

From Rakesh Pathak www.RPathak.com with Notes / Comments

THE ARBITRATION AND CONCILIATION ACT 1996

(Act no.26 of 1996, Assented on 16.8.1996)

NOTE: Earlier than this Act two Ordinances were issued by President, the Ordinance were similar as this Act, the First Ordinance came in effect from 25th January 1996 for Six months and then another Ordinance was issued, then this Act)

(As passed by the Houses of Parliament)

An Act to consolidate and amend the law relating to domestic arbitration, international commercial arbitration and enforcement of foreign arbitral awards as also to define the law relating to conciliation and for matters connection therewith or incidental thereto.

Preamble

Whereas the United Nations Commission on International Trade Law (UNCITRAL) has adopted the UNCITRAL Model Law on International Commercial Arbitration in 1985;

And whereas the Central Assembly of the United Nations has recommended that all countries give due consideration to the said Model Law, in view of the desirability of uniformity of the law of uniformity of the law of arbitral procedures and the specific needs of the international commercial arbitration practice;

And whereas the UNCITRAL has adopted the UNCITRAL Conciliation Rules in 1980;

And whereas the General Assembly of the United Nations has recommended that use of the said Rules in cases where a dispute arises in the context of international commercial relations and the parties seek an amicable settlement of that dispute by recourse to conciliation.

And whereas the said Model Law and Rules make significant contribution to the establishment of the unified legal framework for the fair and efficient settlement of disputes arising in international commercial relations;

And whereas it is expedient to make law respecting arbitration and conciliation, taking into account the aforesaid Model Law and Rules;

Be it enacted by Parliament in the Forty-seventh Year of the Republic of India as follows:-

PRELIMINARY

1. Short title, extent and commencement

(1) This Act may be called the Arbitration and Conciliation Act, 1996.

(2) It extends to the whole of India.

Provided that Parts, I, III and IV shall extend to the State of Jammu and Kashmir only in so far as they relate to international commercial arbitration or, as the case may be, international commercial conciliation.

Explanation- In this sub-section, the expression 'international commercial conciliation' shall have the same meaning as the expression 'international commercial arbitration' in clauses (f) of sub-section (1) of Section 2, subject to the modification that for the word 'arbitration' occurring therein, the word 'conciliation' shall be substituted.

(3) It shall come into force on such date as the Central Government, by notification in Gazette, appoint.

PART I

ARBITRATION

CHAPTER I

GENERAL PROVISIONS

2. Definitions

(1) In this Part, unless the context otherwise requires,-

(a) 'arbitration' means any arbitration whether or not administered by permanent arbitral institutions;

(b.) 'arbitral agreement' means an agreement referred to in Section 7.

(c) 'arbitral award' includes an interim award;

(d) 'arbitral tribunal' means a sole arbitrator or a panel of arbitrators;

(e) 'Court' means the principal Civil Court of original jurisdiction in a district, and includes the High Court in exercise of its ordinary original civil jurisdiction, having jurisdiction to decide the questions forming the subject-matter of the arbitration if the same had been the subject matter of a suit, but does not include any civil court of a grade interior to such principal Civil Court, or any Court of Small Causes;

(f) 'international commercial arbitration' means an arbitration relating to disputes arising out of legal relationships, whether contractual or not, considered as commercial under the law in force in India and where at least one of the parties is-

(i) an individual who is a national or, habitually resident in, any country other than India; or

- (ii) a body corporate which is incorporated in any country other than India; or
- (iii) a company or an association or a body of individuals whose central management and control is exercised in any country other than India; or
- (iv) the Government of a foreign country;
- (g) 'legal representative' means a person who in law represents the estate of a deceased person, and includes any person who intermeddles with the estate of the deceased, and, where a party acts in a representative character, the person on whom the estate devolves on the death of the party so acting;
- (h) 'party' means a party to an arbitration agreement.

Scope

- (2) This part shall apply where the place of arbitration is in India.
- (3) This Part shall not affect any other law for the time being in force by virtue of which certain disputes may not be submitted to arbitration.
- (4) This Part except sub-section (1) of section 40, section 41 and 43 shall apply to every arbitration under any other enactment for the time being in force, as if the arbitration were pursuant to an arbitration agreement, except in so far as the provisions of this Part are inconsistent with that other enactment or with any rules made thereunder.
- (5) Subject to the provisions of sub-section (4), and save in so far as is otherwise provided by any law for the time being in force or in any agreement in force between Indian and any other country or countries, this Part shall apply to all arbitration and to all proceedings relating thereto.

Construction of references

- (6) Where this Part, except section 28, leaves the parties free to determine a certain issue, that freedom shall include the right of the parties to authorise any person including institution, to determine that issue.
- (7) An arbitral award made under this Part shall be considered as a domestic award.
- (8) Where this Part-
 - (a) refresh to the fact that the parties have agreed or that they may agree, or
 - (b) in any other way refers to an agreement of the parties, that agreement shall include any arbitration rules referred to in that agreement.
- (9) Where this Part, other than clause (a) of section 25 or clause (a) of sub-section (2) of section 32, refers to a claim, it shall also apply to a

counterclaim, and where it refers to a defence, it shall also apply to a defense to that counterclaim.

3. Receipt of written communication

(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 at his place of business, habitual residence or mailing address, and

(b.) if none of the places referred to in clause (a) 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 by any other means which provides a record of the attempt to deliver it.

(2) The communication is deemed to have been received on the day it is so delivered.

(3) This section does not apply to written communications in respect of proceedings of any judicial authority.

4. Waiver of right to object

A party who knows that-

(a) any provision of this Part from which the parties may derogate, or

(b.) 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 for stating that objection, within that period of time, shall be deemed to have waived those right to so object.

5. Extent of judicial intervention

Notwithstanding anything contained in any other law for the time being in force, in mattress governed by this Part, no judicial authority shall intervene except where so provided in this Part.

6. Administrative assistance

In other to facilitate the conduct of the arbitral proceedings the parties, or the arbitral tribunal with the consent of the parties, may arrange for administrative assistance by a suitable institution or person.

CHAPTER II ARBITRATION AGREEMENT

7. Arbitration agreement

(1) In this Part, 'arbitration agreement' mean an agreement by the parties so 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.

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

(3) An arbitration agreement shall be in writing.

(4) An arbitration agreement is in writing if it is contained in -

(a) document signed by the parties;

(b) an exchange of letters, telex, telegrams or other means of telecommunication which provide a record of the agreement or

(c) an exchange of statements of claim and defence in which the existence of the agreement is alleged by one party and not denied by the other.

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

Rulings on Interpretation of agreement: AIR 1959 SC 24(3) Radha Sunder Dutta Vs. Md Jahadur Rahim held "If in fact, there is a conflict between the earlier clause and the later clauses and it is not possible to give effect to all of them, then the rule of construction is well established that it is the earlier clause that must override the later clauses and not 'vice versa'.

Similar view held in 1921 All ER 470 (at page 772) Forbes Vs Git and Others. " If in a deed an earlier clause is followed by a later clause which destroys altogether the obligation created by the earlier clause, the later clause is to be rejected as repugnant and the earlier clause prevails. In case the two clauses cannot be reconciled, the earlier provision in deed would prevail over the later."

8. Power to refer parties to arbitration where there is an arbitration agreement

(1) A judicial authority before which an action is brought in a matter which is the subject of an arbitration agreement shall, if a party so applies not later than when submitting his first statement on the substance of the dispute, refer the parties to arbitration.

(2) The application referred to in sub-section (1) shall not be entertained unless it is accompanied by the original arbitration agreement or a duly certified copy thereof.

(3) Notwithstanding that an application has been made under sub-section (1) and that the issue is pending before the judicial authority, an arbitration may be commenced or continued and an arbitral award made.

9. Interim measures etc. by Court

A party may, before, or during arbitral proceedings or any time after the making of the arbitral award but before it is enforced in accordance with section 36, apply to a Court-

(i) for the appointment of a guardian for a minor or person of unsound mind for the purposes of arbitral proceedings; or

(ii) for an interim measure of protection in respect of any of the following matters, namely-

(a) the preservation, interim custody or sale of any goods which are the subject-matter of the arbitration agreement.

