareness of the customers about the benefit of insurance has increased.

It is inevitable that disputes will arise between insurers, policyholders and third parties therefore it is essential to design an efficient and effective mechanism to settle these disputes so that the integrity and stability of the insurance industry is kept so that trust among stakeholders is built and justice is insured.

Long standing in Ethiopia's formal dispute resolution history is litigation through the formal court system, where it serves as the primary way for resolving legal disputes. However, the traditional litigation method is becoming less popular because it is deemed that court processes are often lengthy, costly, and adversarial, potentially hindering the smooth operation of commercial business relationships and due to this alternative dispute resolution (ADR) mechanisms such as arbitration, mediation and negotiation are gaining popularity globally as efficient and flexible alternatives to traditional litigation.

Among the ADR mechanisms, Arbitration is gaining more recognition as an alternative dispute resolution mechanism outside of the formal court system particularly in the insurance sector where insurance companies frequently include arbitration clause in their policies. The Black's law dictionary defines arbitration as "The reference of a dispute to an impartial third person chosen by the parties to the dispute who agree in advance to accept the arbitrator's decision issued after a hearing at which both parties have an opportunity to be heard". It is a private adjudication system where parties choose the arbitrators, the rules and place of arbitration. ¹

Arbitration has several advantages, the major ones being speed, confidentiality, expertise in specific subject matters, and party autonomy in selecting the decision-maker and

¹Margaret L. Moses, *The Principles and Practice of International Commercial Arbitration* (Cambridge University Press, 2008) 14

procedural rules.²Therefore, it is important to further explore the tangibility of these perceived advantages and disadvantages of arbitration in practice and explore specifically the application and effectiveness of arbitration in the Ethiopian commercial dispute resolution dynamics focusing on the insurance industry which is known as a dispute filled sector.

This thesis mainly and solely focuses on the Ethiopian insurance sector and tries to study the use of arbitration as a mechanism for dispute resolution within the insurance industry. It will explore existing legal and institutional framework governing arbitration in Ethiopia, evaluate the extent to which arbitration is currently utilized within the insurance sector, point out possible advantages and disadvantages of using arbitration from the perspective of the insurance industry stakeholders, and investigate potential challenges in utilizing it and opportunities for its further development.

Finally, this research seeks to contribute to a better understanding of the use of arbitration as a dispute resolution mechanism in the Ethiopian insurance industry in general and pave a way for further and future studies of its use as efficient and effective dispute resolution mechanism in the insurance industry.

1.2 Background of the study

The insurance industry in Ethiopia over the years has undertaken a substantial transformation and plays a significant role in the country's economic steadiness and growth. The insurance industry supports individuals, businesses, and the overall economy of the nation by laying a safe ground for various risks. However, characteristic to the nature of insurance involving numerous policies, diverse risks, and frequent claims is the certainty of disputes arising between insurers and policyholders. These disputes can be caused by different interpretations and understandings of policy terms, claim valuations, liability issues, and other contractual obligations.

If disagreements in insurance keep on unresolved, they would leave a substantial burden on all involved parties. Policy holders buy insurance policies so that they can safely pass financial

² Charles L. Bernheimer, *The Advantages of Arbitration Procedure (The ANNALS of the American Academy of Political and Social Science, 1926)*

hardships when a risk comes therefore delays in claim settlement can lead to financial hardship and frustration, missing the whole purpose of having an insurance coverage. With insurers, unresolved and prolonged disputes will lead to unnecessary administrative costs, reputational damage, and harm relationships with their customers. Moreover, accumulation of unresolved disputes can negatively impact the efficiency and overall performance of the insurance industry, possibly deterring its contribution to economic growth.

The traditional litigation mechanism has its limitation in addressing the somehow complex and technical nature of insurance disputes, therefore the commercial landscape in Ethiopia is more inclining towards resolving dispute arising through ADR mechanisms. ADR is becoming more favorable because it is believed that it offers efficient, cost-effective, and less adversarial means of resolving conflicts. The most recognized ADR mechanisms are negotiation, mediation and arbitration and among this arbitration is gaining more recognition as an alternative dispute resolution mechanism outside of the formal court system. And this is evident because insurance companies are frequently including arbitration clause in their policies.

This may give the impression that Arbitration is acknowledged by insurers for its potential benefits and its efficient in handling of disputes that commonly arise within the sector. Arbitration can deliver a faster and more efficient and specialized resolution, lacking in the traditional litigation mechanism.

However, it is important to carefully examine the issues surrounding the enforceability of arbitration clauses since an effective and fair dispute resolution is not ensured by the mere existence of an arbitration clause in insurance policies. Certain challenges arise with the enforceability of these clauses, such as fulfillment of the formality requirement of ART.6(1&2) of the ACWPP Proclamation No.1237/2021, the fact that insurance policies being standard form contracts including arbitration clauses leaving no room for policyholders the right to choose among other methods to settle disputes and this raises a concern of potential power imbalances between insurers and policyholders, which needs careful consideration. Moreover, the alleged advantages of arbitration, such as cost and speed, are not always realized in practice.

Thus, it is essential to have an in-depth understanding of the current use of arbitration as a dispute settlement mechanism in the Ethiopian insurance sector, focusing on arbitration emphasizing on its function and efficiency. This study looks into the practice of the utilization of arbitration by insurers and consumers and also tries to identify obstacles and problems that currently exist, and considers ways to improve the functionality of arbitration as a dispute resolution. This study intends to contribute to the development of a more effective and functional dispute resolution tool that ensures the prompt and equitable resolution of conflicts within the Ethiopian insurance industry, ultimately benefiting all involved parties and strengthening the sector as a whole. It will do this by analyzing the pertinent legal and institutional frameworks, and taking into account the unique characteristics of insurance disputes.

1.3 Statement of the problem

Insurance companies contain arbitration clauses in their policies and The Arbitration and Conciliation Working Procedure Proclamation No.1237/2021 Art. 6(1&2) states that, arbitration agreement should be in writing and it is deemed to be made in writing where it is signed by the parties and two witnesses. The 1960 Civil Code of Ethiopia under the elements of contract referring Art. 1678(c), 1719(2), 1720(1) &1727, no valid contract shall exist unless the contract is made in the form prescribed by law. It could be understood from the cumulative readings of Art 6(1&2) of Proclamation No. 1237/2021 and Art.1678(c) of the CC that for a valid arbitration agreement the formality prescribed by law should be fulfilled. But when it comes to the practice of insurance companies' policies are not signed by two witnesses and mostly the policy holder doesn't sign them. Therefore, it raises a question whether there is a valid arbitration agreement or not.

Another concern in insurance arbitration is the tendency of insurance lawyers to appoint one another as arbitrators. While these individuals bring valuable industry knowledge, their close professional ties raise questions about neutrality and impartiality and create a real or perceived risk of bias. This dynamic may ultimately allow a small circle of insurance lawyers to influence and potentially dominate the way arbitration is used as a dispute-resolution mechanism within the sector.

Policyholders often have low awareness of arbitration clauses because insurance contracts are standard-form agreements drafted by insurers, usually in complex English that many

cannot understand. Many policyholders also do not read the policy terms. As a result, they remain unaware of the arbitration requirement and take disputes directly to court without using arbitration as a primary dispute settlement mechanism hindering the efficient utilization of arbitration in the industry.

Even though it is widely presumed in the insurance sector that Arbitration clauses are optional, most insurance policies tell otherwise where arbitration clauses use the phrase “shall be referred to arbitration” therefore it is binding for the disputing parties to resort to arbitration first before using any other form of dispute settlement. But in practice insurers contest its bindingness by alleging they shouldn’t be bound it.

Therefore, this research seeks to explore and critically analyze the use of Arbitration as a dispute resolution mechanism in the Ethiopian Insurance Industry by examining the gap between the law and the practice regarding the form of arbitration agreement as well as its utilization.

1.4 Research Questions

1. Do arbitration clauses in insurance policies comply with the formality requirement stipulated under the Arbitration and Conciliation Working Procedure Proclamation No.1237/2021 article 6(1&2)? And what are the implications of non-compliance on their validity and legal enforceability?
2. What are the main factors influencing the use of arbitration as a dispute resolution mechanism in the Insurance Industry and possible concerns associated with neutrality, impartiality and bias?
3. How effectively is arbitration utilized by policyholders and insurers as a dispute resolution mechanism within the Ethiopian insurance industry?
4. How binding are arbitration clauses in insurance policies?

1.5 Research Objectives

The research has the following objectives: -

1. To analyze whether arbitration clauses on insurance policies comply with the form of agreement stipulated under the Arbitration and Conciliation Working Procedure

- Proclamation article 6(1&2) and the implication of its non-compliance on the validity and legal enforceability of the agreement.
2. To analyze the main factors influencing the use of arbitration as a dispute resolution mechanism in the Insurance Industry and analyze possible concerns associated with neutrality, impartiality and bias.
 3. To analyze the effective utilization of arbitration by policyholders and insurers in the Ethiopian Insurance Industry.
 4. To analyze to what extent Arbitration clauses in insurance policies are binding.

1.6 Research Methodology

This research will use a qualitative research approach and the approach is chosen to understand the legal frame work for arbitration and examine the practical gaps found in the use of arbitration in the Ethiopian Insurance Industry. To achieve the objectives of the study and get answers for the research questions above, empirical data will also be used.

1.6.1 Source of Data

The study has made use of primary and secondary sources of data.

- **Primary Sources of Data**

Interview with key informants, legal professionals from the insurance industry that have participated in arbitration tribunals (composed of legal department directors of selected insurance companies) and policyholders.

To understand the legal framework of the use of arbitration in insurance companies a thorough examination of the Arbitration and Conciliation Working Procedure Proclamation no 1237/2021, the Ethiopian Civil Code and Civil Procedure Code, international instruments such as NYC & UNICITRAL will be made. In addition, judicial decisions rendered by courts, cassation decisions and arbitration tribunals will be referred.

- **Secondary Source of Data**

As a secondary resource published books, book chapters, data from the internet relevant articles, journals and legal commentaries, reports, published and unpublished research papers, law reviews books will be used.

1.6.2 Data Collection Tools

1.6.2.1 Literature Review

An overview of the body of existing literature is essential while doing legal research. Among other things, it's critical to develop theoretical frameworks, find gaps that have previously been discovered by research, and support statements. It also acts as a data gathering tool and is necessary to have a clear understanding of the subject matter. Therefore, in order to obtain the aforementioned advantages, the study used different sources including books, journal articles, research papers and working papers, court decisions, cassation decisions and decisions of arbitration tribunals.

1.6.2.2 Key Informant's Interviews

An empirical approach is employed to assess the practical implications of arbitration with the legal and theoretical framework of arbitration that involves the collection of data through an interview with legal department directors from selected six insurance companies and the selection of the insurances was made with purposive sampling based on their year of establishment from old to recent. The interview only included legal department directors because mostly arbitration cases are handled by them and not given to officers. They also serve as arbitrators in other insurance disputes involving other insurance companies. Therefore, their exposure and expertise were taken into consideration.

Regarding policyholders an interview was conducted with fifteen (15) policy holders mainly selected based on their educational background Diploma and above. Their educational background is taken into consideration because it affects the policyholder's ability to read and understand the terms of the policy including arbitration clauses. Participants were chosen from multiple insurance companies based on the recommendation of insurance officers.

