

GUIDE TO ARBITRATION PLACES (GAP)

**TANZANIA**

CHAPTER PREPARED BY

GEOFFREY DIMOSO OF ALN TANZANIA | A&K TANZANIA,  
WITH AISHA ABDALLAH OF ALN KENYA AND KHURRAM KHAN OF ALN UAE



FOR FURTHER INFORMATION

[GAP TABLE OF CONTENTS](#) | [GAP TRAFFIC LIGHTS FOR ALL JURISDICTIONS](#) | [FULL GAP ONLINE](#)

EN [DELOS MODEL CLAUSES](#)

ES [DELOS CLÁUSULAS MODELO](#)

FR [DELOS CLAUSES TYPES](#)

PT [DELOS CLÁUSULAS MODELO](#)

[SAFESEATS@DELOSDR.ORG](mailto:SAFESEATS@DELOSDR.ORG) | [DELOSDR.ORG](https://DELOSDR.ORG)

JURISDICTION INDICATIVE TRAFFIC LIGHTS

- |  |   |
|--|---|
| 1. Law                                       | ● |
| a. Framework                                 | ● |
| b. Adherence to international treaties       | ● |
| c. Limited court intervention                | ● |
| d. Arbitrator immunity from civil liability  | ● |
| 2. Judiciary                                 | ● |
| 3. Legal expertise                           | ● |
| 4. Rights of representation                  | ● |
| 5. Accessibility and safety                  | ● |
| 6. Ethics                                    | ● |
| Evolution of above compared to previous year | ● |
| 7. Tech friendliness                         | ● |
| 8. Compatibility with the Delos Rules        | ● |

VERSION: 4 JULY 2023 (v01.00)

There have not been any material changes requiring an update to this chapter (including the traffic lights) since the date of the latest version. Nonetheless, please note that this chapter does not constitute legal advice and its authors, the contributing law firm and Delos Dispute Resolution decline any and all responsibility.

## IN-HOUSE AND CORPORATE COUNSEL SUMMARY

The inclusion of arbitration clauses is gaining popularity in Tanzania, particularly in contracts involving in-bound foreign investment. Similarly, domestic commercial parties are starting to understand the advantages of arbitration over litigation. The likely result will be that when selecting a dispute mechanism in contracts, parties will increasingly adopt arbitration clauses over domestic litigation provisions.

On 14 February 2020, the Tanzania Parliament repealed the former Arbitration Act [Cap 15 R.E 2019], replacing it with the new Arbitration Act, No.2 of 2020. A further revision followed on 01 January 2021 with minor changes reflected in the arrangement of sections. This document, which is labelled Tanzania Arbitration Act [Cap 15 R.E 2020] (**TAA**),<sup>1</sup> is accompanied by the following new regulations: (i) Arbitration (Rules of Procedure) Regulations, 2021 (**Procedural Regulation**); (ii) the Tanzania Arbitration Centre (Management and Operations) Regulations, 2021; (iii) the Code of Conduct for Reconciliators, Negotiators, Mediators and Arbitrators, Regulations 2021; and (iv) the Reconciliation, Negotiation, Mediation and Arbitration (Practitioners Accreditation) Regulations, 2021 (collectively, the **Implementing Regulations**). The TAA and the Regulations came into force on 18 January 2021 and 29 January 2021, respectively (collectively referred to as the **Tanzania Arbitration Laws**).

A strength of the Tanzania Arbitration Laws is that they lend clarity to concepts that frequently plague national arbitration acts, such as domestic arbitration and arbitral seat. Also, the scope of the TAA is limited to mainland Tanzania, save for under provisions relating to stay of proceedings and enforcement of an awards. Additionally, around the time of the TAA enactment, the legislature further introduced amendments to laws that have a bearing on the arbitration regime. These amendments include the Criminal Procedure Act, the Civil Procedure Code, the Natural Wealth and Resources (Permanent Sovereignty) Act, the Private Public Partnership Act.

Key places of arbitration in the jurisdiction?	Dar es Salaam.
Civil law/common law environment? (if mixed or other, specify)	The legal system of Tanzania is largely modelled on the English Common Law, though the primary source of law is the Constitution of 1977 as amended from time to time. Other sources of law include case laws, Customary and Islamic Law, which pertain to narrow fields such inheritance, marriage, succession, and land.
Confidentiality of arbitrations?	Yes, the TAA provides that arbitral hearings are confidential, and all arbitration agreements shall be deemed to provide that the parties and the arbitral tribunal shall not disclose confidential information. Nonetheless, a party or an arbitral tribunal may disclose confidential information if such disclosure is required by law or if it is disclosed in accordance with certain conditions set by the Tanzania Arbitration Law. An arbitral tribunal may also allow disclosure of confidential information if certain conditions are satisfied (see Section 39 and 40 of the TAA).
Requirement to retain (local) counsel?	There are no requirements to retain local counsel. Section 43 of the TAA provides that a party is free to retain an advocate or other person.

