

**Jersey Law 29/1998**

**ARBITRATION (JERSEY) LAW 1998**

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**ARBITRATION (JERSEY) LAW 1998**

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**A LAW** to make further provision with respect to arbitration; to give effect to the New York Convention on the recognition and enforcement of foreign arbitral awards; and for connected purposes; sanctioned by Order of Her Majesty in Council of the

**21st day of OCTOBER 1998**

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*(Registered on the 20th day of November 1998)*

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**STATES OF JERSEY**

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The 23rd day of September 1997

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**THE STATES**, subject to the sanction of Her Most Excellent Majesty in Council, have adopted the following Law –

*PART I*

INTERPRETATION

ARTICLE 1

**Interpretation**

(1) In this Law, unless the context otherwise requires –

“arbitration agreement” means, except as provided in paragraph (2), a written agreement to submit present or future differences to arbitration, whether an arbitrator is mentioned therein or not;

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“Convention award” means, except as provided in paragraph (2), an award made in pursuance of an arbitration agreement in the territory of a State which is a party to the New York Convention;

“the Court” means the Royal Court;

“foreign award” means an award to which Part III applies;

“the Geneva Convention” means the Convention on the Execution of Foreign Arbitral Awards signed at Geneva on behalf of His late Majesty King George V on 26th September 1927, the text of which is set out in the Second Schedule;

“the New York Convention” means the Convention on the Recognition and Enforcement of Foreign Arbitral Awards adopted by the United Nations Conference on International Commercial Arbitration on 10th June 1958, the text of which is set out in the Third Schedule;

“the Protocol” means the Protocol on Arbitration Clauses signed on behalf of His late Majesty King George V at a Meeting of the Assembly of the League of Nations held on 24th September 1923, the text of which is set out in the First Schedule.

(2) In –

(a) the definition of “Convention award” in paragraph (1) of this Article; and

(b) Article 6,

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

(3) A reference in this Law to an Article, Part or Schedule by number only, and without further identification, is a reference to the Article, Part or Schedule of that number in this Law.

(4) A reference in an Article or other division of this Law to a paragraph, sub-paragraph or clause by number or letter only, and without further identification, is a reference to the paragraph, sub-paragraph or clause of that number or letter contained in the Article or other division of this Law in which the reference occurs.

(5) Unless the context otherwise requires, a reference in this Law to an enactment, including an enactment of the United Kingdom, is a reference to that enactment as amended from time to time, and includes a reference to that enactment as extended or applied by or under another enactment, including any other provision of that enactment.

## *PART II*

### ARBITRATION WITHIN THE ISLAND

#### ARTICLE 2

##### **Authority of arbitrators and umpires to be irrevocable**

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

#### ARTICLE 3

##### **Death of party**

(1) An arbitration agreement shall not be discharged by the death of any party thereto, either as respects the deceased or any other party, but shall in such an event be enforceable by or against the executor or administrator of the deceased or, in the case of immovable property, the heir or devisee.

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

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

#### ARTICLE 4

##### **Bankruptcy**

(1) Where it is provided by a term in a contract to which a person who has become bankrupt is a party that any differences arising thereout or in connection therewith shall be referred to arbitration, the said term shall, if the Viscount or other person acting on behalf of the creditors seeks the performance of the contract, be enforceable by or against him so far as relates to any such differences.

(2) Where a person who has become bankrupt had, before the commencement of the bankruptcy, become a party to an arbitration agreement, and any matter to which the agreement applies requires to be determined in connection with or for the purposes of the bankruptcy proceedings, then, if the case is one to which paragraph (1) does not apply, the Viscount or other person acting on behalf of the creditors, or any other party to the agreement, may apply to the Court for an order directing that the matter in question shall be referred to arbitration in accordance with the agreement, and the Court 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.

#### ARTICLE 5

##### **Discretionary stay of court proceedings where party proves arbitration agreement**

Subject to Article 6, if any party to an arbitration agreement, or any person claiming through or under him, commences any legal proceedings in any court against any other party to the agreement, or any person claiming through or under him, in respect of any matter agreed to

be referred, any party to those legal proceedings may at any time before the expiration of a period of three weeks from the date on which the action was placed on the pending list or en preuve apply to the court to stay the proceedings; and the court, if satisfied that there is no sufficient reason why the matter should not be referred in accordance with the agreement, and that the applicant was, at the time when the proceedings were commenced, and still remains, ready and willing to do all things necessary to the proper conduct of the arbitration, may make an order staying the proceedings.

## ARTICLE 6

### **Mandatory stay of court proceedings where party proves arbitration agreement**

(1) If any party to an arbitration agreement to which this Article applies, or any person claiming through or under him, commences any legal proceedings in any court against any other party to the agreement, or any person claiming through or under him, in respect of any matter agreed to be referred, any party to those legal proceedings may at any time before the expiration of a period of three weeks from the date on which the action was placed on the pending list or en preuve apply to the court to stay the proceedings; and the court, unless satisfied that the arbitration agreement is null and void, inoperative or incapable of being performed or that there is not in fact any dispute between the parties with regard to the matter agreed to be referred, shall make an order staying the proceedings.

