

ARBITRATION ACT

CHAPTER 4:50

**Act
6 of 1988**

Current Authorised Pages

<i>Pages (inclusive)</i>	<i>Authorised by L.R.O.</i>
<i>1-27</i>	<i>1/1991</i>

**Note
on
Subsidiary Legislation**

This Chapter contains no Subsidiary Legislation.

CHAPTER 4:50**ARBITRATION ACT****ARRANGEMENT OF SECTIONS****PART I****GENERAL PROVISIONS**

SECTION

1. Short title.
2. Interpretation.
3. Authority of arbitrators and umpires to be irrevocable.
4. Death of party.
5. Bankruptcy.
6. Staying court proceedings where there is submission to arbitration.
7. Reference of interpleader issues to arbitration.

PART II**ARBITRATORS AND UMPIRES**

8. When reference is to a single arbitrator.
9. Power of parties in certain cases to supply vacancy.
10. Umpires.
11. Agreements for references to three arbitrators.
12. Power of Court in certain cases to appoint an arbitrator or umpire.
13. Reference to official referee.

PART III**CONDUCT OF PROCEEDINGS, WITNESSES, ETC.**

SECTION

PART IV
PROVISIONS AS TO AWARDS

15. Time for making award.
16. Interim awards.
17. Specific performance.
18. Awards to be final.
19. Power to correct slips.

PART V
COSTS, FEES AND INTEREST

20. Costs.
21. Taxation of arbitrator's or umpire's fees.
22. Interest on awards.

PART VI
SPECIAL CASES, REMISSION AND SETTING ASIDE OF
AWARDS, ETC.

23. Statement of case.
24. Power to remit award.
25. Removal of arbitrator and setting aside of award.
26. Power of Court to give relief where arbitrator is not impartial or the dispute involves question of fraud.
27. Power of Court where arbitrator is removed or authority of arbitrator is revoked.

PART VII
ENFORCEMENT OF AWARD

SECTION

PART VIII
MISCELLANEOUS

29. Power of Court to extend time for commencing arbitration proceedings.
30. Terms as to costs, etc.
31. Government to be bound.
32. Application of Parts I to VIII to statutory arbitrations.

PART IX
ENFORCEMENT OF CONVENTION AWARDS

33. Awards to which Part IX applies.
34. Effect of convention awards.
35. Evidence.
36. Refusal of enforcement.
37. Saving.
38. Repealed Acts.

SCHEDULE.

CHAPTER 4:50

ARBITRATION ACT

6 of 1988. **AN ACT to provide machinery for the settlement of disputes in civil matters between parties without recourse to the courts and for matters connected therewith and incidental thereto.**

Commencement. [2nd June 1988]

PART I

GENERAL PROVISIONS

Short title. 1. This Act may be cited as the –
ARBITRATION ACT.

Interpretation. 2. In this Act -

“arbitration agreement” means an agreement in writing including an agreement contained in an exchange of letters or telegrams, to submit to arbitration present or future differences capable of settlement by arbitration;

“convention award” means an award made in pursuance of an arbitration agreement in the territory of a State other than Dominica which is a party to the New York Convention;

“domestic arbitration agreement” means an arbitration agreement which does not provide expressly or by implication for arbitration in a State other than Dominica and to which neither –

(a) an individual who is a national of, or habitually resident in any State other than Dominica, nor

(b) a body corporate which is incorporated in, or whose central management and control is exercised in, any State other than Dominica,

is a party at the time the proceedings are commenced;

“New York Convention” means the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, adopted by the United

Nations Conference on International Commercial Arbitrations
on 10th June 1958 set out in the Schedule hereto;

Schedule.

“repealed Acts” means the Arbitration Ordinance, the Arbitration (Foreign Awards) Ordinance and the Arbitration (International Investment Disputes) Act 1966 (Application to Colonies etc.), Order 1967 (repealed by this Act).

