

Major Highlights on Arbitration and Conciliation Working Procedure Proclamation

Description

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Ethiopia has adopted a comprehensive **Arbitration and Conciliation Working Procedure under Proclamation No 1237/2021** (hereafter the Proclamation) effective from publication in the Federal Negarit Gazette, done on 2nd of April 2021. This Proclamation repealed the arbitration and conciliation provisions of the Civil Code and Civil Procedure Code. The proclamation shall apply to commercial related national arbitration, international arbitration whose seat is in Ethiopia and national conciliation proceedings.

However divorce, adoption, guardianship, tutorship, succession, criminal cases, tax cases, judgment on bankruptcy, decision on dissolution of business organizations, all land cases including lease, administrative contracts, trade competition and consumer protection, administrative disputes falling under the powers given to relevant administrative organs by law **shall not be submitted to arbitration.**

The *arbitration agreement* shall be in writing, signed by the parties having two witnesses. An arbitration agreement concluded by **electronic communication** shall be deemed to have been in written form.

With respect to matters falling under the arbitration agreement, the contracting parties may request the court **interim measures** to be taken before the arbitration proceeding is initiated or during the proceedings. This shall not be considered as violation of the the arbitration agreement by the contracting parties and as intervention by the court.

The Proclamation will be applicable as law governing arbitration in which Ethiopia is designated as a seat of the arbitration and where the contracting parties have not chosen the applicable law. Where the parties have chosen the arbitration law, such law chosen by the parties shall govern the arbitration.

The parties to the contract will choose the number of arbitrators by agreement. Where the contracting parties fail to agree on the number of arbitrators, it shall be three arbitrators.

Where one of the contracting parties fail to appoint the co-arbitrator within 30 days from the date of receipt of the notice by the other party, or where the two arbitrators fail to agree on the appointment of the third arbitrator within 30 days from the date of their appointment or where the contracting parties fail to agree, in case of a sole arbitrator, the **First Instance Court** shall appoint such arbitrator upon the request of one of the parties.

Where the contracting party who has notified the other party to participate in the appointment of arbitrator or properly notified to designate a co-arbitrator from his side and if he fails to reply within 30 days or deny the existence of an arbitration agreement, the requesting party shall have the right to *cancel* the agreement in his own time and submit his suit to the **court**.

Arbitration Centers may be established by the government or private persons. The details shall be determined by the *Regulation*. This shall make Ethiopian cities as hubs for arbitration and it is the hope of the writer that the regulation will not be neglected for a long time from being enacted.

One aspect that makes arbitration proceeding lack teeth has been its inability to issue interim measures to protect the interests of the claimant. But in this proclamation, unless the contracting parties agree otherwise, the tribunal may issue an order **interim measure** upon request made by one of the contracting parties. Also where an order for interim measure cannot be enforced, one of the contracting parties may apply to a court for the enforcement of such order.

The proceedings of arbitration such as determination of rules of procedure, place of arbitral tribunal, language, presentation of statement of claim and statement of defense oral and written arguments are stated in detail. In addition to this, the Proclamation provides what happens in case of *non-appearance of a party in dispute* and intervention of a third party.

The arbitral award shall be in writing and signed by the arbitrator or arbitrators. Where the award is rendered by majority, the signature of the majority shall suffice and the arbitrator who has not signed on the arbitral shall state his reasoning. Correction of clerical errors, numerical errors, unintended and inadvertent omission of words may be requested within 30 days from receipt of the award.

Regarding appeal or application to Cassation, **unless the contracting parties agree otherwise in their arbitration agreement**, no appeal shall lie to the court from an arbitral award. Also **unless there is agreement to the contrary**, an application for cassation can be submitted where there is a fundamental or basic error of law.

Execution of an arbitral award shall be done by **court**. An arbitral award rendered in Ethiopia or in a foreign country shall be deemed to be binding and shall be executed pursuant to the Civil Procedure Code by applying to a court that is empowered to execute the award had the case been heard by a court. The party shall submit the arbitration agreement, the original award or an authenticated copy of the award. The arbitral award brought into Ethiopia for recognition or execution shall be authenticated by the relevant organ, and translated into the working language of the court.

And finally the proclamation state dispute resolution through **Conciliation agreement**. Contracting parties may express their agreement, in writing or in any other means, to resolve future or existing disputes through conciliation. Conciliation initiated by one party does not get a response within 30 days from the date of receipt of notification from the other party or upon expiry of the date of response, the party who initiate the conciliation may treat this as a *rejection* of the invitation to conciliate and shall notify the other party is revocation of the invitation.

Where the conciliator believes that there exists a proposal for conciliation that may be acceptable to the contracting parties, he may formulate the terms of the **settlement agreement**. The parties may sign a written settlement agreement. The conciliator shall authenticate the settlement agreement and

furnish a copy thereof to each contracting party. Such settlement agreement shall be deemed to be final and non appealable. The execution shall be made by the court that has material jurisdiction and which is located at the place where the settlement agreement is reached.

In conclusion the Arbitration and Conciliation Working Procedure Proclamation sets the ground work for establishment of alternative dispute resolution in Ethiopia. The Proclamation helps to complement the right to justice, efficient resolution of investment and commercial related disputes. Those areas awaiting the enactment of Regulation by the Council of Ministers should be looked fast and see the realization of the ADR to its fullest extent for the business community and justice sector in Ethiopia.

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Date Created

April 4, 2021

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