The Tanzania New Arbitration Act now Effective

Introduction

The Government of Tanzania has appointed 18th January 2021 to be an effective date for the effectiveness and commencement of operation of the new Arbitration Act, Cap. 15 (Act No. 2 of 2020). The Notice published on the Government Notice No. 101 of 2021 titled, the Arbitration (Date of Commencement) Notice, 2021, was signed by the Minister for Constitution and Legal Affairs has set into motion the application of the Arbitration Act, Cap.15 effectively from 18th January 2021.

In the same juncture, the effectiveness of the Arbitration Act Cap. 15 (Act No. 2 of 2020) (“the Arbitration Act”) came along with the publication of 4 regulations namely, the Arbitration (Rules of Procedure) Regulations, 2021 (Government Notice No. 146 of 2021), Reconciliation, Negotiation, Mediation and Arbitration (Practitioners Accreditation) Regulations, 2021 (Government Notice No. 147 of 2021), the Code of Conduct for Reconciliators, Negotiators, Mediators and Arbitrators, Regulations 2021 (Government Notice No. 148 of 2021) and the Arbitration Centre (Management and Operations) Regulations, 2021 (Government Notice No. 149 of 2021).

This publication thus highlights the salient features of these regulations which are the aiding tools on implementing the new Arbitration Act in Tanzania but also setting up a new era for alternative dispute resolution in Tanzania.
Among others, the new Act establishes the Tanzania Arbitration Centre (Section 77) which is designated as a body corporate. The functions of the Centre are inter alia, to conduct and manage arbitration in Tanzania, to undertake registration and maintenance of the list of accredited arbitrators in Tanzania; to advise the government on matters related to arbitration; to sponsor study and research in arbitration and provide fellowships and grants, to provide facilities and assistance for the conduct of domestic and international arbitration as well as manage the provision of continuing education for arbitrators in Tanzania.

To put the new act in motion, the Government has passed 4 regulations which are made under the act. These regulations address specific areas of practice but also provide a detailed approach to the implementation of the new Act. This update thus highlights the salient features and important aspects addresses by these regulations as the new norm for the practice of Arbitration in Tanzania.

The Arbitration (Rules of Procedure) Regulations, 2021 (Government Notice No. 146 of 2021)
These regulations provide for the procedural approach for any arbitral proceedings brought under any arbitration agreement initiated under the new Arbitration Act. The regulation is divided into 7 parts.

Part 1 provides for the preliminary provisions of the regulations including the definition of the key terms in the regulations.

Part 2 provides for the General Conditions and Notices and submission. Under this part, Parties to the dispute are required to confirm the appointment of their arbitrator by filing necessary forms (Regulation 3(3)) but also require parties to follow the required steps in the initiation of the Arbitration proceeding by filling the requisite forms provided for under the schedules. It is important to note that Regulation 3(10) provide the time limit of 180 days for completion of arbitration proceedings unless extended by the arbitral tribunal on special circumstances.

Part 3 of the Regulations provides for the procedure for the commencement of the Arbitration proceedings whereby a party must submit the request in a writing (prescribed form No. 3) to the Tanzania Arbitration Centre. On the receipt for the request for Arbitration, the Secretary General is required to scrutinize the request to determine whether or not the arbitration agreement provide for the basis for registration by the Centre. Regulation 7 requires the respondent to the Arbitration proceedings upon receipt of the request for Arbitration to submit reply (with or without a Counter claim -regulation 9) to the Centre within 30 days. Regulations 12 Permits consolidation of Arbitration disputes at the request of parties.
Part 4 deals with the Composition and establishment of Arbitral tribunal. The regulations restrict practice as arbitrators only to those who are duly accredited under the Reconciliation, Negotiation, Mediation and Arbitration (Practitioners Accreditation) Regulations, 2021 (Regulation 13). It is the duty of the Centre to maintain the list of accredited arbitrators residing in Tanzania or any other jurisdiction. Foreign Arbitrators may be designated for appointment on a matter on the condition that the foreign arbitrator meets the qualification requirements and is prepared to comply with these regulations, including arbitrator fees (Regulation 13(9)). Further, the regulations require an Arbitrator who is appointed to determine the dispute to sign a statement of independence (form No. 1). The regulations put local preference to Tanzanians for any dispute that is governed by laws of Tanzania. Regulations 16 requires at least one arbitrator (preferably but not necessary) the Chairman to be a Tanzanian (resides in Tanzania and acquainted with the laws of Tanzania). Appointment of Arbitrator (the composition of Arbitral Tribunal) is governed by Regulation 17. The composition is done at the parties autonomy but must be done within 15 days from the receipt of notification from the Centre (Regulation 17(3)(4)). However, where parties cannot agree to the appointment of arbitrators (fails to appoint an arbitrator) then the Centre shall make appointment on behalf of such party.