Cap. 2 and Cap. 3
(1961 Ed.).
S.I. 1967.
No. 159 (U.K.).

3. The authority of an arbitrator or umpire appointed by or by virtue of an arbitration agreement shall, unless a contrary intention is expressed in the agreement, be irrevocable except by leave of the High Court.

Authority of
arbitrators and
umpires to be
irrevocable.

4. (1) An arbitration agreement shall not be discharged by the death of any party thereto either as respects the deceased or any other party, but shall in such an event be enforceable by or against the personal representative of the deceased.

Death of party.

(2) The authority of an arbitrator shall not be revoked by the death of any party by whom he was appointed.

(3) Nothing in this section shall be taken to affect the operation of any written law or rule of law by virtue of which any right of action is extinguished by the death of a person.

5. (1) Where it is provided by a term in a contract to which a bankrupt is a party that any difference arising thereout or in connection therewith shall be referred to arbitration, the said term shall, if the trustee in bankruptcy adopts the contract, be enforceable by or against him so far as it relates to any such difference.

Bankruptcy.

(2) Where a person who has been adjudged bankrupt had, before the commencement of the bankruptcy proceedings, become a party to an arbitration agreement, and any matter to which the agreement applies requires to be determined in connection with or for the purposes of the bankruptcy proceedings, then, if the case is one to which subsection (1) does not apply, any other party to the agreement, or, with the consent of the committee of inspectors, the trustee in bankruptcy, may apply to the High Court for an order directing that the matter in question shall be referred to arbitration in accordance with the agreement, and the High Court may if it is of the opinion that having regard to all the circumstances of the case the matter ought to be determined by arbitration make an order accordingly.

Staying court proceedings where there is submission to arbitration.

6. (1) If any party to a domestic arbitration agreement or any person claiming through or under him commences any legal proceedings in any court against any other party to the agreement, or any person claiming through or under him in respect of any matter agreed to be referred, any party to those legal proceedings may at any time after appearance, before delivering any pleadings or taking any other steps in the proceedings, apply to that court to stay the proceedings, and that court, if satisfied that there is no sufficient reason why the matter should not be referred in accordance with the agreement, and that the applicant was, at the time when the proceedings were commenced and still remains, ready and willing to do all things necessary to the proper conduct of the arbitration, may make an order staying the proceedings.

(2) If any party to an arbitration agreement, other than a domestic arbitration agreement, or any person claiming through or under him, commences any legal proceedings in any court against any other party to the agreement, or any person claiming through or under him, in respect of any matter agreed to be referred, any party to the proceedings may at any time after appearance, and before delivering any pleadings or taking any other steps in the proceedings, apply to the court to stay the proceedings; and the court, unless satisfied that the arbitration agreement is null and void, inoperative or incapable of being performed or that there is not in fact any dispute between the parties with regard to the matter agreed to be referred, shall make an order staying the proceedings.

Reference of interpleader issues to arbitration.

7. Where relief by way of interpleader is granted and it appears to the court that the claims in question are matters to which an arbitration agreement, to which the claimants are parties, applies, the court may direct the issue between the claimants to be determined in accordance with the agreement.

PART II

ARBITRATORS AND UMPIRES

When reference is to a single arbitrator.

8. Unless a contrary intention is expressed therein, every arbitration agreement shall, if no other mode of reference is provided, be deemed to include a provision that the reference shall be to a single arbitrator.

9. Where an arbitration agreement provides that the reference shall be to two arbitrators, one to be appointed by each party, then, unless a contrary intention is expressed therein, if either of the appointed arbitrators refuses to act, or is incapable of acting, or dies, the party who appointed him may appoint a new arbitrator in his place.

Power of parties in certain cases to supply vacancy.

10. (1) Unless a contrary intention is expressed therein, every arbitration agreement shall, where the reference is to two arbitrators, be deemed to include a provision that the two arbitrators shall appoint an umpire immediately after they are themselves appointed.

