LAWS OF THE GAMBIA

ALTERNATIVE DISPUTE RESOLUTION ACT

CHAPTER 6:08

Act No.
6 of 2005

Amended by
Act No. 6 of 2006

CHAPTER 6:08

ALTERNATIVE DISPUTE RESOLUTION ACT

ARRANGEMENT OF SECTIONS

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CHAPTER 6:08

ALTERNATIVE DISPUTE RESOLUTION ACT

An Act to provide an alternative dispute resolution system for The Gambia in conformity with international rules on arbitration, conciliation and mediation, to establish an Alternative Dispute Resolution Secretariat to facilitate dispute resolution, and for connected matters.

[Act No. 6 of 2005 amended by Act No. 6 of 2006.]

[Date of commencement: Section 1 (*a*) not yet appointed. Section 1 (*b*): 29*th July*, 2005.]*

CHAPTER I

Preliminary: General

1. Short title and commencement

This Act may be cited as the Alternative Dispute Resolution Act and shall come into force, in the case of—

(*a*) the provisions of section 56 and the Second Schedule, on such date as the Minister may, by Order published in the *Gazette*, appoint; and

(*b*) the other provisions, on the date of assent of this Act.

[Second Schedule.]

2. Interpretation

In this Act, unless the context otherwise requires—

"commercial" means any relationship of a commercial or other nature and includes any trade transaction for the supply or exchange of goods or services, distribution agreement, commercial representation or agency, factoring, leasing, construction of works, consulting, engineering licensing, investment, financing, banking, insurance, exploitation agreement or concession, joint venture and any form of industrial or business co-operation, carriage of goods or passengers by air, sea, rail, or road;

"contract" means a commercial contract, an investment contract and any contract involving a civil case;

[Act No. 6 of 2006.]

* No Order has been published appointing a date for the coming into force of section 56 and the Second Schedule.

"court" means any court or tribunal established under the Constitution of the Republic of The Gambia or any other law;

[Act No. 6 of 2006.]

"dispute" means a dispute or difference—

(*a*) arising out of a commercial or an investment contract;

(*b*) involving any civil cause or matter; or

(*c*) arising in any other way;

[Act No. 6 of 2006.]

"investment" has the meaning given to it in section 2 of The Gambia Investment Promotion Act;

[Cap. 97:03.]

"Minister" means the Minister of Justice;

"Ministry" means the Ministry of Justice; and

"Secretariat" means the Alternative Dispute Resolution Secretariat established under section 99.

CHAPTER II

Arbitration

PART I

Preliminary

3. Interpretation of this Chapter

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

"arbitral tribunal" means a sole arbitrator or a panel of arbitrators;

"arbitration" means the voluntary submission of a dispute to one or more impartial persons for a final and binding determination;

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

"award" means a decision of the arbitral tribunal on the substance of the dispute and includes any interim, interlocutory or partial award;

"party" means a party to any arbitration agreement or conciliation proceedings, or any person claiming through or under him or her.

(2) An arbitration is international if—

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

(*b*) one of the following places is situated outside the country in which the parties have their places of business—

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

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

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

(*d*) the parties, despite the nature of the contract, expressly agree that any dispute arising from the commercial transaction shall be treated as an international arbitration.

(3) For the purposes of subsection (2), if a party—

(*a*) has more than one place of business, the place of business shall be that which has the closest relationship to the arbitration agreement;

(*b*) does not have a place of business, reference shall be made to his or her habitual residence.

(4) Where a provision of this Act, except section 42, leaves the parties free to determine a certain issue, the freedom includes the right of the parties to authorise a third party, including an institution, to make that determination.

(5) Where a provision of this Chapter refers to the fact that the parties have agreed or that they may agree or in any other way refers to any agreement of the parties, the agreement includes arbitration rules, if any, referred to in that agreement.