1.6.3 Method of Analysis

As the study is qualitative, the collected data were analyzed through narration, description and logical reasoning approaches.

1.6.4 Ethical Issues

The consent of the informants was obtained during the data collection and it was made sure that the participants understood the purpose and objective of the research before the collection of data.

1.7 Literature review

Arbitration is a widely used alternative disputes resolution mechanisms and there are many domestically written academic papers that cover aspects of arbitration, arbitration agreement, arbitration practice and related issues within the Ethiopian legal framework. Also, there are various international literatures that address the use of arbitration as a dispute settlement mechanism in the insurance industry in particular.

The question of whether Indonesian District Courts can hear insurance claims when the contract has an arbitration clause is investigated in Shehan Zihantara's³ (2024) article. The article makes the case that such terms legally oblige the parties to arbitrate disputes rather than taking them to the courts in accordance with Indonesian Arbitration Law (more especially, Articles 3 and 11 of Law No. 30 of 1999). Citing a particular court ruling (39/PDT.G/2021/PN PAL) as an example of a court that erroneously decided a dispute of this nature, the research comes to the conclusion that District Courts lack competence in these circumstances.

Moses⁴ in her book “The Principles and Practice of International Commercial Arbitration” chapter two explores the arbitration agreement; its function and purpose as well explained about arbitration clauses and submission agreement. She also discussed the principle of separability and the question of the arbitration agreement validity is critical whereas the consent to arbitration should be given freely, knowingly and competently. Furthermore, in this chapter in addition to validity of arbitration agreement issues like a defined legal relationship and arbitrability are discussed. Generally, the book discusses principles of arbitration by supporting and explaining them through the practice by providing a means to an important means of resolving disputes.

³ Shehan Zihantara, ‘Dispute resolution on an insurance policy that includes an arbitration clause: a study of award 39/PDT.G/2021/PN PAL’ (2024)15(1) *Gema Wiralodra* 444-448

⁴ Margaret L. Moses, *The Principles and Practice of International Commercial Arbitration*, (Cambridge University Press, 2008)14

Michael Young⁵ in his article covers the procedural flexibility of arbitration and its advantage in resolving insurance dispute in an efficient and cost-effective manner. He further discusses other procedural options available in arbitration in which circumstances these options arise, the article further explores key features of reinsurance and high excess catastrophic liability arbitrations by adding a discussion on possible ways arbitration has been and can be used to resolve all types of insurance coverage disputes and concludes it by presenting guidelines for drafting arbitration clauses for primary and excess liability policies.

Boyani⁶ in this thesis analyzed the legal frame work of ADR in Kenya as a mechanism of dispute settlement in the insurance industry by evaluating its effectiveness in resolving insurance related disputes. She also identifies the challenges contributing to the low use of ADR in the insurance industry backed by the findings of the study and recommend necessary legal reform.

Berhanu Mengistu⁷ in his LLM thesis made a comparative study of Ethiopia's arbitration law with the NYC and the UNICITRAL and also with some jurisdictions and made a comparison with international arbitration practices and experiences and recommended the areas of the laws that should be harmonized with international arbitration laws. One of the issues discussed in his thesis was the formal requirement laid in the Ethiopian Arbitration and Conciliation Working Procedure Proclamation No.1237/2021 Art.6. He compared these provisions with that of the NYC and UNICITRAL and some jurisdictions stating that the two-witness requirement imposed by the Ethiopian law is an additional one and stricter than international laws where it is sufficient if the arbitration agreement is concluded in writing and is signed by the parties deemed enough for the fulfillment of the formal requirement without the need to impose such strict and demanding formal requirement of attesting arbitration by two witnesses.

In *W/ro Selamawit vs. Africa Insurance*⁸, the court ruled that arbitration agreements made between two parties is binding between them and one party can't refuse to be bound by it by the mere fact that he/she doesn't wish to settle the dispute by arbitration and that ART.12(4) & 31(3) is not giving option for the matter to be settled before court when one of the parties refuses to arbitrate

⁵Micheal D. Young, *Insurance Coverage Arbitration*, college of commercial arbitrators,2017

⁶Betty Boyani, 'Alternative Dispute Resolution (ADR) For Insurance Disputes: A Comprehensive Review of The Legislative Framework in Kenya' (LLM Thesis, University of Nairobi 2020)

⁷Berhanu Mengistu, 'Testing the compatibility of the progress of harmonization of Ethiopian Arbitration Laws Towards International Arbitration Laws and Experiences: A Comparative Study' (LLM Thesis, Jimma University 2022)

⁸File No.10324, Federal First Instance court trade and investment bench(unpublished)

because it doesn't want to but rather it is giving option for the willing party to explore other means of dispute settlement so its right to justice won't be lessened.

1.8 Significance of the study

The study will try to assess the practical use of arbitration in the Ethiopian insurance industry and dive into the challenges faced when using arbitration suggesting possible reforms needed for the effective utilization of arbitration.

Therefore, the study will be helpful not only for the academic purpose but also will be a great contribution for future researchers and scholars doing their research on similar and related topics as the study will add some components on the existing literature.

1.9 Scope and Limitation of the study

Scope of the study

This study will solely aim to explore the use of arbitration as a dispute resolution mechanism within the Ethiopian insurance industry. It mainly covers domestic arbitration a involving Ethiopian insurance companies. An emphasis will be given to the Arbitration and Conciliation Working Procedure Proclamation no 1237/2021, the Ethiopian Civil Code, Civil Procedure Code, the NYC and UNICITIRAL Model Law. In addition, few judicial decisions rendered by courts and arbitration tribunals will be analyzed to leverage available information on practical dynamics of arbitration and insurance practices.

Limitation of the study

One of the limitations with this study is that there are very limited comprehensive books and literatures available linked with the issue online since most of them are international sources with an e-book form making them difficult to accesses. The study doesn't include international arbitrations that insurance companies in Ethiopia were a party.

Chapter 2

2. General over view of the use of non-litigation dispute resolution mechanisms in the Ethiopian Insurance Industry

2.1 Alternative Dispute resolution in Insurance

One of the sectors that play a major role in the global economy is the financial sector where it serves as a hub for wealth circulation and investment leading to economic development. Due to many stakeholders involved, it is inevitable that disagreements occur and the sector is often accustomed with conflicts. Therefore, it is vital to resolve these conflicts efficiently through cordial dispute resolution mechanisms. Otherwise, any dispute that passes without being resolved not only harm, the parties involved it goes as far as affecting the overall economy.⁹

In recent eras the financial sector prefers ADR mechanisms over the traditional litigation process making it a common phenomenon of dispute resolution in the industry¹⁰. In the past, even though, the traditional mechanism of litigation has been the dominant method to resolve disputes, the financial industry is becoming more aware of its downsides, which include its adversarial nature, drawn-out hearings, unnecessary costs that hinder the best possible and timely results.¹¹

Among the sub- sectors in the financial sector that has an important role in the global economy¹² and is utilizing alternative dispute resolution mechanism for dispute resolution is the insurance sector where many insurance companies include ADR clauses in their policies.¹³In essence,

⁹ Diviya U, ‘Pivotal significance of alternative dispute resolution within the realm of Financial Institutions’ (2024)1Journal of Law and Legal Research Development 1,12.

¹⁰ Kumar, Vikash, Rise of Arbitration in Financial Institution (June 22, 2021). Available at SSRN:< <https://ssrn.com/abstract=3872029> or <http://dx.doi.org/10.2139/ssrn.3872029>>accessed on 30 May 2025

¹¹Ibid; Diviya (Note 9 above)

¹²Robert H. Jerry II, Dispute Resolution, Insurance, and Points of Convergence, 2015

¹³-The role of alternative dispute resolution in insurance coverage disputes (ThompsonMcMullanPC 12 April ,2023) <<https://www.t-mlaw.com/commentary/the-role-of-alternative-dispute-resolution-in-insurance-coverage-disputes>>

insurance gives individuals, businesses, and other organizations a means of controlling risk and gaining some degree of control over unforeseen future circumstances. But if a loss actually occurs, the insurance industry's attention turns to managing claims and settling any dispute that may arise.¹⁴ And the way these disputes are handled plays a major role for the healthy functioning of the industry.

ADR is an alternative method where parties resolve their dispute without going to court or trial.¹⁵ The parties use the services of an impartial third party to come to an agreement in order to prevent litigation. ADR's function is to give the parties a forum to settle their disagreement amicably and voluntarily where this function is more flexible and efficient than the traditional court proceeding. The common types of ADR¹⁶ are Negotiation¹⁷, Conciliation¹⁸, Mediation¹⁹ and Arbitration²⁰ and the use of these ADR mechanisms to resolve insurance disputes out of court is not a new phenomenon in the insurance industry.²¹

2.2 The non-litigation dispute resolution mechanisms (ADR) used in the Ethiopian Insurance industry?

ADR in Ethiopia is very common and is ancient since the population has been using them to settle disputes between themselves even when there was no modern and formal court system in the

accessed on 30 May 2025. And also see Robert H. Jerry II, *Dispute Resolution, Insurance, and Points of Convergence*, 2015

¹⁴ibid; Robert H (Note 12 above)

¹⁵Mnookin, Robert., *Alternative Dispute Resolution*. Harvard Law School John M. Olin Center for Law, Economics and Business Discussion Paper Series, 1998

¹⁶In *Mukemil Mohammed v Miftah Kedir*, The Cassation Division of the Federal Supreme Court identified four alternative dispute resolution mechanisms, viz., negotiation, conciliation, mediation, and arbitration. Cassation Case No. 38794 [2001EC] Fed. Sup. Ct. Rep., Vol. 9, p.182.

¹⁷Black's Law Dictionary (5th ed, 1979.), defines Negotiation as a process of submission and consideration of offers until acceptable offer is made and accepted. The deliberation, discussion or conference upon the terms of a proposed agreement: the act of settling or arranging the terms and conditions of a bargain sale, or other business transaction.

¹⁸Black's Law Dictionary (5th ed, 1979.), defines conciliation as the adjustment and settlement of a dispute in a friendly, un antagonistic manner used in courts before trial with a view towards avoiding trial and in labor disputes before arbitration.

¹⁹Black's Law Dictionary (6th edn.), defines mediation as a private informal dispute resolution process in which a neutral 3rd person, the mediator, helps disputing parties to reach an agreement. The mediator has no power to impose a decision on the parties.

²⁰Black's Law Dictionary (5th ed, 1979.), defines arbitration as referring of a dispute to an impartial (third) person chosen by the parties to the dispute who agree in advance to abide by the arbitrator's award issued after a hearing at which both parties have an opportunity to be heard.