(b) securing the amount in dispute in the arbitration;

(c) the detention, preservation or inspection of any property or thing which is the subject-matter of the dispute in arbitration, or as to which any question may arise therein and authorising for any other the aforesaid purposes any person to enter upon any land or building in the possession of any party, 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;

(d) interim injunction or the appointment of a receiver;

NOTE: Delhi High Court in judgment dated 24th May 1996 has held as obiter 'The petitioner seeking interim direction without any substantial (sic) relief such as an appointment of the arbitrator, reference of dispute to arbitrator etc., under the above said Ordinance (as then this Act was). In my opinion in the absence of any prayer for substantive relief, the prayer for issuing any direction by way of interim measure cannot be entertained.'

It is submitted that the observation of the Hon'ble High Court ought to be regarded as obiter since the judgment does not reflect any discussion on the subject. Although the lack of a prayer for 'substantive relief' has been treated by the Hon'ble Judge as one of the reasons for declining to grant the interim injunction in that case, the reason for declining to grant the relief would seem to be that in an earlier suit between the same parties on the same facts and on the same documents a prayer for an

interim injunction had already been denied or not granted. This judgment is clearly erroneous being contrary to the express language of Section 9 which itself contemplates substantive relief as opposed to interim relief as granted under Order 39 Rule 1 and 2 and/ or under Section 151 of the Code of Civil Procedure, 1908.

Section 9 enables parties to seek interim conservatory measure by way of injunction etc. which the arbitrators obviously cannot grant before arbitration proceedings have commence, or in any event, enforce pending the issue of an arbitration award in any arbitration already commence or yet to be started. The word 'interim' used in Section 9, when read in its proper context, cannot only mean interim pending the result of the arbitration and not interim pending any decisions of the Court after trial as in a regular civil suit.

(e) such other interim measure of protection as may appear to the Court to be just and convenient, and the Court shall have the same power for making orders as it has for the purpose of, and in relation to, any proceedings before it.

CHAPTER III COMPOSITION OF ARBITRAL TRIBUNAL

10. Number of arbitrators

(1) The parties are free to determine the number of arbitrators, provided that such number shall not be an even number.

NOTE: IV (1996) CLT 397 (Supreme Court) M.M.T.C. Ltd. Vs. Sterlite Industries (India) Ltd.

HELD- ' Sub-section' (3) of Section 7 requires an arbitration agreement to be in writing and sub-section (4) describes the kind of that writing. There is nothing in Section 7 to indicate the requirement of the number of Arbitrators as a part of the arbitration agreement. Thus the validity of an arbitration agreement does not depend on the number of Arbitrators specified therein. The number of Arbitrators is dealt with separately in Section 10 which is a part of machinery provision for the working of the arbitration agreement. It is therefore clear that numbers of arbitrators cannot be a ground to render the arbitration agreement invalid under the new Act.'

(2) Failing the determination referred to in sub-section(1), the arbitral tribunal shall consist of a sole arbitrator.

11. Appointment of arbitrators

(1) A person of any nationality may be an arbitrator, unless otherwise agreed by the parties.

(2) Subject to sub-section (6), the parties are freed to agree on a procedure for appointing the arbitrator or arbitrators.

(3) Failing any agreement referred to in sub-section (2), in an arbitration with three arbitrators, each party shall appoint one arbitrator, and the two appointed arbitrators shall appoint the third arbitrator who shall act as the presiding arbitrator.

(4) If the appointment procedure in sub-section(3) applies and-

(a) a party fails to appoint an arbitrator within thirty days from the receipt of a request to do so from the other party; or

(b) the two appointed arbitrators fails to agree on the third arbitrator within thirty days from the date of their appointment,

the appointment shall be made, upon request of a party, by the Chief Justice or any person or institution designated by him.

(5) Failing any agreement referred to in sub-section(2) in an arbitration with a sole arbitrator, if the parties failing to agree on the arbitrator within thirty days from receipt of a request by one party from the other party to so agreed the appointment shall be made, upon request of a party, by the Chief Justice or any person or institution designated by him.

(6) Where, under an appointment procedure agreed upon by the parties-

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

(b) the parties, or the two appointed arbitrators, fail to reach an agreement expected of them under that procedure; or

(c) a person, including an institution, fails to perform any function entrusted to him or it under that procedure,

a party may request the Chief Justice or any person or institution designated by him to take the necessary measure, unless the agreement on the appointment procedure provides other means for securing the appointment.

(7) A decision on a matter entrusted by sub-section (4) or sub-section(5) or sub-section(6) to the Chief Justice or the person or institution designated by him is final.

(8) The Chief Justice or the person or institution designated by him, in appointing an arbitrator, shall have due regard to-

(a) any qualification required of the arbitrator by the agreement of the parties; and

(b) other consideration as are likely to secure the appointment of an independent and impartial arbitrator.

(9) In the case of appointment of sole or third arbitrator in an international commercial arbitration, the Chief Justice of India or the person or institution designated by him may appoint an arbitrator of a nationality other than the nationalities of the parties where the parties belong to different nationalities.

(10) The Chief Justice may make such scheme as he may deem appropriate for dealing with matters entrusted by sub-section (4) or sub-section (5) or sub-section (6) to him.

NOTE: Chief Justice of Delhi High Court has made Scheme ' Scheme for the Appointment of Arbitrators, 1996'

THE SCHEME FOR APPOINTMENT OF ARBITRATORS, 1996

High Court of Delhi: New Delhi

NOTIFICATION Dated Feb.2, 1996 No. 16/Rules

In exercise of the power conferred by sub-section (10) of Section 11 of the Arbitration and Conciliation Ordinance, 1996 (hereinafter referred to as " Ordinance ") the Chief Justice of the High Court of Delhi, hereby makes the following Scheme:

1. Short title- This Scheme may be called the Scheme for Appointment of Arbitrators, 1996.

2. Submission of Request: (1) The request under sub-section (4) or sub-section (5) or sub-section (6) of Section 11 of the Ordinance shall be made in writing in the form prescribed in Appendix and shall be accompanied by-

(a) The original arbitration agreement or a true copy thereof;

(b) An affidavit supported by the relevant documents or true copies thereof the effect that the condition to be specified under sub-section (4) or sub-section (5) or sub-section (6) of Section 11 of Ordinance, as the case may, before making the request to the person designated by the Chief Justice, has been satisfied.

(ii) The request referred to in sub-para 2 (I) of this para shall be accompanied by as many copies of the request together with items (a) and (b) of sub-para 2(I), as the number of parties to the arbitration agreement or such number which the person designated in para 3 of the scheme may direct.

(iii) In case the person making the request does not have the arbitration agreement or a copy thereof, he shall file an affidavit giving relevant facts in that behalf and request them the opposite party may be directed to produce the original or a copy thereof.

3. Authority to deal with the Request- (I) For the purpose of dealing with the request made under para 2, the Chief Justice hereby designates:

- (a) The Civil Judge where the value of the subject matter does not exceed Rs. 1 lakh,
- (b) The District Judge/ Additional District Judge where the value of the subject matter does not exceed Rs.5 lakhs, and
- (c) The Judge of the High Court exercising ordinary original civil jurisdiction, where the value of the subject matter exceeds Rs. 5 lakhs.

(ii) The requests falling under sub-para (a) of para 3 shall initially be placed before Senior Civil Judge for appropriate allotment; the request falling under sub-para (b) of para 3 shall initially be placed before the District Judge for appropriate allotment; and the request made under sub-para (c) of para 3 shall initially be placed before the Judge-in-Charge on the Original side of the High Court for appropriate allotment.

4. Seeking further information- (I) The person designated under para 3 may seek such further information or clarification or documents from the party making the request under this Scheme, as he may deem fit.

(ii) The party making the request shall file as many copies of the written information or clarification or copies of documents as may be required to be filed by the person designated in para 3 of this Scheme.

5. Rejection of Request- Where the request made by any party under paragraph 2 is not in accordance with the provision of this Scheme, the person designated in para 3 may reject the same.

6. Notice to Affected Person- Subject to the provisions of paragraph 5, the person designated in para 3 shall direct that a notice of the application be given to all the parties to the arbitration agreement and to such other person as may seek to him likely to be affected by such request to show cause within the time specified in the notice, as to why the appointment of the arbitrator(s) or the measure proposed to be taken should not be made or taken and such notice shall be accompanied by copies of all documents referred to in para 2, as the case may be, by the information or clarification or copies of documents, if any, sought under paragraph 4.

