

**Alternative Dispute Resolution Act, 2010 Act 795**

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**ACT**  
**OF THE PARLIAMENT OF THE REPUBLIC OF GHANA**  
ENTITLED  
**ALTERNATIVE DISPUTE RESOLUTION ACT, 2010**

An Act to provide for the settlement of disputes by arbitration, mediation and customary arbitration, to establish an Alternative dispute Resolution Centre and to provide for related matters.

DATE OF ASSENT: 31<sup>st</sup> day of May 2010

PASSED by Parliament and assented to by the President:

## PART ONE -- ARBITRATION

### **Application**

1. This Act applies to matters other than those that relate to

- (a) the national or public interest;
- (b) the environment;
- (c) the enforcement and interpretation of the Constitution;
- (d) any other matter that by law cannot be settled by an alternative dispute resolution method.

### **Form of arbitration agreement**

2. (1) Parties to a written agreement may provide that a dispute arising under the agreement shall be resolved by arbitration.

(2) A provision to submit a dispute to arbitration may be in the form of an arbitration clause in the agreement or in the form of a separate agreement.

(3) An arbitration agreement shall be in writing and may be in the form provided in the Fifth Schedule to this Act.

(4) For the purpose of this Act an arbitration agreement is in writing

(a) it is made by exchange of communications in writing including exchange of letters, telex, fax, e-mail or other means of communication which provide a record of the agreement; or

(b) there is an exchange of statement of claim and defence in which the existence of the agreement is alleged by one party and not denied by the other.

### **Separation of arbitration agreement and revocation of agreement**

3. (1) Unless otherwise agreed by the parties, an arbitration agreement which forms or is intended to form part of another agreement, shall not be regarded as invalid, non-existent or ineffective because that other agreement is invalid or did not come into existence or has become ineffective and shall for that purpose be treated as a distinct agreement.

(2) Unless a contrary intention is expressed in the agreement, an arbitration agreement is irrevocable except by agreement of the parties.

### **Arbitration agreement not discharged by death**

4. An arbitration agreement is not discharged by the death of the person or the dissolution or merger of the body corporate which is a party to that agreement and it is enforceable by or against the personal representative, liquidator or successor of the party.

### **Reference to arbitration**

5. (1) A party to a dispute in respect of which there is an arbitration agreement may, subject to the terms of the arbitration agreement, refer the dispute to

(a) any person or institution for arbitration; or

(b) the Alternative Dispute Resolution Centre established under Part IV to facilitate the arbitration.

(2) Where reference is made to a person or institution other than the Centre the procedure and rules shall be as the parties and arbitrators determine.

(3) Where a reference is made to the Centre, the Rules set out in Regulations made under this Act shall apply to the arbitration.

### **Application to court**

6. (1) Where there is an arbitration agreement and a party commences an action in a court, the other party may on entering appearance, and 0 notice to the party who commenced the action in court, apply to the court to refer the action or a part of the action to which the arbitration agreement relates, to arbitration.

(2) The court on hearing an application made under subsection (1) shall, if satisfied that the matter in respect of which the application has been made is a matter in respect of which there is an arbitration agreement, refer the matter to arbitration.

(3) The grant of an application shall serve as stay of the proceedings in the court.

(4) Unless otherwise agreed to by the parties, where proceedings in court are stayed for the purpose of arbitration, any security given, property detained, injunction or restraining orders imposed in the original action shall apply to the arbitration.

### **Reference by court**

7. (1) Where a court before which an action is pending is of the view that the action or a part of the action can be resolved through arbitration that court may with the consent of the parties in writing, despite that there is no arbitration agreement in respect of the matter in dispute, refer the action or any part of the action for arbitration.

(2) A reference under subsection (1) shall state

(a) the reasons for the reference;

(b) the nature of the dispute;

(c) the monetary value of the claim; and

(d) the remedy sought

and shall have attached copies of the pleadings and any other documents the court considers relevant to it.

(3) Where at the time of reference under this section pleadings are closed, the pleadings shall be deemed to be the claim, defense, reply, counterclaim and defense to counterclaim as the case may be in the arbitration proceedings.

(4) For the purpose of a reference under this section the plaintiff in the original action shall be the claimant and the defendant shall be the respondent in the arbitration.

(5) Where in any action before a court the court realises that the action is the subject of an arbitration agreement, the court shall stay the proceedings and refer the parties to arbitration.

### **Change in claim or counterclaim**

8. (1) A party may make a new claim or counterclaim or change a defence by writing to the other party.

(2) The procedure in relation to change in claim or counterclaim shall be as determined by the parties and the arbitrators or the parties may adopt the Rules set out in the Second Schedule to this Act.

### **Modification of time**

9. Where an arbitration agreement or this Act fixes a time for taking any step in an arbitration or other dispute resolution proceedings,

(a) the parties, by agreement;

(b) the arbitrator, with the agreement of the parties; or

(c) the appointing authority, at the request of a party for good cause shown

may modify that period of time, except that an arbitrator or the appointing authority shall not extend the time for making an award.

### **Reckoning of time**

**10.** Parties to an arbitration may agree on a method of reckoning any period of time in relation to the arbitration.

### **Place of arbitration**

11.(1) The parties are free to agree on the place of arbitration.

(2) In the absence of an agreement the place of arbitration shall be determined by the arbitral tribunal which shall take into account the circumstances of the case and the convenience of the parties.

(3) Despite the other provisions of this section, the arbitral tribunal may, unless otherwise agreed by the parties, meet at any place it considers suitable after consultation among its members, for hearing witnesses, the parties, experts or for the inspection of documents, goods or other items.

### *Qualification and appointment of arbitrator*

### **Qualification of arbitrator**

**12.** (1) An arbitrator shall be a person appointed by the parties or by a person or institution acting under a power conferred by the parties and may be a person with the experience or qualification that the parties may agree on.

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(2) A person without experience or qualification relevant to the subject of the dispute may be appointed an arbitrator if the parties so agree.

(3) A person of any nationality may be appointed an arbitrator unless otherwise determined by the parties.

(4) **In** appointing an arbitrator, the parties, the person or the institution vested with the power of appointment shall have regard to

(a) the personal, proprietary, fiduciary or financial interest of the arbitrator in the matter to which the arbitration relates;

(b) the relationship of the arbitrator to a party or counsel of a party to the arbitration;

(c) the nationalities of the parties; and

(d) other relevant considerations

to ensure the appointment of an independent and an impartial arbitrator.

(5) A person appointed an arbitrator shall before acceptance, disclose to the parties or the appointing authority any information likely to affect the neutrality of the arbitration, particularly with regard to that arbitrator's interest in any case involving the parties.

### **Number of arbitrators**

**13.** (1) The parties are at liberty to determine the number of arbitrator's except that the number must be an uneven number.

(2) Failing the determination as provided in subsection (1), the arbitration shall consist of three arbitrators.

### **Appointment of arbitrator**

**14.** (1) Except otherwise provided in the arbitration agreement, the parties are at liberty to agree on the procedure for appointing an arbitrator.