An appointed arbitrator may be challenged by either party on the grounds of impartiality or independence within 14 days after such information becomes known to the challenging party (regulation 24(1)). On the other hand, an arbitral tribunal may be disqualified on account of manifest lack of qualities or ineligibility for appointment (regulation 24(3)). According to regulation 25, replacement of an arbitrator once appointed can only be invoked where the arbitrator dies, became incapacitated, resign or disqualified.

The principle of *Kompetenz Kompetenz* (the power of the Arbitral Tribunal to rule on its own jurisdiction) is provided for under regulation 28 and Regulation 36 whereby the Regulation empowers the arbitral tribunal to hear and determine its own jurisdiction in respect of form, existence and validity or scope of arbitration agreement. According to regulation 28(3) and 36(5) the plea of *Kompetenz Kompetenz* must be raised not later than in the statement of defence failing of which such plea shall be barred in subsequent proceedings.

Part 5 deals with the conduct of Arbitration. It is the requirement of the Regulation that, an Arbitrator must sign an independence declaration form before the first seating of the Arbitral Tribunal (regulation 29(2)). Failure to do so the Arbitral tribunal will be deemed to have resigned (Regulation 29(3)). Regulation 32(1) requires the Arbitral Tribunal to conduct the Preparatory Conference (Preliminary Meeting) within 15 days after the appointment of the Tribunal. The Jurisdiction of the Arbitral Tribunal including any objection on the validity of the arbitration Agreement must be raised not later than in the reply to the request for Arbitration or in the statement of defence (Regulation 36(5)). The plea of Jurisdiction of Arbitral Tribunal Must be addressed as a matter of preliminary question before (Regulation 37). Regulation 36(3) addresses the fundamental principle of separability of the Arbitration Clause/Arbitration Agreement. The Regulations provides that an arbitration clause that forms part of a contract and which provides for arbitration under these Regulations shall be treated as an agreement independent of the other terms of the contract.
Emergency Relief (interim Reliefs) is provided for under regulation 38 whereby a party seeking urgent interim reliefs before establishment of arbitral tribunal must make request to the Centre for the appointment of a sole Emergency Arbitrator (R 38(6)).

Part 6 provides for the Awards and Other Decisions. Among others, Arbitral Tribunal is required to issue its final award within 30 days of the conclusion of the haring except extended by the tribunal pursuant to the prescribed form Regulation 43(2).

**Reconciliation, Negotiation, Mediation and Arbitration (Practitioners Accreditation) Regulations, 2021 (Government Notice No. 147 of 2021)**

These regulations provide for the procedural requirements for the registration, accreditation and qualifications for individuals practicing as reconciliators, Negotiators, Mediators and Arbitrators in Tanzania. The regulations are made under the Civil Procedure Code, Cap 33 are to be read in tandem with the Arbitration Act, Cap.15. Among others, the regulations provides for the Accreditation panel which is composed of seven members being the Attorney General (the Chairman), the Solicitor General, the Chairman of the Governing Board of the Tanzania Arbitration Centre, the President of the Tanzania Institute of Arbitrators, the President of Tanganyika Law Society; and representative appointed by the Minister from National Construction Council and Public Procurement Regulatory Authority (Regulation 3). The Accreditation panel is required to convene at least 4 times a year (Regulation 4).