Umpires.

(2) Unless a contrary intention is expressed therein every arbitration agreement shall, where such a provision is applicable to the reference, be deemed to include a provision that if the arbitrators have delivered to any party to the arbitration agreement or to the umpire a notice in writing stating that they cannot agree, the umpire may forthwith enter upon reference in lieu of the arbitrators and as if he were a sole arbitrator.

11. (1) Where an arbitration agreement provides that the reference shall be to three arbitrators one to be appointed by each party and the third to be appointed by the two appointed by the parties, the agreement shall have effect as if it provided for the appointment of an umpire, and not for the appointment of a third arbitrator, by the two arbitrators appointed by the parties.

Agreements for references to three arbitrators.

(2) Where an arbitration agreement provides that the reference shall be to three arbitrators to be appointed otherwise than as mentioned in subsection (1), the award of any two of the arbitrators shall be binding.

12. (1) In any of the following cases, that is to say —

Power of Court in certain cases to appoint an arbitrator or umpire.

(a) where an arbitration agreement provides that the reference shall be to a single arbitrator, and all parties do not, after differences have arisen, concur in the appointment of an arbitrator;

(b) if an appointed arbitrator refuses to act, or is incapable of acting, or dies, and the arbitration agreement does not show that it was intended that the vacancy should not be supplied and the parties do not supply the vacancy;

- (c) where the parties or two arbitrators are at liberty to appoint an umpire or third arbitrator and do not appoint him, or where two arbitrators are required to appoint an umpire and do not appoint him; or
- (d) where an appointed umpire or third arbitrator refuses to act, or is incapable of acting, or dies, and the arbitration agreement does not show that it was intended that the vacancy should not be supplied and the parties or arbitrators do not supply the vacancy;

any party may serve the other parties or the arbitrators, as the case may be, with a written notice to appoint or, as the case may be, concur in appointing an arbitrator, umpire or third arbitrator, and if the appointment is not made within seven clear days after the service of the notice, the High Court may, on application by the party who gave the notice, appoint an arbitrator, umpire or third arbitrator who shall have the like powers to act in the reference and make an award as if he had been appointed by consent of all parties.

(2) Where an arbitration agreement provides that the reference shall be to two arbitrators one to be appointed by each party, then, unless a contrary intention appears, if one party fails to appoint an arbitrator, either originally or by way of substitution for an appointed arbitrator who refuses to act or is incapable of acting or dies, for seven clear days after the other party having appointed his arbitrator has served the party making default with notice to make the appointment, the party who gave notice may apply to the High Court and the High Court may, having heard such application appoint an arbitrator to act, and such arbitrator shall have the like powers as if he had been appointed by the party having power to appoint and who has failed so to appoint.

Reference to
official referee.

13. Where an arbitration agreement provides that the reference shall be to an official referee, any official referee to whom application is made shall, subject to any order of the High Court as to transfer or otherwise, hear and determine the matters agreed to be referred.

PART III

CONDUCT OF PROCEEDINGS, WITNESSES, ETC.

Conduct of
proceedings,
witnesses, etc.

14. (1) Unless a contrary intention is expressed therein, every arbitration agreement shall, where such a provision is applicable to the reference, be deemed to contain a provision that the parties to the reference

and all persons claiming through them respectively, shall, subject to any legal objection, submit to be examined by the arbitrator or umpire, on oath or affirmation, in relation to the matters in dispute, and shall, subject as aforesaid, produce before the arbitrator or umpire all documents within their possession or power respectively which may be required or called for, and do all other things which during the proceedings on the reference the arbitrator or umpire may require.

(2) Unless a contrary intention is expressed therein, every arbitration agreement shall, where such a provision is applicable to the reference, be deemed to contain a provision that the witnesses on the reference shall, if the arbitrator or umpire thinks fit, be examined on oath or affirmation.

