



Arbitration

in 49 jurisdictions worldwide

2014

Contributing editors: Gerhard Wegen and Stephan Wilske



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Getting the Deal Through is delighted to publish the ninth edition of *Arbitration*, a volume in our series of annual reports, which provide international analysis in key areas of law and policy for corporate counsel, cross-border legal practitioners and business people.

Following the format adopted throughout the series, the same key questions are answered by leading practitioners in each of the 49 jurisdictions featured. New jurisdictions this year include Equatorial Guinea, Mexico, Nigeria and Scotland.

Every effort has been made to ensure that matters of concern to readers are covered. However, specific legal advice should always be sought from experienced local advisers. *Getting the Deal Through* publications are updated annually in print. Please ensure you are referring to the latest print edition or to the online version at www.gettingthedealthrough.com.

Getting the Deal Through gratefully acknowledges the efforts of all the contributors to this volume, who were chosen for their recognised expertise. We would also like to extend special thanks to contributing editors Gerhard Wegen and Stephan Wilske of Gleiss Lutz for their continued assistance with this volume.

Getting the Deal Through

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Introduction	4	ICSID	54
Gerhard Wegen and Stephan Wilske Gleiss Lutz		Nicolas Herzog and Niccolò Gozzi Niedermann Rechtsanwälte	
CAM-CCBC	10	The Polish Chamber of Commerce	60
André de Albuquerque Cavalcanti Abbud and Gustavo Santos Kulesza Barbosa, Müssnich & Aragão		Justyna Szpara and Maciej Łaszczuk Łaszczuk & Partners	
CEAC	16	SCC	63
Eckart Brödermann and Christine Heeg Chinese European Arbitration Centre		Dan Engström & Cornel Marian Stockholm Arbitration & Litigation Center (SALC) Advokatbyrå KB	
Thomas Weimann Chinese European Legal Association		The Swiss Chambers' Arbitration Institution	67
CIETAC	21	Philippe Bärtsch, Christopher Boog and Benjamin Moss Schellenberg Wittmer	
Peter Yuen, Helen Shi and Benjamin Miao Fangda Partners		Angola	72
CMA	25	Agostinho Pereira de Miranda, Cláudia Leonardo and Jayr Fernandes Miranda Correia Amendoeira & Associados	
André de Albuquerque Cavalcanti Abbud and Gustavo Santos Kulesza Barbosa, Müssnich & Aragão		Australia	79
CRCICA	30	Tony Johnson and Henry Winter Johnson Winter & Slattery	
Mohamed Abdel Raouf Cairo Regional Centre for International Commercial Arbitration		Austria	87
DIAC	36	Klaus Oblin Oblin Melichar	
Gordon Blanke and Soraya Corm-Bakhos Baker & McKenzie Habib Al Mulla		Bahrain	94
DIS	39	Adam Vause Norton Rose Fulbright (Middle East) LLP	
Renate Dendorfer-Ditges Heussen Rechtsanwalts-gesellschaft mbH		Belgium	102
HKIAC	44	Johan Billiet Billiet & Co	
Peter Yuen and Doris Yeung Fangda Partners (in association with Peter Yuen & Associates)		Tatiana Proshkina Association for International Arbitration	
ICC	48	Brazil	111
José Rosell and María Beatriz Burghetto Hughes Hubbard & Reed LLP		Hermes Marcelo Huck, Rogério Carmona Bianco and Fábio Peixinho Gomes Corrêa Lilla, Huck, Otranto, Camargo Advogados	

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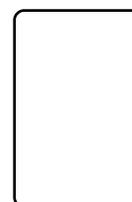
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CONTENTS