<sup>1</sup> Available at: <https://mmuu.sheria.go.tz/storage/534b6bed051a69b086d26a9faf67ea53.pdf>

Ability to present party employee witness testimony?	Section 38 of the TAA allows the tribunal to determine the scope of witness testimony. There is no prohibition on party employee witness testimony.
Ability to hold meetings and/or hearings outside of the seat and/or remotely?	This is generally permitted unless parties agree otherwise. (Section 38(2)(a) of the TAA).
Availability of interest as a remedy?	Yes, the tribunal has the power to award interest. (Section 56 of the TAA).
Ability to claim for reasonable costs incurred for the arbitration?	Yes, Part VIII of the TAA details the bases for claiming costs incurred for the arbitration.
Restrictions regarding contingency fee arrangements and/or third-party funding?	Contingency fee arrangements are not permitted. However, third party funding is not prohibited by law in Tanzania. A party to litigation proceedings is not bound from entering in private arrangements with third parties for funding of its litigation costs so long as the same is not done by the person appearing as its legal representative in the litigation to avoid conflicting interests.
Party to the New York Convention?	International treaties ratified by Tanzania become binding only after they have been passed by an act of Parliament. Tanzania ratified the New York Convention on 12 January 1965. However, the New York Convention has never been incorporated into domestic law, which means that it is considered not directly binding. As a result, enforcing foreign arbitral awards requires a successful application to the High Court of Tanzania. (See Part XI of the TAA).
Party to the ICSID Convention?	Tanzania signed ICSID Convention on 10 January, 1992. The Convention entered into force in Tanzania on 17 June 1992.
Compatibility with the Delos Rules?	We have not identified any provision in the Delos Rules that would in principle conflict with the Tanzania Arbitration Law and the Regulations.
Default time-limitation period for civil actions (including contractual)?	The limitation periods are governed in Tanzania by the Limitation Act, CAP 89 R.E. 2019 ( <b>Limitation Act</b> ). Limitation periods vary depending on the type of claim. For example, for claims arising in breach of contract or trust, the statute of limitation is six years. Claims arising out of tort actions are time-barred after three years.
Other key points to note?	Foreign arbitration in respect of natural wealth and resources is prohibited. (See section 11 of the Natural Wealth and Resources (Permanent Sovereignty) Act 2017 which restricts adjudication by a foreign court or tribunal siting outside Tanzania.).  The Natural Wealth and Resources (Permanent Sovereignty) Act 2017 was amended by Section 100 of the TAA which removed the requirement for arbitration to be conducted by bodies or organs “established” in Tanzania. The section stipulates that the adjudication of natural wealth and resources disputes are limited to bodies or other organs in Tanzania and in accordance with the

	laws of Tanzania. The implication is that the law permits the use of foreign arbitral bodies (e.g., the LCIA) only if the seat of arbitration is in Tanzania and arbitral proceedings governed by Tanzania laws.
<a href="#">World Bank, Enforcing Contracts: Doing Business</a> score for 2020?	In 2020, the country ranked 141 out of 190 countries with a score of 54.5.
<a href="#">World Justice Project, Rule of Law Index: Civil Justice</a> score for 2022?	In 2022, the country ranked 89 out of 140 countries with a score of 0.48.

## ARBITRATION PRACTITIONER SUMMARY

In light of the reforms across Tanzania over the past year, arbitration users in Tanzania are starting to gain confidence in the nation's arbitration regime.

The key arbitration institutions are the: (i) Tanzania Arbitration Centre; (ii) Tanzania Institute of Arbitrators; and (iii) National Construction Council.

The legislative framework of the Tanzania arbitration regime, the TAA and its subsidiary, Implementing Regulation, are based largely on the Arbitration Act 1996 (the **English Arbitration Act**).

Date of arbitration law?	The TAA became effective on 18 January 2021 and the Regulations on the 29 January 2021.
UNCITRAL Model Law? If so, any key changes thereto? 2006 version?	The Tanzania Arbitration Law is closer in principle to the English Arbitration Act rather than the UNCITRAL Model Law on International Commercial Arbitration ( <b>UNCITRAL Model Law</b> ).  The TAA, for instance, provides for broader powers of judicial intervention than provided for in the UNCITRAL Model Law. These powers are more extensive than the grounds set out in Article 34 of the Model Law.
Availability of specialised courts or judges at the key seat(s) in the jurisdiction for handling arbitration-related matters?	The TAA assigns various tiers of national courts for issues related to domestic arbitrations. The High Court is the competent court for matters involving international arbitration (Section 6 of the TAA).
Availability of <i>ex parte</i> pre-arbitration interim measures?	Pre-arbitration interim measures are available under section 51(3) of the TAA in respect of urgent matters.
Courts' attitude towards the competence-competence principle?	The principle of competence-competence is clearly stated in section 34(1) of the TAA and is respected by the Tanzanian courts so that any jurisdictional challenge should, in the first instance, be determined by the tribunal insofar as those questions relate to: (i) whether there is a valid arbitration agreement; (ii) whether the arbitral tribunal is properly constituted; and (iii) what matters shall be submitted to arbitration in accordance with the arbitration agreement.  A court, on the other hand, may not on its own motion consider the arbitration tribunals' jurisdiction. However, in limited circumstances (such as where an application is made by party-agreement or by permission of the tribunal under Section 36 of the TAA), Tanzanian courts may give a preliminary ruling on the arbitral tribunal's jurisdiction. At the enforcement stage, a tribunal's decision on its own jurisdiction may be subsequently challenged by a party before the courts. (See section 74 of the TAA).
May an arbitral tribunal render a ruling on jurisdiction (or other issues) with reasons to follow in a subsequent award?	Yes, subject to party agreement to contrary. (Section 35(4) of the TAA).

