

(3) Where the mandate of an arbitrator is terminated, proceedings shall not be had de-novo unless the parties otherwise agree.

Appointment of
substitute
arbitrator.

9. Where the mandate of an arbitrator terminates under section 8, a substitute arbitrator shall be appointed in the manner applicable to the appointment of the arbitrator whose mandate has terminated.

Grounds for
challenge.

10. (1) Where a person is requested to accept appointment as an arbitrator, he shall first disclose any circumstances likely to give rise to justifiable doubts as to his impartiality or independence, and shall, from the time of his appointment and throughout the arbitral proceedings, disclose without delay any circumstances referred to in this subsection to all the parties and to the other arbitrators, unless they have already been so informed by the arbitrator.

(2) An arbitrator may be challenged only if circumstances exist that give rise to justifiable doubts as to his impartiality or independence. 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 was made.

(3) A party who seeks to challenge an arbitrator shall, unless the parties have decided that the decision shall be taken by some other person, first do so before the arbitral tribunal, within thirty days of his becoming aware of the circumstances which give rise to doubts about the arbitrators' impartiality or independence.

(4) Where a party who makes an application to an arbitral tribunal under this section, is dissatisfied with the order of the tribunal on such application, he may within thirty days of the receipt of the decision, appeal from that order to the High Court.

PART IV

JURISDICTION OF THE ARBITRAL TRIBUNAL

11. (1) An Arbitral tribunal may rule on its jurisdiction including any question, with respect to the existence or validity of the arbitration agreement or as to whether such agreement is contrary

Competence of
Arbitral
Tribunal.

to public policy or is incapable of being performed; but any party to the arbitral proceedings may apply to the High Court for a determination of any such question.

(2) Where an application has been made to the High Court under subsection (1) the arbitral tribunal may continue the arbitral proceedings pending the determination of such question by the High Court.

12. An arbitration agreement which forms part of another agreement shall be deemed to constitute a separate agreement when ruling upon the validity of that arbitration agreement for the purpose of determining the jurisdiction of the arbitral tribunal.

Severability of
agreement

13. (1) An arbitral tribunal may, at the request of a party, order any other party to take such Interim measures as it may consider necessary to protect or secure the claim which forms the subject matter of the dispute. The arbitral tribunal may also order the party making such request to provide the party ordered to take such interim measures, with security for any expense, loss or damage that may be caused in taking such interim measures :

Interim
measures of
protection

Provided however that, other than in exceptional cases no such order shall be made except after hearing the other parties.

(2) An order of an arbitral tribunal requiring the taking of interim measures may be enforced by the High Court, on an application made therefore, by the party requesting the taking of such interim measures.

(3) An application to the High Court, under subsection (2), for the enforcement of interim measures, shall be deemed not to be incompatible with section 5 or the arbitration agreement or a waiver of the agreement.

14. (1) It shall not be incompatible with arbitration proceedings for an arbitral tribunal to encourage settlement of the dispute and, with the agreement of the parties, the arbitral tribunal may use mediation, conciliation or any other procedure at any time during the arbitral proceedings to encourage settlement.

Settlement

(2) If, during arbitral proceedings the parties settle the dispute, the arbitral tribunal shall if requested by the parties, record the settlement in the form of an arbitral award on agreed terms.

(3) An arbitral award on agreed terms shall be made in accordance with Section 25 and shall State that it is an arbitral award on agreed terms.

(4) An arbitral award on agreed terms has the same status and effect as any other arbitral award made in respect of the dispute.

PART V

CONDUCT OF ARBITRATION PROCEEDINGS

Duties of Arbitral Tribunal

15. (1) An arbitral tribunal shall deal with any dispute submitted to it for arbitration in an Impartial, practical and expeditious manner.

(2) An arbitral tribunal shall afford all the parties an opportunity, of presenting their respective cases in writing or orally and to examine all documents and other material furnished to it by the other parties or any other person. The arbitral tribunal may, at the request of a party, have an oral hearing before determining any question before it.

(3) An arbitral tribunal may, notwithstanding the failure of a party without reasonable cause, to appear before it, or to comply with any order made by it, continue the arbitral proceedings and determine the dispute on the material available to it.

(4) Parties may, introduce new prayers for relief provided that such prayers for relief fall within the scope of the arbitration agreement and it is not inappropriate to accept them having regard to the point of time at which they are introduced and to other circumstances. During the course of such proceedings, either party may, on like conditions, amend or supplement prayer for relief introduced earlier and rely on new circumstances in support of their respective cases.

Arbitration Act No. 11 of 1995

7

Place of arbitration.

16. (1) The parties to an arbitration proceeding shall be 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 subsection (1) providing for the place of arbitration, the arbitral tribunal may, unless otherwise agreed upon 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.

17. Subject to the provisions of this Act, the parties shall be free to agree on the procedure to be followed by the arbitral tribunal in conducting the proceedings. The power

Determination
of rules of
procedures.