(2) Paragraph (1) –

- (a) does not apply in relation to a domestic arbitration agreement, but
- (b) applies in relation to other arbitration agreements, instead of Article 5.

(3) In this Article “domestic arbitration agreement” means an arbitration agreement which does not provide, expressly or by



implication, for arbitration in a jurisdiction other than the Island and to which neither –

- (a) an individual who is a national of, or habitually resident in, any jurisdiction other than the Island; nor
- (b) a body corporate which is incorporated in, or whose central management and control is exercised in, any jurisdiction other than the Island,

is a party at the time the proceedings are commenced.

#### ARTICLE 7

##### **When reference is to single arbitrator**

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

#### ARTICLE 8

##### **Power of parties in certain cases to supply vacancy**

(1) Subject to paragraph (2), where an arbitration agreement provides that the reference shall be to two arbitrators, one to be appointed by each party, then, unless a contrary intention is expressed therein –

- (a) if either of the appointed arbitrators refuses to act, or is incapable of acting, or dies, the party who appointed him may appoint a new arbitrator in his place; and
- (b) if, on such a reference, one party fails to appoint an arbitrator, either originally or by way of substitution as aforesaid, for seven clear days after the other party, having appointed his arbitrator, has served the party making default with notice to make the appointment, the party who

has appointed an arbitrator may appoint that arbitrator to act as sole arbitrator in the reference, and his award shall be binding on both parties as if he had been appointed by consent.

(2) The Court may set aside any appointment made in pursuance of this Article.

## ARTICLE 9

### **Umpires**

(1) Unless a contrary intention is expressed therein, every arbitration agreement shall, where the reference is to two arbitrators, be deemed to include a provision that the two arbitrators may appoint an umpire at any time after they are themselves appointed and shall do so forthwith if they cannot agree.

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

(3) At any time after the appointment of an umpire, however appointed, the Court may, on the application of any party to the reference and notwithstanding anything to the contrary in the arbitration agreement, order that the umpire shall enter upon the reference in lieu of the arbitrators and as if he were a sole arbitrator and shall do so forthwith if they cannot agree.

## ARTICLE 10

### **Majority award of three arbitrators**

Unless the contrary intention is expressed in the arbitration agreement, in any case where there is a reference to three arbitrators, the award of any two of the arbitrators shall be binding and in the event that

no two of the arbitrators agree the award, the award of the arbitrator appointed to be chairman shall be binding.

## ARTICLE 11

### **Power of Court in certain cases to appoint arbitrator or umpire**

- (1) In any of the following cases, namely –
  - (a) where an arbitration agreement provides that the reference shall be to a single arbitrator, and all the parties do not, after differences have arisen, concur in the appointment of an arbitrator;
  - (b) if an appointed arbitrator refuses to act, or is incapable of acting, or dies, and the arbitration agreement does not show that it was intended that the vacancy should not be supplied and the parties do not supply the vacancy;
  - (c) where the parties or two arbitrators are required or are at liberty to appoint an umpire or third arbitrator and do not appoint him; and
  - (d) where an appointed umpire or third arbitrator refuses to act, or is incapable of acting, or dies, and the arbitration agreement does not show that it was intended that the vacancy should not be supplied, and the parties or arbitrators do not supply the vacancy,

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

- (2) In any case where –

- (a) an arbitration agreement provides for the appointment of an arbitrator or umpire by a person who is neither one of the parties nor an existing arbitrator (whether the provision applies directly or in default of agreement by the parties or otherwise); and
- (b) that person refuses to make the appointment or does not make it within the time specified in the agreement or, if no time is so specified, within a reasonable time,

any party to the agreement may serve the person in question with a written notice to appoint an arbitrator or umpire and, if the appointment is not made within seven clear days after the service of the notice, the Court may, on the application of the party who gave the notice, appoint an arbitrator or umpire who shall have the like powers to act in the reference and make an award as if he had been appointed in accordance with the terms of the agreement.

## ARTICLE 12

### **Conduct of proceedings, witnesses, etc**

(1) Unless a contrary intention is expressed therein, every arbitration agreement shall, where such a provision is applicable to the reference, be deemed to contain a provision that the parties to the reference, and all persons claiming through them respectively, shall, subject to any legal objection, submit to be examined by the arbitrator or umpire, on oath or solemn affirmation, in relation to the matters in dispute, and shall, subject as aforesaid, produce before the arbitrator or umpire all documents within their possession or power respectively which may be required or called for, and do all other things which during the proceedings on the reference the arbitrator or umpire may require.

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

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

(4) Any party to a reference under an arbitration agreement may cause a summons to be served on any person, in the same manner as a summons may be served upon any person in respect of a civil action before the Court, summoning that person to attend before the arbitrator or umpire for the purpose of giving evidence or producing any document likely to assist the arbitrator or umpire in determining the question in dispute; and a person so summoned shall be under a like obligation as to the giving of any evidence and the production of any document as if he were so summoned in respect of such an action.

