

Tanzania

Executive Agencies Act

Executive Agencies (Conciliation and Arbitration) Regulations, 1999 Government Notice 76 of 1999

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[Section 18; G.N. No. 76 of 1999]

Part I – Preliminary provisions (regs. 1-5)

1. Citation

These Regulations may be cited as the Executive Agencies (Conciliation and Arbitration) Regulations.

2. Interpretation

In these Regulations, unless the context otherwise requires—

"Act" means the Executive Agencies Act¹;

"arbitral tribunal" means a sole arbitrator or a panel of arbitrators;

"dispute" includes a difference;

"party" means a party to conciliation or arbitration proceedings under these Regulations;

"Service Level Agreement" means an agreement between an executive agency on the one part and a Ministry, department or other division, by whatever name called, of the Government on the other part, for the provision of goods or services; or such an agreement between one executive agency and another.

3. Application

- (1) These Regulations shall apply to the settlement of disputes relating to Service Level Agreements in respect of which—
 - (a) the value of the claim exceeds ten million shillings or such other amount as the Minister responsible for the public service may prescribe; and
 - (b) the payment of the claim or the performance of an obligation has remained outstanding for six months or more from the date it became due.

- (2) For the purposes of paragraph (a) of subregulation (1), two or more claims, whether or not of a similar nature, may be joined together in a single submission for conciliation or arbitration.
- (3) In any particular case in which the value of a claim is lower than the amount specified in, or prescribed under, paragraph (a) of subregulation (1), the Minister responsible for the public service may, on an application in writing by a party authorise in writing that the dispute be dealt with under these Regulations.

4. Mandatory implied term for conciliation and arbitration of disputes

Unless it is expressly stated in a Service Level Agreement, it shall be an implied term in every such agreement that any dispute arising from the agreement may be settled only through conciliation or arbitration under these Regulations and that the agreement constitutes a waiver by each of the parties of any rights or remedies to any other method of settling disputes.

5. Duty of parties to settle disputes under Regulations

- (1) The parties shall endeavour to resolve any disputes between or among themselves through conciliation and shall only proceed to arbitration if they do not agree to settle their disputes through conciliation or if the conciliation proceedings do not produce a settlement acceptable to any of the parties.
- (2) Where, in the opinion of a party aggrieved by a dispute all reasonable steps have been taken to resolve the dispute and no settlement, other than through conciliation or arbitration is likely to be reached, that party shall initiate conciliation proceedings without undue delay.

Part II – Conciliation (regs. 6-16)

6. Commencement of conciliation proceedings

- (1) Any of the parties may, in writing, notify the other party of the existence of a dispute, setting out the subject of the dispute and its claim and request the other party to agree to submit the dispute to conciliation; and the party requested shall respond to the other within thirty days of the receipt of the request.
- (2) Where upon a request made in accordance with paragraph (1) the party requested—
 - (a) does not respond within thirty days or does not accept the request, conciliation proceedings shall not take place and the dispute shall thereby become the subject of arbitration; or
 - (b) accepts the request, the parties shall as soon as possible after the acceptance, appoint a conciliation or conciliators.
- (3) For the purposes of these Regulations, conciliation proceedings shall be deemed to commence on the date on which one party requests the other to agree to submit the dispute to conciliation.

7. Number of conciliators

- (1) Conciliation proceedings shall be conducted by one conciliator unless the parties agree that there shall be two or more conciliators.
- (2) Where more than one conciliator is appointed, they shall act jointly.

8. Appointment of conciliators

- (1) In conciliation proceedings—
 - (a) with one conciliator, the Attorney-General, shall appoint a single conciliator;

- (b) with two conciliators, each party may appoint one conciliator;
 - (c) with three conciliators each party may appoint one conciliator and the Attorney-General shall appoint the third conciliator who shall act as presiding conciliator.
- (2) A person who holds a public office shall not be qualified to be appointed a conciliator by the Attorney-General under subparagraph (a) or (c) of paragraph (1).

9. Submission of statement to conciliator

- (1) The conciliator may request each party to submit a written statement describing the nature of the dispute and the matters at issue and each party shall give a copy of its statement to the other.
- (2) At any stage of the conciliation proceedings, the conciliator may request each party to submit any such additional information as he may consider appropriate and any written or other evidence or grounds on which a party wishes to rely in support of its position and the conciliator shall give a copy of every document to the other party.