²¹Ibid; Thompson McMullan (Note 13 above) and also see Veigas E, 'Alternative Dispute Resolution' (*Learnsignal*, 2 July 2024) <<https://www.learnsignal.com/blog/alternative-dispute-resolution/>> accessed 11 June 2025

country.²² Even though the insurance industry as any other industry in Ethiopia settle most disputes by litigation it also employs **non-litigation dispute resolution (ADR) mechanisms** to resolve conflicts.²³ Depending on the type of insurance matter and the insurance policy, parties can take their matter to ADR by waiving their right to institute their claim in courts through litigation. The most widely used non-litigation mechanisms in insurance are Negotiation and Arbitration²⁴

2.2.1 Negotiation

In the insurance sector, negotiation is a common and operative Alternative Dispute Resolution (ADR) technique. Its cost-effectiveness, swiftness, efficiency, and informality allow insurers, insured parties, and third parties to settle their differences. One of the main reasons why insurance companies prefer negotiation to resolve their disputes is it helps them to maintain their relationship with their customers and to preserve their future business relationship especially with big entities that could be long-term customer.²⁵

Most insurance disputes especially minor disputes are usually resolved at their early stages through discussions and mutual concessions.

2.2.2 Mediation

Mediation is a non-binding dispute resolution method where a mediator tries to make sure each party understands the other's point of view meeting each party privately and listens to their respective opinion on the matter pointing out common ground and helps the parties to reach a settlement.²⁶ Unfortunately, in practice Insurance companies doesn't often use formal mediation.²⁷

2.2.3 Arbitration

Arbitration is a dispute settlement mechanism where parties agree to settle future disputes or current disputes by referring to a neutral 3rd party called arbitrator and where the decision of the

²²Shipi M.Gowok, 'Alternative Dispute Resolution in Ethiopia- a Legal Framework' (2008)2, African Research Review 265

²³Tefera Eshetu and Mulugeta Getu, *Alternative Dispute Resolution, teachingmaterial*,217-228

²⁴ See policies of Africa Insurance, United Insurance, Nile Insurance e.t.c

²⁵ Christopher, 'Negotiation as a Tool in Business Disputes || Business Litigation Law' (*Strategic Litigation Lawyers | Achkar Law*, 2024) <<https://achkarlitigation.com/blog-negotiation-as-a-tool-in-business-disputes>> accessed on 12 June 2025

²⁶ Margaret L. Moses, *The Principles and Practice of International Commercial Arbitration*, (Cambridge University Press,2008)14

²⁷ Interview with Ato Fekadu , Ato Solomon, Ato Mikias ,Ato,Olana, Ato Samuel ,May& June 2025

arbitration tribunal will be final and binding. Arbitration is very common in the insurance industry and is included in most insurance policies.

2.3 Common types of disputes in the Ethiopian insurance industry

A dispute arises between a policyholder and insurer when the beneficiary files for claim and the insurer denies it for various reasons. The dispute could arise from policy coverage, claims, and contract interpretation giving rise to insurance disputes. The causes of a loss, especially in auto accidents, and the extent of liability for damages, including consequential losses, are frequent points of controversy. Performance bonds, surety bonds, and matters pertaining to the creation and use of these instruments may also be common grounds of disputes.²⁸

- *Claim- Related Disputes*

Insurance disputes can arise from determining whether the event that has occurred is covered by the insurance or not. Determining whether the covered risk directly caused the loss is often times a point of dispute. Dispute may also arise when determining whether the party claiming compensation is entitled to the compensation or not²⁹. In addition, disputes on the amount of compensation are very common even after insurance companies accepted liability.

- *Consequential loss*

There may be disagreements about whether an insured person is entitled to reimbursement for indirect losses brought on by a covered incident, like missed wages as a result of auto damage.

- *Performance Bonds*

The terms and circumstances of performance bonds, such as the amount owed and the due dates for payments may give rise to disputes.³⁰

- *Bonds for surety*

There may be disagreements about how surety bonds should be interpreted and applied, especially when considering the relationship between the involving parties.³¹

- *Interpretation of the policy*

Conflicts over coverage and liability might result from different readings of the policy language.

³²

²⁸ Paul & Perkins, P.A. “Types of Insurance Disputes” (*Paul & Perkins*) <<https://paulandperkins.com/insurance-litigation/disputes/>> accessed 19 June 2025

²⁹Ibid.

³⁰Ibid, (Note 29 above)

³¹Ibid

³²Ibid,

Chapter 3

The Use of Arbitration as A dispute settlement mechanism in the Ethiopian Insurance Industry

3.1 Legal and Institutional Framework for Arbitration in Ethiopia

Arbitration is, at its core, a straightforward way of settling disputes. The parties mutually agree to refer their disagreement to a person whose judgment they trust. Each side presents its case before this chosen private decision-maker the arbitrator. The arbitrator listens to the parties, examines the facts and arguments, and ultimately issues a decision. This decision is final and binding not because it is enforced by state authority, but because the parties themselves have consented to be bound by it. Arbitration, in short, is an effective way of obtaining a final and binding decision on a dispute, or series of disputes, outside a court of law (although, because of national laws and international treaties such as the New York Convention, that decision will generally be enforceable by a court of law if the losing party fails to implement voluntarily).³³

Arbitration could be categorized depending on jurisdiction, institution and binding nature. Based on jurisdiction there is International and Domestic arbitration, based on institution and procedure and rules there is Ad-hoc arbitration and Institutional arbitration and based on extent of commitment voluntary and mandatory depending on the agreement and law.³⁴

Arbitration is not a recent occurrence in Ethiopia it is rather an ancient form of dispute resolution mechanism serving the society for centuries³⁵ but modern arbitration came into the picture when it was incorporated under the 1960's Civil and the 1965 Civil Procedure Code.³⁶ When it comes to Ethiopia it is hard to find a single definition for arbitration³⁷ even the Arbitration and

³³Alan Redfern and Martin Hunter, *Law and Practice of International Commercial Arbitration* (6th ed, 2015)

³⁴Agrawal A, "Types of Arbitration", (lawbhoomi 2025) <<https://lawbhoomi.com/types-of-arbitration/>> accessed 21 June 2025

³⁵ Arbitration and Its Early History <<https://www.abysinnialaw.com/study-on-line/adr/arbitration-and-its-early-history>> accessed 20 June 2025

³⁶HailegabrielG.Feyisa,'The Role of Ethiopian Courts in Commercial Arbitration' (2010) 4 (2) Mizan Law Review 297,300.

³⁷Assefa Gidey, *The Concept and History of Arbitration in Ethiopia* (2021)3

Conciliation Working Procedure Proclamation No.1237/2021 failed to define arbitration. There is also a confusion as to what Arbitration really stands for in Amharic translation because different laws give it different meaning.³⁸ The Amharic word for arbitration is mostly confused to mean “shimgilina”³⁹, “Giligil”⁴⁰ or “Irq”⁴¹ and different laws use these terms for arbitration interchangeably. We can understand from the readings of Proclamation No.1237/2021 that the term arbitration is translated as “YegelelegDagninet”. The root of the confusion arises from efforts to interpret and apply the concept of an arbitrator an institution imported from foreign legal systems through the lens of pre-existing domestic legal notions.⁴² Due to this it also seems that the courts are having an issue defining what arbitration really is. Under volume 9 file no 38794 the federal first instance court and the federal high court ruled that the mechanism that the disputing parties resolved their dispute with is “Irq” while the Federal Supreme Court Cassation bench ruled that it is “YegelelegDagninet” (Arbitration) since the decision was binding.⁴³

3.1.1 Legal Frame Work

3.1.1.1 The Civil Code and Civil Procedure Code

Before the coming into effect of The Arbitration and Conciliation Working Procedure Proclamation, the substantive aspect of arbitration was governed by the Civil Code and the procedural aspect was governed by the Civil Procedure and the two have contributed a lot for the introduction and development of modern arbitration in Ethiopia. The Civil Code (Proclamation No.165) of the 1960 under Book V, Title XX –Chapter 2 starting from Art.3325 deals with arbitration and The Civil Procedure Code of 1965 under Book IV, Chapter 4, starting from art 315⁴⁴ has incorporated arbitration provisions. The two legislations dealt with arbitration

³⁸see art.942,945,973,1275,1473,1765,2271&3325-3327 of the 1960 Ethiopian civil code, art 82,119-122&266 of proclamation no.213/2000 of the Revised Family Code

³⁹See for example, Civil Code Art; 973 (3),1275, (1)1472,1473, 2271, 3327; Revised Family Code Art.118-122; Proclamation No.550/2007, Art 6(7) & 28(1,2); Proclamation No.197/2000, Art 9(4); Proclamation No. 372/2003, Art 13(4)(c) see also Tilahun Teshome, “The Legal Regime Governing Arbitration in Ethiopia.” (2007)1 Ethiopian Bar Review 117

⁴⁰ See for example the headings of Civil Code Arts 941,945 and 1275; Revised Family Code Art.288; Civil Procedure Code, Art.315; Proclamation No 341/2003, Arts 5(6),15(3),19(3); Proclamation 37/96 Art 22(2); Proclamation 273/2002, Art 7(21); Proclamation No 377/2003 Art 143

⁴¹Fekadu Petros, ‘UNDERLYING DISTINCTIONS BETWEEN ADR, SHIMGLINA AND ARBITRATION: A CRITICAL ANALYSIS’ (2009) 1 Mizan Law Review 122.

⁴² Ibid.

⁴³See also cassation decision file no.97021&16062

⁴⁴See for example Art 350,352,355,356,357 & 461

agreements⁴⁵, the arbitral process and challenges and enforcement of arbitral award. It could be said that these two legislations are designed for domestic arbitration since the provisions of CC and CPC didn't deal with international arbitration.⁴⁶

These two legislations were lacking in many ways and they were criticized for not adequately addressing a number of issues, including the process of setting up and running arbitration centers, not adequately determining what matters are arbitrable and what are not, restricting the role of courts in the arbitration process, and the arbitration tribunal's ability to determine its own jurisdiction. Additionally, the provisions of the previous laws are completely at odds with the globally accepted rules of commercial arbitration. This regime was also criticized for granting courts maximum intervention in arbitration process.⁴⁷ Therefore the provisions from the CC except some provisions from the CPC are repealed by the Arbitration and Conciliation Working Procedure Proclamation.⁴⁸

1.3.1.1 The Arbitration and Conciliation working procedure Proclamation No.1237/2021

Ethiopia made considerable progress in economic and legal reforms by ratifying the 1958 New York Convention (NYC) on February 12, 2020, becoming the 33rd African signatory state.⁴⁹ Because it creates a consistent framework for accepting and upholding foreign arbitral rulings—a significant worry for investors—this measure is essential for attracting foreign investment. A major barrier for foreign investors was previously Ethiopia's "reciprocity" criterion, which meant that only awards from nations with judicial assistance treaties (like China) were enforceable. By guaranteeing the enforcement of foreign arbitral rulings, promoting neutral conflict resolution, and enhancing judicial efficiency, the NYC ratification boosts investor confidence. It is also anticipated that these changes, along with the implementation of The

⁴⁵ See the civil code Art 3325, here the arbitration agreement is referred as “Arbitral Submission” and the civil code defines arbitration agreement as a contract whereby the parties to a dispute entrust its solution to a third party, the arbitrator, who undertakes to settle the dispute in accordance with the principle of law. Art 3326(2) states that the arbitral submission shall be drawn up in the form required by law

⁴⁶Ibid; Hailegebriel (Note 37 above)

⁴⁷Seid Demeke Mekonnen ‘A comparative Analysis of the Ethiopian Legal Framework for Challenging Arbitral Award through Appeal’(2023) Bahir Dar University Journal of Law 103.

