THE ARBITRATION (AMENDMENT) BILL, 2025

A Bill for

AN ACT of Parliament to amend the Arbitration Act, and for connected purposes

ENACTED by the Parliament of Kenya, as follows—

Short title.

1. This Act may be cited as the Arbitration (Amendment) Act, 2024.

Amendment of section 3 of Cap. 49.

2. The Arbitration Act (hereinafter referred to as the "principal Act") is amended in section 3—

(a) by deleting the definition of "arbitral award" and substituting therefor the following definition—

"arbitral award" means any award of an arbitral tribunal and includes an interim arbitral award, or award of an emergency arbitrator;

(b) by deleting the definition of "arbitral tribunal" and substituting therefor the following definition—

"arbitral tribunal" means a sole arbitrator or a panel of arbitrators and includes an emergency arbitrator appointed pursuant to the Rules of Arbitration agreed to or adopted by the parties;

(c) by inserting the following new definitions in proper alphabetical sequence—

"Arbitration Practice Committee" means the Arbitration Practice Committee established under section 14(2)(a) of the Dispute Resolution Act;

"Arbitral Court" means the Arbitral Court established under section 21 of the Nairobi Centre for International Arbitration Act;

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"Centre" means the Nairobi Centre for International Arbitration established under section 4 of the Nairobi Centre for International Arbitration Act";

"Council" means the Council established under section 81 of the Dispute Resolution Act;

"funded party" means a party to the international arbitration proceeding, which benefits from third-party funding;

"Registrar" means the Registrar appointed under section 9 of the Nairobi Centre for International Arbitration Act;

"third-party funder" means any natural or legal person who is not a party to the international arbitration proceeding but enters into an agreement to provide or otherwise provides funding for the proceeding; and

"third-party funding" means any provision of direct or indirect funding or equivalent support to a funded party by a funder.

Insertion of new section 3A in Cap. 49.

3. The principal Act is amended by inserting the following new section immediately after section 3—

Object of the Act.

3A. The object of this Act is to promote the fair resolution of disputes through arbitration without unnecessary delay or expenses.

Amendment of section 6 of Cap. 49.

4. Section 6 of the principal Act is amended by adding the following new subsections immediately after subsection (3)—

(4) Where the Court stays the proceedings, the Court shall refer the parties to the Centre for appointment of an arbitrator unless the arbitration agreement provides otherwise.

(5) Where the arbitration agreement provides for another appointment body, the Court shall refer the parties to that body.

Amendment of section 7 of Cap. 49.

5. Section 7 of the principal Act is amended by adding the following new subsection immediately after subsection (2)—

(3) An injunction or other interim orders issued under subsection (2) shall lapse at the end of sixty days or after such a time as may be extended by the High Court.

Repeal and replacement of section 9 of Cap. 49.

6. The principal Act is amended by repealing section 9 and replacing therefor the following section—

Notice, communication, or proposal.

9. (1) For the purposes of this Act, any notice, communication or proposal shall be in writing.

(2) Any such notice, communication or proposal may be delivered—

(a) by hand;

(b) registered post or courier service;

(c) transmitted by any form of electronic communication including electronic mail and facsimile; or

(d) delivered by any other appropriate means that provides a record of its delivery.

(3) Any notice, communication or proposal shall be deemed to have been received if it is delivered—

(a) to the addressee personally or to its authorized representative;

(b) to the addressee's habitual residence, place of business or designated address;

(c) to any address agreed by the parties;

(d) according to the practice of the parties in prior dealings; or

(e) at the party's last-known residence or place of business where, after reasonable efforts, a party cannot be found.

(4) This section does not apply to the service of documents for the purpose of legal proceedings for which provision is made by rules of court.

Amendment of section 12 of Cap. 49.

7. The principal Act is amended in section 12—

(a) by inserting the following new subsections immediately after subsection (4) —

(4A) Where a sole arbitrator has been appointed under subsection (4), the party in default may, upon notice to the other party, apply to the Registrar within fourteen days to have the appointment set aside.

(4B) The Registrar may grant an application under subsection (4A) only if the Registrar is satisfied that there was good cause for the failure or refusal of the party in default to appoint his arbitrator in due time.

