

**THE ARBITRATION ACT, 1995**

**No. 4 of 1995**

*Date of Assent: 10th August, 1995*

*Date of Commencement: By Notice*

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**An Act of Parliament to repeal and re-enact with amendments the Arbitration Act and to provide for connected purposes**

ENACTED by the Parliament of Kenya as follows:

**PART I—PRELIMINARY**

- 1.** This Act may be cited as the Arbitration Act, 1995 and shall come into operation on a date to be appointed by the Minister by Order published in the Gazette. Short title and commencement.
- 2.** Except as otherwise provided in a particular case, the provisions of this Act shall apply to domestic arbitration and international arbitration. Application.
- 3. (1)** In this Act, unless the context otherwise requires— Interpretation.
- “arbitration” means any arbitration whether or not administered by a permanent arbitral institution;
- “arbitration agreement” means an agreement by the parties to submit to arbitration all or certain disputes which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not;
- “arbitral award” means any award of an arbitral tribunal and includes an interim arbitral award;
- “arbitral tribunal” means a sole arbitrator or a panel of arbitrators;
- “party” means a party to an arbitration agreement and includes a person claiming through or under a party.
- (2)** An arbitration is domestic if the arbitration agreement provides expressly or by implication for arbitration in Kenya: and at the time when proceedings are commenced or the arbitration is entered into—
- (a) the parties are nationals of Kenya or are habitually resident in Kenya;
- (b) in the case of a body corporate, that body is incorporated in or its central management and control is exercised in Kenya; or

- (c) the place where a substantial part of the obligations of the commercial relationship is to be performed or the place with which the subject-matter of the dispute is most closely connected is Kenya.
- (3) An arbitration is international if—
- (a) the parties to an arbitration agreement have, at the time of the conclusion of that agreement, their places of business in different states;
- (b) one of the following places is situated outside the state in which the parties have their places of business—
- (i) the place of arbitration if determined, or pursuant to, the arbitration agreement; or
- (ii) any place where a substantial part of the obligations of the commercial relationship is to be performed or the place with which the subject-matter of the dispute is most closely connected; or
- (c) the parties have expressly agreed that the subject-matter of the arbitration agreement relates to more than one state.
- (4) For the purpose of subsection (3)—
- (a) if a party has more than one place of business, the place of business is that which has the closest relationship to the arbitration agreement; and
- (b) if a party does not have a place of business, reference is to be made to his habitual residence.
- (5) Where a provision of this Act, except section 31 leaves the parties free to determine a certain issue, such freedom includes the right of the parties to authorize a third party including an institution to make that determination.
- (6) Where a provision of this Act refers to the fact that the parties have agreed or that they may agree or in any other way refer to an agreement of the parties, such agreement includes any arbitration rules referred to in that agreement.
- (7) Where a provision of this Act, other than sections 26 and 33 (2) (a), refers to a claim, it also applies to a counter-claim, and where it refers to a defence it also applies to a defence to such counter-claim.

## PART II—GENERAL PROVISIONS

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

Form of  
arbitration  
agreement.

(2) An arbitration agreement shall be in writing.

(3) An arbitration agreement is in writing if it is contained in—

(a) a document signed by the parties;

(b) **an exchange of letters, telex, telegram or other means of telecommunications which provide a record of the agreement; or**

(c) **an exchange of statements of claim and defence in which the existence of an agreement is alleged by one party and not denied by the other party.**

(4) The reference in a contract to a document containing an arbitration clause shall constitute an arbitration agreement if the contract is in writing and the reference is such as to make that arbitration clause part of the contract.

5. A party who knows by any provision of this Act from which the parties may derogate or any requirement under the arbitration agreement has not been complied with and yet proceeds with the arbitration without stating his objection to **such non-compliance without undue delay or, if a time limit is prescribed, within such period of time, shall be deemed to have waived the right to object.**

Waiver of  
right to object.

6. (1) A court before which proceedings are brought in a matter which is the subject of an arbitration agreement shall, if a party so applies not later than the time when that party enters appearance or files any pleadings or takes any other step in the proceedings, stay the proceedings and refer the parties to arbitration unless it finds—

Stay of legal  
proceedings.

