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1929 Ed

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ARBITRATION ACT

An Act to provide for the Arbitration of Disputes.

17 of 1916

[2ND SEPTEMBER, 1916]

1. This Act may be cited as the Arbitration Act.

Short title.

PART I

GENERAL PROVISIONS

2. In this Act—

Interpretation.

“the Court” means the High Court of Guyana;

“judge” means a judge of the Court;

“rules of court” means rules and orders made under the High Court Act;

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“submission” means a written agreement to submit present or future differences to arbitration, whether an arbitrator is named therein or not.

References by Consent Out of Court

3. A submission, unless a contrary intention is expressed therein, shall be irrevocable, except by leave of the Court or a judge, and shall have the same effect in all respects as if it had been made an order of court.

Submission irrevocable and effective as order of court.

4. A submission, unless a contrary intention is expressed therein, shall be deemed to include the provisions set forth in the First Schedule so far as they are applicable to the reference under the submission.

Provision implied in submissions. First Schedule.

Power to stay proceedings where there is a submission.

5. If any party to a submission, or any person claiming through or under him, commences any legal proceedings in any court against another party to the submission, 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 and before delivering any pleadings or taking any other steps in the proceedings, apply to that court to stay the proceedings, and that court or a judge thereof, if satisfied that there is no sufficient reason why the matter should not be referred in accordance with the submission, 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.

Power for the Court in certain cases to appoint an arbitrator, umpire, or third arbitrator.

6. (1) In any of the following cases, namely—

(a) where a submission provides that the reference shall be to a single arbitrator, and all the 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 submission 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;

(d) where an appointed umpire or third arbitrator refuses to act, or is incapable of acting, or dies, and the submission 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 an arbitrator, umpire, or third arbitrator.

(2) If the appointment is not made within seven clear days after the service of the notice, the Court or a Judge 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.

7. Where a submission provides that the reference shall be to two arbitrators, one to be appointed by each party, then, unless the submission expresses a contrary intention—

Power for parties in certain cases to supply vacancy.

(a) 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;

(b) if, on the reference, one party fails to appoint an arbitrator, either originally or by way of substitution as aforesaid, 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 has appointed an arbitrator may appoint that arbitrator to act as sole arbitrator in the reference, and his award shall be binding on both parties as if he had been appointed by consent:

Provided that the Court or a judge may set aside any appointment made in pursuance of this section.

8. The arbitrators or umpire acting under a submission shall, unless the submission expresses a contrary intention, have power—

Powers of arbitrator.

(a) to administer oaths to or take the affirmations of the parties and witnesses appearing; and

(b) to state an award as to the whole or part thereof in the form of a special case for the opinion of the Court; and

(c) to correct in an award any clerical mistake or error arising from any accidental slip or omission.

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Writ of
subpoena.

9. Any party to a submission may sue out a writ of *subpoena ad testificandum*, or a writ of *subpoena duces tecum*, but no person shall be compelled under the writ to produce any document which he could not be compelled to produce on the trial of an action.

Enlargement
of time for
making award.

10. The time for making an award may from time to time be enlarged by order of the Court or a judge, whether the time for making the award has expired or not.

Power to remit
award.

11. In all cases of reference to arbitration the Court or a judge may from time to time remit the matters referred, or any of them, to the reconsideration of the arbitrators or umpire, and where an award is remitted, the arbitrators or umpire shall, unless the order otherwise directs, make their award within three months after the date of the order.

Power to set
aside award.

12. Where an arbitrator or umpire has misconducted himself, the Court may remove him, and where an arbitrator or umpire has misconducted himself, or an arbitration or award has been improperly procured, the Court may set the award aside.

Enforcing
award.

13. An award on a submission may, by leave of the Court or a judge, be enforced in the same manner as a judgment or order to the same effect.

References Under Order of Court

Reference for
report.

14. (1) Subject to rules of court, the Court or a judge may refer to any special referee any question arising in any cause or matter (other than a criminal proceeding by the State) for inquiry or report.

(2) The report of any special referee may be adopted wholly or partially by the Court or a judge, and if so adopted may be enforced as a judgment or order to the same effect.

Power to refer
in certain
cases.

15. In any cause or matter (other than a criminal proceeding by the State)—

- (a) if all the parties interested who are not under disability consent; or
- (b) if the cause or matter requires any prolonged examination of documents or any specific or local investigation which cannot in the opinion of the Court be conducted by the Court through its other ordinary officers; or
- (c) if the question in dispute consists wholly or in part of matters of account,

the Court or a judge may at any time order the whole cause or matter, or any question or issue of fact arising therein, to be tried before a special referee or arbitrator respectively agreed on by the parties, or before an officer of the Court.

