

SPECIAL BILL SUPPLEMENT

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THE ARBITRATION ACT, 2020

ARRANGEMENT OF SECTIONS

<i>Section</i>	<i>Title</i>
PART I PRELIMINARY PROVISIONS	
1.	Short title and commencement.
2.	Application.
3.	Interpretation.
PART II GENERAL PROVISIONS	
4.	General principles.
5.	Scope of application of provisions.
6.	Meaning of “seat of arbitration”.
7.	Mandatory and non-mandatory provisions.
8.	Agreements to be in writing.
PART III ARBITRATION AGREEMENT	
9.	Construction of arbitration agreement.
10.	Separability of arbitration agreement
11.	Agreement not discharged by death of party.
12.	Power to refer parties to arbitration where there is arbitration agreement.
13.	Stay of legal proceedings.
PART IV COMMENCEMENT OF ARBITRAL PROCEEDINGS	
14.	Power of court to extend time for beginning arbitral proceedings.
15.	Application of Law of Limitation Act.

16. Commencement of arbitral proceedings.

PART V
ARBITRAL TRIBUNAL

17. Arbitral Tribunal.
18. Procedure for appointment of arbitrator.
19. Default to appoint sole arbitrator.
20. Failure of appointment procedure.
21. Arbitrator's qualifications.
22. Chairman.
23. Umpire.
24. Absence of Chairman or Umpire.
25. Revocation of arbitrator's appointment.
26. Power of court to remove arbitrator.
27. Resignation of arbitrator.
28. Death of arbitrator.
29. Filling of vacancy.
30. Joint and several liabilities of parties for fees.
31. Immunity of arbitrator.

PART VI
JURISDICTION OF ARBITRAL TRIBUNAL

32. Competence to rule on jurisdiction.
33. Objection to substantive jurisdiction.
34. Determination of preliminary point of jurisdiction.

PART VII
ARBITRAL PROCEEDINGS

35. General duty of tribunal.
36. Procedural and evidential matters.
37. Consolidation of proceedings.
38. Legal or other representation.
39. Power to appoint experts.
40. General power of tribunal.
41. Power to make provisional award.
42. Duty of parties.
43. Power of tribunal in case of default by party.
44. Enforcement of preemptory orders.
45. Attendance of witnesses.
46. Court powers.

- 47. Determination of preliminary point of law.
- 48. Rules applicable to substance of dispute.
- 49. Awards on different issues.
- 50. Remedies.
- 51. Interest.
- 52. Extension of time for making award.
- 53. Settlement.
- 54. Form of award.
- 55. Place where award treated as made.
- 56. Date of award.
- 57. Notification of award.
- 58. Power to withhold award in case of non-payment.
- 59. Correction of award or additional award.
- 60. Effect of award.

PART VIII
COSTS OF ARBITRATION

- 61. Costs of arbitration.
- 62. Agreement to pay costs in any event.
- 63. Award of costs.
- 64. Effect of agreement or award about costs.
- 65. Recoverable costs of arbitration.
- 66. Recoverable fees and expenses of arbitrators.
- 67. Power to limit recoverable costs.

PART IX
POWERS OF COURT IN RELATION TO AWARDS

- 68. Enforcement of award.
- 69. Challenging award on substantive jurisdiction.
- 70. Challenging award on serious irregularity.
- 71. Appeal on point of law.
- 72. Challenge or appeal on supplementary provisions.
- 73. Challenge or appeal on effect of order of court.
- 74. Saving for rights of person who takes no part in proceedings.
- 75. Loss of right to object.
- 76. Immunity of arbitral institutions.

PART X
ARBITRATION CENTRE

77. Establishment and operation of Centre.

PART XI
ENFORCEMENT OF ARBITRAL AWARDS

78. Recognition and enforcement of arbitral awards.
79. Deemed decrees.
80. Appealable orders.

PART XII
MISCELLANEOUS PROVISIONS

81. Service of notices.
82. Powers of court in relation to service of documents.
83. Reckoning periods of time.
84. Power of court to extend time limits relating to arbitral proceedings.
85. Notice and other requirements in connection with legal proceedings.
86. Application and construction.
87. Electronic signatures.
88. Accreditation.
89. Reciprocal enforcement.
90. Regulations, rules and practice directions.
91. Repeal, savings and transitional arrangements.

PART XIII
CONSEQUENTIAL AMENDMENTS

(a) Amendment of the Criminal Procedure Act

92. Construction.
93. Amendment of section 163.
94. Addition of sections 170A, 170B and 170C.

Arbitration Act,

(b) Amendment of the Civil Procedure Code

- 95. Construction.
- 96. Addition of section 10A.
- 97. Addition of sections 22A, 22B, and 22C.
- 98. Addition of sections 64B, 64C and 64D.

*(c) Amendment of the Natural Wealth and Resources
(Permanent Sovereignty) Act, Cap.449*

- 99. Construction.
- 100. Amendment of section 11.

*(d) Amendment of the Public Private
Partnership Act, Cap 103*

- 101. Construction
- 102. Amendment of section 22.

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NOTICE
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This Bill to be submitted to the National Assembly is published for the general information to the public together with a statement of its objects and reasons.

Dodoma,
23rd January, 2020

JOHN W. H. KIJAZI
Secretary to the Cabinet

A Bill

for

An Act to provide for conduct relating to domestic commercial arbitration, international commercial arbitration and enforcement of foreign arbitral awards, repeal of the Arbitration Act and to provide for matters relating to or incidental thereto.

ENACTED by Parliament of the United Republic.

PART I
PRELIMINARY PROVISIONS

Short title and
commencement

1. This Act may be cited as the Arbitration Act, 2020 and shall come into operation on such date as the Minister may, by notice published in the *Gazette*, appoint.

Application

2. This Act shall apply to Mainland Tanzania.

Interpretation

3. In this Act, unless the context otherwise requires:
“arbitration” means any arbitration whether or not administered by permanent arbitral institution;
“arbitrator” means a person who facilitates arbitrations;
“arbitration agreement” means an agreement by the parties to submit to arbitration all or certain disputes which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not;
“arbitral award” includes an interim award;

“arbitral tribunal” means a sole arbitrator or a panel of arbitrators;

“Centre” means the Tanzania Arbitration Centre established under section 77;

“court” means a court of competent jurisdiction in Mainland Tanzania, Provided that, in the case of international commercial arbitration, it means the High Court in exercise of its ordinary original civil jurisdiction;

“domestic commercial arbitration” means an arbitration agreement which provides expressly or by implication for arbitration in Mainland Tanzania, and at the time when proceedings are commenced or the arbitration is entered into—

(a) where the arbitration is between individuals, the parties are nationals of United Republic or are habitually resident in Mainland Tanzania;

(b) where the arbitration is between bodies corporate, the parties are incorporated in Mainland Tanzania or their central management and control are exercised in Mainland Tanzania;

(c) where the arbitration is between an individual and a body corporate-

(i) the party who is an individual is a national of United Republic or is habitually resident in Mainland Tanzania;

(ii) the party that is a body corporate is incorporated in Mainland Tanzania or its central management and control are exercised in Mainland Tanzania; or

(d) the place where a substantial part of the obligations of the commercial relationship is to be performed, or the place with which the subject matter of the dispute is Mainland Tanzania;

“foreign award” means an award made in the territory of a State other than the United Republic where the recognition and enforcement of such awards are sought, and arising out of disputes between persons, whether physical or legal, and such award is binding to Mainland Tanzania only in so far as and to the extent which Mainland Tanzania has a reciprocal arrangement born out of an international

agreement to which the United Republic is a party;
“international commercial arbitration” means an arbitration relating to disputes arising out of legal relationships, whether contractual or not, considered as commercial under the law in force in Mainland Tanzania and where at least one of the parties is-

- (a) an individual who is a national of, or habitually resident in, any country other than Mainland Tanzania;
- (b) a body corporate which is incorporated in any country other than Mainland Tanzania;
- (c) an association or a body of individuals whose central management and control is exercised in any country other than Mainland Tanzania; or
- (d) the Government of a foreign country;

“Minister” means the Minister responsible for legal affairs;

“party” means a party to an arbitration agreement;

“person” includes an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government; governmental department, agency, public corporation; or any other legal or commercial entity; and

“record” means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in a perceivable form.

PART II GENERAL PROVISIONS

General principles

4. The provisions of this Act are founded on the following principles, and shall be construed accordingly:

- (a) the object of arbitration is to obtain the fair resolution of disputes by an impartial tribunal without delay or expense;
- (b) the parties shall be free to agree how their disputes are resolved, subject only to such safeguards as are necessary in the public interest; and
- (c) in matters governed by this Act, the court shall not intervene except as provided by this Act.

Scope of application of

5.-(1) The provisions of this Act shall apply where

provisions

the seat of the arbitration is in Mainland Tanzania.

(2) Notwithstanding subsection (1), the provisions of sections 13 and 68 shall apply even where the seat of the arbitration is outside Mainland Tanzania or no seat has been designated or determined.

(3) The powers conferred under sections 46 shall apply even where the seat of the arbitration is outside Mainland Tanzania or no seat has been designated or determined,

Provided that, the court may refuse to exercise any such power if, in the opinion of the court, the fact that the seat of the arbitration is outside Mainland Tanzania or that when designated or determined the seat is likely to be outside the United Republic makes it inappropriate to do so.

(4) The court may exercise a power conferred by any provision of this Act not mentioned in subsection (2) or (3) for the purpose of supporting the arbitral process where-

(a) no seat of the arbitration has been designated or determined; and

(b) by reason of a connection with Mainland Tanzania the court is satisfied that it is appropriate to do so.

(5) The provisions of sections 10 and 11 shall apply where the law applicable to the arbitration agreement is the law of Mainland Tanzania even where the seat of the arbitration is outside Mainland Tanzania or has not been designated or determined.

Meaning of “seat of arbitration”

6. In this Act “seat of arbitration” means the juridical seat of arbitration designated-

(a) in accordance with the law applicable on matters that are subject of the arbitration;

(b) by the parties to the arbitration agreement;

(c) by any arbitral or other institution or person vested by the parties with powers in that regard; or

(d) by the arbitral tribunal if so authorised by the parties.

Mandatory and non-mandatory provisions

7.-(1) The mandatory provisions of this Act shall be as provided in the Schedule to this Act and have effect notwithstanding any agreement to the contrary.

(2) The provisions of this Act other than the mandatory provisions, herein referred to as the “non-

mandatory provisions” shall allow the parties to make their own arrangements by agreement but provide rules which shall apply in the absence of such agreement.

(3) For the purpose of subsection (2)-

(a) the parties may make such arrangements by agreeing to the application of institutional rules or providing any other means by which a matter may be decided; and

(b) it is immaterial whether or not the law applicable to the parties’ agreement is the law of Mainland Tanzania.

(4) The choice of a law other than the law of Mainland Tanzania as the applicable law in respect of a matter provided for by a non-mandatory provision of this Part is equivalent to an agreement making provision about that matter.

(5) For the purpose of subsection (4) an applicable law determined in accordance with the parties’ agreement, or which is objectively determined in the absence of any express or implied choice, shall be treated as chosen by the parties.

Agreements to be
in writing

8.-(1) The provisions of this Act shall apply only where the arbitration agreement is in writing, and any other agreement between the parties as to any matter is effective for the purposes of this Act only if it is in writing.

(2) For the purpose of subsection (1), the expressions “agreement”, “agree” and “agreed” shall, in its cognate meaning, be construed accordingly.

(3) There shall be deemed to be an agreement in writing where-

(a) the agreement is made in writing, whether or not it is signed by the parties;

(b) the agreement is made by exchange of communications in writing; or

(c) the agreement is evidenced in writing.

(4) Where parties agree, otherwise than in writing, by reference to terms which are in writing, they are considered to have made an agreement in writing.

(5) An agreement shall be evidenced in writing where the agreement made otherwise than in writing is recorded by one of the parties, or by a third party, with the authority of the parties to the agreement.

