

CRIMINAL AND PROCEDURAL LAW

ARBITRATION

ARBITRATION ACT 42 OF 1965

[ASSENTED TO 5 APRIL 1965] [DATE OF COMMENCEMENT: 14 APRIL 1965]

(English text signed by the State President)

as amended by

Justice Laws Rationalisation Act 18 of 1996
General Law Amendment Act 49 of 1996
Prevention and Combating of Corrupt Activities Act 12 of 2004

ACT

To provide for the settlement of disputes by arbitration tribunals in terms of written arbitration agreements and for the enforcement of the awards of such arbitration tribunals.

DEFINITIONS (s 1)

1 Definitions

In this Act, unless the context otherwise indicates-

'arbitration agreement' means a written agreement providing for the reference to arbitration of any existing dispute or any future dispute relating to a matter specified in the agreement, whether an arbitrator is named or designated therein or not;

'arbitration proceedings' means proceedings conducted by an arbitration tribunal for the settlement by arbitration of a dispute which has been referred to arbitration in terms of an arbitration agreement;

'arbitration tribunal' means the arbitrator, arbitrators or umpire acting as such under an arbitration agreement;

'award' includes an interim award;

'court' means any court of a provincial or local division of the Supreme Court of South Africa having jurisdiction;

'party', in relation to an arbitration agreement or a reference, means a party to the agreement or reference, a successor in title or assign of such a party and a representative recognized by law of such a party, successor in title or assign;

'territory'

[Definition of 'territory' deleted by s. 1 of Act 49 of 1996.]

MATTERS NOT SUBJECT TO ARBITRATION (s 2)

2 Matters not subject to arbitration

A reference to arbitration shall not be permissible in respect of-

- (a) any matrimonial cause or any matter incidental to any such cause; or
- (b) any matter relating to status.

EFFECT OF ARBITRATION AGREEMENTS (ss 3-8)

3 Binding effect of arbitration agreement and power of court in relation thereto

(1) Unless the agreement otherwise provides, an arbitration agreement shall not be capable of being terminated except by consent of all the parties thereto.

(2) The court may at any time on the application of any party to an arbitration agreement, on good cause shown-

- (a) set aside the arbitration agreement; or
- (b) order that any particular dispute referred to in the arbitration agreement shall not be referred to arbitration; or
- (c) order that the arbitration agreement shall cease to have effect with reference to any dispute referred.

4 Death or removal from office of party to an arbitration agreement

(1) Unless the agreement otherwise provides, an arbitration agreement or any appointment of an arbitrator or umpire thereunder shall not be terminated by the death of any party thereto.

(2) If any party to a reference under an arbitration agreement dies or vacates or is removed from his office after any dispute has been referred to arbitration, all steps and proceedings in connection with the reference shall be stayed, subject to any order that the court may make, until an executor or other proper representative has been appointed in the estate of the party who has died or, as the case may be, until an executor, administrator, curator, trustee, liquidator or judicial manager has, where necessary, been appointed in the place of an executor, administrator, curator, trustee, liquidator or judicial manager who in his capacity as such was a party to the reference and who has died or has vacated or has been removed from his office.

(3) For the purposes of subsection (2) a dispute shall be deemed to have been referred to arbitration if any party to the dispute has served on the other party or parties thereto a written notice requiring him or them to appoint or to agree to the appointment of an arbitrator or, where the arbitrator is named or designated in the arbitration agreement, requiring the dispute to be referred to the arbitrator so named or designated.

(4) Any period of time fixed by or under this Act which is interrupted by any stay resulting from the operation of subsection (2), shall be extended by a period equal to the period of such interruption.

(5) Nothing in this section contained shall affect the operation of any law or rule of law by virtue of which any right of action is extinguished by the death of any person.

5 Insolvency or winding-up of a party to an arbitration agreement

(1) Unless the agreement otherwise provides, an arbitration agreement or any appointment of an arbitrator or umpire thereunder shall not be terminated by the sequestration of the estate of any party thereto, or, if such party be a corporate body, by the winding-up of the corporate body or the placing of the corporate body under judicial management.

