

TITLE 7

Chapter 7:15

PREVIOUS CHAPTER**ARBITRATION ACT**

Acts 6/1996, 14/2002; Modified by S.1. 208/1996.

ARRANGEMENT OF SECTIONS

Section

1. Short title.
2. Interpretation.
3. Law applicable to arbitrations.
4. What may be arbitrated.
5. Application of Act to arbitration under other enactments.
6. Repeal and transitional provisions.
7. Amendments to Acts.

FIRST SCHEDULE: Model Law.

SECOND SCHEDULE: Amendments to Acts.

AN ACT to give effect to domestic and international arbitration agreements; to apply, with modifications, the Model Law on International Commercial Arbitration adopted by the United Nations Commission on International Trade Law on the 21st June, 1985, thereby giving effect to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards adopted in New York on the 10th June, 1958; to repeal the Arbitration Act [Chapter 7:02]; to amend the High Court Act [Chapter 7:06], and section 6 of the Prescribed Rate of Interest Act [Chapter 8:10]; and to provide for matters incidental to or connected with the foregoing.

[Date of commencement: 13th September, 1996.]

1 Short title

This Act may be cited as the Arbitration Act, 1996.

2 Interpretation

(1) In this Act—

“Minister” means the Minister of Justice, Legal and Parliamentary Affairs or any other Minister to whom the President may, from time to time, assign the administration of this Act;

“Model Law” means the Model Law on International Commercial Arbitration adopted by the United Nations Commission on International Trade Law on the 21st June, 1985, which is set out, with modifications, in the First Schedule.

(2) Any expression to which a meaning has been assigned in the Model Law shall bear the same meaning when used in this Act.

(3) The material to which an arbitral tribunal or a court may refer in interpreting this Act includes the documents relating to the Model Law and originating from the United Nations Commission on International Trade Law, or its working group for the preparation of the Model Law, that is to say the travaux préparatoires to the Model Law, and, in interpreting the Model Law, regard shall be had to its international origin and to the desirability of achieving international uniformity in its interpretation and application.

3 Law applicable to arbitrations

(1) Subject to sections four and five, where the place of an arbitration is in Zimbabwe, this Act and the Model Law, as modified by this Act, shall apply to the arbitration.

(2) Subject to sections four and five, where the place of an arbitration is not in Zimbabwe, articles 8, 9, 35 and 36 of the Model Law, as modified by this Act, shall apply to the arbitration.

4 What may be arbitrated

(1) Subject to this section, any dispute which the parties have agreed to submit to

arbitration may be determined by arbitration.

(2) The following matters shall not be capable of determination by arbitration—

- (a) an agreement that is contrary to public policy; or
- (b) a dispute which, in terms of any law, may not be determined by

arbitration; or

- (c) a criminal case; or

(d) a matrimonial cause or a matter relating to status, unless the High Court gives leave for it to be determined by arbitration; or

(e) a matter affecting the interests of a minor or an individual under a legal disability, unless the High Court gives leave for it to be determined by arbitration; or

(f) a matter concerning a consumer contract as defined in the Consumer Contracts Act [Chapter 8:03], unless the consumer has by separate agreement agreed thereto.

(3) The fact that an enactment confers jurisdiction on a court or other tribunal to determine any matter shall not, on that ground alone, be construed as preventing the matter from being determined by arbitration.

5 Application of Act to arbitration under other enactments

(1) Subject to subsection (2), where an enactment requires any matter to be determined by an arbitrator or by arbitration in accordance with any law relating to arbitration, such requirement shall be deemed to be an arbitration agreement for the purposes of this Act.

(2) Where an enactment provides for the determination of any matter by arbitration, the provisions of that enactment, to the extent that they are inconsistent with this Act, shall prevail.

6 Repeal and transitional provisions

(1) Subject to this section, the Arbitration Act [Chapter 7:02] is repealed.

(2) This Act shall apply to every arbitration agreement, whether made before, on or after the date of commencement of this Act, and any reference in any such agreement to the Arbitration Act [Chapter 7:02] shall be construed as a reference to this Act:

Provided that, where arbitral proceedings were commenced in terms of the Arbitration Act [Chapter 7:02], they may be continued and completed in terms of that Act which shall, for such purpose, be deemed to continue in operation.

(3) For the purposes of this section, arbitral proceedings shall be deemed to have commenced on the date the parties have agreed they commenced or, failing such agreement, on the date of receipt by the respondent of a request for the dispute to be referred to arbitration.

(4) This Act shall apply to every arbitral award whether made before, on or after the date of commencement of this Act.

7 Amendments to Acts

The Act specified in each Part of the Second Schedule is amended to the extent set out in that Part.

