

CHAPTER 40

ARBITRATION ACT

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AN ACT

to repeal and replace the Arbitration Act with provisions for domestic and international arbitration through the adoption, with modifications, of the Model Law on International Commercial Arbitration adopted by the United Nations Commission on International Trade Law on the 21st June, 1985; to provide for an arbitral procedure which is fair, efficient and capable of meeting the specific needs of each arbitration; to redefine the supervisory role of the courts in the arbitral process; to preserve the legal recognition and enforcement of foreign arbitral awards under the Geneva Protocol on Arbitration Clauses (1923) and the Geneva Convention on the Execution of Foreign Arbitral Awards (1927); to provide for the recognition and enforcement of foreign arbitral awards under the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (1958); and to provide for matters connected with or incidental to the foregoing.

[2nd March, 2001]

PART I PRELIMINARY

1. Short title

This Act may be cited as the Arbitration Act.

2. Interpretation

(1) In this Act, unless the context otherwise requires—

“arbitral institution” means an institution recognised as such in accordance with section 23;

“arbitral proceedings” means proceedings conducted by an arbitral tribunal for the settlement, by arbitration, of a dispute which has been referred to arbitration in terms of an arbitration agreement;

“arbitral tribunal” means a sole arbitrator or a panel of arbitrators acting as such under an arbitration agreement;

“arbitration” refers to any arbitration whether or not administered by a permanent arbitral institution and means the conduct of proceedings for the determination of a dispute by an arbitral tribunal in terms of this Act;

“arbitration agreement” means an agreement, whether in writing or not, by the parties to submit to arbitration all or certain disputes which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not;

“award” means the decision of an arbitral tribunal on the substance of a dispute and includes any interim, interlocutory or partial award and on any procedural or substantive issue;

“court” means the High Court or any other court, as may be designated by statutory instrument by the Chief Justice, having jurisdiction to decide the issues constituting the subject matter of the arbitration as if that matter had been the subject-matter of a suit; and the expression **“the court”** shall be construed accordingly;

“dispute” includes a difference;

“legal proceedings” means civil proceedings in any court;

“official language” means the English language;

“party” in relation to an arbitration agreement, a submission to arbitration or arbitral proceedings, means a party to the agreement, submission or proceedings and includes any person claiming under or through a party to the agreement.

(2) In the First Schedule, a reference to "this State" shall be construed as a reference to Zambia.

(3) In interpreting this Act, an arbitral tribunal or a court may refer to the documents relating to the Model Law on International Commercial Arbitration adopted by the United Nations Commission on International Trade Law on the 21st June, 1985 set out in the First Schedule and, subject to the other provisions of this Act,

to the documents of the Commission's working group, namely the *travaux préparatoires*; and in interpreting the provisions of the First Schedule, regard shall be had to its international origin and to the desirability of achieving international uniformity in its interpretation and application.

3. Scope of application of Act to agreements and awards

Subject to section 33, this Act shall apply to—

- (a) every arbitration agreement; and
- (b) every arbitral award,

whether made before or after the commencement of this Act; and any reference in any such agreement or award to the Arbitration Act shall be construed as a reference to this Act.

4. Application of Act to the Republic

Subject to the State Proceedings Act, this Act shall apply to any arbitration agreement to which the Republic is a party but shall not apply to an arbitration agreement between—

- (a) the Republic and the government of a foreign country; or
- (b) the Republic and any undertaking which is wholly owned by, or is under the sole control of, the government of a foreign country unless otherwise agreed between the Republic and that undertaking.

5. Application of Act to arbitration under other laws

(1) Subject to sub-section (3), this Act shall apply to every arbitration under any other written law, whether that law is in force before or after the commencement of this Act.

(2) Where a written law provides for a matter to be determined by arbitration whether or not in accordance with any law relating to arbitration—

- (a) the provision in the written law shall be deemed to be an arbitration agreement; and
- (b) a person by or against whom a claim subject to arbitration in pursuance of that provision may be made or has been made shall be deemed to be a party to that arbitration agreement.

(3) The provisions of this Act shall not apply to an arbitration referred to in sub-section (1) if, or to the extent that, those provisions—

- (a) are inconsistent with the provisions of the written law concerned or with any rules of procedure applicable under that law; or
- (b) are excluded by the written law concerned or by any other written law.

PART II

ARBITRATION AND RELATED MATTERS

6. Matters subject to arbitration and exceptions

(1) Subject to sub-sections (2) and (3), any dispute which the parties have agreed to submit to arbitration may be determined by arbitration.

(2) Disputes in respect of the following matters shall not be capable of determination by arbitration—

- (a) an agreement that is contrary to public policy;
- (b) a dispute which, in terms of any law, may not be determined by arbitration;
- (c) a criminal matter or proceeding except insofar as permitted by written law or unless the court grants leave for the matter or proceeding to be determined by arbitration;
- (d) a matrimonial cause;
- (e) a matter incidental to a matrimonial cause, unless the court grants leave for the matter to be determined by arbitration;
- (f) the determination of paternity, maternity or parentage of a person; or
- (g) a matter affecting the interests of a minor or an individual under a legal incapacity, unless the minor or individual is represented by a competent person.

(3) The fact that a law confers jurisdiction on a court or other tribunal to determine any matter shall not, on that ground alone, be construed as preventing the matter from being determined by arbitration.

7. Effect of death of a party

(1) Unless otherwise agreed by the parties, an arbitration agreement shall not be discharged by the death of a party and may be enforced by or against the personal representative of that party.

(2) Sub-section (1) shall not affect the operation of any written law or rule of law by virtue of which a substantive right or obligation is extinguished by death.

8. Application of First Schedule to arbitral proceedings

(1) Where the place of an arbitration is in Zambia, the First Schedule shall, subject to the other provisions of this Act, apply to the arbitration.

(2) Where the place of arbitration is not in Zambia, Articles 8, 9, 35 and 36 of the First Schedule shall apply.

9. Form of arbitration agreement

(1) An arbitration agreement may be in the form of an arbitration clause in a contract or in the form of a separate agreement.

(2) 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; and the reference in a contract to a document containing an arbitration clause constitutes an arbitration agreement provided that the contract is in writing and reference is such as to make that clause part of the contract.

(3) Where parties agree otherwise than in writing by reference to terms which are in writing, their agreement shall be treated as an agreement in writing.

10. Arbitration agreement and substantive claim before court

(1) A court before which legal proceedings are brought in a matter which is the subject of an arbitration agreement shall, if a party so requests at any stage of the proceedings and notwithstanding any written law, stay those proceedings and refer the parties to arbitration unless it finds that the agreement is null and void, inoperative or incapable of being performed.

(2) Where proceedings referred to in sub-section (1) have been brought, arbitral proceedings may nevertheless be commenced or continued, and an award may be made, while the issue is pending before the court.

11. Arbitration agreement and interim measures by Court

(1) A party may, before or during arbitral proceedings, request from a court an interim measure of protection and, subject to sub-sections (2), (3) and (4), the court may grant such measure.