<p>Grounds for annulment of awards additional to those based on the criteria for the recognition and enforcement of awards under the New York Convention?</p>	<p>Yes, the grounds provided in sections 74 and 75 of the TAA are broader than Article V grounds of the NY Convention.</p> <p>For instance, the TAA allows the courts to annul an award where it has been successfully challenged on a “question of law” (section 76), or “serious irregularity” such as:</p> <ul style="list-style-type: none"> <li>• Failure by the tribunal to comply with its general (due process) duties (section 75(2)(a));</li> <li>• The tribunal “exceeded its powers” (section 75(2)(b));</li> <li>• The tribunal’s failure to adhere to the procedure agreed by the parties (section 75(2)(c));</li> <li>• The Tribunal’s failure to deal with all issues raised before it (section 75(2)(d); and</li> <li>• Uncertainty or ambiguity as to the effect of the award (section 75(2)(f).</li> </ul>
<p>Do annulment proceedings typically suspend enforcement proceedings?</p>	<p>The Tanzanian courts do have the power to adjourn an enforcement action where there is an ongoing annulment proceeding at the seat (section 83(3) of the Act) but this is not automatic. As a condition for adjournment, the court may impose an order for security on the party seeking adjournment.</p>
<p>Courts’ attitude towards the recognition and enforcement of foreign awards annulled at the seat of the arbitration?</p>	<p>The Court shall not recognise and enforce foreign awards which have been annulled at the seat of the arbitration. Section 83(2) of the TAA provides that the court shall refuse the recognition and enforcement of an award on the request of the party against whom the award is invoked satisfies the court conditions that the award has not yet become binding on the parties or has been set aside or suspended by the court or law of which the award was made.</p>
<p>If an arbitral tribunal were to order a hearing to be conducted remotely (in whole or in part) despite a party’s objection, would such an order affect the recognition or enforceability of an ensuing award in the jurisdiction?</p>	<p>No. In accordance with section 38 of the TAA, a tribunal has the power to decide on all procedural and evidential matters and this includes a decision on when and where any part of the proceedings is to be held.</p>

<p>Key points to note in relation to arbitration with and enforcement of awards against public bodies at the jurisdiction?</p>	<p>Although the Government of Tanzania and/or public bodies have been subjected to arbitration proceedings, there is limited information available at <a href="#">TanzLII</a><sup>2</sup> on the recognition and enforcement of such awards in Tanzania.</p> <p>The enforcement of arbitral awards against public bodies in Tanzania has faced numerous challenges especially procedural technicalities relating to recognition and enforcement. For instance, the involvement of the national treasury before any award can be recognised or enforced against the government which often faces delay due to limited budgets. In 2014, the High Court of Tanzania issued an injunction which ordered Standard Chartered Bank (Hong Kong) Limited to refrain from enforcing the award issued by ICSID.<sup>3</sup></p>
<p>Is the validity of blockchain-based evidence recognised?</p>	<p>Generally, the tribunal has the power to decide the manner and form in which evidence may be exchanged or presented under the Tanzania Arbitration Law [section 38(2)(f)]. Therefore, it could be inferred that a tribunal may admit blockchain-based evidence in its discretion. However, there is no decision within the public domain on this.</p>
<p>Where an arbitration agreement and/or award is recorded on a blockchain, is it recognised as valid?</p>	<p>Section 10(1) the TAA requires an arbitration agreement to be in writing and section 10(3) and (4) describe the writing requirement. Generally, Section 10(1) of the TAA requires an arbitration agreement recorded on a block chain will be recognised as a valid agreement is not yet known. However, based on the broader approach, an agreement may be regarded as being in writing if the same is recorded in any medium and accessible for subsequent reference.</p> <p>Section 59 of the TAA also gives the power to the parties in arbitration to determine the form of an award. Therefore, an award recorded on blockchain based on parties' consent may be recognised as a valid award in Tanzania. Additionally, Section 21 of the ETA recognises the use and validity of electronic agreements which covers for all contracts made and stored in an electronic form.</p> <p>Although from the above an arbitration agreement or award recorded on blockchain might be recognised as valid, blockchain technology is relatively new in Tanzania and so this point has not yet been tested.</p>

<sup>2</sup> An online platform where all judgements and rulings issued by the High Court or Court of Appeal are made accessible to the public.