(5) An exchange of written submissions in arbitral or legal proceedings in which the existence of an agreement

otherwise than in writing is alleged by one party against another party and not denied by the other party in his response shall constitute, as between those parties, an agreement in writing to the effect alleged.

(7) References in this Act to anything being written or in writing include its being recorded by any means.

PART III
ARBITRATION AGREEMENT

Construction of arbitration agreement

9. The reference in an agreement to a written form of arbitration clause or to a document containing an arbitration clause constitutes an arbitration agreement if the reference is such as to make that clause part of the agreement.

Separability of arbitration agreement

10. Unless otherwise agreed by the parties, an arbitration agreement which forms or was intended to form part of another agreement, whether or not in writing, shall not be regarded as invalid, non-existent or ineffective because that other agreement is invalid, did not come into existence or has become ineffective, and the arbitration agreement shall for that purpose, be treated as a distinct agreement.

Agreement not discharged by death of party

11.-(1) Unless otherwise agreed by the parties, an arbitration agreement is not discharged by the death of a party and may be enforced by or against the personal representative of that party.

(2) Subsection (1) shall not affect the operation of any enactment or rule of law by virtue of which a substantive right or obligation is extinguished by death.

Power to refer parties to arbitration where there is arbitration agreement.

12.-(1) A court, before which an action is brought in a matter which is the subject of an arbitration agreement shall, where a party to the arbitration agreement or any person claiming through or under him, so applies not later than the date of submitting his first statement on the substance of the dispute, and notwithstanding any judgment, decree or order of the superior court, refer the parties to arbitration unless it finds that *prima facie* no valid arbitration agreement exists.

(2) The application referred to in subsection (1) shall not be entertained unless it is accompanied by the

original arbitration agreement or a duly certified copy thereof:

Provided that, where the original arbitration agreement or a certified copy is not available to the party applying for reference to arbitration under subsection (1), and the agreement or certified copy is retained by the other party to that agreement, then, the party so applying shall, in the manner set out under a written law, apply to court to call upon the other party to produce the original arbitration agreement or its duly certified copy before that Court.

(3) Notwithstanding any application made in terms of subsection (1) and any issue pending thereto, an arbitration may be commenced or continued and an arbitral award made.

Stay of legal proceedings

13.-(1) A party to an arbitration agreement against whom legal proceedings are brought, whether by way of claim or counterclaim in respect of a matter which under the agreement is to be referred to arbitration may, upon notice to the other party to the proceedings, apply to the court in which the proceedings have been brought to stay the proceedings so far as they concern that matter.

(2) An application under subsection (1) may be made notwithstanding that the matter is to be referred to arbitration after the exhaustion of other dispute resolution procedures.

(3) A person shall not make an application under this section unless he has taken appropriate procedural step to acknowledge the legal proceedings against him or he has taken any step in those proceedings to answer the substantive claim.

(4) The court shall, except where it is satisfied that the arbitration agreement is null and void, inoperative or incapable of being performed, grant a stay on any application brought before it.

(5) Where the court refuses to stay the legal proceedings, any provision that an award is a condition precedent to the bringing of legal proceedings in respect of any matter shall be of no effect in relation to those proceedings.

PART IV
COMMENCEMENT OF ARBITRAL PROCEEDINGS

Power of court to

14.-(1) Where an arbitration agreement to refer

extend time for beginning arbitral proceedings.

future disputes to arbitration provides that a claim shall be barred, or the claimant's right extinguished, unless the claimant takes within a time fixed by the agreement some steps-

- (a) to begin arbitral proceedings; or
- (b) to begin other dispute resolution procedures which shall be exhausted before arbitral proceedings can be commenced,

the court may by order extend the time for taking that step.

(2) A party to the arbitration agreement may, apply for an order for extension of time, upon notice to the other parties, and after a claim has arisen and after exhausting any available arbitral process for obtaining an extension of time.

- (3) The court shall make an order if satisfied that-
- (a) the circumstances are such as were outside the reasonable contemplation of the parties when they agreed the provision in question, and that it would be just to extend the time; or
 - (b) the conduct of one party makes it unjust to hold the other party to the strict terms of the provision in question.

(4) The court may extend the time for such period and on such terms as it thinks fit, and may do so whether or not the time previously fixed, by agreement or by a previous order, has expired.

Cap. 89

(5) An order under this section does not affect the operation of the Law of Limitation Act.

(6) Leave of the court shall be required for any appeal from a decision of the court under this section.

Application of law of Limitation Act

15.-(1) The Law of Limitation Act shall apply to arbitral proceedings as it apply to other legal proceedings.

Cap. 89

(2) The court may order that in computing the time prescribed by the Law of Limitation Act for the commencement of proceedings, including arbitral proceedings, in respect of a dispute which was the subject matter-

- (a) of an award which the court orders to be set aside or declares to be of no effect; or
- (b) of the affected part of an award which the court orders to be set aside in part, or declares part of the award to be in part of no effect,

the period between the commencement of the arbitration

and the date of the order referred to in paragraph (a) or (b) shall be excluded.

(3) In determining for the purposes of the Law of Limitation Act when a cause of action accrued, any provision that an award is a condition precedent to the bringing of legal proceedings in respect of a matter to which an arbitration agreement applies shall be disregarded.

Commencement
of arbitral
proceedings
Cap. 89

16.-(1) Parties to an arbitration agreement may agree when arbitral proceedings shall commence for the purposes of this Act and for the purposes of the Law of Limitation Act.

(2) Where parties do not have agreement in terms of subsection (1), the following shall apply:

(a) if the arbitrator is named or designated in the arbitration agreement, arbitral proceedings shall be commenced in respect of a matter when one party serves on the other party a notice in writing requiring him or them to submit that matter to the named or designated arbitration;

(b) if the arbitrator or arbitrators are to be appointed by the parties, arbitral proceedings shall be commenced in respect of a matter when one party serves on the other party or parties notice in writing requiring him or them to appoint an arbitrator or to agree to the appointment of an arbitrator in respect of that matter.

(3) Where the arbitrator or arbitrators are to be appointed by a person other than a party to the proceedings, arbitral proceedings shall be commenced in respect of a matter when one party gives notice in writing to that person requesting him to make the appointment in respect of that matter.

PART V ARBITRAL TRIBUNAL

Arbitral Tribunal

17.-(1) The parties may agree on the number of arbitrators to form the tribunal and whether there is to be a chairman or umpire.

(2) Unless otherwise agreed by the parties, an agreement that the number of arbitrators shall be two or any

other even number shall be understood as requiring the appointment of an additional arbitrator as chairman of the tribunal.

(3) Where there is no agreement as to the number of arbitrators, the tribunal shall consist of a sole arbitrator.

Procedure for
appointment of
arbitrators

18.-(1) The parties may agree on the procedure for appointing the arbitrator or arbitrators, including the procedure for appointing any chairman or umpire.

(2) In the event the agreement referred to in subsection (1) does not exist the following shall apply:

- (a) if the tribunal is to consist of a sole arbitrator, the parties shall jointly appoint the arbitrator not later than twenty eight days after service of a written request by either party;
- (b) if the tribunal is to consist of two arbitrators, each party shall appoint one arbitrator not later than fourteen days after service of a written request by either party;
- (c) if the tribunal is to consist of three arbitrators-
 - (i) each party shall appoint one arbitrator not later than fourteen days after service of a written request by either party; and
 - (ii) the two arbitrators appointed by the parties shall forthwith appoint a third arbitrator who shall be the chairman of the tribunal;
- (d) if the tribunal is to consist of two arbitrators and an umpire-
 - (i) each party shall appoint one arbitrator not later than fourteen days after service of a written request by either party; and
 - (ii) the two appointed arbitrators may appoint an umpire at any time after their appointment, and shall do so before any substantive hearing or forthwith where they cannot agree on a matter relating to the arbitration; and
- (e) in any other case, if there are more than two parties, section 20 shall apply as in the case of a failure of the agreed appointment procedure.

Default to
appoint sole
arbitrator

19.-(1) Unless the parties otherwise agree, where each of the two parties to an arbitration agreement is to appoint an arbitrator and one party refuses or fails to do so

within the time specified, the other party, having duly appointed his arbitrator, may give a written notice to the party in default that he proposes to appoint his arbitrator to act as a sole arbitrator.

(2) Where the defaulting party does not within seven days of the notice-

(a) make the required appointment; and

(b) notify the other party of the appointment,

the other party may appoint his arbitrator as a sole arbitrator whose award shall be binding on both parties as if he had been appointed by the two parties.

(3) Where a sole arbitrator has been appointed under subsection (2), the party in default may, upon notice to the appointing party, apply to the court which may set aside the appointment.

(4) Leave of the court shall be required for any appeal arising from a decision made under this section.

Failure of
appointment
procedure

20.-(1) The parties may agree what next shall happen in the event of failure to appoint the arbitral tribunal.

(2) Where no agreement has been made under subsection (1), a party to the arbitration agreement may, upon notice to the other party, apply to the court which may-

(a) give directions as to the making of any necessary appointment;

(b) direct that the tribunal shall be constituted by such appointment, or any one or more of them, as has been agreed;

(c) revoke any appointment already made; or

(d) make any necessary appointment.

(3) An appointment made by the court under this section shall have effect as if it was made by the agreement of the parties.

Arbitrator's
qualifications

21. In deciding whether and how to exercise, any of its powers under section 18 or 20, the court shall have due regard to any agreement of the parties as to the qualifications required of the arbitrators.

Chairman

22.-(1) Where the parties have agreed that there shall be a chairman, they may agree the functions of the chairman in relation to the making of decisions, orders and awards.

(2) In the event the agreement referred to under

subsection (1) does not exist, decisions, orders or awards shall be made by all or majority of the arbitrators, including the chairman.

(3) The view of the chairman shall prevail in respect of subsection (1), where there is no unanimity or majority in relation to any decision, order or award.

Umpire

23.-(1) Where the parties have agreed that there shall be an umpire, they may agree on the functions of the umpire and in particular-

- (a) whether he is to attend the proceedings; and
- (b) when he may replace the other arbitrators as the tribunal with power to make decisions, orders and awards.

(2) In the event the agreement referred to under subsection (1) does not exist-

- (a) the umpire shall attend the proceedings and be supplied with the same documents and other materials as are supplied to the other arbitrators; and
- (b) decisions, orders and awards shall be made by the other arbitrators unless and until they cannot agree on a matter relating to the arbitration.

(3) Where arbitrators have failed to reach agreement as referred to in subsection (2)(b) they shall, with immediate effect, give a written notice to the parties and the umpire shall replace them as the tribunal with power to make decisions, orders and awards as if he were a sole arbitrator.

(4) Where the arbitrators fail to agree and to give notice of that fact or any of them fails to join in the giving of notice under subsection (2) (b), any party to the arbitral proceedings may, upon notice to the other parties and to the tribunal, apply to the court which may order that the umpire replaces the other arbitrators as the tribunal with power to make decisions, orders and awards as if he were sole arbitrator.

(5) The leave of the court shall be required for any appeal arising from a decision made under this section.

Absence of
Chairman or
Umpire.

24.-(1) Where the parties agree that there shall be two or more arbitrators with no chairman or umpire, the parties may agree how the tribunal shall make decisions, orders and awards.

(2) Where there is no agreement in terms of subsection (1), decisions, orders and awards shall be made by all or majority of the arbitrators.

Revocation of arbitrator's appointment

25.-(1) The parties may agree the circumstances upon which the appointment of an arbitrator may be revoked.

(2) Where the agreement referred to under subsection (1) does not exist, the appointment of an arbitrator may be revoked-

- (a) by the parties acting jointly; or
- (b) by the decision of an arbitral or other institution or person vested by the parties with powers in that regard.

(3) Revocation of the appointment of an arbitrator by the parties acting jointly shall be agreed in writing unless the parties also agree to terminate the arbitration agreement.

(4) Nothing in this section shall affect the power of the court to-

- (a) revoke an appointment under section 20; or
- (b) remove an arbitrator on the grounds specified in section 26.