FIRST SCHEDULE (Section 2)

MODEL LAW

[This Schedule contains the United Nations Commission on International Trade Law (UNCITRAL) Model Law, with modifications. The modifications appear in italics.]

CHAPTER I

GENERAL PROVISIONS

Article

- 1. Scope of application.
- 2. Definitions and rules of interpretation.
- 3. Receipt of written communications.
- 4. Waiver of right to object.
- 5. Extent of court intervention.
- 6. (Deleted)

CHAPTER II

ARBITRATION AGREEMENT

7. Definition and form of arbitration agreement.
8. Arbitration agreement and substantive claim before court.
9. Arbitration agreement and interim measures by court.

CHAPTER III

COMPOSITION OF ARBITRAL TRIBUNAL

10. Number of arbitrators.
11. Appointment of arbitrator.
12. Grounds for challenge.
13. Challenge procedure.
14. Failure or impossibility to act.
15. Appointment of substitute arbitrator.

CHAPTER IV

JURISDICTION OF ARBITRAL TRIBUNAL

16. Competence of arbitral tribunal to rule on its jurisdiction.
17. Power of arbitral tribunal to order interim measures.

CHAPTER V

CONDUCT OF ARBITRAL PROCEEDINGS

18. Equal treatment of parties.
19. Determination of rules of procedure.
20. Place of arbitration.
21. Commencement of arbitral proceedings.
22. Language.
23. Statement of claim and defence.
24. Hearings and written proceedings.
25. Default of party.
26. Expert appointed by arbitral tribunal.
27. Court assistance in taking evidence.

CHAPTER VI

MAKING OF AWARD AND TERMINATION OF PROCEEDINGS

28. Rules applicable to substance of dispute.
29. Decision-making by panel of arbitrators.
30. Settlement.
31. Form and contents of award.
32. Termination of proceedings.
33. Correction and interpretation of award: additional award.

CHAPTER VII

RECOURSE AGAINST AWARD

34. Application for setting aside as exclusive recourse against arbitral award.

CHAPTER VIII

RECOGNITION AND ENFORCEMENT OF AWARD

35. Recognition and enforcement.
36. Grounds for refusing recognition or enforcement.

CHAPTER I

GENERAL PROVISIONS

ARTICLE I

Scope of application

- (1) This Model Law applies as provided in sections 3 and 4 of the Act.
- (2) (deleted: appears in section 3 of the Act).
- (3) (deleted).
- (4) (deleted).
- (5) (deleted: appears in section 4 (3) of the Act).

ARTICLE 2

Definitions and rules of interpretation

For the purposes of this Model Law—

- (a) “arbitration” means any arbitration whether or not administered by a permanent arbitral institution;
- (b) “arbitral tribunal” means a sole arbitrator or a panel of arbitrators;
- (c) “court” means a body or organ of the judicial system of a State;
- (d) where a provision of this Model Law, except article 28, leaves the parties free to determine a certain issue, such freedom includes the right of the parties to authorise a third party, including an institution, to make that determination;
- (e) where a provision of the Model Law refers to the fact that the parties have agreed or that they may agree or in any other way refers to an agreement of the parties, such agreement includes any arbitration rules referred to in that agreement;
- (f) where a provision of this Model Law, other than in articles 25 (a) and 32 (2) (a), refers to a claim, it also applies to a counter-claim, and where it refers to a defence, it also applies to a defence to such counter-claim.

ARTICLE 3

Receipt of written communications

(1) Unless otherwise agreed by the parties—

(a) any written communication is deemed to have been received if it is delivered to the addressee personally or if it is delivered at his place of business, habitual residence or mailing address; if none of these can be found after making a reasonable inquiry, a written communication is deemed to have been received if it is sent to the addressee’s last known place of business, habitual residence or mailing address by registered letter or any other means which provides a record of the attempt to deliver it;

(b) the communication is deemed to have been received on the day it is so delivered.

(2) The provisions of this article do not apply to communications in court proceedings.

ARTICLE 4

Waiver of right to object

A party who knows that any provision of this Model Law from which the parties may derogate or any requirement under the arbitration agreement has not been complied with and yet proceeds with the arbitration without stating his objection to such non-compliance without undue delay or, if a time-limit is provided therefor, within such period of time, shall be deemed to have waived the right to object.

ARTICLE 5

Extent of court intervention

In matters governed by this Model Law, no court shall intervene except where so provided in this Model Law.

ARTICLE 6

Court or other authority for certain functions of arbitration assistance and supervision
(Deleted)

CHAPTER II

ARBITRATION AGREEMENT

ARTICLE 7

Definition and form of arbitration agreement

(1) “Arbitration agreement” is 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. An arbitration agreement may be in the form of an arbitration clause in a contract or in the form of a separate agreement.