16. (1) In all cases of reference to any special referee or arbitrator under an order of the Court or a judge in any cause or matter, the special referee or arbitrator shall be deemed to be an officer of the Court, and shall have the authority, and conduct the reference in the manner prescribed by rules of court, and subject thereto as the Court or a judge directs.

Powers and remuneration of referees and arbitrators.

(2) The report or award of any special referee or arbitrator on the reference shall, unless set aside by the Court or a judge, be equivalent to the judgment of the Court.

(3) The remuneration to be paid to any special referee or arbitrator to whom any matter is referred under order of the Court or a judge shall be determined by the Court or a judge.

17. The Court or a judge shall, as to references under order of the Court or a judge, have all the powers which are by this Act conferred on the Court or a judge as to references by consent out of court.

Court to have powers as in references by consent.

18. The Full Court of the High Court shall have all the powers conferred by this Act on the Court or a judge thereof under the provisions relating to references under order of the Court.

Full Court to have powers of Court.

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General

Power to compel attendance of witness in any part of Guyana and to order *habeas corpus* to issue.

19. The Court or a judge may order that a writ of *subpoena ad testificandum* or of a *subpoena duces tecum* shall issue to compel the attendance, before any special referee, or before any arbitrator or umpire, of a witness wherever he may be within Guyana, and may also order that a writ of *habeas corpus ad testificandum* shall issue to bring up a prisoner for examination before any special referee, or before any arbitrator or umpire.

Statement of case pending arbitration.

20. Any referee, arbitrator, or umpire, may at any stage of the proceedings under a reference, and shall, if so directed by the Court or a judge, state in the form of a special case for the opinion of the Court any question of law arising in the course of the reference.

Costs.

21. Any order made under this Act may be made on those terms as to costs, or otherwise, which the authority making the order thinks just.

Penalty for perjury.

22. Anyone who wilfully and corruptly gives false evidence before any referee, arbitrator, or umpire, shall be guilty of perjury, as if the evidence had been given in open court, and may be dealt with, prosecuted and punished accordingly.

State to be bound.

23. This Act shall, except as in this Act expressly mentioned, apply to any arbitration to which the State is a party, but nothing in this Act shall empower the Court or a judge to order any proceedings to which the State is a party, or any question or issue in those proceedings, to be tried before any referee, arbitrator, or officer, without the consent of the Attorney-General, or affect the law as to costs payable by the State.

Cap. 24
1929 Ed.

PART II

PROVISIONS RELATING TO THE PROTOCOL SET FORTH IN THE SECOND SCHEDULE

Definition of the "protocol".
Second
Schedule.

24.(1) In this section, "the protocol" means the protocol on arbitration clauses set forth in the Second Schedule and signed on behalf of the British Crown on the 24th September, 1923.

(2) Notwithstanding anything in this Act contained, if any party to a submission made in pursuance of an agreement to which the protocol applies, or anyone claiming through or under him, commences any legal proceedings in any court against any other party to the submission or anyone 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, and before delivering any pleading or taking other steps in the proceedings, apply to that court to stay the proceedings and the court or a judge thereof, unless satisfied that the agreement or arbitration has become inoperative or cannot proceed, 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.

Staying proceedings as to matters to be referred under agreements to which the protocol applies.
[4 of 1931]

PART III

[4 of 1931]

PROVISIONS RELATING TO THE CONVENTION SET FORTH IN THE THIRD SCHEDULE

25. In this Part—

Interpretation.

“the Convention” means the Convention on the Execution of Foreign Arbitral Awards signed at Geneva on behalf of the British Crown on the 26th September, 1927, which convention is set forth in the Third Schedule.

Third Schedule.

26. This Part applies to any awards made after the 28th July, 1924—

Application.

(a) in pursuance of an agreement for arbitration to which the protocol set out in the Second Schedule applies; and

Second Schedule.

(b) between the persons of whom one is subject to the jurisdiction of some one of such Powers as the President, being satisfied that reciprocal provisions have been made, may by order declare to be parties to the Convention, and of whom the other is subject to the jurisdiction of some other of the Powers aforesaid; and

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(c) in one of such territories as the President, being satisfied that reciprocal provisions have been made, may by order declare to be territories to which the Convention applies,

and an award to which this Act applies is in this Act referred to as a “foreign award.”

Effect of
foreign award.

27. (1) A foreign award shall, subject to this Act, be enforceable either by action or under section 13.