(2) Where

(a) the arbitration agreement does not provide for a procedure for appointing an arbitrator; or

(b) the parties fail to agree on a procedure for appointing an arbitrator and the arbitration agreement does not provide for the settling of the disagreement,

each party, in an arbitration which requires the appointment of three arbitrators, shall appoint one arbitrator and the two appointed arbitrators, shall appoint the third arbitrator who shall be the chairperson.

(3) For the purposes of section 13 and subsection (2) of this section where

(a) a party fails to appoint an arbitrator within fourteen days from the receipt of a request to do so from the other party; or

(b) the two appointed arbitrators fail to agree on the third arbitrator within fourteen days from the date of their appointment,

the appointment shall be made by the appointing authority upon a request by a party.

(4) In an arbitration which requires the appointment of a sole arbitrator, if the parties fail to agree on the arbitrator within fourteen days after the receipt of a request for arbitration

by one party from the other party, the appointment shall be made by the appointing authority upon a request by a party.

(5) Despite any provision in this section, parties are free to agree on what should happen in the event of a failure of the procedure to appoint arbitrators.

(6) A party may for the purpose of appointing an arbitrator request for the register of arbitrators maintained by the Centre and the Centre shall comply with the request.

(7) An appointing authority may keep a register of arbitrators and mediators which may be accessed by the public.

#### *Impartiality and challenge of arbitrator*

#### **Impartiality and challenge of arbitrator**

**15.** (1) Where a person is requested to be an arbitrator, that person shall disclose in writing any circumstances likely to give reasonable cause to doubt as to the independence or impartiality of that person.

(2) An arbitrator, from the time of appointment and throughout the arbitral proceedings shall without delay, disclose to the parties in writing any circumstances referred to in subsection (1).

(3) An arbitrator's appointment may be challenged only if

(a) circumstances exist that give rise to reasonable cause to doubt as to the arbitrator's independence or impartiality; or

(b) the arbitrator does not possess the qualification agreed on by the parties.

(4) A party may not challenge an arbitrator appointed by the party or in whose appointment that party participated, except for reasons of which the party becomes aware subsequent to the appointment.

#### **Challenge of appointment procedure**

**16.** (1) Subject to subsection (2), the parties are free to agree on a procedure for challenging the appointment of an arbitrator.

(2) Unless otherwise agreed upon in accordance with subsection (1), a party challenging the appointment of an arbitrator, shall within fifteen days of becoming aware of the constitution of the arbitral tribunal or after becoming aware of circumstances that justify the challenge of the appointment of an arbitrator, submit a written statement of the reasons for the challenge to the arbitrator and any other arbitrators.

(3) Unless the arbitrator whose appointment is challenged, withdraws from the arbitration or the other party to the arbitration agrees to the challenge, the arbitral tribunal shall decide on the challenge but in the case of a sole arbitrator

(a) where the arbitrator is appointed by an appointing authority, the appointing authority shall decide on the challenge,

(b) where the arbitrator is appointed by a party the party challenging the arbitrator may apply to the High Court for [he determination of the challenge.

(4) Where a sole arbitrator's appointment is successfully challenged the sole arbitrator shall cease to be the arbitrator for the case.

(5) Where the challenge of an arbitrator is from both parties, the appointing authority shall replace the arbitrator.

#### *Revocation of arbitrator's authority*

#### **Revocation of arbitrator's authority**

**17.** (1) The parties may agree on the circumstances under which the appointment of an arbitrator may be revoked.

(2) Unless the parties have agreed on the circumstances for revocation, the authority of an arbitrator terminates if,

(a) the arbitrator withdraws from office as an arbitrator;

(b) the parties acting jointly or by the appointing authority vested by the parties with the power for the purpose, terminates the appointment; or

(c) the arbitrator fails to sit within a reasonable time.

(3) The revocation of the authority of an arbitrator by the parties acting jointly shall be in writing.

#### **Revocation of arbitrator's authority by the High Court**

**18.** (1) The High Court may on an application on notice by a party to an arbitration remove an arbitrator where it considers it fit.

(2) The Court may make an order to remove an arbitrator where

(a) there is sufficient reason to doubt the impartiality of the arbitrator;

(b) the arbitrator does not possess the qualifications or experience required under the arbitration agreement or agreed to by the parties;

(c) the arbitrator is physically or mentally incapable or there is justifiable doubt as to the arbitrator's capability to conduct the proceedings;

(d) the arbitrator has refused or failed to

(i) conduct the arbitral proceedings properly; or

(ii) use reasonable despatch in conducting the proceedings or making an award and substantial injustice has or will be caused to the applicant.

(3) Where the parties have by agreement vested the power of removal of an arbitrator in an appointing authority, the Court shall not entertain the application unless it is satisfied that the applicant has prior to the application, exhausted the available recourse.

(4) An application under subsection (2) shall operate as a stay of arbitral proceedings.

(5) The arbitrator may make representation to the Court in respect of the application.

(6) Where the Court upon conclusion of the hearing of the application, removes *the arbitrator*, it may make any orders that it considers appropriate for payment of fees and expenses of the arbitrator or the repayment by the arbitrator of any fees or expenses already paid to the arbitrator.

#### *Vacancy in the Arbitral Tribunal*

#### **Resignation of arbitrator**

**19.** (1) The parties may agree with the arbitrator, in the event of the resignation of the arbitrator, on the fees or expenses and relief for any liability incurred by the arbitrator.

(2) If there is no agreement under subsection (1), an arbitrator who resigns may on notice to the parties, apply to the appointing authority if any or the High Court for

(a) relief from any liability incurred; and

(b) an order in respect of entitlement to fees or expenses.

(3) Where there is an appointing authority, an application under subsection (1) shall first be made to the appointing authority.

(4) If the Court or the appointing authority finds the resignation of the arbitrator reasonable, it may grant relief on such terms as it thinks appropriate.

(5) An arbitrator who is dissatisfied with a decision of the Court or the appointing authority in respect of an application for a relief or an order, may

(a) in the case of an application to the Court, appeal to the Court of Appeal; or

(b) in the case of an appointing authority, apply to the Court for judicial review.

(6) The parties may agree with the arbitrator or the personal representative of the arbitrator on the fees or expenses and relief for any liability incurred by the arbitrator in [the event of (l removal or death of an arbitrator.

Death of arbitrator or person who appointed the arbitrator

**20.**(1) The authority of an arbitrator ceases on the arbitrator's death. (2) Unless the parties otherwise agree, the death of the person who appointed the arbitrator does not revoke the arbitrator's appointment.

Filling of vacancy

21. (1) If the position of an arbitrator becomes vacant, the parties may agree on

(a) whether and how the vacancy is to be filled, and

(b) whether the previous proceedings should be adopted.

(2) If there is no agreement between the parties under subsection (1)(a), the appointing authority shall, on a reference by a party, appoint another arbitrator in accordance with this Act.

(3) Where the parties fail to reach an agreement under subsection (1)(b) on the appointment of an arbitrator to fill a vacancy, the new arbitrator shall decide whether to adopt the previous proceedings or to start afresh.