(2) Upon a request in terms of sub-section (1), the court may grant—

(a) an order for the preservation, interim custody, sale or inspection of any goods which are the subject matter of the dispute;

(b) an order securing the amount in dispute or the costs and expenses of the arbitral proceedings;

(c) an interim injunction or other interim order; or

(d) any other order to ensure that an award which may be made in the arbitral proceedings is not rendered ineffectual.

(3) Where the court intends to grant an order or an injunction requested under sub-section (2), and an arbitral tribunal has already ruled or made a finding of fact on a matter relevant to the request, the court shall treat the ruling or finding made in the course of the arbitral proceedings as conclusive for the purpose of the request.

(4) The court shall not grant an order or injunction under this section unless—

(a) the arbitral tribunal has not yet been appointed and the matter is urgent;

(b) the arbitral tribunal is not competent to grant the order or injunction; or

(c) the urgency of the matter makes it impracticable to seek such order or injunction from the arbitral tribunal;

and the court shall not grant any order or injunction where the arbitral tribunal, being competent to grant the order or injunction, has already determined an application therefor.

12. Appointment of arbitrators

(1) No person shall be precluded by reason of that person's nationality, gender, colour or creed from acting as an arbitrator.

(2) The parties are free to agree on a procedure of appointing the arbitrator or arbitrators, subject to the provisions of sub-sections (4) and (5).

(3) Failing such agreement—

(a) in an arbitration with three arbitrators, each party shall appoint one arbitrator, and the two arbitrators thus appointed shall appoint the third arbitrator; if a party fails to appoint the arbitrator within thirty days of receipt of a request to do so from the other party, or if the two arbitrators fail to agree on the third arbitrator within thirty days of their appointment, the appointment shall be made, upon request of a party, by an arbitral institution;

(b) in an arbitration with a sole arbitrator, if the parties are unable to agree on the arbitration, the arbitrator shall be appointed, upon request of a party, by an arbitral institution.

(4) Where, under an appointment procedure agreed upon by the parties—

(a) a party fails to act as required under such procedure; or

(b) the parties, or two arbitrators, are unable to reach an agreement expected of them under such procedure; or

(c) a third party, including an arbitral institution, fails to perform any functions entrusted to it under such procedure,

any party may request the court to take the necessary measures, unless the agreement on the appointment procedure provides other means for securing the appointment.

(5) A decision on a matter entrusted by sub-sections (3) or (4) to the court or to an arbitral institution shall not be subject to appeal,

(6) The court or arbitral institution, in appointing an arbitrator, shall have due regard to any qualifications required of the arbitrator by the agreement of the parties and to such considerations as are likely to secure the appointment of an independent and impartial arbitrator and, in the case of a sole or third arbitrator, shall take into account as well the advisability of appointing an arbitrator of a nationality other than any of the nationalities of the parties.

13. Appointment of substitute arbitrator

(1) Where the mandate of an arbitrator terminates under articles 13 or 14 of the First Schedule or because of his withdrawal from office for any other reason or because of the revocation of his mandate by agreement of the parties or in any other case of termination of his mandate, a substitute arbitrator shall be appointed according to the rules that were applicable to the appointment of the arbitrator being replaced.

(2) Unless otherwise agreed by the parties—

(a) where the sole or other presiding arbitrator is replaced, any hearing previously held shall be held afresh; and

(b) where an arbitrator, other than a sole or a presiding arbitrator is replaced, any hearing previously held may be held afresh at the request of any party.

(3) Unless otherwise agreed by the parties, an order or ruling made prior to the replacement of an arbitrator under this article is not invalid solely because of a change in the composition of the arbitral tribunal.

14. Power of arbitral tribunal to order interim and other measures

(1) Unless otherwise agreed by the parties, the arbitral tribunal may, at the request of a party, order any party to take such interim measure of protection as the arbitral tribunal may consider necessary in respect of the subject-matter of the dispute and the arbitral tribunal may require any party to provide appropriate security in connection with any such measure.

(2) Unless otherwise agreed by the parties, an arbitral tribunal shall have power—

(a) to grant an interim injunction or other interim order;

(b) to order the parties to make a deposit in respect of the fees, costs and expenses of the arbitration.

(3) For the purposes of article 17 of the First Schedule, the arbitral tribunal shall also have power—

(a) to make any order it considers appropriate to compel the attendance of a witness before it to give evidence or produce documents;

(b) to order any witness to submit to examination on oath or affirmation before the arbitral tribunal, or before an officer of the tribunal or any other person in order to produce information or evidence for use by the arbitral tribunal;

(c) to order the discovery of documents and interrogatories;

(d) to issue a commission or request for the taking of evidence out of jurisdiction;

(e) to detain, preserve, or inspect any property or thing in the custody, possession or control of a party which is in issue in the arbitral proceedings and to authorise for any of the those purposes any person to enter upon any land or any building in the possession of a party, or to authorise any sample to be taken or any observation to be made or experiment to be carried out which may be necessary or expedient for the purpose of obtaining full information or evidence.

(4) The arbitral tribunal or a party with the approval of the arbitral tribunal may request from the court executory assistance in the exercise of any power conferred upon the arbitral tribunal under this section.

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15. Default of a party

Unless otherwise agreed by the parties, if, without showing sufficient cause—

(a) the claimant fails to communicate his statement of claim in accordance with article 23(1) of the First Schedule, the arbitral tribunal shall terminate the proceedings;

(b) the respondent fails to communicate his statement of defence in accordance with article 23(1) of the First Schedule, the arbitral tribunal shall continue the proceedings without treating such failure in itself as admission of the claimant's allegations;

(c) any party fails to appear at a hearing or to produce documentary evidence, the arbitral tribunal may continue the proceedings and make the award on the evidence before it; or

(d) the claimant fails to prosecute the claim within a reasonable time, the arbitral tribunal may make an award dismissing the claim or give directions, with or without conditions, for the speedy determination of the claim.

16. Form and contents of award and costs and expenses of arbitration

(1) The award shall be made in writing and shall be signed by the arbitrator or arbitrators; and in arbitral proceedings with more than one arbitrator, the signature of the majority of all members of arbitral tribunal shall suffice, provided that the reason for any omitted signature is stated.

(2) The award shall state the reasons upon which it is based, unless the parties have agreed that no reasons are to be given or the award is an award on agreed terms under article 30 of the First Schedule.

(3) The award shall state its date and the place of arbitration as determined in accordance with article 20(1) of the First Schedule; and the award shall be deemed to have been made at that place.

(4) After the award is made, a copy signed by the arbitrators in accordance with sub-section (1) shall be delivered to each party.

(5) Unless otherwise agreed by the parties—

(a) the costs and expenses of an arbitration including the legal and other expenses of the parties, the fees and expenses of the arbitral tribunal and other expenses related to the arbitration, shall be as fixed and allocated by the arbitral tribunal in its award;

(b) where the award does not specify otherwise, each party shall be responsible for their own legal and other expenses and for an equal share of the fees and expenses of the arbitral tribunal and any other expenses related to the arbitration.

(6) Unless otherwise agreed by the parties an arbitral tribunal may award—

(a) in the case of an arbitration which, under article 1(3) of the First Schedule, is international, simple or compound interest, in accordance with the law applicable to the arbitration; or

(b) in any other case, simple or compound interest in accordance with the law applicable in Zambia to judgment debts on the whole or any part of any sum and in relation to such period and at such rate as is specified in the arbitral award.