(2) The arbitration agreement shall be in writing. An agreement is in writing if it is contained in a document signed by the parties or in an exchange of letters, telex, telegrams or other means of telecommunication which provide a record of the

agreement, or in an exchange of statements of claim and defence in which the existence of an agreement is alleged by one party and not denied by another. The reference in a contract to a document containing an arbitration clause constitutes an arbitration agreement provided that the contract is in writing and the reference is such as to make that clause part of the contract.

ARTICLE 8

Arbitration agreement and substantive claim before court

(1) A court before which proceedings are brought in a matter which is the subject of an arbitration agreement shall, if a party so requests not later than when submitting his first statement on the substance of the dispute, stay those proceedings and refer the parties to arbitration unless it finds that the agreement is null and void, inoperative or incapable of being performed.

(2) Where proceedings referred to in paragraph (1) of this article have been brought, arbitral proceedings may nevertheless be commenced or continued, and an award may be made, while the issue is pending before the court.

ARTICLE 9

Arbitration agreement and interim measures by court

(1) It is not incompatible with an arbitration agreement for a party to request, before or during arbitral proceedings, from the High Court an interim measure of protection and, subject to paragraphs (2) and (3) of this article, for the High Court to grant such measure.

(2) Upon a request in terms of paragraph (1) of this article, the High Court may grant—

(a) an order for the preservation, interim custody or sale of any goods which are the subject-matter of the dispute; or

(b) an order securing the amount in dispute or the costs of the arbitral proceedings; or

(c) an interdict or other interim order; or

(d) any other order to ensure that any award which may be made in the arbitral proceedings is not rendered ineffectual.

(3) The High Court shall not grant an order or interdict in terms of paragraph (1) of this article unless—

(a) the arbitral tribunal has not yet been appointed and the matter is urgent; or

(b) the arbitral tribunal is not competent to grant the order or interdict; or

(c) the urgency of the matter makes it impracticable to seek such order or interdict from the arbitral tribunal;

and the High Court shall not grant any such order or interdict where the arbitral tribunal, being competent to grant the order or interdict, has determined an application therefor.

(4) The decision of the High Court upon any request made in terms of paragraph (1) of this article shall not be subject to appeal.

CHAPTER III

COMPOSITION OF ARBITRAL TRIBUNAL

ARTICLE 10

Number of arbitrators

(1) The parties are free to determine the number of arbitrators.

(2) Failing such determination, the number of arbitrators shall be three:

Provided that where each party has any one of the following in Zimbabwe—

(a) his place of business; or

(b) if he has more than one place of business, his principal place of business; or

(c) if he has no place of business, his place of habitual residence;

the number of arbitrators, failing such determination, shall be one.

ARTICLE 11

Appointment of arbitrators

(1) No person shall be precluded by reason of his nationality from acting as an arbitrator, unless otherwise agreed by the parties.

(2) The parties are free to agree on a procedure of appointing the arbitrator or arbitrators, subject to the provisions of paragraphs (4) and (5) of this article.

(3) Failing such agreement—

(a) in an arbitration with three arbitrators, each party shall appoint one arbitrator, and the two arbitrators thus appointed shall appoint the third arbitrator; if a party fails to appoint the arbitrator within thirty days of receipt of a request to do so from the other party, or if the two arbitrators fail to agree on the third arbitrator within thirty days of their appointment, the appointment shall be made, upon request of a party, by the High Court;

(b) in an arbitration with a sole arbitrator, if the parties are unable to agree on the arbitrator, he shall be appointed, upon request of a party, by the High Court.

(4) Where, under an appointment procedure agreed upon the parties—

(a) a party fails to act as required under such procedure; or

(b) the parties, or two arbitrators, are unable to reach an agreement expected of them under such procedure; or

(c) a third party, including an institution, fails to perform any function entrusted to it under such procedure;

any party may request the High Court to take the necessary measure, unless the agreement on the appointment procedure provides other means for securing the appointment.

(5) A decision on a matter entrusted by paragraph (3) or (4) of this article to the High Court shall be subject to no appeal. The High Court in appointing an arbitrator shall have due regard to any qualifications required of the arbitrator by the agreement of the parties and to such considerations as are likely to secure the appointment of an independent and impartial arbitrator and, in the case of a sole or third arbitrator, shall take into account as well the advisability of appointing an arbitrator of a nationality other than those of the parties.

ARTICLE 12

Grounds for challenge

(1) When a person is approached in connection with his possible appointment as an arbitrator, he shall disclose any circumstances likely to give rise to justifiable doubts as to his impartiality or independence. An arbitrator, from the time of his appointment and throughout the arbitral proceedings, shall without delay disclose any such circumstances to the parties unless they have already been informed of them by him.