*Fees and Immunity of arbitrators*

### **Fees for arbitrators**

**22.** (1) The parties and the arbitrators shall agree on the fees payable by the parties in respect of the arbitration and the parties are jointly and severally liable for the payment of the agreed fees and if a dispute arises about the fees a party may refer the issue to the appointing authority or the High Court for resolution.

(2) An arbitrator shall be paid, based on

(a) the value of the subject matter of the arbitration;

(b) the complexity of the case; and

(c) the agreed hourly rate of fee.

(3) An arbitrator may after consultation with the parties request the parties to make further payments in respect of fees where the circumstances so require.

(4) A party may, within twenty-eight days after the date of the determination of the amount of fees, apply to the appointing authority or the Court upon notice to the other party and the arbitrators, for an order adjusting the amount of fees upon conditions as the appointing authority or the Court shall determine and any excess payment made as a result of the adjustment may be ordered to be repaid having regard to all the circumstances.

(5) Subsection (3) applies to an arbitrator who has ceased to act. (6) Where there is an appointing authority, a matter shall not be referred to the Court in this section unless the matter has been first referred to the appointing authority.

### **Immunity of arbitrator**

**23.** (1) An arbitrator is not liable for any act or omission in the discharge of the arbitrator's functions as an arbitrator unless the arbitrator is shown to have acted in bad faith.

(2) Subsection (1) applies to an employee or an agent of an arbitrator.

(3) This section does not affect a liability incurred by an arbitrator as a result of the resignation of the arbitrator.

### *Jurisdiction of Arbitral Tribunal*

#### **Competence to rule on jurisdiction**

**24.** Unless otherwise agreed by the parties, the arbitral tribunal may rule on its own jurisdiction particularly in respect of

(a) the existence, scope or validity of the arbitration agreement;

(b) the existence or validity of the agreement to which the arbitration agreement relates;

(c) whether the matters submitted to arbitration are in accordance with the arbitration agreement.

#### **Objection to jurisdiction**

**25.** (1) A party that intends to object to the jurisdiction of an arbitrator shall do so before taking the first step in the proceedings to contest the case on its merits.

(2) The appointment or the participation in the appointment of an arbitrator by a party is not a bar to that party raising an objection on jurisdiction.

(3) Subject to subsection (1), a party who in the course of arbitral proceedings intends to raise an objection that the arbitrator is exceeding the arbitrator's jurisdiction shall do so immediately after the matter alleged to be beyond jurisdiction is raised.

(4) Despite subsections (1) and (3), the arbitrator may entertain an objection made later than the prescribed time if the arbitrator considers that there is sufficient justification to do so.

### **Application to High Court on jurisdiction**

**26.** (1) A party dissatisfied with the arbitrator's ruling on Jurisdiction may on notice to the arbitrator and the other party apply to the appointing authority or the High Court for a determination of the arbitrator's jurisdiction.

(2) An application under subsection (1) shall be made within seven days of the arbitrator's ruling and shall state the reasons for the application.

(3) The appointing authority or the Court may consider and grant an application if it is satisfied that

(a) the application has been made within the stipulated time; and

(b) there is justification for the Court or the appointing authority to intervene.

(4) Unless the parties otherwise agree, an application to the appointing authority or the Court shall not serve as a stay of the arbitral proceedings.

(5) An appeal, in the case of the Court or a judicial review in the case of an appointing authority, does not lie from a decision under subsection (3) except with the leave of the Court.

(6) The Court shall grant leave for a judicial review or to appeal

where it is satisfied that the appeal or judicial review

(a) involves a point of law which is fundamental to the case; or

(b) is one which for some special reason deserves consideration by the Court or the Court of Appeal.

### **Waiver of right**

**27.** A party who takes part or continues to take part in an arbitral proceeding, knowing that

- (a) the arbitrator does not have jurisdiction;
- (b) the proceedings are improperly conducted;
- (c) the arbitration agreement or this Act has not been complied with; or
- (d) there is an irregularity in respect of the arbitrator or proceedings

and who fails to promptly or within the time specified in the arbitration agreement or under this Act to object to the proceedings shall be deemed to have waived the right to raise the objection.

### **Rights of party not notified of arbitral proceedings**

**28.** (1) A party to an agreement who is not notified of arbitration proceedings arising under that agreement may, by an application to the High Court,

- (a) question whether there is a valid arbitration agreement;
- (b) question whether the panel is properly constituted;
- (c) question whether the matters submitted are in accordance with the arbitration agreement;
- (d) challenge an award on the ground of lack of jurisdiction in relation to that party; and
- (e) challenge an award on the ground of serious irregularity that affects that party.

(2) A party whose application to the Court is refused may, with the leave of the Court appeal to the Court of Appeal.

(3) The aggrieved party may apply to the Court for a stay of the arbitral proceedings pending the determination of the complaint under section 28 (1).

Arbitral processes

### **Arbitration management conference**

**29.** (1) Unless the parties otherwise decide, an arbitrator shall, within fourteen days of being appointed and upon giving seven days written notice to the parties, conduct an

arbitration management conference with the parties or their representatives in person or through electronic or telecommunication media to determine

(a) the issue to be resolved by arbitration;

(b) the date, time, place and estimated duration of the hearing;

(c) the need for discovery, production of documents or the issue of interrogatories and to establish how this should be done;

(d) the law, rules of evidence and the burden of proof that is or are to apply to the proceedings;

(e) the exchange of declaration regarding facts, exhibits, witnesses and related issues;

(f) whether there is the need to resolve issues of liability and damages separately;

(g) whether the summary of evidence of parties should be oral

or in writing;

(h) the form of the award;

(i) costs and arbitrator's fees; and

(j) any other issue relating to the arbitration.

(2) The decisions of an arbitrator at an arbitration management conference shall be in writing and shall be served on the parties.

(3) An arbitrator may *hold* further arbitration management conference as is considered necessary upon written notice to the parties.

### **Conciliation conference**

**30.** The appointing authority or any institution or individual may, with the consent of the parties at any time during the arbitration process, arrange a conciliation conference to facilitate the resolution of the dispute, except that an arbitrator in the dispute shall not be a conciliator.

### **Duties and powers of arbitrator in proceedings**

**31.** (1) An arbitrator shall

(a) be fair and impartial to the parties; and

(b) give each party the opportunity to present its case.

(2) Subject to this Act, an arbitrator shall conduct the arbitration in a manner that the arbitrator considers appropriate, shall avoid unnecessary delay and expenses and adopt measures that will expedite resolution of the dispute.

(3) Subject to the right of parties to agree on any matter of procedure, the arbitrator shall decide on matters of procedure and evidence.

(4) Matters of procedure and evidence include

(a) the time and place for holding any part of the proceedings; (b) the questions that should be put to and answered by respective parties and how the questions should be put;

(c) the documents to be provided by the parties and at what stage of the proceedings; and

(d) the application or non-application of the strict rules of evidence as to admissibility, relevance or weight of any material sought to be tendered and how the material should be tendered.

(5) The arbitrator may determine the time within which any direction is to be complied with.

(6) The parties may agree to permit an arbitrator to

(a) consolidate one arbitral proceedings with other arbitral proceedings; and

(d) hold concurrent hearings.