(7) Unless otherwise agreed by the parties, an arbitral tribunal shall have the power to make an interim, interlocutory or partial award.

17. Application for setting aside as exclusive recourse against arbitral award

(1) Recourse to a court against an arbitral award may be made only by an application for setting aside in accordance with sub-sections (2) and (3).

(2) An arbitral award may be set aside by the court only if—

(a) the party making the application furnishes proof that—

(i) a party to the arbitration agreement was under some incapacity; or the said agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the laws of Zambia;

(ii) the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case;

(iii) the award deals with a dispute not contemplated by, or not falling within the terms of, the submission to arbitration, or contains decisions on matters beyond the scope of the submission to arbitration, provided that, if the decision on matters submitted to arbitration can be separated from those not so submitted, only that part of the award which contains decisions on matters not submitted to arbitration may be set aside;

(iv) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties or, failing such agreement, was not in accordance with this Act or the law of the country where the arbitration took place; or

(v) the award has not yet become binding on the parties or has been set aside or suspended by a Court of the country in which, or under the law of which, that award was made; or

(b) if the court finds that—

(i) the subject-matter of the dispute is not capable of settlement by arbitration under the law of Zambia;
or

(ii) the award is in conflict with public policy; or

(iii) the making of the award was induced or effected by fraud, corruption or misrepresentation.

(3) An application for setting aside may not be made after three months have elapsed from the date on which the party making that application had received the award or, if a request has been made under article 33 of the First Schedule, from the date on which that request had been disposed of by the arbitral tribunal .

(4) The court, when asked to set aside an award may, where appropriate and if so requested by a party, suspend the setting aside proceedings for a period of time determined by it in order to give the arbitral tribunal an opportunity to resume the arbitral proceedings or to take such other action as in the arbitral tribunal's

opinion will eliminate the grounds for setting aside.

18. Recognition and enforcement

(1) An arbitral award, irrespective of the country in which it was made, shall be recognised as binding and, upon application in writing to the competent court, shall be enforced subject to the provisions of this section and of section 19.

(2) The party relying on an award or applying for its enforcement shall supply the duly authenticated original award or a duly certified copy thereof, and the original arbitration agreement or a duly certified copy thereof. If the award or agreement is not made in the official language, the party shall supply a duly certified translation thereof into the official language.

19. Grounds for refusing recognition or enforcement

(1) Recognition or enforcement of an arbitral award, irrespective of the country in which it was made, may be refused only—

(a) at the request of the party against whom it is invoked, if that party furnishes to the competent Court where recognition or enforcement is sought proof that—

(i) a party to the arbitration agreement was under some incapacity, or the said agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law of the country where the award was made;

(ii) the party against whom the award is invoked was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case;

(iii) the award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration, provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, that part of the award which contains decisions on matters submitted to arbitration may be recognised and enforced;

(iv) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties or, failing such agreement, was not in accordance with the law of the country where the arbitration took place; or

(v) the award has not yet become binding on the parties or has been set aside or suspended by a court of the country in which, or under the law of which, that award was made; or

(b) if the court finds that—

(i) the subject-matter of the dispute is not capable of settlement by arbitration under the law of Zambia;
or

(ii) the recognition or enforcement of the award would be contrary to public policy; or

(iii) the making of the award was induced or effected by fraud, corruption or misrepresentation.

(2) If an application for setting aside or suspension of an award has been made to a court referred to in sub-section (1)(a)(v), the court where recognition or enforcement is sought may, if it considers it proper, adjourn its decision and may also, on the application of the party claiming recognition or enforcement of the award, order the other party to provide appropriate security.

20. Effect of award

(1) Subject to sub-sections (2) and (3), an award made by an arbitral tribunal pursuant to an arbitration agreement is final and binding both on the parties and on any persons claiming through or under them.

(2) Sub-section (1) shall not affect the right of a person to challenge the award by any available process provided for in this Act.

(3) Where the time for making an application to set aside an arbitration award has expired or where the application has been refused by a court, the award shall be deemed to be, and shall be enforceable in the same manner as, an order of the court.

21. Legal or other representation

Unless otherwise agreed by the parties, a party to arbitral proceedings may be represented in the proceedings by a legal practitioner or other person of that party's choice.

22. Prohibition of representation or acting as witness by arbitrators in legal proceedings

(1) A person who has acted as arbitrator in arbitral proceedings shall not act as counsel for, or representative of, any of the parties in legal proceedings which were the subject of the arbitral proceedings.

(2) A party to legal proceedings shall not be allowed to present a person who has acted as arbitrator as a witness in legal proceedings which were the subject of the arbitral proceedings.

23. Recognition of arbitral institutions

(1) A professional body or organisation in Zambia or elsewhere may apply to the Minister for an order (in this Act referred to as a "recognition order") declaring the body or organisation to be an arbitral institution for the purposes of this Act.

(2) An application for a recognition order under sub-section (1)—

(a) shall be made in such manner as the Minister may, by statutory instrument, prescribe; and

(b) shall be accompanied by such information as the Minister may reasonably require for the purpose of determining the application.

(3) Every application shall be accompanied by a copy of the constitution establishing the body or organisation or evidence of any other authority under which it is constituted.

(4) In sub-section (1), "**a professional body or organisation**" means a body or organisation which regulates the practice of a profession.

24. Grant or refusal of recognition

(1) Subject to section 25, the Minister may, on an application duly made in accordance with section 23 and after being furnished with all such information as the Minister may require under section 23, make or refuse to make a recognition order.

(2) The Minister may refuse to make a recognition order in respect of a body or organisation if the Minister considers that its recognition is unnecessary having regard to the existence of one or more other bodies or organisations which are concerned with the resolution of disputes; and where the Minister refuses to make a recognition order the Minister shall give the applicant written notice to that effect stating the reasons for the refusal.

25. Conditions for recognition

The Minister shall not make a recognition order unless the Minister is satisfied that, from the information furnished by the applicant and having regard to any information in the Minister's possession, the body or organisation in respect of which the application is made has satisfactory rules relating to—

- (a) the qualifications of persons for membership of the arbitral institution;
- (b) the certification of arbitrators;
- (c) the effective monitoring and enforcement of compliance with prescribed standards of arbitration;
- (d) the integrity, conduct, discipline and control of arbitrators;
- (e) the investigation of complaints by parties against arbitrators; and
- (f) any other requirements for the maintenance of proper standards of arbitration.

26. Revocation of recognition

(1) The Minister may revoke a recognition order if at any time it appears to the Minister that the arbitral institution concerned has failed to comply with any obligation to which it is subject under this Act.

(2) An order under sub-section (1) to revoke a recognition order shall state the reasons for the revocation and may contain such transitional provisions as the Minister considers appropriate.

(3) Before revoking a recognition order, the Minister shall give written notice of the Minister's intention to do so to the arbitral institution and publish the notice in such manner as the Minister considers appropriate for bringing it to the attention of persons who are likely to be affected by the revocation.

(4) A notice under sub-section (3) shall give the reasons for which the Minister proposes to revoke the recognition order and the arbitral institution upon which a notice under sub-section (3) is served may, within two months or such longer period as the Minister may allow after the date of service, make representations to the Minister.