(2) If the estate of any party to an arbitration agreement is sequestrated or if, in the case of a corporate body which is a party to such an agreement, a petition for the winding-up of the corporate body or for placing the corporate body under judicial management is presented or an order for winding-up the corporate body or for placing

the corporate body under judicial management is made, the provisions of any law relating to the sequestration of insolvent estates or, as the case may be, any law relating to the winding-up or judicial management of the corporate body concerned, shall apply in the same manner as if a reference of a dispute to arbitration under the arbitration agreement were an action or proceeding or civil proceedings or legal proceedings or civil legal proceedings within the meaning of any such law.

(3) For the purposes of the application of the laws referred to in subsection (2)-

(a) a reference of a dispute to arbitration shall be deemed to be an action or proceeding or civil proceedings or legal proceedings or civil legal proceedings by or against any person or corporate body instituted or pending in any court of law having jurisdiction if any party to the dispute has served on the other party or parties thereto a written notice requiring him or them to appoint or to agree to the appointment of an arbitrator, or, where the arbitrator is named or designated in the arbitration agreement, requiring the dispute to be referred to the arbitrator so named or designated; and

(b) a reference of a dispute to arbitration shall be deemed to be an action or proceeding which is being or is about to be instituted against a corporate body, if any party to the dispute is taking steps to serve or is about to serve on the corporate body a written notice such as is referred to in paragraph (a) .

(4) Any period of time fixed by or under this Act which is interrupted by any stay, suspension or restraint resulting from the application of any law referred to in subsection (2), shall be extended by a period equal to the period of such interruption.

6 Stay of legal proceedings where there is an arbitration agreement

(1) If any party to an arbitration agreement commences any legal proceedings in any court (including any inferior court) against any other party to the agreement in respect of any matter agreed to be referred to arbitration, any party to such legal proceedings may at any time after entering appearance but before delivering any pleadings or taking any other steps in the proceedings, apply to that court for a stay of such proceedings.

(2) If on any such application the court is satisfied that there is no sufficient reason why the dispute should not be referred to arbitration in accordance with the agreement, the court may make an order staying such proceedings subject to such terms and conditions as it may consider just.

7 Power of court to order that dispute be determined by interpleader proceedings or that interpleader issues be determined by arbitration

(1) The court may order that the dispute between parties to an arbitration agreement be determined by way of interpleader proceedings for the relief of any person desiring so to interplead.

(2) Where in any interpleader proceedings it is proved that the claims in question are matters to which an arbitration agreement, to which the claimants are parties, relates, the court may order that the issues between the claimants be determined in accordance with the arbitration agreement.

8 Power of court to extend time fixed in arbitration agreement for commencing arbitration proceedings

Where an arbitration agreement to refer future disputes to arbitration provides that any claim to which the agreement applies shall be barred unless some step to commence arbitration proceedings is taken within a time fixed by the agreement, and a dispute arises to which the agreement applies, the court, if it is of the opinion that in the

circumstances of the case undue hardship would otherwise be caused, may extend the time for such period as it considers proper, whether the time so fixed has expired or not, on such terms and conditions as it may consider just but subject to the provisions of any law limiting the time for commencing arbitration proceedings.

ARBITRATORS AND UMPIRES (ss 9-13)

9 Reference to a single arbitrator

Unless a contrary intention is expressed in the arbitration agreement, the reference shall be to a single arbitrator.

10 Power of parties to appoint arbitrators to fill vacancies

(1) Where an appointed arbitrator refuses to act or is or becomes incapable of acting or dies or is removed from office or his appointment is terminated, or is set aside, and a contrary intention is not expressed in the arbitration agreement, the party or parties who appointed him may appoint another arbitrator in his place.

(2) Where an arbitration agreement provides that the reference shall be to two or more arbitrators, one to be appointed by each party, and any party fails to appoint an arbitrator in terms of the agreement, or by way of substitution in the circumstances described in subsection (1), then, unless the arbitration agreement expresses a contrary intention, the other party, having appointed an arbitrator, or the other parties each having appointed an arbitrator, may serve the party in default with a written notice requiring him to appoint an arbitrator within seven days after receipt of the notice.