⁴⁸ See Art 78 of The Arbitration and Conciliation working procedure Proclamation No.1237/2021

⁴⁹Siyum Y, ‘Ethiopia Officially a Party to the New York Convention (NYC)’ (Yared Siyum& Associates Law Office (YSA) | Law firm in Ethiopia | Law office in Ethiopia | Legal Consultancy in Ethiopia | Ethiopian legal website, 2025) <<https://www.yسالawoffice.com/ethiopia-officially-a-party-to-the-new-york-convention-nyc/>> accessed 26 June 2025

Arbitration and Conciliation Working Procedure Proclamation No. 1237/2021, will modernize and upgrade Ethiopia's dispute resolution system.

From the readings of the preamble of the Proclamation No.1237/2021 we can understand that the aim of the Proclamation is to guide the implementation of international treaties and take into account the international practices and principles that the previous laws were lacking. With only a few minor improvements, such as a more thorough regulation of the substantive and procedural norms governing arbitrations, the new Arbitration Law is largely influenced by the UNCITRAL Model Law.⁵⁰The Proclamation was also inspired by Germany and Swiss Arbitration Laws.⁵¹

3.1.2 Institutional Frame work

As regard to the types of arbitration, there could be Ad Hoc Arbitration and Institutional Arbitrations. Ad hoc arbitrations are conducted without recourse to institutional arbitration rules and without the oversight of an arbitration institution where institutions may provide administrative or logistical services to it.⁵²On the contrary, institutional arbitrations are carried out in accordance with institutional arbitration rules and are supervised by an arbitral institution that is in charge of matters, including the appointment of arbitrators, setting their fees, and providing administrative assistance.⁵³

The known arbitrations institutions in Ethiopia are: - The Addis Ababa Chamber of Commerce and Sectorial Association (AACCSA), Ethiopian Mediation and Arbitration Center (EMAC), Ethiopian Mediation and Arbitration center. One of the changes introduces under the ACWPP is that it allows the establishment of private arbitration centers and it has given power to the Attorney General to supervise arbitration centers, issue and renew license and provided for criteria for the establishment of the same.⁵⁴

⁵⁰Elizabeth Oger-Gross | Tolu Obamuroh, 'Ethiopia Modernizes Arbitration Framework' (White & Case LLP, 2021) <<https://www.whitecase.com/insight-alert/ethiopia-modernizes-arbitration-framework>> accessed 24 June 2025

⁵¹Birhanu Mengistu 'Testing the Compatibility of the Progress of Harmonization of Ethiopian Arbitration Laws Towards International Arbitration Laws and Experiences: A Comparative Study' (LLM Thesis Jimma University, 2022)

⁵²Cleis Maria, 'Ad Hoc Arbitration' (*Jus Mundi* 2025) <<https://jusmundi.com/en/document/publication/en-ad-hoc-arbitration>> accessed 29 June 2025

⁵³Ibid;

⁵⁴see Art 18 of The Arbitration and Conciliation working procedure Proclamation No.1237/2021

It is also a common practice among insurance companies and the claimant parties to conduct arbitration in a private setting mostly in a lawyer's office or at a place of their choice. In an interview conducted with Ato.Olana⁵⁵, he mentioned that most of their arbitration cases were conducted in lawyers' offices.

3.2 Arbitration clauses in Insurance policies

3.2.1 Arbitration Agreement

The ACWPP under Art.2(1) defines arbitration agreement⁵⁶ as an agreement to be implemented in order to partly or wholly settle future or existing dispute that may arise from contractual or non-contractual legal relationship. Therefore, from this reading we can suppose that the Proclamation recognizes both Arbitration Clauses and Submission Agreement. Arbitration clauses are drawn up and agreed as part of the main contract before disputes arise and are applicable to future disputes while submission agreements are made after disputes have already arise.⁵⁷

Insurance companies in Ethiopia follow the first approach of arbitration where they incorporate an arbitration clause in their policies to resolve future disputes that may arise.⁵⁸ Some policies state that any difference arising from the policy shall be referred to arbitration while some state that only a difference in the amount shall be referred to arbitration. If we see for example the commercial vehicle insurance policy of Lucy Insurance S.C. it contains an arbitration clause where it is stated that all differences in amount arising out of this policy (liability being otherwise admitted) shall be referred to the decision of an arbitrator to be appointed by both parties. In the Commercial Vehicle Insurance Policy of Africa Insurance S.C. on the other hand, the arbitration clause states that all differences arising out of the policy shall be referred to arbitration. Such clauses in policies also deal with issues about appointment of arbitrators, number of arbitrators, manner of selection, dead line for commencement of arbitrations etc.

Under Proclamation No.1237/2021 arbitration clauses in contracts are treated as a separate and independent agreement. Since the ACWPP is largely influenced by the UNICITRAL model law,

⁵⁵Manger of Oromia Insurance legal service department, June 2025

⁵⁶See also Art. II/1 of NYC and Art.7/1 of UNCITRAL

⁵⁷ See Alan Redfern and Martin Hunter, Law and Practice of International Commercial Arbitration (6th ed, 2015) & see also Margaret L. Moses., The Principles and Practice of International Commercial Arbitration (Cambridge University Press, 2008)

⁵⁸ Policies of Africa, Lucy, EIC, Hibret, Zemen, Anbessa, Tsehay, NICE, Nile Insurance etc.

it has adopted the separability principle where the invalidity of the underlying agreement will not have an impact on the arbitration clause.⁵⁹ Therefore the arbitration clauses in insurance policies are separate from the policy in which they appear and the fact that a policy is deemed invalid will not affect or will not make the arbitration agreement invalid.

When the policyholder and the insurer agree on a policy that contain arbitration clause it is assumed that the parties have given their consent to settle future disputes through arbitration. Most arbitration clauses in insurance policies use the term “**shall be**” making it obligatory for the parties to use arbitration for a difference stated in the clause forfeiting their rights to settle those disputes in an ordinary court.⁶⁰ Hence, it could be said that arbitration clauses are mandatory arbitrations emanating from adhesive contracts.⁶¹

3.2.2 Validity Requirements for Arbitration Agreement

The New York convention Art. II states: -

- Each Contracting state shall recognize an agreement in writing under which the parties undertake to submit to arbitration all or any difference which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not, concerning a subject matter capable of settlement by arbitration.
- The term “agreement in writing” shall include an arbitral clause in a contract or an arbitration agreement, signed by the parties or contained in an exchange of letters or telegrams.

The ACWPP, on the other hand states that the arbitration agreement shall be made in writing signed by all parties and attested by two witnesses.⁶²

⁵⁹Art 19(1) of The Arbitration and Conciliation working procedure Proclamation No.1237/2021& Art. 22(2) of UNICITRAL Arbitration Rules,1976 where it is stated that “an arbitration clause which forms part of the contract and which provides for arbitration under these rules shall be treated as an agreement independent of the other terms of the contract. A decision by the arbitral tribunal that the contract is null and void shall not entail ipso jure the invalidity of the arbitration clause”. See also Margaret L. Moses, *The Principles and Practice of International Commercial Arbitration* (Cambridge University Press, 2008)18

⁶⁰ Margaret L. Moses, *The Principles and Practice of International Commercial Arbitration* (Cambridge University Press, 2008)17

⁶¹ Temesgen Wondmagegn, ‘Mandatory Arbitration in Light of The New Ethiopian Arbitration and Conciliation Working Procedure Proclamation No.1237/2021: A Doctrinal Study’ (LLM Thesis, Addis Ababa University 2023)

⁶² see Art 6 of The Arbitration and Conciliation working procedure Proclamation No.1237/2021

Therefore, it could be said that for an arbitration agreement to be valid requirements such as consent, capacity, arbitrability and formality should be fulfilled. Let's discuss these requirements as regards insurance policies.

3.2.2.1 Consent and Capacity

Arbitration Agreement by itself is a contract made between two parties for a dispute settlement and when it comes to arbitration agreement in insurance it is a clause within a broader insurance contract. Therefore, due to its contractual nature the general requirements for contract are applicable. Except some mandatory arbitrations imposed by law, arbitration is a choice founded on a free will and this will or consent should be given freely, knowingly and competently.⁶³ And if there is no actual consent then the arbitration agreement may be invalidated.⁶⁴

One can't help but ask whether it could be said that policyholders of insurance have given their consent freely, knowingly and competently? Insurance policies are standard form contracts prepared by insurers therefore arbitration clauses are incorporated in the insurance policy as a mandatory pre-dispute settlement mechanism where policyholder have no scope of negotiation in the matter. Even though insurance companies don't coerce or force individuals to buy policies the "take it" or "leave it" nature of insurance contracts limits the policyholder's ability to negotiate on the terms including dispute settlement mechanisms. For what is known many policyholders in Ethiopia have no idea what the terms of the insurance policies are leave alone try to negotiate it so likely, not knowing they have consented to arbitration.⁶⁵ This is due to underwriters not explaining the terms of the policy to their customers as they should.⁶⁶

3.2.2.2 Arbitrability

For a dispute to be settled by arbitration the matter at hand should be arbitrable which means the dispute should be subject to arbitration⁶⁷. There is substantive and procedural arbitrability where

⁶³ Margaret L. Moses, *The Principles and Practice of International Commercial Arbitration* (Cambridge University Press, 2008)18

⁶⁴Samuel Getachew Kidanemariam, 'The Role of Courts in Arbitration in Ethiopia under Proclamation No. 1237/2021' (2023)3 *Middle East Res J Econ Management* 27,40.

⁶⁵ Interview with Ato.Fekadu and Ato.Solomon June 2025

⁶⁶ Interview with policyholders Ato. Misgana,Ato Yohannes and w/roFeyene June 2020

⁶⁷ Margaret L. Moses, *The Principles and Practice of International Commercial Arbitration* (Cambridge University Press, 2008) 20

substantive arbitrability is concerned with if the disputed matter is included in the arbitration agreement of the parties while procedural arbitrability deals with the procedural requirements such as time and specificity.⁶⁸ On Proclamation No. 1237/2001 non-arbitrable matters are listed under article 7.

3.2.2.3 Formality Requirement

The NYC Art.II states that an agreement should be in writing and it is deemed to be in writing where an arbitral clause in a contract or an arbitration agreement is signed by the parties or contained in an exchange of letters or telegrams. Under option I Art.7/3 of UNICTRAL MAL an arbitration agreement shall be deemed to be made in writing if its content is recorded in any form, whether or not the arbitration agreement or contract has been concluded orally, by conduct, or by other means. Margaret L. Moses argue that paragraph 2 of the NYC Art.II have interpretive issues poising questions as to whether the signature requirement apply both to the contract containing the clause and to the submission agreement.⁶⁹Different jurisdictions apply different interpretations and some follow strict interpretation where the arbitration agreement is only valid if it is in a contract or in a separate agreement signed by the parties.⁷⁰

The ACWPP under Art. 6 states arbitration agreement should be in writing, signed by all parties and two witness. Here the Ethiopian law has put additional formal requirement for the arbitration agreement to be attested by two witnesses. But it could be understood from the readings of the UNICITRAL and the NYC provisions that it is not mandatory for an arbitration agreement to be signed by the parties and be signed or attested by two witnesses.

