

Delay in  
prosecuting  
claims.

39. (1) It shall be an implied term of the arbitration agreement that in the event of a dispute arising to which the agreement applies. It shall be the duty of the claimant to exercise due diligence in the prosecution of a claim.

(2) Where there has been undue delay by a claimant in instituting or prosecuting a claim pursuant to an arbitration agreement, then, on the application of any party to the dispute, the arbitral tribunal may make an order terminating the arbitration proceedings.

(3) The arbitral tribunal shall not make an order under subsection (2) unless it is satisfied ---

(a) that the delay has been intentional or inordinate : or

(b) that the delay will give rise to a substantial risk of it not being possible to

have a fair determination of the issues in the arbitration proceedings or

is such as it likely to cause or to have caused serious prejudice to the other parties to the arbitration proceedings either as between them-

selves and the claimant or between each other or between them and a third party.

(4) A party aggrieved by any order of the arbitral tribunal made on an application under subsection (2) may appeal to the High Court.

#### PART VIII

#### PROCEEDINGS BEFORE THE HIGH COURT

Procedure.

40. (1) Every application to the High Court under the provision of this Act, whether by way of appeal or otherwise, shall be by way of petition and affidavit and all parties to the arbitration other than the petitioner or petitioners shall be named as respondents to such petition and shall be given notice of the same.

(2) Upon the petition and affidavit being presented to the court it shall by order appoint a day for the determination of the matter of the petition and grant the parties named as respondents to the petition a date to state their objections, if any, in writing supported by affidavit, and making available a copy thereof to the petitioners.

(3) In proceedings before the High Court evidence shall be given by affidavit. But where the court think it right so to do, it may take evidence viva voce in addition to evidence by affidavit.

(4) The High Court shall delay with every application under subsection (1) and deliver its determination thereon as expeditiously as possible.

Enforcement

41. Where a judgment is given according to an award and a decree entered under the provisions of section 31 (6) it may be enforced in the same manner as a decree entered under the provision of the Civil Procedure Code (Chapter 101 ) and accordingly the provisions of that Code relating to the execution of decrees shall, mutatis mutandis, apply to, such enforcement.

Service of notices and summons.

42. Where under this Act notice or summons is required or permitted to be served on any person, the notice or summons may be served in or out of Sri Lanka ---

(a) by sending it by registered post addressed to that person to be served at the usual or last known place of residence or business of that person ;

(b) if there is no appearance by that person on the date stated therein, by serving it personally on him through the Fiscal ; and

© if that person deliberately avoids accepting the notice or summons, by substituted service in accordance with the provisions of the Civil Procedure Code (Chapter 101 ).

43. The Supreme Court may make rules with respect to ---

(a) any application or appeal made to any Court under this Act and the costs of such application or appeal ;  
and

(b) the payment of money into and out of the Court in satisfaction of a claim

to which the arbitration agreements apply and the investment of such money ;

44. In calculating the period of prescription for the purpose of any action, the period that elapsed between the commencement of an arbitration and its completion or termination as the case may be, shall be excluded.

Calculation of time.

## **PART IX**

### **GENERAL PROVISIONS AS TO ARBITRATION**

45. An arbitrator shall not be liable for negligence in respect of anything done or omitted to be done by him in the capacity of arbitrator but shall be liable for fraud in respect of anything done or omitted to be done in that capacity.

Liability of Arbitrators.

46. (1) Unless a contrary intention is expressed in the arbitration agreement, where a party to an arbitration agreement dies, the agreement shall not be discharged and the mandate of the arbitrators constituting the arbitral tribunal shall not be revoked by the death of that party ; but the agreement shall be enforceable by or against the legal representative of the estate of the deceased.

(2) Nothing in subsection (1) shall be taken to affect the operation of any enactment or rule of law by virtue of which a right of action is extinguished by the death of a person.

Arbitration Act No. 11 of 1995

21

Repeals.

47. (1) The Arbitration Ordinance (Chapter 98) is hereby repealed.

(2) Sections 693 to 698 of the Civil Procedure Code (Chapter 101) are hereby repealed.

Application to other laws providing for arbitration.

48. For the avoidance of doubts, it is hereby declared that nothing in this Act shall apply to arbitral proceedings conducted under the Industrial Dispute Act or any other law, other than the Board of Investment of Sri Lanka Law, No. 4 of 1978, making special provision for arbitration.