(2) Any foreign award which would be enforceable under this Part 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, and any references in this Part to enforcing a foreign award shall be construed as including references to relying on an award.

Conditions for
enforcement of
foreign
awards.

28. (1) In order that a foreign award may be enforceable under this Part, it must have

(a) been made in pursuance of an agreement for arbitration which was valid under the law by which it was governed;

(b) been made by the tribunal provided for in the agreement or constituted in manner agreed upon by the parties;

(c) been made in conformity with the law governing the arbitration procedure;

(d) become final in the country in which it was made;

(e) been in respect of a matter which may lawfully be referred to arbitration under the law of Guyana,

and the enforcement thereof must not be contrary to the public policy or the law of Guyana.

(2) Subject to this subsection, a foreign award shall not be enforceable under this Part if the High Court is satisfied that—

(a) the award has been annulled in the country in which it was made; or

(b) the party against whom it is sought to enforce the award was not given notice of the arbitration proceedings in sufficient time to enable him to present his case, or was under some legal incapacity, and was not properly represented; or

(c) the award does not deal with all the questions referred or contains decisions on matters beyond the scope of the agreement for arbitration:

Provided that, if the award does not deal with all the questions referred, the court may if it thinks fit, either postpone the enforcement of the award or order its enforcement subject to the giving of such security by the person seeking to enforce it as the court may think fit.

(3) If a party seeking to resist the enforcement of a foreign award proves that there is any ground other than the nonexistence of the conditions specified in subsection (1)(a), (b) and (c), or the existence of the conditions specified in subsection (2)(b) and (c), entitling him to contest the validity of the award the court may, if it thinks fit, either refuse to enforce the award or adjourn the hearing until after the expiration of such period as appears to the court to be reasonably sufficient to enable that party to take the necessary steps to have the award annulled by the competent tribunal.

29. (1) The party seeking to enforce a foreign award must produce— Evidence.

(a) the original award or a copy thereof duly authenticated in manner required by the law of the country in which it was made; and

(b) evidence proving that the award has become final; and

(c) such evidence as may be necessary to prove that the award is a foreign award, and that the conditions mentioned in sub-section (1)(a), (b) and (c) of the last foregoing section are satisfied.

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(2) In any case where any document required to be produced under subsection (1) is in a foreign language, it shall be the duty of the party seeking to enforce the award to produce a translation certified as correct by a diplomatic or consular agent of the country to which that party belongs, or certified as correct in such other manner as may be sufficient according to the law of Guyana.

c. 3:02

(3) Subject to this section, rules of court may be made under section 67 of the High Court Act with respect to the evidence which must be furnished by a party seeking to enforce an award under this Part.

Meaning of
final award.

30. For the purposes of this Part, an award shall not be deemed final if any proceedings for the purpose of contesting the validity of the award are pending in the country in which it was made.

Saving.

31. Nothing in this Part shall—

- (a) prejudice any rights which any person would have had of enforcing in Guyana any award, or of availing himself in Guyana of any award if this Part had not been enacted; or
- (b) apply to any award made on an arbitration agreement governed by the law of Guyana.

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FIRST SCHEDULE

PROVISIONS TO BE IMPLIED IN SUBMISSIONS

(a) If no other mode of reference is provided, the reference shall be to a single arbitrator.

(b) If the reference is to two arbitrators, the two arbitrators may appoint an umpire at any time within the period during which they have power to make an award.

(c) The arbitrators shall make their award in writing within three months after entering on the reference, or after having been called on to act by notice in writing from any party to the submission, or on or before any later day to which the arbitrators, by any writing signed by them, from time to time enlarge the time for making the award.

(d) If the arbitrators have allowed their time or extended time to expire without making an award, or have delivered to any party to the submission, or to the umpire, a notice in writing stating that they cannot agree, the umpire may forthwith enter on the reference in lieu of the arbitrators.

(e) The umpire shall make his award within one month after the original or extended time appointed for making the award of the arbitrators has expired, or on or before any later day to which the umpire by any writing signed by him from time to time enlarges the time for making his award.

(f) The parties to the reference, and all parties claiming through them respectively, shall, subject to any legal objection, submit to be examined by the arbitrators or umpire, on oath or affirmation, in relation to the matters in dispute, and shall, subject as aforesaid, produce before the arbitrators or umpire all books, deeds, papers, accounts, writings and 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 arbitrators or umpire require.

(g) The witnesses on the reference, should the arbitrators or umpire think fit, shall be examined on oath or affirmation.