(2) An arbitrator may be challenged only if circumstances exist that give rise to justifiable doubts as to his impartiality or independence, or if he does not possess qualifications agreed to by the parties. A party may challenge an arbitrator appointed by him, or in whose appointment he has participated, only for reasons of which he becomes aware after the appointment has been made.

ARTICLE 13

Challenge procedure

(1) The parties are free to agree on a procedure for challenging an arbitrator, subject to the provisions of paragraph (3) of this article.

(2) Failing such agreement, a party who intends to challenge an arbitrator shall, within fifteen days after becoming aware of the constitution of the arbitral tribunal or after becoming aware of any circumstance referred to in article 12 (2), send a written statement of the reasons for the challenge to the arbitral tribunal. Unless the challenged arbitrator withdraws from his office or the other party agrees to the challenge, the arbitral tribunal shall decide on the challenge.

(3) If a challenge under any procedure agreed upon by the parties or under the procedure of paragraph (2) of this article is not successful, the challenging party may request, within thirty days after having received notice of the decision rejecting the

challenge, the High Court to decide on the challenge, which decision shall be subject to no appeal; while such a request is pending, the arbitral tribunal, including the challenged arbitrator, may continue the arbitral proceedings and make an award.

ARTICLE 14

Failure or impossibility to act

(1) If an arbitrator becomes de jure or de facto unable to perform the functions of his office or for other reasons fails to act without undue delay, his mandate terminates if he withdraws from his office or if the parties agree on the termination. Otherwise, if a controversy remains concerning any of these grounds, any party may request the High Court to decide on the termination of the mandate, which decision shall be subject to no appeal.

(2) If, under this article or article 13 (2), an arbitrator withdraws from his office or a party agrees to the termination of the mandate of an arbitrator, this does not imply acceptance of the validity of any ground referred to in this article or article 12 (2).

ARTICLE 15

Appointment of substitute arbitrator

(1) Where the mandate of an arbitrator terminates under article 13 or 14 or because of his withdrawal from office for any other reason or because of the revocation of his mandate by agreement of the parties or in any other case of termination of his mandate, a substitute arbitrator shall be appointed according to the rules that were applicable to the appointment of the arbitrator being replaced.

(2) Unless otherwise agreed by the parties—

(a) where the sole or the presiding arbitrator is replaced, any hearings previously held shall be repeated; and

(b) where an arbitrator, other than a sole or a presiding arbitrator is replaced, any hearings previously held may be repeated at the discretion of the arbitral tribunal.

(3) Unless otherwise agreed by the parties, an order or ruling of the arbitral tribunal made prior to the replacement of an arbitrator under this article is not invalid solely because there has been a change in the composition of the arbitral tribunal.

CHAPTER IV

JURISDICTION OF ARBITRAL TRIBUNAL

ARTICLE 16

Competence of arbitral tribunal to rule on its jurisdiction

(1) The arbitral tribunal may rule on its own jurisdiction, including any objections with respect to the existence or validity of the arbitration agreement. For that purpose, an arbitration clause which forms part of a contract shall be treated as an agreement independent of the other terms of the contract. A decision by the arbitral tribunal that the contract is null and void shall not entail ipso jure the invalidity of the arbitration clause.

(2) A plea that the arbitral tribunal does not have jurisdiction shall be raised not later than the submission of the statement of defence. A party is not precluded from raising such a plea by the fact that he has appointed, or participated in the appointment of, an arbitrator. A plea that the arbitral tribunal is exceeding the scope of its authority shall be raised as soon as the matter alleged to be beyond the scope of its authority is raised during the arbitral proceedings. The arbitral tribunal may, in either case, admit a later plea if it considers the delay justified.

(3) The arbitral tribunal may rule on a plea referred to in paragraph (2) of this article either as a preliminary question or in an award on the merits. If the arbitral tribunal rules on such a plea as a preliminary question, any party may request, within thirty days after having received notice of that ruling, the High Court to decide the matter, which decision shall be subject to no appeal; while such a request is pending, the arbitral tribunal may continue the arbitral proceedings and make an award.

ARTICLE 17

Power of arbitral tribunal to order interim measures

(1) Unless otherwise agreed by the parties, the arbitral tribunal may, at the request of a party, order any party to take such interim measure of protection as the arbitral tribunal may consider necessary in respect of the subject-matter of the dispute. The arbitral tribunal may require any party to provide appropriate security in connection with any such measure.

(2) Unless otherwise agreed by the parties, an arbitral tribunal shall have power—

(a) to grant an interdict or other interim order;

(b) to order the parties to make a deposit in respect of the fees and costs of the arbitration.