7. Intimation of Action taken on Request- The appointment made or measures taken by the persons designated in para 3 in pursuance of the request under paragraph 2 shall be communicated in writing to-

- (a) the parties to the arbitration agreement;
- (b) the arbitrators, if any, already appointed by the parties to the arbitration agreement;

(c) the person or institution, if any, to whom or to which any function has been entrusted by the parties to the arbitration agreement under the appointment procedure agreed upon by them;

(d) the arbitrator appointed in pursuance of the request.

8. Request and Communication to be Sent to Authorised Officer- All request under the Scheme and communications relating thereto shall be presented to the Officer authorised by the persons designated in para 3 and the said Officer shall maintain a separate register of such requests and communications. Whenever requests under para 2 are received the authorised officer shall as soon as may be, place the same before the persons designated in para 3.

9. Delivery and Receipt of Written Communications- The provisions of sub-sections (1) and (2) of Section 3 of the Ordinance shall, so far as may be, apply to all written communications received or sent under this Scheme.

10. Costs for Processing Requests- The party making a request under this Scheme shall, along with the request for arbitration pay an amount of Rs.250 in case the request is made to the person designated under para 3(a) of this Scheme, Rs.500 in case the request is made to a person designated under para 3(b), and Rs.1,000 in case the request is made to a person designated under para 3(c).

11. Interpretation- (I) If any question arise with reference to the interpretation of any of the provisions of this Scheme before a person designated under para 3(c) of this Scheme, it shall be decided by that person.

(ii) In case the question arises before the person designated in para 2(a) and (b) of this Scheme, the said person shall formulate the question and refer the same for decision of the Chief Justice or a Judge of the High Court of Delhi designated by the Chief Justice.

(iii) The decision by the person to whom the question is referred to as stated in para 11(I) or (ii) shall be final.

Power to Amend the Scheme

The Chief Justice may, from time to time amend, by way of addition or variation or deletion, any provisions of this Scheme.

New Delhi

Dated 29th Jan 1996

Sd\-

(M Jagannadha Rao)

Chief Justice

High Court of Delhi

APPENDIX I

Before

Arbitration Application No. _____ of 1996

1. Provision under which the application is filed.
2. Name(s) of the applicant(s) with complete address(es).
3. Name(s) of the other parties to the arbitration agreement with complete addresses.
4. Names and addresses of the arbitrators, if any, already appointed by parties.
5. Name and address of the person or institution, if any, to whom any function has been entrusted by the parties to the arbitration agreement under the appointment procedure agreed upon by them.
6. Qualification requirements, if any, of the arbitrator by the agreement of the parties.
7. A brief written statement describing the general nature of the disputes and the points at issue.
8. Valuation of the subject matter
- 9 Relief or the remedy sought.

Date

Signature of the applicant

Signature of Advocate, if any

SUPREME COURT

Supreme Court of India has published a Notification in Gazette of India dated 16th May 1996 for appointment of arbitrators for International Commercial Arbitration, Scheme called ' Chief Justice of India Scheme'. This Scheme deals with matters arising under Sub-sections (4),(5),(6),(7), (8), of Section 11.

The requests for appointment are to be made in writing to the Chief Justice of India and shall be accompanied by the original arbitration agreement (or a duly certified copy), the names and addresses of the parties to the arbitration agreement, the names and addresses of the arbitrators, if any, already appointed, the names and addresses of the person or institution, if any, to whom or which any function has been entrusted by the parties to the arbitration agreement under the agreed appointment procedure, the qualifications required, if any, of the arbitrators by the agreement of the parties, a brief written statement describing the general nature of the dispute and the points at issue, the relief or remedy sought and an affidavit supported by the relevant documents to the effect that the conditions to be satisfied under Sub-sections (4), (5), or (6) of Section 11, as the case may be, before making the request to the Chief Justice of India, have been satisfied.

The cost for processing requests under this Scheme is Rs. 15,000/-.

Upon receipt of a request the Chief Justice of India may either deal with the matter entrusted to him or designate any other person or institution for that purpose. Where any person or institution has been designated, CJ shall forthwith forward the request, issuing notices to the parties to the arbitration agreement, and the designated person or institution may seek further information or clarification from the party making request under the Scheme. Notice shall be given to all parties and such other person(s) as may seek to be affected by such request to show cause, within a specified time, why the appointment of the arbitrator or the measure proposed to be taken should not be made or taken.

Under this Scheme if the Chief Justice of India, on receipt of a complaint from either party to the arbitration agreement or otherwise, is of the opinion that the person or institution designated by him has neglected or refused to act or is incapable of acting, he may withdraw the authority given by him and either deal with the request himself or designate another person or institution for that purpose.

Any appointment made or measure taken under the Scheme shall be communicated in writing to the parties to the arbitration agreement, the arbitrators, if any, already appointed, the person or institution to which any function has been entrusted under an appointment procedure and the arbitrator appointed pursuant to the request.

(11) Where more than one request has been made under sub-section (4) or sub-section (5) or sub-section (6) to the Chief Justice of different High Courts or their designate, the Chief Justice or his designate to whom the request has been first made under the relevant sub-section shall alone be competent to decide on the request.

(12) (a) Where the matters referred to in sub-section (4), (5), (6), (7), (8) and (10) arise in an international commercial arbitration the reference to 'Chief Justice' in those sub-sections shall be construed as a reference to the 'Chief Justice of India'.

(b) Where the matters referred to in sub-section (4), (5), (6), (7), (8), and (10) arise in any other arbitration, the reference to 'Chief Justice' in those sub-sections shall be construed as a reference to the Chief Justice of the High Court within whose local limits the principal Civil Court referred to in clause (e) of sub-section (1) of section 2 is situate and, where the High Court itself is the Court referred to in that clause, to the Chief Justice of that High Court.

NOTE: INSTITUTIONS PROVIDING ARBITRATION SERVICES:

1. ' Indian Council of Arbitration ', a Registered Society having Main office at Federation House, Tansen Marg, New Delhi and three branch office in Bombay, Madras and Calcutta. Council is providing services for Arbitration, have panel for Arbitrator. In agreement suggest to make following arbitration clause:

All disputes and differences whatsoever arising under or in connection with this contract will be settled by arbitration in accordance with the Rules of Arbitration of the UNCITRAL / the International Chamber of Commerce (ICC) Court of Arbitration/ (such other arbitral organisations as may be agreed to)

The Venue of arbitration will be India /(such other country as may be agreed to).

The law applicable to the Contract will be Indian Law (law of such other Country as may be agreed to).

2. ' Indian Society of Arbitrators' Registered Office is located at New Delhi and its branch office at Bombay, Bangalore, Hyderabad, Madras, Calcutta, New York and London.

Publishing Journal: ' The Indian Arbitrators', and Newsletter; have Library, Panel of Arbitrator,

Rules of Society are on the line of Rules of International Chamber of Commerce, Paris, Certain Provisions of the Rules are similar to UNCITRAL Rules.

3. ' International Centre for Alternative Dispute Resolution' (ICADR) established on 31st May 1995 as Society under the Society Registration Act 1995. Office is located in New Delhi, and likely to open office in State Capitals.

12. Ground for Challenge

(1) Where a person is appointed in connection with his possible appointment as an arbitrator, he shall disclose in writing any circumstances likely to give rise justifiable doubts as to his independence or impartiality.

(2) An arbitrator, from the time of his appointment and throughout the arbitral proceedings, shall, without delay, disclose to the parties in writing any circumstances referred to in sub-section (1) unless they have already been informed of them by him.

- (3) An arbitrator may be challenged only if-
- (a) circumstances exist that give rise to justifiable doubts as to his independence or impartiality, or
 - (b) he does not possess the qualifications agreed to by the parties.

(4) 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.

13. Challenge procedure

(1) Subject to sub-section (4), the parties are free to agree on a procedure for challenging an arbitrator.

(2) Failing any agreement referred to in sub-section (1), 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 sub-section (3) of section 12, send a written statement of the reasons for the challenge to the arbitral tribunal.

