

PART 4 – COMPOSITION OF ARBITRAL TRIBUNAL

12 Number of arbitrators

The parties are free to determine the number of arbitrators and failing such determination, the number of arbitrators shall be three.

13 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 rules of procedure in appointing the arbitrator or arbitrators, subject to the provisions of sub-sections (4) and (5).
- (3) When failing to agree under sub-section (2) –
 - (a) in an arbitration with three arbitrators, each party shall appoint one arbitrator, and the two arbitrators thus appointed shall appoint the third arbitrator;
 - (b) if a party fails to appoint the arbitrator under sub-paragraph (a) within 30 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 30 days of their appointment, the appointment shall be made, upon request of a party, by the court or other authority; and
 - (c) 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 court or other authority.
- (4) Where, under an appointment rules of procedure agreed upon by 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 court or other authority to take the necessary measure, unless the agreement on the appointment procedure provides other means for securing the appointment.
- (5) The court or other authority, 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.

- (6) A decision on a matter in sub-section (4) or (5) of this section to the court or other authority specified in this section shall be subject to no appeal.

14 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.
- (2) 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.
- (3) 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.
- (4) A party may challenge an arbitrator appointed by him, or in whose appointment that party has participated, only for reasons of which he becomes aware after the appointment has been made.

15 Challenge procedure

- (1) The parties are free to agree on a procedure for challenging an arbitrator, subject to sub-section (3).
- (2) Failing an agreement under sub-section (1), a party who intends to challenge an arbitrator shall, within 15 days after becoming aware of the constitution of the arbitral tribunal or after becoming aware of any circumstance referred to in section 14 (3) and (4), send a written statement of the reasons for the challenge to the arbitral tribunal.
- (3) Unless the challenged arbitrator withdraws from his office or the other party agrees to the challenge, the arbitral tribunal shall decide on the challenge.
- (4) If a challenge under any procedure agreed upon by the parties or under the procedure of sub-sections (2) and (3) is not successful, the challenging party may request, within 30 days after having received notice of the decision rejecting the challenge, the 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.

16 Failure or impossibility to act

- (1) If an arbitrator becomes unable to perform his functions 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.

- (2) If the matter is not resolved under sub-section (1), any party may request the court to decide on the termination of the mandate, which decision shall be subject to no appeal.
- (3) If, under this section or section 15 (3), 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 section or section 14.

17 Appointment of substitute arbitrator

Where the mandate of an arbitrator terminates under section 15 or 16 –

- (a) because of his withdrawal from office for any other reason;
- (b) because of the revocation of his mandate by agreement of the parties; or
- (c) 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.

18 Immunity of arbitrator

- (1) An arbitrator is not liable for anything done or omitted in the discharge or purported discharge of his functions as arbitrator unless the act or omission is shown to have been in bad faith.
- (2) Sub-section (1) applies to an employee or agent of an arbitrator as it applies to the arbitrator himself.
- (3) This section does not affect any liability incurred by an arbitrator by reason of his resigning.

PART 5 – JURISDICTION OF ARBITRAL TRIBUNAL

19 Competence of arbitral tribunal to rule on its own 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.
- (2) For the purpose of sub-section (1), an arbitration clause which forms part of a contract shall be treated as an agreement independent of the other terms of the contract.
- (3) A decision by the arbitral tribunal that the contract is null and void shall not entail the invalidity of the arbitration clause.
- (4) A plea that the arbitral tribunal does not have jurisdiction shall be raised not later than the submission of the statement of defence.