

GOVERNMENT OF ZAMBIA

STATUTORY INSTRUMENT NO. 12 OF 2007

The Arbitration Act
(Act No. 19 of 2000)**The Arbitration (Code of Conduct and Standards)
Regulations, 2007**

IN EXERCISE of the powers contained in section *twenty-nine* of the Arbitration Act, 2000, and with the concurrence of the Chief Justice, the following Regulations are hereby made:

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| 1. These Regulations may be cited as the Arbitration (Code of Conduct and Standards) Regulations, 2007. | Title |
| 2. In these Regulations, unless the context otherwise requires— | Interpretation |
| <ul style="list-style-type: none"> “ Act ” means the Arbitration Act, 2000; “ arbitration ” has the meaning assigned to it by the Act; and “ arbitrator ” means a neutral third party who is— <ul style="list-style-type: none"> (a) appointed by the parties to an arbitration agreement; (b) appointed in accordance with section <i>twelve</i> or <i>thirteen</i> of the Act; or (c) appointed by an arbitral institution which is recognised as such in accordance with section <i>twenty-three</i> of the Act; to provide a fair and adequate hearing to the parties to a dispute and render a binding award at the end of the arbitral proceedings. | Act No. 19 of 2000 |
| 3. Every arbitrator conducting arbitral proceedings in Zambia shall be bound by the Code of Conduct set out in the Schedule. | Application of Code |

SCHEDULE
(Regulation 3)

CODE OF CONDUCT FOR ARBITRATORS

PART I

PROFESSIONAL CONDUCT

Fairness and
impartiality

1. (1) An arbitrator shall act fairly and impartially as between the parties—

(a) in conducting the arbitral proceedings;

(b) in the arbitrator's decisions on matters of procedure and evidence; and

(c) in the exercise of other powers conferred on the arbitrator.

(2) An arbitrator shall treat each party fairly and shall—

(a) give each party a reasonable opportunity to put their case and to sufficiently deal with that of the party's opponent; and

(b) during the conduct of the arbitral proceedings, adopt procedures which are suitable to the case and will avoid unnecessary delay and expense in resolving the dispute.

(3) If an arbitrator is of the opinion that the arbitrator cannot be impartial in a matter the arbitrator shall disclose the fact to the parties and immediately withdraw from the matter.

Disclosure

2. (1) An arbitrator shall disclose at the earliest opportunity any prior interest or relationship that may affect impartiality and or independence or which might reasonably raise doubts as to the arbitrator's impartiality and or independence in the conduct of the arbitral proceedings.

(2) If the circumstances requiring disclosure are not known to the arbitrator prior to acceptance of an appointment or at the commencement of the arbitral proceedings, disclosure shall be made when such circumstances become known to the arbitrator.

(3) The burden of disclosure rests on the arbitrator and the duty to disclose is a continuing duty which does not cease until the arbitration has been concluded.

(4) After appropriate disclosure, the arbitrator may serve if both parties so desire, provided that if the arbitrator believes or perceives that there is a clear conflict of interest, the arbitrator should withdraw, irrespective of the expressed desires of the parties.

(5) An arbitrator shall avoid entering into any financial, business, professional, family or social relationship, or acquiring any financial or personal interest, which might adversely affect impartiality and for a reasonable period of time after a case, an arbitrator shall avoid entering into any such relationship, or acquiring any such interest, in circumstances which might reasonably create the unfavourable appearance that the arbitrator was influenced by the anticipation or expectation of the relationship or interest.

(6) An arbitrator shall not accept any gift or substantial hospitality, from any party to the arbitration, except in the presence of and with the consent of the other party.

3. An arbitrator shall not establish a relationship with any of the parties in a matter related to the arbitration which may give rise to a conflict of interest.

Conflict of Interest

4. (1) An arbitrator shall only accept an appointment if the arbitrator possesses the qualifications required for the arbitration and has suitable experience and ability for the case.

Acceptance of Appointment

(2) An arbitrator must be physically and mentally capable of conducting the arbitral proceedings.

5. (1) An arbitrator shall—

Conduct of proceedings

(a) take reasonable steps to ensure that the parties understand the arbitration process before the arbitration commences;

(b) accord all parties the right to appear in person and to be heard after due notice of the time and place of hearing;

(c) allow any party the opportunity to be represented by counsel; and

(d) ensure that the process provides the parties an opportunity to participate as appropriate.

