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IBA ARBITRATION COMMITTEE

Arbitration Guide

ZIMBABWE

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I. Background

(i) How prevalent is the use of arbitration in your jurisdiction? What are seen as the principal advantages and disadvantages of arbitration?

Arbitration is now a popular and widely used method of commercial dispute resolution.

Principal advantages of arbitration in Zimbabwe:

- Confidentiality: Arbitration proceedings are typically private, ensuring that the dispute and its details are not made public.
- Neutrality: Arbitration allows parties to choose a neutral venue and arbitrators who are knowledgeable in the relevant field.
- Efficiency: Arbitration offers a more expedited resolution compared to traditional court litigation as parties have greater control over the scheduling and the process, minimizing delays and providing a quicker outcome.

Principal disadvantages of arbitration in Zimbabwe:

- Limited legal precedents: As arbitration is a private process, the decisions rendered do not establish legal precedents like court judgments. This lack of precedent can lead to uncertainty in the interpretation and application of the law.
- Cost: Arbitration can be costly, particularly when fees are associated with the appointment of arbitrators and the administration of proceedings. This might act as a deterrent for parties with limited financial resources.
- Difficulty in enforcement: In some cases, parties may face challenges in enforcing arbitral awards. This may be due to non-compliance by the losing party.

(ii) Is most arbitration institutional or ad hoc? Domestic or international? Which institutions and/or rules are most commonly used?

Most arbitration is ad hoc rather than institutional and mostly domestic. However, there are also institutional arbitration options available, which provide administrative support for arbitrations and helps parties in the appointment of arbitrators Institutional arbitration is applicable if both parties agree. Although Zimbabwe is party to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, Zimbabwe has experienced limited foreign investment, therefore, fewer international commercial disputes. As a result, domestic arbitration is more prevalent in Zimbabwe.

Parties often choose to adopt ad hoc rules tailored to the specific dispute. In Zimbabwe parties may seek guidance from the Arbitration Act Chapter 7:15, and the United Nations Commission on International Trade Law (UNCITRAL) Model Law which provides inter alia, a comprehensive framework for the conduct of arbitration proceedings, including the appointment of arbitrators, and the language of the proceedings.

There are three common institutions used to solve disputes in Zimbabwe. These are the Commercial Arbitration Centre (CAC), the Africa Institute of Mediation and Arbitration (AIMA) and the Alternative Dispute Solutions Centre (ADSC).

(iii) What types of disputes are typically arbitrated?

Some common types of disputes that are typically arbitrated include:

- Commercial Disputes;
- Construction Disputes;
- Labor and Employment Disputes;
- International Disputes;
- Intellectual Property Disputes; and
- Sports and Entertainment Disputes.

(iv) How long do arbitral proceedings usually last in your country?

In general, arbitral proceedings in Zimbabwe usually last between six months and twelve months in exceptional circumstances.

(v) Are there any restrictions on whether foreign nationals can act as counsel or arbitrators in arbitrations in your jurisdiction?

Unlike litigation, arbitration is not bound by the strict rules of procedure. In terms of the Arbitration Act [Chapter 7:15], there is no specific restriction on foreign nationals acting as counsels or arbitrators in Zimbabwe regard being also given to Article 11(1) of the UNCITRAL Model Law which is used in Zimbabwe.

II. Arbitration Laws

(i) What law governs arbitration proceedings with their seat in your jurisdiction? Is the law the same for domestic and international arbitrations? Is the national arbitration law based on the UNCITRAL Model Law?

In Zimbabwe, domestic arbitration proceedings are primarily governed by the Arbitration Act [Chapter 7:15]. This law applies to arbitrations with their seat in Zimbabwe and involves disputes between parties who are citizens or entities of Zimbabwe. The Arbitration Act is based on the UNCITRAL Model Law.

Furthermore, both domestic and international arbitration is governed by the Arbitration Act [Chapter7:15] which is based on the UNCITRAL Model Law.

(ii) Is there a distinction in your arbitration law between domestic and international arbitration? If so, what are the main differences?

There is a no distinction in Zimbabwean arbitration law between domestic and international arbitration. The Arbitration Act is applicable to both domestic and international arbitration.

(iii) What international treaties relating to arbitration have been adopted (eg New York Convention, Geneva Convention, Washington Convention, Panama Convention)?

Zimbabwe is party to the United Nations Commission on International Trade Model Law, Convention on the Recognition and Enforcement of Foreign Arbitral Awards and the Convention on the Settlement of Investment Disputes between States and Nationals of Other States.

(iv) Is there any rule in your domestic arbitration law that provides the arbitral tribunal with guidance as to which substantive law to apply to the merits of the dispute?

Article 28(1) of the UNCITRAL Model Law provides that the arbitral tribunal shall decide the dispute in accordance with such rules of law as are chosen by the parties as applicable to the substance of the dispute.

III. Arbitration Agreements

(i) Are there any legal requirements relating to the form and content of an arbitration agreement? What provisions are required for an arbitration agreement to be binding and enforceable? Are there additional recommended provisions?

In terms of article 7 of the UNCITRAL Model Law An arbitration agreement may be in the form of an arbitration clause in a contract or in the form of a separate agreement. It also provides that the arbitration agreement shall be in writing. An agreement is in writing if it is contained in a document signed by the parties or in an exchange of letters, telex, telegrams, or other means of telecommunication which provide a record of the agreement, or in an exchange of statements of claim and defence in which the existence of an agreement is alleged by one party and not denied by another. Although an oral arbitration agreement is not invalid such agreements are regulated by common law and not by Arbitration Act. In practice most arbitration agreements are in writing and regulated by the Arbitration Act.

(ii) What is the approach of courts towards the enforcement of agreements to arbitrate? Are there particular circumstances when an arbitration agreement will not be enforced?

Courts generally favor the enforcement of agreements to arbitrate as they uphold the principle of party autonomy and promote alternative dispute resolution. In terms of Article 8 of the UNCITRAL Model Law, if there is an arbitration agreement, a court may stay proceedings and refer the matter for arbitration However, there are particular circumstances were an arbitration agreement will not be enforced. Some of the circumstances include invalidity of the agreement, lack of capacity or authority and ppublic policy considerations.

(iii) Are multi-tier clauses (eg arbitration clauses that require negotiation, mediation and/or adjudication as steps before an arbitration can be commenced) common? Are they enforceable? If so, what are the consequences of commencing an arbitration in disregard of such a provision? Lack of jurisdiction? Non-arbitrability? Other?

Multi-tier clauses are common and enforceable. If an arbitration is commenced in disregard of such a clause the non-arbitrability of the dispute at that stage may be raised by the respondent by way of a plea in the arbitration or alternatively the respondent may apply to court for an order staying the arbitration proceedings.

(iv) What are the requirements for a valid multi-party arbitration agreement?

A multi-party arbitration agreement must fulfill certain requirements to be enforceable. Some of the requirements are:

- Mutual Consent.
- The agreement must be in written form in terms of Article 7(2) of the UNCITRAL Model Law.
- Compliance with Applicable Laws.
- Parties to the contract must have capacity to contract.