<u>China</u>	<u>118</u>	<u>Hungary</u>	<u>214</u>	<u>Mexico</u>	<u>299</u>
Peter Yuen, Helen Shi and Benjamin Miao Fangda Partners		Chrysta Bán Bán, S Szabó & Partners		Claus von Wobeser and Montserrat Manzano Von Wobeser y Sierra SC	
<u>Colombia</u>	<u>127</u>	<u>India</u>	<u>222</u>	<u>Morocco</u>	
Carolina Posada Isaacs, María Alejandra Arboleda González and Diego Romero Cruz Posse Herrera Ruiz		Mysore Prasanna, Shreyas Jayasimha, Rajashree Rastogi and S Bhushan Aarna Law		Ginestié Magellan Paley-Vincent in association with Ahdab Law Firm see www.gettingthedealthrough.com	
<u>Croatia</u>	<u>134</u>	<u>Indonesia</u>	<u>233</u>	<u>Mozambique</u>	<u>306</u>
Natalija Perić and Frano Belohradsky Mamić Perić Reberski Rimac		Anderonikus A S Janis Roosdiono & Partners		Agostinho Pereira de Miranda, Filipa Russo de Sá and Catarina Carvalho Cunha Miranda Correia Amendoeira & Associados	
<u>Czech Republic</u>	<u>141</u>	<u>Israel</u>	<u>241</u>	<u>Nigeria</u>	<u>313</u>
Alexander J Bělohávek Law Offices Bělohávek		Eric S Sherby and Tali Rosen Sherby & Co, Advs		Dorothy Udeme Ufot SAN Dorothy Ufot & Co	
<u>Ecuador</u>	<u>149</u>	<u>Italy</u>	<u>250</u>	<u>Poland</u>	<u>323</u>
Rodrigo Jijón Letort and Juan Manuel Marchán Pérez Bustamante & Ponce		Mauro Rubino-Sammartano LawFed BRSA		Justyna Szpara and Andrzej Maciejewski Łaszczuk & Partners	
<u>Egypt</u>	<u>158</u>	<u>Japan</u>	<u>258</u>	<u>Portugal</u>	<u>330</u>
Tarek F Riad Kosheri, Rashed & Riad Law Firm		Shinji Kusakabe Anderson Mōri & Tomotsune		Agostinho Pereira de Miranda, Cláudia Leonardo and Catarina Carvalho Cunha Miranda Correia Amendoeira & Associados	
<u>England and Wales</u>	<u>164</u>	<u>Jordan</u>		<u>Qatar</u>	<u>337</u>
Jane Wessel, Claire Stockford and Meriam N Alrashid Crowell & Moring LLP		Ginestié Magellan Paley-Vincent in association with Ahdab Law Firm see www.gettingthedealthrough.com		Jalal El Ahdab and Myriam Eid Ginestié Magellan Paley-Vincent in association with Ahdab Law Firm	
<u>Equatorial Guinea</u>	<u>175</u>	<u>Korea</u>	<u>265</u>	<u>Romania</u>	<u>346</u>
Agostinho Pereira de Miranda and Cláudia Leonardo Miranda Correia Amendoeira & Associados		BC Yoon, Richard Menard and Liz Kyo-Hwa Chung Kim & Chang		Cristiana-Irinel Stoica, Daniel Aragea and Andrei Buga Stoica & Asociații	
<u>France</u>	<u>180</u>	<u>Kuwait</u>	<u>274</u>	<u>Saudi Arabia</u>	<u>353</u>
Nathalie Meyer Fabre Meyer Fabre Avocats		Ahmed Barakat and Ibrahim Sattout ASAR – Al Ruwayeh & Partners		Jalal El Ahdab and Myriam Eid Ginestié Magellan Paley-Vincent in association with Ahdab Law Firm	
<u>Germany</u>	<u>189</u>	<u>Libya</u>		<u>Scotland</u>	<u>363</u>
Stephan Wilske and Claudia Krapfl Gleiss Lutz		Ginestié Magellan Paley-Vincent in association with Ahdab Law Firm see www.gettingthedealthrough.com		Brandon Malone McClure Naismith LLP	
<u>Ghana</u>	<u>196</u>	<u>Lithuania</u>	<u>282</u>	<u>Singapore</u>	<u>372</u>
Kimathi Kuenyehia Sr and Kafui Baeta Kimathi & Partners, Corporate Attorneys		Ramūnas Audzevičius and Rimantas Dajotas Motieka & Audzevičius		Edmund Jerome Kronenburg and Tan Kok Peng Braddell Brothers LLP	
<u>Hong Kong</u>	<u>204</u>	<u>Malaysia</u>	<u>289</u>		
Peter Yuen and Doris Yeung Fangda Partners (in association with Peter Yuen & Associates)		Foo Joon Liang Gan Partnership			

Slovakia	382
Roman Prekop, Monika Simorova and Peter Petho	
Barger Prekop sro	
Sweden	391
Eric M Runesson and Simon Arvmyren	
Sandart & Partners	
Switzerland	398
Thomas Rohner and Nadja Kubat Erk	
Pestalozzi Attorneys at Law Ltd	
Tanzania	406
Wilbert Kapinga, Ofotsu A Tetteh-Kujorjie and Kamanga Kapinga	
Mkono & Co Advocates	
Thailand	413
Kornkieat Chunhakasikarn and John King	
Tilleke & Gibbins	
Turkey	421
Ismail G Esin, Dogan Gultutan and Ali Yesilirmak	
Esin Attorney Partnership	
Ukraine	429
Oleksiy Filatov and Pavlo Byelousov	
Vasil Kisil & Partners	
United Arab Emirates	439
Gordon Blanke and Soraya Corm-Bakhos	
Baker & McKenzie Habib Al Mulla	
United States	448
Birgit Kurtz, Arlen Pyenson and Amal Bouhabib	
Crowell & Moring LLP	
Venezuela	455
José Gregorio Torrealba	
Hoet Pelaez Castillo & Duque	
Vietnam	463
Nguyen Manh Dzung, Le Quang Hung and Nguyen Ngoc Minh	
Dzungst & Associates LLC	

Tanzania

Wilbert Kapinga, Ofotsu A Tetteh-Kujorjie and Kamanga Kapinga

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Laws and institutions

1 Multilateral conventions relating to arbitration

Is your country a contracting state to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards? Since when has the Convention been in force? Were any declarations or notifications made under articles I, X and XI of the Convention? What other multilateral conventions relating to international commercial and investment arbitration is your country a party to?