(4C) Where the Registrar grants an application under subsection (4A), he may, by consent of the parties or on the application of either party, appoint a sole arbitrator.

(4D) The award of the arbitrator appointed by the Registrar shall be binding on both parties.

(4E) If the parties or a party to the arbitration proceedings does not agree to the appointment made by the Registrar, the party or parties may apply to the Arbitral Court to have the appointment set aside.

(b) in subsection (5)—

(i) by deleting the expression "subsection (4)" and substituting therefor the expression "subsection (4C)";

(ii) by deleting the words "High Court" and substituting therefor the words "Arbitral Court";

(c) in subsection (6), by deleting the words "High Court" and substituting therefor the words "Arbitral Court";

(d) in subsection (7), by deleting the words "High Court" and substituting therefor the words "Arbitral Court";

(e) in subsection (8), by deleting the words "High Court" and substituting therefor the words "Arbitral Court";

(f) by deleting subsection (9) and substituting therefor the following subsection—

(9) The Arbitral Court or the Registrar, in appointing an arbitrator, shall consider the qualifications required of an arbitrator by the agreement of the parties to the arbitration proceedings.

Repeal and replacement of section 14 of Cap. 49.

8. The principal Act is amended by repealing section 14 and replacing therefor the following section—

Procedure for challenging an arbitrator

14. (1) Subject to subsection (3), the parties to an arbitration proceeding may agree on a procedure for challenging an arbitrator.

(2) Where parties to an arbitration proceeding fail to agree under subsection (1), a party who intends to challenge an arbitrator shall, within fourteen days of being aware of the composition of the arbitral tribunal or after being aware of any circumstances referred to in section 13(3), send a written statement of the reasons for the challenge to the arbitral tribunal.

(3) Unless the arbitrator being challenged under subsection (1) withdraws from the office or the other party agrees to the challenge, the arbitral tribunal shall decide on the challenge.

(4) If a challenge under agreed procedure or under subsection (2) is unsuccessful, the challenging party may, within fourteen days of being notified of the decision to reject the challenge, apply to the Arbitral Court to determine the matter.

(5) On an application under subsection (4), the arbitrator who was challenged shall be entitled to appear and be heard before the Arbitral Court determines the application.

(6) The application under subsection (4) shall be determined within fourteen days of filing an application in subsection (1) to the Arbitral Court.

(7) The Arbitral Court may either before or after expiry of the period under subsection (5) extend the period for not more than fourteen days.

(8) The Arbitral Court may confirm the rejection of the challenge or may uphold the challenge and remove the arbitrator.

(9) The decision of the Arbitral Court on an application under subsection (4) shall be final and shall not be subject to appeal.

(10) Where an arbitrator is removed by the Arbitral Court under this section, the Arbitral Court may make such order as it thinks fit with respect to his entitlement to fees or expenses or the repayment of any fees or expenses already paid.

(11) While an application under subsection (3) is pending before the Arbitral Court, the arbitral proceedings shall be stayed until the application is decided.

Amendment of section 15 of Cap. 49.

9. Section 15 of the principal Act is amended—

(a) in subsection (2), by deleting the words "High Court" and substituting therefor the words "Arbitral Court"; and

(b) in subsection (3), by deleting the words "High Court" and substituting therefor the words "Arbitral Court";

Amendment of section 16A of Cap 49.

10. Section 16A of the principal Act is amended—

(a) in subsection (1), by deleting the words "High Court" and substituting therefor the words "Arbitral Court";

(b) in subsection (2), by deleting the words "High Court" and substituting therefor the words "Arbitral Court"; and

(c) in subsection (3), by deleting the words "High Court" and substituting therefor the words "Arbitral Court".

Amendment of section 17 of Cap 49.

11. Section 17 of the principal Act is amended—

(a) in subsection (6), by deleting the words "High Court" and substituting therefor the words "Arbitral Court";

(b) by inserting the following new subsection immediately after subsection (7) —

(7A) The other party shall file and serve on the applicant, a response to the application under subsection (6), if any, within fourteen days of receipt of the application.

(c) by adding the following new subsections immediately after subsection (8)—

(9) The Arbitral Court shall within thirty days of receipt of the response issue a decision on the application:

Provided that the Arbitral Court shall issue its decision notwithstanding the fact that a response has not been filed within the prescribed time.