27. Confidentiality of arbitration

(1) Subject to sub-section (2), an arbitration agreement, unless otherwise agreed by the parties, is deemed to provide that the parties shall not publish, disclose, or communicate any information relating to arbitral proceedings under the agreement or to an award made in those proceedings.

(2) Nothing in sub-section (1) prevents the publication, disclosure, or communication of information referred to in that sub-section—

(a) if the publication, disclosure or communication is required under any law;

(b) to a professional or other adviser of any of the parties; or

(c) by an arbitral institution or a person authorised in writing by an arbitral institution, but in such a manner as to maintain the anonymity of the parties and to reveal only those facts which may be necessary for the understanding of the subject of the arbitration and the decision of the Arbitral Tribunal.

28. Protection of arbitrators, arbitral and other institutions, witnesses, etc

(1) An arbitrator, an arbitral or other institution or a person authorised by or under this Act to perform any function in connection with arbitral proceedings is not liable for anything done or omitted in good faith in the discharge or purported discharge of that function.

(2) A witness in arbitral proceedings shall have the like protection from liability as a witness before the court.

29. Code of conduct, and temporary application of Judicial (Code of Conduct) Act, 1999 to arbitrators

(1) The Minister may, in consultation with the Chief Justice and by statutory instrument, make regulations providing for a code of conduct for arbitrators and standards of arbitration.

(2) Until such time as regulations made under sub-section (1) come into force, Parts II, III and IV (except sections 16 and 17) of the Judicial (Code of Conduct) Act, 1999 shall apply, with necessary modifications, to every person appointed an arbitrator and in relation to arbitral proceedings in which the person is an arbitrator.

PART III

RECOGNITION AND ENFORCEMENT OF NEW YORK CONVENTION AWARDS

30. Interpretation of this Part

(1) In this Part—

(a) a **“New York Convention award”** means an award made in pursuance of an arbitration agreement, in the territory of a state (other than the Republic of Zambia) which is a party to the New York Convention;

(b) **“arbitration agreement”** means an arbitration agreement in writing;

(c) “**the New York Convention**” means the Convention on the Recognition and Enforcement of Foreign Arbitral Awards adopted by the United Nations Conference on International Commercial Arbitration on 10th June, 1958, set out in the Second Schedule.

(2) For the purposes of this Part, an award shall be treated as having been made at the place of the arbitration, regardless of where it was signed, despatched or delivered to any of the parties.

31. Recognition and enforcement of New York Convention awards

A New York Convention award shall be recognised as binding, in the manner provided for in this Act, on the persons in relation to whom it was made and shall be enforceable in accordance with articles 35 and 36 of the First Schedule.

PART IV MISCELLANEOUS

32. Rules of court

The Chief Justice may, by statutory instrument, make rules for—

- (a) the conduct of legal proceedings under this Act;
- (b) the filing and hearing of matters referred to the court and all proceedings consequent thereon or incidental thereto;
- (c) the staying of any legal proceedings in contravention of a submission to arbitration;
- (d) the maintenance of confidentiality, in terms of section 30, in relation to legal proceedings;
- (e) the provision, by the court, of executory assistance; and
- (f) such other matters as may be brought before a court which have a bearing on arbitral proceedings.

PART V REPEAL AND TRANSITIONAL PROVISIONS

33. Repeal of Act 3 of 1933 and transitional provisions

- (1) The Arbitration Act, 1933 is repealed.
- (2) Notwithstanding the repeal of the Arbitration Act, 1933 by sub-section (1), arbitral proceedings commenced under that Act before the coming into operation of this Act may be continued and concluded in accordance with that Act as if the Act had not been repealed.
- (3) For the purposes of sub-section (1), arbitral proceedings shall be deemed to have been commenced on the date the parties agreed they commenced or, in the absence of such agreement, on the date of receipt by the respondent of a request for the dispute to which they relate to be referred to arbitration.

(4) The repeal of the Arbitration Act, 1933 by sub-section (1) shall not affect the recognition or enforcement of an award under any other written law or rule of law, in particular an award to which the Protocol on Arbitration Clauses and the Convention on the Execution of Foreign Arbitral Awards (in the Third and Fourth Schedules, respectively, of the Act repealed by sub-section (1)) apply.

FIRST SCHEDULE

[Section 8]

[This Schedule contains the United Nations Commission on International Trade Law (UNCITRAL) Model Law (United Nations Document A/40/17, Annex 1) as adopted by the United Nations Commission on International Trade Law on 21st June, 1985]

CHAPTER I GENERAL PROVISIONS

ARTICLE 1

[Modified by section 3]

Scope of application

(1) This Law applies to international commercial arbitration, subject to any agreement in force between this State and any other State or States.

(2) The provisions of this Law, except articles 8, 9, 35 and 36, apply only if the place of arbitration is in the territory of this State.

(3) An arbitration is international if—

(a) the parties to an arbitration agreement have, at the time of the conclusion of that agreement, their places of business in different States; or

(b) one of the following places is situated outside the State in which the parties have their places of business:

(i) the place of arbitration if determined in, or pursuant to, the arbitration agreement;

(ii) any place where a substantial part of the obligations of the commercial relationship is to be performed or the place with which the subject-matter of the dispute is most closely connected; or

(c) the parties have expressly agreed that the subject-matter of the arbitration agreement relates to more than one country.

(4) For the purposes of paragraph (3) of this Article:

(a) if a party has more than one place of business, the place of business is that which has the closest relationship to the arbitration agreement;

(b) if a party does not have a place of business, reference is to be made to his habitual residence.

(5) This Law shall not affect any other law of this State by virtue of which certain disputes may not be submitted to arbitration or may be submitted to arbitration only according to provisions other than those of this law.

ARTICLE 2

(Modified by section 2)

Definition and rules of interpretation

For the purposes of this Law—

- (a) “**arbitration**” means any arbitration whether or not administered by a permanent arbitral institution;
- (b) “**arbitral tribunal**” means a sole arbitrator or a panel of arbitrators;
- (c) “**court**” means a body or organ of the judicial system of a State;
- (d) where a provision of this Law, except article 28, leaves the parties free to determine a certain issue, such freedom includes the right of the parties to authorise a third party, including an institution, to make that determination;
- (e) where a provision of this Law refers to the fact that parties has agreed or that they may agree or in any other way refers to an agreement of the parties, such agreement includes any arbitration rules referred to in that agreement;
- (f) where a provision of this Law, other than in articles 25(a) and 32(2)(a), refers to a claim, it also applies to a counter-claim, and where it refers to a defence, it also applies to a defence to such counter-claim.

ARTICLE 3

(Modified by section 13)

Receipt of written communications

(1) Unless otherwise agreed by the parties—

- (a) any written communication is deemed to have been received if it is delivered to the addressee personally or if it is delivered at his place of business, habitual residence or mailing address; if none of these can be found after making a reasonable inquiry, a written communication is deemed to have been received if it is sent to the addressee’s last-known place of business, habitual residence or mailing address by registered letter or any other means which provides a record of the attempt to deliver it;
 - (b) the communication is deemed to have been received on the day it is so delivered.
- (2) The provisions of this article do not apply to communications in court proceedings.