(5) The Court shall have, for the purpose of and in relation to a reference under an arbitration agreement, the same power of making orders in respect of –

- (a) the issue of a commission or request for the examination of a witness out of the Island; and
- (b) matters of procedure and other matters incidental to the reference,

as it has for the purpose of and in relation to a civil action before the Court:

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

## ARTICLE 13

### **Time for making award**

(1) Subject to the provisions of paragraph (2) of Article 26, and anything to the contrary in the arbitration agreement, an arbitrator or umpire shall have power to make an award at any time.

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

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

(4) For the purposes of paragraph (3) the expression “proceeding with a reference” includes, in a case where two arbitrators are unable to agree, giving notice of that fact to the parties and to the umpire.

#### ARTICLE 14

##### **Interim awards**

Unless a contrary intention is expressed therein, every arbitration agreement shall, where such a provision is applicable to the reference, be deemed to contain a provision that the arbitrator or umpire may, if he thinks fit, make an interim award, and any reference in this Part to an award includes a reference to an interim award.

#### ARTICLE 15

##### **Specific performance**

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

## ARTICLE 16

**Awards to be final**

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

## ARTICLE 17

**Power to correct slips**

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

## ARTICLE 18

**Costs**

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

(2) For the purposes of Article 19, costs taxed or settled pursuant to paragraph (1) shall be deemed to form part of the award.

(3) Subject to paragraph (4), any provision in an arbitration agreement to the effect that the parties or any party thereto shall in any event pay their or his own costs of the reference or award or any part thereof shall be void, and this Part shall, in the case of an arbitration agreement containing any such provision, have effect as if that provision were not contained therein.

(4) Nothing in paragraph (3) shall invalidate such a provision when it is a part of an agreement to submit to arbitration a dispute which has arisen before the making of that agreement.

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

## ARTICLE 19

### **Taxation of arbitrator's or umpire's fees**

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

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

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



## ARTICLE 20

**Power of arbitrator to award interest**

(1) Unless a contrary intention is expressed therein, every arbitration agreement shall, where such a provision is applicable to the reference, be deemed to contain a provision that the arbitrator or umpire may, if he thinks fit, award simple interest at such rate as he thinks fit –

- (a) on any sum which is the subject of the reference but which is paid before the award, for such period ending not later than the date of the payment as he thinks fit; and
- (b) on any sum which he awards, for such period ending not later than the date of the award as he thinks fit.

(2) The power to award interest conferred on an arbitrator or umpire by paragraph (1) is without prejudice to any other power of an arbitrator or umpire to award interest.

## ARTICLE 21

**Interest on awards**

A sum directed to be paid by an award shall, unless the award otherwise directs, carry simple interest at such rate as the arbitrator or umpire thinks fit for the whole or any part of the period from the date of the award until such later date, not being a date later than the date on which the award is satisfied, as the arbitrator or umpire shall think fit and payment of such interest shall be enforceable by the Viscount as if it is a judgment debt without the necessity for any further action or proceedings by the party to whom the award is made.

## ARTICLE 22

**Judicial review of arbitration awards**

(1) Without prejudice to the right of appeal conferred by paragraph (2), the Court shall not have jurisdiction to set aside or remit

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an award on an arbitration agreement on the ground of errors of fact or law on the face of the award.

(2) Subject to paragraph (3), an appeal shall lie to the Court on any question of law arising out of an award made on an arbitration agreement; and on the determination of such an appeal the Court may –

- (a) confirm, vary or set aside the award; or
- (b) remit the award to the reconsideration of the arbitrator or umpire together with the Court's opinion on the question of law which was the subject of the appeal,

and where the award is remitted under sub-paragraph (b) the arbitrator or umpire shall, unless the order otherwise directs, make his award within three months after the date of the order.

(3) An appeal under this Article may be brought by any of the parties to the reference –

- (a) with the consent of all the other parties to the reference; or
- (b) subject to Article 24, with the leave of the Court.

(4) The Court shall not grant leave under sub-paragraph (b) of paragraph (3) unless it considers that, having regard to all the circumstances, the determination of the question of law concerned could substantially affect the rights of one or more of the parties to the arbitration agreement; and the Court may make any leave which it grants conditional upon the applicant complying with such conditions as it considers appropriate.

(5) Subject to paragraph (6), if an award is made and, on an application made by any of the parties to the reference –

- (a) with the consent of all the other parties to the reference; or
- (b) subject to Article 24, with the leave of the Court,

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it appears to the Court that the award does not or does not sufficiently set out the reasons for the award, the Court may order the arbitrator or umpire concerned to state the reasons for his award in sufficient detail to enable the Court, should an appeal be brought under this Article, to consider any question of law arising out of the award.

(6) In any case where an award is made without any reason being given, the Court shall not make an order under paragraph (5) unless it is satisfied –

- (a) that before the award was made one of the parties to the reference gave notice to the arbitrator or umpire concerned that a reasoned award would be required; or
- (b) that there is some special reason why such a notice was not given.