10. Role of conciliator

- (1) A conciliator shall, in an attempt to reach an amicable settlement of the parties dispute, be guided by principles of impartiality fairness and justice and shall assist the parties in an independent and impartial manner.
- (2) The conciliator shall among other things, give consideration to 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 and the desirability of a speedy settlement of the dispute.
- (3) Subject to these Regulations, a conciliator shall not be bound by the laws applicable to evidence or procedure in proceedings before the courts.
- (4) The conciliator or any party may, at any stage of the conciliation proceedings, make proposals or suggestions for the settlement of the dispute.

11. Communication between conciliator and parties

The conciliator may meet or communicate with the parties together or separately and shall determine, after consultation with the parties, the place where the proceedings are to be held.

12. Co-operation of parties

The parties shall, in good faith, co-operate with the conciliator and, in particular, shall endeavour to comply with requests by the conciliator to submit written evidence, to provide any other evidence and to attend meetings.

13. Settlement agreement

- (1) Where it appears to the conciliator that there exist elements of a settlement that may be acceptable to the parties, he shall formulate the terms of a possible settlement and submit them to the parties for their observations and specify the time within which they must signify their approval.
- (2) The conciliator may reformulate the terms of a proposed settlement in the light of any observations submitted to him by the parties.
- (3) A settlement agreement shall be made in writing and shall be signed by the parties and authenticated by the conciliator; and in proceedings with more than one conciliator, the signature of two conciliators shall be sufficient so long as the reason for any omitted signature is stated on the agreement.

14. Status and effect of settlement agreement

A settlement agreement shall be final and binding on each of the parties and shall have the same force and effect as an arbitral award under Regulations 30 on the substance of the dispute and may be enforced in the same manner.

15. Termination of conciliation proceedings

Conciliation proceedings may be terminated in any of the following cases and on the respective dates of their occurrence—

- (a) by the signing of the settlement agreement by the parties, on the date of the agreement;
- (b) if, at any time after the commencement of proceedings and the conciliator having consulted the parties is of the opinion, and notifies the parties, that further efforts at conciliation are no longer justifiable, on the date of the notification;
- (c) if any of the parties notifies the conciliator that the proceedings should terminate, on the date of the notification;
- (d) if within three months of the date of appointment of the conciliator or such longer periods as the parties may agree to, the proceedings fail to produce a settlement.

16. Mandatory consequence of failure of conciliation

Where, conciliation proceedings have been terminated under regulation 15(b), (c) or (d) conciliation proceedings have terminated, the conciliator shall issue a certificate to that effect and the dispute shall thereby become the subject of arbitration in accordance with Part III of these Regulations.

Part III – Arbitration (regs. 17-31)

17. Commencement of arbitration

Arbitration proceedings shall commence—

- (a) where under subregulation (2) of Regulation 5 a party has not responded within thirty days to a request for conciliation or has not accepted the request, on the date on which one party requests the other to agree to submit the dispute to conciliation;
- (b) where conciliation proceedings have not produced a settlement acceptable to the parties, within fourteen days after the conciliator has issued a certificate to that effect.

18. Number and appointment of arbitrators

- (1) Arbitration proceedings shall be conducted by a single arbitrator appointed by the parties unless they agree that there shall be more than one arbitrator.
- (2) Where two or more arbitrators are appointed, they shall act jointly.
- (3) In arbitration proceedings with three arbitrators, each party shall appoint one arbitrator and the Attorney-General shall appoint the third arbitrator who is not a person holding a public office and who shall act as presiding arbitrator.

19. Non disqualification of conciliation as arbitrator

- (1) Except as may be agreed in writing by the parties a person who, having acted as conciliator in connection with some or all of the matters in conciliation proceedings that have failed to produce

a settlement shall not be disqualified to act as an arbitrator in the same dispute only on the ground that he had acted previously as a conciliator.

- (2) Where the parties have agreed that a person appointed as a conciliator may act as an arbitrator, in the event of the conciliation proceedings having failed to produce a settlement acceptable to the parties, no objection shall be taken to the conduct of arbitration proceedings or to any award on the ground that he had previously acted as a conciliator in connection with any of the matters referred to arbitration.