(3) If the party in default does not appoint an arbitrator within the period referred to in the notice served upon him in terms of subsection (2), the other party who has appointed an arbitrator or the other parties who have each appointed an arbitrator may appoint that arbitrator or those arbitrators, as the case may be, to act as sole arbitrator or arbitrators in the reference, and his or their award shall be binding on all parties as if he or they had been appointed by consent of all parties: Provided that the court may, on the application of the party in default, on good cause shown, set aside such appointment and grant the party in default an extension of time to appoint an arbitrator.

11 Power of parties or arbitrators to appoint umpire and to fill vacancy

(1) If an arbitration agreement provides for a reference-

- (a) to an even number of arbitrators, then, unless a contrary intention is expressed therein, the arbitrators may at any time appoint an umpire; or
- (b) to three arbitrators, of whom one is to be appointed by the other two, such agreement shall, unless a contrary intention is expressed therein, be construed as providing for the appointment of an umpire by the other two arbitrators immediately after they are themselves appointed.

(2) Where an appointed umpire refuses to act or is or becomes incapable of acting or dies or is removed from office or his appointment is terminated, or is set aside, and a contrary intention is not expressed in the arbitration agreement, the parties or arbitrators who appointed him may appoint another umpire in his place.

12 Power of court to appoint an arbitrator or umpire

(1) Where-

- (a) in terms of an arbitration agreement or this Act the reference shall be to a single arbitrator and all the parties to the reference do not, after a dispute has arisen, agree in the appointment of an arbitrator; or

- (b) an arbitration agreement provides that the reference shall be to an even number of arbitrators and the parties to the reference or the arbitrators are at liberty to appoint an umpire and do not appoint him in any case where such appointment is necessary for the decision of the matters in dispute or the due conduct of the arbitration, or where the parties or such arbitrators are required to appoint an umpire and do not appoint him; or
- (c) where an arbitration agreement provides that the reference shall be to two or more arbitrators one to be appointed by each party, and any party fails to appoint an arbitrator in terms of the agreement or by way of substitution in the circumstances described in subsection (1) of section *ten* ; or
- (d) an arbitration agreement provides that the reference shall be to three arbitrators one of whom is to be appointed (whether as arbitrator or as umpire) by the parties to the reference or by the other two arbitrators and such arbitrator or umpire has not been appointed; or
- (e) an appointed arbitrator or umpire refuses to act or is or becomes incapable of acting or dies, or is removed from office or his appointment is terminated or is set aside and the party or parties to the reference or arbitrators who made the appointment are at liberty to appoint another arbitrator or umpire to fill the vacancy and do not appoint him in any case where such appointment is necessary for the decision of the matters in dispute or the due conduct of the arbitration, or where the party or parties or arbitrators who made the appointment is or are required to appoint another arbitrator or umpire to fill such vacancy and does or do not appoint him; or
- (f) more than one arbitrator has to be appointed and the parties to the reference do not, after a dispute has arisen, agree in the appointment of arbitrators so far as the arbitration agreement may require such agreement,

any party to the reference may serve the other party or parties or the arbitrators, as the case may be, with a written notice requiring him or them to appoint or if agreement be necessary, to agree in the appointment of an arbitrator or arbitrators or umpire.

(2) If the appointment referred to in the notice served under subsection (1) is not made or agreed to, as the case may be, within seven days after the service of the notice, the party who gave the notice, may upon notice to the other party or parties or the arbitrators, as the case may be, apply to the court to make the necessary appointment, and thereupon the court may appoint an arbitrator or arbitrators or umpire.

(3) Where an arbitrator (not being a sole arbitrator) or two or more arbitrators (not being all the arbitrators) or an umpire who has or have not entered on the reference is or are removed by the court or his or their appointment or appointments is or are set aside by the court, and the arbitration agreement does not provide otherwise, the court may, on the application of any party to the reference, appoint an arbitrator or arbitrators or umpire to act in the place of the arbitrator, arbitrators or umpire so removed or whose appointment or appointments has or have been so set aside.