(3) Unless the arbitrator challenged under sub-section (2) withdraws from his office or the other party agrees to the challenge, the arbitral tribunal shall decide on the challenge.

(4) If a challenge under any procedure agreed upon by the parties or under the procedure under sub-section (2) is not successful, the arbitral tribunal shall continue the arbitral proceedings and make an arbitral award.

(5) Where an arbitral award is set aside on an application made under sub-section (5), the Court may decide as to whether the arbitrator may make an application for setting aside such an arbitral award in accordance with section 34.

(6) Where an arbitral award is set aside on an application made under sub-section (5), the Court may decide as to whether the arbitrator who is challenged is entitled to any fees.

14. Failure or impossibility to act

(1) The mandate of an arbitrator shall terminate if-

- (a) he becomes de jure or de facto unable to perform his functions or for other reasons fails to act without undue delay; and
- (b) he withdraws from his office or the parties agree to the termination of his mandate.

(2) If a controversy remains concerning any of the grounds referred to in clause (a) of sub-section (1), a party may, unless otherwise agreed by the parties, apply to the Court to decide on the termination of the mandate.

(3) If, under this section or sub-section (3) of section 13, an arbitrator withdraws from his office or a party agrees to the termination of the mandate of an arbitrator, it shall not imply acceptance of the validity of any ground referred to in this section or sub-section(3) of section 12.

15. Termination of mandate and substitution of arbitrator

- (1) In addition to the circumstances referred to in section 13 or section 14, the mandate of an arbitrator shall terminate-
- (a) where he withdraws from office for any reason; or
 - (b) by or pursuant to agreement of the parties.

(2) Where the mandate of an arbitrator terminate, a substitute arbitrator shall be appointed according to the rules that were applicable to the appointment of the arbitrator being replaced.

(3) Unless otherwise agreed by the parties, where an arbitrator is replaced under sub-section (2), any hearings previously held may be repeated at the discretion of the arbitral tribunal.

(4) Unless otherwise agreed by the parties, an order or ruling of the arbitral tribunal made prior to the replacement of an arbitrator under this section shall not be invalid solely because there has been a change in the composition of the arbitral tribunal.

CHAPTER IV

JURISDICTION OF ARBITRAL TRIBUNALS

16. Competence of arbitral tribunal to rule on its jurisdiction

(1) The arbitral tribunal may rule on its own jurisdiction, including ruling on any objections with respect to the existence or validity of the arbitration agreement, and for the purpose-

(a) an arbitration clause which forms part of a contract shall be treated as an agreement independent of the other terms of the contract; and

(b) a decision by the arbitral tribunal that the contract is null and void shall not entrails ipso jure the invalidity of the arbitration clause.

(2) A pleas that the arbitral tribunal does not have jurisdiction shall be raised not later than the submission of the statement of defence; however, a party shall not be precluded from raising such a plea merely because that the has appointed, or participated in the appointment of, an arbitrator.

(3) 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.

(4) The arbitral tribunal may, in either of the cases referred to in sub-section (2) or sub-section (3), admit a later plea if it considers the delay justified.

(5) The arbitral tribunal shall decide on a plea referred to in sub-section (2) or sub-section (3) and, where the arbitral tribunal takes a decision rejecting the plea, continue with the arbitral proceedings and make an arbitral award.

(6) A party aggrieved by such an arbitral award may make an application for setting aside such an arbitral award in accordance with section 34.

17. Interim measures ordered by arbitral tribunal

(1) Unless otherwise agreed by the parties, the arbitral tribunal may, at the request of a party, order a party to take any interim measure of protection as the arbitral tribunal may dispute necessary in respect of the subject-matter of the dispute.

(2) The arbitral tribunal may require a party to provide appropriate security in connection with a measure ordered under sub-section (1).

CHAPTER V CONDUCT OF ARBITRAL PROCEEDINGS

18. Equal treatment of parties

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

19. Determination of rules of procedure

(1) The arbitral tribunal shall not be bound by the Code of Civil Procedure 1908 (5 of 1908) or the Indian Evidence Act, 1872 (1 of 1872).

(2) Subject to this Part, the parties are free to agree on the procedure to be followed by the arbitral tribunal in conducting its proceedings.

(4) The power of the arbitral tribunal under sub-section (3) includes the power to determine the admissibility, relevance, materiality and weight of any evidence.

20- Place of arbitration

(1) The parties are free to agree on the place of arbitration.

(2) Failing any agreement referred to in sub-section (1), 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.

(3) Notwithstanding sub-section (1) or sub-section (2), 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 documents, goods or other property.

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.

22. Language

(1) The parties are free to agree upon the language or languages to be used in the arbitral proceedings.

(2) Failing any agreement referred to in sub-section (1), the arbitral tribunal shall determine the language or languages to be used in the arbitral proceedings.

(3) The agreement or determination, unless otherwise specified, shall apply to any written statement by a party, any hearing and any arbitral award, decision or other communication by the arbitral tribunal.

(4) 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.

23. Statement of claim and defense

(1) Within the period of time agreed upon 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 defense in respect of these particulars, unless the parties have otherwise agreed as to required elements of those statements.

(2) 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.

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

24. Hearings and written proceedings

(1) Unless otherwise agreed 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 materials;

Provided that the arbitral tribunal shall hold oral hearings, at an appropriate state of the proceedings, on a request by a party, unless the parties have agreed that no oral hearing shall be held.

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

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

25. Default of a party

Unless otherwise agreed by the parties, where, without showing sufficient cause,-

(a) the claimant fails to communicate his statement of claim in accordance with sub-section (1) of section 23, the arbitral tribunal shall continue the proceedings without treating that failure in itself as an admission of the allegations by the claimant;

(b) the respondent fails to communicate his statement of defence in accordance with sub-section (1) of section 23, the arbitral tribunal shall continue the proceedings without treating that failure in itself as an admission of the allegations by the claimant;

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

26. Expert appointed by arbitral tribunal

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

(a) appoint one or more experts to report to it one specific issues to be determined by the arbitral tribunal, and

(b) 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 an oral hearing where the parties have the opportunity to put questions to him or to present expert witnesses in order to testify on the points at issue.

(3) Unless otherwise agreed by the parties, the expert shall, on the request of a party, make available to that party for examination all documents, goods or other property in the possession of the expert with which he was provided in order to prepare his report.

27. Court assistance in taking evidence

(1) The arbitral tribunal, or a party with the approval of the arbitral tribunal, may apply to the Court for assistance in taking evidence.

(2) The application shall specify-

(a) the names and addresses of the parties and the arbitrators;

(b) the general nature of the claim and the relief sought;

(c) the evidence to be obtained, in particular,-

(i) the name and address of any person to be heard as witness or expert witness and a statement of the subject-matter of the testimony required;

(ii) the description of any document to be produced or property to be inspected.

(3) The Court may, within its competence and according to its rules on taking evidence, execute the request by ordering that the evidence be provided directly to the arbitral tribunal.

(4) The Court may, while making an order under sub-section (3), issue the same processes to witnesses as it may issue in suits tried before it.

(5) Persons failing to attend in accordance with such process, or making any other default, or refusing to give their evidence, or guilty of any contempt to the arbitral tribunal during the conduct of arbitral proceedings, shall be subject to the like disadvantages, penalties and punishments by order of the Court on the representation of the arbitral tribunal as they would incur for the like offences in suits tried before the Court.

(6) In this section the expression 'Processes' includes summonses and commissions for the examination of witnesses and summonses to produce documents.

CHAPTER VI

MAKING OF ARBITRAL AWARD AND TERMINATION OF PROCEEDINGS

28. Rules applicable to substance of dispute

(1) Where the place of arbitration is situate in India-

(a) In an arbitration other than an international commercial arbitration, the arbitral tribunal shall decide the dispute submitted to arbitration in accordance with the substantive law for the time being in force in India;

(b) In International commercial arbitration-

(i) the arbitral tribunal shall decide the dispute in accordance with the rules of law designated by the parties as applicable to the substance of the dispute;

(ii) any designation by the parties of the law or legal system of a given country shall be construed, unless otherwise expressed, as directly referring to the substantive law of that country and not to its conflict of laws rules;

(iii) failing any designation of the law under clause (a) by the parties, the arbitral tribunal shall apply the rules of law it considers to be appropriate given all the circumstances surrounding the dispute.