(3) An arbitrator or umpire shall, unless a contrary intention is expressed in the arbitration agreement, have power to administer oaths to, or take the affirmation of, the parties to and witnesses on a reference under the agreement.

(4) Any party to a reference under an arbitration agreement may sue out a writ of subpoena *ad testificandum* or writ of subpoena *duces tecum*, but no person shall be compelled under any such writ to produce any document which he could not be compelled to produce on the trial of an action, and the High Court may order that a writ of subpoena *ad testificandum* or of subpoena *duces tecum* shall issue to compel the attendance before an arbitrator or umpire of a witness wherever he may be within Dominica.

(5) The High Court may also order that a writ of *habeas corpus ad testificandum* shall issue to bring up a prisoner for examination before an arbitrator or umpire.

(6) The High Court shall have, for the purpose of and in relation to a reference, the same power of making orders in respect of —

- (a) security for costs;
- (b) discovery of documents and interrogatories;
- (c) the giving of evidence by affidavit;
- (d) examination on oath of any witness before an officer of the High Court or any other person and the issue of a commission or request for the examination of a witness out of the jurisdiction;
- (e) the preservation, interim custody or sale of any goods which are the subject matter of the reference;

- (f) securing the amount in dispute in the reference;
- (g) the detention, preservation or inspection of any property or thing which is the subject of the reference or as to which any question may arise therein, and authorising for any of the purposes aforesaid any persons to enter upon or into any land or building in the possession of any party to the reference or authorising any samples to be taken or any observation to be made or experiment to be tried which may be necessary or expedient for the purpose of obtaining full information or evidence; and
- (h) interim injunctions or the appointment of a receiver, as it has for the purpose of and in relation to an action or matter in the High Court;

but nothing in this subsection shall be taken to prejudice any power which may be vested in an arbitrator or umpire of making orders with respect to any of the matters aforesaid.

PART IV

PROVISIONS AS TO AWARDS

Time for making award.

15. (1) Subject to the provisions of section 24 (2), and anything to the contrary in the arbitration agreement, an arbitrator or umpire shall have power to make an award at any time.

(2) The time, if any, limited for making an award, whether under this Act or otherwise, may from time to time be enlarged by order of the High Court, whether that time has expired or not.

(3) The High Court may, on the application of any party to a reference, remove an arbitrator or umpire who fails to use all reasonable dispatch in entering on and proceeding with the reference and making an award, and an arbitrator or umpire who is removed by the High Court under this subsection shall not be entitled to receive any remuneration in respect of his services.

For the purposes of this subsection, the expression "proceeding with the reference" includes the making of an award, and an arbitrator or umpire who has agreed, giving notice of that fact to the parties and to the umpire.

Interim awards.

16. Unless a contrary intention is expressed therein, every arbitration agreement shall, where such a provision is applicable to the reference, be deemed to contain a provision that the arbitrator or umpire

may, if he thinks fit, make an interim award and any reference in this Part to an award includes a reference to an interim award.

17. Unless a contrary intention is expressed therein, every arbitration agreement shall, where such a provision is applicable to the reference, be deemed to contain a provision that the arbitrator or umpire shall have the same power as the High Court to order specific performance of any contract other than a contract relating to land or any interest in land.

Specific performance.

18. Unless a contrary intention is expressed therein every arbitration agreement shall, where such a provision is applicable to the reference, be deemed to contain a provision that the award to be made by the arbitrator or umpire shall be final and binding on the parties and the persons claiming under them respectively.

Awards to be final.

19. Unless a contrary intention is expressed in the arbitration agreement, the arbitrator or umpire shall have power to correct in an award any clerical mistakes or error arising from any accidental slip or omission.

Power to correct slips.

PART V

COSTS, FEES AND INTEREST

20. (1) Unless a contrary intention is expressed therein, every arbitration agreement shall be deemed to include a provision that the costs of the reference and award shall be in the discretion of the arbitrator or umpire who may direct to and by whom and in what manner those costs or any part thereof shall be paid, and may tax or settle the amount of costs to be so paid or any part thereof, and may award costs to be paid as between solicitor and client.