(4) Where a sole arbitrator or all the arbitrators or an umpire who has or have entered on the reference is or are removed by the court, or his or their appointment or appointments is or are set aside by the court and the arbitration agreement does not provide otherwise, the court may, on the application of any party to the reference, either-

- (a) appoint an arbitrator or arbitrators or an umpire to act in the place of

the arbitrator, arbitrators or umpire so removed or whose appointment or appointments has or have been so set aside; or

- (b) appoint a sole arbitrator to act in the place of the sole arbitrator or all the arbitrators or umpire so removed or whose appointment or appointments has or have been so set aside; or
- (c) order that the arbitration agreement shall cease to have effect with respect to the dispute referred.

(5) An arbitrator or umpire appointed by the court shall have the like power to act in the reference and make an award as if he had been appointed in accordance with the terms of the arbitration agreement.

(6) An arbitrator or umpire appointed in the circumstances described in subsection (1) of section *ten* or subsection (2) of section *eleven* or subsection (2), (3) or (4) of this section or an arbitrator appointed after the court has granted an extension of time to do so in the circumstances described in subsection (3) of section *ten*, may avail himself of the evidence recorded in the arbitration proceedings before his appointment and may, if he think fit, recall for further examination any person who has given such evidence.

13 Termination or setting aside of appointment of arbitrator or umpire

(1) Subject to the provisions of subsection (2), the appointment of an arbitrator or umpire, unless a contrary intention is expressed in the arbitration agreement, shall not be capable of being terminated except by consent of all the parties to the reference.

(2) (a) The court may at any time on the application of any party to the reference, on good cause shown, set aside the appointment of an arbitrator or umpire or remove him from office.

(b) For the purposes of this subsection, the expression 'good cause', includes failure on the part of the arbitrator or umpire to use all reasonable dispatch in entering on and proceeding with the reference and making an award or, in a case where two arbitrators are unable to agree, in giving notice of that fact to the parties or to the umpire.

(3) Where the appointment of an arbitrator or umpire is so set aside, or where an arbitrator or umpire is so removed from office, the court may, apart from any order for costs which may be awarded against such arbitrator or umpire personally, order that such arbitrator or umpire shall not be entitled to any remuneration for his services.

PROVISIONS AS TO ARBITRATION PROCEEDINGS (ss 14-22)

14 Powers of arbitration tribunal and manner of arriving at decisions where the arbitration tribunal consists of two or more arbitrators

(1) An arbitration tribunal may-

- (a) on the application of any party to a reference, unless the arbitration agreement otherwise provides-
 - (i) require any party to the reference, subject to any legal objection, to make discovery of documents by way of affidavit or by answering interrogatories on oath and to produce such documents for inspection;
 - (ii) require the parties to the reference to deliver pleadings or statements of claim and defence or require any party to give particulars of his claim or counterclaim, and allow any party to amend his pleadings or statements of claim or defence;
 - (iii) require any party to the reference to allow inspection of any

goods or property involved in the reference, which is in his possession or under his control; and

- (iv) appoint a commissioner to take the evidence of any person in the Republic or abroad and to forward such evidence to the tribunal in the same way as if he were a commissioner appointed by the court;

[Sub-para. (iv) amended by s. 1 of Act 49 of 1996.]

(b) unless the arbitration agreement otherwise provides-

- (i) from time to time determine the time when and the place where the arbitration proceedings shall be held or be proceeded with;
- (ii) administer oaths to, or take the affirmations of, the parties and witnesses appearing to give evidence;
- (iii) subject to any legal objection, examine the parties appearing to give evidence in relation to the matters in dispute and require them to produce before the tribunal all books, documents or things within their possession or power which may be required or called for and the production of which could be compelled on the trial of an action;
- (iv) subject to any legal objection, examine any person who has been summoned to give evidence and require the production of any book, document or thing which such person has been summoned to produce;
- (v) with the consent of the parties or on an order of court, receive evidence given by affidavit; and
- (vi) inspect any goods or property involved in the reference.

(2) Where an arbitration tribunal consists of two or more arbitrators, any oath or affirmation may be administered by any member of the tribunal designated by it for the purpose.

(3) Where an arbitration tribunal consists of two arbitrators, their unanimous decision, and where it consists of more than two arbitrators, the decision of the majority of the arbitrators, shall be the decision of the arbitration tribunal.