Power of court to remove arbitrator

26.-(1) A party to arbitral proceedings may, upon notice to the other party, to the arbitrator concerned and to any other arbitrator, apply to the court to remove an arbitrator on any of the following grounds:

- (a) that there are circumstances which give rise to justifiable doubts as to his impartiality;
- (b) that he does not possess the qualifications required by the arbitration agreement;
- (c) that he is physically or mentally incapable of conducting the proceedings or there are justifiable doubts as to his capacity to do so; or
- (d) that he has refused or failed to-
 - (i) properly conduct the proceedings;
 - (ii) use all reasonable dispatch in conducting the proceedings; or
 - (iii) make an award and substantial injustice has been or will be caused to the applicant.

(2) Where there is an arbitral or other institution or person vested by the parties with power to remove an arbitrator, the court shall not exercise its power of removal

unless satisfied that the applicant has first exhausted any available recourse to that institution or person.

(3) The arbitral tribunal may continue the arbitral proceedings and make an award pending an application to the court under this section.

(4) Where the court removes an arbitrator, it may make such order as it thinks fit with respect to-

- (a) his entitlement to any fee or expense; or
- (b) the repayment of any fees or expenses already paid.

(5) The arbitrator against whom the application is brought shall be entitled to be heard by the court before it makes any order under this section.

(6) Leave of the court shall be required for any appeal arising from a decision made under this section.

Resignation of arbitrator

27.-(1) The parties may agree with an arbitrator as to the consequences of his resignation as regards to-

- (a) his entitlement to any fees or expenses; and
- (b) any liability thereby incurred by him.

(2) Where the agreement referred to under subsection (1) does not exist, the resigning arbitrator may, upon notice to the parties, apply to the court to-

- (a) grant him relief from any liability thereby incurred by him; and
- (b) make such order as it thinks fit with respect to his entitlement to any fees or expenses or the repayment of any fees or expenses already paid.

(3) Upon the court being satisfied that in the given circumstances, it was reasonable for the arbitrator to resign, it may grant relief referred to under subsection (2) as it deems fit.

(4) Leave of the court shall be required for any appeal arising from a decision made under this section.

Death of arbitrator

28.-(1) The appointment of an arbitrator shall be personal and shall cease upon his death.

(2) Unless otherwise agreed by the parties, the death of the person by whom an arbitrator was appointed shall not revoke the arbitrator's appointment.

Filling of vacancy

29.-(1) Where an arbitrator ceases to hold office, the parties may agree-

- (a) whether, and if so, how the vacancy is to be filled;
 - (b) whether, and if so, to what extent the previous proceedings should stand; and
 - (c) what effect if any, his ceasing to hold office shall have on any appointment made by him.
- (2) Where the agreement referred to in subsection (1) does not exist the following provisions shall apply:
- (a) the provisions of sections 18 and 20 shall apply in relation to the filling of the vacancy as in relation to an original appointment;
 - (b) the tribunal, when reconstituted, shall determine whether and if so to what extent the previous proceedings shall stand, except that any right of a party to challenge the proceedings on any ground which had arisen before the arbitrator shall not be precluded; and
 - (c) his ceasing to hold office shall not affect any appointment made by him, alone or jointly, of another arbitrator, in particular any appointment of a chairman or umpire.

Joint and several liabilities of parties for fees

30.-(1) The parties shall, jointly and severally, be liable to pay the arbitrators any reasonable fees and expenses as are appropriate in the circumstances.

(2) Any party may apply to the court, upon notice to the other party and to the arbitrators for an order that the amount of the arbitrators' fees and expenses shall be considered and adjusted by such means and upon such terms as it may direct.

(3) Where an application is made after any amount has been paid to the arbitrators by way of fees or expenses, the court may order the repayment of the exceeding amount if any, provided that the court shall not make such order unless it is reasonable in the circumstances to order repayment.

(4) The provisions of subsections (1), (2) and (3) shall have effect subject to any order of the court under sections 26(4) or 27(2)(b).

(5) Nothing in this section shall affect any liability of a party to pay all or any of the costs of the arbitration or any contractual right of an arbitrator to payment of his fees and expenses.

(6) In this section, references to arbitrators include an arbitrator who has ceased to act and an umpire who has not replaced the other arbitrators.

Immunity of arbitrator

31.-(1) Save as provided for in section 26, an arbitrator shall not be liable for anything done or omitted in the discharge or purported discharge of his functions as arbitrator unless the act or omission is proven to have been done in bad faith or professional negligence.

(2) Subsection (1) shall apply to an employee or agent of an arbitrator as it applies to the arbitrator.

(3) This section shall not affect any liability incurred by an arbitrator by reason of his resignation.

PART VI
JURISDICTION OF ARBITRAL TRIBUNAL

Competence to rule on jurisdiction

32.-(1) Unless otherwise agreed by the parties, the arbitral tribunal may rule on its own substantive jurisdiction, as to-

- (a) whether there is a valid arbitration agreement;
- (b) whether the tribunal is properly constituted; and
- (c) what matters shall be submitted to arbitration in accordance with the arbitration agreement.

(2) The decision under subsection (1) may be challenged by any available arbitral process of appeal or review or in accordance with the provisions of this Act.

Objection to substantive jurisdiction

33.-(1) An objection that the arbitral tribunal lacks substantive jurisdiction at the outset of the proceedings shall be raised by a party not later than the time he takes the first step in the proceedings to contest the merits of any matter in relation to which he challenges the tribunal's jurisdiction:

Provided that, a party shall not be precluded from raising such an objection by the fact that he has appointed or participated in the appointment of an arbitrator.

(2) An objection raised during the course of the arbitral proceedings that the arbitral tribunal exceeds its substantive jurisdiction shall be made as soon as possible after the matter alleged to be beyond its jurisdiction is raised.

(3) The arbitral tribunal may admit an objection later than the time specified in subsection (1) or (2) if it

considers the delay justifiable.

(4) Where an objection relates to tribunal's substantive jurisdiction and the tribunal has power to rule on its own jurisdiction, it may-

- (a) rule on the matter in an award as to jurisdiction; or
- (b) deal with the objection in its award on the merits:

Provided that, where the parties agree which recourse to take, the tribunal shall proceed accordingly.

(5) The tribunal may, in any case, and shall if the parties so agree stay proceedings pending determination of an application made to the court under section 34.

Determination of preliminary point of jurisdiction

34.-(1) The court may, on the application of a party to arbitral proceedings and upon notice to the other party, determine any question as to the substantive jurisdiction of the tribunal.

(2) An application under this section shall not be considered unless-

- (a) it is made with the agreement in writing of all the other parties to the proceedings; or
- (b) it is made with the permission of the tribunal and the court is satisfied that-
 - (i) the determination of the question is likely to produce substantial savings in costs;
 - (ii) the application was made without delay; and
 - (iii) there is good reason why the matter should be decided by the court.

(3) An application under this section shall, unless made with the agreement of all the parties to the proceedings, state the grounds on which the court is vested with power to determine the matter.

(4) Unless otherwise agreed by the parties, the arbitral tribunal may continue the arbitral proceedings and make an award pending determination of an application under this section.

(5) An appeal shall not lie from a decision of the court whether or not the conditions prescribed in subsection (2) have been met, unless the court gives a leave to that effect.

(6) The decision of the court on the question of jurisdiction shall be treated as a judgment of the court for the purposes of an appeal.

(7) A leave of the appellate court shall not be granted unless the court is of the opinion that, the appeal involves a point of law of general importance or for other reasons, it is proper to be determined by the appellate court.

PART VII
ARBITRAL PROCEEDINGS

General duty of
tribunal

35.-(1) The tribunal shall-

- (a) act fairly and impartially as between the parties, giving each party a reasonable opportunity of putting his case and dealing with that of his opponent; and
- (b) adopt procedures suitable to the circumstances of the particular case, avoiding unnecessary delay or expense, so as to provide a fair means for the resolution of the matters to be determined.

(2) The tribunal shall comply with the general duty referred to under subsection (1), in conducting the arbitral proceedings, in making decisions on matters of procedure and evidence, and in the exercise of all other powers conferred on it.

Procedural and
evidential matters

36.-(1) The tribunal shall decide all procedural and evidential matters, subject to the agreement of the parties thereof.

(2) The procedural and evidential matters shall include-

- (a) when and where any part of the proceedings is to be held;
- (b) the language or languages to be used in the proceedings and whether translations of any relevant documents are to be supplied;
- (c) whether and if so, what form of written statements of claim and defence are to be used, when these should be supplied and the extent to which such statements can be later amended;
- (d) whether and if so, which documents or classes of documents shall be disclosed and produced by the parties and at what stage;
- (e) whether and if so, what questions should be put to and answered by the respective parties and when and in what form this shall be done;

- (f) whether to apply strict rules of evidence or any other rules as to the admissibility, relevance or weight of any material oral, written or other sought to be tendered on any matter of fact or opinion, and the time, manner and form in which such material shall be exchanged and presented;
- (g) whether and to what extent the tribunal shall itself take the initiative in ascertaining the facts and the law; and
- (h) whether and to what extent there shall be oral, written evidence or submissions.

(3) The tribunal may fix the time within which any directions given by it shall be complied with and may, if it thinks fit extend the time so fixed, whether or not it has expired.

Consolidation of proceedings

37.-(1) The parties may agree that-

- (a) the arbitral proceedings shall be consolidated with other arbitral proceedings, or
 - (b) concurrent hearings shall be held,
- on such terms as may be agreed.

(2) Unless the parties agree otherwise, the tribunal shall not have power to order consolidation of proceedings or concurrent hearings.

Legal or other representation

38. A party to arbitral proceedings may be represented in the proceedings by a lawyer or other person chosen by him, unless the parties agree to the contrary.

Power to appoint experts

39.-(1) Unless otherwise agreed by the parties-

- (a) the tribunal may-
 - (i) appoint experts or legal advisers to report to it and the parties; or
 - (ii) appoint assessors to assist it on technical matters,and may allow any such expert, legal adviser or assessor to attend the proceedings; and
 - (b) the parties shall be given a reasonable opportunity to comment on any information, opinion or advice offered by any such person.
- (2) The fees and expenses of an expert, legal adviser or assessor appointed by the tribunal for which the

arbitrators are liable shall be expenses borne by the arbitrators for the purposes of this Act.

General power of tribunal

40.-(1) The parties may agree on the powers to be exercisable by the arbitral tribunal for the purposes of and in relation to the proceedings.

(2) Unless otherwise agreed by the parties, the tribunal shall have the following powers:

(a) to order a claimant to provide security for costs of the arbitration, except that such power shall not be exercised on the ground that the claimant is-

(i) an individual ordinarily resident outside Mainland Tanzania; or

(ii) a corporation or association incorporated or formed under the laws of a country outside Mainland Tanzania or whose central management and control is exercised outside Mainland Tanzania;

(b) to give directions in relation to any property which is the subject of the proceedings or as to which any question arises in the proceedings, and which is owned by or is in the possession of a party to the proceedings-

(i) for the inspection, photographing, preservation, custody or detention of the property by the tribunal, an expert or a party; or

(ii) ordering that samples be taken from, or any observation be made of or experiment conducted upon the property;

(c) to direct a party or witness to be examined on oath or affirmation as the case may be, and may for that purpose administer an oath or take affirmation; and

(d) for the purposes of the proceedings, to give directions to a party to preserve any evidence in his custody or control.

Power to make provisional award

41.-(1) The parties may agree that the tribunal shall have powers to order on a provisional basis any relief which it would have powers to grant in a final award.

(2) The relief referred to under subsection (1) shall include making-

- (a) a provisional order for the payment of money or the disposition of property as between the parties; or
 - (b) an order to make an interim payment on account of the costs of the arbitration.
- (3) The tribunal's final award in relation to merits or cost shall take into account the order referred to under subsection (1).
- (4) Unless the parties agree to confer such powers on the tribunal, the tribunal shall not have powers to grant provisional award.