(a) **that the arbitration agreement is null and void, inoperative or incapable of being performed; or**

(b) **that there is not in fact any dispute between the parties with regard to the matters agreed to be referred to arbitration.**

(2) Notwithstanding that an application has been brought under subsection (1) and the matter is pending before the court, arbitral proceedings may be commenced or continued and an arbitral award may be made.

Interim  
measures  
by court.

7. (1) It is not incompatible with an arbitration agreement for a party to request from the High Court, before or during arbitral proceedings, an interim measure of protection and for the High Court to grant that measure.

(2) Where a party applies to the High Court for an injunction or other interim order and the arbitral tribunal has already ruled on any matter relevant to the application, the High Court shall treat the ruling or any finding of fact made in the course of the ruling as conclusive for the purposes of the application.

Death of  
a party.

8. (1) An arbitration agreement is not discharged by the death of any party thereto, either as respects the deceased or any other party, but in such event is enforceable by or against the personal representative of the deceased.

(2) The authority of an arbitrator is not revoked by the death of any party by whom he was appointed.

(3) Nothing in this section affects the operation of any law by virtue of which any right of action is extinguished by the death of a person.

Receipt of  
written  
communications.

9. (1) Unless otherwise agreed by the parties—

(a) any written communication 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

(b) the communication is deemed to have been received on the day it is so delivered.

(2) If none of the places referred to in subsection (1) (a) can be found after making a reasonable inquiry a written communication is deemed to have been received if it is sent to the addressee's last known place of business, habitual residence or mailing address by registered mail or by any other means which provides a record of the attempt to deliver it.

(3) This section does not apply to written communications in respect of court proceedings.

10. Except as provided in this Act, no court shall intervene in matters governed by this Act.

Extent of court intervention.

PART III—COMPOSITION AND JURISDICTION OF ARBITRAL TRIBUNAL

11. (1) The parties are free to determine the number of arbitrators.

Determination number of arbitrators.

(2) Failing such determination, the number of arbitrators shall be one.

12. (1) No person shall be precluded by reason of that person's nationality from acting as an arbitrator, unless otherwise agreed by the parties.

Appointment of arbitrators.

(2) The parties are free to agree on a procedure of appointing the arbitrator or arbitrators and failing such agreement—

(a) in an arbitration with three arbitrators, each party shall appoint one arbitrator and the two arbitrators so appointed shall appoint the third arbitrator;

(b) in an arbitration with one arbitrator, the parties shall agree on the person to be appointed.

(3) If—

(a) in the case of three arbitrators, a party fails to appoint the arbitrator within 30 days of receipt of a request to do so from the other party or if the two arbitrators fail to agree on the third arbitrator within 30 days of their appointment; or

(b) in the case of one arbitrator, the parties fail to agree on the arbitrator;

the appointment shall be made, upon application of a party, by the High Court.

(4) Where, under a procedure agreed upon by the parties for the appointment of an arbitrator or arbitrators—

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

(b) the parties or two arbitrators, fail to reach agreement expected of them under such procedure; or

(c) a third party including an institution, fails to perform any function entrusted to it under such procedure;

any party may apply to the High Court to take the necessary measures, unless the agreement otherwise provides, for securing compliance with the procedure agreed upon by the parties.

(5) A decision of the High Court in respect of a matter under subsection (3) or (4) shall be final and not be subject to appeal.

(6) 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.

**Grounds for challenge.**

13. (1) When a person is approached in connection with his possible appointment as an arbitrator, he shall disclose any circumstances likely to give rise to justifiable doubts as to his impartiality or independence.

(2) From the time of his appointment and throughout the arbitral proceedings, an arbitrator shall without delay disclose any such circumstances to the parties unless the parties have already been informed of them by him.

(3) An arbitrator may be challenged only if circumstances exist that give rise to justifiable doubts as to his impartiality and independence, or if he does not possess qualifications agreed to by the parties.

(4) A party may challenge an arbitrator appointed by him, or in whose appointment that party has participated, only for reasons of which he becomes aware after the appointment.

**Challenge procedure.**

14. (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 15 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 any procedure agreed upon by the parties or under subsection (2) is not successful, the challenging party may, within 30 days after having received notice of the decision rejecting the challenge apply to such competent authority as the Attorney-General may by notice in the Gazette designate to decide on the challenge and the decision of such competent authority shall be final and not be subject to appeal, but while such an application is pending before such competent authority, the arbitral tribunal including the challenged arbitrator may continue the arbitral proceedings and make an arbitral award.**

**15. (1) The mandate of an arbitrator shall terminate if—**

- (a) he is unable to perform the functions of his office or for any other reason fails to act without undue delay; or
- (b) he withdraws from his office; or
- (c) the parties agree to the termination of the mandate.