(6) Where a provision of this Chapter, other than in section 39 (*a*) and 47 (2) (*a*), refers to a claim, it also applies to a counterclaim, and where it refers to a defence, it also applies to a defence to the counterclaim.

4. Application of this Chapter

(1) Subject to subsection (2)—

(*a*) this Chapter applies to an arbitration agreement, whether made before or after the commencement of this Act, and to an arbitration under the agreement; and

(*b*) a reference in an arbitration agreement to the Arbitration Act or a provision of that Act, shall be construed as a reference to this Act or to the corresponding provision, if any, of this Act.

(2) Where arbitration was commenced before the commencement of this Act, the law governing the arbitration and the arbitration agreement shall be that which would have been applicable if this Act had not been enacted.

(3) For the purposes of this section, an arbitration is deemed to have been commenced if—

(*a*) a dispute to which the relevant arbitration agreement applies has arisen; and

(*b*) a party to the agreement—

(i) has served on another party to the agreement a notice requiring that other party to appoint an arbitrator or to join or concur in or approve of the appointment of an arbitrator in relation to the dispute,

(ii) has served on another party to the agreement a notice requiring that other party to refer or concur in the reference of the dispute to arbitration, or

(iii) has taken any other step contemplated by the agreement, or the law in force at the time the dispute arose, with a view to referring the dispute to arbitration or appointing, or securing the appointment of, an arbitrator in relation to the dispute.

PART II

Arbitration: General

5. Arbitration of disputes

(1) Any dispute which the parties have agreed to submit to arbitration under an arbitration agreement may be determined by arbitration unless the arbitration agreement is contrary to public policy or, under any other law, the dispute is not capable of determination by arbitration.

(2) The fact that an enactment confers jurisdiction in respect of any matter on a court but does not refer to the determination of that matter by arbitration does not, of itself, indicate that a dispute about that matter is not capable of determination by arbitration.

6. Prohibition of disclosure of information relating to arbitration proceedings and awards

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

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

(*a*) if the publication, disclosure, or communication is contemplated by this Act; or

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

7. Receipt of written communications

(1) Unless otherwise agreed by the parties, a written communication is deemed to have been received if—

(*a*) it is delivered to the addressee personally;

(*b*) it is delivered at the addressee's place of business, habitual residence, or mailing address; or

(*c*) the addressee, place or address cannot be found after making a reasonable inquiry, it is sent to the addressee's last known place of business, habitual residence, or mailing address by registered letter or any other means which provides a record of the attempt to deliver it.

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

(3) The provisions of this section do not apply to communications in court proceedings.

8. Waiver of right to object

A party who knows that any provision of this Chapter from which the parties may derogate or that any requirement under the arbitration agreement has not been complied with and yet proceeds with the arbitration without stating his or her objection to non-compliance—

(*a*) without undue delay; or

(*b*) if a time limit is provided, within the period of time,

is deemed to have waived the right to object.

9. Reference to arbitration by court

(1) Where a court before which an action is pending is of the view that the action or part of the action can be resolved through arbitration, it may, with the consent of the parties in writing, refer the action or any part of the action for resolution through arbitration, notwithstanding that there is no arbitration agreement in respect of the matter in dispute.

(2) A reference under subsection (1) shall—

(*a*) state—

(i) the reasons for the reference,

(ii) the nature of the dispute,

(iii) the monetary value of the claim, and

(iv) the remedy sought; and

(*b*) have attached to it copies of the pleadings and any other documents the court considers relevant to it.

(3) Where, at the time of reference under subsection (1), pleadings are closed, the pleadings shall be deemed to be the claim, defence and counterclaim, as the case may be, in the arbitral proceedings.

(4) For the purpose of a reference under this section, the plaintiff in the original action is the claimant, and the defendant is the respondent in the arbitration.

10. Extent of court intervention

A court shall not intervene in matters governed by this Chapter, except where so provided in this Chapter.

