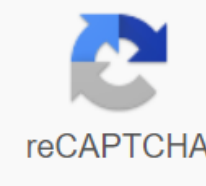




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Arbitration act 1995 pdf

15. Court of Arbitration16. Procedure for appointing arbitrators17. Powers in case of non-compliance with obligations on appointment of a single arbitrator18. Rejection of the appointment procedure19. The court to have to deal with the agreed qualifications20. Chairman21. Judge22. Decision-making in cases where there is no chairman or judge23 Recall of the arbitrator's powers24. The court's authority to remove the arbitrator25. The referee's resignation26. The death of an arbitrator or the person appointed by him27 Filling vacancies. q.28. Joint and multiple obligations of the parties to arbitrators for fees and expenses29. Immunity of the arbitrator. Use the Lexology Navigator tool to compare responses in this article with responses for 20 other jurisdictions. The legal framework of the National Arbitration Act What legislation applies to arbitration in your jurisdiction? The Arbitration Act 1995, as amended in 2010, applies to arbitration in Kenya. Mandatory laws are there any mandatory laws? No, there is no mandatory arbitration law, although the Arbitration Act contains binding provisions. New York Convention Is Your Country a Signatory to the New York Convention? If so, what is the effective date? Kenya joined the New York Convention on February 10, 1989. Were there any reservations about the general obligations of the convention? The accession was made with a reservation of reciprocity. Treaties and Conventions What other treaties and conventions regarding arbitration is your jurisdiction a party? Kenya has also signed the Treaty on the East African Community, which provides for arbitration as an available means of dispute resolution (Article 32). UNCITRAL Has Your Jurisdiction Adopted the UNCITRAL Model Law? When the Arbitration Act 1995 originally came into force, it accurately passed the UNCITRAL Model Act. The 2010 amendments then filled in the gaps in the law, including provisions on arbiters' immunity, the general duty of the parties, expenses, interest, costs and the effect of the award. Reform Are there any upcoming plans to reform arbitration laws in your jurisdiction? The initiative is in its infancy but has not yet been determined. The duration of arbitration agreements What are the requirements for the validity of the arbitration agreement? To be valid, an arbitration agreement must meet the requirements established in section 4 of the Arbitration Act 1995 (as amended in 2010), meaning it must be in writing and may form a separate agreement or be included as a clause in the contract. It may be included with a reference to another document, may be contained in the exchange of letters, telex, telegram, facsimile, e-mail or other means of communication that provide a record agreement, or may be an exchange of pleas if not breaches of the existence of an arbitration agreement. Enforcement of agreements How are arbitration agreements in your jurisdiction respected? What is the attitude of the attitude national courts to arbitration agreements? Over the past few years, the attitude of the judiciary towards arbitration, respect for the integrity of the process and contractual conditions in the parties' choice of forum and governing legislation have improved markedly. The awards are submitted in accordance with another application for enforcement by the Commercial Division of the High Court. Can an arbitration court with its place in your jurisdiction consolidate individual arbitration proceedings on one or more contracts, and if so, under what circumstances? The consolidation of individual arbitration proceedings is supported in Kenya, but only with the consent of the parties. Choosing the Right How is the basic law of dispute determined? Where the basic law is unclear, how will the court determine what it should be? The basic right of the treaty will be determined by the parties during the negotiations. If the parties do not do so, section 29 (3-5) of the Law sets out guidelines for how an arbitrator should determine the basic right of the contract. Are there any provisions for the separation of arbitration agreements? The doctrine of separation was well rooted in Kenyan law and was codified in section 17 of the Act. Are multi-party agreements recognized by multi-party agreements? Yes, multi-party agreements are recognized in Kenya. The criteria of the arbitration court for arbitrators are there any restrictions? Parties are given broad powers to choose an arbitrator. Contractual clauses What can be stipulated about the tribunal in the agreement? Kenyan law imposes no restrictions on what may be included in the arbitration agreement. However, the provisions of the agreement should not violate the requirements of public policy. Do the default requirements have any legal requirements for the choice of tribunal - for example, with respect to the number of arbitrators or their characteristics? Parties are free to determine the number of arbitrators and their characteristics, if they fail to establish the number of arbitrators under section 11 of the Arbitration Act, the only arbitrator will resolve the dispute. Can the appointment of an arbitrator be challenged by the appointment of an arbitrator? Can the arbitrator be disqualified? What is the procedure for this? Section 14 of the Arbitration Act sets out the procedure for challenging the arbitrator, while section 13 establishes grounds for challenge, including disqualification. Section 17 in Kenyan jurisprudence implements the principle of competence and competence. Jurisdictional Objections How should objections to jurisdiction be withdrawn? Under article 14, parties could agree on a grievance procedure. If the procedure is not agreed, the objection to the jurisdiction must be raised through a written application to the court within 15 days after the party with a report on the circumstances that fall under section 13 (3). The arbitrator may decide to withdraw or hear the call. Section 17 (2) makes it clear, however, that the declaration that the tribunal does