(3) The arbitral tribunal or a party with the approval of the arbitral tribunal may request from the High Court executory assistance in the exercise of any power conferred upon the arbitral tribunal under paragraphs (1) and (2) of this article.

(4) If a request is made under paragraph (3) of this article, the High Court shall have, for the purpose of giving effect to the request, the same powers it would have in civil proceedings before it.

CHAPTER V

CONDUCT OF ARBITRAL Proceedings

ARTICLE 18

Equal treatment of parties

The parties shall be treated with equality and each party shall be given a full opportunity of presenting his case.

ARTICLE 19

Determination of rules of procedure

(1) Subject to the provisions of this Model Law, the parties are free to agree on the procedure to be followed by the arbitral tribunal in conducting the proceedings.

(2) Failing such agreement, the arbitral tribunal may, subject to the provisions of this Model Law, conduct the arbitration in such manner as it considers appropriate. The power conferred upon the arbitral tribunal includes the power to determine the admissibility, relevance, materiality and weight of any evidence.

(3) Every witness giving evidence, and every person appearing before an arbitral tribunal, shall have the same privileges and immunities as witnesses and legal practitioners in proceedings before a court.

ARTICLE 20

Place of arbitration

(1) The parties are free to agree on the place of arbitration. Failing such agreement, the place of arbitration shall be determined by the arbitral tribunal having regard to the circumstances of the case, including the convenience of the parties.

(2) Notwithstanding the provisions of paragraph (1) of this article, the arbitral tribunal may, unless otherwise agreed by the parties, meet at any place it considers appropriate for consultation among its members, for hearing witnesses, experts or the parties, or for inspection of goods, other property or documents.

ARTICLE 21

Commencement of arbitral proceedings

Unless otherwise agreed by the parties, the arbitral proceedings in respect of a particular dispute commence on the date on which a request for that dispute to be referred to arbitration is received by the respondent.

ARTICLE 22

Language

(1) The parties are free to agree on the language or languages to be used in the arbitral proceedings. Failing such agreement, the arbitral tribunal shall determine the language or languages to be used in the proceedings. This agreement or determination, unless otherwise specified therein, shall apply to any written statement by a party, any hearing and any award, decision or other communication by the arbitral tribunal.

(2) The arbitral tribunal may order that any documentary evidence shall be

accompanied by a translation into the language or languages agreed upon by the parties or determined by the arbitral tribunal.

ARTICLE 23

Statement of claim and defence

(1) Within the period of time agreed by the parties or determined by the arbitral tribunal, the claimant shall state the facts supporting his claim, the points at issue and the relief or remedy sought, and the respondent shall state his defence in respect of these particulars, unless the parties have otherwise agreed as to the required elements of such statements. The parties may submit with their statements all documents they consider to be relevant or may add a reference to the documents or other evidence they will submit.

(2) Unless otherwise agreed by the parties, either party may amend or supplement his claim or defence during the course of the arbitral proceedings, unless the arbitral tribunal considers it inappropriate to allow such amendment having regard to the delay in making it.

ARTICLE 24

Hearings and written proceedings

(1) Subject to any contrary agreement by the parties, the arbitral tribunal shall decide whether to hold oral hearings for the presentation of evidence or for oral argument, or whether the proceedings shall be conducted on the basis of documents and other materials. However, unless the parties have agreed that no hearing shall be held, the arbitral tribunal shall hold such hearings at an appropriate stage of the proceedings, if so requested by a party.

(2) The parties shall be given sufficient advance notice of any hearing and of any meeting of the arbitral tribunal for the purposes of inspection of goods, other property or documents.

(3) All statements, documents or other information supplied to the arbitral tribunal by one party shall be communicated to the other party. Also any expert report or evidentiary document on which the arbitral tribunal may rely in making its decision shall be communicated to the parties.

(4) At any hearing or any meeting of the arbitral tribunal of which notice is required to be given under paragraph (2) of this article, or in any proceedings conducted on the basis of documents or other materials, the parties may appear or act in person or may be represented by any other person of their choice.

ARTICLE 25

Default of a party

Unless otherwise agreed by the parties, if, without showing sufficient cause—

(a) the claimant fails to communicate his statement of claim in accordance with article 23 (1), the arbitral tribunal shall terminate the proceedings;

(b) the respondent fails to communicate his statement of defence in accordance with article 23 (1), the arbitral tribunal shall continue the proceedings without treating such failure in itself as an admission of the claimant's allegations;

(c) any party fails to appear at a hearing or to produce documentary evidence, the arbitral tribunal may continue the proceedings and make the award on the evidence before it;

(d) the claimant fails to prosecute his claim, the arbitral tribunal may make an award dismissing the claim or give directions, with or without conditions, for the speedy determination of the claim.