**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.**

(4) **Where under this section or section 14 (2), an arbitrator withdraws from his office or a party agrees to the termination of the mandate of an arbitrator, that shall not imply acceptance of the validity of any ground referred to in this section or section 16 (3).**

**16. (1) Where the mandate of an arbitrator is terminated under section 14 or 15, a substitute arbitrator shall be appointed in accordance with the procedure that was applicable to the appointment of the arbitrator being replaced.**

**Termination of mandate and substitution of arbitrator.**

(2) **Unless otherwise agreed by the parties—**

- (a) **where a sole arbitrator or the presiding arbitrator is replaced, any hearing previously held shall be held afresh; and**
- (b) **where an arbitrator, other than a sole arbitrator or a presiding arbitrator is replaced, any hearings previously held may be held afresh at the discretion of the arbitral tribunal.**

(3) Unless otherwise agreed by the parties, an order or ruling of the arbitral tribunal made prior to the replacement of an arbitrator under this section shall not be invalidated solely because there has been a change in the composition of the arbitral tribunal.

Competence of  
arbitral tribunal  
to rule on its  
jurisdiction.

**17. (1) The arbitral tribunal may rule on its own jurisdiction, including ruling on any objections with respect to the existence or validity of the arbitration agreement, and for that purpose—**

- (a) an arbitration clause which forms part of a contract shall be treated as an independent agreement of the other terms of the contract; and
- (b) a decision by the arbitral tribunal that the contract is null and void shall not itself invalidate the arbitration clause.

(2) A plea that the arbitral tribunal does not have jurisdiction shall be raised not later than the submission of the statement of defence, however, a party is not precluded from raising such a plea because he has appointed, or participated in the appointment of, an arbitrator.

(3) A plea that the arbitral tribunal is exceeding the scope of its authority shall be raised as soon as the matter alleged to be beyond the scope of its authority is raised during the arbitral proceedings.

(4) The arbitral tribunal may, in either of the cases referred to in subsection (2) or (3) admit a later plea if it considers the delay justified.

(5) The arbitral tribunal may rule on a plea referred to in subsections (2) and (3) either as a preliminary question or in an arbitral award on the merits.

(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.

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

(8) While an application under subsection (6) is pending before the High Court, the arbitral tribunal may continue the arbitral proceedings and make an arbitral award.

18. (1) Unless the parties otherwise agree, the arbitral tribunal may at the request of a party order any party to take such interim measure of protection as the arbitral tribunal may consider necessary in respect of the subject-matter of the dispute, and the arbitral tribunal may require any party to provide appropriate security in connection with such measure.

Power of  
arbitral  
tribunal.

(2) The arbitral tribunal or a party with the approval of the arbitral tribunal, may seek assistance from the High Court in the exercise of any power conferred on the arbitral tribunal under subsection (1).

(3) If a request is made under subsection (2) the High Court shall have, for the purposes of the arbitral proceedings, the same power to make an order for the doing of anything which the arbitral tribunal is empowered to order under subsection (1) as it would have in civil proceedings before that Court, but the arbitral proceedings shall continue notwithstanding that a request has been made and is being considered by the High Court.

#### PART IV—CONDUCT OF ARBITRAL PROCEEDINGS

19. The parties shall be treated with equality and each party shall be given full opportunity of presenting his case.

Equal treatment  
of parties.

20. (1) Subject to the provisions of this Act, the parties are free to agree on the procedure to be followed by the arbitral tribunal in the conduct of the proceedings.

Determination  
of rules of  
procedure.

(2) Failing an agreement under subsection (1) the arbitral tribunal may, subject to this Act, conduct the arbitration in the manner it considers appropriate.

(3) The power of the arbitral tribunal under subsection (2) includes the power to determine the admissibility, relevance, materiality and weight of any evidence.

(4) Every witness giving evidence and every person appearing before an arbitral tribunal shall have at least the

same privileges and immunities as witnesses and advocates in proceedings before a court.