(h) The award to be made by the arbitrators or umpire shall be final and binding on the parties and the persons claiming under them respectively.

(i) The costs of the reference and award shall be in the discretion of the arbitrators 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 so to be paid or any part thereof, and may award costs to be paid as between solicitor and client.

SECOND SCHEDULE

PROTOCOL ON ARBITRATION CLAUSES

The undersigned, being duly authorised, declare that they accept on behalf of the countries which they represent the following provisions—

1. Each of the Contracting States recognises the validity of an agreement whether relating to existing or future differences between parties, subject respectively to the jurisdiction of different Contracting States by which the parties to a contract agree to submit to arbitration all or any differences that may arise in connection with such contract relating to commercial matters or to any other matter capable of settlement by arbitration, whether or not the arbitration is to take place in a country to whose jurisdiction none of the parties is subject.

Each Contracting State reserves the right to limit the obligation mentioned above to contracts which are considered as commercial under its national law. Any contracting State which avails itself of this right will notify the Secretary General of the League of Nations, in order that the other Contracting States may be so informed.

2. The arbitral procedure, including the constitution of the arbitral tribunal, shall be governed by the will of the parties and by the law of the country in whose territory the arbitration takes place.

The Contracting States agree to facilitate all steps in the procedure which require to be taken in their own territories, in accordance with the provisions of their law governing arbitral procedure applicable to existing differences.

3. Each Contracting State undertakes to ensure the execution by its authorities and in accordance with the provisions of its national laws of arbitral awards made in its own territory under the preceding articles.

4. The tribunals of the Contracting Parties, on being seized of a dispute regarding a contract made between persons to whom Article 1 applies and including an arbitration agreement whether referring to present or future differences which is valid in virtue of the said article and capable of being carried into effect, shall refer the parties on the application of either of them to the decisions of the arbitrators.

Such reference shall not prejudice the competence of the judicial tribunals in case the agreement or the arbitration cannot proceed or become inoperative.

5. The present Protocol, which shall remain open for signature by all States, shall be ratified. The ratifications shall be deposited as soon as possible with the Secretary General of the League of Nations, who shall notify such deposit to all the signatory States.

6. The present Protocol shall come into force as soon as two ratifications have been deposited. Thereafter it will take effect, in the case of each Contracting State, one month after the notification by the Secretary General of the deposit of its ratification.

7. The present Protocol may be denounced by any Contracting State on giving one year's notice. Denunciation shall be effected by a notification addressed to the Secretary General of the League, who will immediately transmit copies of such notification to all the other signatory States and inform them of the date on which it was received. The denunciation shall take effect one year after the date on which it was notified to the Secretary General, and shall operate only in respect of the notifying State.

8. The Contracting States may declare that their acceptance of the present Protocol does not include any or all of the undermentioned territories: that is to say, their colonies, overseas possessions or territories, protectorates or the territories over which they exercise a mandate.

The said States may subsequently adhere separately on behalf of any territory thus excluded. The Secretary General of the League of Nations shall be informed as soon as possible of such adhesions. He

shall notify such adhesions to all signatory States. They will take effect one month after the notification by the Secretary General to all signatory States.

The Contracting States may also denounce the Protocol separately on behalf of any of the territories referred to above. Article 7 applies to such denunciation.

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THIRD SCHEDULE

CONVENTION ON THE EXECUTION OF FOREIGN ARBITRAL AWARDS

ARTICLE 1

In the territories of any High Contracting Party to which the present Convention applies, an arbitral award made in pursuance of an agreement, whether relating to existing or future differences (hereinafter called “a submission to arbitration”) covered by the Protocol on Arbitration Clauses, opened at Geneva on 24th September, 1923, shall be recognised as binding and shall be enforced in accordance with the rules of the procedure of the territory where the award is relied upon, provided that the said award has been made in a territory of one of the High Contracting Parties to which the present Convention applies and between persons who are subject to the jurisdiction of one of the High Contracting Parties.

To obtain such recognition or enforcement it shall, further, be necessary—

- (a) That the award has been made in pursuance of a submission to arbitration which is valid under the law applicable thereto;
- (b) That the subject-matter of the award is capable of settlement by arbitration under the law of the country in which the award is sought to be relied upon;
- (c) That the award has been made by the Arbitral Tribunal

provided for in the submission to arbitration or constituted in the manner agreed upon by the parties and in conformity with the law governing the arbitration procedure;

(d) That the award has become final in the country in which it has been made, in the sense that it will not be considered as such if it is open to *opposition appel* or *pourvoi en cassation* (in the countries where such forms of procedure exist) or if it is proved that any proceedings for the purpose of contesting the validity of the award are pending;

(e) That the recognition or enforcement of the award is not contrary to the public policy or to the principles of the law of the country in which it is sought to be relied upon.