Duty of parties

- 42.** The parties shall do all things necessary for the proper and expeditious conduct of the arbitral proceedings, and shall include-
- (a) compliance without delay to any determination of the tribunal as to procedural or evidential matters, or with any order or directions of the tribunal; and
 - (b) where appropriate, taking without delay any necessary steps to obtain a decision of the court on a preliminary question of jurisdiction or law.

Power of tribunal in case of default by party

- 43.**-(1) The parties may agree on the powers of the tribunal in case of a party's failure to take necessary steps for the proper and expeditious conduct of the arbitration.
- (2) Unless otherwise agreed by the parties, the tribunal may exercise powers under the following circumstances-
- (a) where it is satisfied that there has been inordinate and inexcusable delay on the part of the claimant in pursuing his claim and that the delay-
 - (i) gives rise, or is likely to give rise, to a substantial risk that it is not possible to have a fair resolution of the issues in that claim; or
 - (ii) has caused, or is likely to cause, serious prejudice to the respondent,the tribunal may make an award dismissing the claim;
 - (b) if without sufficient cause, a party-
 - (i) fails to attend or be represented at an oral hearing of which due notice was

- given; or
- (ii) where matters are to be dealt with in writing, fails after due notice to submit written evidence or make written submissions,
the tribunal may continue the proceedings in the absence of that party or, as the case may be, without any written evidence or submissions on his behalf, and may make an award on the basis of the evidence before it;
- (c) where without sufficient cause, a party fails to comply with any order or directions of the tribunal, the tribunal may make a peremptory order to the same effect, prescribing such time for compliance with it as the tribunal considers appropriate;
- (d) where a claimant fails to comply with a peremptory order of the tribunal to provide security for costs, the tribunal may make an award dismissing his claim; and
- (e) where a party fails to comply with any other kind of peremptory order, then, without prejudice to section 44, the tribunal may do any of the following:
 - (i) direct that the party in default shall not be entitled to rely upon any allegation or material which was the subject matter of the order;
 - (ii) draw such adverse inferences from the act of non-compliance as the circumstances justify;
 - (iii) proceed to an award on the basis of such materials as have been properly provided to it; or
 - (iv) make such order as it deems fit as to the payment of costs of the arbitration incurred in consequence of the non-compliance.

Enforcement of
peremptory
orders

44.-(1) Unless otherwise agreed by the parties, the court may make an order requiring a party to comply with a peremptory order made by the tribunal.

(2) An application for an order under this section may be made-

- (a) by the tribunal upon notice to the parties;

- (b) by a party to the arbitral proceedings with the permission of the tribunal and upon notice to the other parties; or
- (c) where the parties have agreed that the powers of the court under this section shall be available.

(3) The court shall not make an order unless it is satisfied that the applicant has exhausted available arbitral process in respect of failure to comply with the tribunal's order.

(4) No order shall be made under this section unless the court is satisfied that the person to whom the tribunal's order was directed has failed to comply with it within the time prescribed in the order or, if no time was prescribed, within a reasonable time.

(5) Leave of the court shall be required for any appeal against a decision made by the court under this section.

Attendance of witnesses

45.-(1) A party to arbitral proceedings may, with the permission of the tribunal or by agreement with the other party, and by using the same court procedures available in relation to other legal proceedings, secure the attendance of a witness before the tribunal to give oral testimony or to produce documents or other material evidence.

- (2) The court procedures may be used where-
 - (a) the witness is within Mainland Tanzania; and
 - (b) the arbitral proceedings are conducted within Mainland Tanzania.

(3) A person shall not be compelled by virtue of this section to produce any document or other material evidence which he could not be compelled to produce in other legal proceedings.

Court powers

46.-(1) Unless otherwise agreed by the parties, the court shall, for the purposes of and in relation to arbitral proceedings, have the same power to make orders on matters provided for under subsection (2).

(2) The matters referred to under subsection (1) shall include-

- (a) the taking of the evidence of witnesses;
- (b) the preservation of evidence;
- (c) making orders relating to property which is the subject of the proceedings or as to which any

question arises in the proceedings-

- (i) for the inspection, photographing, preservation, custody or detention of the property; or
- (ii) ordering that samples be taken from, or any observation be made of or experiment conducted upon the property,

and for that purpose, the tribunal may authorise any person to enter any premises in the possession or control of a party to the arbitration;

- (d) the sale of any goods which are the subject of the proceedings; or
- (e) the granting of an interim injunction or the appointment of a receiver.

(3) Where the case is one of urgency, the court may, on the application of a party or proposed party to the arbitral proceedings, make such orders as it thinks necessary for the purpose of preserving evidence or assets.

(4) Where the case is not one of urgency, the court shall act only on the application of a party to the arbitral proceedings and upon notice to the other parties and to the tribunal, made with the permission of the tribunal or the agreement in writing of the other parties.

(5) In any other case, the court shall act only if or to the extent that the arbitral tribunal, and any arbitral or other institution or person vested by the parties with power in that regard, has no power or is unable for the time being to act effectively.

(6) If the court so orders, an order made by it under this section shall cease to have effect in whole or in part on the order of the tribunal or of any such arbitral or other institution or person having power to act in relation to the subject matter of the order.

Determination of preliminary point of law

47.-(1) Unless otherwise agreed by the parties, the court may, on the application of a party to arbitral proceedings and upon notice to the other party, determine any question of law arising in the course of the proceedings which the court is satisfied that the matter substantially affects the rights of one or more of the parties.

(2) An agreement between the parties to dispense with reasons for the tribunal's award shall be considered an agreement to exclude the court's jurisdiction under

subsection (1).

(3) An application under this section shall not be considered unless where-

- (a) it is made with the agreement of the other party to the proceedings; or
- (b) it is made with the permission of the tribunal and the court is satisfied that-
 - (i) the determination of the question is likely to produce substantial savings of costs; and
 - (ii) the application was made without delay.

(4) The application shall identify the question of law to be determined and, unless made with the agreement of the other party to the proceedings, shall state the grounds on which it is said that the question should be decided by the court.

(5) Unless otherwise agreed by the party, the arbitral tribunal may continue the arbitral proceedings and make an award pending an application to the court under this section.

(6) Unless the court gives leave, no appeal shall lie from a decision of the court whether the conditions specified in subsection (2) are met.

(7) The decision of the court on the question of law shall be treated as a judgment of the court for the purposes of an appeal.

(8) A leave of the appellate court shall not be granted unless the court is of the opinion that, the appeal involves a point of law of general importance or for other reasons, it is proper to be determined by the appellate court.

Rules applicable to
substance of
dispute

48.-(1) The arbitral tribunal shall decide the dispute-

- (a) in accordance with the law chosen by the parties as applicable to the substance of the dispute; or
- (b) if the parties so agree, in accordance with such other considerations as are agreed by them or determined by the tribunal.

(2) For the purpose of this section, the choice of the laws of a country shall refer to the substantive laws of that country and not its conflict of laws rules.

(3) Where there is no such choice or agreement, the

tribunal shall apply the law determined by rules of the conflict of laws which are applicable.

Awards on
different issues

49.-(1) Unless otherwise agreed by the parties, the tribunal may make more than one award at different times on different aspects of the matters to be determined.

(2) The tribunal may, in particular, make an award relating to-

- (a) an issue affecting the whole claim; or
- (b) a part of the claims or cross-claims submitted to it for decision.

(3) Where the tribunal make an award on a certain issue or a part of a claim under this section, it shall specify in its award the issue, or the claim or part of a claim, which is the subject matter of the award.

Remedies

50.-(1) The parties may agree on the powers exercisable by the arbitral tribunal as regards to remedies.

(2) Unless otherwise agreed by the parties, the tribunal shall have powers to-

- (a) make a declaration as to any matter to be determined in the proceedings; or
- (b) order the payment of a sum of money, in any currency.

(3) The tribunal shall have the same powers as the court to order-

- (a) a party to do or refrain from doing anything;
- (b) specific performance of a contract, other than a contract relating to land; or
- (c) the rectification, setting aside or cancellation of a deed or other document.

Interest

51.-(1) The parties may agree on the powers of the tribunal as regards the award of interest.

(2) The tribunal may, unless agreed otherwise by the parties, award simple or compound interest from such dates, at such rates and with such rests as it considers to be just-

- (a) on the whole or part of any amount awarded by the tribunal; or
- (b) on the whole or part of any amount claimed in the arbitration and outstanding at the commencement of the arbitral proceedings but paid before the award was made.

(3) The tribunal may award simple or compound interest from the date of the award or any later date, until payment, at such rates and with such rests as it considers just on the outstanding amount of any award, including any award of interest as provided under subsection (2) and any award as to costs.

(4) References in this section to an amount awarded by the tribunal shall include an amount payable in consequence of a declaratory award by the tribunal.

(5) The provisions of this section do not affect any other power of the tribunal to award interest.

Extension of time
for making award

52.-(1) Unless otherwise agreed by the parties, where the time for making an award is limited by or in pursuance of the arbitration agreement the court may extend that time for making an award.

(2) An application for an order under this section may be made by-

(a) the tribunal, upon notice to the parties; or

(b) any party to the proceedings, upon notice to the tribunal and the other parties,

after exhausting any available arbitral process for obtaining an extension of time.

(3) The court shall make an order on an application under this section if it is satisfied that a substantial injustice would otherwise be done.

(4) The court may extend the time for such period and on such terms as it considers fit, and may do so whether or not the time previously fixed, by or under the agreement or by a previous order, has expired.

(5) Leave of the court shall be required for any appeal arising from a decision of the court under this section.

Settlement

53.-(1) Where the parties to arbitral proceedings have settled their dispute, unless stated otherwise by the parties, the tribunal shall terminate the substantive proceedings and where requested by the parties, record the settlement in the form of an agreed award.

(2) An agreed award shall state that it is an award of the tribunal and shall have the same status and effect as any other award on the merits of the case.

(3) The provisions of section 54 to 60 applies also to an agreed award.

(4) Where the parties have settled their dispute in

terms of subsection (1) without agreement on payment of costs of the arbitration, the provisions of this Act relating to costs shall continue to apply.

Form of award **54.**-(1) The parties may agree on the form of an award.
(2) Where there is no such agreement the award shall-
(a) be in writing signed by all the arbitrators or all those assenting to the award;
(b) contain the reasons for the award unless it is an agreed award or the parties have agreed to dispense with the reasons; and
(c) state the seat of the arbitration and the date when the award is made.

Place where award treated as made **55.** Where the seat of the arbitration is in Mainland Tanzania, unless otherwise agreed by the parties, any award in the proceedings shall be treated as made in Mainland Tanzania, regardless of where it was signed, dispatched or delivered to any of the parties.

Date of award **56.**-(1) A tribunal may, unless otherwise agreed by the parties, decide what is to be considered as the date on which the award was made.
(2) In the absence of a decision of the tribunal, the date of the award shall be considered to be the date on which the award was signed by the arbitrator or, where more than one arbitrator signs the award, the date signed by the last arbitrator.

Notification of award **57.**-(1) The parties may agree on the requirements as to notification of the award to the parties.
(2) Where there is no agreement by the parties, the tribunal shall notify the parties by service of copies of the award to the them, which shall be done without delay after the award is made.

Power to withhold award in case of non-payment **58.**-(1) A tribunal may refuse to deliver an award to the parties where parties fail to make full payment of the fees and expenses of the arbitrators.

(2) Where the tribunal refuses to deliver an award on the grounds referred to under subsection (1), a party to the arbitral proceedings may, upon notice to the other party and the tribunal, apply to court, and the court may order-

- (a) the tribunal to deliver the award on the payment into court by the applicant of the fees and expenses demanded, or such lesser amount as the court may specify;
- (b) that the amount of the fees and expenses properly payable shall be determined by such means and upon such terms as the court may direct; and
- (c) that out of the money paid into court, there shall be paid out such fees and expenses as may be found to be properly payable, and the balance of the money, if any, be paid out to the applicant.

(3) For purpose of subsection (2), the amount of fees and expenses to be properly payable is the amount the applicant is liable to pay under section 30 or any agreement relating to the payment of the arbitrators.