When it comes to insurance, arbitration clauses are incorporated in insurance policies and one can't help but ask does the insurance policy need to be signed by both the policy holder and the insurer as well as signed or attested by two witnesses for the agreement to be valid? Since insurance policies are famous for not following form requirements under general contract it makes the question quite interesting.

⁶⁸Aron Degol, 'Notes on Arbitrability Under Ethiopian Law' (2011) 5 Mizan Law Review 150

⁶⁹Ibid. Margaret L (Note 67 above) she also adds it is generally the rule today in most jurisdictions that both the contract containing the arbitration clause or the submission agreement, must be signed.

⁷⁰Ibid.

Despite being written documents, policies are frequently issued with just the insurer's seal in real-world insurance operations. The policyholder seldom signs the paper them self, much less has two witnesses sign it.⁷¹ Therefore these pose a problem because in practice insurance policies do not fulfill the formal requirement for arbitration agreement stipulated by law.

- **Effect of Non-Fulfillment of Formalities**

Formalities may include functions such as the evidentiary function, the channeling function and the cautionary function and also protection of the interest of 3rd parties or protection of the weaker party.⁷² It appears that formalities meant to provide channeling and cautionary functions are probably created to function as validity criteria since both functions are linked with proving there was a full and free consent.⁷³

Insurance contracts have formality requirement that serve two purposes: **evidence** and **validity**. This means they prove the contract exists and ensure its legal enforceability⁷⁴ and from the reading of Art.657 (1) of the commercial code of Ethiopia it could be presumed that the function of the written formalities is primarily evidentiary rather than validity requirement as far as insurance contract is concerned.⁷⁵ But when we examine the effect of non-fulfillment of the formalities set under the CC, As per Art. 1720(1) & 1727(2) the contract will be of no effect.

Regarding this the cassation bench gave a different interpretation to the matter on file no.24703 Vol.7 where it ruled that insurance is a type of contract where the analogy of offer and acceptance is applied therefore the bench by citing Art.651, 654 and Art.657 of the commercial code explained that when the policy holder fills a form prepared by the insurance company asking to buy insurance coverage and when the insurance company signs on the policy it is presumed that the offer is accepted therefore a contract is made between the parties. Furthermore, the bench states that even

⁷¹Interview with Ato Fekadu Director of legal department at EIC, June 2025 Ato Solomon director of legal department at Lucy Insurance June 2025, Ato Mikiyas Director of legal department at Africa Insurance July 2025 , Ato Birhanu lawyer & previously worked at Tsehay Insurance also, The researcher tried to look into various policies of different policy holders such as Commercial Vehicle policy, fire policy, political violence and terrorism policy of Tsehay Insurance, Africa Insurance, Anbesa Insurance and observed that the policies even though contained arbitration clauses were not signed by the policy holder nor by two witnesses.

⁷²Fekadu Petros, 'Effects of Formalities on the Enforcement of Insurance Contract in Ethiopia' (2008) 1 Ethiopian Journal of Legal Education 4,6.

⁷³Ibid.p.10

⁷⁴Ibid.p.22

⁷⁵Ibid.

though as per Art.1725&1727 of the civil code it is implied that insurance contract should include signature of both parties and should be attested by two witnesses there is a special law governing insurance i.e. commercial code and, in this code, there is no such requirement and, in this case, the commercial code prevails over the civil code.⁷⁶

When it comes to arbitration agreements found in insurance policies the validity of the main insurance contract wouldn't interest us because as mentioned earlier because of the separability principle the fact that the main contract becomes null and void doesn't affect the arbitration clause. This in turn means that the arbitration clause on the policy is treated as separate and independent agreement, it is critical to examine the validity of such agreement and examine the effect of the non-fulfillment of formality requirement placed under Art.6(1).

In practice insurance policies are not signed by two witness and they are hardly ever signed by the policy holder. Mostly only the seal of the insurer is there and sometimes the manager's name and signature might be there.

From the readings of Art.1719 (2), 1720(1) &1727 of the CC it could be inferred that arbitration agreements that doesn't observe the form requirement (written, signed by both parties and signed by two witnesses) is a mere draft.

Mostly a validity question arises when one of the parties deny agreeing to arbitration or raise an objection saying there is no arbitration agreement or the validity of the arbitration agreement is contested. By a dispute between Blue Cloud International P.L.C VS Africa Insurance the arbitration tribunal take a stand saying that arbitration agreements on insurance policies that doesn't follow the form requirement are deemed invalid. In addition, the cassation bench file no.38794, Mukemil Mohammed vs Miftah kedir on volume 9 made a ruling that arbitration agreements are to be treated as special contracts and an arbitral submission should fulfill the elements of contract to be deemed valid where if a special form is required then it shall be fulfilled for it to be a valid contract or agreement.⁷⁷

Regarding formality Ethiopia followed a strict approach than the UNICITRAL MAL because under option I Art.7/3 arbitration agreement is considered made in writing and valid where its

⁷⁶ See cassation decision file no.23003,24703

⁷⁷ cassation decision file no.38794

content is recorded in any form, whether or not the arbitration agreement or contract has been concluded orally, by conduct or by other means.⁷⁸ Other jurisdictions such as the French and the English Arbitration Laws doesn't require such strict approach, the French international arbitration law doesn't have any form requirement for arbitration agreement the English arbitration act states that the arbitration agreement is presumed to be made in writing whether the parties signed it or not.⁷⁹ Therefore a valid arbitration under the UNICITRAL and NYC and other jurisdiction may not be under Ethiopia's jurisdiction if failed to be signed by two witnesses.

It is believed that the intention behind for an arbitration agreement to be in writing and incorporating additional formal requirement is to prove that the parties have consented to arbitration.⁸⁰ It is thought that if an arbitration agreement is concluded in writing as required by the NYC, it will be sufficient to accomplish the goals of the formal requirement without imposing the more stringent or demanding formal requirement of attesting arbitration agreement by two witnesses. This is also the intention of the harmonized international legal frameworks and countries designated as pro-arbitration law countries. By imposing stricter requirement, it seems as though the ACWPP failed to fulfill its promise of adopting international practices and principles concerning arbitration.⁸¹

When it comes to the insurance sector as discussed previously the form requirement stipulated by law is barely mere almost sounding as if there is no valid or enforceable arbitration agreement contract and it is demanding and burdensome.

3.2.3 Are Arbitration Clauses in Insurance policies binding?

When examining different policies of various insurances, the arbitration clauses use the term "Shall **be**" be it for disputes arising out of any difference in the policy or difference in amount. That means both the policy holder and the insurer are obligated to submit their dispute to arbitration if aroused. The presumption is that once the policy holder and the insurer signed a policy that contains arbitration clause then they are forfeiting their right of using other dispute resolution

⁷⁸Berhanu Mengistu 'Testing the compatibility of the progress of harmonization of Ethiopian Arbitration Laws Towards International Arbitration Laws and Experiences: A Comparative Study' (LLM Thesis, Jimma University 2022)58

⁷⁹Ibid.

⁸⁰Ibid.

⁸¹See the preamble of the ACWPP No,1237/2021

mechanism first. If the arbitration clause use optional sounds like “may” or “could” it might be optional for the parties. But most arbitration clauses in insurance policies an obligatory phrase like shall. If we see for example the fire & Lightning policy of EIC the arbitration clause state that if any difference arises in connection with the policy the difference **shall** independently of all other questions be referred to the decision of the arbitrator.⁸²

Concerning this there is an interesting case where Africa Insurance was the respondent and W/ro Selamawit Teshome the applicant⁸³. The issue in this case was about arbitration tribunal where the applicant asked the court to appoint an arbitrator for them regarding a dispute that arouse from the applicant’s car parts being stolen and the respondent’s refusal to compensate the amount asked by the applicant. Even though the applicant asked the respondent to choose their arbitrator and notify them the respondent refused and the respondent gave a response to the court arguing that even though there is an arbitration clause on the policy and admitting to having an arbitration agreement they are not mandated to settle by arbitration because as per Art. 31(3) of proclamation no.1237/2021,if one party didn’t express its willingness to arbitrate then the requesting party can institute the claim to court and that implies that it’s not mandatory to be abided by the arbitration agreement. The court on the other hand gave a decision saying the arbitration agreements made between two parties is binding between them and one party can’t refuse to be bound by it by the mere fact that he/she doesn’t wish to settle the dispute by arbitration and that ART.12(4) & 31(3) is not giving option for the matter to be settled before court when one of the parties refuses to arbitrate because it doesn’t want to but rather it is giving option for the willing party to explore other means of dispute settlement so its right to justice won’t be lessened therefore the arbitration agreement between the parties is binding and gave order for the appointment of arbitrators.

3.2.4 The utilization of arbitration by policyholders as a dispute resolution mechanism.

Insurance policies are standard form contracts prepared by the insurer and the terms and conditions of the policy are solely prepared by the insurer where the policy holder have minimum to no opportunity to negotiate the terms of the policy or choose his/her preferred dispute settlement

⁸²See also commercial motor policy of Africa insurance, vehicle insurance policy of NICE insurance, performance bond of Lucy insurance etc.

⁸³ A decision rendered by the Federal First Instance Court Trade and Investment Bench on 11/08/2016 E.C, File No. 10324

mechanism. Most policy holders are individuals who don't understand how the insurance policy operates and doesn't bother to know or read what the terms of the insurance policies are. Even when the policy holder is a business entity the representative of the company responsible for such matter is reluctant to read and understand the terms and the lawyers of the company mostly get to see or advise on it not before the purchase of the policy but after mostly when a dispute has arisen and their expertise is needed. In the insurance sector if the policy holder signed or purchased a policy it is presumed that he/she has given their consent to all terms of the policy therefore to the arbitration clause also but in reality, most policy holders have no idea there is an arbitration agreement and that they are agreeing to it nor does they understand the repercussion of agreeing to arbitration as the primary dispute resolution mechanism is.

In Ethiopia insurance policies are prepared in English and contain many technical terms and complex words and this is a big challenge for a country like Ethiopia where most of policy holders have low literacy. And an arbitration clause is no exception where the clause is vague and difficult to be understood by a lay person. One of the reasons for such problem is that most insurance policies are transplanted from the English and they were not made to fit the standard of the country when transplanted.⁸⁴

When it comes to arbitration clauses in insurance policies leave alone the policy holders the underwriters themselves have no clue that they are there. Most policy holders don't know what arbitration really means. By an interview conducted with Ato.Fekadu(Director of legal service department at EIC) he remembered this an incident where the policyholder brought elders to settle the matter when told that the dispute is going to be settled through arbitration. Through an interview conducted with policyholder (with purposive sampling) even though most of them were educated (diploma level and above) they had no idea what arbitration is and that the policy contained arbitration policies.⁸⁵ Interestingly even where some interviewees knew what arbitration was, they were unaware that it is included in insurance policies.