Regulation 5 stipulates the qualifications for a person to be registered as reconciliator, negotiator or mediator. Those include, among others, a proven record of amicably settling disputes in the community for a period of not less than five years or a practicing Advocate or a member of allied associations (National Board of Auditors and Accountants, the Engineers Registration Board and the Contractors Registration Board) having at least 5 years experience as practicing experience or is a holder of a bachelor degree or its equivalent from a recognized institution having at least five years experience in field of telecom, information technology, intellectual property rights or any other specialized areas in the public service or private sector.

Further, according to regulation 6 a person is qualified to be registered as practising arbitrator if has qualifications to be appointed as a Judge of the High Court or has experience of at least five years in panels and tribunals that settle disputes at national or international level or has a dispute resolution qualification from a recognized institution or is a practicing advocate or is a member of allied institutions having at least 5 years experience as practicing experience or is a holder of bachelor degree or its equivalent from a recognized institution having at least ten years experience in field of telecom, information technology, intellectual property rights or any other specialized areas in the public service or private sector. The regulations allow and recognize foreign practitioners to apply and practice in Tanzania (Regulation 7).
Application for accreditation is done under a prescribed form accompanied by an application fee (regulation 8). Application for accreditation may be granted or refused if it does not meet the requirements (Regulation 13). If granted, the Registrar shall issue a certificate of accreditation (Regulation 15) that shall be valid for 2 years (Regulation 17). Certificate of registration may be suspended and/or de-registered if the holder is in breach of the terms and conditions for accreditation or fails to meet the qualification requirements (Regulation 19 and 20). Regulation 21 provides for the procedure to be followed before de-registration that entails the right to be heard or rectify the breach. The regulation also provides for a penalty of a fine of up to TZS 5 Million or to an imprisonment term of 2 years or both on breach of the regulations.

The Code of Conduct for Reconciliators, Negotiators, Mediators and Arbitrators, Regulations 2021 (Government Notice No. 148 of 2021)
The Code of Conduct for Reconciliators, Negotiators, Mediators and Arbitrators is made under the civil Procedure Code, Cap 33. The Code which is provided under the First Schedule of the Regulations is established to serve as a guide in the performance of their professional responsibilities, duties, and acceptable behaviours. The Code has been published to assist in attaining the desired level of conduct to ensure the integrity of the reconciliation, negotiation, mediation, adjudication or arbitration process and the utility of the process as part of dispute resolution (Regulation 4). The enforcement of the code is both to the Civil Procedure Code Cap. 33 and the Arbitration Act, Cap. 15. As part of the enforcement, every accredited practitioner is required to sign a declaration of compliance with the Code (Regulation 6). Breach of the Code may result to the deregistration of the practitioner.

The Arbitration Centre (Management and Operations) Regulations, 2021 (Government Notice No. 149 of 2021)
These regulations provides for the Management and Operation of the Tanzania Arbitration Centre which is established under of the Arbitration Act, Cap. 15. Section 77 of the Arbitration Act, Cap. 77 establishes the Centre as a body corporate with perpetual succession capable of among others suing and being sued, acquiring, holding and alienation of assets. Regulation 17 requires the Centre to be headquartered in Arusha, Tanzania. The Centre functions are provided to include the conduct and management of Arbitration in Tanzania, registration and maintenance of a list of accredited arbitrators, enforcement of code of conduct, among others. Organizationally, the Centre is comprised of the Board of Directors, Secretariat and Standing Committees (Regulation 3). The tenure of office of the board is 3 years capable of reappointment for another term (Regulation 7). Secretariat of the Centre is composed of the Secretary general and other staff as may be appointed by the Board. The Standing Committees may be established by the Board subject to the needs and requirements. However, the committee established may include a committee responsible for domestic arbitration, committee responsible for international arbitration as well an advisory committee. To promote international cooperation and relationship, the regulations requires the Centre to enter into cooperation and agreements with other Arbitration Centres and Associations in other countries.