(4) An applicant shall, before making an application under subsection (2), exhaust any available arbitral process for appeal or review of the amount of the fees or expenses demanded.

(5) References in this section to arbitrators shall include an arbitrator who has ceased to act and an umpire who has not replaced the other arbitrators.

(6) The provisions of this section shall apply in relation to any arbitral institution or other institution or person vested by the parties with powers in relation to the delivery of the tribunal's award.

(7) For the purpose of subsection (6), the references to the fees and expenses of the arbitrators shall be construed to include the fees and expenses of an arbitral institution or other institution or person vested by the parties with powers in relation to the delivery of the tribunal's award.

(8) The leave of the court shall be required for any appeal arising from a decision made under this section.

(9) Nothing in this section shall be construed as excluding an application under section 30 where payment has been made to the arbitrators in order to obtain the award.

Correction of
award or additional
award

59.-(1) The parties may agree on the powers of the tribunal to correct an award or make an additional award.

(2) Where parties fail to agree in terms of

subsection (1), the tribunal may, on its own initiative or on the application of a party-

- (a) correct an award so as to remove any clerical mistake or error arising from an accidental slip or omission or clarify or remove any ambiguity in the award; or
- (b) make an additional award in respect of any claim, including a claim for interest or costs, which was presented to the tribunal but was not dealt with in the award:

Provided that, the tribunal shall first afford the other parties a reasonable opportunity to make representations to it.

(3) An application for the exercise of powers under this section shall be made within twenty eight days from the date of the award or such longer period as the parties may agree.

(4) Any correction of an award shall be made -

- (a) in the case of an application of a party, within twenty eight days from the date the application was received by the tribunal;
- (b) where the correction is made by the tribunal on its own initiative, within twenty eight days from the date of the award; or
- (c) in either case, such longer period as the parties may agree.

(5) Any additional award shall be made within fifty six days from the date of the original award or such longer period as the parties may agree.

(6) Any correction of an award shall form part of the award.

Effect of award

60.-(1) An award made by the tribunal pursuant to an arbitration agreement shall, unless otherwise agreed by the parties, be final and binding to both parties and to any person claiming through or under them.

(2) The provisions of subsection (1) shall not affect the right of a person to challenge the award by any available arbitral process of appeal or review or in accordance with the provisions of this Act.

PART VIII
COSTS OF ARBITRATION

Costs of
arbitration

61.-(1) In this Act, references to the costs of the arbitration shall be to-

- (a) the arbitrators' fees and expenses;
- (b) the fees and expenses of any arbitral institution concerned; and
- (c) the legal or other costs of the parties.

(2) Any reference referred to under subsection (1) shall include the costs of or incidental to any proceedings to determine the amount of the recoverable costs of the arbitration.

Agreement to pay
costs in any event

62. An agreement which has the effect that a party is to pay the whole or part of the costs of the arbitration in any event is only valid where the agreement is made after the dispute in question has arisen.

Award of costs

63.-(1) Subject to any agreement by the parties, the tribunal may make an award allocating the costs of the arbitration as between the parties.

(2) The tribunal shall, unless the parties otherwise agree, award costs on the general principle that costs shall follow the event, except where it appears to the tribunal that in the circumstances it is not appropriate in relation to the whole or part of the costs.

Effect of
agreement or
award about costs

64. Unless the parties otherwise agree, any obligation under an agreement between the parties as to how the costs of the arbitration shall be borne, or under an award allocating the costs of the arbitration, extends only to such costs as are recoverable.

Recoverable costs
of arbitration

65.-(1) Parties may agree on the recoverable costs of arbitration.

(2) The tribunal may, where there is no agreement between the parties as on the recoverable costs of arbitration, determine by award the recoverable cost on such basis as it considers fit, and it shall in doing so, specify-

- (a) the basis on which it has acted; and
- (b) the items of recoverable costs and the amount

referable to each party.

(3) Where the tribunal does not determine the recoverable costs of the arbitration, any party to the arbitral proceedings may, upon notice to the other party apply to court, and the court may-

- (a) determine the recoverable costs of the arbitration on such basis as it deems fit; or
- (b) order that the recoverable costs of the arbitration shall be determined by such means and upon such terms as it may specify.

(4) Unless the tribunal or the court determines otherwise-

- (a) the recoverable costs of the arbitration shall be determined on the basis that there shall be allowed a reasonable amount in respect of all costs reasonably incurred; and
- (b) any doubt as to whether costs were reasonably incurred or were reasonable in amount shall be resolved in favour of the paying party.

(5) Nothing in this section shall affect any right of an arbitrator, expert, legal adviser or assessor appointed by the tribunal or any arbitral institution to the payment of their fees and expenses.

Recoverable fees
and expenses of
arbitrators

66.-(1) Unless otherwise agreed by the parties, the recoverable costs of the arbitration shall, in respect of the fees and expenses of the arbitrators, include such reasonable fees and expenses as are appropriate in the circumstances.

(2) For the purposes of determining the question as to what reasonable fees and expenses are appropriate in the circumstances, and where a matter is not already before the court on an application under section 65(4), the court may, on application by a party and upon notice to the other party-

- (a) determine the matter; or
- (b) order that the matter be determined by such means and upon such terms as the court may specify.

(3) Subsection (1) shall have effect to any order of the court under section 26(4) or 27(2) (b).

(4) Nothing in this section shall affect the right of the arbitrator to payment of his fees and expenses.

Power to limit

67.-(1) Unless otherwise agreed by the parties, the

recoverable costs tribunal may direct that the recoverable costs of the arbitration, or of any part of the arbitral proceedings, shall be limited to a specified amount.

(2) A tribunal may at any stage, vary its directive under subsection (1):

Provided that, such variation is done sufficiently in advance prior to-

(a) the incurring of costs to which variation of the directives relates; or

(b) the taking of any steps in the proceedings which may be affected by variation of the directives, for the limit to be taken into account.

PART IX
POWERS OF COURT IN RELATION TO AWARDS

Enforcement of award **68.**-(1) An award made by the tribunal pursuant to an arbitration agreement may, by leave of the court, be enforced in the same manner as a judgment or order of the court.

(2) Where leave of the court is given, judgment may be entered in terms of an award.

(3) Leave to enforce an award shall not be given where, or to the extent that, the person against whom it is sought to be enforced shows that the tribunal lacked substantive jurisdiction to make the award.

Challenging award on substantive jurisdiction **69.**-(1) A party to arbitral proceedings may, upon notice to the other parties and to the tribunal, apply to court-

(a) challenging any award of the arbitral tribunal as to its substantive jurisdiction; or

(b) for an order declaring an award made by the tribunal on the merits to be of no effect, in whole or in part, on grounds that the tribunal did not have substantive jurisdiction.

(2) An arbitral tribunal may continue the arbitral proceedings and make a further award pending an application to the court under this section in relation to an award as to jurisdiction.

(3) The court may, on determination of an application under this section, make any of the following orders-

(a) confirm the award;

- (b) vary the award; or
- (c) set aside the award in whole or in part.
- (4) Leave of the court shall be required for any appeal against a decision of the court made under this section.

Challenging award
on serious
irregularity

70.-(1) A party to arbitral proceedings may, upon notice to the other parties and to the tribunal, apply to the court challenging an award in the proceedings on the ground of serious irregularity affecting the tribunal, the proceedings or the award.

(2) For the purpose of this section, “serious irregularity” means an irregularity of one or more of the following kinds which the court considers has caused or is likely to cause substantial injustice to the applicant:

- (a) failure by the tribunal to comply with section 35;
- (b) the tribunal has exceeded its powers otherwise than by exceeding its substantive jurisdiction;
- (c) failure by the tribunal to conduct the proceedings in accordance with the procedure agreed by the parties;
- (d) failure by the tribunal to deal with all the issues that were raised before it;
- (e) any arbitral institution or other institution or person vested by the parties with powers in relation to the proceedings or the award exceeding its powers;
- (f) uncertainty or ambiguity as to the effect of the award;
- (g) the award being obtained by fraud or procured in a manner that is contrary to public policy;
- (h) failure to comply with the requirements as to the form of the award; or
- (i) any irregularity in the conduct of the proceedings or in the award which is admitted by the tribunal or by any arbitral or other institution or person vested by the parties with powers in relation to the proceedings or the award.

(3) The court may, where it determines that there is a serious irregularity affecting the tribunal, the proceedings or the award-

- (a) remit the award to the tribunal, in whole or in

- part, for reconsideration;
- (b) set the award aside in whole or in part; or
- (c) declare the award to be of no effect, in whole or in part:

Provided that, the court shall not exercise its power to set aside or to declare an award to be of no effect, in whole or in part, unless it is satisfied that it will be inappropriate to remit the matters in question to the tribunal for reconsideration.

(4) The leave of the court shall be required for any appeal against a decision of the court made under this section.

Appeal on point of law

71.-(1) Unless otherwise agreed by the parties, a party to arbitral proceedings may, upon notice to the other party and to the tribunal, appeal to the court on a question of law arising out of an award made in the proceedings.

(2) An agreement between the parties to dispense with reasons for the tribunal's award shall be considered an agreement to exclude the court's jurisdiction under section (1).

(3) An appeal shall not be brought under this section except-

- (a) by agreement with the other party to the proceedings; or
- (b) with the leave of the court.

(4) The right to appeal under this section shall be subject to the restrictions in subsections (2) and (3) of section 72.

(5) Leave to appeal shall be given only if the court is satisfied that-

- (a) the determination of the question will substantially affect the rights of one or more of the parties;
- (b) the question is one which the tribunal was asked to determine;
- (c) on the basis of the findings of fact in the award-
 - (i) the decision of the tribunal on the question is wrong; or
 - (ii) the question is one of general public importance and the decision of the tribunal is open to serious doubt; and
- (d) despite the agreement of the parties to resolve the matter by arbitration, it is just and proper in

all the circumstances for the court to determine the question.

(6) An application for leave to appeal under this section shall identify the question of law to be determined and state the grounds on which it is alleged that leave to appeal shall be granted.

(7) The court shall determine an application for leave to appeal under this section without a hearing unless it appears to the court that a hearing is required.

(8) Where a party is aggrieved by an order of the court on application for leave to appeal, he may seek leave of court to appeal against that order.

(9) Where leave to appeal is granted and an appeal has been entertained, the court may, by order-

- (a) confirm the award;
- (b) vary the award;
- (c) remit the award to the tribunal, in whole or in part, for reconsideration in the light of the court's determination;
- (d) set aside the award in whole or in part; or
- (e) declare the award to be of no effect in whole or in part:

Provided that, the court shall not exercise its power to set aside an award, in whole or in part, unless it is satisfied that it would be inappropriate to remit the matters in question to the tribunal for reconsideration.

(10) The decision of the court on an appeal under this section shall be treated as a judgment of the court for the purposes of further appeal.

(11) A leave of the appellate court shall not be granted unless the court is of the opinion that, the appeal involves a point of law of general importance or for other reasons, it is proper to be determined by the appellate court.

Challenge or
appeal on
supplementary
provisions

72.-(1) The provisions of this section shall apply to an application or appeal under sections 69, 70 or 71.

(2) An application or appeal shall not be brought where the applicant or appellant has not exhausted-

- (a) any available arbitral process of appeal or review; and
- (b) any available recourse under section 59.

(3) Any application or appeal shall be brought within twenty eight days from the date of the award or,

where there has been any arbitral process of appeal or review, from the date when the applicant or appellant was notified of the result of that process.

- (4) On any application or appeal, where it appears to the court that the award does not -
- (a) contain the tribunal's reasons; or
 - (b) set out the tribunal's reasons in sufficient detail to enable the court properly to consider the application or appeal,

the court may order the tribunal to state the reasons for its award in sufficient detail for that purpose.

(5) Where the court makes an order under subsection (4), it may make such further order as it considers fit with respect to any additional costs of the arbitration resulting from its order.

(6) The court may order the applicant or appellant to provide security for the costs of the application or appeal, and may direct that the application or appeal be dismissed where the order is not complied with.

