



THE VALUE OF A PROPERLY DRAFTED DISPUTE RESOLUTION AGREEMENT

Correctly used, commercial arbitration is an invaluable tool for expeditious, cost-effective dispute resolution.

By law, a written arbitration agreement, either as a clause in a commercial contract or as a self-standing agreement, is required. This is where things often go wrong. The main culprit is usually a poorly drafted, outdated arbitration agreement extracted without much thought from an existing commercial contract by an individual with good intentions but inadequate specialised arbitration knowledge and experience.

As an arbitral appointing body and learning institute over more than 40 years, the Association of Arbitrators (Southern Africa) NPC (the Association) has dealt with a multitude of inadequate arbitration agreements, and their cumbersome and costly consequences.

Important but often neglected aspects of a properly drafted arbitration agreement include *inter alia* the type of dispute to be referred, the appointing body and the governing rules. The counter-productive temptation to over-complicate is ever present.

For the benefit of our members, commercial stakeholders and the public, we have asked senior members of our Faculty and experienced Fellows to draft a carefully worded Arbitration Clause suitable for use in any commercial contract, a version which provides for a two-tier Mediation – Arbitration process, and a version for use as a Self-standing Arbitration Agreement, for example when an existing litigious dispute is referred to arbitration.

The wording of the aforesaid applies to domestic and international arbitrations and is drafted to cater for all reasonably foreseeable eventualities. Amendments might have unintended consequences and are not encouraged. Whatever is not expressly provided for in the wording of the aforesaid is covered by the current edition of the Association's Standard Procedure Rules for the Conduct of Arbitrations, which is incorporated therein by reference.

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