(10) The decision of the Arbitral Court shall be final and shall not be subject to appeal.

(11) While an application under subsection (3) is pending before the Arbitral Court, the parties may commence, continue and conclude arbitral proceedings, but no award in such proceedings shall take effect until the application is decided, and such an award shall be void if the application is successful.

Repeal and replacement of

12. The principal Act is amended by repealing section 19A and replacing therefor the following section—

section 19A of Cap. 49.

General principles and duty of the parties.

19A. (1) The object of arbitration is to obtain a fair resolution of disputes by an impartial tribunal without unnecessary delay or expense.

(2) The parties shall agree on how the disputes are resolved subject to the safeguards necessary to the public interest.

(3) The parties to arbitration proceedings shall do all things necessary for the proper and expeditious conduct of the arbitral proceedings.

Amendment of section 20 of Cap 49.

13. Section 20 of the principal Act is amended by adding the following new subsection immediately after subsection (5) —

(6) The parties and the tribunal may use technology including electronic communication to examine witnesses without requiring the physical presence of the witnesses.

Insertion of a New Part.

14. The principal Act is amended by inserting the following new Part immediately after section 28—

PART IVA – FAST TRACK ARBITRATION

Application.

28A. The provisions of this Part shall apply to domestic arbitration unless the parties have otherwise agreed that it should not apply to the arbitration proceedings.

Fast track procedure.

28B. (1) Notwithstanding anything contained in this Act, the parties to an arbitration agreement, may, at any stage either before or at the time of appointment of the arbitral tribunal, agree in writing to have the arbitration proceedings referred for fast-track procedure specified under sub-section (3).

(2) The parties to the arbitration agreement, while agreeing for fast-track procedure, may agree that the arbitral tribunal shall consist of a sole arbitrator who shall be chosen by the parties or by other procedure as may be agreed by the parties.

(3) The arbitral tribunal, in conducting arbitration proceedings under subsection (1) shall —

(a) decide the dispute on the basis of written pleadings, documents and submissions filed by the parties without any oral hearing;

(b) have power to call for further information from the parties in addition to the pleadings and documents filed by them;

(c) hold oral hearings at the request of the parties to the arbitration proceedings or where the arbitral tribunal considers it necessary; and

(d) dispense with any technical formalities, if an oral hearing is held, and shall adopt such procedure as deemed appropriate for expeditious disposal of the case.

(4) The fees payable to the arbitrator and the manner of payment of the fees shall be such as may be agreed between the arbitrator and the parties or rules of the arbitral institution appointed by the parties.

Timeline for arbitral award.

28C. (1) Unless the parties otherwise agree, the award shall be made within a period of six months from the date the arbitral tribunal enters upon the reference.

(2) For the purpose of this subsection (1), an arbitral tribunal shall be deemed to have entered upon the reference on the date on which the arbitrator receives notice, in writing, of their appointment.

(3) The parties may, by consent, extend the period specified in subsection (1) for a further period not exceeding six months.

(4) If the award is not made within the period specified in subsection (1) or the extended period specified under subsection (3), a party to the arbitration may apply to the arbitral institution or

the Arbitral Court to terminate the mandate of the arbitrator.

(5) Where the Arbitral Court is satisfied that, in the circumstances, there is sufficient cause to terminate the mandate of the arbitrator, it may grant the application under subsection (4) or extend the specified period upon such terms as it may deem necessary.

(6) Where the Arbitral Court finds that the proceedings have been delayed by the arbitral tribunal, the Arbitral Court may order reduction of fees of arbitrators by not exceeding five per cent for each month of such delay.

(7) Any party to an arbitration proceeding may apply to the Arbitral Court for extension of the period in subsection (4) and the Arbitral Court may extend the period on such terms and conditions as it may deem fit.

(8) While extending the period referred to in subsection (4), the Arbitral Court may substitute an arbitrator and where an arbitrator is substituted, the arbitral proceedings may continue as if the arbitrator substituted was present at the start of the arbitral proceedings.

(9) Where an arbitrator is substituted under subsection (8), the arbitral tribunal that is reconstituted shall be deemed to be in continuation of the previously appointed arbitral tribunal.