(4) Where the arbitrators, or a majority of them, do not agree in their award, their decision shall not be taken to be either the least amount or least right of relief awarded by them, or the average of what has been awarded by them, but the matter shall thereupon become referable to the umpire, unless the arbitration agreement otherwise provides.

15 Notice of proceedings to parties

(1) An arbitration tribunal shall give to every party to the reference, written notice of the time when and place where the arbitration proceedings will be held, and every such party shall be entitled to be present personally or by representative and to be heard at such proceedings.

(2) If any party to the reference at any time fails, after having received reasonable notice of the time when and place where the arbitration proceedings will be held, to attend such proceedings without having shown previously to the arbitration tribunal good and sufficient cause for such failure, the arbitration tribunal may proceed in the absence of such party.

16 Summoning of witnesses

(1) The issue of a summons to compel any person to attend before an arbitration tribunal to give evidence and to produce books, documents or things to an arbitration tribunal, may be procured by any party to a reference in the same manner and subject to the same conditions as if the reference were a civil action pending in the court having jurisdiction in the area in which the arbitration proceedings are being or are about to be held: Provided that-

- (a) no person shall be compelled by such a summons to produce any book, document or thing the production of which would not be compellable on trial of an action; and
- (b) the clerk of the magistrate's court having jurisdiction in the said area, may issue such summons upon payment of the same fees as are chargeable for the issue of a subpoena in a civil case pending in the magistrate's court.

(2) Any summons issued out of any court in terms of subsection (1) shall be served in the same manner as a subpoena issued out of that court in a civil action pending in that court.

(3) The provisions of subsections (3) and (4) of section *eighty-seven* of the Correctional Services Act, 1959 (Act 8 of 1959), relating to the service of a subpoena upon any prisoner to give evidence in civil proceedings in any court, shall *mutatis mutandis* apply with reference to the service of a summons upon any prisoner required to give evidence before an arbitration tribunal as if the proceedings before such tribunal were civil proceedings pending in a court.

[Sub-s. (3) amended by s. 4 of Act 18 of 1996.]

(4) On the application of any party to a reference, the court may order the process of the court to issue to compel the attendance of a witness before the arbitration tribunal or may order any prisoner to be brought before such arbitration tribunal for examination.

17 Recording of evidence

If not recorded by the arbitration tribunal itself, the oral evidence of witnesses shall be recorded in such manner and to such extent as the parties to the reference may agree or, failing such agreement, as the arbitration tribunal may from time to time direct after consultation with the parties.

18 Reference of particular points to umpire

Where the arbitrators or a majority of them are unable to agree as to any matter of procedure, or any interlocutory question, they may refer that matter or question forthwith to the umpire for decision.

19 Powers of umpire

Unless the arbitration agreement otherwise provides-

- (a) the umpire may sit together with the arbitrators and hear the evidence given from time to time and may then and there decide any matter of procedure or any interlocutory question upon which the arbitrators disagree and which is referred by them to him for decision;
- (b) an umpire shall not be entitled to any remuneration from the parties in respect of his attendance at any arbitration proceedings conducted by the arbitrators unless the parties have requested him so to attend

or unless he is called upon to decide any matter of procedure or any interlocutory question at the request of the arbitrators or is required to enter on the reference and to give an award;

- (c) if the arbitrators have by notice in writing advised the parties to the reference, or the umpire, that they are unable to agree, or if the arbitrators have allowed the time or extended time for making their award to expire without making an award, and the parties have not advised the umpire that they intend to grant an extension or further extension of the said period or to apply to the court therefor, the umpire shall forthwith enter on the reference in lieu of the arbitrators;
- (d) an umpire who enters on a reference as provided in paragraph (c) , shall have the same powers as if he had been appointed as sole arbitrator, and may for that purpose unless he is required by the parties to hear the evidence of the parties and their witnesses, or, whenever he is called upon by the arbitrators to decide any matter of procedure or any interlocutory question, act upon the evidence recorded in the proceedings before the arbitrators, and may, if he thinks fit, recall for further examination any person who has given such evidence.

20 Statement of case for opinion of court or counsel during arbitration proceedings

(1) An arbitration tribunal may, on the application of any party to the reference and shall, if the court, on the application of any such party, so directs, or if the parties to the reference so agree, at any stage before making a final award state any question of law arising in the course of the reference in the form of a special case for the opinion of the court or for the opinion of counsel.