(v) Is an agreement conferring on one of the parties a unilateral right to arbitrate enforceable?

The courts usually favor mutual arbitration agreements where both parties agree to submit their disputes to arbitration. However a unilateral arbitration agreement can be enforceable because the UNCITRAL Model Law does not differentiate between a unilateral or bilateral arbitration agreements. Therefore if the unilateral arbitration agreement is in line with Article 7 of the UNCITRAL Model Law it can be enforced.

(vi) May arbitration agreements bind non-signatories? If so, under what circumstances?

Arbitration agreements generally bind the parties who have willingly entered into the agreement; therefore, arbitration agreements do not bind non-signatories.

(vii) How do the courts in the jurisdiction determine the law governing the arbitration agreement?

In terms of Article 19(1) of the UNCITRAL Model Law the parties are free to agree on the procedure to be followed by the arbitral tribunal in conducting the proceedings. If the parties fail to reach a consensus on the applicable law, the arbitral tribunal may, subject to the provisions of this UNCITRAL Model Law, conduct the arbitration in such manner as it considers appropriate. Therefore Article 19 relates to procedural law.

Furthermore, Article 28 of the UNCITRAL Model Law states that the arbitral tribunal shall decide the dispute in accordance with such rules of law as are chosen by the parties as applicable to the substance of the dispute. If the parties fail to agree, the arbitral tribunal shall apply the law which it considers applicable.

(viii) Do courts in your jurisdiction distinguish between the seat (or legal place) of the arbitration and the venue of meetings/hearings?

Generally, the courts in Zimbabwe generally make a distinction between the seat (or legal place) of arbitration and the venue of meetings or hearings in arbitration proceedings. The seat of arbitration refers to the legal jurisdiction that governs the arbitration process and determines the procedural and substantive laws applicable to the arbitration agreement.

On the other hand, the venue of meetings or hearings in arbitration refers to the physical location where the proceedings take place, such as a conference room or hearing room. The venue is usually decided by the agreement of the parties or by the rules of the arbitration institution chosen by the parties.

(ix) Are blockchain- and NFT-related disputes arbitrable in your jurisdiction?

Section 4 of the Arbitration Act [Chapter 7:15] which provides a list of matters which are not arbitrable does not include blockchain or NFTs. Therefore, subject to the agreement of the parties, arbitrators can typically accommodate disputes arising from emerging technologies, including blockchain and NFTs.

(x) Are there circumstances in which courts find that a valid arbitration agreement has become inoperable?

- Invalidity of the arbitration agreement: If the court determines that the arbitration agreement is invalid, such as due to lack of consent, duress, fraud, or unconscionability, it may deem the agreement inoperable.
- Lack of jurisdiction: If the court finds that it has exclusive jurisdiction over the subject matter of the dispute or that the dispute falls outside the scope of the arbitration agreement, it may declare the agreement inoperable.
- Waiver of the right to arbitrate by both parties
- Illegality or public policy concerns: In situations where the subject matter of the dispute is illegal or against public policy, the court may refuse to enforce the arbitration agreement and declare it inoperable.

IV. Arbitrability and Jurisdiction

(i) Are there types of disputes that may not be arbitrated? Who decides – courts or arbitrators – whether a matter is capable of being submitted to arbitration? Is the lack of arbitrability a matter of jurisdiction or admissibility?

In terms of Section 4 of the Arbitration Act [Chapter 7:15] the following are disputes that may not be arbitrable:

- An agreement that is contrary to public policy;
- A dispute which, in terms of any law, may not be determined by arbitration;
- A criminal case;
- A matrimonial cause or a matter relating to status, unless the High Court gives leave for it to be determined by arbitration;
- A matter affecting the interests of a minor or an individual under a legal disability, unless the High Court gives leave for it to be determined by arbitration; or
- A matter concerning a consumer contract as defined in the Consumer Contracts Act [Chapter 8:03], unless the consumer has by separate agreement agreed thereto.

(ii) What is the procedure for disputes over jurisdiction if court proceedings are initiated despite an arbitration agreement? Do local laws provide time limits for making jurisdictional objections? Do parties waive their right to arbitrate by participating in court proceedings?

When a dispute arises despite the presence of an arbitration agreement, and one-party initiates court proceedings instead of proceeding with arbitration, the other party can raise jurisdictional objections. In terms of Article 8 of the UNCITRAL Model Law, in the presence of an arbitration agreement, a court may stay proceedings and refer the matter for arbitration. Article 16 of the UNCITRAL Model Law provides time limits for making jurisdictional challenges. It prescribes that a plea that the arbitral tribunal does not have jurisdiction shall be raised not later than the submission of the statement of defence. However, the arbitral tribunal may admit a later plea if it considers the delay justified. Participating in court proceedings without raising a jurisdictional objection may be interpreted as a waiver of the right to arbitrate. This means that if both parties actively participate in court proceedings, by filing pleadings or presenting arguments on the merits of the case, may be deemed to have waived their right to insist on arbitration.

(iii) Can arbitrators decide on their own jurisdiction? Is the principle of competence-competence applicable in your jurisdiction? If yes, what is the nature and intrusiveness of the control (if any) exercised by courts on the tribunal's jurisdiction?

Arbitrators have the authority to decide on their own jurisdiction. The principle of competence-competence recognizes the autonomy of the arbitral tribunal and allows it to rule on its own jurisdictional competence, including any objections with respect to the existence or validity of the arbitration agreement. This is provided for in terms of Article 16 of the UNCITRAL Model Law

It states that if the arbitral tribunal rules on the issue of jurisdiction, a party may within thirty days after having received notice of that ruling, apply to the High Court to decide the matter, which decision shall be subject to no appeal. Once the High Court decides the matter, its decision is subject to no appeal. This means that parties cannot challenge the court's decision on jurisdiction through an appellate process.

V. Selection of Arbitrators

(i) How are arbitrators selected? Do courts play a role?

Article 11 of the UNCITRAL Model Law prescribes that parties are free to agree on a procedure of appointing the arbitrator or arbitrators. If the parties fail to agree on the appointment of arbitrators, the following rules apply

- Three-arbitrator panel: Each party appoints one arbitrator, and the two arbitrators selected will then appoint the third arbitrator.

  If a party fails to appoint an arbitrator within 30 days of receiving a request from the other party, or if the two appointed arbitrators are unable to agree on the third arbitrator within 30 days, a party can request the High Court to make the appointment.

- Sole arbitrator: If the arbitration is to be conducted with only one arbitrator and the parties cannot agree on the arbitrator, a party may request the High Court to appoint the arbitrator.

It must be noted that if the parties are unable to agree on the appointment process or if there are delays, the High Court may step in to make the necessary appointments upon request from one of the parties.

(ii) What are the requirements in your jurisdiction as to disclosure of conflicts? Do courts play a role in challenges and what is the procedure?