The Arbitration Act (chapter 15 RE 2002) of Tanzania still incorporates multilateral agreements like the Geneva Protocol on Arbitration Clauses of 1923 and the Geneva Convention on the Execution of Foreign Arbitral Awards of 1927.

The New York Convention entered into force in Tanzania on 11 January 1965. There were no declarations made according to articles I, X and XI of the Convention. Tanzania is also a contracting state to the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (ICSID) of 1965 since 17 June 1992 and to the Multilateral Investment Guarantee Agency of 1985 since 19 June 1992.

2 Bilateral investment treaties

Do bilateral investment treaties exist with other countries?

So far, Tanzania has entered into 17 bilateral agreements relating to arbitration. The corresponding countries are Denmark (in force since 21 October 2005), Finland (in force since 30 October 2002), Germany (in force since 12 July 1968), Italy (in force since 25 April 2003), the Netherlands (in force since 1 April 2004), Sweden (in force since 1 March 2002), Switzerland (in force since 6 April 2006) and the United Kingdom (in force since 2 August 1996). Tanzania also has agreements with Canada, Egypt, Jordan, the Republic of Korea, Mauritius, Oman, South Africa, Turkey and Zimbabwe, which have not entered into force yet.

3 Domestic arbitration law

What are the primary domestic sources of law relating to domestic and foreign arbitral proceedings, and recognition and enforcement of awards?

The Arbitration Act governs domestic arbitral proceedings and enforcement of foreign arbitral awards. A link to the Arbitration Act can be found at www.mkono.com. Pursuant to schedule 4 of the Act, foreign arbitral proceedings are recognised as binding when they are or have been conducted in the territories of any contracting party of the Geneva Convention on the Execution of Foreign Arbitral Awards.

4 Domestic arbitration and UNCITRAL

Is your domestic arbitration law based on the UNCITRAL Model Law? What are the major differences between your domestic arbitration law and the UNCITRAL Model Law?

As the Tanzanian legislation on arbitration was first introduced in 1931 and amended in 1971, the UNCITRAL Model Law of 1985 has had no influence on it. The major differences between the domestic arbitration law and the Model Law are:

- under the Model Law, three arbitrators are the established requirement, whereas schedule 1 of the Arbitration Act provides that only a single arbitrator is necessary;
- domestic law requires arbitrators to proceed in an impartial manner whereas the Model Law prescribes the additional requirement of independence; and
- unlike the Model Law, the tribunal's determination of its own jurisdiction under domestic law is not a necessary prerequisite to a party's desire to appeal to court.

5 Mandatory provisions

What are the mandatory domestic arbitration law provisions on procedure from which parties may not deviate?

The mandatory provisions under the Arbitration Act and 'having effect notwithstanding any agreement to the contrary' are:

- the ability to apply for a stay of legal proceedings if there is prima facie evidence of a valid arbitration clause;
- the power of the court to extend time for beginning arbitral proceedings and other time limits;
- the power of the court to remove an arbitrator on grounds of legal misconduct;
- the parties' joint and several liability to pay to the arbitrators such reasonable fees and expenses (if any) as are appropriate in the circumstances and the power of the tribunal to refuse to grant the award in the event the arbitrators' fees and expenses are not paid;
- the tribunal's duty to act fairly and impartially between the parties;
- securing the attendance of witnesses; and
- the enforcement of the award.

6 Substantive law

Is there any rule in your domestic arbitration law that provides the arbitral tribunal with guidance as to which substantive law to apply to the merits of the dispute?

The rule of domestic arbitration law is that the arbitral tribunal should apply the substantive law chosen by the parties in the arbitration agreement. For this purpose the choice of the laws of a country shall be understood to refer to the substantive laws of that country and not to its conflict of laws rules. If, or to the extent that, there is no such choice or agreement, the tribunal shall apply the law determined by the conflict of laws rules that it considers applicable.

7 Arbitral institutions

What are the most prominent arbitral institutions situated in your country?