(7) The power to order security for costs under subsection (6) shall not be exercised on the ground that the applicant or appellant is-

- (a) an individual ordinarily resident outside Mainland Tanzania; or
- (b) a corporation or association incorporated or formed under the law of a country outside Mainland Tanzania.

(8) The court may order that any money payable under the award shall be brought into court or otherwise secured pending the determination of the application or appeal, and may direct that the application or appeal be dismissed where the order is not complied with.

(9) The court may grant leave to appeal subject to conditions under subsections (6), (7) and (8).

(10) Subsection (8) shall not affect the general discretion of the court to grant leave subject to conditions as it may deem appropriate.

Challenge or
appeal on effect of
order of court

73.-(1) The following provisions shall have effect where the court makes an order under section 69, 70 or 71 with respect to an award.

(2) Where the award is varied, the variation shall have effect as part of the tribunal's award.

(3) Where the award is remitted to the tribunal, in whole or in part, for reconsideration, the tribunal shall

make a fresh award in respect of the matters remitted within three months from the date of the order for remission or such longer or shorter period as the court may direct.

(4) Where the award is set aside or declared to be of no effect, in whole or in part, the court may order that any provision, that an award is a condition precedent to the bringing of legal proceedings in respect of a matter to which the arbitration agreement applies, is of no effect as regards to the subject matter of the award or, as the case may be, the relevant part of the award.

Saving for rights of person who takes no part in proceedings

74.-(1) A person who is an interested party to arbitral proceedings but who took no part in the proceedings may apply to court-

- (a) on questions that-
 - (i) whether there is a valid arbitration agreement;
 - (ii) whether the tribunal is properly constituted;
 - (iii) what matters shall be submitted to arbitration in accordance with the arbitration agreement; or
 - (iv) whether there is a contravention of laws and norms; and
- (b) for a declaration or injunction or other appropriate relief.

(2) The applicant under subsection (1) shall have the same right as a party to the arbitral proceedings to challenge an award by an application under -

- (a) section 69 on the ground of lack of substantive jurisdiction in relation to him; or
- (b) section 70 on the ground of serious irregularity, within the meaning of that section, affecting him,

and section 72(2) shall not apply in his case.

Loss of right to object

75.-(1) Where a party to arbitral proceedings takes part, or continues to take part, in the proceedings without making, either forthwith or within such time as is allowed by the arbitration agreement or the tribunal or by any provision of this Act or the Law of Limitation Act, any objection that-

- (a) the tribunal lacks substantive jurisdiction;

- (b) the proceedings have been improperly conducted;
- (c) there has been a failure to comply with the arbitration agreement or with any provision of this Act; or
- (d) there has been any other irregularity affecting the tribunal or the proceedings,

he may not raise that objection, before the tribunal or the court, unless he shows that, at the time he took part or continued to take part in the proceedings, he did not know and could not with reasonable diligence have discovered the grounds for the objection.

(2) Where the arbitral tribunal rules that it has substantive jurisdiction, a party to arbitral proceedings who could have questioned that ruling-

- (a) by any available arbitral process of appeal or review;
- (b) by challenging the award,

does not do so, or does not do so within the time allowed by the arbitration agreement or any provision of this Act, he may not object to the tribunal's substantive jurisdiction on any ground which was the subject of that ruling.

Immunity of
arbitral institutions

76.-(1) An arbitral or other institution or person designated or requested by the parties to appoint or nominate an arbitrator shall not be liable for anything done or omitted in the discharge or purported discharge of that function unless the act or omission is proven to have been done in bad faith.

(2) An arbitral or other institution or person by whom an arbitrator is appointed or nominated shall not be liable, by reason of having appointed or nominated him, for anything done or omitted to be done by the arbitrator or his employees or agents, in the discharge or purported discharge of his functions as arbitrator.

(3) This section shall apply to an employee or agent of an arbitral or other institution or person as they apply to the institution or person himself.

PART X ARBITRATION CENTRE

Establishment and
operation of Centre

77.-(1) There shall be a center to know as the Tanzania Arbitration Centre.

- (2) The functions of the Centre shall be-
 - (a) conduct and management of arbitration;
 - (b) registration and maintenance of list of accredited arbitrators;
 - (c) enforcement of the code of conduct and practice for arbitrators;
 - (d) management and provision of continuing education for arbitrators; and
 - (e) to perform any other functions as the Minister may direct.
- (3) The Centre may affiliate and seek accreditation from other regional and international bodies.
- (4) In the performance of its functions the Centre shall be guided by the provisions of this Act and any other written laws.
- (5) The Centre may establish branches as may be necessary for the proper and effective performance of its functions.

PART XI
ENFORCEMENT OF ARBITRAL AWARDS

Recognition and enforcement of arbitral awards

78.-(1) Upon application in writing to the court, a domestic arbitral award or foreign arbitral award may be recognised as binding and enforceable if it satisfies the following conditions:

- (a) at the request of the party against whom it is invoked, if that party furnishes to court proof that-
 - (i) parties to the arbitration agreement, pursuant to the law applicable-
 - (aa) lacked capacity to enter into the agreement;
 - (bb) was not properly represented;
 - (ii) the arbitration agreement is not valid under the law to which the parties have subjected it or, failing any indication of that law, under the law of the state where the arbitral award was made;
 - (iii) the party against whom the arbitral award is invoked was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case;

- (iv) the arbitral award deals with a dispute not contemplated by or not falling within the terms of the reference to arbitration, or it contains decisions on matters beyond the scope of the reference to arbitration, provided that if the decisions on matters referred to arbitration can be separated from those not so referred, that part of the arbitral award which contains decisions on matters referred to arbitration may be recognised and enforced;
 - (v) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties or, failing any agreement by the parties, was not in accordance with the law of the state where the arbitration took place; or
 - (vi) the arbitral award has not yet become binding on the parties or has been set aside or suspended by a court of the state in which, or under the law of which, that arbitral award was made;
- (b) the making of the arbitral award was induced or affected by fraud, bribery, corruption or undue influence;
- (c) if the court finds that-
- (i) the subject-matter of the dispute is not capable of settlement by arbitration under any written laws; or
 - (ii) the recognition or enforcement of the arbitral award would be contrary to any written laws or norms.

(2) If an application for the setting aside or suspension of an arbitral award has been made to a court referred to in subsection (1)(a)(vi), the court may, if it considers it proper, adjourn its decision and may also, on the application of the party, claiming recognition or enforcement of the arbitral award, order the other party to provide appropriate security.

(3) Enforcement of a foreign award may be refused at the request of the party against whom it is invoked, only if that party furnishes to the court proof that-

- (a) the parties to the agreement referred to in section 83 where, under the law applicable to them, under some incapacity, or the said agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law of the country where the award was made;
 - (b) the party against whom the award is invoked was not given proper notice of the appointment of the arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or
 - (c) the award deals with a difference not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration, except that where the decisions on matters submitted to arbitration can be separated from those not so submitted, that part of the award which contains decisions on matters submitted to arbitration may be enforced;
 - (d) the composition of the arbitral authority or the arbitral procedure was not in accordance with the agreement of the parties, or, failing such agreement, was not in accordance with the law of the country where the arbitration took place; or
 - (e) the award has not yet become binding on the parties, or has been set aside or suspended by a competent authority of the country in which, or under the law of which, that award was made.
- (4) Enforcement of an arbitral award may also be refused if the Court finds that-
- (a) the subject-matter of the difference is not capable of settlement by arbitration under the laws of Mainland Tanzania; or
 - (b) the enforcement of the award would be contrary to the public policy of Mainland Tanzania.
- (5) Where an application for the setting aside or suspension of the award has been made to a competent authority referred to in subsection (1)(e) the Court may, if it considers it proper, adjourn the decision on the enforcement of the award and may also, on the application of the party claiming enforcement of the award, order the

other party to give suitable security.

Deemed decrees

79. Where the court is satisfied that the award is enforceable under this Part, the award shall be deemed to be a decree of that court.

Appealable orders

80. Notwithstanding anything contained in any other law for the time being in force, an appeal shall lie from the order refusing to-

(a) refer the parties to arbitration under section 12;
or

(b) enforce an arbitral award under section 78,
to the court authorised by law to hear appeals from such order.

PART XII MISCELLANEOUS PROVISIONS

Service of notices

81.-(1) The parties may agree on the manner of service of any notice or other document required or authorised to be given or served in pursuance of the arbitration agreement or for the purposes of the arbitral proceedings.

(2) Where there is no agreement of the parties in terms of subsection (1), a notice or other document may be served on party and the tribunal by any effective means.

(3) A notice or other document shall be treated as effectively served if it is addressed, pre-paid and delivered by post-

(a) to the addressee's last known principal residence or, if he is or has been carrying on a trade, profession or business, his last known principal business address; or

(b) where the addressee is a body corporate, to the body's registered or principal office.

(4) This section shall not apply to the service of documents for the purposes of legal proceedings, for which provision is made by rules of court.

(5) References in this Act to a notice or other document including any form of communication in writing and references to giving or serving a notice or other document shall be construed accordingly.

Powers of court in relation to service

82.-(1) This section shall apply where service of a

of documents

document on a person in the manner agreed by the parties, or in accordance with provisions of section 76 having effect in default of agreement, is not reasonably practicable.

(2) Unless otherwise agreed by the parties, the court may make such order as it considers fit-

(a) for service in such manner as the court may direct; or

(b) dispensing with service of the document.

(3) Any party to the arbitration agreement may apply for an order after exhausting any available arbitral process for resolving the matter.

(4) The leave of the court shall be required for any appeal against a decision of the court made under this section.

Reckoning periods of time

83.-(1) The parties may agree on the method of reckoning periods of time for the purposes of any provision agreed by them or any provision of this Act having effect in default of such agreement.

(2) Where there is no agreement of the parties in terms of subsection (1), periods of time shall be reckoned as follows:

(a) where the act is required to be done within a specified period after or from a specified date, the period begins immediately after that date;

(b) where the act is required to be done in a specified number of clear days after a specified date, at least that number of days between the day on which the act is done and that specified date; and

(c) where the period is a period of seven days or less which may include a Saturday, Sunday or a public holiday in the place where anything which has to be done within the period falls to be done, that day shall be excluded.

Power of court to extend time limits relating to arbitral proceedings

84.-(1) Unless the parties otherwise agree, the court may by order extend any time limit agreed by the parties in relation to any matter relating to the arbitral proceedings or specified in any provision of this Act having effect in default of such agreement.

(2) An application for an order may be made by-

(a) any party to the arbitral proceedings upon notice to the other party and to the tribunal; or

- (b) the arbitral tribunal upon notice to the party.
- (3) The court shall not exercise its power to extend a time limit unless it is satisfied that-
 - (a) any available recourse to the tribunal, or to any arbitral or other institution or person vested by the parties with power in that regard, has first been exhausted; and
 - (b) a substantial injustice would otherwise be done.
- (4) The court's power under this section may be exercised whether or not the time has already expired.
- (5) An order under this section may be made on such terms as the court may deem fit.
- (6) Leave of the court shall be required for any appeal against a decision of the court made under this section.
- (7) This section shall not apply to a time limit to which section 14 applies.

Notice and other requirements in connection with legal proceedings

- 85.**-(1) References in this Part to an application, appeal or other step in relation to legal proceedings being taken "upon notice" to the other parties to the arbitral proceedings, or to the tribunal, shall be to such notice of the originating process as is required by rules prescribed by the Chief Justice.
- (2) The rules prescribed under subsection (1) shall be made-
 - (a) requiring such notice to be given as indicated by any provision of this Act; and
 - (b) as to the manner, form and content of any such notice.
 - (3) Without prejudice to the rules prescribed under subsection (1), a requirement to give notice to the tribunal of legal proceedings shall be construed-
 - (a) if there is more than one arbitrator, as a requirement to give notice to each of them; and
 - (b) if the tribunal is not fully constituted, as a requirement to give notice to any arbitrator who has been appointed.
 - (4) References in this Act to making an application or appeal to the court within a specified period shall be to the issue within that period of the appropriate originating process in accordance with rules prescribed under subsection (1).