ARTICLE 26

Expert appointed by arbitral tribunal

(1) Unless otherwise agreed by the parties, the arbitral tribunal—

(a) may appoint one or more experts to report to it on specific issues to be determined by the arbitral tribunal;

(b) may require a party to give the expert any relevant information or to produce, or to provide access to any relevant document, goods or other property for

his inspection.

[amended by the General Laws Amendment (No.2) Act 2002 promulgated on the 24th January, 2003 - with retrospective effect, in terms of clause 47 - from the 4th February, 2002 - Editor.]

(2) Unless otherwise agreed by the parties, if a party so requests or if the arbitral tribunal considers it necessary, the expert shall, after delivery of his written or oral report, participate in a hearing where the parties have the opportunity to put questions to him and to present expert witnesses in order to testify on the points at issue.

ARTICLE 27

Court assistance in taking evidence

(1) The arbitral tribunal or a party with the approval of the arbitral tribunal may request from the High Court assistance in taking evidence. The High Court may execute the request within its competence and according to its rules on taking evidence.

(2) For the purposes of paragraph (1) of this article—

(a) the High Court may issue a subpoena to compel the attendance of a witness before an arbitral tribunal to give evidence or produce documents;

(b) the High Court may order any witness to submit to examination on oath before the arbitral tribunal, or before an officer of the court or any other person for the use of the arbitral tribunal;

(c) the High Court shall have, for the purpose of the arbitral proceedings, the same power as it has for the purpose of proceedings before that court to make an order for—

(i) the discovery of documents and interrogatories;

(ii) the issue of a commission or request for the taking of evidence out of the jurisdiction;

(iii) the detention, preservation or inspection of any property or thing which is in issue or relevant to the arbitral proceedings and authorising for any of those purposes any person to enter upon any land or building in the possession of a party, or authorising any sample to be taken or any observation to be made or experiment to be tried which may be necessary or expedient for the purpose of obtaining full information or evidence.

CHAPTER VI

MAKING OF AWARD AND TERMINATION OF PROCEEDINGS

ARTICLE 28

Rules applicable to substance of dispute

(1) The arbitral tribunal shall decide the dispute in accordance with such rules of law as are chosen by the parties as applicable to the substance of the dispute. Any designation of the law or legal system of a given State shall be construed, unless otherwise expressed, as directly referring to the substantive law of that State and not to its conflict of laws rules.

(2) Failing any designation by the parties, the arbitral tribunal shall apply the law determined by the conflict of laws rules which it considers applicable.

(3) The arbitral tribunal shall decide *ex aequo et bono* or as *amiable compositeur* only if the parties have expressly authorised it to do so.

(4) In all cases, the arbitral tribunal shall decide in accordance with the terms of any contract and shall take into account any usages of any trade applicable to the transaction.

ARTICLE 29

Decision-making by panel of arbitrators

In arbitral proceedings with more than one arbitrator, any decision of the arbitral tribunal shall be made, unless otherwise agreed by the parties, by a majority of all its members. However, questions of procedure may be decided by a presiding arbitrator, if so authorised by the parties or all members of the arbitral tribunal.

ARTICLE 30

Settlement

(1) If, during arbitral proceedings, the parties settle the dispute, the arbitral tribunal shall terminate the proceedings and, if requested by the parties and not objected to by the arbitral tribunal, record the settlement in the form of an arbitral award on agreed terms.

(2) An award on agreed terms shall be made in accordance with the provisions of article 31 and shall state that it is an award. Such an award has the same status and effect as any other award on the merits of the case.

ARTICLE 31

Form and contents of award

(1) The award shall be made in writing and shall be signed by the arbitrator or arbitrators. In arbitral proceedings with more than one arbitrator, the signatures of the majority of all members of the arbitral tribunal shall suffice, provided that the reason for any omitted signature is stated.

(2) The award shall state the reasons upon which it is based, unless the parties have agreed that no reasons are to be given or the award is an award on agreed terms under article 30.

(3) The award shall state its date and the place of arbitration as determined in accordance with article 20 (1). The award shall be deemed to have been made at that place.

(4) After the award is made, a copy signed by the arbitrators in accordance with paragraph (1) of this article shall be delivered to each party.

(5) Unless otherwise agreed by the parties—

(a) the costs and expenses of an arbitration including the legal and other expenses of the parties, the fees and expenses of the arbitral tribunal and other expenses related to the arbitration, shall be as fixed and allocated by the arbitral tribunal in its award;

(b) where the award does not specify otherwise, each party shall be responsible for his own legal and other expenses and for an equal share of the fees and expenses of the arbitral tribunal and any other expenses related to the arbitration.