(7) Unless otherwise agreed by the parties, the arbitrator may order a claimant to provide security for the costs of the arbitration whether the claimant is an individual resident in this country or a body established or registered by law in this country.

(8) The arbitrator may give directions in respect of property which is the subject matter of the arbitration and which is owned or is in the possession of a party,

(a) for the inspection, preservation, photographing or detention of the property by the arbitrator, an expert or a party; and (b) that samples be taken or an experiment be conducted of the property.

(9) The arbitrator may subpoena a witness and shall at the request of a party subpoena a witness.

(10) The arbitrator may direct a party or a witness to give evidence on oath or affirmation and may for that purpose administer the oath or affirmation.

### **Language of proceedings**

**32.** (1) The parties are free to agree on the language to be used in the arbitral proceedings.

(2) In the absence of an agreement, the arbitrator shall determine the language of the proceedings.

(3) The arbitrator may direct that any documentary evidence should be accompanied with a translation into a language agreed on by the parties or determined by the arbitrator.

### **Statement of claim and defence**

**33.** (1) The parties are free to agree on the time within which the claimant should submit a statement of claim and the respondent a defence.

(2) In the absence of an agreement under subsection (1) the arbitrator shall determine the time for the submission of a statement of claim and a defence.

(3) The claimant shall state

(a) the claim and the facts that support the claim;

(b) the points in issue for resolution; and

(c) the relief sought.

(4) The respondent shall state in the defence the particulars of its

(5) The parties may submit their statements together with documents considered relevant to the proceedings or provide reference to other documents or other evidence intended for production at the proceedings.

(6) Unless otherwise agreed by the parties, a party may amend or add to the particulars of claim or defence submitted, except that the arbitrator may refuse an amendment or addition on the ground that it is inappropriate to allow the amendment or addition because there has been undue delay on the part of the party.

(7) A party may submit a counterclaim or defence to counterclaim and the arbitrator shall in consultation with the parties determine the applicable period for doing so.

### **The arbitration hearing**

**34.** (1) An arbitrator shall give the parties notice of the date of hearing.

(2) A party shall before the hearing give the arbitrator and the other party the personal particulars of witnesses that the party intends calling and the substance of the testimony of each witness.

(3) A hearing begins with the

(a) recording of the date, time and place of hearing;

(b) recording the presence of the arbitrator, the parties and their representatives, if any; and

(c) receiving into the record the claim, defence, counterclaim and the answer as applicable.

(4) The arbitrator may at the beginning of the hearing ask for opening statements from the parties to clarify the issues involved in the arbitration.

(5) Except as otherwise agreed by the parties or provided by law, the arbitrator shall ensure the confidentiality of the arbitration.

(6) An arbitrator has the authority

(a) to exclude a witness who is not a party from the hearing; and

(b) to determine whether a person who is neither a witness nor a party should attend the hearing.

(7) Unless otherwise agreed by the parties, the hearing of the arbitration proceeding shall be private.

(8) Unless otherwise agreed by the parties, the arbitrator shall determine the time within which action under subsections (1) and (2) shall occur.

(9) Subject to the discretion of an arbitrator to vary the order of presentation, the claimant shall first present evidence in support of the claimant's claim and this shall be followed by the respondent.

(10) Except the parties otherwise agree or the arbitrator otherwise orders, a claim, a notice or any written communication may be served

(a) personally on a party; or

(b) by mail, courier, facsimile transmission, telex, telegram or other form of written electronic communication addressed to the party or its representative at its last known address.

(11) Unless otherwise agreed by the parties, the arbitrator shall decide whether to hold oral hearing for the presentation of evidence or for argument or whether the proceedings are to be conducted on the basis of documents and other materials.

(12) Despite subsection (11), the arbitrator shall at the request of a party at any point in the proceedings, hold oral hearing unless the parties have agreed that there should be no oral hearing.

(13) A party shall be given sufficient advance notice of any hearing and (in opportunity to inspect. document and other property relevant to the dispute.

(14) Statements, documents or other information supplied to the arbitrator and applications made to the arbitrator by one party shall be communicated by the party to the other party.

#### **Taking of evidence in presence of parties**

**35.** (1) Except where a party is absent without good cause or has waived the right to be present, evidence shall be taken in the presence of the arbitrator and the parties.

(2) Evidence of a witness may be presented by affidavit and the arbitrator may admit that evidence, after considering any objection raised against its admission.

(3) Where evidence by affidavit or a witness statement is admitted. a party may cross examine the deponent or the witness will presented that evidence.

(4) An arbitrator shall in taking evidence take into account applicable principles of legal privilege.

#### **Filing of documents and other evidence after hearing**

**36.** (1) An arbitrator may direct or parties may agree, that documents or other evidence should be submitted to the arbitrator after the hearing.

(2) Documents or other evidence in respect of which there is an agreement or direction under subsection (1) may be submitted to the Centre or the appointing authority for transmission to the arbitrator.

#### **Notice of investigation or inspection**

**37.** (1) An arbitrator who decides to conduct an inspection or investigation in connection with the arbitration *shall* give notice to *the* parties stating the date and time of the inspection or investigation.

(2) A party may attend an inspection or investigation.

(3) Whether or not a party attends an inspection or investigation, the arbitrator shall present a report to the party and afford the party an opportunity to comment on the report.

#### **Interim reliefs**

**38.** (1) An arbitrator may at the request of a party grant any interim relief the arbitrator considers necessary for the protection or preservation of property.

(2) An interim relief may be in the form of ,in interim award the arbitrator may require the

(3) The arbitrator may apportion costs related to applications for interim relief in an interim award or in the final award.

#### **Powers of the High Court to support arbitral proceedings**

**39.** (1) Unless otherwise agreed by the parties, the High Court has power

in relation to an arbitral proceedings to make an order

(a) for the taking of evidence of witnesses;

(b) for the preservation of evidence;

(c) in respect of the determination of any question or issue affecting any property right which is the subject of the proceedings or in respect of which any question in the proceedings arise

(i) for the inspection, photographing, preservation, custody or detention of property; or

(ii) for the taking of samples from or the observation of an experiment conducted upon, a property;

and for that purpose authorizing any person to enter any premises in the possession or control of a party to the arbitration;

(d) for the sale of any goods the subject of the proceedings; (e) for the granting of an interim injunction or the appointment of a receiver.

(2) Where the case is one of urgency, the Court may, on the application of a party to the arbitral proceedings, make orders as it considers necessary for the purpose of preserving evidence or assets.

(3) If the case is not one of urgency, the Court shall act only where the application to the Court is upon notice to the other party and to the arbitrator and is made with the permission of the arbitrator or is supported by an agreement in writing of the other party.

(4) In any case, the Court shall act if the arbitrator or other institution or person vested by the parties with power in that regard, is unable for the time being to act effectively.

(5) If the Court so orders, an order made by it under this section shall cease to have effect in whole or in part upon a decision to that effect by the arbitrator or other institution or person vested with power to act in relation to the subject matter of the order.

(6) Leave of the court is required for any appeal from decision of the Court under this section.