PART III

Arbitration Agreement

11. Form of arbitration agreement

(1) An arbitration agreement shall be in writing, and subject to section 12, may be—

(*a*) in the form of an arbitration clause in a contract or in the form of a separate agreement; or

(*b*) inferred in an exchange of points of claim or defence in which the existence of an arbitration agreement is alleged by one party and not denied by the other party.

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

12. Arbitration agreement and substantive claim before court

(1) A court before which proceedings are brought in a matter which is the subject of an arbitration agreement shall, if a party so requests not later than when submitting his or her first statement on the substance of the dispute, stay those proceedings and refer the parties to arbitration.

(2) A court shall not stay proceedings under subsection (1) if it finds that—

(*a*) the agreement is null and void, inoperative, or incapable of being performed; or

(*b*) there is not in fact any dispute between the parties with regard to the matters agreed to be referred.

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

13. Arbitration agreement and interim measures by court

(1) A party to an arbitration agreement may, before or during the arbitral proceedings, request from a court an interim measure of protection, and the court may grant the measure if it deems it necessary or desirable.

(2) For the purposes of section (1), the court has the same power as it has for the purposes of proceedings before it to make—

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

(*b*) an order securing the amount in dispute;

(*c*) an order appointing a receiver;

(*d*) any other order to ensure that any award which may be made in the arbitral proceedings is not rendered ineffectual by the dissipation of assets by the other party; or

(*e*) an interim injunction or other interim order.

(3) Where a party applies to a court for an interim injunction or other interim order and an arbitral tribunal has already ruled on any matter relevant to the application, the court shall treat the ruling or any finding of fact made in the course of the ruling as conclusive for the purpose of the application.

PART IV

Composition of Arbitral Tribunal

14. Number of arbitrators

(1) The parties to an arbitration agreement may determine the number of arbitrators.

(2) Where the parties fail to determine the number of arbitrators—

(*a*) in the case of an international arbitration, the number shall be three; and

(*b*) in every other case, the number shall be one.

15. Appointment of arbitrators

(1) Unless otherwise agreed by the parties and subject to subsection (5) (*b*), a person is not precluded by reason of that person's nationality from acting as an arbitrator.

(2) Subject to the provisions of subsections (4) and (5), the parties may decide on a procedure to be followed in appointing the arbitrator or arbitrators.

(3) Where the parties fail to determine a procedure, then in an arbitration—

(*a*) with three arbitrators and two parties, each party shall appoint one arbitrator, and the two arbitrators so appointed shall appoint the third arbitrator who shall be the chairperson or umpire, but if—

(i) a party fails to appoint an arbitrator within twenty-one days of receipt of a request to do so from the other party, or

(ii) the two arbitrators fail to agree on the third arbitrator within twenty-one days of their appointment,

the appointment shall, on the request of a party, be made by the Secretariat;

(*b*) with a sole arbitrator, if the parties are unable to agree on the arbitrator, the appointment shall, on the request of a party, be made by the Secretariat.

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

(*a*) a party fails to act as required under the procedure;

(*b*) the parties, or two arbitrators, are unable to reach an agreement as required under the procedure; or

(*c*) a third party, including an institution, fails to perform any function entrusted to it under the procedure,

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

(5) The Secretariat, in appointing an arbitrator, shall—

(*a*) have due regard to any qualification required of the arbitrator by the agreement of the parties and to such considerations as are likely to secure the appointment of an independent and impartial arbitrator; and

(*b*) in addition, in the case of a sole or third arbitrator in an international arbitration, take into account the advisability of appointing an arbitrator of a nationality other than those of the parties.

(6) In an arbitration, where—

(*a*) the parties have agreed to an arbitration with two or four or more arbitrators; or

(*b*) there are three arbitrators and more than two parties,

and no procedure for the appointment of arbitrators has been agreed on by the parties, the Secretariat may, on the request of a party, appoint the requisite number of arbitrators, having due regard to the matters referred to in subsection (5).