(2) An opinion referred to in subsection (1) shall be final and not subject to appeal and shall be binding on the arbitration tribunal and on the parties to the reference.

21 General powers of the court

(1) For the purposes of and in relation to a reference under an arbitration agreement, the court shall have the same power of making orders in respect of-

- (a) security for costs;
- (b) discovery of documents and interrogatories;
- (c) the examination of any witness before a commissioner in the Republic or abroad and the issue of a commission or a request for such examination;

[Para. (c) amended by s. 1 of Act 49 of 1996.]

- (d) the giving of evidence by affidavit;
- (e) the inspection or the interim custody or the preservation or the sale of goods or property;
- (f) an interim interdict or similar relief;
- (g) securing the amount in dispute in the reference;
- (h) substituted service of notices required by this Act or of summonses; and
- (i) the appointment of a receiver,

as it has for the purposes of and in relation to any action or matter in that court.

(2) The provisions of subsection (1) shall not be construed so as to derogate from any power which may be vested in an arbitration tribunal of making orders with reference to any of the matters referred to in the said subsection.

(3) Notwithstanding anything to the contrary in the arbitration agreement, the court may at any time, on the application of any party to the reference, order that the umpire shall enter upon the reference in lieu of the arbitrators in all respects as if he were a sole arbitrator.

22 Offences

(1) Any person who-

- (a) without good cause, fails to appear in answer to a summons to give evidence before an arbitration tribunal; or
- (b) having so appeared, fails to remain in attendance until excused from further attendance by the arbitration tribunal; or
- (c) upon being required by an arbitration tribunal to be sworn or to affirm as a witness, refuses to do so; or
- (d) refuses to answer fully and to the best of his knowledge and belief any question lawfully put to him during any arbitration proceedings; or
- (e) without good cause, fails to produce before an arbitration tribunal any book, document or thing specified in a summons requiring him so to produce it; or
- (f) while arbitration proceedings are in progress, wilfully insults any arbitrator or umpire conducting such proceedings, or wilfully interrupts such proceedings or otherwise misbehaves himself in the place where such proceedings are being conducted,

shall be guilty of an offence and liable on conviction to a fine not exceeding one hundred rand or to imprisonment for a period not exceeding three months: Provided that in connection with the interrogation of any such person or the production of any such book, document or thing the law relating to privilege as applicable to a witness subpoenaed to give evidence or to produce any book, document or thing before a court of law shall apply.

(2) Any person who, having been sworn or having made an affirmation, knowingly gives false evidence before an arbitration tribunal, shall be guilty of an offence and liable on conviction to the penalties prescribed by law for perjury.

PROVISIONS AS TO AWARDS (ss 23-33)

23 Time for making award

The arbitration tribunal shall, unless the arbitration agreement otherwise provides, make its award-

- (a) in the case of an award by an arbitrator or arbitrators, within four months after the date on which such arbitrator or arbitrators entered on the reference or the date on which such arbitrator was or such arbitrators were called on to act by notice in writing from any party to the reference, whichever date be the earlier date; and
- (b) in the case of an award by an umpire, within three months after the

date on which such umpire entered on the reference or the date on which such umpire was called on to act by notice in writing from any party to the reference, whichever date be the earlier date,

or in either case on or before any later date to which the parties by any writing signed by them may from time to time extend the time for making the award: Provided that the court may, on good cause shown, from time to time extend the time for making any award, whether that time has expired or not.

24 Award to be in writing

(1) The award shall be in writing and shall be signed by all the members of the arbitration tribunal.

(2) If a minority of the members of the arbitration tribunal refuse to sign the award, such refusal shall be mentioned in the award but shall not invalidate it.

25 Publication of award

(1) The award shall be delivered by the arbitration tribunal, the parties or their representatives being present or having been summoned to appear.

(2) The award shall be deemed to have been published to the parties on the date on which it was so delivered.

26 Interim award

Unless the arbitration agreement provides otherwise, an arbitration tribunal may make an interim award at any time within the period allowed for making an award.