#### **Determination of preliminary point of law**

**40.** (1) Unless otherwise agreed by the parties, the High Court may, on an application on notice to the other party by a party to arbitral proceedings, determine any question of law that arises in the course of the proceedings if the Court is satisfied that the question substantially affects the rights of the other party.

(2) The application shall identify the question of law to be determined, and shall state the grounds which requires that the question should be decided by the Court.

(3) Unless otherwise agreed by the parties, the arbitrator may continue the arbitral proceedings and make an award while the application to the Court under this section is pending.

(4) The decision of the Court on the question of law shall be treated as a judgment of the Court for the purpose of an appeal; except that no appeal lies without the leave of the Court, which leave shall not be given unless the Court considers that the question is one of importance or is one which for some other special reason should be considered by the Court of Appeal.

#### **Mode and substance of evidence by witness**

**41.** (1) The arbitrator may determine the manner in which witnesses are examined.

(2) A witness may only offer evidence that is relevant and material to the dispute.

(3) A witness must offer evidence as the arbitrator considers necessary for the understanding and determination of the dispute.

(4) The arbitrator shall be the judge of relevance and materiality of evidence and shall conform to the rules of natural justice in that regard.

### **Representation**

**42.** (1) Unless otherwise agreed by the parties, a party may be represented by counselor or any other person chosen by the party.

(2) Unless a claim or an answer is filed by a representative, a party who intends to be represented shall give notice stating the name and address of the representative to the other party at least seven days before the commencement of the arbitral proceedings.

### **Appointment of expert**

**43.** (1) The arbitrator may appoint an independent expert to report to the arbitrator in writing on issues specified by the arbitrator and this shall be communicated to both parties.

(2) A party shall for this purpose

(a) provide relevant information; and

(b) produce for inspection, any relevant document or material that the expert may require.

(3) The arbitrator shall settle any dispute between the parties and the expert as to the relevance of any information or material demanded by the expert.

(4) The arbitrator shall send a copy of the expert's report to each party and give an opportunity to each party to comment in writing on the report.

(5) The arbitrator shall give an opportunity to the parties to

(a) cross examine the expert at the hearing; and

(b) call their experts to testify on the subject of the report and the evidence of the expert appointed by the arbitrator.

### **Postponement of hearing**

**44.** (1) An arbitrator may postpone a hearing

(a) at the arbitrator's own instance; or

(b) at the request of a party who gives sufficient reason.

(2) The arbitrator shall postpone a hearing if the parties agree on a postponement.

(3) If a party without sufficient reason fails to take a required step in the proceedings or to give evidence, the arbitrator may proceed with the arbitration, and on the evidence before it, make an award.

### **Closing of hearing**

45. (1) An arbitrator may declare a hearing closed after specifically inquiring from the parties whether they have any further evidence to give and the parties have answered in the negative.

(2) If closing statements are to be filed, a hearing shall be declared closed as of the last date for the submission of the statements.

(3) If a document is to be filed and the date for the filing of the document is after the date for the submission of statements, the last date for the filing of the document shall be the date of the closing of the hearing.

### **Re-opening of hearing**

46. (1) An arbitrator may on application by a party or for a reason which the arbitrator considers appropriate, re-open the hearing at any time before an award is made.

(2) A hearing shall not be re-opened without the agreement of the parties for an extension of time, if re-opening the hearing will prevent the making of the award within the time specified in the arbitration agreement or the time agreed on by the parties for making of an award.

(3) Where the arbitration agreement or the parties do not specify the time for making the award and hearing is re-opened, the arbitrator shall make an award within thirty days of the closing of the re open hearing.

### **Settlement before conclusion of arbitration**

47. (1) In an arbitral proceeding the arbitrator may encourage settlement of the dispute with the agreement of the parties.

(2) The arbitrator may for the purposes of subsection (1), use mediation or other procedures at any time during the arbitral proceedings.

(3) If during the proceedings the parties settle the dispute, the arbitrator shall terminate the proceeding and with the agreement of the parties, record the settlement in the form of an arbitral award on agreed terms.

(4) An arbitral award on agreed terms shall contain in substance the terms of an arbitral award provided for under section 49.

## Rules for the award

48. (1) An arbitrator shall decide the dispute

(a) in accordance with the law chosen by the parties as applicable to the substance of the dispute, or

(b) in accordance with such other considerations as are agreed by the parties or determined by the arbitrator.

(2) For this purpose the choice of the law of a country shall be understood to refer to the substantive laws of that country and not conflict of laws rules.

(3) Where or to the extent that no law has been chosen or agreed on, the arbitrator shall apply the law determined by the conflict of laws rules which the arbitrator considers applicable.

(4) In disputes relating to contract, the arbitrator shall apply the terms of the contract taking into consideration the usages of the trade to which the contract relates.

(5) Where there are three or more arbitrators any award or decision of the tribunal shall be made by majority of the arbitrators.

(6) A monetary award shall be in the currency of the contract unless the arbitrator considers another currency more appropriate.

(7) The arbitrator may grant the appropriate pre-award or post award relief at simple or compound interest under the terms of the contract and the applicable law.

(8) Subsection (6) does not apply to damages awarded to compensate for conduct of bad faith or for time wasting.

## **Form and content of arbitral award**

49. (1) The parties are free to agree on the form of the award and in the absence of such an agreement this section shall apply.

(2) The award shall be in writing.

(3) The arbitrator shall

(a) sign the award;

(b) state the date and place where the award was made; and

(c) except the parties otherwise agree, state in writing the reasons for the award.

(4) Where there is more than one arbitrator the signatures of the majority of the arbitrators shall be sufficient where the reason for the omission of the signatures of some of the arbitrators is stated.

(5) A signed copy of the award shall be delivered to each party. (6) The mode of payment and rate of interest on any sum where applicable shall be determined by the arbitrator.

(7) Unless the parties otherwise agree, the award shall not be made public without the consent of the parties.

(8) An arbitral award may be registered with the High Court, or other institution as the parties may agree upon.

### **Scope of award**

**50.** An arbitrator may within the scope of the arbitration agreement grant any relief that the arbitrator considers just and equitable including specific performance.

### **Assessment of fees and compensation**

**51.** The arbitrator shall assess the arbitration fees, expenses and compensation in the award.

### **Effect of award**

**52.** Subject to the right of a party to set aside an award under section 58 of this Act, an arbitration award is final and binding as between the parties and any person claiming through or under them.

### **Correction of or addition to award**

#### **Effect of award**

**52.** Subject to the right of a party to set aside an award under section 58 of this Act, an arbitration award is final and binding as between the parties and any person claiming through or under them.

#### **Correction of or addition to award**

**53.** The arbitrator, at the request of a party or on the arbitrator's own volition, may within twenty-eight days of delivering all award or such longer period as parties may agree on, upon giving fourteen days notice to the parties

(a) correct any clerical, typographical, technical or computation error in the award; and

(b) make an additional award in respect of a claim presented to the arbitrator but omitted from the award.

### **Liability and waiver**

**54.** (1) Except for the consequences of deliberate wrong doing, neither an appointing authority nor an arbitrator is liable for any act or omission in connection with an arbitration.

(2) A party's right to arbitration is not waived because the party has initiated judicial proceedings in relation to the subject matter of the arbitration.