**Place of  
arbitration.**

**21.** (1) The parties are free to agree on the place of arbitration.

(2) Failing an agreement under subsection (1), the place of arbitration shall be determined by the arbitral tribunal having regard to the circumstances of the case and convenience of the parties.

(3) Notwithstanding subsection (1) the arbitral tribunal may, unless otherwise agreed by the parties, meet at any place it considers appropriate for consultation among its members, for hearing witnesses, experts or the parties, or for inspection of documents, goods or other property.

**Commencement  
of arbitral  
proceedings.**

**22.** Unless the parties otherwise agree, the arbitral proceedings in respect of a particular dispute shall commence on the date on which a request for the dispute to be referred to arbitration is received by the respondent.

**Language.**

**23.** (1) The parties are free to agree upon the language or languages to be used in the arbitral proceedings.

(2) Failing an agreement under subsection (1), the arbitral tribunal shall determine the language or languages to be used in the arbitral proceedings.

(3) The agreement or determination under subsection (1) or (2) shall, unless otherwise specified, apply to any written statement by a party, any hearing and any arbitral award, decision or other communication by the arbitral tribunal.

(4) The arbitral tribunal may order that any documentary evidence shall be accompanied by a translation into the language or languages agreed upon by the parties or determined by the arbitral tribunal.

**Statements of  
claim and  
defence.**

**24.** (1) Within the period of time agreed upon by the parties or determined by the arbitral tribunal, the claimant shall state the facts supporting his claim, the points at issue and the relief or remedy sought, and the respondent shall state

his defence in respect of these particulars, unless the parties have otherwise agreed as to the required particulars of such statements.

(2) The parties may submit with their statements all documents they consider to be relevant or may add a reference to the documents or other evidence they will submit.

(3) Except as otherwise agreed by the parties, either party may amend or supplement his claim or defence during the course of the arbitral proceedings, unless the arbitral tribunal considers it inappropriate to allow the amendment or supplement having regard to the delay in making it.

**25.** (1) Subject to any agreement to the contrary by the parties, the arbitral tribunal shall decide whether to hold oral hearing for the presentation of evidence or for oral argument, or whether the proceedings shall be conducted on the basis of documents and other materials furnished under section 24.

Hearings and  
written  
representations.

(2) Unless the parties have agreed that no hearings shall be held, the arbitral tribunal shall hold oral hearings at an appropriate stage of the proceedings, if so required by a party.

(3) The parties shall be given sufficient advance notice of any hearing and of any meeting of the arbitral tribunal for the purpose of inspection of documents, goods or other property.

(4) All statements, documents or other information furnished to, or applications made to, the arbitral tribunal by one party shall be communicated to the other party, and any expert report or evidential document on which the arbitral tribunal may rely in making its decisions shall be communicated to the parties.

(5) At any hearing or meeting of the arbitral tribunal of which notice is required to be given under subsection (3), or in any proceedings conducted on the basis of documents or other materials, the parties may appear or act in person or may be represented by any other person of their choice.

**26.** Unless otherwise agreed by the parties, if, without showing sufficient cause—

Default of  
a party.

(a) the claimant fails to communicate his statement of claim in accordance with section 24 (1), the arbitral tribunal shall terminate the arbitral proceedings;

- (b) the respondent fails to communicate his statement of **defence in accordance with section 24 (1), the arbitral tribunal shall continue the proceedings without treating such failure in itself as an admission of the claimant's allegations;**
- (c) any party which fails to appear at a hearing or to produce documentary evidence, the arbitral tribunal may continue the proceedings and make the award on the evidence before it;
- (d) **the claimant fails to prosecute his claim, the arbitral tribunal may make an award dismissing the claim or give directions, with or without conditions, for the speedy determination of the claim.**

**Experts.**

27. (1) Unless otherwise agreed by the parties, the arbitral tribunal may—

- (a) appoint one or more experts to report to it on specific issues to be determined by the arbitral tribunal; and
- (b) require a party to give the expert any relevant information or to produce or provide access to, any relevant documents, goods or other property for inspection.

(2) Unless otherwise agreed by the parties, if a party so requests or if the arbitral tribunal considers it necessary, the expert shall, after delivery of his written or oral report, participate in an oral hearing where the parties shall have the opportunity to put questions to him and to present expert witnesses in order to testify on the points at issue.

(3) Unless otherwise agreed by the parties, the expert shall, upon the request of a party, make available to that party for examination all documents, goods or other property in the expert's possession which was provided to him in order to prepare his report.