27 Specific performance

Unless the arbitration agreement provides otherwise, an arbitration tribunal may order specific performance of any contract in any circumstances in which the court would have power to do so.

28 Award to be binding

Unless the arbitration agreement provides otherwise, an award shall, subject to the provisions of this Act, be final and not subject to appeal and each party to the reference shall abide by and comply with the award in accordance with its terms.

29 Interest on amount awarded

Where an award orders the payment of a sum of money, such sum shall, unless the award provides otherwise, carry interest as from the date of the award and at the same rate as a judgment debt.

30 Power of arbitration tribunal to correct errors in award

An arbitration tribunal may correct in any award any clerical mistake or any patent error arising from any accidental slip or omission.

31 Award may be made an order of court

(1) An award may, on the application to a court of competent jurisdiction by any party to the reference after due notice to the other party or parties, be made an order of court.

(2) The court to which application is so made, may, before making the award an order of court, correct in the award any clerical mistake or any patent error arising from any accidental slip or omission.

(3) An award which has been made an order of court may be enforced in the same manner as any judgment or order to the same effect.

32 Remittal of award

(1) The parties to a reference may within six weeks after the publication of the award to them, by any writing signed by them remit any matter which was referred to arbitration, to the arbitration tribunal for reconsideration and for the making of a further award or a fresh award or for such other purpose as the parties may specify in the said writing.

(2) The court may, on the application of any party to the reference after due notice to the other party or parties made within six weeks after the publication of the award to the parties, on good cause shown, remit any matter which was referred to arbitration, to the arbitration tribunal for reconsideration and for the making of a further award or a fresh award or for such other purpose as the court may direct.

(3) When a matter is remitted under subsection (1) or (2) the arbitration tribunal shall, unless the writing signed by the parties or the order of remittal otherwise directs, dispose of such matter within three months after the date of the said writing or order.

(4) Where in any case referred to in subsection (1) or (2) the arbitrator has died after making his award, the award may be remitted to a new arbitrator appointed, in the case of a remittal under subsection (1), by the parties or, in the case of a remittal under subsection (2), by the court.

33 Setting aside of award

(1) Where-

- (a) any member of an arbitration tribunal has misconducted himself in relation to his duties as arbitrator or umpire; or
- (b) an arbitration tribunal has committed any gross irregularity in the conduct of the arbitration proceedings or has exceeded its powers; or
- (c) an award has been improperly obtained,

the court may, on the application of any party to the reference after due notice to the other party or parties, make an order setting the award aside.

(2) An application pursuant to this section shall be made within six weeks after the publication of the award to the parties: Provided that when the setting aside of the award is requested on the grounds of the commission of an offence referred to in Part 1 to 4, or section 17, 20 or 21 (in so far as it relates to the aforementioned offences) of Chapter 2 of the Prevention and Combating of Corrupt Activities Act, 2004, such application shall be made within six weeks after the discovery of that offence and in any case not later than three years after the date on which the award was so published.

[Sub-s. (2) substituted by s. 36 (1) of Act 12 of 2004.]

(3) The court may, if it considers that the circumstances so require, stay enforcement of the award pending its decision.

(4) If the award is set aside the dispute shall, at the request of either party, be submitted to a new arbitration tribunal constituted in the manner directed by the court.

REMUNERATION OF ARBITRATORS AND UMPIRE AND COSTS (ss 34-36)

34 Remuneration of arbitrators and umpire

(1) Where the fees of the arbitrator or arbitrators or umpire have not been fixed by an agreement between him or them and the parties to the reference, any party to the reference may, notwithstanding that such fees may already have been paid by the parties, or any of them, require such fees to be taxed, and thereupon such fees shall be taxed by the taxing master of the court.

(2) Any taxation of fees under this section may be reviewed by the court in the same manner as a taxation of costs.

(3) The arbitrator or arbitrators or umpire shall be entitled to appear and be heard at any taxation or review of taxation under this section.

(4) The arbitrator or arbitrators or an umpire may withhold his or their award pending payment of his or their fees and of any expenses incurred by him or them in connection with the arbitration with the consent of the parties, or pending the giving of security for the payment thereof.