<sup>3</sup> *Standard Chartered Bank (Hong Kong) Limited v. Tanzania Electric Supply Company Limited*, ICSID Case No. ARB/10/20.

<p>Would a court consider a blockchain arbitration agreement and/or award as originals for the purposes of recognition and enforcement?</p>	<p>The use of blockchain technology in Tanzania is still quite new and its applicability in arbitration proceedings has not been tested in our courts. Tanzania recognises the use of electronic transactions and storage of data by electronic from as brought by the ETA. It is therefore possible for the court to consider a blockchain arbitration agreement and/or award as original for the purpose of recognition and enforcement.</p>
<p>Other key points to note?</p>	<p>The Court, on the application by a party to the arbitral proceedings, has powers to determine any questions of law which arise in the arbitration proceedings, and which has substantial effects to the rights of the parties in arbitration. The court will only make the determination on the point of law if:</p> <ol style="list-style-type: none"> <li>a. The parties have not dispensed the Courts jurisdiction by agreement (see Section 52(2) of TAA);</li> <li>b. The application is made with the agreement of all parties to the arbitration; and</li> <li>c. It has been made with the permission of the arbitral tribunal.</li> </ol>



## JURISDICTION DETAILED ANALYSIS

### 1. The legal framework of the jurisdiction

#### 1.1 Is the arbitration law based on the UNCITRAL Model law? 1985 or 2006 version?

Tanzania's Arbitration Act (**TAA**) is closer in form and substance to the English Arbitration Act of 1996 than any version of the UNCITRAL Model Law on International Commercial Arbitration (the **UNCITRAL Model Law**).

#### 1.2 When was the arbitration law last revised?

The TAA, which came into force in January 2021, is the most recent iteration of the arbitration law.

### 2. The arbitration agreement

#### 2.1 How do the courts in the jurisdiction determine the law governing the arbitration agreement?

Section 41 of Procedural Regulations provides that the law of the underlying commercial agreement shall govern the substance of the dispute. In the absence of party-agreement on the governing law, the tribunal has the power to apply the law it deems appropriate.

The courts in Tanzania, when determining the applicable law between the parties, will similarly adopt the law specified to govern the underlying commercial agreement. In the absence of party-agreement, the Courts shall adopt the laws of Tanzania.

#### 2.2 In the absence of an express designation of a 'seat' in the arbitration agreement, how do the courts deal with references therein to a 'venue' or 'place' of arbitration?

Section 30 of the Procedural Regulations provides that absent party-agreement the Tanzania Arbitration Centre shall decide the seat by accounting for party observations and circumstances of the case.

#### 2.3 Is the arbitration agreement considered to be independent from the rest of the contract in which it is set forth?

Section 12 of the TAA recognizes the concept of separability of arbitration agreements. It provides that, unless the parties agree otherwise, an arbitration agreement that forms or was intended to form part of another agreement, whether written or oral, shall not be deemed invalid, non-existent, or ineffective solely because the underlying agreement is deemed invalid.

#### 2.4 What are formal requirements (if any) for an enforceable arbitration agreement?

Section 10 of the TAA provides that all arbitration agreements must be in writing.

An agreement in writing exists when:

- a. the agreement is in writing whether or not it is signed by the parties;
- b. the agreement is made through the exchange of written communications; or
- c. the agreement is evidenced in writing.

Relevant Considerations of Section 10 of the TAA include:

- When parties agree, other than in writing, by referring to written terms, they are considered to have made a written agreement. Section 10(4) of the TAA.

- An agreement is evidenced in writing when it is recorded by one of the parties, or by a third party, with the authority of the parties to the agreement. Section 10(5) of the TAA [See also TAA sections 10(5) and 10(6)].

**2.5 To what extent, if at all, can a third party to the contract containing the arbitration agreement be bound by said arbitration agreement?**

A third party to the contract shall not be bound by the arbitration agreement. There is no legislation in Tanzania that specifically addresses such third-party rights.

**2.6 Are there restrictions to arbitrability? In the affirmative:**

Section 3 of the TAA defines an arbitration agreement as an agreement between parties to submit all or specific disputes that have arisen or may arise between them in connection with a defined legal relationship, whether contractual or not, to arbitration.

**2.6.1 Do these restrictions relate to specific domains (such as anti-trust, employment law etc.)?**

Generally, disputes in Tanzania may be subject to arbitral proceedings under the Arbitration Act (in other words, most disputes are arbitrable). However, under Section 167 of the Land Act (CAP 113 R.E. 2019), all disputes concerning land matters are vested in the exclusive jurisdiction of specific land tribunals together with the High Court and Court of Appeal. Criminal matters too are not arbitrable in Tanzania.

**2.6.2 Do these restrictions relate to specific persons (i.e., State entities, consumers etc.)?**

There are no restrictions prohibiting specific persons from being involved in an arbitration.