In terms of Article 12(1) of the UNCITRAL Model Law, when a person is approached with a possible appointment as an arbitrator, they are required to disclose any circumstances that are likely to give rise to justifiable doubts as to their impartiality or independence.

Furthermore, once an arbitrator is appointed, they have an ongoing duty of disclosure throughout the arbitral proceedings. If any circumstances arise that could affect their impartiality or independence, the arbitrator must disclose these circumstances without delay to the parties, unless the parties have already been informed of them by the arbitrator.

This duty of disclosure ensures transparency and fairness in the arbitration process, allowing parties to make informed decisions and raise objections if necessary. By disclosing any potential conflicts of interest, arbitrators maintain the integrity of the proceedings and uphold the principles of impartiality and independence.

In terms of Article 12(2) of the UNCITRAL Model Law, an arbitrator may be challenged only if circumstances exist that give rise to justifiable doubts as to his or her impartiality or independence. Although the UNCITRAL Model Law does not specifically provide the courts role and the procedure to be followed in challenges as to the non-disclosure of conflicts, courts play a role in such challenges.

(iii) Are there limitations on who may serve as an arbitrator? Do arbitrators have ethical duties? If so, what is their source and generally what are they?

Yes, Article 11 of the UNCITRAL Model Law impose certain limitations on who may serve as an arbitrator. While the Model Law itself does not explicitly prescribe specific qualifications or requirements for arbitrators, it allows the parties to agree on the qualifications and characteristics they desire in an arbitrator.

However, there are some general limitations and ethical duties that arbitrators are expected to adhere to, regardless of the specific jurisdiction or rules governing the arbitration. These ethical duties are aimed at ensuring the fairness, impartiality, and integrity of the arbitration process. Some of the key ethical duties commonly expected from arbitrators in terms of Article 12 of the UNCITRAL Model Law are independence, impartiality, disclosure of conflicts of interest, and fairness and due process.

(iv) Are there specific rules or codes of conduct concerning conflicts of interest for arbitrators? Are the IBA Guidelines on Conflicts of Interest in International Arbitration followed?

There are no specific rules and codes of conduct that address conflicts of interest for arbitrators. However in our jurisdiction there is recognition of the IBA Guidelines on Conflicts of Interest in International Arbitration. While these guidelines are not binding, they are frequently referred to and followed by arbitrators, parties and arbitral institutions as a best practice in managing conflicts of interest.

VI. Interim Measures and Emergency Arbitration

(i) Can arbitrators issue interim measures or other forms of preliminary relief? What types of interim measures can arbitrators issue? Is there a requirement as to the form of the tribunal's decision (order or award)? Are interim measures issued by arbitrators enforceable in courts?

In terms of Article 17 UNCITRAL Model Law Arbitrators generally have the authority to issue interim measures or other forms of preliminary relief, subject to the agreement of the parties involved.

Arbitrators can issue various types of interim measures, which are designed to preserve the rights of the parties or maintain the status quo until a final resolution is reached. These measures can include:

- Injunctions or orders to preserve assets or evidence.
- Orders to maintain or restore the parties' rights or prevent irreparable harm.
- Orders to prevent a party from taking certain actions during the arbitration proceedings.
- Orders for the provision of security, such as the posting of a bond or guarantee.

(ii) Will courts grant provisional relief in support of arbitrations? If so, under what circumstances? May such measures be ordered after the constitution of the arbitral tribunal? Will any court ordered provisional relief remain in force following the constitution of the arbitral tribunal?

The courts may grant orders in respect of matters specified in the Arbitration Act as if it is for the purpose of and in relation to any action or matter in that court. Most commonly provisional relief will be sought in the form of an interim interdict pending the outcome of the arbitration. Such relief remains in force following the constitution of the arbitral tribunal.

(iii) To what extent may courts grant evidentiary assistance/provisional relief in support of the arbitration? Do such measures require the tribunal's consent if the latter is in place?

The court can grant relief in matters involving discovery of documents and interrogatories.

- Evidentiary Assistance: Courts may provide evidentiary assistance in support of arbitration by ordering the taking of evidence or the preservation of evidence. This can include compelling witnesses to testify, ordering the production of documents, or preserving evidence that may be necessary for the arbitration proceedings. The specific procedures and requirements for seeking evidentiary assistance from the court can vary between jurisdictions.
- Provisional Relief: Courts can grant provisional relief in support of arbitration, such as injunctions, asset preservation orders, or freezing orders, to maintain the status quo or prevent irreparable harm pending the resolution of the arbitration. The availability and specific requirements for seeking provisional relief from the court will depend on the laws and practices of the jurisdiction.
- Consent of the Arbitral Tribunal: Whether the consent of the arbitral tribunal is required for court-ordered evidentiary assistance or provisional relief can depend on the jurisdiction and the applicable laws. In some jurisdictions, courts may

require the consent or authorization of the arbitral tribunal before granting certain types of relief. This requirement ensures that the court's actions are in line with the arbitral tribunal's authority and the principle of party autonomy.

(iv) Are decisions by emergency arbitrators enforceable in your country?

The enforceability of decisions by emergency arbitrators in Zimbabwe is not explicitly addressed in the Arbitration Act, Chapter 7:15.

Emergency arbitrators are appointed in certain arbitration proceedings to provide expedited relief before the constitution of the full arbitral tribunal. The decisions or orders issued by emergency arbitrators are typically intended to be binding on the parties involved.

(v) What is the approach in your country to anti-suit injunctions or injunctions by arbitrators preventing parties from initiating litigation proceedings?

In Zimbabwe, the courts have shown a willingness to grant anti-suit injunctions to enforce arbitration agreements and protect the integrity of the arbitration process. This is also provided in Article 8 [1] of the UNCITRAL Model Law, First Schedule to the Arbitration Act [Chapter 7:15]. See the following Zimbabwean judgements: Conplant Technology [Private] Limited v Wentspring Investments [Private] Limited HH 965/15; Bitumat Ltd v Multicom HH 142/2000 and Shell Zimbabwe (Pvt) Ltd v Zimsa (Pvt) Ltd 2007 (2) ZLR 366.

The Zimbabwean courts have acknowledged the importance of party autonomy in arbitration. Therefore, when faced with such a scenario, the courts have granted anti-suit injunctions to restrain such proceedings and require the parties to refer the dispute to arbitration.

(vi) Do courts provide assistance in aid of foreign-seated arbitrations, including for disclosure of documents?

In many jurisdictions, courts can provide assistance in aid of foreign-seated arbitrations. This assistance may extend to various matters, including the disclosure of documents.

The specific procedures and requirements for seeking court assistance in aid of foreign-seated arbitrations can vary depending on the jurisdiction and agreement between parties. The assistance can be in the form of Recognition and Enforcement of Awards, Judicial Assistance for Taking Evidence and Assistance for Document Disclosure.

VII. Disclosure/Discovery

(i) What is the general approach to disclosure or discovery in arbitration? What types of disclosure/discovery are typically permitted?