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

(3) 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.

29. Decision making by panel of arbitrators

(1) Unless otherwise agreed by the parties, in arbitral proceedings with more than one arbitrator, any decision of the arbitral tribunal shall be made by a majority of all its members.

(2) Notwithstanding sub-section (1), if authorised by the parties or all the member of the arbitral tribunal, questions of procedure may be decided by the presiding arbitrator.

30. Settlement

(1) It is not incompatible with an arbitration agreement for an arbitral tribunal to encourage settlement of the dispute and, with the agreement of the parties, the arbitral tribunal may use mediation, conciliation or other procedures at any time during the arbitral proceedings to encourage settlement.

(2) If, during arbitral proceedings, the parties settle the dispute, the arbitral tribunal shall terminate the proceedings and, if requested by the

parties and no objected to by the arbitral tribunal, record the settlement in the form of an arbitral award on agreed terms.

(3) An arbitral award on agreed terms shall be made in accordance with section 31 and shall state that it is arbitral award.

(4) An arbitral award on agreed terms shall have the same status and effect as any other arbitral award on the substance of the dispute.

31. Form and contents of arbitral award

(1) An arbitral award shall be made in writing and shall be signed by the members of the arbitral tribunal.

(2) For the purpose of sub-section (1), in arbitral proceedings with more than one arbitrator, the signatures of the majority of all the members of the arbitral tribunal shall be sufficient so long as the reason for any omitted signature is stated.

(3) The arbitral award shall state the reasons upon which it is based, unless-

- (a) the parties have agreed that no reasons are to be given, or
- (b) the award is an arbitral award on agreed terms under section 30.

(4) The arbitral award shall state its date and the place of arbitration as determined in accordance with section 20 and the award shall be deemed to have been made at that place.

(5) After the arbitral award is made, a signed copy shall be delivered to each party.

(6) The arbitral tribunal may, at any time during the arbitral proceedings, make an interim arbitral award on any matter with respect to which it may make a final arbitral award.

(7) (a) Unless otherwise agreed by the parties, where and in so far as an arbitral award is for the payment of money, the arbitral tribunal may include in the sum for which the award is made interest, at such rate as it deems reasonable, on the whole or any part of the money, for the whole or any part of the period between the date on which the cause of action arose and the date on which the award is made.

(b) A sum directed to be paid by an arbitral award shall, unless the award otherwise directs, carry interest at the rate of eighteen per cent per annum from the date of the award to the date of payment.

(8) Unless otherwise agreed by the parties,-

(a) the costs of an arbitration shall be fixed by the arbitral tribunal;

B) the arbitral tribunal shall specify-

(i) the parties entitled to costs,

(ii) the party who shall pay the costs,

(iii) the amount of costs or method of determining that amount, and

(iv) the manner in which the costs shall be paid.

Explanation- For the purpose of clause (a), 'costs' means reasonable costs relating to-

(i) the fees and expenses of the arbitrators and witnesses,

(ii) legal fees and expenses,

(iii) any administration fees of the institution supervising the arbitration, and

(iv) any other expenses incurred in connection with the arbitral proceedings and the arbitral award.

32. Termination of proceedings

(1) The arbitral proceedings shall be terminated by the final arbitral award or by an order of the arbitral tribunal under sub-section(2).

(2) The arbitral tribunal shall issue an order for the termination of the arbitral proceedings where-

(a) the claimant withdraws his claim, unless the respondent objects to the order 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, or

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

(3) Subject to Section 33 and sub-section (4) of section 34, the mandate of the arbitral tribunal shall terminate with the termination of the arbitral proceedings.

33. Correction and interpretation of award; additional award

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

(a) a party, with notice to the other party, made request the arbitral tribunal to correct any computation, errors of a similar nature occurring in the award;

(b) if so agreed by the parties, a party, with notice to other party, may request the arbitral tribunal to give an interpretation of a specific point or part of the award.

(2) If the arbitral tribunal considers the request made under sub-section (1) to be justified, it shall make the correction or give the interpretation within thirty days from the receipt of the request and the interpretation shall form part of arbitral award.

(3) The arbitral tribunal may correct any error of the type referred to in clause (a) of sub-section (1), on its own initiative within thirty days from the date of the arbitral award.

(4) Unless otherwise agreed by the parties, a party giving notice to the other party, may request, within thirty days from the receipt of the arbitral award, the arbitral tribunal to make an additional arbitral award as to claims presented in the arbitral proceedings but omitted from the arbitral award.

(5) If the arbitral tribunal considers the request made under sub-section (4) to be justified, it shall make the additional award within sixty days from the receipt of such request.

(6) If the arbitral tribunal may extend, if necessary, the period of time within which it shall make a correction, give an interpretation or make an additional arbitral award under sub-section (2) or sub-section (5).

(7) Section 31 shall apply to a correction or interpretation of the arbitral award or to an additional arbitral award made under this section.

CHAPTER VII RECOURSE AGAINST ARBITRAL AWARD

34. Application for setting aside arbitral award

(1) Recourse to a Court against an arbitral award may be made only by an application for setting aside such award in accordance with sub-section (2) and sub-section (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 was under some incapacity, or
 - (ii) the arbitration agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law for the time being in force; or
 - (iii) 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
 - (iv) the arbitral award deals with a dispute not contemplated by or not falling within a terms of the submission to arbitration, or it contains decision 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 arbitral award which contains decision on matters not submitted to arbitration may be set aside; or
 - (v) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless agreement was in conflict with a provision of this Part from which the parties cannot derogate, or, failing such agreement, was not in accordance with this Part; or

- (b) the Court finds that-
- (i) the subject-matter of the dispute is not capable of settlement by abrogation under the law for the time being in force, or
 - (ii) the arbitral award is in conflict with the public policy of India.

Explanation- Without prejudice to the generality of sub-clause (ii), it is hereby declared, for the avoidance of any doubt, that an award is in conflict with the public policy of India if the making of the award was induced or affected by fraud or corruption or was in violation of section 75 or section 81.

(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 arbitral award or, if a request had been made under section 33, from the date on which that request had been disposed of by the arbitral tribunal:

Provided that if the Court is satisfied that the applicant was prevented by sufficient cause from making the application within the said period of three months it may entertain the application within a further period of their days, but not hereafter.

(4) On receipt of an application under sub-section (1), the Court may, where it appropriate and it is so requested by a party, adjourn the proceedings for a period of time determined by it in order to give the arbitral tribunal an opportunity to resume that arbitral proceedings or to taken such other action as in the opinion of arbitral tribunal will eliminate the grounds for setting aside the arbitral award.

CHAPTER VIII FINALITY AND ENFORCEMENT OF ARBITRAL AWARDS

35. Finality of arbitral awards

Subject to this Part an arbitral awards shall be final and binding on the parties and persons claiming under them respectively.

36. Enforcement

Where the time for making an application to set aside the arbitral award under award shall be endorse under the Code of Civil Procedure, 1908 (5 of 1908) in the same manner as if it were a decree of the Court.

CHAPTER IX APPEALS

37. Appealable Orders

(1) An appeal shall lie from the following orders (and from no orders) to the Court authorised by law to hear appeals from original decrees of the Court passing the order, namely:-

- (a) granting or refusing to grant any measure under section 9;
- (b) setting aside or refusing to set aside an arbitral award under section 34.

(2) Appeal shall also lie to a court from an order of the arbitral tribunal-

- (a) accepting the plea referred to in sub-section (2) or sub-section (3) of section 16; or
- (b) granting or refusing to grant an interim measure under section 17.

(3) No second appeal shall lie from an order passed in appeal under this section, but nothing in this section shall affect or take away any right to appeal to the Supreme Court.

CHAPTER X

MISCELLANEOUS

38. Deposits

(1) The arbitral tribunal may fix the amount of the deposit or supplementary deposit, as the case may be, as an advance for the costs referred to in sub-section (8) of section 31, which it expects will be incurred in respect of the claim submitted to it:

Provided that where, apart from the claim, a counter-claim has been submitted to the arbitral tribunal, it may fix separate amount of deposit from the claim and counter-claim.