**3. Intervention of domestic courts**

**3.1 Will the courts stay litigation if there is a valid arbitration agreement covering the dispute?**

**3.1.1 If the place of the arbitration is outside of the jurisdiction?**

Section 5(c) of the TAA's general principles calls for a non-interventionist approach and states that the court shall not intervene except as provided by the TAA.

Section 15 of the TAA grants the authority to stay litigation based on conditions that include:

- An application to stay may be made after all other dispute resolution procedures have been exhausted. (TAA, section 15(2))
- A stay application is not allowed unless procedural steps to acknowledge the legal proceedings and answer the substantive claim have been taken. (TAA, section 15(3))

In accordance with the provisions of section 7 of the TAA regarding the scope of application, Section 15 applies regardless of whether the seat of arbitration is outside Tanzania, or if no seat has been designated or determined. As a practical matter, however, Tanzania courts are not able to stay foreign-seated arbitrations.

**3.2 How do courts treat injunctions by arbitrators enjoining parties to refrain from initiating, halt or withdraw litigation proceedings?**

Generally, under Section 15 of the TAA, the Courts are directed to stay any legal proceedings that are referred to arbitration. There is however no reliable information available on the courts' treatment of anti-suit injunctions issued by arbitrators.

**3.3 On what ground(s) can the courts intervene in arbitrations seated outside of the jurisdiction? (Relates to anti-suit injunctions/anti-arbitration injunctions or orders, but not only)**

The courts may intervene in limited circumstances, such matters involving land in Tanzania or matters of a criminal nature that the state organs have the power to prosecute.

Additionally, the courts may intervene where a foreign seat is prohibited. These areas include disputes that relate to the extraction, exploitation or acquisition and use of natural wealth and resources in Tanzania and disputes arising from public private partnership arrangement. (See section 11 of the Natural Wealth and Resources (Permanent Sovereignty) Act 2017 which restricts adjudication by a foreign court or tribunal siting outside Tanzania.)

**4. The conduct of the proceedings**

**4.1 Can parties retain foreign counsel or be self-represented?**

Yes. Section 43 of the TAA states that a party to the arbitral proceeding may be represented by an advocate or other representative.

**4.2 How strictly do courts control arbitrators' independence and impartiality? For example, does an arbitrator's failure to disclose suffice for the court to accept a challenge or do courts require that the undisclosed circumstances be of gravity such as to justify this outcome?**

Section 37 of the TAA provides the relevant standards, including that the arbitral tribunal shall act fairly and impartially between the parties and adopt procedures that are appropriate to the circumstances of the case. Where the circumstances give rise to justifiable doubts as to an arbitrator's impartiality and also have caused or will cause "substantial injustice" to a party, a party can apply to the court for the arbitrator to be removed under section 28(1) of the TAA.

We are not aware of how strictly courts have dealt with such issues recently.

**4.3 On what grounds do courts intervene to assist in the constitution of the arbitral tribunal (in case of *ad hoc* arbitration)?**

The court does not have the powers to assist in the constitution of the arbitral tribunal. If the arbitration agreement is governed by the TAA, the constitution of the arbitral tribunal in the absence of the how the tribunal will be constituted shall follow the provisions of section 22(1) of the TAA where parties may agree on the modality of the appointment of the Arbitrator.

If the parties are at an impasse, the Tanzania Arbitration Center shall on application of a party to the arbitration agreement and on notice to the other party, give directions as to the making of the necessary appointment; or direct that the arbitral tribunal be constituted by appointment by any one of the parties; or may make such necessary appointments to constitute the arbitration tribunal.

**4.4 Do courts have the power to issue interim measures in connection with arbitrations? If so, are they willing to consider *ex parte* requests?**

Yes. Section 51 of the TAA vests courts with broad authority to grant interim orders in support of arbitral procedures. However, the parties may agree to preclude the courts from exercising these powers. In all circumstances, courts may intervene only if the arbitral tribunal or institution lacks the power or is unable to act effectively Section 51(3) allows, in urgent matters, for a party to seek interim measures without notice to the other party.

#### **4.5 Other than arbitrators' duty to be independent and impartial, does the law regulate the conduct of the arbitration?**

##### **4.5.1 Does it provide for the confidentiality of arbitration proceedings?**

Section 39 of the TAA provides for the confidentiality of arbitration proceedings. There are however carve-outs in section 40 in respect of disclosures required by law or for court proceedings.

##### **4.5.2 Does it regulate the length of arbitration proceedings?**

The TAA does not regulate the length of arbitration hearings, however, under section 36(1), the tribunal has broad powers on this point.

##### **4.5.3 Does it regulate the place where hearings and/or meetings may be held, and can hearings and/or meetings be held remotely, even if a party objects?**

The TAA does not regulate where the hearings and/or meetings may be held. Section 38(2) (a) and (h) of the TAA together with Regulation 30(2) of the Regulation on Rules of Procedure allow for remote hearings. The Arbitral tribunal shall have the power to determine the place where the hearings are to take place which on its opinion considers to be appropriate after consultation with the parties. The TAA under Section 8 and 38 recognises the distinction between the legal seat and the place of the hearing.