⁸⁴Fekadu Petros, 'Effects of Formalities on the Enforcement of Insurance Contract In Ethiopia' (2008) 1 Ethiopian Journal of Legal Education 4

⁸⁵ Interview with Ato Misgana, May 2025 ,interview with w/ro Selamawit June 2025 ,interview with Ato.Yohanes June 2025 ,interview with w/roFeyne,Eyerus&Birtukanjune2025 ,interview with w/roZerfe from Varnero Construction p.l.c, interview with w/roTiblets may 2025,interview with Ato.Yosef,May 2025

Even when arbitration is initiated by the policy holder it is mostly a corporate entity and the occurrence of individuals initiating is very rare.

One of the main reasons for unawareness of policy holders is the insurance company officers not explaining the terms of the policy to them even though they are expected to by law and by the insurance company. Even if they do explain some of the terms of the policy they leave behind major details including dispute settlement clauses.⁸⁶ The policy holder's main aim is just to buy insurance and the focus of the insurance officer is to sell. Most policy holders don't bother reading the policies since they are bulky and not interesting to read and most of the interviewees said that they don't want to waste time reading all the provisions and would rather prefer it if the insurance officers explain it to them.

When it comes to insurance disputes, the insured party is more likely to file a claim than the insurance companies themselves. The fact that policyholders frequently aren't aware of the arbitration terms in their insurance contracts presents a big problem. As a result, these policyholders usually use traditional litigation in a court of law to pursue their claims. However, this widespread practice frequently results in a regrettable outcome: the court, which acknowledges the existence of a mandatory arbitration clause, promptly rejects their claims at the preliminary objection stage. This denial exposes a significant discrepancy between the policyholder's real comprehension and the assumed consent to arbitration at the time of policy issuance, costing all parties including the legal system time, money, and frustration.

Therefore, policyholders must actively participate in the process of purchasing insurance by carefully reading and comprehending all of the terms and conditions of their insurance policies. Underwriting officers have an equally important duty to thoroughly explain all relevant policy features, including any embedded arbitration provisions or other dispute resolution procedures.

⁸⁶ Interview with Ato.Fekadu & Ato Mikiyas June 2025 legal service directors of EIC and Africa insurance respectively

3.3 Types of Insurance Disputes Commonly Referred to Arbitration

Generally speaking, the two main disputes that are covered by arbitration in insurance policies are:
- dispute in amount and any difference arising from the policy.

If we see the policies of EIC, Africa Insurance, Lucy Insurance, NICE Insurance and so on their arbitration clause depending on the kind of policy states that all difference arising out of the policy or where liability is admitted by the insurer any difference as to the amount to be paid shall be referred to arbitration. For example, the performance guarantee bond and advance payment guarantee policy of Lucy Insurance states that all difference that arise from the policy shall be referred to arbitration while the Motor Vehicle policy states that difference as to the amount to be paid shall be referred to arbitration. The wordings of most policies are almost the same and they adopted their policies from the long-standing insurance company EIC.

3.3.1 Claims Settlement Disputes regarding Liability and Quantum of Damages and policy interpretation

As mentioned earlier arbitration clauses cover either only a difference in amount or differences that rise from the policy. Even though policies stipulate that only a difference in amount shall be referred to arbitration once it is referred to arbitration it is not only the dispute in amount that is solely to be discussed sometimes the insurer deny liability fully or partially and the arbitration tribunal will discuss liability also not solely amount of damage or claim.⁸⁷ By a dispute referred to arbitration tribunal between Begena Trading P.LC and Hibret Insurance: - the applicant Begena Trading claimed the insurer should pay birr 742,768.26 (Seven hundred forty two thousand seven hundred sixty eight) since it maintained the car in dispute by its own cost but the insurer not only disputed the amount but its liability also. The arbitration tribunal on the other had framed issues like whether the insurer is liable to pay the maintenance cost by the applicant and as such. This actually poses a question can the arbitration tribunal determine the amount without establishing a liability? The question of liability will be raised one way or the other.

⁸⁷Interview with Ato.Fekadu,Ato.Solomon,AtoOlana,AtoMikiyas .AtoSamuel,AtoAron ,June 2025

The other dispute that is settled by arbitration is any difference that arises from the policy including interpretation of the terms.

3.3.2 Disputes arising out of Extra-contractual Liability

In the insurance industry arbitration agreement mainly originate from policies and are designed to settle disputes that arise from the insurance policy and when disputes are settled with arbitration it is mostly from disputes that arise among the contracting parties that is the policy holder and the insurer.⁸⁸

Extra-contractual liabilities often times involve 3rd parties other than the policy holder where the policyholder causes damage to such party. This is a common phenomenon especially where an insured property causes damage to another property or person. Even though arbitration is included in 3rd party insurance of some insurance (for example Africa insurance), it is very rare that disputes with 3rd parties are settled by arbitration. The interview held with the selected insurance companies also shows the same⁸⁹. Unless otherwise the 3rd party and the insurer agree to settle the matter with arbitration which the occurrence is very unlikely these matters are settled by litigation or negotiation and courts are filled with claims arising extra-contractual liability.

3.4 Selection of Arbitrators

The ACWPP 1237/2021 under section 3 for Art. 11 and the following, deals with the number and designation of arbitrators. As per art.11 of the proclamation contracting parties can determine the number of arbitrators by agreement provided that the number of judges shall be odd number. Arbitration clauses on insurance policies include about designation of arbitrators and most of the clauses are similar in many ways. The clause let the parties to choose one arbitrator if failed then each will appoint and therefore there will be two arbitrators and if these two arbitrators can't reach on decision by themselves then they will select an umpire before entering upon the reference (see for example the policies of Africa, Lucy and NICE insurance).

⁸⁸Interview with Ato.Fekadu, June 2025

⁸⁹Ibid.

Among those the EIC Fire and Lightning policy is more detailed and explanatory dealing with issues such as matters to be referred to arbitration, manner of appointing and replacing arbitrators and issues related to costs of reference and award.

The problem that is visible from the arbitration clauses is that proclamation no.1237/2021 art. 11 has determined the number of arbitrators to be odd number and if they failed to agree then three but the readings of the policies give the impression that if the parties couldn't agree on one arbitrator then they will appoint two arbitrators by each for decision and if this arbitrators reached on decision there is no need for them to appoint an umpire, they only appoint an umpire if they can't reach on decision by themselves. Therefore, polices are not complying with the odd number rule in appointing an arbitrator.

In practice the claiming party will request in writing for an appointment of an arbitrator (mostly policy holders are to initiate it) to the other party (the insurer) and mostly they don't reach an agreement they each choose their side of arbitrator and together the appointed arbitrators together chose an umpire.

3.5 Factors prompting the use of Arbitration as dispute settlement mechanism

Arbitration has many advantages over the traditional court litigation which includes speed, cost, confidentiality, flexibility and expertise. While some of its disadvantages could be limited ability to appeal and arbitration selection disputes.⁹⁰ But it is important to examine this advantages and disadvantages of arbitration in relation to the insurance sector in general and in the Ethiopian context in particular.

3.5.1 Advantages of using Arbitration as a dispute resolution mechanism in the insurance industry

Arbitration in insurance has numerous advantages both to policyholders and insurers. It provides a faster, cost effective and expert-driven solution to settle disputes arising out of the insurance

⁹⁰ LexisNexis, 'Arbitration vs. Litigation: Making the Right Choice', (LexisNexis 20 September 2023) <<https://www.lexisnexis.com/community/insights/legal/b/thought-leadership/posts/arbitration-vs-litigation>> accessed 18 July 2025

relation. Especially in cases where court proceedings are time consuming and lack the necessary expertise for insurance disputes arbitration becomes in hand.⁹¹

- **Faster resolution**

When compared to regular court procedure, arbitration offers a resolution that is visibly faster. This is due to a number of reasons, such as arbitration cases being usually settled in a few of months, giving policyholders timely resolution of their disagreements. Arbitration sets a shorter timetable for conflict resolution than court trials, which usually drag on for several months, causing policyholders to lose a significant amount of time and experience prolonged financial insecurity that affects negatively the very purpose policy holders buy insurance. But arbitration handles this problem accelerated procedure, therefore the speed and efficiency of arbitration make it a practical substitute for the traditional litigation which is a drawn-out and onerous processes, giving a quicker justice and a more effective means of settling disputes which is common in the insurance industry.

- **Lower Costs**

Compared to the traditional litigation, arbitration has a considerable financial benefit because it renders a faster resolution both the insurer and the policy holder can save time and their resources and policyholders can get the compensation due to them fast rather than waiting for it longer. Policyholders will be affected financially by the high costs of litigation, cost of attorneys, file opening fees, and other procedural fees. On the other hand, arbitration lowers these legal and procedural expenses, making it a more economical option.

- **Expertise**

This is the best advantage arbitration could offer to insurance disputes. Insurance dispute involves technical issues that needs an expert who is familiar with the insurance business and know the technical issues and arbitration gives a chance for both the policyholder and the insurer to select an expertise in the area therefore ensuring a fair decision. Courts mostly lack

⁹¹ 'Insurance Law: Advantages of Insurance Arbitration' (Ilk & Soy Law Firm 23 January 2025)<<https://www.ilkssoy.com/en/news-detail/insurance-law-advantages-of-insurance-arbitration>>accessed on 12 June 2025

judges who specialize in certain areas like insurance and while rendering a decision might not take into consideration the nature of the business or not understand technical details.

- **Flexible procedure**

Since arbitration follows a flexible procedure, it allows the parties to tailor the arbitration procedure to their specific need and likes such as selection of arbitrators and the rules of procedure.

- **Confidentiality**

Arbitration hearings are private proceedings where it is private and confidential enabling both the policyholder and the insurer to protect sensitive information from public disclosure helping then to protect their reputation.

- **Amicable Resolution**

Arbitration encourages a collaborative and less adversarial approach between the policyholder and the insurer potentially leading to an amicable resolution.

3.5. 2 Challenges/Disadvantages of using Arbitration as a dispute resolution mechanism in the insurance industry

Even though arbitration provides various advantages in settling insurance disputes it also has potential drawbacks.⁹²

- **Limited appeals**

Arbitration awards and decisions are final and binding if both parties agree to accept the decisions of the arbitrator. Therefore, if the arbitrator makes an adverse ruling the losing party has limited opportunity to challenge the decision.

⁹² - Raizner, J., 'How Arbitration Can Negatively Affect an Insurance Policyholder'(Raizner law 24 May 2022) <<https://www.raiznerlaw.com/insights/how-arbitration-can-negatively-affect-an-insurance-policyholder/>> accessed 22 June 2025&Simmons JSJ, 'Arbitration vs. Litigation in Insurance Claim Disputes - Simmons Law Group' (*Simmons Law Group - My WordPress Blog*, 30 January 2024) <<https://mylegalchampions.com/arbitration-vs-litigation-insurance-claims/>> accessed 22 June 2025

- **Costly for policyholders**

Arbitration is not a free procedure, and arbitrators must be compensated for their services, even if in some cases it might be a far less expensive option than litigation. If the amount of the contested claim is little, this might become an issue. In certain cases, pursuing arbitration could not be financially worthwhile since the expense would significantly exceed the amount of the contested claim.

- **Mandatory choice of forum**

Choice of forum and choice of law provisions may also be applicable if arbitration is required by an insurance policy. These provisions may compel policyholders to visit and comply with the laws of a state in which they do not currently reside and where the disputed property is located. As a result, any recoverable damages that would be accessible in the policyholder's home state but not in the state where the arbitration must occur under the provisions of the policy may be effectively eliminated.