(3) An appointing authority or the arbitrator is not a necessary party in a judicial proceeding relating to an arbitration.

### **Expenses**

**55.** (1) A party shall pay the expenses of a witness called by the party.

(2) Unless the parties otherwise agree or the arbitrator includes an expense in the award against a party, all expenses of the arbitration shall be paid for equally by the parties.

### **Power to withhold award in case of non-payment**

**56.** (1) An arbitrator may refuse to deliver an award to the parties until there is full payment of the fees and expenses of the arbitrator.

(2) If the arbitrator refuses on the ground specified in subsection (1) to deliver an award, a party to the proceedings may, upon notice to the other party and the arbitrator, apply to the High Court, which may, order that

(a) the arbitrator shall deliver the award on the payment into Court by the applicant of the fees and expenses demanded or such amount as the Court may specify;

(b) the amount of the fees and expenses properly payable shall be determined by such means and upon such terms as the Court may direct; and

(c) out of the money paid into Court there shall be paid out such fees and expenses as may be found to be properly payable to the arbitrator and the balance of the money, if any, shall be paid out to the applicant.

(3) For the purposes of this section, the amount of fees and expenses properly payable is the amount the applicant is liable to pay under section 62 or any agreement that relates to the payment of the arbitrator.

(4) No application to the Court may be made where there is an available arbitral process for an appeal against or review of the amount of the fees or expenses demanded.

(5) References in this section to arbitrator include an arbitrator who has ceased to act.

(6) The provisions of this section also apply to any arbitrator or an appointing authority with powers in relation to the delivery of the arbitrator's award and for that purpose the references to the fees and expenses of the arbitrator shall be construed as including the fees and expenses of that appointing authority.

(7) The leave of the Court is required for an appeal from a decision of the Court under this section.

### **Powers of the High Court in relation to award**

#### **Enforcement of the award**

**57.** (1) An award made by an arbitrator pursuant to an arbitration agreement may, by leave of the High Court, be enforced in the same manner as a judgment or order of the Court to the same effect.

(2) Where leave is so given, judgment may be entered in terms of the award.

(3) Leave to enforce an award shall not be given where, or to the extent, that a person against whom the award is sought to be enforced shows that the arbitrator lacked substantive jurisdiction to make the award.

#### **Challenge of award**

**58.** (1) An arbitral award may subject to this Act be set aside on an application by a party to the arbitration.

(2) The application shall be made to the High Court and the award may be set aside by the Court only where the applicant satisfies the Court that

(a) a party to the arbitration was under some disability or incapacity:

(b) the law applicable to the arbitration agreement is not valid; (c) the applicant was not given notice of the appointment of the arbitrator or of the proceedings or was unable to present the applicant's case;

(d) the award deals with a dispute not within the scope of the arbitration agreement or outside the agreement except that the Court shall not set aside any part of the award that falls within the agreement:

(e) there has been failure to conform to the agreed procedure by the parties;

(f) the arbitrator has an interest in the subject matter of arbitration which the arbitrator failed to disclose.

(3) The Court shall set aside an arbitral award where it finds that the subject-matter of the dispute is incapable of being settled by arbitration or the arbitral award was induced by fraud or corruption.

(4) An application to set aside an award may not be made after three months from the date on which the applicant received the award unless the Court for justifiable cause orders otherwise.

(5) On hearing the applicant, the Court may make an order as is just in the circumstances of the case.

(6) An appeal from the Court lies to the Court of Appeal.

### **Enforcement of foreign awards**

**59.** (1) The High Court shall enforce a foreign arbitral award if It is satisfied that

(a) the award was made by a competent authority under the laws of the country in which the award was made;

(b) a reciprocal arrangement exists between the Republic of Ghana and the country in which the award was made; or

(c) the award was made under the international Convention specified in the First Schedule to this Act or under any other international convention on arbitration ratified by Parliament; and

(d) the party that seeks to enforce the award has produced

(i) the original award or has produced a copy of the award authenticated in the manner prescribed by the law of the country in which it was made;

(ii) the agreement pursuant to which the award was made or a copy of it duly authenticated in the manner prescribed by the law of the country in which it was made or in any other manner as may be sufficient according to the laws of the Republic of Ghana; and

(e) there is no appeal pending against the award in any court under the law applicable to the arbitration.

(2) A party who seeks to enforce a foreign award and who relies on a document which is not in the English Language, shall produce a certified true translation of that document in English to the Court.

(3) Despite subsection (1) the court shall not enforce a foreign award if

- (a) the award has been annulled in the country in which it was made;
- (b) the party against whom the award is invoked was not given sufficient notice to enable the party present the party's case;
- (c) a party, lacking legal capacity, was not properly represented;
- (d) the award does not deal with the issues submitted to arbitration; or
- (e) the award contains a decision beyond the scope of the matters submitted for arbitration.

### **Expedited arbitration proceedings**

**60.** Parties to a dispute in respect of which there is an arbitration agreement may agree to the resolution of the dispute by the Centre through expedited arbitration proceedings or by the adoption by the arbitrator of the Expedited Arbitration Proceedings Rules of the Centre set out in the Third Schedule to this Act.

### **Modification of Centre Rules**

**61.** An agreement by the parties to apply the- rules of the Centre to their dispute is subject to modifications as the parties may agree upon in writing.

### **Effect of expedited proceedings**

**62.** An award made in expedited arbitration proceedings shall have the same effect as an arbitration award made under Part I of this Act.

### **Submission to mediation**

**63.** (1) A party to any agreement may with the consent of the other party submit any dispute arising out of that agreement to mediation by an institution or a person agreed on by the parties.

(2) A submission to mediation may be made by writing, telephone, or other form of verbal communication, fax, telex, e-mail or any other electronic mode of communication and shall briefly state the nature of the dispute.

(3) A submission to mediation through telephone, or any other verbal mode of communication shall, unless the parties agree otherwise, be confirmed in writing and shall state the names, addresses including e-mail addresses and telephone numbers of the parties and in brief the nature of the dispute.

(4) Mediation proceedings commence when the other party accepts the invitation for mediation.

(5) An acceptance of an invitation for mediation may be by a letter, telephone, or other form of verbal communication, fax, telex, or e-mail or other mode of electronic communication.

(6) An acceptance by telephone or any other verbal means shall be confirmed in writing but a failure to confirm an acceptance in writing shall not invalidate the proceedings.

(7) Failure by the other party to accept the invitation to mediation within fourteen days after receipt of the invitation or within the period of time specified in the invitation shall be considered to be a rejection of the invitation to mediation.

### **Reference to mediation by court**

**64.** (1) A court before which an action is pending may at any stage in the proceedings, if it is of the view that mediation will facilitate the resolution of the matter or a part of the matter in dispute, refer the matter or that part of the matter to mediation.

(2) A party to an action before a court may, with the agreement of the other party and at any time before final judgment is given, apply to the court on notice to have the whole action or part of the action referred to mediation.

(3) A reference under subsections (1) or (2) shall state

(a) the nature of the dispute;

(b) the monetary value of the claim, if any;

(c) the reasons for the reference; and

(d) the remedy sought

and shall have attached copies of the pleadings and any other documents the court considers relevant.