Costs.

(2) Any costs directed by an award to be paid shall, unless the award otherwise directs, be taxable in the High Court.

(3) Any provision in an arbitration agreement to the effect that the parties or any party thereto shall in any event pay their or his own costs of the reference or award or any part thereof shall be void, and Parts I to VIII shall, in the case of an arbitration agreement containing any such provision, have effect as if that provision were not contained therein.

when it is a part of an agreement to submit to arbitration a dispute which has arisen before the making of that agreement.

(4) If no provision is made by an award with respect to the costs of the reference, any party to the reference may, within fourteen days of the publication of the award or such further time as the High Court may direct, apply to the arbitrator or umpire for an order directing by and to whom those costs shall be paid and thereupon the arbitrator shall, after hearing any party who may desire to be heard, amend his award by adding thereto such directions as he may think proper with respect to the payment of the costs of the reference.

Taxation of
arbitrator's or
umpire's fees.

21. (1) If in any case an arbitrator or umpire refuses to deliver his award except on payment of the fees demanded by him, the High Court may, on application for the purpose, order that the arbitrator or umpire shall deliver the award to the applicant on payment into court by the applicant of the fees demanded, and further that the fees demanded shall be taxed by the taxing officer, and that out of money paid into court there shall be paid out to the arbitrator or umpire by way of fees such sum as may be found reasonable on taxation and that the balance of the money, if any, shall be paid out to the applicant.

(2) An application for the purposes of this section may be made by any party to the reference unless the fees demanded have been fixed by a written agreement between him and the arbitrator or umpire.

(3) A taxation of fees under this section may be reviewed in the same manner as a taxation of costs.

(4) The arbitrator or umpire shall be entitled to appear and be heard on any taxation under this section.

Interest on
rewards.

22. A sum directed to be paid by an award shall, unless the award otherwise directs, carry interest as from the date of the award and at the same rate as a judgment debt.

PART VI

SPECIAL CASES, REMISSION AND SETTING ASIDE OF AWARDS, ETC.

Statement of case.

23. (1) An arbitrator or umpire may, and shall if so directed by the High Court, state

(a) any question of law arising in the course of the reference; or

(b) an award or any part of an award;

in the form of a special case for the decision of the High Court.

(2) A special case with respect to an interim award or with respect to the question of law arising in the course of a reference may be stated or may be directed by the High Court to be stated, notwithstanding that proceedings under the reference are still pending.

(3) A decision of the High Court under this section shall be deemed to be a judgment of the Court and, with the leave of the Court of Appeal, an appeal shall lie to the Court of Appeal from such judgment.

24. (1) In all cases of reference to arbitration the High Court may from time to time remit the matters referred, or any of them to the reconsideration of the arbitrator or umpire. Power to remit award.

(2) Where an award is remitted, the arbitrator or umpire shall, unless the order otherwise directs, make his award within three months after the date of the order.

25. (1) Where an arbitrator or umpire has misconducted himself or the proceedings, the High Court may remove him. Removal of arbitrator and setting aside of award.

(2) Where an arbitrator or umpire has misconducted himself or the proceedings, or an arbitration or award has been improperly procured, the High Court may set the award aside.

(3) Where an application is made to set aside an award, the High Court may order that any money made payable by the award shall be brought into court or otherwise secured pending the determination of the application .

26. (1) Where an agreement between any parties provides that disputes which may arise in the future between them shall be referred to an arbitrator named or designated in the agreement, and after a dispute has arisen, the arbitrator named or designated is not or may not be impartial, for leave to revoke the authority of the arbitrator or for an injunction to restrain any other party or the arbitrator from proceeding with the arbitration, it shall not be a ground for refusing the application that the said party at the time when he made the agreement had no right to have known that the Power of Court to give relief where arbitrator is not impartial or the dispute involves question of fraud.

arbitrator, by reason of his relation towards any other party to the agreement or of his connection with the subject referred, might not be capable of impartiality.