(2) An arbitrator who is a lawyer shall not represent any party to the arbitration or provide legal advice to the parties.

(3) An arbitrator shall conduct the arbitration with reasonable dispatch and shall attend hearings and participate in deliberations. An arbitrator shall follow the procedure agreed by the parties and shall deal with all the issues.

(4) Where there is more than one arbitrator, the arbitrators shall accord each other an opportunity to participate in all aspects of the proceedings.

6. (1) Where practicable, an arbitrator shall advise the parties to explore the possibility of reaching an amicable settlement of a matter:

Settlement

Provided that the arbitrator shall not be present at a settlement negotiation, except where expressly requested by the parties.

(2) Where an arbitrator is present at a settlement negotiation and the negotiations fail to culminate into a settlement, the arbitrator shall withdraw from the conduct of the arbitration.

Confidentiality

7. An arbitrator shall not disclose to anyone who is not a party to the arbitral proceedings any information or documents that are exchanged in the course of the proceedings except—

- (a) with the consent of the parties concerned;
- (b) when ordered to do so by a court or otherwise required to do so by law; or
- (c) when the information discloses an actual or potential threat to human life or national security.

Impropriety

8. (1) An arbitrator shall—

- (a) avoid impropriety in communicating with the parties;
- (b) ensure that all communications are in writing; and
- (c) not communicate privately with any party regarding substantive issues in the case.

(2) Notwithstanding clause (c) of subparagraph (1), an arbitrator may communicate with a party to the proceedings in the absence of another party where—

- (a) the communication concerns the determination of the time and place of hearing;
- (b) the other party does not attend a hearing after due notice; or
- (c) both parties consent to the discussion.

(3) Where an arbitrator communicates in writing with one party, the arbitrator shall concurrently send a copy of the communication to the other party.

Arbitrator's qualifications

9. (1) An arbitrator shall—

- (a) provide accurate information regarding the arbitrator's educational background, training and experience; and
- (b) not actively solicit appointment as an arbitrator.

(2) An arbitrator has an obligation to acquire and maintain professional skills and abilities which are required to uphold the quality of arbitration.

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| <p>10. An arbitrator shall—</p> <p>(a) disclose the basis of fees, disbursements and other charges at the outset, to enable the parties decide on the retainer; and</p> <p>(b) charge reasonable fees—</p> <p>(i) having regard to the complexity of the matter, the time required, the experience of the arbitrator and the rates customary in the particular discipline or dispute; or</p> <p>(ii) according to the fees prescribed by an arbitral institution.</p> | Fees |
| <p>11. An arbitrator shall, in the case of court annexed arbitration, abide by such fees as may be determined by the Court or prescribed by an arbitral institution.</p> | Court annexed arbitration |
| <p>12. (1) An arbitrator shall observe faithfully both the limitations and inclusions of the jurisdiction conferred by an agreement or other instrument under which the arbitrator serves.</p> <p>(2) A direct settlement by the parties of some or all issues in a case, at any stage of the proceedings, must be accepted by the arbitrator as removing further jurisdiction over such issues.</p> | Jurisdiction |
| <p>13. (1) An arbitrator shall, after careful deliberation, decide all issues submitted for determination and shall refrain from deciding other issues. It is important to observe that an arbitrator does not delegate the duty to decide to any other person.</p> <p>(2) An arbitrator shall decide all matters justly, exercising independent judgment, and shall not permit outside pressure to affect the decision.</p> <p>(3) In the event that all parties agree upon a settlement of issues in dispute and request an arbitrator to embody that agreement in an award, an arbitrator may do so, but the arbitrator is not obliged to do so unless satisfied with the propriety of the terms of settlement.</p> <p>(4) Whenever an arbitrator embodies a settlement by the parties in an award, the arbitrator shall state in the award that it is based on an agreement of the parties.</p> | Decision making |
| <p>14. An arbitrator shall assume full personal responsibility for the decision in each case decided.</p> | Reliance by an arbitrator on other arbitration awards or on independent research |