- **Limited Discovery**

In arbitration, discovery—the process of obtaining evidence in a lawsuit—is usually more constrained. This may make it more difficult for a party to thoroughly look into the case and find pertinent information.

- **Potential for Bias**

In certain situations, one party may select the arbitrator on a regular basis, which could result in bias or the appearance of bias. This might be problematic, particularly if the arbiter depends on one party's recurring business as an income.

- **Lack of Transparency**

Arbitration proceedings are typically private, which means that neither the procedure nor the arbitrator's conclusions are accessible to the general public. Those looking for public accountability may find it challenging to comprehend the reasoning behind the decision due to this lack of transparency.

- **Mandatory Arbitration**

When a mandatory arbitration clause is stipulated in an insurance policy Even where the policyholder would rather litigate in court, they must use arbitration. Because it restricts the policyholder's alternatives, this might be viewed as a drawback.

3.6 Factors prompting the use of Arbitration as dispute settlement mechanism in the Ethiopian Insurance Industry

3.6.1 Factors related with the Advantages of using Arbitration

- **Flexibility**

Arbitration procedures follow a more flexible procedure than that of court procedure and the insurer and the other party is at liberty starting from selection of arbitrators, place of arbitration and rules of arbitration.⁹³ This allows the parties to adjust steps of the procedure to suit their particular needs and preferences. By an interview conducted with the selected insurance legal service directors all of them mentioned the flexible procedure of arbitration is one of its greatest features that make it better than court litigations because it sets a friendly environment for both the arbitrators and the parties and they can freely exchange information as well as present their matter without any stress.⁹⁴

- **Expert**

When a dispute arises the insurer and the policy holder can select an arbitrator who has an in-depth knowledge about the insurance industry and understands how the business operates specially insurers most of the time select an arbitrator from the industry. It is a common trade between insurance companies to select arbitrator from another insurance company. Therefore, the arbitrators already understand the nuances and technicalities of the insurance industry without the need for extensive explanation on matters from the parties unlike court judges who had a hard time understanding it. An expert arbitrator with the needed knowledge and experience can grasp insurance concepts quickly. This is one of the significant advantages of arbitration that makes it best suited for insurance disputes than litigation.⁹⁵

⁹³ Interview with Ato Fekadu,AtoSolomon,Ato,Mikiyas,AtoAron,AtoSamuel,AtoOlana,June 2025

⁹⁴Ibid.

⁹⁵ Ibid.

3.6.2 Factors related with the Disadvantages of using arbitration

- **Speed/Fast Resolution**

The presumed advantage of arbitration being faster than litigation seems to be a myth in reality when it comes to insurance disputes referred to arbitration. It takes as long as courts would take to render a decision sometimes taking up to two years thus forfeiting the presumption that arbitration is faster than litigation.

One of the contributing factors to this is that, most of the arbitrators including the umpire serve as an arbitrator in a part time bases. Some of them are full time university lecturers, some of them are full time lawyers, some of them are full time legal service directors or senior attorneys in insurance companies, some of them are engineers and loss assessors leading to their busy schedule and they don't make proper time to examine cases thoroughly.⁹⁶Due to their busy schedule the arbitrators often times give extended appointments leading to the dragging on of cases.

The other factor contributing to this is when an order is issued to governmental organs because the individual (private) arbitrators don't have a seal except from arbitration institutions such as chamber of commerce. Therefore, the party who requested the order or the responsible party (either the insurance company or the other party) should first take the order to court put on the seal of the court and then take it to the governmental organ to which the order is made. And this by itself is time consuming and tiring again dragging the case for a longer time.⁹⁷

- **Cost**

The cost of arbitration is more expensive when it comes to the case of insurance disputes in Ethiopia, because the arbitration fees are very high.⁹⁸The ACWPP, under Art. 46. States that the arbitration tribunal can decide on the fee and arbitration fees asked by arbitrators is usually higher compared with court fees. When it comes to court litigation a defendant is not required to pay a court fee while in arbitration both the plaintiff and defendant are both expected to pay the arbitration fee also in courts there is system laid for individuals who can't afford the court fee known as "YedehaDenb" and still people with low financial status can have access to justice but arbitration doesn't have such system leaving the poor behind. One of the reasons that make arbitration not favorable in Ethiopia is its cost and when it comes to insurance disputes the disputed amount can be very low thus in such cases arbitration won't be favorable.

⁹⁶ Interview with Ato Fekadu, Ato Solomon, Ato, Mikiyas, Ato Aron, Ato Samuel, Ato Olana, June 2025

⁹⁷ Interview with Ato. Mikiyas (Legal Service Director of Africa Insurance) , June 2025

⁹⁸ Ibid.

- **Limited appeal**

Arbitration awards and decisions are final and no appeal shall lie to the court.⁹⁹ An appeal can only be filed to the cassation and the cassation only deals with fundamental error of law. This limits the right to appeal of the losing party if there is a problem on the decision other than fundamental error of law such as issues with evidence then the losing party has limited opportunity to challenge the decision.

- **Low utilization of arbitration by policy holders**

Most policy holders have no awareness that insurance policies include arbitration clauses and their level of awareness about arbitration in general is very low.¹⁰⁰ Because of this they file their claim before the ordinary court sometimes leading to their claim being rejected by preliminary objection because it is not always that the insurers object the fact that the suit was supposed to be referred to arbitration. Therefore, arbitration clauses are not most of the time enforceable because most claims are made by policyholders and as discussed above the policy holders don't know about the arbitration clauses and how mandatory they are therefore posing a problem.

- **Selection of Umpire**

The other challenge that is noticeable is that when the disputing parties select their own arbitrators those arbitrators need to select an umpire together and they mostly don't agree on this and a court registrar will appoint an umpire for them.

3.7 Potential Risk of Impartiality and bias while using arbitration as a dispute resolution mechanism in the Ethiopian insurance industry

A significant concern in insurance arbitration is the widespread practice of insurers appointing each other's lawyers to serve as arbitrators.¹⁰¹ Although these individuals may have valuable industry knowledge, their repeated involvement in disputes within the same professional circle raises questions about the neutrality of the process. When arbitrators are consistently selected by

⁹⁹Art 49(1) of The Arbitration and Conciliation working procedure Proclamation No.1237/2021

¹⁰⁰Interview with Ato Misgana, May 2025 ,interview with w/ro Selamawit June 2025 ,interview with Ato.Yohanes June 2025 ,interview with w/roFeyne,Eyerus&Birtukanjune2025 ,interview with w/roZerfe from Varnero Construction p.l.c, interview with w/roTiblets may 2025,interview with Ato.Yosef,May2025,Interview with Ato. Abdi & Daniel, June 2025(some of the interviewees thought arbitration was “shimgilina” where they settle the dispute by involving the elderly)

¹⁰¹Interview with Ato Fekadu,AtoSolomon,Ato,Mikiyas,AtoAron,AtoSamuel,AtoOlana,June 2025

one side of the industry, their independence can be compromised, or at least appear to be compromised.¹⁰²

Moreover, when the same lawyers are repeatedly appointed by insurance companies, an arbitrator may feel subtle pressure whether consciously or unconsciously to issue decisions that do not jeopardize their likelihood of being selected again in future cases. Since such appointments can be an important source of income, arbitrators may develop an unspoken inclination to favor the interests of insurers, who are more likely than policyholders to be repeat players in arbitration proceedings. This creates an environment where the balance of fairness is difficult to maintain.¹⁰³

In the long term, this pattern of appointments can result in a small and interconnected group of insurance lawyers effectively shaping the arbitration landscape within the sector. Their influence can extend beyond individual cases to broader industry practices and norms. As a result, arbitration may evolve in a way that disproportionately reflects the perspectives and preferences of insurers rather than serving as a neutral and balanced mechanism for resolving disputes. This undermines trust in arbitration and limits its legitimacy as an equitable dispute settlement method for policyholders.¹⁰⁴

Another issue arises when an insurer receives an arbitral decision that is unfavorable to its interests. In such cases, there is a risk that the insurer may develop negative sentiments toward the arbitrator who issued the decision. Since insurers frequently appoint each other's lawyers as arbitrators, this dissatisfaction can influence future cases.¹⁰⁵ An insurer who feels wronged in one arbitration may act unfairly toward the same lawyer when that lawyer later serves as an arbitrator in another dispute. This may manifest through withholding future appointments, undermining the arbitrator's credibility, or exerting subtle pressure to secure more favorable outcomes.

¹⁰² Simmons JSJ, 'Arbitration vs. Litigation in Insurance Claim Disputes - Simmons Law Group' (Simmons Law Group - My WordPress Blog, 30 January 2024) <<https://mylegalchampions.com/arbitration-vs-litigation-insurance-claims/>> accessed 22 June 2025

¹⁰³ *Ibid.*

¹⁰⁴ *Ibid.*

¹⁰⁵ Interview with Ato Fekadu, Ato Solomon, Ato, Mikiyas, Ato Aron, Ato Samuel, Ato Olana, June 2025

Such dynamics create a cycle of informal retaliation and strategic behavior that further compromises the independence of arbitrators. Arbitrators who are aware that an unfavorable ruling could jeopardize their professional relationships or future appointments may hesitate to decide purely on the merits of a case. In this way, the structure of repeat appointments not only threatens impartiality but also exposes arbitrators to pressure from powerful industry actors. This amplifies concerns about fairness and reinforces the perception that arbitration in the insurance sector may be influenced by internal networks rather than objective decision-making.

Chapter Four

Conclusion and Recommendation

4.1 Findings

The key findings from this paper are the following

- **Inconsistency in Formalities of Arbitration Agreements:** There is a substantial gap between the formality requirement specified under the Arbitration and Conciliation Working Procedure Proclamation No. 1237/2021, Art. 6(1&2), where it is required for an arbitration agreement to be in writing, signed by the parties and attested by two witnesses. But in practice insurance policies often don't contain the signatures of policyholders, let alone two witnesses. This raises questions about the validity and legal enforceability of these arbitration clauses as a valid arbitration agreement. Also, some policies have contradicting number of arbitrators to be selected other than that of the proclamation where it is demanded for the arbitrators' number to be always odd numbers.
- **Low Awareness and utilization of arbitration among Policyholders:** Policyholders generally have very low awareness of the existence and implications of arbitration clauses in their insurance policies. This is largely due to the fact that insurance officers not disclosing the terms of the policies in a clear and detailed manner. On the other hand, the policy holders themselves don't bother to read the policies before buying them contributing to the problem. The other contributing factor is insurance policies being standard form contracts prepared unilaterally by insurers with no room for policy holders to negotiate and often the policies are lengthy and packed with technical and complex terms. Due to this most interviewees preferred litigation over arbitration the low awareness of policy holders about arbitration clauses and arbitration in general in consequence leads the policyholders to initiate their claims before courts, only for their cases to be rejected at the preliminary objection stage by an objection raised by the defendant claiming that the court has no jurisdiction to entertain the case because there is an arbitration agreement. This indirectly results in wasted time, resources, and frustration for all parties involved, including the courts.