not have jurisdiction must be made no later than the defence application; however, section 17 (4) gives the arbitrator the right to allow an application that can be filed at any time after the defence application is filed, if the application is justified. Replacing the referee Why and how can you replace the referee? Section 15 gives the parties the right to agree on the termination of the arbitrator's powers, in which case the parties may appoint a new arbitrator. The section also states that the arbitrator may refuse the reference; in addition, the mandate of an arbitrator who is unable to perform his functions properly or at a reasonable speed would be terminated. If a dispute arises on the basis of any of these grounds, either party can go to court for a final decision. Section 16 applies to the appointment of a new arbitrator, where the procedure originally used to appoint the original arbitrator is applied. What powers and responsibilities do arbitrators have the powers and responsibilities? Sections 18, 20, 26, 27 and 28 of the law will be given to the arbitrator various powers. In addition, the parties may grant the Tribunal any additional powers, and any rules chosen by the parties will grant the arbitrator additional powers, provided that they do not contravene the statute. Are arbitrators protected from liability? Article 16B of the Act grants the arbitrator immunity from liability for all acts committed in good faith in the performance or alleged performance of his or her duties as an arbitrator. Communicating with the Tribunal How do the parties communicate with the tribunal? Section 9 of the Law allows for written communications in the form of a hard copy, facsimile or electronic transmission. In the light of the legal position, it was necessary to harmonize the relationship with the tribunal, and direct communication by one party in the absence of the other party was discouraged and in fact prohibited, except in an emergency. Is the unanimous consent of the tribunal required? If there is disagreement, is the will of the majority sufficient? What are the consequences of this? Section 30 of the Law clearly states that the will of the majority in a trial with more than one arbitrator will suffice. However, in cases of procedural matters, the President of the Tribunal may decide that the authority has been obtained from other members of the tribunal or parties. Are there disputes that cannot be referred to arbitration? In practice, arbitration does not apply to criminal, land or family matters in Kenya. However, on family issues, there is growing recognition that arbitration be a useful tool when the parties cannot reach agreement on certain aspects of the dispute when seeking an indirect settlement. No statutory legislation restricts the use of arbitration by a specific subject, but section 159 of the Constitution understands that the objectives of justice must be achieved in promoting alternative dispute resolution methods, including arbitration. Justice must: not delay, equally to all persons, regardless of their status; to be carried out without due regard for procedural formalities; and to promote and defend the purposes and principles of the Constitution. The Constitution provides carte blanche for the application of arbitration and alternative dispute resolution (ADR) methods to any given situation, and in some cases the courts seek to apply the DOJ in the criminal sphere. However, they should be seen as an aberration, since section 159 (2) made it clear that the results of arbitration and DJA.S. in such situations should not be repugnant to justice and morality. Can the arbitration decision of the dispute be challenged? The act still does not mention it. However, in Heather-Hayes v AMREF, the employment award was challenged in the Industrial Court. Jurisdiction and competence-competence Is the principle of competence recognized in your jurisdiction? Could a party in arbitration go to court with a different problem relating to the jurisdiction and competence of the tribunal? Article 17 of the Arbitration Act in Kenyan law implements the principle of competence. The courts can determine matters relating to the jurisdiction of the tribunal only if the jurisdiction is challenged and adjudicated by the tribunal under article 14, the losing party appeals to the High Court for a final decision. The court can either uphold the decision or support the challenge and remove the arbitrator. Arbitration Start Arbitration What Is Necessary to Start Arbitration? Article 22 of the Arbitration Act allows for the preponderance of the will of the parties. In practice, the terms of an arbitration agreement or clause come into force, with the first step being the appointment of an arbitrator. Where there is no consensus, arbitration begins on the day the defendant is asked to refer the case to arbitration. Are there any statutes of limitations for the start of arbitration? The Kenyan Statute of Restrictions does not contain a provision restricting the prosecution of arbitration claims for a certain period of time. It can be argued, however, that, as a commercial contract, the arbitration clause will fall under general civil matters and will therefore be limited to a six-year period. A specific arbitration agreement may also contain a statute of limitations during which arbitration must be Thirty days. On the other hand, the right to arbitration may be lost because of the fact that neither party has taken any steps over a period of time, usually under an arbitration agreement. National courts will not interfere with the agreement of the parties unless there is a good reason for doing so. The Arbitration Act 1995 did not address the issue, and the courts therefore had the discretion to act. Procedural rules Are there any procedural rules that arbitrators should follow? The law does not require arbitrators to follow a certain set of procedural rules. Parties and arbitrators can agree on rules of use, and an arbitration clause or agreement may impose a set of procedural rules. However, where the parties cannot agree on rules, under article 20 of