##### **4.5.4 Does it allow for arbitrators to issue interim measures? In the affirmative, under what conditions?**

Yes, under sections 45 and 55(3) of the TAA, the tribunal has broader powers to issue interim measures. Express conditions are not stipulated save for anything precluded by party agreement.

##### **4.5.5 Does it regulate the arbitrators' right to admit/exclude evidence? For example, are there any restrictions to the presentation of testimony by a party employee?**

Unless the parties agree differently, arbitral tribunals have broad discretion to consider "*all procedural and evidential matters*" under section 38(1) of the TAA. These matters include, but are not limited to, the format of submissions, whether the tribunal should take the initiative in establishing the facts and law, the language or location of hearings, whether documents should be disclosed in the arbitration, the rules of evidence to be applied, and whether (and to what extent) oral or written evidence or submissions should be permitted. Additionally, the Tribunal may determine whether this evidence is to be taken under oath or affirmation and may administer the required oath or affirmation (section 45(2) (c)). There are no per se restrictions on party employee testimony.

##### **4.5.6 Does it make it mandatory to hold a hearing?**

No. Pursuant to section 38(2)(h) of the TAA, the tribunal has the power to determine "*whether and to what extent oral or written evidence or submissions should be permitted,*" including whether or not a hearing should be held. Where a party requests for a hearing the arbitral tribunal has the power to issue directions as it sees fit.

In the case where the parties expressly request a hearing, the arbitral tribunal shall have the powers to determine and provide directions on the mode under which the hearing will take place.

##### **4.5.7 Does it prescribe principles governing the awarding of interest?**

Section 56 of the TAA gives the arbitral tribunal broad discretion to decide the basis for the award of interest unless the parties agree otherwise. The tribunal may award simple or compound interest for such periods and at such rates "as it considers appropriate to the circumstances of the case." This authority includes the ability to charge interest on any costs awarded.

#### **4.5.8 Does it prescribe principles governing the allocation of arbitration costs?**

The TAA's default stance on cost allocation is that costs follow the event (i.e., the losing party pays the winning party's fees), except in cases where such allocation would be improper for all or a portion of the costs (section 68(2)).

The TAA permits the parties to agree on cost allocation before to the conclusion of the arbitration, but only if the parties entered into such an agreement after the relevant dispute occurred (section 67).

### **4.6 Liability**

#### **4.6.1 Do arbitrators benefit from immunity to civil liability?**

Yes. Arbitrators are not liable for any act or omission in the discharge of their functions under section 33 of the TAA, save when their act or omission can be demonstrated to be in bad faith or involving professional negligence. In contrast to other Act provisions, parties cannot deprive the arbitrator of this protection. This protection extends to any employee or agent of an arbitrator (section 33(2)).

#### **4.6.2 Are there any concerns arising from potential criminal liability for any of the participants in an arbitration proceeding?**

No, the TAA is silent on the exclusion from liability of any parties or participants in the arbitration proceedings.

### **5. The award**

#### **5.1 Can parties waive the requirement for an award to provide reasons?**

Yes. The TAA's section 59(2) (b) allows the parties to dispense with the reasons for an award.

#### **5.2 What atypical mandatory requirements apply to the rendering of a valid award at a seat in the jurisdiction?**

Under Section 60 of the TAA, an award shall be treated as made in Tanzania if the seat of arbitration is mainland Tanzania and regardless of where the award was signed. Parties to the arbitration may agree on the form of the award to be rendered and in the absence of such agreement, the award shall only be valid if: It is in writing and signed by all arbitrators or those assenting to the award; contains the reasons for the award and state the seat of the arbitration and date when it is made.

#### **5.3 Is it possible to appeal an award (as opposed to seeking its annulment)? If yes, what are the grounds for appeal?**

Yes, technically, the wording of the TAA provides for the challenging of the award on substantive jurisdiction or on serious irregularities to domestic awards which takes form and shape of an appeal. Section 74 of TAA allows parties to challenge an award based on lack of substantial jurisdiction and Section 75 allows a challenge due to a "serious irregularity".

#### **5.4 What procedures exist for the recognition and enforcement of awards, what time-limits apply and is there a distinction to be made between local and foreign awards?**

The default rule is that a domestic arbitral award or a foreign arbitral award shall be recognized as binding and enforceable upon application to the court. (Section 83 of the TAA).

However, a resisting party can move to refuse recognition on grounds provided in section 83(2) of the TAA. These grounds are similar to those of Article V of the NY Convention (e.g., the parties lacked capacity to enter into the arbitration agreement and the arbitration agreement is not valid under the law of the state where the award was made.)