(7) No appeal shall lie to the Court of Appeal from a decision of the Court on an appeal under this Article unless –

- (a) the Court or the Court of Appeal grants leave; and
- (b) it is certified by the Court that the question of law to which its decision relates either is one of general public importance or is one which for some other special reason should be considered by the Court of Appeal.

(8) Where the award of an arbitrator or umpire is varied on appeal, the award as varied shall have effect (except for the purposes of this Article) as if it were the award of the arbitrator or umpire.

(9) Any appeal under the provisions of paragraph (2) shall be made to the Court within one month from the date of the publication to the parties of the award:

Provided that the Court may extend the period prescribed under this paragraph for making an appeal upon application being made to the Court before the expiration of that period.

## ARTICLE 23

**Determination of preliminary point of law by Court**

(1) Subject to paragraph (2) and Article 24, on an application to the Court made by any of the parties to a reference –

- (a) with the consent of an arbitrator who has entered on the reference or, if an umpire has entered on the reference, with his consent; or
- (b) with the consent of all the other parties,

the Court shall have jurisdiction to determine any question of law arising in the course of the reference.

(2) The Court shall not entertain an application under sub-paragraph (a) of paragraph (1) with respect to any question of law unless it is satisfied that –

- (a) the determination of the application might produce substantial savings in costs to the parties; and
- (b) the question of law is one in respect of which leave to appeal would be likely to be granted under sub-paragraph (b) of paragraph (3) of Article 22.

(3) No appeal shall lie from such a decision unless –

- (a) the Court or the Court of Appeal grants leave; and
- (b) it is certified by the Court that the question of law to which its decision relates either is one of general public importance or is one which for some other special reason should be considered by the Court of Appeal.

## ARTICLE 24

**Exclusion agreements affecting rights under Articles 22 and 23**

- (1) Subject to the following provisions of this Article –
  - (a) the Court shall not, under sub-paragraph (b) of paragraph (3) of Article 22, grant leave to appeal with respect to a question of law arising out of an award;
  - (b) the Court shall not, under sub-paragraph (b) of paragraph (5) of Article 22, grant leave to make an application with respect to an award; and
  - (c) no application may be made under sub-paragraph (a) of paragraph (1) of Article 23 with respect to a question of law,

if the parties to the reference in question have entered into an agreement in writing (in this Article referred to as an “exclusion agreement”) which excludes the right of appeal under Article 22 in relation to that award or, in a case falling within sub-paragraph (c), in relation to an award to which the determination of the question of law is material.

(2) If the parties to an exclusion agreement subsequently enter into an agreement in writing to revoke the exclusion agreement, the provisions of paragraph (1) shall cease to apply to the reference or references in question until such time as a further exclusion agreement is entered into by the parties.

(3) An exclusion agreement may be expressed so as to relate to a particular award, to awards under a particular reference or to any other description of awards, whether arising out of the same reference or not; and an agreement may be an exclusion agreement for the purposes of this Article whether it is entered into before or after the passing of this Law and whether or not it forms part of an arbitration agreement.

- (4) In any case where –

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- (a) an arbitration agreement, other than a domestic arbitration agreement, provides for disputes between the parties to be referred to arbitration;
- (b) a dispute to which the agreement relates involves the question whether a party has been guilty of fraud; and
- (c) the parties have entered into an exclusion agreement which is applicable to any award made on the reference of that dispute,

the Court, except insofar as the exclusion agreement otherwise provides, shall not exercise its powers under paragraph (2) of Article 28 in relation to that dispute.

(5) Except as provided by paragraph (1), Articles 22 and 23 shall have effect notwithstanding anything in any agreement purporting –

- (a) to prohibit or restrict access to the Court;
- (b) to restrict the jurisdiction of the Court; or
- (c) to prohibit or restrict the making of a reasoned award.

(6) An exclusion agreement shall be of no effect in relation to an award made on, or a question of law arising in the course of a reference under, an arbitration agreement which is a domestic arbitration agreement unless the exclusion agreement is entered into after the commencement of the arbitration in which the award is made or, as the case may be, in which the question of law arises.

(7) In this Article “domestic arbitration agreement” means an arbitration agreement which does not provide, expressly or by implication, for arbitration in a jurisdiction other than the Island and to which neither –

- (a) an individual who is a national of, or habitually resident in, any jurisdiction other than the Island; nor

- (b) a body corporate which is incorporated in, or whose central management and control is exercised in, any jurisdiction other than the Island,

is a party at the time the arbitration agreement is entered into.

## ARTICLE 25

### **Interlocutory orders**

(1) If any party to a reference under an arbitration agreement fails within the time specified in the order or, if no time is so specified, within a reasonable time to comply with an order made by the arbitrator or umpire in the course of the reference, then, on the application of the arbitrator or umpire or of any party to the reference, the Court may make an order extending the powers of the arbitrator or umpire as mentioned in paragraph (2).

(2) If an order is made by the Court under this Article, the arbitrator or umpire shall have power, to the extent and subject to any conditions specified in that order, to continue with the reference in default of appearance or of any other act by one of the parties in like manner as the Court might continue with proceedings in the Court where a party fails to comply with an order of the Court or a requirement of rules of court.

