

# Arbitration: The Relationship Between Arbitration Tribunals And The Courts

31 Oct 2016 : Cape Times (First Edition)

AVE: R 36 219,23

Circulation: 31342,00

Dimensions: w:270 h:190

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Publication: Cape Times (First Edition)  
Date: 31 Oct 2016  
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# Arbitration: the relationship between arbitration tribunals and the courts

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IN RECENT years, arbitration has become a widely recognised alternative mechanism to resolve disputes between parties. Arbitration may, in many circumstances, be a more suitable alternative to civil litigation. It is efficient, cost-effective and private - it avoids the publicity often attributed to court litigation.

The manner in which arbitration proceedings are conducted takes place pursuant to an agreement between the parties. The parties may agree to deal with the dispute in a summary manner and expedite the presentation of evidence. The parties will also be able to choose the arbitrator.

There is inherently more flexibility, than traditional litigation in a court of law. This being said, however, the court is not divested of its power to hear and determine certain issues relating to a matter referred to arbitration and certain disputes may not be arbitrated at all.

## **A court's powers are facilitative and supervisory**

A court retains general statutory powers and functions, which it exercises in support of arbitration proceedings. These powers and functions are facilitative and supervisory, and must be viewed as essential to the collaboration between the courts and arbitral tribunals in resolving disputes between parties.

One such instance in which a court exercises its powers is where an arbitrator is called upon to decide a question of law during the arbitration proceedings.

In terms of section 20 of the Arbitration Act 42 of 1965, one of the parties requires it or if the parties agree, an arbitrator is obliged to state any question of law arising in the course of the arbitration for the opinion of the court or counsel. This opinion is considered final and binding on all parties to the arbitration proceedings.

In the recent decision of Krishna Soobramoney Padachie & Another vs The Body Corporate of Crystal Cove & Another, the Supreme Court of Appeal held that an arbitrator may only refer a question of law arising in the course of the arbitration, that is, arising from one of those issues that the parties agreed to be referred to for arbitration.

Any questions of law other than those agreed upon between the parties in an arbitration agreement may not be referred for the opinion of the court or counsel.

The consensual nature of arbitration proceedings means that parties who have agreed to refer certain clearly specified legal issues for arbitration, should

not be allowed to renege or back down from their deal by introducing new questions of law.

The question of law should be real and substantial and of such importance that its determination by a court of law or counsel is necessary for the proper determination of the case.

## **The relationship between the courts, tribunals and parties is of utmost importance**

The relationship between the courts, arbitral tribunals and the parties to arbitration proceedings is of utmost importance in the resolution and ultimate finalisation of a dispute.

In terms of international arbitration, during the next few months, the International Arbitration Bill 2016 will be presented to the South African National Assembly.

One of the Bill's objectives is to align the administration of arbitrations in South Africa to the Model Law of the UNCITRAL. Previously, unless otherwise agreed, international arbitrations were subject to the South African Arbitration Act.

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