16. Duty to disclose and grounds of challenge

(1) A person who is approached in connection with that person's possible appointment as an arbitrator shall disclose to the parties any circumstances he or she knows is likely to give rise to justifiable doubts as to his or her impartiality or independence.

(2) The duty to disclose imposed under subsection (1) shall continue even after the person has been appointed and subsist throughout the arbitral proceedings, unless the arbitrator had previously disclosed the circumstances to the parties.

(3) An arbitrator may be challenged only if—

(*a*) circumstances exist that give rise to justifiable doubts as to that arbitrator's impartiality or independence; or

(*b*) the arbitrator does not possess qualifications agreed to by the parties.

(4) A party may challenge an arbitrator appointed by that party, or in whose appointment that party has participated, only for reasons of which that party becomes aware after the appointment has been made.

17. Challenge procedure

(1) Subject to the provisions of subsection (3), the parties may agree on a procedure for challenging an arbitrator.

(2) Where there is no agreement between the parties on a challenge procedure, 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 section 16 (3), send a written statement of the reasons for the challenge.

(3) Unless the challenged arbitrator withdraws from 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 on by the parties or under the procedure of subsection (2) is not successful, the challenging party may, within thirty days after receiving notice of the decision rejecting the challenge, request a court to decide on the challenge, which decision shall not be subject to appeal.

(5) While a request under subsection (4) is pending, the arbitral tribunal, including the challenged arbitrator, may continue the arbitral proceedings and make an award.

18. Termination of mandate due to failure or impossibility to act

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

(*a*) he or she withdraws from office;

(*b*) the parties agree to terminate his or her appointment by reason of his or her inability to perform his or her functions;

(*c*) he or she dies; or

(*d*) for any other reason, he or she fails to act diligently.

(2) The fact that—

(*a*) an arbitrator withdraws from office under subsection (1) (*a*) or under section 17 (3); or

(*b*) a party agrees to the termination of the mandate of an arbitrator,

shall not be construed as implying the existence of any ground or circumstance referred to in subsection (1) or section 16.

19. Appointment of substitute arbitrator

(1) Where the mandate of an arbitrator terminates—

(*a*) under section 17 or 18; or

(*b*) because of withdrawal from office for any other reason, or the revocation of that arbitrator's mandate by agreement of the parties; or

(*c*) in any other case,

a substitute arbitrator shall be appointed according to the rules that were applicable to the appointment of the arbitrator being replaced.

(2) Unless otherwise agreed by the parties, if—

(*a*) the sole or the presiding arbitrator is replaced, any hearings previously held shall be repeated; and

(*b*) an arbitrator, other than a sole or a presiding arbitrator is replaced, any hearings previously held shall be continued.

(3) 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 is not invalid solely because there has been a change in the composition of the arbitral tribunal.

20. Appointment of umpire

(1) Where there are more than two arbitrators, the parties may provide in the arbitration agreement for the appointment of an umpire.

(2) If the arbitration agreement provides for the appointment of an umpire and the parties or the arbitrators, as the case may be, fail to appoint the umpire—

(*a*) within the specified time; or

(*b*) where no time is specified, within fourteen days of the appointment of the last arbitrator,

the appointing authority or the Secretariat, as the case may be, shall at the request of a party, appoint an umpire.

21. Notice of appointment

(1) The arbitrators or appointing authority, as the case may be, shall send a notice of the appointment to the umpire.

(2) The umpire shall, within fourteen days of receipt of the notice, send a signed acceptance of the appointment to the arbitrators or appointing authority.

22. Qualification of umpire

The qualification of an umpire is the same as that of an arbitrator.

23. Disclosure by umpire

A person appointed an umpire shall disclose to the parties and the arbitrators any—

(*a*) personal interest in the arbitration;

(*b*) circumstances likely to affect his or her impartiality; or

(*c*) past or present relationship with the parties or their representatives.