There are two principal arbitration bodies, both with their own set of arbitral rules, namely, the Tanzania Institute of Arbitrators (TIA) and the National Construction Council (NCC). While the TIA was established six years ago in accordance with the Arbitration Act, the NCC is a statutory body created under the National Construction Council Act (No. 20 of 1979). In 2001, the NCC adopted a set of Arbitration Rules, to enable parties settle their construction disputes under these Rules. Nonetheless, since arbitration is relatively undeveloped in Tanzania, parties can resolve their disputes under the NCC arbitration rules, regardless of the subject matter of the dispute. Notably, the majority of arbitral proceedings that have taken place in Tanzania over the years have been conducted in a disorganised and ineffective manner, leading to most disputes ending up before international arbitration bodies such as the International Centre for Settlement of Investment Disputes (ICSID), the International Chamber of Commerce (ICC) and the London Court of International Arbitration (LCIA).

Arbitration agreement**8 Arbitrability**

Are there any types of disputes that are not arbitrable?

The Arbitration Act does not prohibit any particular type of dispute from being resolved by arbitration. However, disputes concerning land must be heard by the superior courts and specific statutory tribunals as laid out in section 167 of the Lands Act 2002. Therefore, apart from land disputes, all other disputes are arbitrable.

9 Requirements

What formal and other requirements exist for an arbitration agreement?

The sole formal requirement is that the arbitration agreement must be in writing.

10 Enforceability

In what circumstances is an arbitration agreement no longer enforceable?

Pursuant to section 6 of the Act, a party can no longer apply to the court for stay of proceedings pending arbitration if that party has taken steps in the legal proceedings against the arbitrator or has taken any step in those proceedings to answer the substantive claim. The termination of the underlying contract does not affect the validity of the arbitration agreement.

11 Third parties – bound by arbitration agreement

In which instances can third parties or non-signatories be bound by an arbitration agreement?

There are no legally specified instances in which third parties are bound to an arbitration agreement. However, an agency is a common law exception that might be raised by a party that wishes to extend arbitration to a non-party. An agent, acting within the boundaries of his or her authority, can bind his or her principal by entering into a contract with an arbitration agreement.

12 Third parties – participation

Does your domestic arbitration law make any provisions with respect to third-party participation in arbitration, such as joinder or third-party notice?

There is no provision in the Arbitration Act enabling a joinder of a third party to an arbitration. If a party is not privy to a contract containing a reference to arbitration, that party cannot be joined to any subsequent arbitration.

13 Groups of companies

Do courts and arbitral tribunals in your jurisdiction extend an arbitration agreement to non-signatory parent or subsidiary companies of a signatory company, provided that the non-signatory was somehow involved in the conclusion, performance or termination of the contract in dispute, under the 'group of companies' doctrine?

Courts and arbitral tribunals may not extend an arbitration agreement to non-signatory parent or subsidiary companies of a signatory company.

14 Multiparty arbitration agreements

What are the requirements for a valid multiparty arbitration agreement?

Multiparty arbitration agreements are possible as long as the drafting is clear and the parties express their willingness to be bound by the agreement. This kind of agreement is often used in construction contracts.

Constitution of arbitral tribunal**15 Eligibility of arbitrators**

Are there any restrictions as to who may act as an arbitrator? Would any contractually stipulated requirement for arbitrators based on nationality, religion or gender be recognised by the courts in your jurisdiction?

The Arbitration Act provides in section 5 that the parties to a submission may agree about the reference and qualification for an arbitrator or arbitrators or appoint a person designated in their agreement. Arbitrators do not need to be selected from a list of arbitrators under Tanzanian law. As a rule of practice a sitting judge may not be appointed as an arbitrator. While there are no specific restrictions for retired judges to act as arbitrators, active judges may not do so. A contractually stipulated requirement for arbitrators based on nationality, religion or gender would probably not be recognised by the courts in Tanzania, because arbitrators could be deemed 'employees' for the purposes of the anti-discrimination provisions of Tanzanian employment law.

16 Default appointment of arbitrators

Failing prior agreement of the parties, what is the default mechanism for the appointment of arbitrators?

Section 8 of the Arbitration Act covers the situation where parties fail to come to an agreement regarding the appointment of the arbitrators. Any party may serve the other party or the arbitrators, as the case may be, with a written notice to concur in appointing the missing arbitrator. Subsequently, by virtue of the same section, the court may, on application by the party who gave the notice and after giving the other party an opportunity of being heard, appoint the arbitrator.

17 Challenge and replacement of arbitrators

On what grounds and how can an arbitrator be challenged and replaced? Please discuss in particular the grounds for challenge and replacement, and the procedure, including challenge in court. Is there a tendency to apply or seek guidance from the IBA Guidelines on Conflicts of Interest in International Arbitration?

