

APPOINTMENT OF AN ARBITRATOR

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Now that we have covered basics of arbitration, disadvantages and advantages in the previous article, In this chapter, we consider the ways in which the parties may appoint an arbitrator and the powers of the arbitrator once appointed.

APPOINTMENT OF AN ARBITRATOR

The parties may agree to appointment of a specified person as an arbitrator. It is advisable for the parties to appoint an arbitrator by mutual agreement prior to the dispute, that is at the time of contracting. Where the dispute has already arisen, the relationship between the parties often deteriorate to the extent that it may prove difficult to even agree on the appointment of an arbitrator.

Alternatively, the parties may agree to the qualifications and experience of a person to be appointed as an arbitrator by any governing body, for example the Botswana Institute of Arbitrators (“**BIA**”) or the Law Society of Botswana, upon request by either one of the parties.

In the event that the parties cannot agree to appointment of an arbitrator, either party is entitled to make an application to the High Court for such appointment in terms of section 11 (a) of the Arbitration Act [Cap 06:01] Laws of Botswana.

Powers of the Arbitrator:

In terms of both the Arbitration Act and the BIA Rules (“the **rules**”) for the conduct of Arbitrations, the arbitrator shall have the power to:

- determine the procedure to be followed in a particular arbitration, subject to the arbitration agreement;
- administer oaths or take affirmations on witnesses appearing before him;
- correct in any award, any clerical errors, arising from accidental slip or omission;
- award costs against the unsuccessful party in the arbitration.

Removal of the arbitrator

Once appointed, the arbitrator may be removed by mutual agreement by the parties. Failing agreement, either party may challenge the appointment of the arbitrator in one of the two options hereunder:

- through an application to the High Court under section 13 of the Arbitration Act;
- through an application to the chairperson of the BIA in terms of rule 8 of the rules.

Our firm has broad experience in both construction and commercial arbitrations. For more insight in this offering please contact kelebileone@bookbinderlaw.co.bw or call us on (+267) 391 2397