The general approach to disclosure or discovery in arbitration can vary depending on the rules or procedures chosen by the parties and the laws of the jurisdiction governing the arbitration. However, parties are required to make full discovery of all relevant documents which are in their possession or under their control.

(ii) What, if any, limits are there on the permissible scope of disclosure or discovery?

There are no limits on the discoverability of relevant documents which are in the possession or under the control of the parties save to the extent that such documents are legally privileged.

(iii) Are there special rules for handling electronically stored information?

There are typically no specific rules and guidelines for handling electronically stored information (ESI) in arbitration proceedings. However, in Zimbabwe, the Data Protection Act 5 of 2021 provides the basic rules for handling electronically stored information.

VIII. Confidentiality

(i) Are arbitrations confidential? What are the rules regarding confidentiality?

The Arbitration Act does not provide for the confidentiality of arbitration proceedings. However, even if the arbitration agreement does not expressly provide that the arbitration proceedings are confidential such a term will be implied.

(ii) Are there any provisions in your arbitration law as to the arbitral tribunal's power to protect trade secrets and confidential information?

In Zimbabwe, the primary legislation governing arbitration is the Arbitration Act [Chapter 7:15], which is based on the UNCITRAL Model Law on International Commercial Arbitration. The Arbitration Act does not contain specific provisions addressing the arbitral tribunal's power to protect trade secrets and confidential information.

However, the arbitral tribunal has the inherent authority to take measures to protect trade secrets and confidential information during the arbitration proceedings. This authority is typically derived from the Trademarks Act [Chapter 26:04] and the Civil Evidence Act.

(iii) Are there any provisions in your arbitration law as to rules of privilege?

The Zimbabwean Arbitration Act, which governs arbitration proceedings in the country does not contain specific provisions addressing privilege or the protection of confidential information. In the absence of explicit provisions on privilege in the Arbitration Act, parties involved in arbitration in Zimbabwe may have to rely on general principles of law and procedural rules to assert privilege and protect confidential information. This could include relying on common law principles, such as legal professional and state privilege, which protects communications between lawyers and the protection of information which is detrimental to the public interest. This is also outlined in Section 8 as read together with Section 10 of the Civil Evidence Act.

IX. Evidence and Hearings

(i) Is it common that parties and arbitral tribunals adopt the IBA Rules on the Taking of Evidence in International Arbitration to govern arbitration proceedings? If so, are the Rules generally adopted as such or does the tribunal retain discretion to depart from them?

It is unusual for the parties and arbitral tribunals to adopt the IBA Rules on the Taking of Evidence in International Arbitration to govern arbitration proceedings in Zimbabwe.

(ii) Are there any limits to arbitral tribunals' discretion to govern the hearings?

There are no limits to arbitral tribunals' discretion to govern the hearings in arbitration proceedings. While arbitral tribunals have a certain degree of discretion in managing the proceedings, their powers are subject to certain legal

and procedural limits. The rules of evidence as observed in a court of law should be followed as far as possible but the arbitrator may deviate from them provided that in so doing he or she does not disregard the substance of justice.

(iii) How is witness testimony presented? Is the use of witness statements with cross examination common? Are oral direct examinations common? Do arbitrators question witnesses?

The presentation of witness testimony in arbitration can vary depending on the procedural rules agreed upon by the parties, the preferences of the arbitral tribunal and the specific circumstances of the case. There are no rules which apply for the production of written and/or oral witness testimony. The use of witness statements with cross examination is also common. Oral direct cross examinations are also common. Arbitrators do question witnesses during direct examination and during cross examination.

(iv) Are there any rules on who can or cannot appear as a witness? Are there any mandatory rules on oath or affirmation?

Arbitration rules generally do not impose strict limitations on who can or cannot appear as a witness in arbitration proceedings. The parties typically have the discretion to determine which witnesses they wish to call to testify, subject to any specific requirements set out in the arbitration agreement or procedural orders. There is no requirement that the witness must be sworn in before the tribunal. The usual practice is that witnesses are sworn in and those who cannot take an affirmation.

(v) Are there any differences between the testimony of a witness specially connected with one of the parties (eg legal representative, director or employee) and the testimony of unrelated witnesses?

There are no differences between the testimony of a witness specially connected to one of the parties and the testimony of unrelated witnesses. The issue is centered around the weight that is to be given to the evidence of a particular witness.

(vi) How is expert testimony presented? Are there any formal requirements regarding independence and/or impartiality of expert witnesses?

There are no formal requirements regarding expert witnesses. Usually, expert evidence is presented in the form of an expert report before the hearing. The expert witness will then give an oral testimony making reference to his or her report and is subjected to cross examination. Issues regarding the independence or impartiality will be raised during cross examination.

(vii) Is it common that arbitral tribunals appoint experts beside those that may have been appointed by the parties? How is the evidence provided by the expert appointed by the arbitral tribunal considered in comparison with the evidence provided by party-appointed experts? Are there any requirements in your jurisdiction that experts be selected from a particular list?

It is not common for arbitral tribunals to appoint their own independent experts in addition to the experts appointed by the parties.

(viii) Is witness conferencing ('hot-tubbing') used? If so, how is it typically handled?

Witness conferencing, also known as 'hot-tubbing' or 'concurrent evidence', is a technique that is sometimes used in arbitration though not common in our jurisdiction. The arbitrator will often encourage experts to meet and to record their agreement regarding issues in a minute of their meeting and also outline areas where there was no agreement.

(ix) Are there any rules or requirements in your jurisdiction as to the use of arbitral secretaries? Is the use of arbitral secretaries common?

In Zimbabwe, the use of arbitral secretaries is not specifically addressed or regulated by the Arbitration Act. The Act does not contain provisions that explicitly authorize or prohibit the use of arbitral secretaries.

(x) Are there any ethical codes or other professional standards applicable to counsel and arbitrators conducting proceedings in your jurisdiction?

In Zimbabwe, Arbitration Act does not explicitly provide detailed ethical codes or professional standards. The Act primarily focuses on the procedural aspects of arbitration, such as the appointment of arbitrators, commencement of proceedings and enforcement of awards. It only provides that parties must appoint an independent and impartial arbitrator. However, the absence of specific provisions in the Arbitration Act does not mean that counsel and arbitrators are exempt from ethical obligations and professional standards. In the absence of explicit statutory provisions, legal professionals in Zimbabwe, including counsel and arbitrators, are generally expected to adhere to established common law principles on ethics and professional standards that govern their conduct. Furthermore, the Legal Practitioners Act [Chapter 27:07] and the Law Society By-Laws also provides ethical codes and professional standards applicable to counsel and arbitrators conducting proceedings.

(xi) Have arbitral institutions in your jurisdiction implemented rules empowering arbitral tribunals to exclude counsel based on conflicts of interest or other reasons?

There are no specific provisions in the Arbitration Act that empower arbitral tribunals to exclude counsel based on conflicts of interest or other reasons. However, arbitral tribunals have the power to exclude counsel based on conflict of interest in accordance with common law.