(2) The deposit referred to in sub-section(1) shall be payable in equal shares by the parties.

Provided that were one party fails to pay his share of the deposit, the other party may pay that share;

Provided further that where other party also does not pay the aforesaid share in respect of the claim or the counter-claim, the arbitral tribunal may suspend or terminate the arbitral proceedings in respect of such claim or counter-claim, as the case may be.

(3) Upon termination of the arbitral proceedings, the arbitral tribunal shall render an accounting to the parties of the deposits received and shall return any unexpended balance to the party or parties, as the case may be.

39. Lien on arbitral award and deposits as to costs

(1) Subject to the provisions of sub-section(2) and to any provision to the contrary in the arbitration agreement, the arbitral tribunal shall have a lien on the arbitral award for any unpaid costs of the arbitration.

(2) If in any case an arbitral tribunal refuses to deliver its award except on payment of the costs demanded by it, the Court may, on an application in this behalf, order that the arbitral tribunal shall deliver the arbitral award to the applicants on payment into Court by applicant of the costs demanded, and shall, after such inquiry, if any, as it thinks fit, further order that out of the money so paid into Court there shall be paid to the arbitral tribunal by way of costs such sum as the Court may consider reasonable and that the balance of the money, if any, shall be refunded to the applicant.

(3) An application under sub-section(2) may be made by any party unless the fees demanded have been fixed by written agreement between him and the arbitral tribunal, and the arbitral tribunal shall be entitled to appear and be heard on any such application.

(4) The Court may make such orders as it thinks fit respecting the costs of the arbitration where any question arises respecting such cost and the arbitral award contains no sufficient provision concerning them.

40. Arbitration agreement not be discharged by death of party thereto

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

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

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

41. Provisions in case of insolvency

(1) Where it is provided by a term in a contract to which an insolvent is a party that any dispute arising thereat or in connection therewith shall be submitted to arbitration, the said term shall, if the receiver adopts the contract, be enforceable by or against him so far as it relates to any such dispute.

(2) Where a party who has been adjudged an insolvent had, before the commencement of the insolvency proceedings, become a party to an arbitration agreement, and any matter to which the agreement applied is required to be determined in connection with, or for the purposes of, the insolvency proceedings, then, if the case is one to which sub-section(1) does not apply, any other party or the receiver may apply to the judicial authority having jurisdiction in the insolvency proceedings for an order directing that the matter in question shall be submitted to arbitration in accordance with the arbitration agreement, and the judicial authority may, if it is of opinion that, having regard to all the circumstances of the case, the matter ought to be determined by arbitration, make an order accordingly.

(3) In this section the expression 'receiver' includes an Official Assignee.

42. Jurisdiction

Notwithstanding anything contained elsewhere in this Part or in any other law for the time being in force, where with respect to an arbitration agreement any application under this Part has been made in a Court, that Court alone shall have jurisdiction over the arbitral proceedings and all subsequent applications arising out of that agreement and the arbitral proceedings shall be made in that Court and in no other Court.

43. Limitations

(1) The Limitation Act, 1963 (36 of 1963), shall apply to arbitration as it applies to proceedings in court.

(2) For the purposes of this section and the Limitation Act, 1963 (36 of 1963), an arbitration shall be deemed to have commenced on the date referred in section 21.

(3) Where an arbitration agreement to submit future disputes to arbitration provides that any claim to which the agreement applies shall be barred unless some step to commence arbitral proceedings is taken within a time fixed by the agreement, and a dispute arises to which the agreement applies, the Court, if it is of 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 require, extend the time for such period as it thinks proper.

(4) Where the Court orders that an arbitral award be set aside, the period between the commencement of the arbitration and the date of the order of the Court shall be excluded in computing the time prescribed by the Limitation Act, 1963 (36 of 1963), for the commencement of the proceedings (including arbitration) with respect to the dispute so submitted.

PART II

ENFORCEMENT OF CERTAIN FOREIGN AWARDS

CHAPTER I

NEW YORK CONVENTION AWARDS

44. Definition

In this Chapter, unless the context otherwise requires, 'foreign award' means an arbitral award on differences between persons arising out of legal relationships, whether contractual or not, considered as commercial under the law in force in India, made on or after the 11th day of October, 1960-

(a) in pursuance of an agreement in writing for arbitration to which the Convention set forth in the First Schedule applies, and

(b) in one of such territories as the Central Government, being satisfied that reciprocal provisions have been made may, by notification in the Official Gazette, declare to be territories to which the said Convention applies.

45. Power of judicial authority to refer parties to arbitration

Notwithstanding anything contained in Part I or in the Code of Civil Procedure, 1908 (5 of 1908), a judicial authority, when seized of an action in a matter in respect of which the parties have made an

agreement referred to in section 44, shall, the request of one of the parties or any person claiming through or under him, refer the parties to arbitration, unless it finds that the said agreement is null and void, inoperative or incapable of being performed.

46. When foreign award binding

Any foreign award which would be enforceable under this Chapter shall be treated as binding of 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 India any references in this Chapter to enforcing a foreign award shall be construed as including references to rely on an award.

47. Evidence

(1) The party applying for the enforcement of a foreign award shall, at the time of the application, proceeded before the court-

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

(b) the original agreement for arbitration or a duly certified copy thereof; and

(c) such evidence as may be necessary to prove that the award is a foreign award

(2) If the award of agreement to be produced under sub-section (1) is in a foreign language, the party seeking to enforce the award shall procure a translation into English 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 in force in India.

Explanation- In this section and all the following sections of this Chapter, 'Court' means the principal Civil Court of original jurisdiction in a district, and includes the High Court in exercise of its ordinary original civil jurisdiction, having jurisdiction over the subject-matter of the award if the same had been the subject-matter of a suit, but does not include any civil court of a grade inferior to such principal Civil Court, or any Court of Small Causes.

48. Conditions for enforcement of foreign awards

(1) Enforcement of a foreign award may be refused, at the request of the party against whom it is invoked, only if that party furnishes to the court proof that-

(a) the parties to the agreement referred to in section 44 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 arbitral proceedings or was otherwise unable to present his case; or

(c) the awards deals with a difference not contemplated by or not falling within the terms of submission to arbitration, or it contains decisions on matters beyond the scope of the submission of arbitration;

Provided that, if the decisions on matters submitted, that part of the award which contains decisions on matters submitted to arbitration may be 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) Enforcement of an arbitral award may also be refused if the Court finds that-

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

(b) the enforcement of the award would be contrary to the public policy of India.

Explanation- Without prejudice to the generality of clause (b), it is hereby declared, for the avoidance of any doubt, that an award is in conflict with the public policy of India if the making of the award was induced or affected by fraud or corruption.

(3) If an application for the setting aside or suspension of the award has been made to a competent authority referred to in clause (e) of sub-section (1) of the Court 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 on the award, order the other party to give suitable security.

49. Enforcement of foreign awards

Where the Court is satisfied that the foreign award is enforceable under this Chapter, the award shall be deemed to be a decree of that Court.

50. Appealable orders

(1) An appeal shall lie from the order refusing to-

(a) refer the parties to arbitration under section 45;

(b) enforce a foreign award under section 48,

to the court authorised by law to hear appeals from such order.

(2) No second appeal shall lie from an order passed in appeal under this section, but nothing in this section shall affect or take away any right to appeal to the Supreme Court.

51. Saving

Nothing in this Chapter shall prejudice any rights which any person would have had of enforcing in India of any award or of availing himself in India of any award if this Chapter had not been enacted.

52. Chapter II not to apply

Chapter II of this part shall not apply in relation to foreign awards to which this Chapter applies.

CHAPTER II

GENEVA CONVENTION AWARDS

53. Interpretation

In this Chapter 'foreign award' means an arbitral award on differences relating to matters considered as commercial under the law in force in India made after the 28th day of July, 1924-

(a) in pursuance of an agreement for arbitration of which the Protocol set forth in the Second Schedule applies, and

(b) between persons of whom one is subject to the jurisdiction of some one of such Powers as the Central Government, being satisfied that reciprocal provisions have been made, may by notification in the Official Gazette, declare to be parties to the Convention set forth in the Third Schedule, and of whom the other is subject to the jurisdiction of some other of the Powers aforesaid, and

(c) in one of such territories as the Central Government, being satisfied that reciprocal provisions have been made, may, by lie notification, declare to be territories to which the said Convention applies, and for the purposes of this Chapter an award shall not be deemed to be final if any proceedings for the purpose of contesting the validity of the award are pending in the country in which it was made.