- **Arbitration clauses on insurance policies are binding:** Most insurance policies use phrases like "shall be referred to arbitration," implying a binding obligation to use arbitration in practice policyholders go to litigation first and insurers dispute its bindingness. But clearly the wording of the clause indicates that the arbitration agreement is binding; therefore both the policyholder and the insurer should first resort to arbitration to settle their dispute within the scope of the policy before resorting to any other form of dispute settlement mechanism.
- **Possible concerns related with the use of arbitration regarding impartiality and bias:** The advantages of arbitration, such as speed & cost-effectiveness, is not always realized in insurance disputes. Arbitration proceedings often take as long as, or even longer than, court proceedings (up to two years), largely because arbitrators frequently work part-time and have busy schedules, leading to extended appointments. Additionally, delays occur when seeking court seals for orders to governmental organs. Regarding cost, arbitration fees in Ethiopia are more expensive than court fees. Moreover, the fact that insurance lawyers appoint each other as arbitrators can be exposed to bias and impartiality.
- **Limited Appeal of Arbitration Awards:** Arbitration awards are generally final with limited space for appeal, only for fundamental errors of law. Restricting the losing party's ability to challenge decisions based on other issues, such as evidence. Due to the above two challenges, most of the selected insurances for this paper preferred litigation over arbitration.
- **Challenges in Arbitrator Selection:** A noticeable challenge is the difficulty for party-appointed arbitrators to agree on a third umpire, often necessitating court intervention for the umpire's appointment.

4.2 Conclusion

This thesis, "The Use of Arbitration as a Mechanism of Dispute Settlement in the Ethiopian Insurance Industry," sees the sights of the existing landscape of arbitration within the Ethiopian insurance sector. It highlights that while arbitration offers theoretical advantages like faster resolution and cost-effectiveness over traditional litigation, these benefits are not always realized in practice. The other important matter is the widespread lack of awareness among policyholders regarding arbitration clauses in their insurance contracts in specific and lack of awareness of arbitration in general, mostly leading to them initiating claims in court.

Furthermore, the research identifies a gap between the formality requirement stipulated under Proclamation number 1237/2021 such as the two-witness requirement, which is often not met in many insurance policies. This raises questions about the validity and enforceability of such agreements. In addition, the fact that insurance companies appoint each other as an arbitrator may lead to a potential bias and impartiality. Although arbitration clauses use a mandatory phrase, insurers argue that the arbitration clauses are not binding therefore they shouldn't be forced to arbitrate creating confusion and inefficiencies with some insurers arguing they are not bound. Overall, the paper underscores the challenges in fully leveraging arbitration's potential in the Ethiopian insurance industry due to issues with consent, awareness, and compliance with formal legal requirements.

4.3 Recommendations

Based on the findings of this thesis, the following recommendations are put forth to add to the effectiveness and use of arbitration as a dispute settlement mechanism in the Ethiopian insurance industry:

1. Increase The Awareness of Policyholder:

Insurance companies should prepare clear and brief policies and communication strategies to raise the awareness of policyholders about arbitration clauses within their policies and arbitration in general. This could be achieved by providing easily understandable brochures, in local languages

so that the policy holders can understand it fully about what arbitration entails, its implications as a dispute resolution mechanism, and its advantages.

In addition, underwriting officers should be mandated and thoroughly trained to explain in detail the terms of the policies including arbitration provisions, when policy holders come to buy an insurance rather than merely focusing on selling the policy. This will at least give the policy holders to know what they getting themselves into and know the available dispute settlement options.

2. Update Arbitration clauses on Policies to Meet proclamation No. 1237/2021

Insurance companies must ensure that arbitration clauses in their policies strictly comply with the formal requirements stipulated under the Arbitration and Conciliation Working Procedure Proclamation No. 1237/2021, including the formal requirement and number of arbitrators. Therefore, they should update the arbitration clauses in their policies to avoid questions about the validity and legal enforceability of these agreements.

3. To Align Formality Requirements with International Standards

Legal reforms should be considered to align the formality requirement under the arbitration and conciliation working procedure proclamation No.1237/2021 with international standards such as the New York Convention and UNCITRAL Model Law and other jurisdictions which generally only require an agreement to be in writing and signed by the parties, to reduce practical hurdles and ambiguities so that the country can have a more liberal arbitration system.

4. Clarify the Binding Nature of Arbitration Clauses:

There is a need for guidance regarding the binding nature of arbitration clauses in insurance policies and this would provide certainty for both insurers and policyholders, preventing disputes arising from the enforceability of the arbitration agreement itself. If they put an arbitration clause in their policies they should abide by it.

5. Making The Arbitration Optional Than Binding

A mandatory arbitration clause is a bit unfair to the policyholders because most of the time they are not aware it is there and how binding it is. Also, due to the challenges mentioned on this paper most insurance policies don't even prefer arbitration therefore it is better for the arbitration clauses to be more open and be optional so that the parties can decide simultaneously when it suits their need rather than forcing them to arbitrate.

6. Promote Expertise and Efficiency in Arbitration Proceedings:

Even though it is believed that the arbitrators for an insurance dispute have the needed expertise to settle the dispute it wouldn't hurt to ensure that arbitrators possess specialized knowledge by providing consistent trainings on insurance law and business to effectively leverage the advantage of expertise. This will also help to diversify and widen the pool of arbitrators and lessen the risk of it being dominated by insurance lawyers.

7. To Have a Separate Supervisory Body

For an arbitration to be effective and efficient it is better to have a Supervisory body that oversees the overall functionality and system and a body that sees and deals with complaints from users regarding untimely resolutions or dragged cases for a long time or about arbitrators for ad hoc arbitrations.

8. Encourage Institutional Arbitration and Have Full Time Arbitrators

While ad-hoc arbitration is common in insurance related arbitration, promoting institutional arbitration through established centers like the Addis Ababa Chamber of Commerce and Sectorial Association (AACCSA) or the Ethiopian Arbitration and Conciliation Center (EACC) can provide more structured procedures, administrative support, and oversight, potentially enhancing efficiency and trust in the process. Also, since AACCSA has listed arbitrators, it won't be a problem for the disputing parties to an arbitrator that suits their need and narrows concerns regarding bias and impartiality. Furthermore, having full time arbitrators will help with time efficiency and attain fast resolutions.

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Interviews

Interview with legal Professionals

1. Interview made with Ato Fekadu Yami – Legal Service Director at Ethiopian Insurance Corporation, June 2025, Addis Ababa
2. Interview made with Ato Solomon Zelalem – Legal Service Director at Lucy Insurance S.C, May 2025, Addis Ababa
3. Interview made with Ato Samuel – Legal Service Director at Zemen Insurance S.C, June 2025, Addis Ababa
4. Interview made with Ato Mikias – Legal Service Director at Africa Insurance S.C, June 2025, Addis Ababa
5. Interview made with Ato Olana – Senior Attorney at Oromia Insurance S.C, June 2025, Addis Ababa
6. Interview made with Ato Aron Kassaye – Legal Service Director at Hibret Insurance S.C June2025, Addis Ababa

Interview with Policyholders

1. Interview with Ato. Misgana Assegid, May 2025, Addis Ababa
2. Interview with W/ro Selam Shewangizaw May 2025, Addis Ababa
3. Interview with Ato.Yohannes Mamo June 2015, Addis Ababa
4. Interview with Ato Yonas Ayalew June 2025, Addis Ababa
5. Interview with w/roZerfe Kebede June 2025, Addis Ababa
6. Interview with w/roFeyeneShibiru May 2025, Addis Ababa
7. Interview with Ato Yilikal Yemane May 2025, Addis Ababa
8. Interview with Ato Abellene Dawit June 2025, Addis Ababa
9. Interview with w/roTiblets Halefom June 2025, Addis Ababa
10. Interview with w/roMintimarHunegnaw June 2025, Addis Ababa
11. Interview with Ato Yenus Mohammed June 2025, Addis Ababa
12. Interview with Ato Daniel Chala June 2025, Addis Ababa
13. Interview with Ato Milkias Endeshaw June 2025, Addis Ababa
14. Interview with W/ro Hana Wotene June 2025, Addis Ababa
15. Interview with Ato.Samuel Mekonnen June 2025, Addis Ababa

Interview questions for legal professionals (with arbitration experience either as an arbitrator or a party)

1. General Information
 - Name (optional) _____
 - Position _____
 - Years of experience in the insurance Industry (Legal Field) _____
2. Does your company use arbitration to resolve insurance Disputes and how many cases have been entertained or is entertained by arbitration? Among this how many are initiated by your company?
3. What kind of insurance disputes are handled by arbitration mostly? And what factors determine the peruse of arbitration and how does the complexity of the claim or the identity of the counterparty influence this choice?
4. Have you ever participated in an arbitration tribunal? If so, what do you think are the advantages and dis advantages of using arbitration? And in relation to the coming into effect of proclamation 1237/2021 are there any tangible changes in how insurance arbitrations are conducted?
5. What practical gaps do you observe in the use of arbitration in insurance disputes? In addition, due to the fact that insurance disputes often requiring expert and technical knowledge, how and where do you find qualified arbitrators? Do you think the arbitrators

assigned have the needed impartiality, knowledge and expertise about insurance business and law?

6. What are the main challenges insurance companies faces while utilizing arbitration as a dispute settlement mechanism? And from your experience from litigation and arbitration which one is more effective in handling insurance disputes in regards of procedure, time, cost and other factors? (some say that procedures followed by arbitration tribunals is not different from courts)
7. How do you see the formality requirement stipulated under proclamation no.1237/2021 Art.6 with insurance policies. Do they comply with the formality requirement?
8. How do you see the level of awareness of customers about arbitration and arbitration clauses on insurance policies?
9. Some say that insurer's abuse arbitration clause's and use it to their own advantage. What is your opinion on this? And in your company are arbitration clauses binding or optional?
10. Do you think the current legal and institutional framework is efficient for the use of arbitration as a dispute settlement mechanism in the insurance industry? And which one do you use mostly the ECAA or AD Hoc arbitration centers?
11. What legal and institutional reforms do you think are needed for the effective use of arbitration for insurance disputes?
12. What do you think is the role of external institutions, such as arbitration centers, courts and legal professionals like you play in supporting and influencing Insurance companies to opt for arbitration than the traditional litigation process?
13. Do you have any additional comments or suggestions regarding the use of arbitration In the Ethiopian Insurance Industry? If you could propose one legal, institutional or industry led change to enhance the effective use of arbitration?

Thank you very much for your participation!

Interview Question for Policy holders

1. Name?
2. Level of education?
3. Which insurance company do you have policy?
4. What kind of insurance policy do you have?
5. Have you read the terms of the policy before you signed on it?
6. Have the insurance officers read you or explained to you about the terms of the policy including the dispute settlement clause?
7. How much do you know about arbitration?
8. Do you know that there is an arbitration clause on the insurance policy or do you know that you should settle your dispute with the insurer regarding the policy by arbitration before the court?

9. If your answer to the above question is yes, have you ever initiated an arbitration? If yes what was the challenges you faced?
10. If you have settled a dispute with arbitration, how do you asses the advantage of arbitration regarding cost and time?
11. From arbitration and litigation which one do you prefer?

Thank you!