

Tanzania's arbitration landscape is cultivated after 85 years; what does the Arbitration Bill 2020 envisage?

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Over the past few years, the nature rich and resource wealthy continent of Africa has experienced a flurry of new arbitration laws, treaties, organisations and ventures to boost its position in international arbitration. Tanzania's Arbitration Bill 2020 (the "Bill"), which currently awaits Presidential assent, comes in the wake of many such developments and appears to be another promising feather in Africa's arbitration cap.

The announcement of the Bill appears timely with several multinational mining companies in Tanzania filing arbitrations over cancelled retention licenses. The Bill also comes in the midst of a new profit sharing deal between Tanzania and Canadian miner Barrick Gold Corp for the three Barrick owned gold mines in Tanzania. Interestingly, in its agreement with Barrick Gold Corp, Tanzania has agreed to refer disputes to arbitration. This is in stark contrast to Tanzania's position just two years ago when it amended its Public Private Partnership (Amendment) Act disallowing the use of international arbitration in PPP agreements and requiring that judicial or other bodies, established in Tanzania, to adjudicate any mediation or arbitration arising out of PPP agreements.

This article explores some of the key provisions and issues the Bill addresses.

Key developments

The Bill aims to provide a framework for arbitrations seated in Tanzania and seeks to address challenges faced by the country in arbitration.

The Bill defines and distinguishes between domestic commercial arbitration and international commercial arbitration. This distinction may be to clarify the scope and application of the Bill. The Bill also proposes a more vigorous framework of regulating arbitrators.

The most notable and interesting feature is that the Bill creates the Tanzania Arbitration Centre which will act as a case management centre managing arbitrations. The Centre will conduct and manage the arbitration, register and maintain a list of accredited arbitrators, enforce the code of conduct and practice for arbitrators, manage and provide for the continuous education for arbitrators, and perform any other functions as the Minister for Legal Affairs may direct. However, referring disputes to the Tanzania Arbitration Centre is not mandatory and parties can opt to select another institution of their choice in their arbitration agreement.

The Bill also encapsulates principles of party autonomy emphasizing a fair and impartial tribunal and promoting the limited interference from the courts. The Bill requires that where an arbitration agreement exists, court proceedings should be stayed.

The Bill captures the doctrine of *Kompetenz-kompetenz* that is the arbitrator has the authority to rule and decide on its own jurisdiction. Similar to the UK Arbitration Act of 1996, the proposed law allows the tribunal to withhold the award in case of non-payment.

What does Tanzania's Arbitration Bill 2020 envisage?

Under the Bill, on application to the Court, a domestic arbitral award or foreign arbitral award may be recognised as binding and enforceable. The Bill sets out the enforcement of both domestic and international arbitral awards and provides for the prerequisites to enforcement. The law sets out the grounds on which an arbitral award may not be recognised in Tanzania. These grounds are unsurprisingly modelled around Article V of the New York Convention, to which Tanzania became a signatory in 1965. An award may not be enforced where the arbitral procedure is not aligned with the parties' agreement or the agreement is not in accordance with the law of the country where the arbitration took place or where the arbitral award has not yet become binding on the parties. An arbitral award may also be set aside where the award was influenced by fraud, bribery, corruption or undue influence; or where the enforcement of the award would be contrary to the public policy of Mainland Tanzania.

The Bill also proposes to make amendments to other key legislations such as Tanzania's:

- (i) Criminal Procedure Act: to include elements of alternative dispute resolution in criminal matters, and empower the Court to refer a criminal matter for compoundment on consent of parties; and,
- (ii) Civil Procedure Code: to establish, among others, the office of the Registrar of reconciliators, negotiators, mediators and arbitrators within the Ministry responsible for legal affairs.

Closing thoughts

The Bill is currently being reviewed in Parliament and it remains to be seen if it will come into force or whether it will go for further discussion and deliberation. In effect, the Bill appears to be similar in many respects to the English Arbitration Act 1996, for example, it does not distinguish between enforcement of domestic and foreign arbitral awards. Overall, the Bill is a welcome piece of legislation replacing the Tanzania Arbitration Act 1931 which seemed transfixed in a different era. We represent a number of contractors in the region and have acted for parties under the old law. We eagerly anticipate the outcome of the Bill.

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