(xii) Has your jurisdiction adopted any rules with regard to remote hearings and have there been any court decisions on same?

Zimbabwe has not adopted specific rules or regulations addressing remote hearings in arbitration proceedings. The Arbitration Act Chapter 7:15does not contain provisions that specifically address the use of remote hearings or virtual platforms for conducting arbitration proceedings.

However, it is worth mentioning that the Covid-19 pandemic significantly accelerated the adoption of remote hearing practices worldwide, including in the field of arbitration.

X. Awards

(i) Are there formal requirements for an award to be valid? Are there any limitations on the types of permissible relief?

Under the Arbitration Act Chapter 7:15, there are certain formal requirements for an award to be valid. Article 31 of the UNCITRAL Model Law outlines these requirements, which include:

- The award must be in writing;
- The award must be signed by the arbitrator(s) or a majority of them;
- The award should state the reasons upon which it is based, unless the parties have agreed that no reasons are to be given or the award;
- The award shall state its date and the place of arbitration as determined.

These formal requirements ensure that the award is properly documented, provides clarity and enables the parties to understand the reasoning behind the decision.

(ii) Can arbitrators award punitive or exemplary damages? Can they award interest? Compound interest?

The authority of arbitrators to award punitive or exemplary damages and interest, including compound interest, can vary depending on the applicable laws and the jurisdiction in which the arbitration is taking place. The general principles are as follows:

- Punitive or Exemplary Damages: In many legal systems, including common law jurisdictions, arbitrators have the power to award punitive or exemplary damages. However, the availability and scope of such damages may be subject to limitations imposed by law or public policy. Some jurisdictions restrict or disallow punitive damages in arbitration, while others allow them under certain circumstances.
- Interest: In terms of Article 36(4) of the Model Law empowers arbitrators to award interest on the amount awarded. The interest rate and the method of calculating interest may be determined by the arbitration agreement, or the discretion of the arbitral tribunal. The interest awarded is usually simple interest, but compound interest may be awarded if authorized by the applicable law or the agreement of the parties.

It's important to note that the availability and scope of punitive or exemplary damages, as well as the calculation of interest, can differ between jurisdictions and may be subject to specific statutory provisions, or the agreement of the parties. Therefore, it's essential to consider the governing law and any specific rules or limitations that apply to the arbitration in question.

When parties engage in arbitration, they typically have the freedom to agree on the powers and limitations of the arbitrators. Therefore, the authority of arbitrators to award punitive or exemplary damages and interest, including compound interest, can also be influenced by the parties' arbitration agreement and any applicable institutional rules governing the arbitration.

(iii) Are interim or partial awards enforceable?

Interim or partial awards in arbitration are enforceable. In general, an interim award is an award that addresses specific issues or disputes that arise during the course of arbitration before a final award is rendered. A partial award, on the other hand, is an award that resolves some but not all of the issues in dispute. Interim orders are provided for in terms of Article 17 of the UNCITRAL Model Law.

(iv) Are arbitrators allowed to issue dissenting opinions to the award? What are the rules, if any, that apply to the form and content of dissenting opinions?

Arbitrators are permitted to issue dissenting opinions. There are no specific rules that apply to the form and content of dissenting opinions.

(v) Are awards by consent permitted? If so, under what circumstances? By what means other than an award can proceedings be terminated?

Awards by consent are permitted. There are no specific rules applicable to awards by consent. Generally, the arbitrator will require the consent of the parties in writing or to be on record in the hearing. Parties are free to settle their disputes at any stage of the arbitration proceedings, including before the rendering of a final award.

(vi) What powers, if any, do arbitrators have to correct or interpret an award?

Arbitrators generally have the power to correct or interpret an award under certain circumstances.

- In terms of Article 33(1)(a) of the UNCITRAL Model Law, arbitrators have the authority to correct any clerical, typographical, or calculation errors in the award. Corrections of this nature aim to ensure the accuracy and clarity of the award.
- In terms of Article 33(1)(b) of the UNCITRAL Model Law, arbitrators have the power to interpret the meaning or scope of the award. This can only be done when a party requests the arbitral tribunal to provide clarifications or explanations regarding the intent or application of the award.
- Additional Award or Supplementary Decision: In certain situations, arbitrators may have the authority to issue an additional award or supplementary decision to address matters that were inadvertently omitted from the original award or that require further consideration. This can occur when the arbitral tribunal realizes that the award did not fully resolve all issues or claims, or when new issues arise after the rendering of the initial award.

It is important to note that the powers of arbitrators to correct or interpret an award may be subject to certain limitations imposed by law or the agreement of the parties. For example, the scope of correction or interpretation may be restricted to avoid altering the substance of the award or reopening the merits of the dispute.

XI. Costs

(i) Who bears the costs of arbitration? Is it always the unsuccessful party who bears the costs?

The allocation of costs in arbitration, including who bears the costs and the extent to which the unsuccessful party is responsible, can vary depending on several factors, including the applicable case law and the agreement of the parties. However, costs are generally but not always borne by the unsuccessful party.

(ii) What are the elements of costs that are typically awarded?

The elements of costs that are typically awarded can include the following: Arbitration Fees, Legal and Professional Fees, Administrative Expenses, Witness Expenses and Other Disbursements.

(iii) Does the arbitral tribunal have jurisdiction to decide on its own costs and expenses? If not, who does?

The arbitral tribunal does not have jurisdiction to decide on its own costs and expenses. The arbitrator's fees are generally agreed or determined by the arbitration institution.

(iv) Does the arbitral tribunal have discretion to apportion the costs between the parties? If so, on what basis?

Yes, an arbitral tribunal typically has the discretion to apportion the costs between the parties in an arbitration proceeding. The specific rules and guidelines for cost apportionment may vary depending on the applicable arbitration laws, institutional rules, or the parties' agreement.

The basis for apportioning costs can include various factors, such as:

- Conduct of the parties: The tribunal may consider the conduct of each party throughout the arbitration process. If one party has engaged in dilatory tactics, acted in bad faith, or unreasonably refused settlement offers, the tribunal may allocate a higher proportion of the costs to that party.
- Outcome of the case: The tribunal may consider the extent to which each party was successful in its claims or defenses. If one party prevails on most of its claims, the tribunal may allocate a larger portion of the costs to the unsuccessful party.

- Allocation of responsibility: The tribunal may assess the parties' respective responsibility for the circumstances giving rise to the dispute. If one party is found to be primarily responsible for the dispute or for prolonging the proceedings, the tribunal may shift a greater share of the costs to that party.
- Costs incurred: The tribunal may consider the costs incurred by each party during the arbitration, including legal fees, administrative expenses, expert witness fees and other costs. The tribunal may take into account the reasonableness and necessity of the costs claimed by each party when deciding on their allocation.

It is important to note that the discretion of the arbitral tribunal in apportioning costs is subject to any agreement between the parties or any applicable institutional rules or laws governing the arbitration.