ARTICLE 4

Waiver of right to object

A party who knows that any provision of this Law from which the parties may derogate or any requirement under the arbitration agreement has not been complied with and yet proceeds with the arbitration without stating his objection to such non-compliance without undue delay or, if a time-limit is provided therefor, within such period of time, shall be deemed to have waived his right to object.

ARTICLE 5

Extent of court intervention

In matters governed by this Law, no court shall intervene except where so provided in this Law.

ARTICLE 6

Court or other authority for certain functions of arbitration assistance and supervision

The function referred to in articles 11(3), 11(4), 13(3), 14, 16(3) and 34(2) shall be performed by.....[Each State enacting this model law specifies the court, courts or, where referred to therein, other authority competent to perform these functions.]

CHAPTER II ARBITRATION AGREEMENT

ARTICLE 7

(Modified by sections 2 and 9)

Definition and form of arbitration agreement

(1) "Arbitration agreement" is an agreement by the parties to submit to arbitration all or certain disputes which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not. An arbitration agreement may be in the form of an arbitration clause in a contract or in the form of a separate agreement.

(2) 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. The reference in a contract to a document containing an arbitration clause constitutes an arbitration agreement provided that the contract is in writing and the reference is such as to make that clause part of the contract.

ARTICLE 8

[Modified by section 10]

Arbitration agreement and substantive claim before court

(1) A court before which an action is brought in a matter which is the subject of an arbitration agreement shall, if a party so requests not later than when submitting his first statement on the substance of the dispute, refer the parties to arbitration unless it finds that the agreement is null and void, inoperative or incapable of being performed.

(2) Where an action referred to in paragraph (1) of this article have been brought, arbitral proceedings may nevertheless be commenced or continued, and an award may be made, while the issue is pending before the court.

ARTICLE 9

(Modified by section 11)

Arbitration agreement and interim measures by court

It is not incompatible with an arbitration agreement for a party to request, before or during arbitral proceedings, from a court an interim measure of protection and for a court to grant such measure.

CHAPTER III COMPOSITION OF ARBITRAL TRIBUNAL

ARTICLE 10

Number of arbitrators

- (1) The parties are free to determine the number of arbitrators.
- (2) Failing such determination, the number of arbitrators shall be three.

ARTICLE 11

(Modified by section 12)

Appointment of arbitrators

(1) No person shall be precluded by reason of his nationality from acting as an arbitrator, unless otherwise agreed by the parties.

(2) The parties are free to agree on a procedure of appointing the arbitrator or arbitrators, subject to the provisions of paragraphs (4) and (5) of this article.

(3) Failing such agreement—

(a) in an arbitration with three arbitrators, each party shall appoint one arbitrator, and the two arbitrators thus appointed shall appoint the third arbitrator; if a party fails to appoint the arbitrator within thirty days of receipt of a request to do so from the other party, or if the two arbitrators fail to agree on the third arbitrator within thirty days of their appointment, the appointment shall be made, upon request of a party, by the court or other authority specified in article 6;

(b) in an arbitration with a sole arbitrator, if the parties are unable to agree on the arbitrator, he shall be appointed, upon request of a party, by the court or other authority specified in article 6.

(4) Where, under an appointment procedure agreed upon by the parties—

(a) a party fails to act as required under such procedure; or

(b) the parties, or two arbitrators, are unable to reach an agreement expected of them under such procedure; or

(c) a third party, including an institution, fails to perform any functions entrusted to it under such procedure,

any party may request the court or other authority specified in article 6 to take the necessary measure, unless the agreement on the appointment procedure provides other means for securing the appointment

(5) A decision on a matter entrusted by paragraph (3) or (4) of this article to the court or other authority, specified in article 6 shall be subject to no appeal. The court or other authority, in appointing an arbitrator, shall have due regard to any qualifications required of the arbitrator by the agreement of the parties and to such considerations as are likely to secure the appointment of an independent and impartial arbitrator and, in the case of a sole or third arbitrator, shall take into account as well the advisability of appointing an arbitrator of a nationality other than those of the parties.

ARTICLE 12

Grounds for challenge

(1) When a person is approached in connection with his possible appointment as an arbitrator, he shall disclose any circumstances likely to give rise to justifiable doubts as to his impartiality or independence. An arbitrator, from the time of his appointment and throughout the arbitral proceedings, shall without delay disclose any such circumstances to the parties unless they have already been informed of them by him.

(2) An arbitrator may be challenged only if circumstance exist that give rise to justifiable doubts as to his impartiality or independence, or if he does not possess qualifications agreed to by the parties. A party may challenge an arbitrator appointed by him, or in whose appointment he has participated, only for reasons of which he becomes aware after the appointment has been made.

ARTICLE 13

Challenge procedure

(1) The parties are free to agree on a procedure for challenging an arbitrator, subject to the provisions of paragraph (3) of this article.

(2) Failing such agreement, a party who intends to challenge an arbitrator shall, within fifteen days after becoming aware of the constitution of the arbitral tribunal or after becoming aware of any circumstances referred to in article 12(2), send a written statement of the reasons for the challenge to the arbitral tribunal. Unless the challenged arbitrator withdraws from his office or the other party agrees to the challenge, the arbitral tribunal shall decide on the challenge.

(3) If a challenge under any procedure agreed upon by the parties or under the procedure of paragraph (2) of this article is not successful, the challenging party may request, within thirty days after having received notice of the decision rejecting the challenge, the court or other authority specified, in article 6 to decide on the challenge, which decision shall be subject to no appeal; while such a request is pending, the arbitral tribunal, including the challenged arbitrator, may continue the arbitral proceedings and make an award.

ARTICLE 14

Failure or impossibility to act

(1) If an arbitrator becomes *de jure* or *de facto* unable to perform his functions or for other reasons fails to act without undue delay, his mandate terminates if he withdraws from his office or if the parties agree on the termination. Otherwise, if a controversy remains concerning any of these grounds, any party may request the court or other authority specified in article 6 to decide on the termination of the mandate, which decision shall be subject to no appeal.

(2) If, under this article or article 13(2), an arbitrator withdraws from his office or a party agrees to the termination of the mandate of an arbitrator, this does not imply acceptance of the validity of any ground referred to in this article or article 12(2).

ARTICLE 15

(Modified by section 13)

Appointment of substitute arbitrator

(1) Where the mandate of an arbitrator terminates under articles 13 or 14 or because of his withdrawal from office for any other reason or because of the revocation of his mandate by agreement of the parties or in any other case of termination of his mandate, a substitute arbitrator shall be appointed according to the rules that were applicable to the appointment of the arbitrator being replaced.

CHAPTER IV JURISDICTION OF ARBITRAL TRIBUNAL

ARTICLE 16

Competence of arbitral tribunal to rule on its jurisdiction

(1) The arbitral tribunal may rule on its own jurisdiction, including any objections with respect to the existence or validity of the arbitration agreement. For that purpose, an arbitration clause which forms part of a contract shall be treated as an agreement independent of the other terms of the contract. A decision by the arbitral tribunal that the contract is null and void shall not entail *ipso jure* the invalidity of the arbitration clause.