**Court assistance in taking evidence.**

28. The arbitral tribunal, or a party with the approval of the arbitral tribunal, may request from the High Court assistance in taking evidence, and the High Court may execute the request within its competence and according to its rules on taking evidence.

PART V—ARBITRAL AWARD AND TERMINATION OF  
ARBITRAL PROCEEDINGS

**29. (1)** The arbitral tribunal shall decide the dispute in accordance with the rules of law chosen by the parties as applicable to the substance of the dispute.

Rules applicable  
to substance  
of dispute.

(2) The choice of the law or legal system of any designated state shall be construed, unless otherwise agreed by the parties, as directly referring to the substantive law of that state and not to its conflict of laws rules.

(3) Failing a choice of the law under subsection (1) by the parties, the arbitral tribunal shall apply the rules of law it considers to be appropriate given all the circumstances of the dispute.

(4) The arbitral tribunal shall decide on the substance of the dispute according to considerations of justice and fairness without being bound by the rules of law, only if the parties have expressly authorized it to do so.

(5) In all cases, the arbitral tribunal shall decide in accordance with the terms of the particular contract and shall take into account the usages of the trade applicable to the particular transaction.

**30. (1)** Unless otherwise agreed by the parties, in arbitral proceedings with more than one arbitrator, any decision of the arbitral tribunal shall be made by a majority of all its members.

Decision making  
by panel of  
arbitrators.

(2) Notwithstanding subsection (1), if authorized by the parties or all the members of the arbitral tribunal, questions of procedure may be decided by a presiding arbitrator.

**31. (1)** If, during arbitral proceedings, the parties settle the dispute, the arbitral tribunal shall terminate the proceedings and, if requested by the parties and not objected to by the arbitral tribunal, record the settlement in the form of an arbitral award on agreed terms.

Settlement.

(2) An arbitral award on agreed terms shall be made in accordance with section 32 and shall state that it is an arbitral award.

(3) An arbitral award on agreed terms has the same status and effect as any other arbitral award on the substance of the dispute.

Form and  
contents of  
arbitral award.

**32.** (1) An arbitral award shall be made in writing and shall be signed by the arbitrator or the arbitrators.

(2) For the purposes of subsection (1), in arbitral proceedings with more than one arbitrator, the signatures of the majority of all the arbitrators shall be sufficient so long as the reasons for any omitted signature is stated.

(3) The arbitral award shall state the reasons upon which it is based, unless—

(a) the parties have agreed that no reasons are to be given; or

(b) the award is an arbitral award on agreed terms under section 31.

(4) The arbitral award shall state the date of the award and the place of arbitration as determined in accordance with section 21(1), and the award shall be deemed to have been made at that place.

(5) After the arbitral award is made, a signed copy shall be delivered to each party.

(6) Unless otherwise agreed by the parties—

(a) the costs and expenses of an arbitration, being the legal and other expenses of the parties, the fees and expenses of the arbitral tribunal and any other expenses related to the arbitration, shall be as determined and apportioned by the arbitral tribunal in its award under this section, or any additional award under section 34 (5); or

(b) in absence of an award or additional award determining and apportioning the costs and expenses of the arbitration, each party shall be responsible for the legal and other expenses of that party and for an equal share of the fees and expenses of the arbitral tribunal and any other expenses relating to the arbitration.



**33.** (1) The arbitral proceedings shall be terminated by the final arbitral award or by an order of the arbitral tribunal under subsection (2).

Termination  
of arbitral  
proceedings.

(2) The arbitral tribunal shall issue an order for the termination of the arbitral proceedings where—

- (a) the claimant withdraws his claim, unless the respondent objects to the order and the arbitral tribunal recognises a legitimate interest on his part in obtaining a final settlement of the dispute;
- (b) the parties agree on the termination of the arbitral proceedings; or
- (c) the arbitral tribunal finds that the continuation of the proceedings has for any other reason become unnecessary or impossible.

(3) Subject to sections 34 and 35, the mandate of the arbitral tribunal shall terminate upon the termination of the arbitral proceedings.

**34.** (1) Within 30 days after receipt of the arbitral award, unless a different period of time has been agreed upon by the parties—

Correction and  
interpretation  
of arbitral  
award;  
additional  
award.

