



# ARBITRATION CLAUSES IN COMMERCIAL CONTRACTS IN TANZANIA

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An arbitration agreement clause is a provision in a contract such as a commercial contract that requires the parties to submit to arbitration all or certain disputes which have arisen or which may arise between them in respect of their contract. It is obvious that sometimes disputes do arise between the parties to the commercial contract either on failure to perform, poor performance or any other form of breach, therefore parties can execute an agreement that entitles them to resolve disputes through arbitration rather than going to court.

## **LAWS GOVERNING ARBITRATION**

- The New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 1958.
- The UNCITRAL Model Law on International Commercial Arbitration, 1985.
- The ICSID Convention on the Settlement of Investment Disputes between States, 1966.

In Tanzania, these kinds of agreements are recognized by both domestic and international laws, the arbitration agreement is defined under 3 of The Arbitration Act [CAP 15.R.E.2020] which is the main legislation dealing with arbitration matters in Tanzania.

## **PRINCIPLES GOVERNING ARBITRATION AGREEMENTS**

- **Parties autonomy**

Parties to a contract have the freedom to negotiate and agree on the terms of the contract without interference from the government or other external forces. This principle is considered fundamental to the functioning of a free market economy, as it allows individuals and businesses to enter into agreements that best suit their needs and interests. It also allows for the efficient allocation of resources by allowing market participants to make their own decisions about how to use them.

- **Separability of an arbitration agreement**



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An arbitration agreement is considered a separate and independent agreement from the contract in which it is embedded. This means that if a dispute arises and one party seeks to invalidate the contract, the arbitration agreement remains valid and enforceable. This principle is often included in arbitration agreements to ensure that even if the underlying contract is found to be invalid or unenforceable, the parties are still bound to resolve disputes through arbitration.

- **Competence, competence principle**

This principle is based on the idea that the parties to an arbitration agreement have chosen to have disputes resolved by the arbitral tribunal, and so it is appropriate for the tribunal to have the power to determine its own jurisdiction.

### **ESSENTIAL DETAILS TO BE CONTAINED IN AN ARBITRATION AGREEMENT.**

An arbitration agreement as one of the legal agreements has to contain some essential details which will make it easier for the parties to solve their disputes through arbitration in case of the dispute must contain the following

- The rules and procedures that will govern the arbitration.
- The number and qualifications of arbitrators.
- The location of the arbitration.
- The scope of disputes that will be subject to arbitration.
- The language to be used in the arbitration.
- The process for initiating the arbitration, including any notice requirements.
- The clause should also indicate who will pay for the arbitration and how the arbitration will be conducted.

### **IMPORTANCE OF AN ARBITRATION AGREEMENT CLAUSE IN THE COMMERCIAL CONTRACT.**

1. **Binding:** Once the arbitration clause is agreed upon, the parties are bound to follow the arbitration process to resolve any disputes that may arise.
2. **Speed and efficiency:** Arbitration can often be faster and more efficient than going to court, as the process is less formal and the parties have more control over the proceedings.
3. **Cost-effective:** Arbitration can be less expensive than going to court, as the parties do not have to pay for the costs associated with a trial.
4. **Flexibility:** The parties can also agree on the rules of the arbitration, such as the number of arbitrators, the location of the arbitration, and the language to be used.



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5. Limited appeal: Arbitration awards are typically final and binding, with limited grounds for appeal.