24. Objection to appointment of umpire

(1) A party may object to the appointment of an umpire or the continuance in office of an umpire by sending to the other party a written notice of the objection, together with the grounds of objection.

(2) If the other party accepts the objection, the parties shall request the arbitrators or the Secretariat to appoint another umpire.

(3) If the other party does not accept the objection, any of the parties may refer the matter to the Secretariat for resolution.

(4) The Secretariat may, having regard to the grounds of objection, appoint, or require the arbitrators to appoint a new umpire.

25. The umpire and proceedings

(1) If the parties appoint an umpire, but do not define his or her role, the umpire shall attend the proceedings and be given documents and other materials that are given to the arbitrators.

(2) Unless the arbitration is deadlocked, the arbitrators shall make decisions, orders and awards.

(3) If the arbitration is deadlocked, the arbitral tribunal shall give notice of the deadlock in writing to the parties and the umpire shall proceed to make decisions, orders and awards as a sole arbitrator.

(4) If the arbitral tribunal fails to give notice of the deadlock, or one arbitrator fails to join the others in giving the notice, any of the parties may, on notice in writing to the party and the arbitral tribunal, apply to the Secretariat for resolution of the matter.

(5) The Secretariat may, in resolving the matter, require that the umpire replaces the arbitrators to make decisions, orders and awards as if the umpire were a sole arbitrator.

26. Decisions where no umpire

(1) Where the parties agree to have two or more arbitrators without an umpire, the parties may agree on how the arbitral tribunal is to make its decisions, orders and awards.

(2) Where there is no agreement under subsection (1), decisions, orders and awards shall be that of the majority of the arbitral tribunal.

27. Vacancy in position of umpire

If the position of umpire becomes vacant, unless the parties otherwise agree, the arbitrators shall continue with the determination of the matter and any award is an agreed award of the arbitral tribunal.

28. Liability of arbitrators

An arbitrator is not liable in respect of anything done or not done in his or her capacity as an arbitrator.

29. Arbitration management conference

Unless the parties otherwise decide, the arbitral tribunal shall, within fourteen days of being appointed and on giving seven days written notice to the parties, conduct an arbitration management conference with the parties or their representatives in person or through electronic or telecommunication media to determine—

(*a*) the issues to be resolved by arbitration;

(*b*) the date, time, place and estimated duration of the hearing;

(*c*) the need for discovery and production of documents;

(*d*) the issue of interrogatories and how it should be done;

(*e*) the law, rules of evidence and the burden of proof that is or are to apply to the proceedings;

(*f*) the exchange of declaration regarding facts, exhibits, witnesses and related issues;

(*g*) whether there is the need to resolve issues of liability and damages separately;

(*h*) whether the summary of evidence of the parties should be oral or in writing;

(*i*) the form of the award;

(*j*) costs and arbitrator's fees;

(*k*) any other issue relating to the arbitration.

(2) The decisions of the arbitral tribunal at an arbitration management conference shall be in writing and shall be served on the parties.

(3) The arbitral tribunal may hold further arbitration management conferences as is considered necessary on written notice to the parties.

PART V

Jurisdiction and Conduct of Arbitral Tribunal

30. Competence of arbitral tribunal to rule on its jurisdiction

(1) An arbitral tribunal may rule on its own jurisdiction, including any objections with respect to the existence or validity of the arbitration agreement.

(2) For the purposes of subsection (1), an arbitration clause which forms part of a contract shall be treated as an agreement independent of the other terms of the contract and a decision by an arbitral tribunal that the contract is null and void shall not invalidate the arbitration clause.

(3) In arbitral proceedings, a plea that the arbitral tribunal—

(*a*) does not have jurisdiction, shall be raised not later than the submission of the statement of defence and a party is not precluded from raising the plea by the fact that the party has appointed, or participated in the appointment of, an arbitrator; or

(*b*) 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,

and the arbitral tribunal may, in either case, admit a later plea if it considers the delay justified.