(2) Where an agreement between any parties provides that disputes which may arise in the future between them shall be referred to arbitration, and a dispute which so arises involves the question whether any such party has been guilty of fraud, the High Court shall, so far as may be necessary to enable that question to be determined by the High Court, have power to order that the agreement shall cease to have effect and power to give leave to revoke the authority of any arbitrator or umpire appointed by or by virtue of the agreement.

(3) In any case where by virtue of this section the High Court has power to order that an arbitration agreement shall cease to have effect or to give leave to revoke the authority of an arbitrator or umpire, the High Court may refuse to stay any action brought in breach of the agreement.

Power of Court where arbitrator is removed or authority of arbitrator is revoked.

27. (1) Where an arbitrator (not being a sole arbitrator), or two or more arbitrators (not being all the arbitrators), or an umpire who has entered on the reference is or are removed by the High Court the High Court may, on the application of any party to the arbitration agreement, appoint a person or persons to act as arbitrator or arbitrators or umpire in place of the person or persons to be removed.

(2) Where the authority of an arbitrator or arbitrators or umpire is revoked by leave of the High Court, or a sole arbitrator or all the arbitrators or an umpire who has entered on the reference is or are removed by the High Court, the High Court may, on the application of any party to the arbitration agreement, either –

(a) appoint a person to act as sole arbitrator in place of the person or persons removed, or

(b) order that the arbitration agreement shall cease to have

(3) A person appointed under this section by the High Court as an arbitrator or umpire shall have the like power to act in the reference and to make an award as if he had been appointed in accordance with the terms of the arbitration agreement.

(4) Where it is provided (whether by means of a provision in the arbitration agreement or otherwise) that any award under an arbitration agreement shall be a condition precedent to the bringing of an action with respect to any matter to which the agreement applies, the High Court if it orders (whether under this section or under any other enactment) that the agreement shall cease to have effect as regards any particular dispute may further order that the provision making an award a condition precedent to the bringing of an action shall also cease to have effect as regards that dispute.

PART VII

ENFORCEMENT OF AWARDS

28. An award on an arbitration agreement may, by leave of the High Court or a Judge thereof, be enforced in the same manner as a judgment or order of the High Court to the same effect, and where leave is so given judgment may be entered in terms of the award.

Enforcement of award.

PART VIII

MISCELLANEOUS

29. Where the terms of an agreement to refer future disputes to arbitration provide that any claims to which the agreement applies shall be barred unless notice to appoint an arbitrator is given or an arbitrator is appointed or some other step to commence arbitration proceedings is taken within a time fixed by the agreement and a dispute arises to which the agreement applies, the High Court, if it is of the opinion that in the circumstances of the case undue hardship would otherwise be caused, and notwithstanding that the time so fixed has expired, may, on such terms, if any, as the justice of the case may require, but without prejudice to the provisions of any enactment limiting the time for the commencement of arbitration proceedings, extend the time for such period as it thinks proper.

Power of Court to extend time for commencing arbitration proceedings.

30. Any order made under Parts I to VIII may be made on such terms as to costs or otherwise as the authority making the order thinks

Terms as to costs, etc.

Government to
be bound.

31. Parts I to VIII shall apply to any arbitration to which the Government of Dominica is a party.

Application of
Part I to VIII to
statutory arbitra-
tions.

32. (1) Parts I to VIII except the provisions thereof specified in subsection(2) shall apply to every arbitration under any other Act (whether passed before or after the commencement of this Act) as if the arbitration were pursuant to an arbitration agreement and as if that other Act were an arbitration agreement, except in so far as this Act is inconsistent with that other Act or with any rules or procedure authorised or recognized thereby.