(2) A plea that the arbitral tribunal does not have jurisdiction shall be raised not later than the submission of the statement of defence. A party is not precluded from raising such a plea by the fact that he has appointed, or participated in the appointment of, an arbitrator. A plea that the arbitral tribunal is exceeding the scope of its authority shall be raised as soon as the matter alleged to be beyond the scope of its authority is raised during the arbitral proceedings. The arbitral tribunal may, in either case, admit a later plea if it considers the delay justified.

(3) The arbitral tribunal may rule on a plea referred to in paragraph (2) of this article either as a preliminary question or in an award on the merits. If the arbitral tribunal rules as a preliminary question that it has jurisdiction, any party may request, within thirty days after having received notice of the ruling, the court specified in article 6 to decide the matter, which decision shall be subject to no appeal; while such a request is pending, the arbitral tribunal may continue the arbitral proceedings and make an award.

ARTICLE 17

(Modified by section 14)

Power of arbitral tribunal to order interim measures

Unless otherwise agreed by the parties, the arbitral tribunal may, at the request of a party, order any party to take such interim measure of protection as the arbitral tribunal may consider necessary in respect of the subject-matter of the dispute. The arbitral tribunal may require any party to provide appropriate security in connection with any such measure.

CHAPTER V
CONDUCT OF ARBITRAL PROCEEDINGS

ARTICLE 18

Equal treatment of parties

The parties shall be treated with equality and each party shall be given a full opportunity of presenting his case.

ARTICLE 19

Determination of rules of procedure

(1) Subject to the provisions of this Law, the parties are free to agree on the procedure to be followed by the arbitral tribunal in conducting the proceedings.

(2) Failing such agreement, the arbitral tribunal may, subject to the provisions of this Law, conduct the arbitration in such manner as it considers appropriate. The power conferred upon the arbitral tribunal includes the power to determine the admissibility, relevance, materiality and weight of any evidence.

ARTICLE 20

Place of arbitration

(1) The parties are free to agree on the place of arbitration. Failing such agreement, the place of arbitration shall be determined by the arbitral tribunal having regard to the circumstances of the case, including the convenience of the parties.

(2) Notwithstanding the provisions of paragraph (1) of this article, the arbitral tribunal may, unless otherwise agreed by the parties, meet at any place it considers appropriate for consultation among its members, for hearing witnesses, experts or the parties, or for inspection of goods, other property or documents.

ARTICLE 21

Commencement of arbitral proceedings

Unless otherwise agreed by the parties, the arbitral proceedings in respect of a particular dispute commence on the date on which a request for that dispute to be referred to arbitration is received by the respondent.

ARTICLE 22

Language

(1) The parties are free to agree on the language or languages to be used in the arbitral proceedings. Failing such agreement, the arbitral tribunal shall determine the language or languages to be used in the proceedings. This agreement or determination, unless otherwise specified therein, shall apply to any written statement by a party, any hearing and any award, decision or other communication by the arbitral tribunal.

(2) The arbitral tribunal may order that any documentary evidence shall be accompanied by a translation into the language or languages agreed upon by the parties or determined by the arbitral tribunal.

ARTICLE 23

Statement of claim and defence

(1) Within the period of time agreed by the parties or determined by the arbitral tribunal, the claimant shall state the facts supporting his claim, the points at issue and the relief or remedy sought, and the respondent shall state his defence in respect of these particulars, unless the parties have otherwise agreed as to the required, elements of such statement. The parties may submit with their statements all documents they consider to be relevant or may add a reference to the documents or other evidence they will submit.

(2) Unless otherwise agreed by the parties, either party may amend or supplement his claim or defence during the course of the arbitral proceedings, unless the arbitral tribunal considers it inappropriate to allow such amendment having regard to the delay in making it.

ARTICLE 24

Hearings and written proceedings

(1) Subject to any contrary agreement by the parties, the arbitral tribunal shall decide whether to hold oral hearings for the presentation of evidence or for oral argument, or whether the proceedings shall be conducted on the basis of documents and other material. However, unless the parties have agreed that no hearing shall be held, the arbitral tribunal shall hold such hearings at an appropriate stage of the proceedings, if so requested by a party.

(2) The parties shall be given sufficient advance notice of any hearing and of any meeting of the arbitral tribunal for the purposes of inspection of goods, other property or documents.

(3) All statements, documents or other information supplied to the arbitral tribunal by one party shall be communicated to the other party. Also any expert report or evidentially document on which the arbitral tribunal may rely in making its decision shall be communicated to the parties.

ARTICLE 25

(Modified by section 15)

Default of a party

Unless otherwise agreed by the parties, if, without showing sufficient cause—

(a) the claimant fails to communicate his statement of claim in accordance with article 23(1), the arbitral tribunal shall terminate the proceedings;

(b) the respondent fails to communicate his statement of defence in accordance with article 23(1), the arbitral tribunal shall continue the proceedings without treating such failure in itself as an admission of the claimant's allegations;

(c) any party fails to appear at a hearing or to produce documentary evidence, the arbitral tribunal may continue the proceedings and make the award on the evidence before it.

ARTICLE 26

Expert appointed by arbitral tribunal

(1) Unless otherwise agreed by the parties, the arbitral tribunal—

(a) may appoint one or more experts to report to it on specific issues to be determined by the arbitral tribunal;

(b) may require a party to give the expert any relevant information or to produce, or to provide access to, any relevant documents, goods or other property for his inspection.

(2) Unless otherwise agreed by the parties, if a party so requests or if the arbitral tribunal considers it necessary, the expert shall, after delivery of his written or oral report, participate in a hearing where the parties have the opportunity to put questions to him and to present expert witnesses in order to testify on the points at issue.

ARTICLE 27

Court assistance in taking evidence

The arbitral tribunal, or a party with the approval of the arbitral tribunal, may request from a competent court of this State assistance in taking evidence. The court may execute the request within its competence and according to its rules on taking evidence.

CHAPTER VI MAKING OF AWARD AND TERMINATION OF PROCEEDINGS

ARTICLE 28

Rules applicable to substance of dispute

(1) 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. Any designation of the law or legal system of a given State shall be construed, unless otherwise expressed, as directly referring to the substantive law of that State and not to its conflict of laws rules.

(2) Failing any designation by the parties, the arbitral tribunal shall apply the law determined by the conflict of laws rules which it considers applicable.

(3) The arbitral tribunal shall decide *ex aequo et bono* or as *amiable compositeur* only if the parties have expressly authorised it to do so.

(4) In all cases, the arbitral tribunal shall decide in accordance with the terms of the contract and shall take into account the usage of the trade applicable to the transaction.

ARTICLE 29

Decision making by panel of arbitrators

In arbitral proceedings with more than one arbitrator, any decision of the arbitral tribunal shall be made, unless otherwise agreed by the parties, by a majority of all its members. However, questions of procedure may be decided by a presiding arbitrator, if so authorised by the parties or all members of the arbitral tribunal.

ARTICLE 30

Settlement

(1) If, during arbitral proceedings, the parties settle the dispute, the arbitral tribunal shall terminate the proceedings and, if requested by the parties and not objected to by the arbitral tribunal, record the settlement in the form of an arbitral award on agreed terms.