(4) The arbitral tribunal may rule on a plea referred to in subsection (3) either as a preliminary question or in an award on the merits.

(5) If the arbitral tribunal rules on a plea as a preliminary question, any party may within thirty days after having received notice of that ruling, request a court to decide the matter, which decision shall not be subject to appeal.

(6) While a request under subsection (5) is pending before the court, the arbitral tribunal may continue the arbitral proceedings and make an award.

31. Power of arbitral tribunal to order interim measures

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

(*a*) at the request of a party, or of its own motion, order any party to take such interim measure of protection, as the arbitral tribunal may consider necessary in respect of the subject matter of the dispute; and

(*b*) require any party to provide appropriate security in connection with any measure taken under paragraph (*a*).

(2) Unless otherwise agreed by the parties, sections 52 and 53 apply to an order made by an arbitral tribunal under this section as if a reference in those sections to an award were a reference to the order.

32. Equal treatment of parties

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

33. Determination of rules of procedure

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

(2) Where there is no agreement, the arbitral tribunal may, subject to the provisions of this Act, conduct the arbitration in such manner, as it considers appropriate.

(3) The power conferred on the arbitral tribunal includes the power to determine the admissibility, relevance, materiality, and weight of any evidence brought before it.

(4) Every witness giving evidence, and every counsel or expert or other person appearing before an arbitral tribunal shall have the same privileges and immunities as witnesses and counsel in proceedings before a court.

34. Place of arbitration

(1) The parties may agree on the place of arbitration.

(2) Where there is no agreement on a place, 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 the provisions of subsection (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 goods, other property, or documents.

35. Commencement of arbitration proceedings

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

36. Language

(1) The parties may agree on the language or languages to be used in the arbitral proceedings.

(2) Where there is no agreement on the language or languages, the arbitral tribunal shall determine the language or languages to be used in the proceedings.

(3) The agreement or determination shall, unless otherwise specified, apply to any written statement by a party, a hearing, and any 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 on by the parties or determined by the arbitral tribunal.

37. Statements of claim and defence

(1) Unless otherwise agreed by the parties, the claimant shall, within the period of time agreed by the parties or determined by the arbitral tribunal, state and communicate to the respondent and the arbitral tribunal the facts supporting the claim, the points at issue and the relief or remedy sought.

(2) Unless otherwise agreed by the parties, the respondent, on receiving the communication under subsection (1), shall within the period of time agreed by the parties or determined by the arbitral tribunal, state and communicate to the claimant and the arbitral tribunal his or her defence to the claim.

(3) 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.

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

38. 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.

(2) Unless the parties have agreed that no hearings shall be held, the arbitral tribunal shall hold the hearings at an appropriate stage of the proceedings, if so requested by a party.

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

(4) The arbitral tribunal shall communicate to—

(*a*) the other party any statement, document or other information supplied to the arbitral tribunal by one party; and

(*b*) the parties any expert report or documentary evidence on which the arbitral tribunal may rely in making its decision.

(5) At any hearing or any meeting of the arbitral tribunal of which notice is required to be given under subsection (3), or in any proceedings conducted on the basis of documents or other materials, the parties may appear or act in person or may be represented by any other person of their choice.

39. Default of a party

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

(*a*) the claimant fails to communicate the statement of claim in accordance with section 37 (1), the arbitral tribunal shall terminate the proceedings;

(*b*) the respondent fails to communicate the statement of defence in accordance with section 37 (2), the arbitral tribunal shall continue the proceedings without treating the failure in itself as an admission of the claimant's allegations;

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

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

40. Power of arbitral tribunal to appoint expert

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

(*a*) appoint one or more experts to report to it on 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 the expert's 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 a written or oral report, participate in a hearing where the parties have the opportunity to put questions and to present expert witnesses in order to testify on the points at issue.

41. Court assistance in taking evidence

(1) The arbitral tribunal or a party, with the approval of the arbitral tribunal, may request from a court assistance in taking evidence.