20. Role of arbitrator and co-operation of parties

The provisions of Regulations 9, except paragraph (3), and Regulation 11 shall apply to arbitration proceedings.

21. Proper law

An Agreement out of which the dispute or the arbitration arises shall be governed by the law of Tanzania.

22. Procedural law

The arbitration proceedings shall be governed by the law of evidence and procedure generally applicable to civil proceedings in Tanzania except where the parties, in any particular part of the proceedings, agree to apply any other rules of evidence or procedure.

23. Statement of claims and defence

- (1) Within the period of time agreed upon by the parties or determined by the arbitral tribunal, the claimant shall state the facts supporting his claim, the points at issue and of the relief or remedy sought, and the respondent shall state his defence in respect of these particulars, unless the parties have mutually agreed as to the required particulars of such statements.
- (2) The parties may submit with their statements all documents they consider to be relevant or may add a reference to the documents or other evidence they will submit.
- (3) Except as otherwise agreed by the parties, or determined by the arbitral tribunal, either party may amend or supplement his claim or defence during the course of the arbitral proceedings unless the arbitral tribunal considers it inappropriate to allow the amendment or supplement having regard to the delay in making it.

24. Hearing and written submission

- (1) Subject to any agreement to the contrary by the parties, the arbitral tribunal shall decide whether to hold oral hearing for the presentation of evidence or for oral argument or whether the proceedings shall be conducted only on the basis of documents and other materials furnished under Regulation 23.
- (2) Unless the parties have agreed that no hearings shall be held, the arbitral tribunal shall hold oral hearing at an appropriate stage of the proceedings, if so required by a party.
- (3) The arbitral tribunal shall have power to administer oaths to the parties and witnesses appearing before it.
- (4) The parties shall be given sufficient advance notice of any hearing and of any meeting of the arbitral tribunal for the purpose of inspection of documents, goods or other matter.
- (5) All statements, documents or other information furnished to, or applications made to, the arbitral tribunal by one party shall be communicated to the other party, and any expert report or evidential document on which the arbitral tribunal may rely in making its decisions shall be communicated to the parties.

25. Default of a party

Where without showing sufficient cause—

- (a) the claimant fails to communicate his statement of claim in accordance with Regulation 23(1), the tribunal shall terminate the arbitral proceedings;
- (b) the respondent fails to communicate his statement of defence in accordance with Regulation 23(1), tribunal shall continue the proceedings without treating that failure alone as an admission of the claimant's claim;
- (c) any party fails to appear at a hearing or produce documentary evidence, the arbitral tribunal may continue the proceedings and make the award on the evidence before it;
- (d) the claimant fails to prosecute his claim, the arbitral tribunal may make an award dismissing the claim or give directions, with or without conditions, for the speedy determination of the claim.

26. Experts

- (1) The arbitral tribunal may, unless otherwise agreed by the parties.
 - (a) appoint one or more experts to report to it on specific issues to be determined by the arbitral tribunal; and
 - (b) require a party to give the expert any relevant information or to produce or provide access to, any relevant documents, goods or other property for inspection.
- (2) Where a party so requests or if the arbitral tribunal considers it necessary, the expert shall, after delivery of his written or oral report, participate in an oral hearing where the parties shall have the opportunity to put questions to him and to present expert witnesses in order to testify on the points at issue.
- (3) The expert appointed under this regulation shall, upon the request of a party make available to that party for examination all documents, goods or other property in the expert's possession which was provided to him in order to prepare his report.

27. Decisions by panel of arbitrators

- (1) In arbitral proceedings with three arbitrators, unless otherwise agreed by the parties, a decision made by two or all its members shall be the decision of the arbitral tribunal.
- (2) Notwithstanding paragraph (1), if authorised by the parties or all the members of the arbitral tribunal, questions of procedure may be decided by a presiding arbitrator.

28. Settlement

- (1) If, during arbitral proceedings, the parties settle the dispute the arbitral tribunal shall terminate the proceedings and, if requested by the parties and not objected to by the arbitral tribunal, record the settlement in the form of an arbitral award on agreed terms.
- (2) An arbitral award on agreed terms shall be made in accordance with Regulation 29 and shall state that it is an arbitral award.
- (3) An arbitral award on agreed terms has the same status effect as any other arbitral award on the substance of the dispute.