- (a) a party may request the arbitral tribunal to correct in the arbitral award any computation errors, any clerical or typographical errors or any other errors of a similar nature; and
- (b) a party may, if agreed by the parties, request the arbitral tribunal to give an interpretation of a specific point or part of the arbitral award.

(2) If the arbitral tribunal considers the request made under subsection (1) to be justified, it shall make the correction or give the interpretation within 30 days after receipt of the request and the interpretation shall form part of the arbitral award.

(3) The arbitral tribunal may correct any error of the type referred to in subsection (1) (a) on its own initiative within 30 days after the date of the arbitral award.

(4) Unless otherwise agreed by the parties, a party may, within 30 days after receipt of the arbitral award, request the arbitral tribunal to make an additional arbitral award as to

claims presented in the arbitral proceedings but omitted from the arbitral award.

(5) If the arbitral tribunal considers the request made under subsection (4) to be justified, it shall make the additional arbitral award within 60 days.

(6) The arbitral tribunal may extend, if necessary, the period of time within which it shall make a correction, give an interpretation or make an additional arbitral award under subsection (2) or (5).

(7) Section 32 shall apply to a correction or an interpretation of the arbitral award or to an additional arbitral award made under this section.

#### PART VI—RECOURSE TO HIGH COURT AGAINST ARBITRAL AWARD

Application  
for setting aside  
arbitral award.

35. (1) Recourse to the High Court against an arbitral award may be made only by an application for setting aside the award under subsections (2) and (3).

(2) An arbitral award may be set aside by the High Court only if—

(a) the party making the application furnishes proof—

(i) that a party to the arbitration agreement was under some incapacity; or

(ii) the arbitration agreement is not valid under the law to which the parties have subjected it or, failing any indication of that law, the law of Kenya; or

(iii) the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or

(iv) the arbitral award deals with a dispute not contemplated by or not falling within the terms of the reference to arbitration or contains decisions on matters beyond the scope of the reference to arbitration, provided that if the decisions on matters referred to arbitration can be separated from those not so referred, only that part of the arbitral award which contains decisions on matters not referred to arbitration may be set aside; or

(v) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless that agreement was in conflict with a provision of this Act from which the parties cannot derogate; or failing such agreement, was not in accordance with this Act; or

(b) the High Court finds that—

(i) the subject-matter of the dispute is not capable of settlement by arbitration under the law of Kenya; or

(ii) the award is conflict with the public policy of Kenya:

(3) An application for setting aside the arbitral award may not be made after 3 months have elapsed from the date on which the party making that application had received the arbitral award, or if a request had been made under section 36 from the date on which that request had been disposed of by the arbitral award.

(4) The High Court, when required to set aside an arbitral award, may, where appropriate and so requested by a party suspend the proceedings to set aside the arbitral award for such period of time determined by it in order to give the arbitral tribunal an opportunity to resume the arbitral proceedings or to take such other action as in the opinion of the arbitral tribunal will eliminate the grounds for setting aside the arbitral award.

#### PART VII—RECOGNITION AND ENFORCEMENT OF AWARDS

36. (1) An arbitral award, irrespective of the state in which it was made shall be recognized as binding and, upon application in writing to the High Court, shall be enforced subject to this section and section 37.

Recognition and enforcement of awards.

(2) Unless the High Court otherwise orders, the party replying on an arbitral award or applying for its enforcement shall furnish—

(a) the duly authenticated original arbitral award or a duly certified copy of it; and

(b) the original arbitration agreement or a duly certified copy of it.

(3) If the arbitral award or arbitration agreement is not made in the English language, the party shall furnish a duly certified translation of it into the English language.

**Grounds for  
refusal of  
recognition or  
enforcement.**

**37. (1) The recognition or enforcement of an arbitral award, irrespective of the state in which it was made, may be refused only—**

- (a) at the request of the party against whom it is invoked, if that party furnishes to the High Court proof that—
  - (i) a party to the arbitration agreement was under some incapacity; or
  - (ii) the arbitration agreement is not valid under the law to which the parties have subjected it or, failing any indication of that law, under the law of the state where the arbitral award was made;
  - (iii) the party against whom the arbitral award is invoked was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or
  - (iv) the arbitral award deals with a dispute not contemplated by or not falling within the terms of the reference to arbitration, or it contains decisions on matters beyond the scope of the reference to arbitration, provided that if the decisions on matters referred to arbitration can be separated from those not so referred, that part of the arbitral award which contains decisions on matters referred to arbitration may be recognised and enforced; or
  - (v) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties or, failing any agreement by the parties, was not in accordance with the law of the state where the arbitration took place; or

(vi) the arbitral award has not yet become binding on the parties or has been set aside or suspended by a court of the state in which, or under the law of which, that arbitral award was made; or

(b) if the High Court finds that—

(i) the subject matter of the dispute is not capable of settlement by arbitration under the law of Kenya; or

(ii) the recognition or enforcement of the arbitral award would be contrary to the public policy of Kenya.