the act the arbitrator becomes the master of the procedure. The following sections of the Arbitration Act establish a procedure that parties must follow in the absence of consent to the contrary: section 24 - the submission of a claim and protection statement; Section 25 - hearings and written submissions; Section 26 - non-compliance by the party, non-compliance and imperative orders; and section 27 - expert appointed by the tribunal. Parties are also free to accept the rules of any institution at their discretion or even to create their own. Finally, the order 46 of the Civil Procedure Rules sets out rules that must be respected when the reference is made under the direction of the court. Dissenting arbitrators Are dissenting opinions allowed in accordance with the laws of your jurisdiction? Yes, dissenting opinions are allowed. Can local courts interfere with proceedings? Under article 10, national courts may intervene in arbitration only under an injunction from the Arbitration Act. The extent of the intervention of the courts is severely limited by this law. Can local courts help in selecting arbitrators? Yes, but only if the party to the arbitration has made such an application in accordance with article 12 of the Act. What is the applicable law (and prevailing practice) when the defendant is not involved in arbitration? Can the courts force the parties to arbitration? Could they issue subpoenas to third parties? Under article 28 of the Act, the courts could issue a summons to require a third party to appear before the tribunal. However, the law does not give the courts the power to compel the parties to arbitration - this would be contrary to the consensual nature of arbitration. In the event that the defendant is not involved in arbitration after he has submitted his jurisdiction, the court may issue imperative orders and its persuasion powers to get the defendant to participate. If this fails, the court may proceed with the hearing and render Third parties Where cases third parties may be bound by arbitration Or a reward? The national legislation did not mention anything on that issue, and the practice did not provide for any allowances for third-party accession. However, the court's recent jurisprudence has led to uncertainty about joining unrelated parties. This is of concern to practitioners, as if the matter returns to the same court, the correct principles can be applied. Default language and place If not agreed by the parties, what is the default language and the place for arbitration? The law imposes neither the default language nor the venue for arbitration. In the absence of an agreement between the parties, the court may rule on the language and place of its use. Gathering evidence How did the evidence obtained by the tribunal? The court may collect evidence by presenting the parties with relevant documentation through either: statements in the case of the procedure under which documents are attached to the statements; or complete detection and disclosure procedures. The production of documents can be forced either by the tribunal directly or through the court. The Tribunal may also visit the site to gather additional evidence. What evidence is acceptable? There is no limit to the types of acceptable evidence, given that where the parties are unable to agree on the limits, if any, the decision is made by the tribunal. Section 23 (3) states that the Tribunal has the right to determine the acceptability, relevance, materiality and weight of any evidence and to determine at what point an argument or submission on any matter where the parties failed to agree was made. The Evidence Act does not apply to arbitration, although the parties may agree to its application. Is privacy guaranteed? Arbitration is confidential in Kenya and this is maintained to the highest possible standard. Can the information in the arbitration process be disclosed in the subsequent proceedings? No - arbitration remains confidential unless the parties agree otherwise. Ethical Codes What ethical codes and other professional standards, if any, apply to lawyers and arbitrators conducting proceedings in your jurisdiction? Lawyers are bound by the Lawyers Act in terms of representing the parties in the area of arbitration. In addition, control practices are imposed, among other things, by the Code of Professional Conduct and Ethics of the Diplomat Institute and the International Bar Association's Code on the Representation of Parties in International Arbitration. Cost assessment and distribution How are the costs of arbitration assessed and distributed? The Court of Arbitration charges an hourly fee and upholds schedule with the help of a schedule. Lawyers representing the parties can agree with clients on the method of charging. The safety of costs may be the national court or or order security costs under the law in your jurisdiction? Yes. Both national courts and arbitration courts have the power to take action to ensure costs. Reward Requirements What legal requirements exist to recognize the award? Should the award be awarded? Should the award be considered by any other body? The law does not require that a decision be considered by any other body. The decision must contain reasons (unless otherwise agreed by the parties or if the decision is a decision of consent under section 31 of the Arbitration Act 1995). In addition, in order for the decision to be valid, the decision must be written, signed by all members of the tribunal and dated, and the legal place must be specified. Delivery times Are there any time limits on the delivery of the reward? In addition to the restrictions that may be imposed by the parties in the arbitration agreement, which can be extended with the consent of the parties, there is no time frame for granting an arbitration award established by law. Lee's remedy law impose restrictions on available remedies? Were some remedies not enforceable by the court? The Arbitration Act does not impose any restrictions on the types of remedies that an arbitration court can award - the autonomy of the parties remains paramount in this