(v) Do courts have the power to review the tribunal's decision on costs? If so, under what conditions?

The courts do not have the power to review the tribunal's decision on costs.

XII. Challenges to Awards

(i) How may awards be challenged and on what grounds? Are there time limitations for challenging awards? What is the average duration of challenge proceedings? Do challenge proceedings stay any enforcement proceedings? If yes, is it possible nevertheless to obtain leave to enforce? Under what conditions?

The process for challenging arbitral awards and the grounds for challenge are provided for under Article 36 of the UNCITRAL Model Law.

Grounds for Challenge:

- If a party to the arbitration agreement was under some incapacity or the said agreement is invalid;
- If a party a was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was unable to present his or her case;
- If the award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration;
- The composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties; or
- Public policy violations.

Time Limitations:

Arbitration laws typically prescribe time limits within which a party must challenge an award. In terms of Article 36(3) of the UNCITRAL Model Law an application for setting aside an award may not be made after three months have elapsed from the date on which the party making that application had received the award

Duration of Challenge Proceedings:

The duration of challenge proceedings can vary significantly depending on various factors, including the complexity of the case, the jurisdiction and the efficiency of the court system. It is difficult to provide an average duration as it can range from a few months to several months; however, following the establishment of the commercial court in Zimbabwe the duration has reduced.

Stay of Enforcement Proceedings:

The filing of a challenge to an arbitral award may automatically stay the enforcement proceedings.

Leave to Enforce:

Even if challenge proceedings have stayed the enforcement proceedings, it may be possible to obtain leave to enforce the award in certain circumstances. Typically, the party seeking enforcement must apply to the court for leave to register the award for enforcement.

(ii) May the parties waive the right to challenge an arbitration award? If yes, what are the requirements for such an agreement to be valid?

Yes, parties to an arbitration can generally waive their right to challenge an arbitration award and generally such agreements will be upheld.

(iii) Can awards be appealed in your country? If so, what are the grounds for appeal? How many levels of appeal are there?

Under the Arbitration Act and the UNCITRAL Model Law on International Commercial Arbitration (which Zimbabwe has adopted), arbitral awards can be challenged through a process called setting aside and not an appeal. Typically, under both the Zimbabwean Arbitration Act and the UNCITRAL Model Law, the setting aside is considered the final recourse for challenging an arbitral award. There is generally no provision for a further level of appeal beyond the setting aside proceedings.

(iv) May courts remand an award to the tribunal? Under what conditions? What powers does the tribunal have in relation to an award so remanded?

In certain circumstances, courts may have the power to remand an arbitral award back to the tribunal. However, the conditions and extent of this power vary depending on the jurisdiction and the applicable arbitration laws. Here are some general considerations:

Remand to the Tribunal by Courts:

- Procedural irregularities: If a court finds that there has been a procedural irregularity in the arbitration process that may have affected the fairness or integrity of the award, it may choose to remand the award back to the tribunal. The court may do so to allow the tribunal to rectify the irregularity or conduct further proceedings on specific issues.
- Limited scope of review: Generally, courts' power to remand an award is limited to procedural matters and does not extend to reviewing the merits of the case or the tribunal's findings.
- Jurisdictional challenges: If a party challenges the jurisdiction of the arbitral tribunal and the court is seized with the jurisdictional issue, the court may remand the award to the tribunal for a determination on the jurisdictional matter.

Powers of the Tribunal upon Remand :

- Rectification of procedural irregularities: If an award is remanded to the tribunal due to procedural irregularities, the tribunal may have the power to rectify those irregularities. This may involve re-hearing certain aspects of the case, allowing additional evidence, or addressing any specific procedural issues identified by the court.
- Limited scope of authority: The tribunal's authority upon remand is typically limited to addressing the specific matters identified by the court. The tribunal may not have the authority to reconsider or modify the substantive findings or conclusions already made in the original award.

(v) Is there a specialist arbitration court in your jurisdiction?

No, Zimbabwe does not have a specialized arbitration court. However, it must be noted that they are only three arbitral tribunal institutions in Zimbabwe. These are CAC, AIMA and ADSC that are referred to in Section I (ii) above. The institutions serve as a judicial body that settle arbitration disputes. However, recently the Commercial Court under the

High Court was established to deal with any matters relating to arbitration in the event of a challenge to the award or any processes associated with the arbitration agreement.

(vi) To what extent do courts in your jurisdiction allow arbitrators to amend and/or replace wrongly invoked law or the law not invoked by the parties (iura novit arbiter)? Could this be a basis to set aside the award?

In Zimbabwe, as in many jurisdictions, the principle of iura novit arbiter, which means 'the arbitrator knows the law', is generally recognized. This principle allows arbitrators to apply the relevant law, even if it has not been specifically invoked by the parties, or to correct any errors in the law invoked by the parties.

In terms of setting aside an award based on the arbitrator's exercise of the iura novit arbiter principle, courts typically have a limited scope of review. Under the UNCITRAL Model Law, a court can only set aside an arbitral award on specific grounds provided in Section 34 of the Arbitration Act, such as incapacity, invalidity of the arbitration agreement, lack of proper notice or opportunity to present a case, lack of jurisdiction, or the award being in conflict with public policy.

The mere fact that an arbitrator applied the iura novit arbiter principle and considered the relevant law, is unlikely to be a sufficient ground for setting aside an award in Zimbabwe. Generally, courts are hesitant to interfere with the merits of an arbitral award unless there are clear procedural irregularities and egregious errors or violations of public policy.

XIII. Arbitrator Liability

(i) Does the arbitration law in your jurisdiction expressly provide for the immunity of arbitrators, experts, translators, interpreters and/or other participants in arbitration proceedings from civil liability in connection with their mandate? If so, are there exceptions to this immunity?

The Arbitration Act [Chapter 7:15] and the UNCITRAL Model Law, which was adopted by Zimbabwe, does not expressly provide for the immunity of arbitrators, experts, translators, interpreters, or other participants in arbitration proceedings from civil liability in connection with their mandate. Neither of these laws contains specific provisions addressing the issue of immunity for these individuals.

However, the Arbitration (International Investment Disputes) Act [Chapter 7:03] as read together with Article 20, 21 and 22 of the Convention on the Settlement of Investment Disputes between States and Nationals of Other States, provides for the immunity of arbitrators, experts, translators, interpreters and/or other participants in arbitration proceedings from civil liability in connection with their mandate. It must be noted that this only applies to international investment disputes.

(ii) Does this immunity, if any, extend to criminal liability?

Yes, it applies.

XIV. Recognition and Enforcement of Awards

(i) What is the process for the recognition and enforcement of awards? What are the grounds for opposing enforcement? Which is the competent court? Does such opposition stay the enforcement? If yes, is it possible nevertheless to obtain leave to enforce? Under what circumstances?

The process for the recognition and enforcement of arbitral awards is governed by the Article 35 of the Model Law.