According to section 18 of the Act, an arbitrator can be removed for the following reasons:

- misconduct during the proceedings;
- justifiable doubts as to his or her impartiality;
- lack of the qualifications required by the arbitration agreement;
- the arbitrator is physically or mentally incapable of conducting the proceedings or there are justifiable doubts as to his or her capacity to do so; or
- the arbitrator has refused or failed to properly conduct the proceedings or to use all reasonable despatch in conducting the proceedings or making an award.

So far, there is no clear tendency to apply or seek guidance from the IBA Guidelines on Conflicts of Interest in International Arbitration, although it lies within the parties' discretion to adopt IBA rules as part of their procedure.

18 Relationship between parties and arbitrators

What is the relationship between parties and arbitrators? Please elaborate on the contractual relationship between parties and arbitrators, neutrality of party-appointed arbitrators, remuneration, and expenses of arbitrators.

The general duty of arbitrators includes fairness and impartiality towards the parties. The remuneration and expenses of the arbitrator lie solely in the hands of the involved parties.

19 Immunity of arbitrators from liability

To what extent are arbitrators immune from liability for their conduct in the course of the arbitration?

An arbitrator is not liable for anything done or omitted in the discharge or purported discharge of his or her functions as arbitrator unless the act or omission is shown to have been in bad faith and constitutes an intentional breach of duty.

Jurisdiction and competence of arbitral tribunal

20 Court proceedings contrary to arbitration agreements

What is the procedure for disputes over jurisdiction if court proceedings are initiated despite an existing arbitration agreement, and what time limits exist for jurisdictional objections?

Pursuant to section 6 of the Act, a party may apply to the court to stay the legal proceedings if it can establish the existence of a valid arbitration agreement on a matter that, under the arbitration agreement, is to be brought to arbitration. The court will normally grant the stay unless there is evidence the arbitration agreement is null and void, inoperative, incapable of being performed or the applicant has taken a step in court proceedings.

21 Jurisdiction of arbitral tribunal

What is the procedure for disputes over jurisdiction of the arbitral tribunal once arbitral proceedings have been initiated and what time limits exist for jurisdictional objections?

The tribunal decides on its own substantive jurisdiction, unless it is otherwise settled by the parties. A party may object on the ground that the tribunal lacks substantive jurisdiction, but this objection must be raised before contesting the merits of the case.

Arbitral proceedings

22 Place and language of arbitration

Failing prior agreement of the parties, what is the default mechanism for the place of arbitration and the language of the arbitral proceedings?

Where the parties have not agreed upon the place of arbitration and the language of the arbitral proceedings, the tribunal will decide on the matter. In Tanzania the language of arbitration will usually be English and the place will be determined having regard to the proximity of the subject matter to the place of arbitration or the convenience of the parties involved.

23 Commencement of arbitration

How are arbitral proceedings initiated?

Arbitral proceedings are initiated by the notice of arbitration. In any event, the following provisions apply:

- where the arbitrator is named or designated in the arbitration agreement, arbitral proceedings are commenced in respect of a matter when one party serves on the other party or parties a notice in writing requiring it to submit that matter to the person so named or designated;
- where the arbitrator or arbitrators are to be appointed by the parties, arbitral proceedings are commenced in respect of a matter when one party serves on the other party or parties notice in writing requiring it to appoint an arbitrator or to agree to the appointment of an arbitrator in respect of that matter; and
- where the arbitrator or arbitrators are to be appointed by a person other than a party to the proceedings, arbitral proceedings are commenced in respect of a matter when one party gives notice in writing to that person requesting him or her to make the appointment in respect of that matter.

24 Hearing

Is a hearing required and what rules apply?

The parties are free to agree on how their disputes are to be resolved. In other words, the parties can agree to a hearing if they think it is required, subject only to such safeguards as are necessary in the public interest.

25 Evidence

By what rules is the arbitral tribunal bound in establishing the facts of the case? What types of evidence are admitted and how is the taking of evidence conducted?

A party to arbitral proceedings may use the same court procedures as are available in relation to legal proceedings to secure the attendance before the tribunal of a witness to give oral testimony or to produce documents or other material evidence. This may only be done with the permission of the tribunal or the agreement of the other parties.

The tribunal may decide 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 matters of fact or opinion and the time, manner and form in which such material should be exchanged and presented.

It will also decide whether and to what extent the tribunal should itself take the initiative in ascertaining the facts and the law, and whether and to what extent there should be oral or written evidence or submissions. Although nothing prohibits the application or seeking guidance from IBA rules on taking evidence and indeed parties are free to adopt IBA rules, this has not been recorded as a practice of arbitral tribunals in Tanzania.

26 Court involvement

In what instances can the arbitral tribunal request assistance from a court and in what instances may courts intervene?