(10) The Arbitral Court may impose actual or exemplary costs on a party under this section.

(11) An application filed under subsection (4) shall be disposed of by the Arbitral Court within a period of thirty days from the date of service of notice on the opposite party.

(12) An order of the Arbitral Court made under this section shall be final and enforceable as an order of the Court.

Amendment of section 32 of Cap 49.

15. Section 32 of the principal Act is amended—

(a) in subsection (4) by inserting the following new subsection immediately after subsection (4)—

(4A) An arbitral tribunal shall notify the parties when the arbitral award is made and ready for collection.

(b) in subsection (5) by inserting the following new subsection immediately after subsection (5)—

(5A) The arbitral award shall be deemed to be delivered to the parties on the date of collection by a party or where no party has collected the award, within fifteen days after notification is made to the parties in accordance with subsection (4A), that the award is ready for collection.

Amendment of section 32B of Cap 49A.

16. The principal Act is amended in section 32B —

(a) in subsection (4) —

(i) by deleting the words "into court" and substituting therefor the words "to the Registrar"; and

(ii) by deleting the words "High Court" and substituting therefor the words "Arbitral Court";

(b) in subsection (5), by deleting the words "into court" and substituting therefor the words "to the Registrar";

(c) in subsection (6), by deleting the words "High Court" and substituting therefor the words "Arbitral Court".

Amendment of section 35 of Cap 49.

17. The principal Act is amended in section 35 by inserting the following new subsections immediately after subsection (4) —

(5) The leave of the Court of Appeal is required for any appeal from an order for grant or refusal to set aside made by the High Court under this section.

(6) In an application for leave under subsection (5), the Court of Appeal shall not grant leave unless it is satisfied that—

(a) in making the order appealed against the High Court has relied on grounds other than those contemplated in subsection (2);

(b) if the question of law before it is one of general importance; or

(c) one which for some other special reason should be considered by the Court of Appeal.

(7) The Court of Appeal may order the applicant in an application under subsection (5) to provide security for costs of the application and may direct that the application be dismissed if the order is not complied with.

(8) If the Court of Appeal grants leave to appeal under subsection (6), it may attach such conditions to the order granting leave as it considers just.

(9) An application for leave to appeal under this section shall be made within fourteen days from the date of the decision of the High Court.

(10) On an appeal to the Court of Appeal, the court may —

(a) uphold or set aside the decision of the High Court appealed against; or

(b) confirm, vary, or set aside the whole or part of the decision of the High Court appealed against.

(11) Where the Court of Appeal makes an order under subsection (10) and the decision is varied, the variation shall be part of the arbitral tribunal's award.

(12) Where the Court of Appeal makes an order under subsection (10) and the matter is remitted to the High Court, in whole or in part, for reconsideration, the High Court shall determine the matter within ninety days of the date of the order.

(13) Where the Court of Appeal makes an order declaring the award to be of no effect, the Court of Appeal may order that any provision of the award that is a condition precedent to instituting

legal proceedings is of no effect as regards the subject matter of the award.

(14) No further appeal shall lie from a decision of the Court of Appeal.

Insertion of a new section in Cap. 49.

18. The principal Act is amended by inserting the following new section immediately after section 39—

Third party funding.

39A. (1) Third-party funding shall be permissible in an international arbitration proceeding seated in Kenya, unless—

(a) the funding is provided on a non-recourse basis in exchange for a success fee and other forms of monetary remuneration or reimbursement wholly or partially dependent on the outcome of a proceeding or portfolio of proceedings;

(b) the expected return to be paid to the third-party funder exceeds a reasonable amount;

(c) where the respondent is a public body, the number of cases that the third-party funder funds against the respondent public body with regard to the same measure exceeds a reasonable number;

(d) where the third-party funder has an interest whether direct or indirect in the matter other than the funding agreement, prior to, during, or after the arbitration proceeding; or

(e) the contract is to be treated as contrary to public policy or otherwise illegal on account of its being maintenance or champerty.