29. Form and contents of arbitral award

- (1) The arbitrators shall make their award in writing within three months after entering on the reference, or after having been called on to act by notice in writing from any part to the submission,

or on or before any later day to which the arbitrators, by writing signed by them, may, extend for making the award.

- (2) An arbitral award shall be made in writing and shall be signed by the arbitrator or the arbitrators.
- (3) For the purpose of paragraph (1), in arbitral proceedings with more than one arbitrator, the signatures of two of the arbitrators shall be sufficient so long as the reason for any omitted signature is stated on the record of the award.
- (4) The arbitral award shall state the reasons upon which it is based, unless—
 - (a) the parties have agreed that no reasons are to be given; or
 - (b) the award is an arbitral award on agreed terms under Regulation 28; and wherever practicable shall set out the time limits within which its terms, or any of them, are to be complied with.
- (5) The arbitral award shall state the date of the award and the place of arbitration.

30. Status and effect of arbitral award

An arbitral award shall be final and binding on the parties and the persons claiming under them respectively and is enforceable in the manner provided for in Part IV of these regulations.

31. Termination of arbitral proceedings

- (1) The arbitral proceedings shall be terminated by the final arbitral award or by an order of the arbitral tribunal under paragraph (2).
- (2) The arbitral tribunal shall issue an order for the termination of the arbitral proceedings where—
 - (a) the claimant withdraws his claim, unless the respondent objects to the order and the arbitral tribunal recognises a legitimate interest on his part in obtaining a final settlement of the dispute;
 - (b) the parties agree on the termination of the arbitral proceedings and the tribunal is satisfied that the parties are actively pursuing other measures to resolve the dispute; or
 - (c) the arbitral tribunal finds that the continuation of the proceedings has for any other reason, become unnecessary or impossible.
- (3) If arbitral proceedings are terminated under subregulation (2), the arbitral tribunal shall submit a report on its proceeding—
 - (a) in respect of a dispute involving a Ministry and an executive agency, to the Minister responsible for that Ministry and the Minister responsible for the executive agency; and
 - (b) in respect of a dispute involving executive agencies only, to the respective Ministers and Permanent Secretaries responsible for the executive agencies concerned.
- (4) Subject to Regulation 39, the mandate of an arbitral tribunal terminates upon the termination of arbitral proceedings as provided for in this Regulation.

Part IV – Enforcement of settlement agreements and arbitral awards (reg. 32)

32. Enforcement of agreements

- (1) At the conclusion of proceedings, the conciliator or arbitral tribunal, as the case may be, shall submit a certified copy of every settlement agreement or arbitral award to the Permanent Secretary of the Ministry concerned or for the Ministry responsible for the executive agency concerned who

shall, in accordance with the terms of the agreement or award, take all reasonable measures to ensure that unless the parties have sooner implemented those terms—

- (a) in the case of a monetary claim, any amount due from one party to the other is paid; or
 - (b) in the case of any their right or obligation, the right is enforced or the obligation is performed by the relevant party.
- (2) For the purposes of paragraph (1), in addition to any other measures for satisfying the terms of a settlement agreement or an arbitral award, the Permanent Secretary may—
- (a) withhold any funds appropriated under section 12(1) of the Act to an executive agency which is in default of its obligation and pay the party to whom money is due;
 - (b) pay any moneys due to another party from the amount of revenue of an executive agency which under section 12(3) of the Act, is to be treated as public funds credited to the Exchequer account.
- (3) The provisions of subregulation (2) shall apply to settlement agreement or an arbitral award to which a Ministry, department or other division is a party in the same manner as they apply between executive agencies.
- (4) The chief executive of an agency that has been a party to proceedings under these Regulations shall include in the annual report for the year in which the proceedings terminated or for the following year a summary and the outcome of those proceedings and also indicate the measures taken or contemplated for the implementation of the agreement or award.
- (5) Where the Permanent Secretary has failed to enforce an agreement or award as provided for in this regulation, he shall, without delay, submit the matter to Cabinet and Cabinet may take such measures as it considers appropriate.