(6) Unless otherwise agreed by the parties—

(a) an arbitral tribunal may award interest at such rate, on such sum and for such period as may be specified in the award;

(b) where the award does not specify otherwise, a sum directed to be paid by the award shall carry interest from the date of the award up to the date of payment at the same rate as a judgment debt.

(7) Unless otherwise agreed by the parties, an arbitral tribunal shall have the power to make an interim, interlocutory or partial award.

ARTICLE 32

Termination of proceedings

(1) The arbitral proceedings are terminated by the final award or by an order of the arbitral tribunal in accordance with paragraph (2) of this article.

(2) The arbitral tribunal shall issue an order for the termination of the arbitral proceedings when—

(a) the claimant withdraws his claim, unless the respondent objects thereto and the arbitral tribunal recognizes a legitimate interest on his part in obtaining a final settlement of the dispute;

(b) the parties agreed on the termination of the proceedings;

(c) the arbitral tribunal finds that the continuation of the proceedings has for any other reason become unnecessary or impossible.

(3) The mandate of the arbitral tribunal terminates with the termination of the arbitral proceedings, subject to the provisions of articles 33 and 34 (4).

ARTICLE 33

Correction and interpretation of award: additional award

(1) Within thirty days of receipt of the award, unless another period of time has been

agreed upon by the parties—

(a) a party, with notice to the other party, may request the arbitral tribunal to correct in the award any errors in computation, any clerical or typographical errors or any errors of similar nature;

(b) if so agreed by the parties, a party, with notice to the other party, may request the arbitral tribunal to give an interpretation of a specific point or part of the award.

If the arbitral tribunal considers the request to be justified, it shall make the correction or give the interpretation within thirty days of receipt of the request. The interpretation shall form part of the award.

(2) The arbitral tribunal may correct any error of the type referred to in paragraph (1) (a) of this article on its own initiative within thirty days of the date of the award.

(3) Unless otherwise agreed by the parties, a party, with notice to the other party, may request, within thirty days of receipt of the award, the arbitral tribunal to make an additional award as to claims presented in the arbitral proceedings but omitted from the award. If the arbitral tribunal considers the request to be justified, it shall make the additional award within sixty days.

(4) The arbitral tribunal may extend, if necessary, the period of time within which it shall make a correction, interpretation or an additional award under paragraph (1) or (3) of this article.

(5) The provisions of article 31 shall apply to a correction or interpretation of the award or to an additional award.

CHAPTER VII

RECOURSE AGAINST AWARD

ARTICLE 34

Application for setting aside as exclusive recourse against arbitral award

(1) Recourse to a court against an arbitral award may be made only by an application for setting aside in accordance with paragraphs (2) and (3) of this article.

(2) An arbitral award may be set aside by the High Court only if—

(a) the party making the application furnishes proof that—

(i) a party to the arbitration agreement referred to in article 7 was under some incapacity; or the said agreement is not valid under the law to which the parties have subjected it or, failing any indication on that question, under the law of Zimbabwe; or

(ii) the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or

(iii) the award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or contains decisions on matters beyond the scope of the submission to arbitration, provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, only that part of the award which contains decisions on matters not submitted to arbitration may be set aside; or

[amended by the General Laws Amendment (No.2) Act 2002 promulgated on the 24th January, 2003 - with retrospective effect, in terms of clause 47 - from the 4th February, 2002 - Editor.]

(iv) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless such agreement was in conflict with a provision of this Model Law from which the parties cannot derogate, or, failing such agreement, was not in accordance with this Model Law; or

[amended by the General Laws Amendment (No.2) Act 2002 promulgated on the 24th January, 2003 - with retrospective effect, in terms of clause 47 - from the 4th February, 2002 - Editor.]

(b) the High Court finds, that—

(i) the subject-matter of the dispute is not capable of settlement by

arbitration under the law of Zimbabwe; or

(ii) the award is in conflict with the public policy of Zimbabwe.

(3) An application for setting aside may not be made after three months have elapsed from the date on which the party making that application had received the award or, if a request had been made under article 33, from the date on which that request had been disposed of by the arbitral tribunal.

(4) The High Court, when asked to set aside an award, may, where appropriate and so requested by a party, suspend the setting aside proceedings for a period of time determined by it in order to give the arbitral tribunal an opportunity to resume the arbitral proceedings or to take such other action as in the arbitral tribunal's opinion will eliminate the grounds for setting aside.