(2) The funded party shall disclose to the arbitral tribunal, the disputing parties, and where applicable the arbitral institution the following information—

(a) the name and address of the third-party funder;

(b) the name and address of the beneficial owner of the third-party funder and any natural or legal person with decision-making authority for or on behalf of the third-party funder in relation to the proceeding; and

(c) the funding agreement or the terms thereof.

(3) In addition, the arbitral tribunal and where applicable the arbitral institution may require the funded party to disclose the following information—

(a) whether the third-party funder agrees to cover the costs of an adverse cost award;

(b) the expected return amount of the third-party funder;

(c) any right of the third-party funder to control or influence the management of the claim or the proceeding as well as to terminate the funding arrangement;

(d) where the respondent is a public body, the number of cases for which the third-party funder has provided funding for claims against the respondent public body;

(e) any agreement between the third-party funder and the legal counsel or firm representing the funded party; and

(f) any other information deemed necessary by the arbitral tribunal.

(4) The funded party shall disclose the information listed in subsection (2) when submitting its statement of claim, or if the funding agreement is entered into after the submission of the statement of claim, as promptly as possible after the agreement is entered into.

(5) The funded party shall disclose the information requested by the arbitral tribunal and where applicable the arbitral institution in accordance with subsection (3) as promptly as possible after the request.

(6) If there is any new information or any change in the information disclosed in accordance with

subsections (2) and (3), the funded party shall disclose such information to the arbitral tribunal, the other parties and, where applicable, the arbitral institution as promptly as possible.

(8) If a party enters into an agreement on, or receives, third-party funding otherwise than is provided under this section, or if a funded party fails to disclose the information in accordance with subsection (3) and (4), the arbitral tribunal may—

(a) order the party to terminate the agreement and to return any funding received;

(b) suspend or terminate the proceedings;

(c) order security for costs; or

(d) take the fact into account when allocating costs.

(9) The costs of the proceeding do not include expenses related to or arising from third-party funding incurred by a disputing party unless the arbitral tribunal determines otherwise.

(10) For purpose of third-party funding in international arbitration practice, the Council shall, in consultation with the arbitration practice area committee, prepare and publish a code or codes of practice to regulate and set standards for third-party funding.

Insertion of new sections in Cap. 49.

19. The principal Act is amended by inserting the following new sections immediately after section 40—

Decisions of the Arbitral Court

40A. Any decision of the Arbitral Court under this Act shall be deemed to be an order of the High Court and enforceable as an order of the High Court.

Codes of Practice

40B. (1) For the purpose of domestic arbitration the Council shall, in consultation with the Arbitration Practice Committee, develop a code of practice.

(2) A code of practice referred to in subsection (1), may include provisions in relation to any of the following—

(a) continuing professional development training requirements for arbitrators;

(b) guidelines for professional party representatives and other third parties involved in arbitration;

(b) procedures to be followed by arbitrators in the conduct of an arbitration requiring consultation, by an arbitrator, with a child;

(c) ethical standards to be observed by arbitrators during an arbitration;

(d) confidentiality of an arbitration;

(e) procedures to be followed by a party for redress in the event of dissatisfaction with the conduct of an arbitration;

(f) principles for setting of the fees and costs of an arbitration; and

(g) any other matters relevant to the conduct of arbitrators.

(3) Before publishing or approving a code of Practice under subsection (1), the Council shall publish a notice in at least one daily newspaper with a national circulation in Kenya.

MEMORANDUM OF OBJECTS AND REASONS

The principal object of the Bill is to amend the Arbitration Act, (Cap. 49).

Clause 2 of the Bill seeks to amend the Act to provide for the definition of terms used in a technical sense but not defined.

Clause 3 of the Bill further seeks to amend the Act to provide for the object of the Act which is to promote the fair resolution of disputes through arbitration without unnecessary delay or expenses.

Clause 4 of the Bill proposes to amend section 6 to provide for recourse for parties where a court stays the proceeding in a matter by appointing an arbitrator.

Clause 5 of the Bill contains amendment to section 7 to provide for timelines for interim orders issued by the arbitral tribunal.

Clause 6 of the Bill further proposes to repeal section 9 of the Act and replace it with a more elaborate and substantive provision on written communications between parties.

Clause 7 of the Bill seeks to repeal section 12 and replace it with a new section that streamlines the appointment of arbitrators.