Process for Recognition and Enforcement:

- Application for enforcement: The party seeking enforcement of an arbitral award must make an application to the High Court. The application should typically include the original award or a duly certified copy, along with the original arbitration agreement or a duly certified copy.
- Notice to the other party: The applicant must serve a notice of the application for enforcement on the other party. The other party then has an opportunity to respond and oppose enforcement if they have valid grounds for doing so.
- Examination of the award: The court examines the award and verifies its authenticity and conformity with the requirements of the law.

Grounds for Opposing Enforcement:

This is provided for in terms of Article 36 of the UNCITRAL Model Law. The party against whom enforcement is sought may oppose it on specific grounds. These grounds include incapacity, invalidity of the arbitration agreement, lack of proper notice or opportunity to present a case, lack of jurisdiction, procedural irregularity, or the award being in conflict with public policy.

Court decision: The court will make a decision on whether to recognize and enforce the award based on the submissions presented by the parties.

Competent Court and Impact of Opposition:

The High Court is the competent court for the recognition and enforcement of arbitral awards. When an application for enforcement is made, it is the High Court that will review the award and determine whether to grant enforcement.

Generally, a challenge to enforcement stays the enforcement process pending the finalization of the court's decision.

(ii) If an exequatur is obtained, what is the procedure to be followed to enforce the award? Is the recourse to a court possible at that stage?

An exequatur is a legal concept that refers to the recognition and enforcement of a foreign judgment or arbitral award by a domestic court. The procedure that is followed to enforce the foreign judgment is outlined in terms of Article 35 of the UNCITRAL Model Law. The procedure to enforce the award typically involves the following steps:

- Filing a petition: The party seeking enforcement of the award files a petition or application with the appropriate court in the jurisdiction where enforcement is sought. The petition usually includes relevant documents such as the original award and the original arbitration agreement.
- Review by the court: The court reviews the petition and supporting documents to determine if the requirements for enforcement are met. This may include verifying the authenticity of the award and ensuring that it does not conflict with public policy or violate any local laws.
- Notice to the other party: The court typically notifies the other party (the 'debtor') about the enforcement proceedings and provides an opportunity for the debtor to respond or raise any objections, if permitted under the applicable laws.
- Hearing or review: Depending on the jurisdiction, the court may hold a hearing to consider any objections raised by the debtor or to review the evidence and arguments presented by both parties. The purpose of the hearing is to ensure fairness and due process.
- Enforcement order: If the court determines that the award is enforceable, it issues an enforcement order or judgment. This order empowers the creditor to take legal actions to seize assets, garnish wages, or pursue any other available enforcement measures to satisfy the award.

(iii) Are conservatory measures available pending enforcement of the award?

Yes, conservatory measures or provisional measures are often available pending the enforcement of an arbitral award. These measures can be sought from both national courts and arbitral tribunals to protect the rights and interests of the party seeking enforcement during the period between obtaining the award and its enforcement.

The availability and procedures for obtaining conservatory measures in relation to an arbitral award can depend on the applicable laws and the rules of the arbitration institution or the jurisdiction where enforcement is sought. Here are a few common types of conservatory measures that may be available:

- Interim measures from the arbitral tribunal: The arbitral tribunal itself may have the power to grant interim measures during the arbitration proceedings.
- Interim measures from national courts: In some jurisdictions, parties can apply to the national courts for interim measures even before or during the arbitration proceedings. These measures may include asset freezing, injunctions, or other types of relief to protect the party's rights and assets.

(iv) What is the attitude of courts towards the enforcement of awards? What is the attitude of courts to the enforcement of foreign awards set aside by the courts at the place of arbitration?

There is a strong support for arbitration in Zimbabwe especially with the advent of the commercial court division which is pro arbitration. The court generally enforces domestic and international arbitration awards subject to the Arbitration Act. However, the courts will not enforce foreign awards set aside by the courts at the place of arbitration.

(v) How long does enforcement typically take? Are there time limits for seeking the enforcement of an award?

The duration of the enforcement process for an award can vary significantly depending on several factors, including the jurisdiction where enforcement is sought, the complexity of the case and any challenges or objections raised by the parties involved. It is difficult to provide a precise timeframe. However, the procedure is quick and effective and generally it should be possible to obtain recognition and enforcement order within two or three months.

XV. Sovereign Immunity

(i) Do state parties enjoy immunities in your jurisdiction? Under what conditions?

State parties, referring to sovereign states, often enjoy certain immunities under international law. These immunities are designed to protect states from legal actions in the territory of another state. The specific immunities granted to state parties can vary depending on the jurisdiction and the nature of the legal proceedings.

One commonly recognized principle of international law is the doctrine of sovereign immunity, which grants immunity to foreign states from the jurisdiction of domestic courts. This principle is based on the idea that one sovereign state should not be subjected to the judicial authority of another sovereign state.

(ii) Are there any special rules that apply to the enforcement of an award against a state or state entity?

The UNCITRAL Model Law does not provide special rules that apply to the enforcement of an award against a state or state entity. Article 35 of the UNCITRAL Model Law provides general rules on enforcement of awards. Article 4 of the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards outlines the procedure that is followed to enforce an award against a state or a state entity. However, the State Liabilities Act in Zimbabwe requires that notice be given to the state entity before instituting proceedings against the entity.

(iii) Are there any requirements for arbitrations involving sovereign entities?

Yes, there are certain requirements and considerations that may apply to arbitrations involving sovereign entities. These requirements can vary depending on the jurisdiction and the specific circumstances of the case.

XVI. Investment Treaty Arbitration

(i) Is your country a party to the Washington Convention on the Settlement of Investment Disputes Between States and Nationals of Other States? Or other multilateral treaties on the protection of investments?

Zimbabwe is a party to the Washington Convention on the Settlement of Investment Disputes Between States and Nationals of Other States, commonly known as the ICSID Convention. The ICSID Convention is a multilateral treaty administered by the International Centre for Settlement of Investment Disputes (ICSID), which provides a framework for the settlement of investment disputes between states and foreign investors.

(ii) Has your country entered into bilateral investment treaties with other countries?

Zimbabwe has entered into bilateral investment treaties (BITs) with several countries. Some of the countries with which Zimbabwe has signed BITs include China, Germany, the Netherlands, South Africa and the United Kingdom, among others. These treaties are intended to promote and protect investments made by investors from these countries in Zimbabwe, as well as provide certain guarantees and protections for the investments.

(iii) Have there been any recent court decisions in your country in relation to intra-European investor-state arbitration?

There have not been any court decisions in relation to intra-European investor-state arbitration.

XVII. Resources

(i) What are the main treatises or reference materials that practitioners should consult to learn more about arbitration in your jurisdiction?

To learn more about arbitration in Zimbabwe, practitioners may consult the following treatises and reference materials:

- Davison Kanokanga (2020) Commercial Arbitration Law in Zimbabwe 1st Edition,2020 by Davison Kanokanga.
- A Practical Guide to Labour Law, Conciliation, Mediation & Arbitration in Zimbabwe by Caleb Mucheche (2014) African Dominion Publications.
- John Reid-Rowland Arbitration in Zimbabwe: the UNCITRAL Model Law in Practice in a Developing Country.
- PAA Ramsden (2018) The Law of Arbitration: South African and International Arbitration 2nd Edition Juta Press.