(2) The provisions referred to in subsection (1) are sections 4 (1), 5, 7, 20 (3), 26, 27, and 29.

PART IX

ENFORCEMENT OF CONVENTION AWARDS

Awards to which
Part IX applies.

33. This Part applies with respect to the enforcement of convention awards.

Effect of conven-
tion awards.

34. (1) A convention award shall, subject to the other provisions of this Part, be enforceable either by action or in the same manner as the award of an arbitration is enforceable by virtue of section 28.

(2) Any convention award which would be enforceable under this Act shall be treated as binding for all purposes on the persons as between whom it was made, and may accordingly be relied on by any of those persons by way of defence, set off or otherwise in any legal proceedings in Dominica and any reference in this Act to enforcing a convention award shall be construed as including references to relying on such an award.

Evidence.

35. The party seeking to enforce a convention award must produce—

(a) the duly authenticated original award or a duly certified copy of it;

(b) the original arbitration agreement or a duly certified copy of it; and

(c) where the award or agreement is in a foreign language, a translation of it certified by an official or sworn translator or by a diplomatic or consular agent.

36. (1) Enforcement of a convention award shall not be refused except in the cases mentioned in this section. Refusal of enforcement.

(2) Enforcement of a convention award may be refused if the person against whom it is invoked proves –

- (a) that a party to the arbitration agreement was, under the law applicable to him, under some incapacity;
- (b) that the arbitration agreement was not valid under the law to which the parties subjected it or, failing any indication thereon, under the law of the country where the award was made;
- (c) that he was not given proper notice of the appointment of the arbitrator or of the arbitration proceedings or was otherwise unable to present his case;
- (d) subject to subsection (4), that the award deals with a difference 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.
- (e) that the composition of the arbitral authority or the arbitral procedure was not in accordance with the agreement of the parties or, failing such agreement, with the law of the country where the arbitration took place; or
- (f) that 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, it was made.

(3) Enforcement of a convention award may also be refused if the award is in respect of a matter which is not capable of settlement by arbitration, or if it would be contrary to public policy to enforce the award.

(4) A convention award which contains decisions on matters not submitted to arbitration may be enforced to the extent that it contains decisions on matters submitted to arbitration which can be separated from those matters not so submitted.

(5) Where an application for the setting aside or suspension of a convention award has been made to such a competent authority as is mentioned in subsection (1) above, the court shall not enforce or

the award is sought may, if it thinks fit, adjourn the proceedings and may, on the application of the party seeking to enforce the award, order the other party to give security.

Saving.

37. Nothing in this Part shall prejudice any right to enforce or rely on an award otherwise than under this Part.

Repealed Acts.

38. Any arbitration which is in process of adjudication under any of the repealed Acts shall be continued and completed under the procedures specified in those Acts notwithstanding the repeal of those Acts.

Section 2.

SCHEDULE

CONVENTION ON THE RECOGNITION AND ENFORCEMENT OF FOREIGN ARBITRAL AWARDS.

DONE AT NEW YORK, ON 10 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 arising out of differences between persons, whether physical or legal. It shall also apply to arbitral awards not considered as domestic awards in the State 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 of reciprocity declare that it will apply the Convention to the 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 recognize 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 on 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, at the request of one of the parties, shall refer the parties to arbitration, unless it finds that the said agreement is null and void, inoperative or incapable of being performed.

Article III

Each Contracting State shall recognize 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 a 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 by a 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 the 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 decision on matter 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 recognized and 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
- (e) 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 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 the award has been made to a competent authority referred to in article V (1) (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 the 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 31 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

becomes 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 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 Government 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 its 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 the 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 the Convention.

Article XV

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

- (a) Signatures and ratifications in accordance with Article VIII;
- (b) Accessions in accordance with Article IX;
- (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 notifications in accordance with Article

Article XVI

1. This Convention, of which the Chinese, English, French, Russian and Spanish texts shall be equally authentic, shall be deposited in the archives of the United Nations.

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