Clause 8 of the Bill proposes to repeal section 14 and replace it with a new section 14 that provides for challenge procedures on where parties to arbitration proceedings challenge an arbitrator.

Clause 9 of the Bill seeks to amend section 15 to replace the High Court with the Arbitral Court.

Clause 10 of the Bill further seeks to amend section 16 to replace the High Court with the Arbitral Court.

Clause 11 of the Bill proposes to amend section 17 by deleting the reference to the "High Court" and substituting therefore the words "Arbitral Court", being the court with district to handle the matter in question.

Clause 12 of the Bill seeks to amend the Act by repealing section 19A and replacing it with a new section that provides for general principles and duties of the parties.

Clause 13 of the Bill seeks to amend section 20 to provide for the use of technology in the examination of witnesses without them having to appear in person.

Clause 14 of the Bill seeks to amend section 28 to insert a new Part on fast tracked arbitration proceedings. .

Clause 15 of the Bill seeks to amend section 31 by deleting subsection (5) and substituting it with a new subsection that will provide for timelines on delivering the award to the parties.

Clause 16 of the Bill seeks to amend section 32B to replace the words "High Court" with the words "Arbitral Court".

Clause 17 of the Bill seeks to amend section 35 by adding new provisions on the process of appeals for setting aside of arbitral awards.

Clause 18 of the Bill proposes to amend the Act by introducing a new section 39A which provides for and regulates third party funding of international arbitration proceedings.

Clause 19 of the Bill seeks to amend the Act by introducing new sections 40A and 40B on decisions of the Arbitral Court and establishment of a code of practice, respectively.

Dated the……., 2024.

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Attorney-General.

Section 3 of Cap. 49, which it is proposed to amend—

Interpretation

(1) In this Act, unless the context otherwise requires—
"arbitral tribunal" means a sole arbitrator or a panel of arbitrators.

Section 9 of Cap. 49, which it is proposed to amend—

Receipt of written communications
(1) Unless otherwise agreed in writing between the parties any communication made pursuant to or for the purposes of an arbitration agreement—
(a) being a communication effected by facsimile or electronic mail—
(i) is deemed to have been received if it is transmitted to a facsimile number or electronic mailing address, as the case may be, specified by the addressee as his number or address for service; and
(ii) is deemed to have been received on the day on which it is so transmitted; or
(b) in any other case—
(i) is deemed to have been received if it is delivered to the addressee personally or if it is delivered at his place of business, habitual residence or mailing address; and
(ii) is deemed to have been received on the day on which it was so delivered.

(2) Where, after reasonable inquiry, a place of business or residential address specified by the addressee cannot be found, or where such a place or address, or any mailing address, facsimile number or electronic mailing address so specified appears never to have been, or to be no longer, that of the addressee, a written communication—

(a) is deemed to have been received if it is sent to the addressee's last known place of business, residential address or mailing address, or last known facsimile number or electronic mailing address, or by any other means that provides a record of the attempt to deliver or transmit the communication; and

(b) is deemed to have been received on the date specified in that record.

(3) This section does not apply to the service of documents for the purpose of legal proceedings for which provision is made by rules of court.

Section 12 of Cap. 49, which it is proposed to amend—

Appointment of arbitrators
(3) Unless the parties otherwise agree, where each of two parties to an arbitration agreement is to appoint an arbitrator and one party ("the party in default")—

(a) has indicated that he is unwilling to do so;

(b) fails to do so within the time allowed under the arbitration agreement; or

(c) fails to do so within fourteen days (where the arbitration agreement does not limit the time within which an arbitrator must be appointed by a party), the other party, having duly appointed an arbitrator, may give notice in writing to the party in default that he proposes to appoint his arbitrator to act as sole arbitrator.

(4) If the party in default does not, within fourteen days after notice under subsection (3) has been given —

(a) make the required appointment; and

(b) notify the other party that he has done so, the other party may appoint his arbitrator as sole arbitrator, and the award of that arbitrator shall be binding on both parties as if he had been so appointed by agreement.

(5) Where a sole arbitrator has been appointed under subsection (4), the party in default may, upon notice to the other party, apply to the High Court within fourteen days to have the appointment set aside.