(3) The preceding provisions of this Article shall have effect notwithstanding anything in any agreement but shall not derogate from any powers conferred on an arbitrator or umpire, whether by an arbitration agreement or otherwise.

## ARTICLE 26

### **Power to remit award**

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

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

(3) An application to the Court to remit an award under paragraph (1) may be made at any time within one month after the award has been made and published to the parties.

#### ARTICLE 27

##### **Removal of arbitrator and setting aside of award**

(1) Where an arbitrator or umpire has misconducted himself or the proceedings, the Court may remove him.

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

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

(4) Any money ordered to be paid into court under paragraph (3) shall be paid to the Judicial Greffier.

(5) An application to the Court to set aside an award under paragraph (2) may be made at any time within one month after the award has been made and published to the parties.

#### ARTICLE 28

##### **Power of Court to give relief where arbitrator is not impartial or dispute involves question of fraud**

(1) Where an agreement between any parties provides that disputes which may arise in the future between them shall be referred to an arbitrator named or designated in the agreement, and after a dispute



has arisen any party applies, on the ground that the arbitrator so named or designated is not or may not be impartial, for leave to revoke the authority of the arbitrator or for an order to restrain any other party or the arbitrator from proceeding with the arbitration, it shall not be a ground for refusing the application that the said party at the time when he made the agreement knew, or ought to have known, that the arbitrator, by reason of his relation towards any other party to the agreement or of his connection with the subject referred, might not be capable of impartiality.

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

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

## ARTICLE 29

### **Power of Court where arbitrator is removed or authority of arbitrator is revoked**

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

(2) Where the authority of an arbitrator or arbitrators or umpire is revoked by leave of the Court, or a sole arbitrator or all the arbitrators or an umpire who has entered on the reference is or are

removed by the Court, the Court may, on the application of any party to the arbitration agreement, either –

- (a) appoint a person to act as sole arbitrator in place of the person or persons removed; or
- (b) order that the arbitration agreement shall cease to have effect with respect to the dispute referred.

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

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

## ARTICLE 30

### **Enforcement of award**

An award on an arbitration agreement may, by leave of the Court on an application made *ex parte*, be enforced in the same manner as a judgment or order to the same effect; and, where leave is so granted, the act of court shall specify the manner of enforcement.

## ARTICLE 31

**Power of Court to extend time for commencing arbitration proceedings**

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

## ARTICLE 32

**Delay in prosecuting claims**

(1) In every arbitration agreement, unless the contrary be expressly provided therein, there is an implied term that in the event of a difference arising which is capable of a settlement by arbitration it shall be the duty of the claimant to exercise due diligence in the prosecution of his claim.

(2) Where there has been undue delay by a claimant in instituting or prosecuting his claim pursuant to an arbitration agreement, then, on the application of the arbitrator or umpire or of any party to the arbitration proceedings, the Court may make an order terminating the arbitration proceedings and prohibiting the claimant from commencing further arbitration proceedings in respect of any matter which was the subject of the terminated proceedings.

(3) The Court shall not make an order under paragraph (2) unless it is satisfied that –

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- (a) the delay has been intentional; or
- (b) there has been inordinate and inexcusable delay on the part of the claimant or his advisers which –
  - (i) gives rise to a substantial risk that it is not possible to have a fair trial of the issues in the arbitration proceedings; or
  - (ii) is likely to cause or to have caused serious prejudice to the other party or parties to the arbitration proceedings or any of them, either as between the other party or parties and the claimant or between the other party or parties and a third party or between the other parties themselves.

(4) No appeal shall lie to the Court of Appeal from a decision of the Court under paragraph (2) unless the Court or the Court of Appeal grants leave, in which event the Court of Appeal shall have jurisdiction to consider the appeal.

ARTICLE 33

**Terms as to costs, etc**

Any order made under this Part may be made on such terms as to costs or otherwise as the authority making the order thinks just.

ARTICLE 34

**Prescription of actions**

(1) Subject to the provisions of this Article, the rules of customary and statutory law relating to the prescription of actions shall apply to arbitrations as they apply to civil actions before the Court.

(2) No rule of customary or statutory law relating to the prescription of actions nor the provisions of paragraph (3) shall operate to prevent the bringing of an action to enforce an award on an arbitration

agreement where such action is brought within ten years after the award has been made and published to the parties.

(3) Subject to paragraph (2), notwithstanding any term in an arbitration agreement to the effect that no cause of action shall accrue in respect of any matter required by the agreement to be referred until an award is made under the agreement, the cause of action shall, for the purpose of this Article and of any such enactment as aforesaid, be deemed to have accrued in respect of any such matter at the time when it would have accrued but for that term in the agreement.

(4) For the purpose of this Article, an arbitration shall be deemed to be commenced when one party to the arbitration serves on any other party a notice requiring him to appoint an arbitrator or to agree to the appointment of an arbitrator, or, where the arbitration agreement provides that the reference shall be to a person named or designated in the agreement, requiring him to submit the dispute to the person so named or designated.