Under the Limitation Act, the limitation period to make an application to the court to enforce an award and to bring an action on the award is 6 years. Claims for which the law does not provide a specific limitation period are time-barred after six years. The limitation period starts running once the cause of action has arisen. [Section 4 of the Limitation Act]

### **5.5 Does the introduction of annulment or appeal proceedings automatically suspend the exercise of the right to enforce an award?**

If a court referred to in section 83(2)(a)(vi) of the TAA receives an application for the setting aside or suspension of an arbitral award, the court may, if it deems it appropriate, adjourn its decision and, on the application of the party claiming recognition or enforcement of the arbitral award, order the other party to provide appropriate security. (TAA Section 83(3))

When a party challenges an award under section 74 due to a lack of jurisdiction, the TAA expressly permits the arbitral tribunal to proceed with the arbitral process (section 74(2)). This provision is especially useful in bifurcated proceedings: if the tribunal's jurisdictional finding is issued as a partial or separate award, proceedings can continue pending a party's challenge to the tribunal's jurisdictional award.

### **5.6 When a foreign award has been annulled at its seat, does such annulment preclude the award from being enforced in the jurisdiction?**

Yes, the Court shall not recognise and enforce foreign awards which have been annulled at the seat of the arbitration. Section 83(2) of the TAA provides that the court shall refuse the recognition and enforcement of an award on the request of the party against whom the award is invoked satisfies the court conditions that the award has not yet become binding on the parties or has been set aside or suspended by the court or law of which the award was made.

### **5.7 Are foreign awards readily enforceable in practice?**

Foreign awards are not readily enforceable in that the enforcement of foreign awards must be done through an application to the High Court of Tanzania being the court of original jurisdiction to register foreign awards. Once registered by the high court, the foreign award shall be treated as binding before the parties and capable of being enforced against the party to whom it was made.

## **6. Funding arrangements**

### **6.1 Are there restrictions to the use of contingency or alternative fee arrangements or third-party funding at the jurisdiction? If so, what is the practical and/or legal impact of such restrictions?**

#### **6.1.1 Contingency fee arrangements.**

Contingency fee arrangements are not permitted in Tanzania, pursuant to Rule 81 of the Advocates (Professional Conduct and Etiquette) Regulations, 2018. However, third party funding is not prohibited by law in Tanzania. A party to litigation proceedings is not prohibited from entering in private arrangements with third parties for funding of its litigation costs so long as the same is not done by the person appearing as its legal representative in the litigation to avoid conflicting interests.

## **7. Arbitration and technology**

### **7.1 Is the validity of blockchain-based evidence recognised?**

As of now, there is scant evidence of the use of blockchain-based evidence in arbitral proceedings. However, there is a possibility that it will be recognized under the TAA, given the arbitral tribunal's extremely broad power regarding the admissibility of evidence. The tribunal has the power to decide the manner and form in which evidence may be exchanged or presented (section 38(2)(f)), considering its obligation under section 37(1) of the Act to adopt procedures that are appropriate to the circumstances of the individual case. Due to

the fact that blockchain technology is still in its infancy, much may depend on the parties' consent and the form of the contract that is the topic of the arbitration (e.g., whether a smart contract).

Further, the Electronic Transactions Act, (Act No. 13 of 2015) (the **ETA**) was enacted to provide for the legal recognition of electronic transactions and to provide for the admissibility of electronic evidence in Tanzania judiciary system. Under section 9 of the ETA, the law recognises records that are kept in electronic form provided that the information contained in electronic form is kept in a format in which it was generated, sent, or received and kept in a form that enables the identification of the origin and destination of the electronic record or communication, date and time when it was first generated, sent, received or retained. The ETA provides for the admissibility of electronic data messages and electronic contracts subject to the satisfaction of the conditions provided under Section 18 (2) of the ETA.

### **7.2 Where an arbitration agreement and/or award is recorded on a blockchain, is it recognised as valid?**

An arbitration agreement must be in writing or evidenced in writing (sections 10(1) and (2) of the TAA). "In writing" is broadly defined and includes, for example, an oral agreement to submit to arbitration based on "terms that are in writing" (section 10(3)). Additionally, Section 21 of the ETA recognises the use and validity of electronic agreements. An arbitration agreement recorded on a blockchain would be one recorded by "electronic means" and could qualify as "recorded by any means."

In terms of awards, the situation may be less clear and may be contingent on the parties' agreement. Parties are free to agree on the form of an award under the Act (section 59(1)), which may include agreeing to the award being recorded on a blockchain. In the absence of an agreement, however, the Act requires that the award be in writing and signed by all arbitrators or those who assent to the award (section 59). (2). Because blockchain technology is entirely electronic and only allows for digital signatures, it is unclear whether an award stored on a blockchain would satisfy the Act's requirements for both writing and signature. It could be argued (as explained in section 7.4 below) that the Act's requirements would be met because blockchain technology allows for digital signatures.

### **7.3 Would a court consider a blockchain arbitration agreement and/or award as originals for the purposes of recognition and enforcement?**

The use of blockchain technology in Tanzania is still quite new and its applicability in arbitration proceedings has not been tested in our courts. Tanzania recognises the use of electronic transactions and storage of data by electronic from as brought by the ETA. It therefore is plausible that the courts would consider blockchain arbitration agreement and/or award as original for the purpose of recognition and enforcement.

