

PART II

ARBITRATION AGREEMENT

Form of arbitration agreement.

3. (1) An arbitration agreement may be in the form of an arbitration clause in a contract or in the form of a separate agreement.

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

Arbitrability of the dispute

4. Any dispute which the parties have agreed to submit to arbitration under an arbitration agreement may be determined by arbitration unless the matter in respect of which the arbitration agreement is entered into is contrary to public policy or, is not capable of determination by arbitration.

Jurisdiction of Court in respect of dispute covered by arbitration agreement.

5. Where a party to an arbitration agreement institutes legal proceedings in a court against another party to such agreement in respect of a matter agreed to be submitted for arbitration under such agreement, the Court shall have no jurisdiction to hear and determine such matter if the other party objects to the court exercising jurisdiction in respect of such matter.

PART III

COMPOSITION OF THE ARBITRAL TRIBUNAL

Number of Arbitrators

6. (1) The parties shall be free to determine the number of arbitrators of an arbitral tribunal subject to the provisions of subsection (3) of this section.

(2) Where no such determination is made, the number of arbitrators shall be three.

(3) Where the parties appoint an even number of arbitrators, the arbitrators so appointed shall jointly appoint an additional arbitrator who shall act as Chairman.

Appointment of arbitrators

7. (1) The parties shall be free to agree on a procedure for appointing the arbitrators, subject to the provisions of this Act.

(a) in an arbitration with a sole arbitrator if the parties are unable to agree on the arbitrators, that arbitrators shall be appointed, on the application of a party by the High Court;

(b) in an arbitration with three arbitrators, such party shall appoint one arbitrator, and the two arbitrators thus appointed shall appoint the third arbitrators; if a party fails to appoint the arbitrator within sixty 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 sixty days of their appointment, the appointment shall be made upon the application of a party, by the High Court.

(3) Where, under an appointment procedure agreed upon by the parties –

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

or

(b) the parties, or the arbitrators are unable to reach an agreement required of them under such procedure: or

© a third party, including an institution, fails to perform any function assigned to such third party under such procedure,

any party may apply to the High Court to take necessary measures towards the appointment of the arbitrator or arbitrators.

(4) The High Court shall in appointing an arbitrator, have due regard to any qualifications required of an arbitrator under the agreement between the parties and to such consideration as are likely to secure the appointment of an independent and impartial arbitrator.

8. (1) The mandate of an arbitrator shall terminate if such arbitrator becomes unable to perform the functions of that office or for any other reason fails to act without undue delay, or dies, or withdraws from office or the parties agree on the termination.

Termination of Arbitrator's mandate and removal of Arbitrator.
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(2) Where an arbitrator unduly delays in discharging the duties of his office the High Court may upon the application of a party, remove such arbitrator and appoint another arbitrator in his place.

Provided however that where the parties have so agreed, such removal and appointment shall be made by an arbitral institution.

(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.