ARTICLE 2

Even if the conditions laid down in Article 1 hereof are fulfilled, recognition and enforcement of the award shall be refused if the Court is satisfied—

(a) That the award has been annulled in the country in which it was made;

(b) That the party against whom it is sought to use the award was not given notice of the arbitration proceedings in sufficient time to enable him to present his case; or that, being under a legal incapacity, he was not properly represented;

(c) That the award does not deal with the differences contemplated by or falling within the terms of the submission to arbitration or that it contains decisions on matters beyond the scope of the submission to arbitration.

If the award has not covered all the questions submitted to the arbitral tribunal, the competent authority of the country where recognition or enforcement of the award is sought can, if it think fit, postpone such recognition or enforcement or grant it subject to such guarantee as that authority may decide.

ARTICLE 3

If the party against whom the award has been made proves that, under the law governing the arbitration procedure, there is a ground, other than the grounds referred to in Article 1 (a) and (c) and Article 2 (b) and (c), entitling him to contest the validity of the award in a Court of Law, the Court may, if it thinks fit either refuse recognition or enforcement of the award or adjourn the consideration thereof, giving such party a reasonable time within which to have the award annulled by the competent tribunal.

ARTICLE 4

The party relying upon an award or claiming its enforcement must supply, in particular—

- (1) The original award or a copy thereof duly authenticated, according to the requirements of the law of the country in which it was made;
- (2) Documentary or other evidence to prove that the award has become final, in the sense defined in Article 1 (d), in the country in which it was made;
- (3) When necessary, documentary or other evidence to prove that the conditions laid down in Article 1, paragraph 1 and paragraph 2 (a) and (c), have been fulfilled.

A translation of the award and of the other documents mentioned in this Article into the official language of the country where the award is sought to be relied upon may be demanded. Such translation must be certified correct by a diplomatic or consular agent of the country to which the party who seeks to rely upon the award belongs or by a sworn translator of the country where the award is sought to be relied upon.

ARTICLE 5

The provisions of the above Articles shall not deprive any interested party of the right of availing 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.

ARTICLE 6

The present Convention applies only to arbitral awards made after the coming into force of the Protocol on Arbitration Clauses, opened at Geneva on September 24th, 1923.

ARTICLE 7

The present Convention, which will remain open to the signature of all the signatories of the Protocol of 1923 on Arbitration Clauses, shall be ratified.

It may be ratified only on behalf of those Members of the League of Nations and non-Member States on whose behalf the Protocol of 1923 shall have been ratified.

Ratifications shall be deposited as soon as possible with the Secretary General of the League of Nations, who will notify such deposit to all the signatories.

ARTICLE 8

The present Convention shall come into force three months after it shall have been ratified on behalf of two High Contracting Parties. Thereafter, it shall take effect, in the case of each High Contracting Party, three months after the deposit of the ratification on its behalf with the Secretary General of the League of Nations.

ARTICLE 9

The present Convention may be denounced on behalf of any Member of the League or non-Member State. Denunciation shall be notified in writing to the Secretary General of the League of Nations, who will immediately send a copy thereof, certified to be in conformity with the notification, to all the other Contracting Parties, at the same time informing them of the date on which he received it.

The denunciation shall come into force only in respect of the High Contracting Party which shall have notified it and one year after such notification shall have reached the Secretary General of the League of Nations.

The denunciation of the Protocol on Arbitration Clauses shall entail, *ipso facto*, the denunciation of the present Convention.

ARTICLE 10

The present Convention does not apply to the Colonies, Protectorates or territories under suzerainty or mandate of any High Contracting Party unless they are specially mentioned.

The application of this Convention to one or more of such Colonies, Protectorates or territories to which the Protocol on Arbitration Clauses, opened at Geneva on September 24th, 1923, applies can be effected at any time by means of a declaration addressed to the Secretary General of the League of Nations by one of the High Contracting Parties.

Such declaration shall take effect three months after the deposit thereof.

The High Contracting Parties can at any time denounce the Convention for all or any of the Colonies, Protectorates or territories referred to above. Article 9 hereof applies to such denunciation.

ARTICLE 11

A certified copy of the present Convention shall be transmitted by the Secretary General of the League of Nations to every Member of the League of Nations and to every non-Member State which signs the same.