(5) Where any provision of this Act requires an application or appeal to be made to the court within a specified time, the rules prescribed under subsection (1) relating to the reckoning of periods, the extending or abridging of periods, and the consequences of not taking a step within the period prescribed by the rules, shall apply in relation to that requirement.

(6) The rules made under subsection (1) may provide for-

- (a) matters with respect to the time within which any application or appeal to the court shall be made;
- (b) any matter to be in line with arbitral proceedings as provided for in this Act; or
- (c) any matter of legal proceeding, as provided for in this Act, to be in line with court legal proceedings.

Application and construction

86. In applying and construing this Act, an arbitrator shall have regard to positions taken by other arbitrators in similar subject matter as well as positions taken by courts of law in such matters, and justify his decision in the event he decides to differ with the position of other arbitrators or courts.

Electronic signatures

87. The provisions governing the legal effect, validity, and enforceability of electronic records or electronic signatures, and of contracts performed with the use of such records or signatures made by the Evidence Act or practice direction by the Chief Justice or other laws in force shall apply to proceedings under this Act.

Cap. 6

Accreditation

88. An arbitrator who decides to practice at a fee shall be required to register in accordance with the system put in place pursuant to section 64 of the Civil Procedure Code or any other law for the time being in force.

Cap. 33

Reciprocal enforcement

89. A party who intends to enforce a final award shall do so in accordance to the provisions of this Act.

Regulations, rules and practice directions

90.-(1) The Minister may make regulations for the better carrying out of the provisions of this Act.

(2) Without prejudice to the generality in subsection (1), the Minister may make regulations on the

following matters:

- (a) the scale of fees to be applied in arbitration matters;
- (b) forms to be used in arbitration matters;
- (c) accreditation of arbitrators;
- (d) prescribe fee thresholds to be charged by arbitrators; and
- (e) prescribe anything which is by this Act required or permitted to be prescribed or otherwise provided for.

(3) The Chief Justice in consultation with the Minister may make rules or issue practice directions as may be necessary with regards to matters that the court may be involved in accordance with this Act.

Repeal, savings
and transitional
arrangements
Cap. 15

91.-(1) The Arbitration Act, 1931 is hereby repealed.

(2) Anything done or concluded and the repealed Act or regulations shall be deemed to have been done or concluded under this Act.

(3) Any arbitration arrangement concluded before the coming into effect of this Act which has not yet materialized shall be renegotiated and brought in line with this Act.

(4) Any proceedings pending shall be proceeded in the light of this Act.

(5) Any Award which has been granted shall be deemed to have been granted under this Act.

PART XIII CONSEQUENTIAL AMENDMENTS

(a) Amendment of the Criminal Procedure Act, Cap. 20

Construction
Cap. 20

92. Item (a) of this part shall be read as one with the Criminal Procedure Act herein referred to as “the principal Act”.

amendment of section
163

93. The principal Act is in section 163, by-

- (a) designating the contents of section 163 as contents of subsection (1);
- (b) adding immediately after subsection (1) as designated the following:

“(2) For the purpose of subsection (1), a court may, with the consent of the complainant, reconcile the parties or otherwise advise the parties to seek the service of a reconciliatory.

(3) The terms approved by the court under subsection (1) may include-

- (a) giving of an apology in an appropriate manner;
- (b) giving of a promise or undertaking not to reoffend, or to respect the rights and interests of any victim;
- (c) mandatory attendance at any counselling services or other program aimed at rehabilitation;
- (d) a promise or undertaking to alter any habits or conduct, such as the consumption of alcohol or any other prohibited substance;
- (e) a promise or undertaking not to associate with persons shown to be of bad habit or influence to the accused person, or
- (f) any other term the court may deem proper to make taking into account the circumstances of the case.

(4) A court shall only proceed under subsection (2) where it is satisfied that it is in the interests of the complainant to proceed in such a manner, and in any case involving domestic violence, the court shall ensure that the victim of the violence does not submit to any proceedings being undertaken in accordance with this section by reason of pressure being exerted to him or her in any form by the accused person.

(5) Upon proceeding in accordance with this section the court may-

- (a) order the proceedings to be stayed for a specified period of time upon the accused person entering into any bond to comply with the terms imposed by the court under subsection (2); or
 - (b) dismiss the proceedings.
- (6) The reconciliator shall make proper record

of every aspect of the outcome of the proceedings on the court files and in the records of an accused person whose case has been dealt with in accordance with the procedures specified in this section.

(7) The Minister may, in consultation with the Chief Justice, make rules for better implementation of the provisions of this section.”.

Addition of sections
170A, 170B and
170C

94. The principal Act is amended by adding immediately after section 170 the following:

“Compounding of
offences

170A.-(1) Where the court takes cognizance of a compoundable offence specified in subsection (6) of section 170 or under any other law for the time being in force, the court may appoint a probation officer or such other officer as may be agreed upon by the parties to facilitate compounding of the offence:

Provided that, the court shall not refer a case for compounding of an offence-

- (a) without the consent of the parties; or
- (b) the court is satisfied that the accused was afforded an opportunity of compounding the offence for which the offence relates.

(2) The officer appointed under sub-section (1) shall endeavor to facilitate compounding of the offence within thirty days.

(3) Where the offence is compounded, the officer appointed under subsection (1) shall submit a report in this respect to the court duly witnessed and signed by him and by the persons authorized to compound the offence under any law for the time being in force, and the court shall pass an order and discharge the

accused.

(4) Where the efforts of the officer appointed under subsection (1) for compounding the offence fail, the court shall proceed with the trial from the stage it was referred to the said officer.

(5) Where the parties have themselves resorted to procedures for compounding of the offence and the offence is compounded in terms of subsection (6) of section 170 or any other law for the time being in force, they may make application to the court in terms thereof, and if the court is satisfied that the parties have voluntarily compounded the offence and the document recording their agreement has been duly filed in court, the court shall pass an order accordingly and discharge the accused person.

(6) Subsection (6) of section 170 or any other law under which the offence is compoundable shall *mutatis mutandis* apply to the proceedings under this section.

Enforcement of a
compounding
order

170B.-(1) Where a compounding order has been issued under this Act or any other law for the time being in force for the payment of a fine and the accused person fails in wholly or in part to make such payment within the prescribed time, the officer authorised to compound the offence shall either-

- (a) issue a warrant for the levy of the amount on the immovable and movable property of the accused person; or
- (b) agree with the accused person on alternative sanction, including the

performance of supervised community work in lieu of payment of the prescribed fine.

Cap. 16 (2) Where the options stated in subsection (1) fails, the accused person shall be taken to court to be dealt with in accordance with section 29(d) of the Penal Code imprisonment arising from default to pay a fine.

Regulations **170C.** The Minister may make Regulations for the better carrying out of the provisions of sections 170, 170A and 170B.”.

(b) Amendment of the Civil Procedure Code, Cap. 33

Construction Cap. 33 **95.** Item (b) of this part shall be read as one with the Civil Procedure Code herein referred to as “the principal Act”.

Addition of section 10A **96.** The principal Act is amended by adding immediately after section 10 the following:

“Bonafide steps to resolve dispute **10A.**-(1) For the purposes of this Act, a person shall be deemed to have taken bonafide steps to resolve a dispute if the steps taken by the person in relation to the dispute constitute a sincere and genuine attempt to resolve the dispute out of court, having regard to the person’s circumstances and the nature and circumstances of the dispute.

(2) For purposes of this Act, the following steps may be taken by a person as part of bonafide steps to resolve a dispute with another person-

(a) notifying the other person of the issues that are, or may be, in dispute, and offering to discuss them with a view to resolving

- the dispute;
- (b) responding appropriately to any notification referred to under paragraph (a);
- (c) providing relevant information and documents to the other person to enable the other person to understand the issues involved and how the dispute may be resolved;
- (d) considering whether the dispute could be resolved by a process other than a court action, including reconciliation, negotiation, mediation, arbitration, warning, diversion, as applicable;
- (e) if a process referred under paragraph (d) is agreed to-
 - (i) agreeing on a particular person to facilitate the process, where feasible; and
 - (ii) attending the process;
- (f) if a process agreed under paragraph (e) is conducted but does not result in resolution of the dispute, considering a different process; or
- (g) attempting to reconcile or negotiate with the other person or otherwise engage in independent evaluation, with a view to resolving some or all the issues in dispute, or authorizing a representative to do so, before escalating the matter to mediation or arbitration.

(3) For avoidance of doubt, the provisions of subsection (1) shall not limit the steps that may constitute taking bonafide steps to resolve a dispute.

(4) The provisions of this section shall apply to all proceedings intended to be initiated in court.”.

Addition of sections 22A, 22B, and 22C

97. The principal Act is amended by adding immediately after section 22 the following:

Vexatious or frivolous proceedings prohibited

or

22A. Without prejudice to the right to access a court or other dispute resolution mechanisms, no person shall engage in proceedings for the purposes of harassing or subduing another person.

Power to make orders

22B.- Where, on an application made by-

- (a) the Attorney General;
- (b) if the person has made a vexatious application against another person, that other person; or
- (c) a person who has a sufficient interest in a matter,

under this section, the court is satisfied that any person has habitually and persistently and without any reasonable ground instituted vexatious proceedings, whether alone or in concert with any other person and whether in the court or in any other dispute resolution mechanism, and whether against the same person or against different persons, the court may, after hearing that person or giving him an opportunity of being heard, make an order declaring such person to be a vexatious litigant.

Restraint of proceedings **22C.** No suit shall, except with leave of the High Court be instituted by or on behalf of a vexatious litigant in any court, and any suit instituted by him in any court before the making of an order under this Part shall not be continued by him without the leave, and such leave shall not be given unless the High Court is satisfied that the suit is not an abuse of the process of the court and that there is a prima facie ground for the suit.

Addition of sections 64B, 64C and 64D. **98.** The principal Act is amended by adding immediately after section 64 the following:

“Accreditation matters **64B.**-(1) The Minister shall establish and maintain a system of accreditation for reconciliators, negotiators, mediators and arbitrators and keep a register of accredited persons who may be involved in facilitation of reconciliations, negotiations, mediations and arbitrations.

(2) No person shall practice for fee as reconciliator, negotiator, mediator or arbitrator unless such a person is accredited in accordance with subsection (1).

(3) It shall be an offence to practice for fee as a reconciliator, negotiator, mediator, arbitrator or any other category of a dispute resolution practitioner without being accredited.

(4) Any person who commits an offence under this section, on conviction be liable to a fine not exceeding five million shillings or imprisonment for a term not exceeding two years or to both.

(5) The Registrar may, where the accused person admits the

commission of an offence under this section, compound the offence and impose a fine of not more than five million shillings/ not exceeding one half of the fine imposed under subsection (4).

(6) The Minister may, on advice in writing by the Registrar, extend the accreditation system for reconciliators, negotiators, mediators and arbitrators to other categories of the dispute resolution providers.

Appointment and
functions of
Registrar

64C.-(1) There shall be appointed within the Ministry responsible for legal affairs a person not below the rank of a Principal State Attorney to be the Registrar of reconciliators, negotiators, mediators and arbitrators.

(2) The Registrar shall perform the following functions:

- (a) determine the criteria for the certification and accreditation of reconciliators, negotiators, mediators and arbitrators;
- (b) propose rules for the certification and accreditation of reconciliators, negotiators, mediators and arbitrators;
- (c) maintain a register of qualified reconciliators, negotiators, mediators and arbitrators;
- (d) issue annual or periodic practicing certificate to an accredited reconciliator, negotiator, mediator and arbitrator as the case may be; and
- (e) enforce such code of

practice for
reconciliators,
negotiators, mediators
and arbitrators as may be
prescribed.

Societies and
regulations

64D.-(1) Accredited
reconciliators, negotiators, mediators
or arbitrators shall be entitled to
establish different societies in
accordance with the law regulating
establishment of societies.

(2) Every society duly
established pursuant to subsection (1)
shall notify the Registrar who shall
register the society in the Register.