Part V – General provisions (regs. 33-41)

33. Representation of parties

- (1) In conciliation proceedings, a party may be represented only by—
 - (a) on the part of an Executive Agency, the Chief Executive; or
 - (b) on the part of a Ministry, department or other division of the Government, the Permanent Secretary to that Ministry or of the Ministry to which the department or division belongs; or
 - (c) any other employee authorised in writing, either generally or in any particular case, by the chief executive or, as the case may be by the Permanent Secretary.
- (2) In arbitration proceedings a party may be represented by any of the respective persons referred to in paragraph (1) or by—
 - (a) an advocate who is not the holder of a public office; or
 - (b) any other person of that party's choice.

34. Interim measures

A party may, at any time during any proceedings under these regulations, request the conciliator or the arbitral tribunal to grant an interim measure for the protection of its interests and the conciliator or the arbitral tribunal may grant the request.

35. Service and receipt of written communications

A written communication to be served by the conciliator, the arbitral tribunal, a party or any other person shall be deemed to have been duly served and received by the person to whom it is addressed if it is delivered to the addressed personally or at the usual place of business or postal address.

36. Termination of mandate

The mandate of a conciliator or an arbitrator shall terminate if—

- (a) he resigns or is unable to perform the functions of his office or for any reason fails to act without undue delay;
- (b) where any of the parties allege that he has misconducted himself by reason of lack of impartiality and the conciliator or arbitrator thereby withdraws from his office;
- (c) the parties agree to the termination of the mandate.

37. Substitution of conciliator or arbitrator

- (1) Where the mandate of a person is terminated under Regulation 36, a substitute conciliator or arbitrator shall be appointed in accordance with the procedure applicable to the appointment of the person being replaced.
- (2) Unless otherwise agreed by the parties—
 - (a) where a sole conciliator or the presiding arbitrator is replaced, any hearing previously held shall be held afresh; and
 - (b) where a conciliator or an arbitrator other than a sole conciliator or a presiding conciliator or arbitrator is replaced, the other members may continue the proceedings and make any decision, ruling or award after taking into account the stage of the proceedings and such other matters they consider appropriate under the circumstances.

38. Costs and fees of conciliators and arbitrators

- (1) Upon the termination of the proceedings, the conciliator or the arbitral shall determine the costs of the proceedings and give written notice of those costs to the parties.
- (2) For the purposes of paragraph (1) "costs" means reasonable costs of witnesses, administration and other assistance required by the conciliator or arbitral tribunal for the proceedings.
- (3) The costs and fees of conciliators and arbitrators shall be borne equally by the parties unless the parties agree to a different apportionment.
- (4) All other expenses incurred by a party shall be borne by that party.
- (5) The conciliator or arbitral tribunal may direct each party to deposit an equal amount as an advance for the costs referred to in this Regulation and, upon termination of the proceedings, shall render an account to the parties of the deposits received and shall return any unexpended balance to the parties.
- (6) The Minister responsible for the public service shall with the approval of the Minister responsible for finance, prescribe the fees and other expenses payable to conciliators and arbitrators and the fees and other expenses shall be paid by the parties immediately upon the termination of the proceedings.

39. Correction of errors and interpretation of arbitral awards

- (1) An arbitral tribunal may, on its own initiative, correct any clerical or typographical errors or any other errors of a similar nature appearing in its award within thirty days after the date of the award.
- (2) Within thirty days after receipt of the arbitral award, and after notifying the other party in writing, a party may request the arbitral tribunal—
 - (a) to correct in the arbitral award any errors of the type referred to in paragraph (1); and
 - (b) to give an interpretation of a specific point or part of the arbitral award.
- (3) Regulation 38 shall apply to the correction or interpretation of an award requested by a party under subregulation (2).

40. Protection of conciliators, arbitrators and other participants

No conciliator, arbitrator, witness or any other person assisting in proceedings under these Regulations shall be liable in civil or criminal proceedings for any act or omission in connection with those proceedings but he may be liable for the consequences of his conscious and deliberate wrong doing.

41. Forms

The forms set out in the Schedule to these Regulations or similar forms, with such variations or modifications as the circumstances of each case require, may be used for the respective purposes to which they relate.

Schedule (Regulation 41)**Forms**

[Editorial note: The forms have not been reproduced.]