(4) A reference under this section shall serve as a stay of proceedings of the court action.

(5) Where a reference leads to settlement of the dispute or part of the dispute the settlement shall be

(a) drawn up and filed in the court;

(b) recorded by the court as a judgment of the court: and

(c) enforced by the court as its judgment.

(6) Where the reference does not lead to a settlement, the court shall continue with the proceedings from the point where the reference was made.

(7) A reference by a court shall specify the time within which a report on the reference shall be submitted to the court.

### **Number of mediators**

65.(1) Unless the parties otherwise agree, there shall be one mediator. (2) Where there is more than one mediator, the mediators shall act jointly.

### **Appointment of mediator**

66. (1) The parties to a mediation may appoint any person or institution the parties consider acceptable to serve as a mediator.

(2) Parties may request the assistance of a suitable institution or person in the appointment of a mediator and may in so doing request the institution or person

(a) to recommend the names or provide a list of suitable persons to serve as mediator; or

(b) to conduct the mediation.

(3) Parties to a mediation may adopt the Mediation Rule in the Fourth Schedule to this Act.

### **Mediator with interest**

67. (1) In recommending a person to be a mediator an institution or person shall have regard to the independence and impartiality of that person, and take into consideration the background of the parties.

(2) An institution or person that is requested to recommend a mediator shall not recommend a person to serve as a mediator if that person has a financial or personal interest in the outcome of the dispute

### **Disclosure by mediator**

68. (1) A person appointed a mediator shall before accepting the appointment, disclose any circumstances relating to that person that may

(a) create a likelihood of bias; or

(b) affect the conduct of the mediation.

(2) A mediator shall promptly disclose to the parties any circumstances that arises during the mediation which is likely to affect the

(a) impartiality of the mediator; or

(b) conduct of the mediation.

(3) Parties to a mediation may replace a mediator who makes a disclosure under subsection (1).

### **Termination of appointment for delay**

**69.** The parties may replace a mediator who without reasonable cause fails to

(a) start work within the period agreed by the parties; or

(b) operate within the ground rules of the mediation.

### **Filling of vacancy in mediation**

**70.** The parties may appoint another mediator to replace a mediator who is unable to perform the functions of a mediator.

### **Representation in mediation**

**71.** (1) A party to a mediation may be represented by a lawyer, an expert or any other person chosen by the party.

(2) A party shall communicate in writing to the mediator and the other parties the name, address and the extent of the authority of any representative within seven days of the representative's appointment.

### **Date, time and place of mediation**

**72.** (1) A mediator in consultation with the parties shall determine the date and time of each mediation session.

(2) Subject to the mediator choosing a convenient place, the parties shall determine the place for the mediation.

### **Identification of issues in dispute**

**73.** (1) Not later than eight days before the first mediation session or within such period of time as the parties may mutually agree upon, each party shall present to the mediator and the other parties a memorandum setting out the party's position with regard to the issues which require resolution.

(2) The mediator may request each party to submit a written statement of that party's position and the facts and grounds in support of that position, supplemented by any documents and other evidence that the party considers appropriate.

(3) At any stage of the mediation proceedings, the mediator may request a party to submit additional information as the mediator considers necessary.

### **Powers of mediator**

**74.** (1) A mediator shall in an independent and impartial manner do everything necessary to help the parties to satisfactorily resolve their dispute.

(2) A mediator may conduct joint or separate meetings with the parties and make suggestions to facilitate settlement.

(3) A mediator may where necessary and if the parties agree to pay the expenses, obtain expert advice on a technical aspect of the dispute.

(4) A request for the services of an expert may be made by the mediator or by one party with the consent of the other party.

(5) A mediator shall be guided by principles of objectivity, fairness and justice, and shall give consideration to, among other things, the rights and obligations of the parties, the usages of the trade concerned and the circumstances surrounding the dispute, including any previous business practices between the parties.

(6) A mediator may conduct the mediation proceedings in a manner that the mediator considers appropriate, but shall take into account the wishes of the parties including any request by a party that the mediator hear oral statements, and the need for a speedy settlement of the dispute.

(7) A mediator may end the mediation whenever the mediator is of the opinion that further mediation between the parties will not help to resolve the dispute between the parties.

### **Administrative assistance**

**75.** In order to facilitate the conduct of mediation proceedings, the parties, or the mediator with the consent of the parties, may arrange for administrative assistance by a suitable institution or individual.

### **Communication between mediator and parties**

**76.** The mediator may invite the parties to meet the mediator and may communicate with them orally or in writing and may meet or communicate with the parties together or with each of them separately.

### **Attendance at mediation**

77. Except where the parties agree and the mediator consents, a person who is not a party to the mediation shall not attend a mediation session.

### **Disclosure of information**

78. Except where a party gives information to the mediator subject to a condition of confidentiality, when the mediator receives factual information concerning the dispute from a party, the mediator may disclose the substance of that information to the other party in order that the other party may have the opportunity to present any explanation which that other party considers appropriate.

### **Confidentiality of mediation**

79. (1) A record, a report, the settlement agreement, except where its disclosure is necessary for the purpose of implementation and enforcement, and other documents required in the course of mediation shall be confidential and shall not be used as evidence or be subject to discovery in any court proceedings.

(2) A mediator shall not disclose information given in the course of the mediation to a person who is not a party to the mediation without the consent of the parties.

(3) Without limiting the effect of subsection (1) a party to a mediation shall not rely on

(a) the record of the mediation;

(b) statement made at the mediation; or

(c) any information obtained during the mediation as evidence in court proceedings.

### **End of mediation**

80. (1) A mediation ends when

(a) the parties execute a settlement agreement;

(b) the mediator terminates the mediation proceedings for nonpayment of a deposit under section 88.

(c) the mediator after consultation with the parties makes a declaration to the effect that further mediation is not worthwhile;

(d) the parties jointly address a declaration to the mediator to the effect that the mediation is terminated; or

(e) a party makes a declaration to the mediator and the other party to the effect that the mediation is terminated.

(2) A declaration under subsection (1) may be in writing or oral but where a declaration is not written the mediator shall record the declaration.

### **Settlement agreement**

**81.** (1) Where it appears to the mediator that there exist elements of a settlement which may be acceptable to the parties, the mediator may formulate the terms of a possible settlement and submit them to the parties for their considerations and after receiving the observations of the parties, the mediator may reformulate the terms of a possible settlement in the light of the observations.

(2) If the parties reach agreement on a settlement of the dispute, they may draw up and sign a written settlement agreement and if requested by the parties, the mediator may draw up, or assist the parties in drawing up, the settlement agreement.

(3) When the parties sign the settlement agreement, the parties shall be deemed to have agreed that the settlement shall be binding on the parties and persons claiming under them respectively.

(4) The mediator shall authenticate the settlement agreement and furnish a copy of the settlement agreement to each of the parties.

### **Status and effect of settlement agreement**

**82.** Where the parties agree that a settlement is binding, the settlement agreement has the same effect as if it is an arbitral award under section 52.