(2) An award on agreed terms shall be made in accordance with the provisions of article 31 and shall state that it is an award. Such an award has the same status and effect as any other award on the merits of the case.

ARTICLE 31

(Modified by section 16)

Form and contents of award and costs and expenses of arbitration

(1) The award shall be made in writing and shall be signed by the arbitrator or arbitrators. In arbitral proceedings with more than one arbitrator, the signatures of the majority of all members of the arbitral tribunal shall suffice, provided that the reasons for any omitted signature is stated.

(2) The award shall state the reasons upon which it is based, unless the parties have agreed that no reasons are to be given or the award is an award on agreed terms under article 30.

(3) The award shall state its date and place of arbitration as determined in accordance with article 20(1). The award shall be deemed to have been made at that place.

(4) After the award is made, a copy signed by the arbitrators in accordance with paragraph (1) of this article shall be delivered to each party.

ARTICLE 32

Termination of proceedings

(1) The arbitral proceedings are terminated by the final award or by an order of the arbitral tribunal in accordance with paragraph (2) of this article.

(2) The arbitral tribunal shall issue an order for the termination of the arbitral proceedings when—

(a) the claimant withdraws his claim, unless the respondent objects thereto and the arbitral tribunal recognises a legitimate interest on his part in obtaining a final settlement of the dispute;

(b) the parties agree on the termination of the proceedings;

(c) the arbitral tribunal finds that the continuation of the proceedings has for any other reason become unnecessary or impossible.

(3) The mandate of the arbitral tribunal terminates with the termination of the arbitral proceedings, subject to the provisions of articles 33 and 34(4).

ARTICLE 33

Correction and interpretation of award; additional award

(1) Within thirty days of receipt of the award, unless another period of time has been agreed upon by the parties:

(a) a party, with notice to the other party, may request the arbitral tribunal to correct in the award any errors in computation, any clerical or typographical errors or any errors of similar nature;

(b) if so agreed by the parties, a party, with notice to the other party, may request the arbitral tribunal to give an interpretation of a specific point or part of the award. If the arbitral tribunal considers the request to be justified, it shall make the correction or give the interpretation within thirty days of receipt of the request. The interpretation shall form part of the award.

(2) The arbitral tribunal may correct any error of the type referred to in paragraph (1)(a) of this article on its own initiative within thirty days of the date of the award.

(3) Unless otherwise agreed by the parties, a party, with notice to the other party, may request, within thirty days of receipt of the award, the arbitral tribunal to make an additional award as to claims presented in the arbitral proceedings but omitted from the award. If the arbitral tribunal considers the request to be justified, it shall make the additional award within sixty days.

(4) The arbitral tribunal may extend, if necessary, the period of time within which it shall make a correction, interpretation or an additional award under paragraph (1) or (3) of this article.

(5) The provisions of article 31 shall apply to a correction or interpretation of the award or to an additional award.

CHAPTER VII

RECOURSE AGAINST AWARD

ARTICLE 34

(Modified by section 17)

Application for setting aside as exclusive recourse against arbitral award

(1) Recourse to a court against an arbitral award may be made only by an application for setting aside in accordance with paragraph (2) and (3) of this article.

(2) An arbitral award may be set aside by the court only if:

(a) the party making the application furnishes proof that:

(i) a party to the arbitration agreement referred to in article 7 was under some incapacity; or the said agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law of this State; or

(ii) the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or

(iii) the award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or contains decisions on matters beyond the scope of the submission to arbitration, provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, only that part of the award which contains decisions on matters not submitted to arbitration may be set aside; or

(iv) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless such agreement was in conflict with a provision of this Law from which the parties cannot derogate, or failing such agreement, was not in accordance with this Law; or

(b) if the court finds that:

(i) the subject-matter of the dispute is not capable of settlement by arbitration under the law of this State;
or

(ii) the award is in conflict with the public policy of this State;

(3) An application for setting aside may not be made after three months have elapsed from the date on which the party making that application had received the award or, if a request had been made under article 33, from the date on which that request had been disposed of by the arbitral tribunal.

(4) The court, when asked to set aside an award, may, where appropriate and so requested by a party, suspend the setting aside proceedings for a period of time determined by it in order to give the arbitral tribunal an opportunity to resume the arbitral proceedings or to take such other action as in the arbitral tribunal's opinion will eliminate the grounds for setting aside.

CHAPTER VIII

RECOGNITION AND ENFORCEMENT OF AWARDS

ARTICLE 35

(Modified by section 18)

Recognition and enforcement

(1) An arbitral award, irrespective of the country in which it was made, shall be recognised as binding and, upon application in writing to the competent court, shall be enforced subject to the provisions of this article and of article 36.

(2) The party relying on an award or applying for its enforcement shall supply the duly authenticated original award or a duly certified copy thereof, and the original arbitration agreement referred to in article 7 or a duly certified copy thereof. If the award or agreement is not made in an official language of this State, the party shall supply a duly certified translation thereof into such language.

ARTICLE 36

(Modified by section 19)

Grounds for refusing recognition or enforcement

(1) Recognition or enforcement of an arbitral award, irrespective of the country in which it was made, may be refused only:

(a) at the request of the party against whom it is invoked, if that party furnishes to the competent court where recognition or enforcement is sought proof that—

(i) a party to the arbitration agreement referred to in article 7 was under some incapacity; or the said agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law of the country where the award was made; or

(ii) the party against whom the award is invoked was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or

(iii) the award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration, provided that, if the decisions on matters submitted, to arbitration can be separated from those not so submitted, that part of the award which contains decisions on matters submitted to arbitration may be recognised and enforced; or

(iv) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties or, failing such agreement, was not in accordance with the law of the country where the arbitration took place; or

(v) the award has not yet become binding on the parties or has been set aside or suspended by a court of the country in which, or under the law of which, that award was made; or

(b) if the court finds that:

(i) the subject-matter of the dispute is not capable of settlement by arbitration under the law of this state; or

(ii) the recognition or enforcement of the award would be contrary to the public policy of this State.

SECOND SCHEDULE

[Section 33]

CONVENTION ON THE RECOGNITION AND ENFORCEMENT OF FOREIGN ARBITRAL AWARDS

(Adopted at New York by the United Nations Conference on International Commercial Arbitration on 10th June, 1958)

ARTICLE I

1. This Convention shall apply to the recognition and enforcement of arbitral awards made in the territory of a State other than the State where the recognition and enforcement of such awards are sought, and out of differences between persons, whether physical or legal. It shall also apply to arbitral awards not considered as domestic awards in the States where their recognition and enforcement are sought.

2. The term "arbitral" awards shall include not only awards made by arbitrators appointed for each case but also those made by permanent arbitral bodies to which the parties have submitted.

3. When signing, ratifying or acceding to this Convention, or notifying extension under article X hereof, any State may on the basis reciprocity declare that it will apply the Convention, to recognition and enforcement of awards made only in the territory of another Contracting State. It may also declare that it will apply the Convention only to differences arising out of legal relationships, whether contractual or not, which are considered as commercial under the national law of the State making such declaration.