(5) Where the Court orders that an award be set aside or orders, after the commencement of an arbitration, that the arbitration shall cease to have effect with respect to the dispute referred, the period between the commencement of the arbitration and the date of the order of the Court shall, unless the Court otherwise orders, be excluded in computing the time prescribed by this Article or any such rule of customary or statutory law as aforesaid for the commencement of proceedings (including arbitration) with respect to the dispute referred.

## ARTICLE 35

### **Transitional – Part II**

This Part shall not affect any arbitration commenced, within the meaning of Article 34, before the commencement of this Law, but shall apply to an arbitration so commenced after the commencement of this Law under an agreement made before the commencement of this Law.

*PART III*ENFORCEMENT OF AWARDS UNDER PROTOCOL AND GENEVA  
CONVENTION

## ARTICLE 36

**Awards to which Part III applies**

(1) Subject to Article 42, this Part applies to any award made –

- (a) in pursuance of an agreement for arbitration to which the Protocol applies;
- (b) between persons of whom one is subject to the jurisdiction of some one of such Powers as Her Majesty may, by Order in Council, have declared to be parties to the Geneva Convention 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 Her Majesty may, by Order in Council, have declared to be territories to which the Geneva Convention applies.

(2) In this Article the expression “Order in Council” means an Order in Council which is in force and which –

- (a) has been made under section 35 of the Arbitration Act 1950 (14 Geo. 6 c.27); or
- (b) has effect, by virtue of section 35(3) thereof, as if it had been so made.

## ARTICLE 37

**Effect of foreign awards**

(1) A foreign award shall, subject to the provisions of this Part, be enforceable in the Island either by action or in the same manner as the award of an arbitrator is enforceable by virtue of Article 30.

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

## ARTICLE 38

**Conditions for enforcement of foreign awards**

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

- (a) been made in pursuance of an agreement for arbitration which was valid under the law by which it is governed;
- (b) been made by the tribunal provided for in the agreement or constituted in manner agreed upon by the parties;
- (c) been made in conformity with the law governing the arbitration procedure;
- (d) become final in the country in which it was made; and
- (e) been in respect of a matter which may lawfully be referred to arbitration under the law of the Island,

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

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(2) Subject to the provisions of this paragraph, a foreign award shall not be enforceable under this Part 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 enforce the award was not given notice of the arbitration proceedings in sufficient time to enable him to present his case, or was under some legal incapacity and was not properly represented; or
- (c) the award does not deal with all the questions referred or contains decisions on matters beyond the scope of the agreement for arbitration,

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

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

**ARTICLE 39****Evidence**

(1) The party seeking to enforce a foreign award must produce –



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- (a) the original award or a copy thereof duly authenticated in 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 award is a foreign award and that the conditions mentioned in sub-paragraphs (a), (b) and (c) of paragraph (1) of Article 38 are satisfied.

(2) In any case where any document required to be produced under paragraph (1) is in a foreign language, it shall be the duty of the party seeking to enforce the award to produce a translation thereof in the English language certified as correct by an official or sworn translator or 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 satisfactory to the Court.

ARTICLE 40

**Meaning of “final award”**

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

ARTICLE 41

**Saving for other rights, etc**

Nothing in this Part shall –

- (a) prejudice any rights which any person has of enforcing in the Island any award or of availing himself of any award to which the Arbitration (International Investment Disputes) (Jersey) Order 1979 applies;

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

#### *PART IV*

### ENFORCEMENT OF AWARDS UNDER NEW YORK CONVENTION

#### ARTICLE 42

#### **Replacement of Part III in certain cases**

This Part shall have effect with respect to the enforcement of Convention awards; and where a Convention award would, but for this Article, be also a foreign award within the meaning of Part III, that Part shall not apply to it.

#### ARTICLE 43

#### **Effect of Convention awards**

(1) A Convention award shall, subject to the following provisions of this Part, be enforceable in the Island either by action or in the same manner as the award of an arbitrator is enforceable by virtue of Article 30.

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

## ARTICLE 44

**Evidence**

The party seeking to enforce a Convention award must produce

- (a) the duly authenticated original award or a duly certified copy of it;
- (b) the original arbitration agreement or a duly certified copy of it; and
- (c) where the award or agreement is in a foreign language, a translation of it certified by an official or sworn translator or by a diplomatic or consular agent.

## ARTICLE 45

**Refusal of enforcement**

(1) Enforcement of a Convention award shall not be refused except in the cases mentioned in this Article.

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

- (a) that a party to the arbitration agreement was (under the law applicable to him) under some incapacity;
- (b) that the arbitration agreement was not valid under the law to which the parties subjected it or, failing any indication thereon, under the law of the country where the award was made;
- (c) that he was not given proper notice of the appointment of the arbitrator or of the arbitration proceedings or was otherwise unable to present his case;

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- (d) subject to paragraph (4), that the award deals with a difference not contemplated by, or not falling within the terms of, the submission to arbitration or contains decisions on matters beyond the scope of the submission to arbitration;
- (e) that the composition of the arbitral authority or the arbitral procedure was not in accordance with the agreement of the parties or, failing such agreement, with the law of the country where the arbitration took place; or
- (f) that the award has not yet become binding on the parties, or has been set aside or suspended by a competent authority of the country in which, or under the law of which, it was made.