(ii) Are there major arbitration educational events or conferences held regularly in your jurisdiction? If so, what are they and when do they take place?

There are no major arbitration educational events or conferences held regularly in Zimbabwe.

XVIII. Trends and Developments

(i) Do you think that arbitration has become a real alternative to court proceedings in your country?

Arbitration has indeed gained significant popularity worldwide as an alternative dispute resolution mechanism. It is often chosen by parties as a means to resolve their disputes outside of traditional court proceedings. There are several reasons why parties may prefer arbitration:

- Flexibility and party autonomy: Arbitration allows parties to have more control over the process. They can choose their arbitrators, determine the procedural rules and agree on the place and language of the arbitration. This flexibility can lead to more efficient and tailored dispute resolution.
- Expertise and specialization: Arbitration allows parties to select arbitrators with specialized knowledge and experience in the subject matter of the dispute. This can lead to more informed and expert decision-making, particularly in complex or technical matters.
- Confidentiality: Arbitration proceedings often offer greater confidentiality compared to court proceedings, which may be appealing to parties seeking to keep their disputes private.
- Enforcement of awards: Arbitral awards are generally enforceable under international conventions, such as the New York Convention. This ensures that parties have a mechanism for enforcing and recognizing awards across different jurisdictions.

(ii) What are the trends in relation to other ADR procedures, such as mediation?

In recent years, there has been a growing recognition and utilization of alternative dispute resolution (ADR) mechanism such as mediation. The following are some of the key trends related to mediation:

- Increased Adoption and Integration: Mediation is increasingly being recognized and integrated into legal systems and dispute resolution frameworks worldwide. Many jurisdictions have enacted legislation or developed rules and guidelines specifically addressing the practice of mediation.
- Court-Annexed Mediation: Courts in various jurisdictions have implemented court-annexed mediation programs to promote the use of mediation as an early and cost-effective means of resolving disputes. These programs often require parties to participate in mediation before proceeding to formal litigation, encouraging a more collaborative and consensual approach to resolving disputes.
- Mediation in Commercial Contexts: Mediation has become particularly popular in commercial disputes. Parties involved in complex commercial transactions are increasingly including mediation clauses in their contracts, requiring them to attempt mediation before initiating arbitration or litigation. This trend reflects a recognition that mediation can preserve business relationships, maintain confidentiality and offer more flexible and creative solutions.
- Online Mediation: With advancements in technology, online mediation platforms have emerged, allowing parties to engage in mediation remotely. Online mediation offers convenience, flexibility and cost savings, enabling parties from different locations to participate in the process.
- Mediation in Community and Family Disputes: Mediation is also gaining traction in non-commercial contexts, such as community disputes and family law matters. Community mediation programs aim to resolve conflicts at the local level, involving trained mediators who facilitate dialogue and promote understanding among community members. In family law, mediation is often used to address issues related to divorce, child custody and visitation arrangements.
- Combined Approaches: Some jurisdictions are adopting hybrid approaches that combine various ADR procedures. For example, in some cases, mediation may be used alongside arbitration or other ADR processes to provide parties with a range of options for resolving their disputes.

These trends demonstrate an increasing recognition of the benefits of mediation, such as preserving relationships, promoting party autonomy and achieving cost-effective and amicable outcomes. However, it's important to note that the adoption and utilization of mediation can vary across jurisdictions and depend on cultural, legal and institutional factors.

(iii) Are there any noteworthy recent developments in arbitration or ADR?

Some of the noteworthy developments in arbitration have not been fully implemented in our jurisdiction for example third party funding. However, please note that the field of arbitration and ADR is dynamic, and new developments may have occurred since then. Here are a few notable trends and developments:

- Technology and Online Dispute Resolution (ODR): With the advancement of technology, there is an increased emphasis on utilizing online platforms and virtual hearings for arbitration proceedings. This has made it more efficient and cost-effective for parties involved in the arbitration process. Furthermore, the Covid-19 pandemic accelerated the adoption of technology in dispute resolution. Arbitration or other alternative dispute resolution mechanisms are utilizing virtual platforms, videoconferencing and other online tools.
- Compliance and multi-tiered dispute resolution clauses: Arbitration clauses are becoming more complex, incorporating multi-tiered dispute resolution mechanisms that require parties to undertake negotiation, mediation, or other alternative dispute resolution methods before proceeding to arbitration. This trend promotes the resolution of disputes at an earlier stage and reduces the burden on arbitration institutions.
- Third-party funding: Third-party funding has gained popularity in arbitration cases. It involves an external entity providing financial support to one party in exchange for a portion of the settlement or award. This trend has made arbitration more accessible to smaller companies and individuals who may not have the financial resources to pursue arbitration.
- Ethical Standards and Professional Conduct: The importance of ethical standards and professional conduct in arbitration has received increased attention. Codes of ethics and guidelines are being developed to promote integrity, impartiality and fairness in arbitration proceedings, addressing issues such as conflicts of interest, disclosure obligations and party representation.

(iv) Are there any official plans to reform the arbitration laws and practice in your jurisdiction?

There are no official plans to reform the arbitration laws and practice in Zimbabwe.

(v) Are there any rules governing third-party funding in your jurisdiction? Is there an obligation to disclose the identity of any non-party who has an economic interest in the outcome of the proceedings, including any third party funder? Have there been any recent court decisions in your jurisdiction in relation to third-party funding?

Zimbabwe does not have specific arbitration rules governing third-party funding in arbitral proceedings. Third party funding is also called champerty which relates to an agreement in which a person with no previous interest in a lawsuit finances it with a view to acquire a share of the proceeds if the suit succeeds.

It must be noted that By-law 11 of the Legal Practitioners (Code of Conduct) By-Laws provides that champerty amounts to unprofessional, dishonourable or unworthy conduct. However, third party funding agreement is not regulated in relation with to non-lawyers.

Since third party funding is not related in relation to non-lawyers there is no obligation to disclose the identity of any non-party who has an economic interest in the outcome of the proceedings, including any third-party funder. Unfortunately, there is no recent court decision on third party funding.

(vi) Has your country implemented a sanctions regime? Do the courts in your jurisdiction consider international economic sanctions as part of their international public policy? Have there been any recent court decisions in your country in relation to the impact of sanctions on international arbitration proceedings?

Sanctions against Zimbabwe were imposed by United States of America, England and the European Union. These sanctions were initially imposed in response to concerns about human rights violations, political developments and economic factors in Zimbabwe. The sanctions primarily target specific individuals, entities and sectors of the economy.

Regarding the consideration of international economic sanctions by courts in Zimbabwe as part of their international public policy depends on the circumstances of the case.

There are no recent court decisions in Zimbabwe related to the impact of sanctions on international arbitration proceedings.