### **Resort to arbitral or judicial proceedings**

**83.** The parties shall not initiate, during the mediation proceedings, any arbitral or judicial proceedings in respect of a dispute that is the subject-matter of the mediation proceedings.

### **Role of mediator in other proceedings**

**84.** Unless otherwise agreed by the parties or required by law.

(a) the mediator shall not act as an arbitrator or as a representative or counsel of a party in any arbitral or judicial proceeding in respect of a dispute that is [the subject of the mediation proceedings; and

(b) the mediator shall not be presented by the parties as a witness in any arbitral or judicial proceedings arising out of or in connection with the dispute mediated upon.

### **Admissibility of evidence in other proceedings**

**85.** The parties shall not rely on or introduce JS evidence in arbitral or judicial proceedings, whether or not the proceedings relate to the dispute that is the subject of the mediation proceedings,

(a) views expressed or suggestions made by the other party in the mediation in respect of a possible settlement of the dispute;

(b) admissions made by the other party in the course of the mediation proceedings; or

(c) the fact that the other party had indicated that party's willingness to accept a proposal for settlement made by the mediator.

### **Exclusion of liability**

**86.** (1) A mediator shall not be a party in any court proceedings relating to a mediation under this Act in which the mediator participated.

(2) A mediator is not liable for any act or omission in the discharge of the functions of a mediator unless the mediator is proven to have acted in bad faith.

### **Mediation expenses**

**87.** Unless the parties agree otherwise, the parties shall equally pay the expenses of the mediation including the fees and expenses of

(a) the mediator;

(b) any administrative assistance received;

(c) experts called; and

(d) any expenses incurred in connection with the mediation proceedings and settlement agreement.

### **Deposits**

**88.** (1) The mediator may direct each party to deposit an equal amount as an advance for the expenses of the mediation referred to in section 87 which the mediator expects will be incurred.

(2) During the course of mediation proceedings, the mediator may direct supplementary deposits in an equal amount from each party.

(3) If the required deposits are not paid in full by both parties within thirty days of the direction, the mediator may suspend the proceedings or may make a written declaration of termination of the proceedings to the parties, effective on the date of that declaration.

(4) On termination of the mediation proceedings, the mediator shall render an account to the parties of the deposits received and shall return any unexpended balance to the parties.

### **Submission to customary arbitration**

**89.** (1) A party to a dispute may submit the dispute to customary arbitration under this Part.

(2) Except otherwise ordered by a court and subject to any other enactment in force, a person shall not

(a) submit a criminal matter for customary arbitration; or (b) serve as an arbitrator in a criminal matter.

(3) A person who contravenes subsection (2) commits an offence and is liable on summary conviction to a fine not exceeding two hundred and fifty penalty units or a term of imprisonment not exceeding twelve months or to both.

(4) A conviction of a person under subsection (3) is not a bar to prosecution for an offence under the Criminal Offences Act, 1960 (Act 29) to which that person is liable in respect of the matter submitted for customary arbitration.

### **Agreement to submit to customary arbitration**

**90.** (1) A report of a dispute by a party to that dispute to a qualified person as provided in section 92, followed by a request to that qualified person to help resolve the dispute shall constitute a submission to customary arbitration.

(2) A customary arbitrator to whom a submission for customary arbitration is made by a party shall inform the other party of the submission and invite that other party and the party who made the submission to pay a fee or a token for the arbitration.

(3) The payment by the parties of the arbitration fee or token demanded by the arbitrator in customary arbitration constitute

(a) consent to submit to customary arbitration and

(b) the appointment of the arbitrator.

(4) Customary arbitration shall not commence where the other party rejects the invitation by failing to pay the fee or token demanded by the arbitrator.

(5) Failure by the other party to accept the invitation within twenty-one days of receipt of the invitation or within a period of time specified by the arbitrator shall be deemed to be a rejection of the invitation.

(6) A person shall not be forced or coerced by another person, institution or authority to submit to customary arbitration.

### **Reference by court to customary arbitration**

**91.** A court may with the consent of parties order a dispute pending before it to be submitted by the parties to customary arbitration.

### **Qualification of customary arbitrator**

**92.** (1) A person chosen by one of the parties and accepted by the other party or a person agreed on by the parties to a dispute qualifies to be an arbitrator.

(2) The Centre shall as far as practicable prepare and maintain at its offices a list of customary arbitrators for the area which the office of the Centre oversees.

### **Rules of customary arbitration**

**93.** (1) A customary arbitrator shall apply the rules of natural justice and fairness and is not obliged to apply any legal rules of procedure in the arbitration.

(2) The parties may agree in consultation with the arbitrator to, (a) conduct the arbitration under the auspices of the Centre; or

(b) adopt the Rules of arbitration of the Centre subject to such modifications as the parties and the arbitrator consider appropriate.

### **Registration of dispute with the Centre**

**94.** (1) Where parties agree to conduct a customary arbitration under the auspices of the Centre, they shall register the dispute with the nearest local office of the Centre.

(2) For the purpose of subsection (1) the Centre shall as far as practicable have offices attached to Unit Committees and District Assemblies.

(3) A registration of a dispute under this Part shall indicate

(a) the names and addresses of the parties and the arbitrator; and (b) the nature of the dispute.

(4) The parties are free to appoint the person who should be the arbitrator.

### **Number of customary arbitrators**

**95.** Unless the parties agree otherwise, there shall be one customary arbitrator for customary arbitration proceedings.

### **Appointment of customary arbitrator by Centre**

**96.** (1) Parties to a dispute may agree that the Centre should appoint the arbitrator.

(2) Where parties agree as provided under subsection (1), the parties shall go to the nearest Office of the Centre; register their dispute and pay the required fee upon which the Centre shall appoint an arbitrator from the register of arbitrators for that area for the parties.

### **Notice of appointment of customary arbitrator**

**97.** Where parties appoint an arbitrator under section 101 (4) or the Centre appoints the arbitrator under section 103 (1), the Centre shall within fourteen days after that appointment inform the arbitrator of the appointment.

### **Disclosure by a customary arbitrator**

**98.** (1) A person requested to be a customary arbitrator shall disclose any circumstance likely to give reasonable cause to doubt as to the independence or impartiality of that person.

(2) A customary arbitrator's obligation to disclose under subsection (1) subsists throughout the arbitral proceedings.

### **Challenge of a customary arbitrator**

**99.** (1) A customary arbitrator may be challenged if

(a) circumstances exist that give rise to reasonable cause to doubt as to the arbitrator's independence or impartiality; or

(b) the arbitrator does not possess a qualification agreed on by the parties.

(2) A party may not challenge an arbitrator who that party has appointed or in whose appointment that party participates expect for reasons which that party becomes aware of subsequent to the appointment.

(3) Subject to subsection (4), parties may agree on a procedure for challenging a customary arbitrator.

(4) Unless the parties in accordance with subsection (3) agree otherwise, a party who intends to challenge a customary arbitrator shall within seven days of appointment of the arbitrator or after becoming aware of the grounds of the challenge, inform the other party and the arbitrator of the challenge and the reasons for the challenge.

(5) A customary arbitrator who is challenged shall step down and the party who appointed the challenged arbitrator shall appoint another ar