As arbitration is essentially a private matter, the law outlines a mere peripheral function for the court. However, the collaboration of the court in respect of the production of certain documents and the attendance of witnesses is provided for.

27 Confidentiality

Is confidentiality ensured?

Although there is no direct provision for confidentiality in Tanzanian law, the legislature clearly intends that proceedings are between the parties and the public is not involved. It can, therefore, be safely assumed that confidentiality is ensured.

Interim measures and sanctioning powers**28 Interim measures by the courts**

What interim measures may be ordered by courts before and after arbitration proceedings have been initiated?

Unless otherwise agreed by the parties, the court has, for the purposes of and in relation to arbitral proceedings, the same power in relation to the making of orders regarding matters under consideration as it has for the purposes of and in relation to legal proceedings. Those matters include the granting of an interim injunction or the appointment of a receiver. However, the courts do not have exclusivity over the arbitral tribunal in terms of interim measures – the arbitration body is free to grant those to the parties as well, as explained in question 30.

29 Interim measures by an emergency arbitrator

Does your domestic arbitration law or do the rules of the domestic arbitration institutions mentioned above provide for an emergency arbitrator prior to the constitution of the arbitral tribunal?

The Arbitration Act does not provide for an emergency arbitrator prior to the constitution of the arbitral tribunal.

30 Interim measures by the arbitral tribunal

What interim measures may the arbitral tribunal order after it is constituted? In which instances can security for costs be ordered by an arbitral tribunal?

The Arbitration Act gives the parties freedom to agree on the powers exercisable by the arbitral tribunal for the purposes of and in relation to the proceedings. This includes that the tribunal may order a claimant to provide security for the costs of the arbitration. It may give directions in relation to any property that is the subject of the proceedings or to any question arising in the proceedings that is owned by or is in the possession of any party involved. It may also direct that a party or witness shall be examined on oath or affirmation and may for that purpose administer any necessary oath or take any necessary affirmation. The tribunal may also give directions to a party for the preservation, for the purposes of the proceedings, of any evidence in its custody or under its control. Apart from the above, the parties are free to agree that the tribunal can order on a provisional basis any relief that it could have granted in a final award.

31 Sanctioning powers of the arbitral tribunal

Pursuant to your domestic arbitration law or the rules of the domestic arbitration institutions mentioned above, is the arbitral tribunal competent to order sanctions against parties or their counsel who use 'guerrilla tactics' in arbitration?

The arbitral tribunal is not empowered under the Act or the rules of the domestic arbitration institutions mentioned above to order sanctions against parties or their counsel who use 'guerrilla tactics' in arbitration.

Awards**32 Decisions by the arbitral tribunal**

Failing party agreement, is it sufficient if decisions by the arbitral tribunal are made by a majority of all its members or is a unanimous vote required? What are the consequences for the award if an arbitrator dissents?

The arbitral tribunal can make decisions by a majority vote. In the unlikely event of all the arbitrators refusing to take part in a vote or sign the award, the arbitral proceedings would necessarily fail and the matter would be referred to court.

33 Dissenting opinions

How does your domestic arbitration law deal with dissenting opinions?

The Arbitration Act does not make any provision in respect of dissenting opinions. However, the court may take a closer look at the opinion of the dissenting arbitrator in the course of setting aside proceedings; for example, if the dissenting arbitrator points to procedural irregularities in the arbitral process.

34 Form and content requirements

What form and content requirements exist for an award?

The award must be in writing and signed by all the arbitrators or all those assenting to the award. The award must contain reasons for granting it unless it is an agreed award or the parties have agreed to dispense with the reasoning. The award shall also state the seat of the arbitration and the date on which the award is made.

35 Time limit for award

Does the award have to be rendered within a certain time limit under your domestic arbitration law or under the rules of the domestic arbitration institutions mentioned above?

According to the first schedule of the Arbitration Act, the arbitrators must make their award within three months after entering on the reference or after having been called on to act by notice in writing from any party to the submission. However, the arbitrators can extend this time frame when they deem it best in accordance with the same provision. The parties' consent is not required for the arbitrators' decision to extend their time frame to render the award. Neither does the law set a specific time as for how long this period of extension can be continued.

36 Date of award

For what time limits is the date of the award decisive and for what time limits is the date of delivery of the award decisive?

Unless the parties agree differently, the date of the award is the date on which it is signed by the arbitrator or, where more than one arbitrator signs the award, by the last of them. The date of the award is crucial for any challenge to the award or any application for rectification, clarification or correction.

37 Types of awards

What types of awards are possible and what types of relief may the arbitral tribunal grant?