(2) If an application for the setting aside or suspension of an arbitral award has been made to a court referred to in subsection (1) (a) (vi), the High Court may, if it considers it proper, adjourn its decision and may also, on the application of the party claiming recognition or enforcement of the arbitral award, order the other party to provide appropriate security.

#### PART VIII—MISCELLANEOUS PROVISIONS

**38.** (1) Where it is provided by a term in a contract to which a bankrupt is a party that any differences arising out of or in connection with the contract shall be referred to arbitration, then if the trustee in bankruptcy adopts the contract, that term is enforceable by or against him so far as relates to those differences.

**Bankruptcy.**

(2) Where a person who has been adjudged bankrupt had, before the commencement of the bankruptcy, becomes a party to an arbitration agreement, and any matter to which the agreement applies requires to be determined in connection with or for the purposes of the bankruptcy proceedings, then if the case is one to which subsection (1) does not apply—

(a) any other party to the agreement or, with the consent of the committee of inspection, the trustee in bankruptcy may apply to the court having jurisdiction in the bankruptcy proceedings for an order directing that the matter in question shall be referred to arbitration in accordance with the agreement; and

(b) the court, if it is of the opinion that, having regard to **all the circumstances of the case, the matter ought to be determined by arbitration, may make an order accordingly.**

(3) This section shall apply in domestic arbitration or if the bankrupt person is a Kenyan or if the law of Kenya is applicable according to the rules of conflict of laws.

Questions of law arising in domestic arbitration.

**39.** Where in the case of a domestic arbitration, the parties have agreed that—

(a) an application by any party may be made to a court to determine any question of law arising in the course of the arbitration; or

(b) an appeal by any party may be made to a court on any question of law arising out of the award;

such application or appeal, as the case may be, may be made **to the High Court.**

(2) On an application or appeal being made to it under subsection (1) the High Court may, as appropriate—

(a) determine the question of law arising;

(b) confirm, vary or set aside the arbitral award or remit the matter to the arbitral tribunal for re-consideration **or, where another arbitral tribunal has been appointed, to that arbitral tribunal for consideration.**

(3) **Notwithstanding sections 10 and 35 an appeal shall lie to the Court of Appeal against a decision of the High Court under subsection (2)—**

(a) **if the parties have so agreed that an appeal shall lie; and**

(b) the High Court grants leave to appeal, or failing leave by the High Court, the Court of Appeal grants special leave to appeal; and on such appeal the Court of Appeal may exercise any of the powers which the High Court could have exercised under subsection **(2).**

(4) An application or appeal under this section shall be **made within the time limit and in the manner prescribed by the Rules of Court applicable, as the case may be, in the High Court or the Court of Appeal.**

(5) When an arbitral award has been varied on appeal under this section, the award so varied shall have effect as if it were the award of the arbitral tribunal concerned.

**40.** The Chief Justice may make Rules of Court for— **Rules.**

- (a) the recognition and enforcement of arbitral awards and all proceedings consequent thereon or incidental thereto,
- (b) the filing of applications for setting aside arbitral awards;
- (c) the staying of any suit or proceedings instituted in contravention of an arbitration agreement;
- (d) generally all proceedings in court under this Act.

**41.** This Act shall bind the Government.

**Government to be bound.**

**42.** (1) The Arbitration Act is repealed.

**Repeal of Cap. 49 and saving.**

(2) The repeal of the Arbitration Act shall not affect any arbitral proceedings commenced before the coming into operation of this Act.

(3) For the purposes of this subsection, an arbitral proceedings shall be deemed to have commenced on the date the parties have agreed the proceedings should be commenced or, failing such agreement, on the date of receipt by the respondent of a request for the dispute to be referred to arbitration.