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

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

(5) Where an application for the setting aside or suspension of a Convention award has been made to such a competent authority as is mentioned in sub-paragraph (f) of paragraph (2), the Court may, if it thinks fit, adjourn the proceedings and may, on the application of the party seeking to enforce the award, order the other party to give security.

## ARTICLE 46

### **Saving**

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

**PART V****SUPPLEMENTARY****ARTICLE 47****Rules of court**

The power of the Court to make rules of court under Article 11 of the Royal Court (Jersey) Law 1948<sup>1</sup> shall include power, from time to time, to make rules dealing generally with all matters of procedure and incidental matters arising under this Law.

**ARTICLE 48****Service of notices**

Any notice or other document required or authorised by or under this Law to be given to or served on any person shall be validly given or served if served in a manner provided –

- (a) by the arbitration agreement;
- (b) by the Royal Court Rules 1992<sup>2</sup>; or
- (c) in respect of the service within the Island of process in a civil or commercial matter, by the Service of Process and Taking of Evidence (Jersey) Law 1960<sup>3</sup>.

**ARTICLE 49****Transitional provisions**

Any proceedings under –

<sup>1</sup> Tome VII, page 502, Volume 1979–1981, page 195, Volume 1984–1985, page 175. Volume 1990–1991, pages 113 and 855, Volume 1992–1993, page 461, and Volume 1996–1997, pages 147 and 667.

<sup>2</sup> R & O Nos. 8509, 8565, 8573, 8683, 8713, 8777, 8800, 8824, 8875, 8970, 8971 and 8998.

<sup>3</sup> Tome VIII, page 843, and Volume 1984–1985, page 203.

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- (a) the Loi (1926) rendant applicable à cette Ile l'Acte de Parlement intitulé "Arbitration Clauses (Protocol) Act 1924"<sup>4</sup>; or
- (b) the Loi (1931) rendant applicable à cette Ile l'Acte de Parlement intitulé "Arbitration (Foreign Awards) Act 1930"<sup>5</sup>,

which have not been completed on the coming into force of this Law may be carried on and completed under Part III as if they had been instituted thereunder.

## ARTICLE 50

**Repeals**

The Laws set out in the Fourth Schedule are hereby repealed.

## ARTICLE 51

**Short title and commencement**

- (1) This Law may be cited as the Arbitration (Jersey) Law 1998.
- (2) This Law shall come into force on such day or days as the States may by Act appoint and different days may be appointed for different purposes or different provisions of the Law.

**C.M. NEWCOMBE**

*Deputy Greffier of the States.*

<sup>4</sup> Tomes IV–VI, page 590.

<sup>5</sup> Tome VII, page 33.

*FIRST SCHEDULE***(Article 1(1))****Protocol on Arbitration Clauses signed on behalf of His Majesty at a Meeting of the Assembly of the League of Nations held on 24th September 1923**

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

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

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

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

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

3. Each Contracting State undertakes to ensure the execution by its authorities and in accordance with the provisions of its

national laws of arbitral awards made in its own territory under the preceding articles.

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

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

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

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

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



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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.

*SECOND SCHEDULE***(Article 1(1))****Convention on the Execution of Foreign Arbitral Awards signed at Geneva on behalf of His Majesty on 26th September 1927****ARTICLE 1**

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

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

- (a) That the award has been made in pursuance of a submission to arbitration which is valid under the law applicable thereto;
- (b) That the subject-matter of the award is capable of settlement by arbitration under the law of the country in which the award is sought to be relied upon;
- (c) That the award has been made by the Arbitral Tribunal provided for in the submission to arbitration or constituted in the manner agreed upon by the parties and in conformity with the law governing the arbitration procedure;
- (d) That the award has become final in the country in which it has been made, in the sense that it will not be considered as

such if it is open to opposition, appel or pourvoi en cassation (in the countries where such forms of procedure exist) or if it is proved that any proceedings for the purpose of contesting the validity of the award are pending;

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

## ARTICLE 2

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

- (a) That the award has been annulled in the country in which it was made;
- (b) That the party against whom it is sought to use the award was not given notice of the arbitration proceedings in sufficient time to enable him to present his case; or that, being under a legal incapacity, he was not properly represented;
- (c) That the award does not deal with the differences contemplated by or falling within the terms of the submission to arbitration or that it contains decisions on matters beyond the scope of the submission to arbitration.

If the award has not covered all the questions submitted to the arbitral tribunal, the competent authority of the country where recognition or enforcement of the award is sought can, if it 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 relied upon may be demanded. Such translation must be certified correct by a diplomatic or consular agent of the country to which the party who seeks to rely upon the award belongs or by a sworn translator of the country where the award is sought to be relied upon.