(6) The High Court may grant an application under subsection (5) only if it is satisfied that there was good cause for the failure or refusal of the party in default to appoint his arbitrator in due time.

(7) The High Court, if it grants an application under subsection (5), may, by consent of the parties or on the application of either party, appoint a sole arbitrator.

(8) A decision of the High Court in respect of a matter under this section shall be final and not be subject to appeal.

(9) The High Court in appointing an arbitrator shall have due regard to any qualifications required of an 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 the advisability of appointing an arbitrator of a nationality other than those of the parties.

Section 14 of Cap. 49, which it is proposed to amend—

Challenge procedure
(1) Subject to subsection (3), the parties are free to agree on a procedure for challenging an arbitrator.

(2) Failing an agreement under subsection (1), a party who intends to challenge an arbitrator shall, within fifteen days after becoming aware of the composition of the arbitral tribunal or after becoming aware of any circumstances referred to in section 13 (3), send a written statement of the reasons for the challenge to the arbitral tribunal, and unless the arbitrator who is being challenged withdraws from his office or the other party agrees to the challenge, the arbitral tribunal shall decide on the challenge.

(3) If a challenge under agreed procedure or under subsection (2) is unsuccessful, the challenging party may, within thirty days after being notified of the decision to reject the challenge, apply to the High Court to determine the matter.

(4) On an application under subsection (3), the arbitrator who was challenged shall be entitled to appear and be heard before the High Court determines the application.

(5) The High Court may confirm the rejection of the challenge or may uphold the challenge and remove the arbitrator.

(6) The decision of the High Court on such an application shall be final and shall not be subject to appeal.

(7) Where an arbitrator is removed by the High Court under this section, the court may make such order as it thinks fit with respect to his entitlement (if any) to fees or expenses or the repayment of any fees or expenses already paid.

(8) While an application under subsection (3) is pending before the High Court, the parties may commence, continue and conclude arbitral proceedings, but no award in such proceedings shall take effect until the application is decided, and such an award shall be void if the application is successful.

Section 15 of Cap. 49, which it is proposed to amend—

Failure or impossibility to act

(2) If there is any dispute concerning any of the grounds referred to in subsection (1)(a), a party may apply to the High Court to decide on the termination of the mandate.

(3) A decision of the High Court under subsection (2) shall be final and shall not be subject to appeal.

Section 16A of Cap. 49, which it is proposed to amend—

Withdrawal of arbitrator

(1) Unless otherwise agreed by the parties, an arbitrator who withdraws from his office may, if prior notice has been given to the parties, apply to the High Court—

(a) to grant him relief from any liability thereby incurred by him; and

(b) to make such order as the court thinks fit with respect to his entitlement (if any) to fees or expenses or the repayment of any fees or expenses already paid.

(2) Where the High Court is satisfied that, in the circumstances, it was reasonable for the arbitrator to resign, it may grant relief on such terms as it may think fit.

(3) The decision of the High Court shall be final and shall not be subject to appeal.

Section 17 of Cap. 49, which it is proposed to amend—

Competence of arbitral tribunal to rule on its jurisdiction

(6) Where the arbitral tribunal rules as a preliminary question that it has jurisdiction, any party aggrieved by such ruling may apply to the High Court, within 30 days after having received notice of that ruling, to decide the matter.

Section 19A of Cap. 49, which it is proposed to amend—

General duty of parties

The parties to arbitration shall do all things necessary for the proper and expeditious conduct of the arbitral proceedings.

Section 32B of Cap. 49, which it is proposed to amend—

Costs and expenses

(4) If the arbitral tribunal has, under subsection (3), withheld the delivery of an award, a party to the arbitration may, upon notice to the other party and to the arbitral tribunal, and after payment into court of the fees and expenses demanded by the arbitral tribunal, apply to the High Court for an order directing the manner in which the fees and expenses properly payable to the arbitral tribunal shall be determined.

(5) The fees and expenses found to be properly payable pursuant to such an order shall be paid out of the moneys paid into court and the balance of those moneys. if any, shall be refunded to the applicant.

(6) The decision of the High Court on an application under subsection (4) shall be final and not subject to appeal.

(7) The provisions of subsections (3) to (6) have effect notwithstanding any agreement to the contrary made between the parties.