Kluwer Arbitration Blog

Updating Tanzania's Arbitration Law to Align with International Best Practice

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The implementation of Tanzania's Arbitration Act in 2020 (the **Act**) was an important step in positioning the country as a competitive investment hub. A Kluwer Arbitration Blog post written in 2021, The First Year of Tanzania's 2020 Arbitration Act, reflects on how this law was also intended to position Tanzania as an African arbitration hub. However, there are several challenges in the current arbitration framework, which presents inconsistent enforcement procedures, undefined terms and restrictive timeframes. As such, the framework requires clarification by amendments to the Act. In this regard, Tanzania's Law Reform Commission (LRC) has recently invited interested stakeholders to comment on ways to improve the Act.

This blog outlines key challenges in Tanzania's arbitration framework and compares Tanzania's approach with international best practices. It details recommended legislative amendments, highlights timing issues, lack of clarity with regard to the definition of "public policy", and ambiguities that may delay enforcement. This post further discusses ways to strengthen procedural efficiency for greater clarity and effectiveness. In doing so it assesses and compares legal developments in jurisdictions, such as Kenya, England, Singapore, Switzerland, Germany and India, some of which have recently updated their arbitration frameworks, and can offer valuable insight into international best practice, which could be incorporated into Tanzania's arbitration framework to rectify some of its challenges. Finally, this post concludes with a look at the path to legislative reform and the benefits of best practice alignment.

Key Challenges

This section assesses the practical timing constraints imposed by Tanzanian arbitration law, identifies procedural loopholes and interpretive gaps, particularly around public policy, that contribute to delays or uncertainty, and concludes with a comparative review of best practices from other jurisdictions that could enhance Tanzania's arbitration landscape.

Timing

Regulation 4(10) of Arbitration (Rules of Procedure) Regulations, 2021 (the **Regulations**) provides in part that *'unless specifically agreed upon by the parties, arbitration proceedings shall be completed within a period of not later than one hundred eighty days from the date of composition*

of the arbitral tribunal: Provided that, in special circumstances where the dispute is of a highly complex nature, the arbitral tribunal may extend the deadline upon notice to the parties'. While the 180-day limit under the Regulations aims to ensure expediency, it is still comparatively slower than jurisdictions like Kenya, where newly adopted institutional rules provide for an option for expedited proceedings.

A solution could be to incorporate a fast-track arbitration process, which would provide parties with a quicker resolution mechanism. ?This process is present in Kenya's Arbitration Rules 2020, which govern how non-institutional (or non-administered) arbitrations are conducted in Kenya when the parties have agreed to use the rules of the Chartered Institute of Arbitrators (Kenya Branch). Kenya's Arbitration Rules introduce an expedited arbitration procedure designed to resolve disputes within three months from the date of the status hearing or case management conference, provided that certain conditions are met. Parties can request the appointment of an arbitral tribunal along with a request for expedited proceedings. Tanzania's Arbitration Regulations currently do not provide for a fast-track procedure.

The Act contains a limit prescribed by Item 21 of Part III of the Schedule to the Law of Limitation Act [Cap 89 R.E 2019] (the **LLA**). The registration of an arbitral award for subsequent recognition and enforcement is 60 days, significantly shorter than in other jurisdictions like the United Kingdom, which does not have a requirement to register, but only a time period for enforcing the award (six years).

This limited timeframe in the Act may pressure parties into premature action for recognition and enforcement rather than allowing time for amicable settlement negotiations. Further, obtaining a certified copy of the award, securing necessary approvals and preparing an enforcement application also takes considerable time, especially when parties are in different jurisdictions. A 60-day limit is impractical.

A similar approach to that adopted in the UK could be followed, whereby there is no restriction on when parties must 'register' the award, provided it is enforced within the prescribed six-year period.

There is also a notable inconsistency in the Act regarding the time limits set for challenging an arbitral award based on substantive jurisdiction (Section 74) and serious irregularity (Section 75). Section 77 explicitly sets a 28-day limit to challenge an award on the grounds of substantive jurisdiction. However, there is no specified time limit under the Act for challenging an award based on serious irregularity. In such cases, the LLA applies, providing a 60-day limit for bringing the challenge.

This discrepancy creates uncertainty and procedural inconsistency, as there is no apparent justification for why a jurisdictional challenge must be brought within 28 days while a challenge for serious irregularity benefits from a longer 60-day period.

To ensure clarity, a uniform 28-day period should be adopted, as in the English Arbitration Act 2025**.**

Public Policy

The Act currently lacks a defined interpretation of what amounts to "Public Policy". While no explicit reason is given, this may be because the Act closely mirrored the English Arbitration Act

1996, which likewise did not provide a definition. Notably, no such definition is included in the recently enacted English Arbitration Act 2025. While the arbitration statutes in other common law jurisdictions like India, Kenya, England and Singapore acknowledge “public policy” as a ground for challenging arbitral awards, none provide a statutory definition. The interpretation is primarily shaped by judicial decisions within each jurisdiction.

However, the Indian Arbitration and Conciliation (Amendment) Act, 2015, provides an explanation to Sections 34(2)(b) and 48(2)(b) of the Indian Arbitration Act (which relate to enforcement of arbitration awards), similar to Sections 73 and 83 of the Tanzanian Arbitration Act. For example, a prior Kluwer Arbitration Blog post titled Deciding the Question of Applicability: Arbitration Amendment Act, 2015 – Kluwer Arbitration Blog explains the limits of the interpretation of public policy under the Indian Arbitration and Conciliation (Amendment) Act.