The arbitral tribunal can make a declaration as to any matter to be determined in the proceedings and order the payment of a sum of money. Moreover the tribunal has the same powers as the court in respect of ordering a party to do or to refrain from doing anything or to force a specific performance of a contract. The tribunal may also make interim, partial or final awards depending on the circumstances of the case. If the dispute is settled during the proceedings, the parties may request that a consent award is attached to the settlement agreement for the purpose of recognition and enforcement.

38 Termination of proceedings

By what other means than an award can proceedings be terminated?

The premature termination of the proceedings is possible by the settlement of the dispute. In that case, the tribunal terminates the substantive proceedings and, if so requested by the parties, records the settlement in the form of an agreed award. An agreed award states that it is an award of the tribunal and has the same status and effect as any other award on the merits of the case.

39 Cost allocation and recovery

How are the costs of the arbitral proceedings allocated in awards?

The costs of the award are at the discretion of the arbitrators or umpire, who may direct how and by whom those costs or any part thereof will be paid. In addition, the arbitrator may tax or settle the amount of costs to be paid and may award costs to be paid between advocate and client. The award of costs is at the sole discretion of the arbitrator and there is no rule or practice that the loser pays the costs of the winner or on the splitting of the costs in any proportion.

40 Interest

May interest be awarded for principal claims and for costs and at what rate?

Unless otherwise agreed, the tribunal may award simple or compound interest from such dates, at such rates and with such rests as it considers sufficient for the case. The interest can be on the whole or part of any amount awarded by the tribunal and in respect of any period up to the date of the award. The tribunal may also award simple or compound interest on the outstanding amount of any award from the date of the award (or any later date) until payment at such rates and with such interest as it considers appropriate. The normal interest is the commercial rate or around 25 per cent of the value of the subject matter.

Proceedings subsequent to issuance of award**41 Interpretation and correction of awards**

Does the arbitral tribunal have the power to correct or interpret an award on its own or at the parties' initiative? What time limits apply?

The parties are principally free to agree on the powers of the tribunal to correct an award or make an additional award. If there is no such agreement, the tribunal may, on its own initiative or on the application of a party, correct an award so as to remove any clerical mistake or error arising from an accidental slip or omission or to clarify or remove any ambiguity in the award or make an additional award in respect of any claim (including a claim for interest or costs) that was presented to the tribunal but was not dealt with in the award. Any correction of an award forms part of the award.

42 Challenge of awards

How and on what grounds can awards be challenged and set aside?

According to section 16 of the Act, the court may set aside the award where an arbitrator or umpire has misconducted him or herself or an arbitration or award has been improperly procured and serious irregularities have affected the tribunal, the proceedings or the award. Misconduct and serious irregularities include the negligent conduct of the proceedings by the arbitrator and behaviour that causes one or all of the parties involved to lose confidence in his or her abilities to settle the dispute out of court.

43 Levels of appeal

How many levels of appeal are there? How long does it generally take until a challenge is decided at each level? Approximately what costs are incurred at each level? How are costs apportioned among the parties?

In Tanzania, there is only one level of appeal, from the High Court to the Court of Appeal. This step will usually take a considerable amount of time, according to practical experience, it can easily take between three and four years, depending on the number of filings that have been accumulated. The costs for the filing of an appeal are very small (between US\$8 and US\$10) compared to the representation fees of the legal advisers that might result from such a procedural step. These costs are frequently imposed on the loser in this instance, since the Tanzanian regulations usually exempt the winner from costs.

44 Recognition and enforcement

What requirements exist for recognition and enforcement of domestic and foreign awards, what grounds exist for refusing recognition and enforcement, and what is the procedure?

An award made by the arbitral tribunal will, by leave of the court, be enforceable as if it were a decree of the court. The leave to enforce an award will not be given where the person against whom it is sought to be enforced shows that the tribunal lacked substantive jurisdiction to make the award.

A foreign award is enforceable if:

- it has been made pursuant to an arbitration agreement that was valid under the law by which it was governed;
- it has been made by the tribunal provided for in the agreement or constituted in the manner agreed upon by the parties;
- it has been made in conformity with the law governing the arbitration procedure;
- it has become final in the country in which it was made; and
- it has been made in respect of a matter that may lawfully be referred to arbitration under the law of Tanzania and its enforcement is not contrary to the public policy of or the law of Tanzania.

Foreign awards will not be enforceable if:

- the award has been annulled in the country in which it was made;
- the party against whom it is sought to enforce the award was not given notice of the arbitration proceedings in sufficient time to enable him or her to present his or her case or was under some legal incapacity and was not properly represented; or
- the award does not deal with all the questions referred to or contains decisions on matters beyond the scope of the agreement for arbitration. In that case, the court may postpone the enforcement of the award or order its enforcement subject to the giving of such security by the person seeking the enforcement.

