

Chambers Role As an Appointing Authority. (By Yohannes Woldegebriel)

One of the most common responsibilities Chambers of commerce and Industries in most countries the world over have is to serve as an appointing body. Often, commercial disputes arising from contractual relations between businesspersons and/or their customers are resolved by arbitration and other alternative dispute resolution mechanisms. For various real and practical reasons, businesspersons prefer amicable and less confrontational dispute resolution mechanisms and impose maximum restraint not to refer cases to court.

As a legitimate, enduring, credible, dependable and trustworthy association of the business community, the responsibility to provide amicable dispute resolution fora and carry out the appointment of appropriate professional to serve as an arbitrator, mediator or conciliator is usually entrusted to chambers of commerce. Accordingly, disputing parties often direct their request and seek the support of chambers of commerce for the appointment of arbitrators. It is evident however that all chambers of commerce may not have the same rule, experience or system carries out their responsibility. As the pioneer and oldest chamber to be established in Ethiopia, the Addis Ababa Chamber of Commerce and Sectoral Associations (AACCSA) has a very elaborate rules, systems and experiences for the appointment of arbitrators, mediators, conciliators and adjudicators that are engaged in the resolution of commercial disputes. Currently the legal and contractual mandate entrusted to AACCSA as an appointing body is discharged by the Arbitration Institute (AI). This article shall discuss how AACCSA AI carries out these responsibilities.

One of the most frequent services provided by AACCSA AI is the appointment of arbitrators, adjudicators, mediators and conciliators. Most commercial contracts prepared or entered by private and public bodies designate the Chambers of Commerce in general and AACCSA in particular, as arbitrator, adjudicator etc... appointing body. This is quite prevalent in construction contracts, in particular, where adjudication and arbitrations are the most common dispute resolution mechanisms. General and special conditions of contracts recommended by public Procurement Agency (PPA), which has been recently renamed as Public Procurement and Property Administration (PPPA) and adopted by most construction contracting parties often, designate AACCSA AI as adjudicator or arbitrator appointing body (authority).

The appointment of arbitrator, adjudicator, mediator and conciliator is also one of the most transparent, organized and accountable services provided by AACCSA AI to its customers. AACCSA AI maintains a roster of various professionals serving in arbitration and other ADR mechanisms. The list of professionals in the institute roster has been developed over a long period of time since the Chamber (Institute) started providing its services. Most professionals in the Institute roster have been

appointed and served in institutional and ad hoc arbitrations and other ADR services. They have also underwent several trainings and participated in workshops organized by AACCSA AI.

The roster of AACCSA AI is regularly updated and approved by the supreme organ of the Institute, the Arbitration Institute Council. The roster list serves as the official basis for the appointment arbitrators' adjudicators, mediators and conciliators. Sometimes however, it is possible that AACCSA AI may appoint professionals out of the roster list. The procedure for the appointment of professionals from the roster list is the same for all types of arbitration and alternative dispute resolutions whether ad hoc or institutional. Each appointee is required to fill statement of acceptance and declaration of independence form attached with the Chamber Arbitration rules. This form provides vital information that requires the appointee to prove his/her acceptance of the appointment and confirm his/her independence or neutrality from the case, the parties and their lawyers.

This form also obliges the appointee to abide with the relevant rules of AACCSA including the code of ethics, to receive no remuneration other than provided in AACCSA rules and make full and accurate disclosure of any fact that call in to question his/her independence.

The appointee's statement of acceptance and declaration of independence form is referred for all parties after it is filled and duly signed by the nominee for parties' examination and comment. Parties are always encouraged to comment in accordance with the relevant rules, in writing on the declaration of the appointee and forward their approval or disapproval within specified period of time.¹ Parties are also advised file their challenge to AACCSA AI if any, in accordance with the relevant and applicable rules.²

If party's fail to submit their written comment or file a challenge within the specified period of time,³ it shall be presumed that parties have no comment or objection and confirmation of appointment letter is issued from the institute. The Institute however, always welcomes all information and complaints regarding any misconducts or impropriety of the appointee that violates relevant laws and rules that is likely to result a miscarriage of justice and take appropriate measure. In one case, an appointed arbitrator complained to a fellow arbitrator that his expectation for a huge remuneration was shattered after he saw the Institute fee schedule and demonstrated his displeasure by repeated absence. This information was later brought to the attention of the institute and the later took prompt measure to replace the disenchanting arbitrator.

¹ Article 14(2) of the Revised Arbitration rules provides 15 days.

² Article 14 of the Revised Arbitration rules.

³ Supra 22

In the course of nomination and subsequent appointment, the institute tries to ensure fairness and give priority to those professionals who provide pro bono service as part of their social and professional ethical obligation. There are instances where parties authorize the Institute to administer the case while reserving their right to make their own appointment of arbitrators. In order to maintain uniformity and consistency on all cases administered by the Institute, immediate actions aimed at mainstreaming party appointed arbitrators are made. Accordingly, party appointed arbitrators are required to fill the form and undergo the same procedure as arbitrators appointed by the Institute to ensure neutrality and compliance with applicable laws and rules.

The Ethiopian Civil Code provides very important rules to ensure the independence or impartiality of an arbitrator.⁴ Therefore, an arbitrator may be disqualified where he is found to be unfit according to these rules upon the request of a party by court. It is not clear however, how ad hoc arbitrators may pass through the screening procedures prior to their appointment. Obviously, the detailed procedures and rules that have been discussed above on the appointment of arbitrators where it is administered by institutional arbitration are non-existent in ad hoc arbitration.

Disputing parties that have chosen to rely on the elaborate procedures and systems for the nomination and appointment of arbitrators, mediators, conciliators and adjudicators are evidently guaranteed the transparent and accountable services that are not readily available elsewhere.

⁴ Article 3340 of the Civil Code.