(3) Every society established
pursuant to this section shall comply
with the minimum standards for
reconciliators, negotiators, mediators
or arbitrators.

(4) The Minister may make
regulations prescribing for-

- (a) minimum standard for
reconciliators,
negotiators, mediators or
arbitrators;
- (b) rules of procedures for
reconciliation, negotiations
and mediations;
- (c) code of conduct and
practice for
reconciliators,
negotiators, mediators or
arbitrators;
- (d) forms or any other
templates or electronic
based system for
purposes of this Act; or
- (e) any other areas that he
deems proper to prescribe
procedures for purposes
of this Act.

*(c) Amendment of the Natural Wealth and Resources
(Permanent Sovereignty) Act, Cap. 449*

Construction Act No. 5 of 2017 **99.** Item (c) of this part shall be read as one with the Natural Wealth and Resources (Permanent Sovereignty) Act herein referred to as “the principal Act”.

Amendment of section 11 **100.** The principal Act is amended in section 11 by deleting the word “established” appearing in subsections (2) and (3).

(d) Amendment of the Public Private Partnership Act

Construction Cap. 103 **101.** Item (d) of this part shall be read as one with the Public Private Partnership Act herein referred to as “the principal Act”.

Amendment of section 22 **102.** The principal Act is amended in section 22 by deleting the word “established” appearing in paragraph (b).

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SCHEDULE
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(Made under section 7(1))

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MANDATORY PROVISIONS OF PART I

- (a) sections 13 (relating to stay of legal proceedings);
- (b) section 14 (relating to power of court to extend agreed time limits);
- (c) section 15 (relating to application of the Law of Limitation Acts);
- (d) section 26 (relating to power of court to remove arbitrator);
- (e) section 28(1) relating to (effect of death of arbitrator);
- (f) section 30 (relating to liability of parties for fees and expenses of arbitrators);
- (g) section 31 (relating to immunity of arbitrator);
- (h) section 32 (relating to objection to substantive jurisdiction of tribunal);
- (i) section 34 (relating to determination of preliminary point of jurisdiction);
- (j) section 35 (relating to general duty of tribunal);

- (k) section 39(2) (relating to items to be treated as expenses of arbitrators);
- (l) section 42 (relating to general duty of parties);
- (m) section 45 (relating to securing the attendance of witnesses);
- (n) section 58 (relating to power to withhold award in case of non-payment);
- (o) section 64 (relating to effectiveness of agreement for payment of costs in any event);
- (p) section 68 (relating to enforcement of award);
- (q) sections 69 and 70 (relating to challenging the award: substantive jurisdiction and serious irregularity);
- (r) sections 72 and 73 (relating to supplementary provisions and effect of order of court)
- (s) section 74 (relating to saving for rights of person who takes no part in proceedings);
- (t) section 75 (relating to loss of right to object); and
- (u) section 76 (relating to immunity of arbitral institutions).

OBJECT AND REASONS

This Bill intends to provide for the enactment of the Arbitration Act 2020, with a purpose of facilitating amicable settlement of disputes outside the court system as well as enforceability of arbitration agreements. This Bill responds to the challenges faced by the Mainland Tanzania in managing and addressing many issues emerging in arbitration cases including guidance to, general principles guiding arbitration, meaning and nature of arbitration agreements, commencement and enforcement of arbitral awards and general amendments that intend to introduce and regulate various forms of alternative dispute settlement methods as an integral part of arbitration.

This Bill is divided into XIII Parts.

Part I contains preliminary Provisions which includes short title, commencement date, application and interpretation of various terms and phrases used in the proposed Bill.

Part II provides for General Provisions which elaborate general principles which apply in arbitration matters, conditions to be adhered to, where arbitration is held in Mainland Tanzania, seat of arbitration as well as description of mandatory and non-mandatory provisions. This Part also provides for the requirement of arbitration agreement to be in writing.

Part III deals with various aspects relating to arbitration agreements such as construction of arbitral agreement, separability of arbitration agreement and what happens where a party to an arbitration agreement dies.

Part IV provides for commencement of arbitral proceedings and it contains provisions relating to power of court to extend the time for commencing arbitral proceedings, application of the Law of Limitation Act, Cap. 89 and commencement of arbitral proceedings.

Part V deals with arbitral tribunal and among other matters it contains provisions relating to appointment of arbitrators, chairmen and umpire. The Part also provides for general matters relating to the composition of arbitral tribunal.

Part VI contains provisions providing for jurisdiction of arbitral tribunal, it also outlines the procedure to challenge jurisdiction of the arbitral tribunal. This Part

also states the procedure to be pursued when a party to arbitral proceedings intends to raise a preliminary objection as to the jurisdiction of the tribunal in court of law.

Part VII deals with proceedings in the tribunal specifically the general duty of the tribunal, procedural and evidential matters, consolidation of proceedings and appointment of legal representatives or experts. This Part further provides for powers of the tribunal where a party has failed to comply with necessary steps ordered, the part also provides for the grounds on which the court can enforce peremptory orders issued by a tribunal in the event of default by a party.

Part VIII deals with matters relating to costs of arbitration. It also contains provisions catering for recoverable fees and expenses of arbitrators and other matters related thereto such as limit of recoverable costs.

Part IX provides for the power of the court in matters involving enforcement of award, appeal on a point of law. It further provides for procedure relating to saving of interested party who could not participate in the proceedings. Lastly, this Part provides for immunity of arbitral institutions.

Part X provides for the establishment of the Tanzania Arbitration Centre which shall deal with Arbitration disputes arising within and outside Mainland Tanzania. This Part further mandates the Centre to affiliate with other International Arbitration Centres.

Part XI provides for recognition and enforcement of domestic and foreign awards. The Part further gives the meaning of those awards, their conditions and enforcement, criteria as well as meaning of various decrees and orders by the court.

Part XII deals with Miscellaneous provisions which relate to the procedure for service of notices, power of court in relation to service of documents, reckoning of time, power of court to extend time relating to arbitral proceedings and other requirement in connection with legal proceedings.

Part XIII deals with Consequential Amendments of certain written laws whereby the Civil Procedure Code Cap.33, Criminal Procedure Act Cap 20, the Natural Wealth and Resources (Permanent Sovereignty) Act, Cap. 449 and the Public Private Partnership Act, Cap. 103 are proposed to be amended

MADHUMUNI NA SABABU

Muswada huu unapendekeza kufuta Sheria ya Usuluhishi, Sura ya 15 na kutunga Sheria mpya ya Usuluhishi ya Mwaka 2020 (The Arbitration Act, 2020). Lengo la Sheria hii ni kuweka masharti ya utatuzi wa migogoro kirafiki nje ya mfumo wa mahakama pamoja na kuwezesha utekelezaji makubaliano ya kiusuluhishi. Muswada huu umekusudia kutatua changamoto mbalimbali zilizokuwa zinaikabili Nchi katika kusimamia na kushughulikia masuala mbalimbali yanayotokana na mashauri ya usuluhishi pamoja na kutoa mwongozo unaohusu misingi ya usuluhishi, maana ya usuluhishi na chanzo cha makubaliano ya usuluhishi. Sheria inayopendekezwa inalenga kuweka utaratibu wa utekelezaji wa Mikataba ya Kimataifa ya Usuluhishi ambayo Tanzania Bara imeridhia na kuweka mfumo madhubuti wa usimamizi na uratibu wa wasuluhishi.

Muswada huu umegawayika katika sehemu kumi na tatu.

Sehemu ya Kwanza ya Muswada inahusu masharti ya utangulizi, ambayo yanajumuisha jina la Muswada, tarehe ya kuanza kutumika kwa Sheria, matumizi na tafsiri ya maneno na misamiati mbalimbali iliyotumika katika Muswada huu.

Sehemu ya Pili ya Muswada inaainisha masharti ya jumla ya usuluhishi, eneo usuluhishi unapofanyika pamoja na masharti ya kuzingatiwa iwapo usuluhishi utafanyikia Tanzania Bara. Sehemu hii pia inaweka sharti la makubaliano ya usuluhishi kuwa katika maandishi.

Sehemu ya Tatu ya Muswada inahusu masuala mbalimbali ya makubaliano ya usuluhishi ikiwemo kutafsiri makubaliano ya usuluhishi na hatma ya makubaliano iwapo mmoja wa muhusika atafariki.

Sehemu ya Nne ya Muswada ina masharti yanayohusu kuanza kwa usuluhishi, uwezo wa mahakama kuongeza muda wa kuanza kwa usuluhishi na kutumika kwa Sheria ya Ukomo wa Muda, Sura ya 89(The Law of Limitation Act, Cap 89).

Sehemu ya Tano ya Muswada inahusu mambo mbalimbali yanayohusu Mabaraza ya Usuluhishi ikiwemo uteuzi wa wasuluhishi, mwenyekiti na waamuzi. Sehemu hii pia ina masharti yanayohusu muundo wa Baraza la Usuluhishi.

Sehemu ya Sita ya Muswada inaainisha mamlaka ya Baraza la Usuluhishi na kuweka utaratibu wa kuhoji mamlaka ya Baraza. Aidha, Sehemu hii pia inaweza utaratibu wa kufuatwa pindi mhusika anapodhamiria kuweka pingamizi la awali kuhusu mamlaka ya Baraza.

Sehemu ya Saba ya Muswada ina masharti yanayohusu mwenendo wa mashauri kwenye Baraza kwa kuainisha wajibu wa Baraza, masuala ya taratibu za ushahidi, uteuzi wa wanasheria au wataalam. Vilevile, inaainisha kuhusu mamlaka ya Baraza na amri ambazo Baraza linaweza kuzitekeleza kwa mhusika aliyeshindwa kutekeleza amri za awali za Baraza hilo.

Sehemu ya Nane ya Muswada inahusu masuala ya gharama za usuluhishi ikiwemo gharama ambazo zinaweza kufidiwa pamoja na gharama za wasuluhishi na ukomo wa gharama hizo.

Sehemu ya Tisa ya Muswada inahusu mamlaka ya mahakama kuhusiana na utekelezaji wa tuzo na haki ya rufaa endapo kuna ukiukwaji wa sheria. Aidha, inatoa mwongozo kuhusiana na mhusika ambaye ameshindwa kushiriki katika shauri la usuluhishi na kutoa kinga kwa taasisi za usuluhishi.

Sehemu ya Kumi ya Muswada inaainisha masharti kuhusu uanzishwaji wa Kituo cha Usuluhishi ambacho kitashughulika na usuluhishi wa migogoro ya ndani na nje ya Tanzania Bara. Aidha Kituo hicho kitakuwa na uwezo wa kujifungamanisha na vituo vingine vya usuluhishi vya Kimataifa.

Sehemu ya Kumi na Moja ya Muswada inaainisha masharti kuhusu utambuzi na utekelezaji wa tuzo zilizotolewa ndani na nje ya nchi. Sehemu hii inatoa pia tafsiri ya tuzo, vigezo na masharti ya utekelezaji wa tuzo hizo pamoja na namna ambavyo Mahakama itatambua Amri mbalimbali zinazotolewa.

Sehemu ya Kumi na Mbili inahusu masharti ya nyongeza kuhusiana na taratibu za kutoa wito wa kufika kwenye Baraza na taratibu za kufikisha nyaraka. Sehemu hii pia inaelezea mamlaka ya mahakama kuongeza muda wa mashauri ya usuluhishi.

Sehemu ya Kumi na Tatu ya Muswada inahusu Marekebisho Yatokanayo, ambapo Sheria ya Mwenendo wa Mashauri ya Madai, Sura ya 33, na Sheria ya Mwenendo wa Mashauri ya Jinai, Sura ya 20 Sheria ya Mamlaka ya Nchi na Usimamizi wa Maliasilia za Nchi, Sura ya 449 na Sheria ya Ubia Baina ya Sekta ya Umma na Sekta Binafsi zinapendekezwa kufanyiwa marekebisho.

Dodoma,
22 Januari, 2020

AUGUSTINE P. MAHIGA
Waziri wa Katiba na Sheria