54. Power of judicial authority to refer parties to arbitration

Notwithstanding anything contained in Part I or in the Code of Civil Procedure, 1908 (5 of 1908), a judicial authority, on being seized of a dispute regarding a contract made between persons to whom section 53 applies and including an arbitration agreement, whether referring to present or future differences, which is valid under that section and capable of being carried into effect, shall refer the parties on the application of either of them or any person claiming through or under him to the decision of the arbitrators and such reference shall not prejudice the competence of the judicial authority in case the agreement or the arbitration cannot proceed or becomes inoperative.

55. Foreign awards when binding

Any foreign award which would be enforceable under this Chapter 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 India and any references in this Chapter to enforcing a foreign award shall be construed as including references to relying on an award.

56. Evidence

(1) The party applying for the enforcement of a foreign award shall, at the time of application procured before the Court-

- (a) the original award or a copy thereof duly authenticated in the manner required by the law of the country in which it was made;
- (b) evidence proving that the award has become final; and
- (c) such evidence as may be necessary to prove that the conditions mentioned in clause (a) and (c) of sub-section(1) of section 57 are satisfied.

(20) Where any document requiring to be proceeded under sub-section (1) is in a foreign language, the party seeking to enforce the award shall produce a translation into English certified as correct by a diplomatic or consular agent of the country to which that party belongs or certified as correct to such other manner as may be sufficient according to the law in force in India.

Explanation- In this section and all the following sections of this Chapter, 'Court' means the principal Civil Court of original jurisdiction in a district, and includes the High Court in exercise of its ordinary original civil jurisdiction, having jurisdiction over the subject-matter of the award if the same had been the subject-matter of a suit, but does not include any civil court of a grade inferior to such principal Civil Court, or any Court of Small Causes.

57. Conditions for enforcement of foreign awards

(1) In order that a foreign award may be enforceable under this Chapter, it shall be necessary that-

(a) the award has been made in pursuance of a submission to the arbitration which is valid under the law applicable thereto;

(b) the subject-matter of the award is capable of settlement by arbitration under the law of India;

(c) 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) 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 or appeal or if it is proved that any proceedings for the purpose of contesting the validity of the award are pending;

(e) the enforcement of the award is not contrary to the public policy or the law of India.

Explanation- Without prejudice to the generality of clause (e), it is hereby declared, for the avoidance of any doubt, that an award is in conflict with the public policy of India if the making of the award was induced or affected by fraud or corruption.

(2) Even if the conditions laid down in sub-section (1) are fulfilled, enforcement of the award shall be refused if the Court is satisfied that-

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

(b) 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) 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; Provided that if the award has not covered all the differences submitted to the arbitration tribunal, the Court may, if it thinks fit, postpone such enforcement or grant it subject to such guarantee as the Court may decide.

(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 clause (a) and (c) of sub-clause (1)

and clause (b) and (c) of sub-section (2) entitling him to contest the validity of the award, the Court may, if it thinks fit, either refused 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.

58. Enforcement of foreign awards

Where the Court is satisfied that the foreign award is enforceable under this Chapter, the award shall be deemed to be a decree of the Court.

59. Appealable orders

(1) An appeal shall lie from the order refusing-

- (a) to refer the parties to arbitration under section 54; and
- (b) to enforce a foreign award under section 57,

to the Court authorised by law to hear appeals from such order.

(2) No second appeal shall lie from an order passed in appeal under this section, but nothing in this section shall affect or take away any right to appeal to the Supreme Court.

60. Saving

Nothing in this Chapter shall prejudice any rights which any person would have had of enforcing in India of any award or of availing himself in India of any award if this Chapter had not been enacted.

PART III CONCILIATION

61. Application and scope

(1) Save as otherwise provided by any law for the time being in force and unless the parties have otherwise agreed, this Part shall apply to conciliation of disputes arising out of legal relationship, whether contractual or not and to all proceedings relating thereto.

(2) This Part shall not apply where by virtue of any law for the time being in force certain disputes may not be submitted to conciliation.

62. Commencement of conciliation proceedings

(1) The party initiating conciliation shall send to the other party a written invitation to conciliate under this Part, briefly identifying the subject of the dispute.

(2) Conciliation proceedings shall commence when the other party accepts in writing the invitation to conciliate.

(3) If the other party rejects the invitation, there will be no conciliation proceedings.

(4) If the party initiating conciliation does not receive a reply within thirty days from the date on which he sends the invitation, or within such other period of time as specified in the invitation, he may elect to treat this as a rejection of the invitation to conciliate and if he so elects, he shall inform in writing the other party accordingly.

63. Number of conciliators

(1) There shall be one conciliator unless the parties agree that there shall be two or three conciliators.

(2) Where there is more than one conciliator, they ought, as a general rule, to act jointly.

64. Appointment of conciliators

(1) Subject to sub-section (2),-

(a) in conciliation proceedings with one conciliator, the parties may agreed on the name of a sole conciliator;

(b) in conciliation proceedings with two conciliators, each party may appoint one conciliator;

(c) in conciliation proceedings with three conciliators, each party may appoint one conciliator and the parties may agree on the name of the third conciliator who shall act as the presiding conciliator.

(2) Parties may enlist the assistance of suitable institution or person in connection with the appointment of conciliators, and in particular-

(a) a party may request such an institution or person to recommend the names of suitable individuals to act as conciliator; or

(b) the parties may agree that the appointment of one or more conciliators be made directly by such an institution or person;

Provided that in recommending or appointing individuals to act as conciliator, the institution or person shall have regard to such considerations as are likely to secure the appointment of an independent and impartial conciliator and, with respect to a sole or third conciliator,

shall take into account the advisability of appointing a conciliator or a nationality, other than the nationalities of the parities.

65. Submission of statements to conciliator

(1) The conciliator, upon his appointment, may request each party to submit to him a brief written statement describing the general nature of the dispute and the points at issue. Each party shall send a copy of such statement to the other party.

(2) The conciliator may request each party to submit to him a further written statement of his position and the facts and grounds in support thereof, supplemented by any documents and other evidence that such party deems appropriate. The party shall send a copy of such statement, documents and other evidence to the other party.

(3) At any stage of the conciliation proceedings, the conciliator may request a party to submit to him such additional information as he deems appropriate.

Explanation- In this section and all the following sections of this Part, the term 'conciliator' applies to sole conciliator, two or three conciliators as the case may be.

66. Conciliator not bound by certain enactments

The conciliator is not bound by the Code of Civil Procedure, 1908(5 of 1908), or the Indian Evidence Act, 1872 (1 of 1872).

67. Role of conciliator

(1) The conciliator shall assist the parties in an independent and impartial manner in their attempt to reach an amicable settlement of their dispute.

(2) The conciliator shall be guided by principles of objectivity, fairness and justice, giving consideration to, among other things, the rights and obligations of the parties, the usages of the trade concerned and the circumstances surrounding the dispute, including any previous business practices between the parties.

(3) The conciliator may conduct the conciliation proceedings in such a manner as he considers appropriate, taking into account the circumstances of the case, the wishes the parties may express, including

any request by a party that the conciliator hear oral statements, and the need for a speedy settlement of the dispute.

(4) The conciliator may, at any stage of the conciliation proceedings, make proposals for a settlement of the dispute. Such proposals need not be in writing and need not be accompanied by a statement of the reasons therefor.

68. Administrative assistance

In order to facilitate the conduct of the conciliation proceedings, the parties, or the conciliator with the consent of the parties, may arrange for administrative assistance by a suitable institution or person.

69. Communication between conciliator and parties

(1) The conciliator may invite the parties to meet him or may communicate with the parties together or with each of them separately.

(2) Unless the parties have agreed upon the place where meetings with the conciliator are to be held, such place shall be determined by the conciliator, after consultation with the parties, having regard to the circumstances of the conciliation proceedings.