Update and trends

There is a growing need for arbitration law reform in Tanzania. The government is being asked to review and replace current arbitration laws that have, evidently, failed to keep pace with key changes in the local business environment. The present Act is said to be antiquated and unlikely to be particularly useful in dealing effectively with contractual disputes. The Act presents significant challenges to any practising lawyer in the country, particularly when attempting to prevent the enforcement of an arbitral award in courts of law. The law also creates confusion among arbitrators when filing awards in courts for the registration and enforcement of arbitral awards. Despite the obvious need for reform, the rules of the domestic arbitration institutions are not being revised at present.

Recent decisions in the field of international investment arbitration to which Tanzania was a party include the following two cases.

Tanzania Electric Supply Company Limited (TANESCO) v Independent Power Tanzania Limited (IPTL) (ICSID case No. ARB/98/8). (interpretation proceeding) (filed June 2008, discontinued August 2010). This was only the second Interpretation proceeding filed in the history of ICSID and is unique in that it was filed seven years after the final award in ICSID ARB/98/8. After the original tribunal from ICSID ARB/98/8 was reconstituted, TANESCO filed a jurisdiction challenge to IPTL's authority to maintain the proceeding. Before the authority issue was resolved, the case was stayed by consent of the parties following the appointment in Tanzania of a provisional liquidator for IPTL. The arbitration was subsequently discontinued by IPTL pursuant to ICSID Arbitration Rule 44. The tribunal issued an order taking note of the discontinuance of the proceeding on 19 August 2010 pursuant to ICSID Arbitration Rule 44.

Biwater Gauff (Tanzania) Ltd v United Republic of Tanzania (ICSID case No. ARB/05/22). Biwater arose out of a dispute between a British project company, held jointly by a British and a German company, and the Republic of Tanzania over a concession to operate the water and sewerage services of Tanzania's capital, Dar es Salaam. After concluding that the claimant failed to meet its contractual

obligations, Tanzania cancelled the contract and regained possession of assets previously leased to the claimant. The claimant brought an action before ICSID under the UK-Tanzania Bilateral Investment Treaty (BIT), claiming that Tanzania breached its obligation to afford the claimant fair and equitable treatment, to provide full protection and security, not to take unreasonable and discriminatory measures and to guarantee the unrestricted transfer of funds. The ICSID tribunal refused to award damages to the Anglo-German consortium that filed the claim against the Republic of Tanzania under the UK-Tanzania BIT. The tribunal's ruling came in the wake of an award in favour of Tanzania in a UNCITRAL arbitration initiated by the parties to resolve their purely contractual (ie, non-treaty) differences.

Tanzania is a party in the following pending investment arbitration case.

Standard Chartered Bank (Hong Kong) Limited v Tanzania Electric Supply Company Limited (TANESCO) (ICSID case No. ARB/10/20) (filed in September 2010 and pending). In 2001, TANESCO was required to pay Independent Power Tanzania Limited (IPTL) US\$32 million as an accumulated capacity charge payment that it alleged had been due since deemed commercial operation of the facility in September 1998. This arbitration arises out of a power purchase agreement, dated on and in force from 26 May 1995 between TANESCO and IPTL whereby IPTL agreed to design, construct, own, operate and maintain an electricity generating facility with a nominal net capacity of 100 megawatts to operate the facility and deliver electricity generated thereby to TANESCO for an initial period of 20 years, subject to extension. On 18 October 1999 the tribunal convened to hear both parties' applications for provisional measures. In the meantime, on 8 July 1999, the order of the High Court of Tanzania had been stayed by the Court of Appeal of Tanzania, pending determination of the appeal thereof, and the parties then requested the tribunal to defer consideration of TANESCO's request for provisional measures directed at the Tanzanian court proceedings.

45 Enforcement of foreign awards

What is the attitude of domestic courts to the enforcement of foreign awards set aside by the courts at the place of arbitration?

This question does not have practical importance, since a foreign award has to be sent to a Tanzanian court through the arbitrator, who has to submit the document in a sealed envelope. The arbitrator, in his or her neutral position, would not have any motivation to submit an award for filing if it has been set aside by the courts at the place of arbitration.

46 Cost of enforcement

What costs are incurred in enforcing awards?

When enforcing awards, court expenses have to be paid by the enforcing party as well as lawyers' fees for preparing the required documentation.

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Other**47 Judicial system influence**

What dominant features of your judicial system might exert an influence on an arbitrator from your country?

Provision or production of documents is available. Written witness statements are not uncommon and party officers may testify.

48 Regulation of activities

What particularities exist in your jurisdiction that a foreign practitioner should be aware of?

All foreign nationals from non-Commonwealth countries are required to have a valid visa. The business visa (class 'B') that a foreign practitioner would need to work in Tanzania is issued to prospective investors who intend to visit Tanzania for the purpose of professional and business matters. The validity of the visa is usually two years.



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