(5) For the avoidance of doubt, and without limiting the generality of paragraph (2) (b) (ii) of this article, it is declared that an award is in conflict with the public policy of Zimbabwe if—

(a) the making of the award was induced or effected by fraud or corruption; or

(b) a breach of the rules of natural justice occurred in connection with the making of the award.

CHAPTER VIII

RECOGNITION AND ENFORCEMENT OF AWARDS

ARTICLE 35

Recognition and enforcement

(1) An arbitral award, irrespective of the country in which it was made, shall be recognised as binding and, upon application in writing to the High Court, shall be enforced subject to the provisions of this article and of article 36.

(2) The party relying on an award or applying for its enforcement shall supply the duly authenticated original award or a duly certified copy thereof and the original arbitration agreement referred to in article 7 or a duly certified copy thereof. If the award or agreement is not made in the English language, the party shall supply a duly certified translation into the English language.

ARTICLE 36

Grounds for refusing recognition or enforcement

(1) Recognition or enforcement of an arbitral award, irrespective of the country in which it was made, may be refused only—

(a) at the request of the party against whom it is invoked, if that party furnishes to the court where recognition or enforcement is sought proof that—

(i) a party to the arbitration agreement referred to in article 7 was 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; or

(ii) the party against whom the 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; or

(iii) the award deals with a dispute 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, provided that, if 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 recognised and enforced; or

(iv) the composition of the arbitral tribunal 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

(v) the award has not yet become binding on the parties or has been set aside or suspended by a court of the country in which, or under the law of which, that award was made; or

(b) if the court finds that—
(i) the subject-matter of the dispute is not capable of settlement by arbitration under the law of Zimbabwe; or
(ii) the recognition or enforcement of the award would be contrary to the public policy of Zimbabwe.

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

(3) For the avoidance of doubt and without limiting the generality of paragraph (1) (b) (ii) of this article, it is declared that the recognition or enforcement of an award would be contrary to the public policy of Zimbabwe if—

(a) the making of the award was induced or effected by fraud or corruption; or

(b) a breach of the rules of natural justice occurred in connection with the making of the award.

SECOND SCHEDULE (Section 7)

AMENDMENTS TO ACTS

PART I

HIGH COURT ACT [Chapter 7:06]

By the insertion after section 19 of the following section—

“19A. (1) The High Court may refer any question arising in civil proceedings, including—

(a) any question requiring extensive examination of documents or any scientific, technical or local investigation which, in the opinion of the High Court, cannot conveniently be conducted by it; or

(b) any question relating wholly or partly to accounts;
for inquiry and report by referee appointed generally or specially by the High Court.

(2) The High Court may adopt, wholly or partly and with or without modification, the report of a referee appointed under subsection (1), or may remit the report to him for further consideration or may take such other action in regard to the report as the High Court considers necessary or desirable.

(3) Any part of a referee’s report which has been adopted by the High Court under subsection (2) shall have effect, subject to any modifications the court may have made, as if it were a finding by the High Court in the civil proceedings in question.

(4) A referee appointed under this section shall have such powers, and shall conduct his inquiry in such manner, as may be prescribed by order of the High Court or in rules of court.

(5) For the purpose of procuring the attendance of witnesses, including a witness detained in custody under any law, and the production of documents or other things before a referee appointed under this section, proceedings before such a referee shall be deemed to be civil proceedings before the High Court.

(6) If a person who has been summoned to appear and give evidence or produce any document or thing before a referee appointed under this section—

(a) fails without just excuse to attend at the time and place specified; or

(b) having attended, fails without just excuse to remain in attendance until the conclusion of the proceedings or until he is excused by the referee from further attendance; or

(c) refuses without just excuse to be sworn; or

(d) having been sworn, refuses without just excuse to answer such questions as are put to him or fails to produce any document or thing which he is required to produce;

he shall be guilty of an offence and liable to a fine not exceeding five hundred dollars or to imprisonment for a period not exceeding three months or to both such fine and

such imprisonment.

(7) If a person, after being sworn in proceedings before a referee appointed under this section, gives false evidence knowing the evidence to be false or not knowing or believing it to be true, he shall be guilty of an offence and liable to the penalties prescribed by law for perjury.

(8) A referee appointed under this section shall be entitled to—

(a) such remuneration as may be prescribed in rules of court or, if no such remuneration is prescribed, as the court may determine; and

(b) the reimbursement of any reasonable expenditure incurred by him in connection with the proceedings conducted by him;
and any such remuneration and reimbursement shall be liable to taxation and shall be costs in the civil proceedings concerned.”.

PART II

PRESCRIBED RATE OF INTEREST ACT [Chapter 8:10]

In section 6 by the deletion from subsection (1) of “, by arbitration”.

[Go To Top Page](#)

[NEXT CHAPTER](#)