### **7.4 Would a court consider an award that has been electronically signed (by inserting the image of a signature) or more securely digitally signed (by using encrypted electronic keys authenticated by a third-party certificate) as an original for the purposes of recognition and enforcement?**

Section 92 of the TAA recognizes electronic signatures and provides that the provisions governing the legal effect, validity, and enforceability of electronic records or electronic signatures, and of contracts performed with the use of such records or signatures, made by the Evidence Act or by practice direction of the Chief Justice, or by other applicable laws, shall apply to proceedings brought under this Act.

Further the ETA provides for sections that facilitate the use of secure electronic signatures. Section 6 (1) of the ETA provides that where a law requires a signature of a person to be entered, then the requirements shall be met by the use of a secure electronic signature made under the act.

**8. Is there likely to be any significant reform of the arbitration law in the near future?**

There is no reliable information in the public domain on any intentions of the government or the parliament to have the arbitration laws reformed. Given that the TAA together with its regulations are fairly recent, it is unlikely that any reforms may be brought in the near future.

**9. Compatibility of the Delos Rules with local arbitration law**

The main area of non-compatibility relates to the avenue of appeal for domestic awards.

**10. Further Reading**

φ



## ARBITRATION INFRASTRUCTURE AT THE JURISDICTION

<p>Leading national, regional and international arbitral institutions based out of the jurisdiction, <i>i.e.</i> with offices and a case team?</p>	<ol style="list-style-type: none"> <li>1. The National Construction Council (NCC) is the first arbitration institution in Tanzania established by under Parliamentary Act No. 20 of 1979 (currently referred to as the National Construction Council Act, CAP 162, RE. 2008) and came into operation in 1981. NCC is established within the Ministry of Works and Transport to deal with arbitration of construction disputes amongst other things. Location: 9th Floor, Samora Tower Building, Mansfield Street. Key Person: Dr. Matiko Samson Mturi (Chief Executive Officer)</li> <li>2. The Tanzania Institute of Arbitrators, (TIArb) is a private arbitration Institution registered in December 1999 with the Registrar of Societies. Currently the TIArb has approximately 41 active arbitrators dealing with arbitration of all commercial disputes. Location: NEDCO Building, Dar es Salaam, Tanzania Key Person: Madeline C. Kimei (President)</li> <li>3. The Tanzania Arbitration Center (TAC) has been established by the TAA when it came in force in January 2021. Although provided for in the TAA, the TAC is yet to be physically established and commence its operations.</li> <li>4. Tanganyika Law Society is the bar association of Tanzania mainland for all advocates admitted in the roll of advocates. It was established by the Tanganyika Law Society Ordinance 1954. The society maintains the roll of advocates and in conjunction with the Judiciary, provide for practicing certificates to active advocates who shall have the power to represent clients in any disputes. Location: Plot No. 391 Chato Street Regent Estate Key Person: Dr. Edward Hoseah (elections are held annually)</li> </ol>
<p>Main arbitration hearing facilities for in-person hearings?</p>	<p>Parties are at liberty to choose the hearing facilities for in-person hearings with the exception of the National Construction Council who conduct the in-person hearings at their offices.</p>
<p>Main reprographics facilities in reasonable proximity to the above main arbitration providers with offices in the jurisdiction?</p>	<p>All the arbitration institutions are located in the city centre and with a number of reprographics facilities within the vicinity.</p>
<p>Leading local providers of court reporting services, and regional or international providers with offices in the jurisdiction?</p>	<p>There is no established court reporting system in Tanzania and as a result such services do not exist.</p> <p>Practically, Judges and Magistrates are responsible in the recording of the proceedings in a case by way of pen to paper. There are quite a limited number of electronic recording systems with currently only the High Court of Tanzania (Commercial Division), and the (Corruption and Economic Crimes Division) having installed digital</p>

	<p>audio and video recording devices used for recording the proceedings and the same reduced to an extracted manuscript at a later stage.</p>
<p>Leading local interpreters for simultaneous interpretation between English and the local language, if it is not English?</p>	<p>Baraza la Kiswahili Tanzania (BAKITA) is an established government agency within the Ministry of Information, Culture and Sports specialised in translation, interpretation and editing of texts. BAKITA only serves clients within Tanzania and is specialised in various languages including Swahili (native language), French, English, Italian, Chinese, Japanese, Arabic, German, Spanish, Indian, Dutch etc.</p> <p>Corporate Solution limited is a private company in Tanzania specialised in interpretation system, conference interpreters and translation of texts. The company offers its services in Tanzania and within East Africa and is specialised in Swahili, French, English, Portuguese, Arabic and Spanish languages.</p> <p>Pinnacle Interpretation Services is a private company in Tanzania specialised in interpretation system, conference interpreters and translation of texts. The company offers its services in Tanzania and within East Africa and is specialised in Swahili, French, English, Arabic and Spanish languages.</p>
<p>Other leading arbitral bodies with offices in the jurisdiction?</p>	<p>Apart from the above-mentioned arbitral bodies, there are no offices established in Tanzania by any regional or international arbitral bodies.</p>