ARTICLE II

1. Each Contracting State shall recognise an agreement in writing under which the parties undertake to submit to arbitration all or any differences which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not, concerning a subject-matter capable of settlement by arbitration.
2. The term "agreement in writing" shall include an arbitral clause in a contract or an arbitration agreement, signed by the parties or contained in an exchange of letters or telegrams.
3. The court of a Contracting State, when seized of an action in a matter in respect of which the parties have made an agreement within the meaning of this article, shall at the request of one of the parties, refer the parties to arbitration, unless it finds that the agreement is null and void, inoperative or incapable of being performed.

ARTICLE III

Each Contracting State shall recognise arbitral awards as binding and enforce them in accordance with the rules of procedure of the territory where the award is relied upon, under the conditions laid down in the following articles.

There shall not be imposed substantially more onerous conditions or higher fees or charges on the recognition or enforcement of arbitral awards to which this Convention applies than are imposed on the recognition or enforcement of domestic arbitral awards.

ARTICLE IV

1. To obtain the recognition and enforcement mentioned in the preceding Article, the party applying for recognition and enforcement shall at the time of the application, supply:
 - (a) The duly authenticated original award or duly certified copy thereof;
 - (b) The original agreement referred to in article II or a duly certified copy thereof.
2. If the said award or agreement is not made in an official language of the country in which the award is relied upon, the party applying for recognition and enforcement of the award shall produce a translation of these documents into such language. The translation shall be certified by an official or sworn translator or by a diplomatic or consular agent

ARTICLE V

1. Recognition and enforcement of the award may be refused, at the request of the party against whom it is invoked, only if that party furnishes to the competent authority where recognition and enforcement is sought, proof that—
 - (a) The parties to the agreement referred to in article II were, under the law applicable to them, under some incapacity, or the said agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law of the country where the award was made; or
 - (b) The party against whom the award is invoked was not given proper notice of the appointment of the arbitrator or of the arbitration proceedings or was otherwise unable to present his case; or

(c) The award deals with a difference not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration, provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, that part of the award which contains decisions on matters submitted to arbitration may be recognised or enforced; or

(d) The composition of the arbitral authority or the arbitral procedure was not in accordance with the agreement of the parties, or failing such agreement, was not in accordance with the law of the country where the arbitration took place; or

(c) The award has not yet become binding on the parties, or has been set aside or suspended by a competent authority of the country in which, or under the law of which, that award was made.

2. Recognition and enforcement of an arbitral award may also be refused if the competent authority in the country where recognition and enforcement is sought finds that—

(a) the subject matter of the difference is not capable of settlement by the arbitration under the law of that country; or

(b) The recognition or enforcement of the award would be contrary to the public policy of that country.

ARTICLE VI

If an application for the setting aside or suspension of an award has been made to a competent authority referred to in article V(l)(e), the authority before which the award is sought to be relied upon may, if it considers it proper, adjourn the decision on the enforcement of the award and may also, on the application of the party claiming enforcement of the award, order the other party to give suitable security.

ARTICLE VII

1. The provisions of the present Convention shall not affect validity of multilateral or bilateral agreements concerning the recognition and enforcement of arbitral awards entered into by the Contracting States nor deprive any interested party of any right he may have to avail himself of an arbitral award in the manner and to the extent allowed by the law or the treaties of the country where such award is sought to be relied upon.

2. The Geneva Protocol on Arbitration Clauses of 1923 and the Geneva Convention on the Execution of Foreign Arbitral Awards of 1927 shall cease to have effect between Contracting States on their becoming bound and to the extent that they become bound, by this convention.

ARTICLE VIII

1. This Convention shall be open until 31st December 1958 for signature on behalf of any member of the United Nations and also on behalf of any other State which is or hereafter becomes a member of any specialised agency of the United Nations, or which is or hereafter become a party to the Statute of the International Court of Justice, or any other State to which an invitation has been addressed by the General Assembly of the United Nations.

2. This Convention shall be ratified and the instrument of ratification shall be deposited with the Secretary-General of the United Nations.

ARTICLE IX

1. This Convention shall be open for accession to all States referred to in Article VIII.

2. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

ARTICLE X

1. Any State may, at the time of signature, ratification or accession, declare that this Convention shall extend to all or any of the territories for the international relations of which it is responsible. Such a declaration shall take effect when the Convention enters into force for the State concerned.

2. At any time thereafter any such extension shall be made by notification addressed to the Secretary-General of the United Nations and shall take effect as from the ninetieth day after the day of receipt by the Secretary-General of the United Nations of this notification, or as from the date of entry into force of the Convention for the State concerned whichever of such is the later.

3. With respect to those territories to which this Convention is not extended at the time of signature, ratification or accession, each State concerned shall consider the possibility of taking the necessary steps in order to extend the application of this Convention to such territories, subject, where necessary for constitutional reasons, to the consent of the governments of such territories.

ARTICLE XI

In the case of a federal or non-unitary State, the following provisions shall apply:

(a) With respect to those articles of this Convention that come within the legislative jurisdiction of the federal authority, the obligations of the federal government shall to this extent be the same as those of Contracting States which are not federal States;

(b) With respect to those articles of this Convention that come within the legislative jurisdiction of constituent states or provinces which are not, under the constitutional system of the federation, bound to take legislative action, the federal Government shall bring such articles with a favourable recommendation to the notice of the appropriate authorities of constituent states or provinces at the earliest possible moment;

(c) A federal State Party to this Convention shall, at the request of any other Contracting State transmitted through the Secretary-General of the United Nations, supply a statement of the law and practice of the federation and its constituent units in regard to any particular provision of this Convention, showing the extent to which effect has been given to that provision by legislative or other action.

ARTICLE XII

1. This Convention shall come into force on the ninetieth day following the date of deposit of the third instrument of ratification or accession.

2. For each State ratifying or acceding to this Convention after the deposit of the third instrument of ratification or accession, this Convention shall enter into force on the ninetieth day after deposit by such State of this instrument of ratification or accession.

ARTICLE XIII

1. Any Contracting State may denounce this Convention by a written notification to the Secretary-General of the United Nations. Denunciation shall take effect one year after the date of receipt of the notification by the Secretary-General.

2. Any State which has made a declaration or notification under article X may, at any time thereafter, by notification to the Secretary-General of the United Nations, declare that this Convention shall cease to extend to the territory concerned one year after the date of receipt of the notification by the Secretary-General.

3. This Convention shall continue to be applicable to arbitral awards in respect of which recognition or enforcement proceedings have been instituted before the denunciation takes effect.

ARTICLE XIV

A Contracting State shall not be entitled to avail itself of the present Convention against other Contracting States except to the extent that it is itself bound to apply this Convention.

ARTICLE XV

The Secretary-General of the United Nations shall notify the States contemplated in Article VIII of the following—

- (a) Signatures and ratification in accordance with article VIII;
- (b) Accessions in accordance with article X;
- (c) Declarations and notifications under articles I, X and XI;
- (d) The date upon which this Convention enters into force in accordance with article XII;
- (e) Denunciations and ratification in accordance with article XIII.

ARTICLE XVI

1. The Secretary-General of the United Nations shall transmit a certified copy of this Convention to the States contemplated in Article VIII.