35 Costs of arbitration proceedings

(1) Unless the arbitration agreement otherwise provides, the award of costs in connection with the reference and award shall be in the discretion of the arbitration tribunal, which shall, if it awards costs, give directions as to the scale on which such costs are to be taxed and may direct to and by whom and in what manner such costs or any part thereof shall be paid and may tax or settle the amount of such costs or any part thereof, and may award costs as between attorney and client.

(2) If no provision is made in an award with regard to costs, or if no directions have been given therein as to the scale on which such costs shall be taxed, any party to the reference may within fourteen days of the publication of the award, make application to the arbitration tribunal for an order directing by and to whom such costs shall be paid or giving directions as to the scale on which such costs shall be taxed, and thereupon the arbitration tribunal shall, after hearing any party who may desire to be heard, amend the award by adding thereto such directions as it may think proper with regard to the payment of costs or the scale on which such costs shall be taxed.

(3) If the arbitration tribunal has no discretion as to costs or if the arbitration tribunal has such a discretion and has directed any party to pay costs but does not forthwith tax or settle such costs, or if the arbitrators or a majority of them cannot agree in their taxation, then, unless the agreement otherwise provides, the taxing master of the court may tax them.

(4) If an arbitration tribunal has directed any party to pay costs but has not taxed or settled such costs, then, unless the arbitration agreement provides otherwise, the court may, on making the award an order of court, order the costs to be taxed by the taxing master of the court and, if the arbitration tribunal has given no directions as to the scale on which such costs shall be taxed, fix the scale of such taxation.

(5) Any taxation of costs by the taxing master of the court may be reviewed by the court.

(6) Any provision contained in an arbitration agreement to refer future disputes to arbitration to the effect that any party or the parties thereto shall in any event pay his or their own costs or any part thereof, shall be void.

36 Costs of legal proceedings

An order made or opinion given by the court under this Act may be made or given on such terms as to costs, including costs against an arbitrator or umpire, as the court considers just.

MISCELLANEOUS PROVISIONS (ss 37-43)

37 Service of notices

Unless the arbitration agreement provides otherwise, any notice required by any provision of this Act to be served on any person, may be served either-

- (a) by delivering it to the person on whom it is to be served; or
- (b) by leaving it at the usual or last known place of residence of that person in the Republic; or

[Para. (b) amended by s. 1 of Act 49 of 1996.]

- (c) by sending it by post to that person at his usual or last known place of residence in the Republic; or

[Para. (c) amended by s. 1 of Act 49 of 1996.]

- (d) in any other manner authorized by the court.

38 Extension of periods fixed by or under this Act

The court may, on good cause shown, extend any period of time fixed by or under this Act, whether such period has expired or not.

39 This Act binds the State

This Act shall apply to any arbitration in terms of an arbitration agreement to which the State is a party, other than an arbitration in terms of an arbitration agreement between the State and the Government of a foreign country or any undertaking which is wholly owned and controlled by such a Government.

40 Application of this Act to arbitrations under special laws

This Act shall apply to every arbitration under any law passed before or after the commencement of this Act, as if the arbitration were pursuant to an arbitration agreement and as if that other law were an arbitration agreement: Provided that if that other law is an Act of Parliament, this Act shall not apply to any such arbitration in so far as this Act is excluded by or is inconsistent with that other law or is inconsistent with the regulations or procedure authorized or recognized by that other law.

41

[S. 41 repealed by s. 1 of Act 49 of 1996.]

42 Repeal of laws

(1) The Arbitrations Act, 1898 (Act 29 of 1898), of the Cape of Good Hope, the Arbitration Act, 1898 (Act 24 of 1898), of Natal, the Arbitration Ordinance, 1904 (Ordinance 24 of 1904), of the Transvaal, and the Arbitration Proclamation (Proclamation 3 of 1926), of South-West Africa, are hereby repealed.

(2) Any arbitration, enquiry or trial commenced prior to the commencement of this Act in terms of any law repealed by subsection (1) shall be proceeded with in all respects as if such repeal had not been effected.

(3) Any arbitration commenced after the commencement of this Act under any arbitration agreement entered into before such commencement, shall be dealt with under this Act in all respects as if such agreement had been entered into after such commencement.

43 Short title

This Act shall be called the Arbitration Act, 1965.

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