The Indian Arbitration and Conciliation (Amendment) Act narrows the scope of ‘public policy’ as a ground for challenging or refusing the enforcement of arbitral awards. An award is deemed to be in conflict with the public policy of India only if the making of the award was (1) induced or affected by fraud or corruption or was in violation of Section 75 or Section 81; (2) in contravention of the fundamental policy of Indian law; or (3) conflicts with the most basic notions of morality or justice. It is recommended that the Act adopt a similarly structured explanation of ‘public policy’ as seen in the Indian Arbitration and Conciliation (Amendment) Act, which would provide greater legal certainty.

Loopholes

In practice, the enforcement proceedings of an arbitral award in Tanzania are effectively stayed, albeit informally, by adjourning them upon the respondent filing a petition challenging the award, regardless of the petition’s merit. This loophole has been exploited through delay tactics and frivolous petitions, which are intended to hinder the enforcement of awards.

India’s 2021 Amendments introduced a condition under Section 36(3) ensuring that when a party challenges an arbitral award on the grounds of fraud or corruption, the court, upon being *prima facie* satisfied, must grant an unconditional stay on enforcement until the challenge is resolved. In Tanzania, similar measures would help prevent abuse of the system.

Jurisdiction

The Act currently allows for court challenges to arbitral jurisdiction and does not expressly restrict the re-litigation of issues already decided by the tribunal.? Section 74(1) provides that *‘A party to arbitral proceedings may, upon notice to the other parties and the arbitral tribunal, apply to court- (a) challenging any award of the arbitral tribunal as to its substantive jurisdiction; or (b) for an order declaring an award made by the arbitral tribunal on the merits to be of no effect, in whole or in part, on grounds that the arbitral tribunal did not have substantive jurisdiction’*.

Further, Section 46 (1) of the Act allows the parties to agree that the arbitral tribunal should have powers ‘to order on a provisional basis any relief which it would have powers to grant in a final award’. Where the parties do not agree to confer such powers on the arbitral tribunal, the arbitral tribunal ‘shall not have powers to grant a provisional award’.

It is also not provided how foreign arbitral tribunals can request the assistance of the court at the place where an interim order is sought to be enforced.

The English Arbitration Act 2025 simplifies the process for challenging arbitral awards under Section 67 on grounds of jurisdiction. Where a challenging party has participated in an arbitration in which the tribunal ruled on a jurisdictional objection, that party will be unable to raise any new grounds or evidence at court, and any evidence already heard by the tribunal will generally not be reheard (unless the court makes a ruling to the contrary). Tanzania could refer to the new English Arbitration Act for guidance in simplifying the arbitration process.

Further, with regard to including a provision as to how foreign arbitral tribunals could request the assistance of the court to enforce an interim order, this could be amended by adopting similar wording to Article 185*a*(1) of the Swiss Federal Act on Private International Law (PILA), which provides that foreign arbitral tribunals and foreign parties can also request the assistance of the state court at the place where an interim or conservatory measure is to be enforced. introducing a similar provision in the Act would provide legal certainty regarding the enforceability of interim measures issued in foreign arbitrations, thereby enhancing Tanzania's reputation as an arbitration-friendly jurisdiction.

Enforcement

The Act does not provide a provision for *ex parte* enforcement of an award. Without this provision, enforcement could be delayed significantly, allowing the opposing party to dissipate assets or otherwise evade compliance before a court decision is made.

Tanzania could adopt similar provisions to the German Arbitration Law 98 – Book 10 of its Code of Civil Procedure (Zivilprozessordnung – ZPO), which provides that the presiding judge may grant *ex parte* enforcement of an arbitral award or provisional measure, limited to protective measures, while allowing the opposing party to prevent enforcement by providing security.

Best Practice Proposals

There are numerous further provisions in the arbitration frameworks of other jurisdictions that may be considered to support Tanzania in modernising its arbitration framework, namely:

- The International Arbitration (Amendment) Act 2020 in Singapore introduced Sections 12(1)(j) and 12A(2), empowering courts and arbitral tribunals to enforce confidentiality obligations agreed upon in writing, ensuring confidentiality agreements are legally enforceable.
- The English Arbitration Act 2025 introduced a continuous duty of disclosure, requiring arbitrators to disclose circumstances raising doubts about impartiality. The Act also expanded arbitrator immunity to include resignations and removal costs, encouraging experienced professionals to accept appointment as arbitrators with more confidence . The Act also allows for summary disposal of claims with no real prospect of success, expediting proceedings and reducing costs. The Act also clarifies that the law of the seat governs arbitration agreements by default when no choice is made.
- Nigeria's Arbitration and Mediation Act 2023 provides for emergency arbitrators for urgent interim relief.
- The 2020 Arbitration Rules in Kenya and Nigeria enable consolidation of arbitrations involving the same parties, promoting efficiency, and the Kenya Rules allow for virtual and hybrid hearings.

All of these provisions would assist in ensuring Tanzania's Arbitration Act is on par with global best practice, providing more clarity and efficiency for investors.

Final Word

A review of the Act, which aims to address the challenges in commercial dispute resolution and enhance the efficiency of arbitration, is a welcome development. We are keen to see whether our thoughts on any of the proposed amendments outlined above are aligned with the submissions made by other stakeholders, and whether the LRC will take these thoughts into account as they deliberate on reforming the Act to align it with global best practice.

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