Use of assistants	15. An arbitrator shall not delegate any decision-making function to another person without the consent of the parties.
Consent awards	16. (1) Prior to issuance of an award, the parties may jointly request the arbitrator to include in the award certain agreements between them, concerning some or all of the issues. (2) If the arbitrator believes that a suggested award is proper, fair, sound, and lawful, and that it is consistent with professional responsibility the arbitrator may adopt it.
Avoidance of delay	17. (1) It is a basic professional responsibility of an arbitrator to plan a work schedule so that present and future commitments will be fulfilled in a timely manner. (2) An arbitrator shall cooperate with the parties in avoiding delays. (3) Once the case record has been closed, an arbitrator shall adhere to the time limits for an award, as stipulated in the submission to arbitrate or the order for directions.
Disclosure of terms of award	18. An arbitrator shall not disclose a prospective award to either party prior to its simultaneous issuance to both parties or explore possible alternative awards unilaterally with one party, unless both parties so agree.
Clarification or interpretation of awards	19. (1) An application for a clarification or interpretation of an award shall be made in accordance with article 33 of the UNCITRAL Model Law: Provided that no clarification or interpretation of an award is permissible without the consent of both parties. (2) Under agreements which permit or require clarification or interpretation of an award, an arbitrator shall afford both parties an opportunity to be heard.
Enforcement of award	20. (1) The arbitrator's responsibility shall not extend to the enforcement of an award. (2) In view of the professional and confidential nature of the arbitration relationship, an arbitrator shall not voluntarily participate in legal enforcement proceedings.
Fees and expenses	21. (1) An arbitrator occupies a position of trust in respect to the parties and the administrative agencies. In charging for services and expenses, the arbitrator shall be governed by the same high standards of honour and integrity that apply to all other phases of the arbitration process. (2) An arbitrator shall endeavour to keep the total charges for services and expenses reasonable and consistent with the nature of the case or cases decided and within the prescribed scale of fees.

(3) Prior to appointment, the parties should be aware of or be able readily to determine all significant aspects of an arbitrator's bases for charges for fees and expenses.

(4) An arbitrator shall maintain adequate records to support charges for services and expenses and shall make an accounting to the parties on request.

22. (1) An arbitrator shall uphold the dignity and integrity of the office and endeavour to provide effective service to the parties; to this end, an arbitrator should keep current with principles, practices and developments that are relevant in the practice of arbitration.

Responsibilities
to the
profession

(2) An arbitrator shall not engage in conduct that would appear to compromise the arbitrator's impartiality.

(3) An arbitrator may publicise their expertise but shall not actively solicit appointment as an arbitrator.

(4) An experienced arbitrator shall cooperate in the training of new arbitrators.

(5) An arbitrator shall not make false or misleading representations in advertising and neither shall they perform the functions designated for arbitral institutions without seeking the permission of such institutions.

(6) For the avoidance of doubt, an arbitrator shall, prior to publishing an advertisement obtain written approval of the intended advertisement from the Zambia Association of Arbitrators.

PART II

UNPROFESSIONAL CONDUCT

23. (1) An arbitrator shall be guilty of professional misconduct if, in the course of practice, the arbitrator—

Professional
misconduct

- (a) contravenes the provisions of the Act and these Regulations;
- (b) unlawfully discloses or uses to their own advantage any information acquired in the course of professional work on behalf of a client;
- (c) engages in conduct that is dishonest, fraudulent or deceitful;
- (d) commits a criminal offence;
- (e) engages in conduct that is prejudicial to the proper administration of the arbitration process;

- (f) charges fees for professional work on scales other than the scales prescribed by an arbitral institution or determined by the Court;
- (g) breaches the principles of this Code of Conduct and brings the profession into disrepute;
- (h) encourages another person to breach or disregard the principles of this Code;
- (i) attempts to influence unfairly, whether directly or indirectly, the award in an arbitration;
- (j) obtains or attempts to obtain an appointment as an arbitrator by offering or paying monetary or other consideration or inducement to any person or by any other improper means;
- (k) touts for, or in any way solicits for, appointment as an arbitrator;
- (l) attempts to supplant or discredit another arbitrator with a view to unfairly influencing an appointment; or
- (m) conducts oneself dishonourably in connection with the work performed by that person as an arbitrator.

Reporting
misconduct

24. (1) Any person who has reasonable ground to believe that an arbitrator has violated this Code shall make a written complaint with details of the alleged misconduct to the Zambia Association of Arbitrators and the Association shall determine the complaint in accordance with its rules.

(2) A report of the alleged misconduct shall not be construed as a violation of this Code unless proved otherwise.

LUSAKA
4th January, 2007
[LA/B/2000/362]

G. KUNDA,
Minister of Justice