70. Disclosure of information

Where the conciliator receives the factual information concerning the disputes from a party, he shall disclose the substance of that information to the other party in order that the other party may have the opportunity to present any explanation which he considers appropriate;

Provided that when a party gives any information to the conciliator, subject to a specific condition that it be kept confidential, the conciliator shall not disclose that information to the other party.

71. Co-operation of parties with conciliator

The parties shall in good faith co-operate with the conciliator and, in particular, shall endeavour to comply with requests by the conciliator to submit written materials, provide evidence and attend meetings.

72. Suggestions by parties for settlement of dispute

Each party may, on his own initiative or at the initiation of the conciliator, submit to the conciliator suggestions for the settlement of the dispute.

73. Settlement agreement

(1) When it appears to the conciliator that there exist elements of settlement which may be acceptable to the parties, he shall formulate

the terms of a possible settlement and submit them to the parties for their observations. After receiving the observations of the parties, the conciliator may reformulate the terms of a possible settlement in the light of such observations.

(2) If the parties reach agreement on a settlement of the dispute, they may draw upon and sign a written settlement agreement. If requested by the parties, the conciliator may draw up, or assist the parties in drawing up, the settlement agreement.

(3) When the parties sign the settlement agreement, it shall be final and binding on the parties and person claiming under them respectively.

(4) The conciliator shall authenticate the settlement agreement and furnish a copy thereof to each of the parties.

74. Status and effect of settlement agreement

The settlement agreement shall have the same status and effect as if it is an arbitral award on agreed terms on the substance of the dispute rendered by an arbitral tribunal under section 30.

75. Confidentiality

Notwithstanding anything contained in any other law for the time being in force, the conciliator and the parties shall keep confidential all matters relating to the conciliation proceedings. Confidentiality shall extend also to the settlement agreement, except where its disclosure is necessary for purposes of implementation and enforcement.

76. Termination of conciliation proceedings

The conciliation proceedings shall be terminated:-

(a) by the signing of the settlement agreement by the parties, on the date of the agreement; or

(b) by a written declaration of the conciliator, after consultation with the parties, to the effect that further effects at conciliation are no longer justified, on the date of the declaration; or

(c) by a written declaration of the parties addressed to the conciliator to the effect that the conciliation proceedings are terminated, on the date of the declaration; or

(d) by a written declaration of a party to the other party and the conciliator, if appointed, to the effect that the conciliation proceedings are terminated, on the date of the declaration.

77. Resort to arbitral or judicial proceedings

The parties shall not initiate, during the conciliation proceedings, any arbitral or judicial proceedings in respect of a dispute that is the subject-matter of the conciliation proceedings except that a party may initiate

arbitral or judicial proceedings where, in his opinion, such proceedings are necessary for preserving his rights.

78. Costs

(1) Upon termination of the conciliation proceedings, the conciliator shall fix the costs of the conciliation and give written notice thereof to the parties.

(2) For the purpose of sub-section(1), 'costs' means reasonable costs relating to-

(a) the fee and expenses of the conciliator and witnesses requested by the conciliator with the consent of the parties;

(b) any expert advice requested by the conciliator with the consent of the parties;

(c) any assistance provided pursuant to clause (b) of sub-section (2) of section 64 and section 68;

(d) any other expenses incurred in connection with the conciliation proceedings and the settlement agreement.

(3) The costs shall be born equally by the parities unless the settlement agreement provides for a different apportionment. All other expenses incurred by a party shall be borne by that party.

79. Deposits

(1) The conciliator may direct each party to deposit an equal amount as an advance for the costs referred to in sub-section (20) of section 78 which he expects will be incurred.

(2) During the course of the conciliation proceedings, the conciliator may direct supplementary deposits in an equal amount from each party.

(3) If the required deposits under sub-section (1), (2) are not paid in full by both parties within thirty days, the conciliator may suspend that proceedings or may make a written declaration of termination of the proceedings to the parties, effective on the date of that declaration.

(4) Upon termination of the conciliation proceedings, the conciliator shall render an accounting to the parties of the deposits received and shall return any unexpended balance to the parties.

80. Role of conciliator in other proceedings

Unless otherwise agreed by the parties,-

- (a) the conciliator shall not act as an arbitrator or as a representative or counsel of a party in any arbitral or judicial proceeding in respect of a dispute that is the subject of the conciliation proceedings;
- (b) the conciliator shall not be presented by the parties as a witness in any arbitral or judicial proceedings.

81. Admissibility of evidence in other proceedings

The parties shall not rely on or introduce as evidence in arbitral or judicial proceedings, whether or not such proceedings relate to the dispute that is the subject of the conciliation proceedings,-

- (a) views expressed or suggestions made by the other party in respect of a possible settlement of the dispute;
- (b) admission made by the other party in the course of the conciliation proceedings;
- (c) proposals made by the conciliator;
- (d) the fact that the other party had indicated his willingness to accept a proposal for settlement made by the conciliator.

PART IV

SUPPLEMENTARY PROVISIONS

82. Power of High Court to make rules

The High Court may make rules consistent with this Act as to all proceedings before the Court under this Act.

83. Removal of difficulties

(1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order published in the Official Gazette, make such provisions, not inconsistent with the provisions of this Act as appear to it to be necessary or expedient for removing the difficulty;

Provided that no such order shall be made after the expiry of a period of two years from the date of commencement of this Act.

(2) Every order made under this section shall, as soon as may be after it is made, be laid before each House of Parliament.

84. Power of make rules

(1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the provisions of this Act.

(2) Every rule made by the Central Government under this Act shall be laid, as soon as may be, after it is made before each House of Parliament while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session aforesaid, both Houses agree in

making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or the modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

85. Repeal and savings

(1) The Arbitration (Protocol and Convention) Act, 1937 (6 of 1937); the Arbitration Act, 1940 (10 of 1940), and the Foreign Awards (Recognition and Enforcement) Act 1961 (45 of 1961), are hereby repealed.

(2) Notwithstanding such repeal-

(a) the provisions of the said enactments shall apply in relation to arbitral proceedings which commence before this Act came into force unless otherwise agreed by the parties but this Act shall apply in relation to arbitral proceedings which commence on or after this Act comes into force;

(b) all rules made and notifications published, under the said enactments shall to the extent to which they are not repugnant to this Act, be deemed respectively to have been made or issued under this Act.

86. Repeal and saving

(1) The Arbitration and Conciliation (Third) Ordinance, 1996 (Ord. 27 of 1996), is hereby repealed.

(2) Notwithstanding such repeal any order, rule, notification or scheme made or anything done or any action taken in pursuance of any provision of the said Ordinance shall be deemed to have been made, done or taken under the corresponding provisions of this Act.

THE FIRST SCHEDULE

(See Section 44)

CONVENTION ON THE RECOGNITION AND ENFORCEMENT OF FOREIGN ARBITRAL AWARDS

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 and 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 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 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 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 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 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 the 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 cases; or

(c) the award deals with a difference not contemplated by or not falling within the terms of submission to arbitration, or it contains decisions on matters submitted to arbitration may be recognised 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 Conventions.

ARTICLE VIII

1. This Convention shall be open until 21st December, 1958, for the signature on behalf of any Member of the United Nations and also on behalf of any other State which is or hereafter becomes member of any specialised agency of the United Nations, or which is or hereafter 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 from 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 Governments of such territories.

ARTICLE XI

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

(a) with respect of 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 provisions 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 ratification in accordance with article VIII;
- (b) accessions in accordance with article IX;
- (c) declaration and notification 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 XIII.

ARTICLE XVI

1. This Convention, of which 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 State contemplated in Article XIII.

THE SECOND SCHEDULE

(See Section 53)

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 States 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 person 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 decision of the Arbitrators.

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

5. The present Protocol, which shall remain open for signature by all States, shall be ratified. The ratification 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 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 information 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 of all of the undermentioned territories; that is to say, their colonies, overseas possessions or 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.

THE THIRD SCHEDULE

(See Section 53)

CONVENTION ON THE EXECUTION OF FOREIGN ARBITRAL AWARDS

Article 1-(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 September 24th, 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 High Contracting Parties.

(2) 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, appeal 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 be used 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 thinks 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 relief upon may be demanded. Such translations 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 applied 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.

Ratification 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 notifications, 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 anyone 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, applied, 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 applied 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.