regard. Therefore, tribunals can award both traditional remedies and innovative remedies, subject to considerations of public policy considerations and compliance with remedies to Kenyan law. What temporary measures are available? Will local courts issue interim measures before the constitutional tribunal is adopted? Temporary protections available to arbitration parties have not been established. The same interim measures are available as in the trial. Section 7 of the Act states that interim measures will be issued by national courts until the constitution adopts an arbitration court. Interest can be awarded? Yes, interest may be awarded under article 32C of the Law unless otherwise agreed by the parties. At what rate? The interest rate is specified in the award, but must be within the law applicable to the merits of the dispute (section 32C of the act), unless otherwise agreed by the parties. Is the award final and binding? Yes, the award is final and binding. There are several grounds on which the decision can be appealed; facts cannot be appealed. What if there are any errors? If the decision contains typographical or clerical errors or ambiguities requiring clarification, the party may within 30 days of receiving the decision (or other period, parties), to ask the court to correct or clarify the error in writing to the other party (section 34 of the act). The Court may also make adjustments on its own initiative and during the same period. Can the parties under the agreement exclude any right of appeal or other the law of your jurisdiction can provide? The right to appeal may be excluded by parties that have agreed to be bound by the terms of the decision. With regard to other remedies provided by the parties, the parties did not fall counter to the considerations of public policy, and the parties could exclude other remedies. Appeal What is the procedure for contesting awards? The application must be submitted to the High Court within three months of the date of receipt of the decision by the disputed party. On what grounds can the parties appeal the court's decision? The grounds for deferring or challenging a decision are limited and established under section 35 of the Arbitration Act. These include: the High Court's conclusion that the decision is within the level of Kenyan public policy; conclusion that the subject matter of the dispute could not be settled by arbitration in accordance with national law; or the applicant providing evidence that the decision was purchased or caused by corrupt funds, bribery, misconduct or fraud. Enforcement What measures can be taken to enforce the decision if there is non-compliance? A decision may be filed with the High Court in accordance with another motion filed by the defendant, who then has the opportunity to defend the law enforcement proceedings. Could decisions be applied in local courts? Yes, decisions can be enforced in national courts - Sections 36 and 37 of the Arbitration Act give equal treatment to domestic and foreign awards in their recognition and enforcement. How much can this award be performed internationally? Kenya has signed the New York Convention, and therefore any decision made or published within Kenyan jurisdiction is subject to international enforcement, provided that it does not violate the law in the jurisdiction in which the enforcement is intended. To what extent can a State or public entity successfully enhance the protection of state or sovereign immunity during the enforcement phase? Both the New York Convention and the Convention on the Settlement of Investment Disputes protect state immunity or sovereignty. It is therefore always possible that this protection may be raised during the enforcement phase. Are there any other grounds on which the award can be challenged, and if so, what? With the exception of those contained in section 5 of the Arbitration Act, there are no other grounds. How binding are foreign arbitration decisions in your jurisdiction? Since Kenya had signed the New York Convention, enforcement should not be a problem, although public policy considerations were in force. In Tanzania National Road Agency v Kundan Singh Building Limited (2013 the failure of the arbitration court to apply Tanzanian law as the guiding law of the treaty (English law was applied instead, against the direct clause of the treaty between the parties) led the Kenyan High Court to refuse to implement the decision on the basis of political considerations. Will the award deferred by the courts at the point of arbitration be enforced in your jurisdiction? Section 37 (1)(vi) of the Arbitration Act is unequivocal in this regard, making it clear that the decision is deferred or suspended by a state court where, or under the law of awarding the award, will not be enforced by the High Court. Third-party funding rules and restrictions Are there rules or restrictions on third-party sponsors? The concept of third-party funding has not yet been developed in Kenya. Thus, there are currently no rules or restrictions. Does the concept of group or group arbitration exist in your jurisdiction a concept of group arbitration or group arbitration? If so, were there any restrictions on the award of such claims or claims that must be met before such claims could be arbitrage? This concept does not exist in Kenya. Hot Topics New Trends Are Hot Topics or Trends Emerging in Arbitration in Your Jurisdiction? The Nairobi Centre for International Arbitration began operations in December 2015 with the launch of its Mediation and Arbitration Rules. NCIA aims to establish itself as a locomotive in the region, attracting various commercial disputes. The government has designated the NCIA as the default arbitration centre for any GOK contracts. The centre is currently building its own database of arbitrators and intermediaries. Intermediaries, arbitration act 1995 kenya. arbitration act 1995 pdf. english arbitration act 1995. arbitration act no 11 of 1995. arbitration act no 4 of 1995 kenya. arbitration and conciliation act 1995. arbitration act no. 4 of 1995

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