#### ARTICLE 5

The provisions of the above Articles shall not deprive any interested party of the right of availing himself of an arbitral award in the manner and to the extent allowed by the law or the treaties of the country where such award is sought to be relied upon.

## ARTICLE 6

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

## ARTICLE 7

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

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

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

## ARTICLE 8

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

## ARTICLE 9

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

The denunciation shall come into force only in respect of the High Contracting Party which shall have notified it and one year after

such notification shall have reached the Secretary-General of the League of Nations.

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

#### ARTICLE 10

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

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

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

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

#### ARTICLE 11

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

**THIRD SCHEDULE****(Article 1(1))****Convention on the Recognition and Enforcement of Foreign Arbitral Awards Done at New York on 10th June 1958****ARTICLE I**

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

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

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

**ARTICLE II**

1. Each Contracting State shall recognise an agreement in writing under which the parties undertake to submit to arbitration all or any differences which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not, concerning a subject matter capable of settlement by arbitration.

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2. The term “agreement in writing” shall include an arbitral clause in a contract or an arbitration agreement, signed by the parties or contained in an exchange of letters or telegrams.

3. The court of a Contracting State, when seized of an action in a matter in respect of which the parties made an agreement within the meaning of this Article, 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 recognise arbitral awards as binding and enforce them in accordance with the rules of procedure of the territory where the award is relied upon, under the conditions laid down in the following Articles. There shall not be imposed substantially more onerous conditions or higher fees or charges on the recognition or enforcement of arbitral awards to which this Convention applies than are imposed on the recognition or enforcement of domestic arbitral awards.

### ARTICLE IV

1. To obtain the recognition and enforcement mentioned in the preceding Article, the party applying for recognition and enforcement shall, at the time of the application, supply –

- (a) the duly authenticated original award or 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 that party furnishes to the competent authority where the recognition and enforcement is sought, proof that –

- (a) the parties to the agreement referred to in Article II were, under the law applicable to them, under some incapacity, or the said agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law of the country where the award was made; or
- (b) the party against whom the award is invoked was not given proper notice of the appointment of the arbitrator or of the arbitration proceedings or was otherwise unable to present his case; or
- (c) the award deals with a difference not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration, provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, that part of the award which contains decisions on matters submitted to arbitration may be recognised and enforced; or
- (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.

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

- (a) the subject matter of the difference is not capable of settlement by arbitration under the law of that country; or
- (b) the recognition or enforcement of the award would be contrary to the public policy of that country.

#### ARTICLE VI

If an application for the setting aside or suspension of the award has been made to a competent authority referred to in Article V(1)(e), the authority before which the award is sought to be relied upon may, if it considers it proper, adjourn the decision on the enforcement of the award and may also, on the application of the party claiming enforcement of the award, order the other party to give suitable security.

#### ARTICLE VII

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

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

#### ARTICLE VIII

1. This Convention shall be open until 31 December, 1958 for signature on behalf of any Member of the United Nations and

also on behalf of any other State which it is or hereafter becomes a 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 for the State concerned, whichever is the later.

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

to such territories, subject, where necessary for constitutional reasons, to the consent of the Governments of such territories.

#### ARTICLE XI

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

- (a) with respect to those Articles of this Convention that come within the legislative jurisdiction of the federal authority, the obligations of the federal Government shall to this extent be the same as those of Contracting States which are not federal States;
- (b) with respect to those Articles of this Convention that come within the legislative jurisdiction of constituent states or provinces which are not, under the constitutional system of the federation, bound to take legislative action, the federal Government shall bring such Articles with a favourable recommendation to the notice of the appropriate authorities of constituent states or provinces at the earliest possible moment;
- (c) a federal State Party to this Convention shall, at the request of any other Contracting State transmitted through the Secretary-General of the United Nations, supply a statement of the law and practice of the federation and its constituent units in regard to any particular provision of this Convention, showing the extent to which effect has been given to that provision by legislative or other action.

#### ARTICLE XII

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

2. For each State ratifying or acceding to this Convention after the deposit of the third instrument of ratification or accession, this

Convention shall enter into force on the ninetieth day after deposit by such State of its instrument of ratification or accession.

### ARTICLE XIII

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

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

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

### ARTICLE XIV

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

### ARTICLE XV

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

- (a) signatures and ratifications in accordance with Article VIII;
- (b) accessions in accordance with Article IX;
- (c) declarations and notifications under Articles I, X and XI;

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- (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 the Chinese, English, French, Russian and Spanish texts shall be equally authentic, shall be deposited in the archives of the United Nations.

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

**FOURTH SCHEDULE****(Article 50)****Enactments repealed**

1. Loi (1926) rendant applicable à cette Ile l'Acte de Parlement intitulé "Arbitration Clauses (Protocol) Act 1924."<sup>6</sup>
2. Loi (1931) rendant applicable à cette Ile l'Acte de Parlement intitulé "Arbitration (Foreign Awards) Act 1930."<sup>7</sup>

<sup>6</sup> Tomes IV-VI, page 590

<sup>7</sup> Tome VII, page 33.