(2) The court may execute the request within its competence and according to its rules on taking evidence.

(3) For the purposes of subsection (1), the court—

(*a*) may make an order of subpoena to compel the attendance of a witness before an arbitral tribunal to give evidence or produce documents;

(*b*) may order any witness to submit to examination on oath or affirmation before the arbitral tribunal, or before an officer of the court, or any other person for the use of the arbitral tribunal;

(*c*) has, for the purpose of the arbitral proceedings, the same power as it has for the purpose of proceedings before that court to make an order for—

(i) the discovery of documents and interrogatories,

(ii) the issue of a commission or request for the taking of evidence out of the jurisdiction, and

(iii) the detention, preservation, or inspection of any property or thing which is in issue in the arbitral proceedings and authorising, for any of those purposes, any person to enter on any land or building in the possession of a party, or authorising a sample to be taken or an observation to be made or experiment to be tried which may be necessary or expedient for the purpose of obtaining full information or evidence.

42. Rules applicable to substance of dispute

(1) The arbitral tribunal shall decide a dispute in accordance with such rules of law as are chosen by the parties, as applicable to the substance of the dispute.

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

(3) Where the parties fail to designate the rules of law, the arbitral tribunal shall apply the law determined by the conflict of laws rules, which it considers applicable.

(4) The arbitral tribunal shall decide according to considerations of general justice and fairness only if the parties have expressly authorised it to do so.

(5) The arbitral tribunal shall, in all cases, decide in accordance with the terms of the contract between the parties and shall take into account any usage of the trade applicable to the transaction.

43. Decision-making by arbitrators

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

(2) The presiding arbitrator may decide any question of procedure, if so authorised by the parties or members of the arbitral tribunal.

PART VI

Making of Award and Termination of Proceedings

44. Settlement

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

(2) An award on agreed terms—

(*a*) shall be made in accordance with the provisions of section 45;

(*b*) shall state that it is an award on agreed terms; and

(*c*) has the same status and effect as any other award on the merits of the case.

45. Form and contents of award

(1) An award shall be made in writing and be signed by the arbitrator or arbitrators.

(2) In arbitral proceedings with more than one arbitrator, the signatures of the majority of all the members of the arbitral tribunal shall suffice, provided that the reason for any omitted signature is stated.

(3) The award shall state—

(*a*) the reasons on which it is based, unless the parties have agreed that no reasons are to be given or the award is an award on agreed terms under section 44;

(*b*) its date and the place of arbitration as determined in accordance with section 34 (1), which place shall be deemed to be the place where the award is made.

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

(5) Unless the arbitration agreement otherwise provides, or the award otherwise directs, a sum directed to be paid by an award shall carry interest as from the date of the award and at the same rate as a judgement debt.

46. Rules for the award

(1) The arbitral tribunal shall make an award in accordance with—

(*a*) the law chosen by the parties as applicable to the substance of the dispute; and

(*b*) such other considerations as are agreed by the parties or determined by the arbitral tribunal.

(2) The rules applicable to the substance of a dispute set out in section 42 are also applicable to the making of an award under this section.

47. Termination of proceedings

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

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

(*a*) the claimant withdraws the claim, unless the respondent objects to the withdrawal and the arbitral tribunal recognises a legitimate interest on the respondent's 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 the provisions of sections 48 and 49, the mandate of the arbitral tribunal terminates with the termination of the proceedings.

(4) Unless otherwise agreed by the parties, the death of a party does not terminate the arbitral proceedings or the authority of the arbitral tribunal.

(5) Subsection (4) does not affect any rule of law or enactment under which the death of a person extinguishes a cause of action.

48. Correction and interpretation of award and additional award

(1) Unless another period of time has been agreed on by the parties, a party may, within thirty days of receipt of an award and with notice to the other party, request the arbitral tribunal to—

(*a*) correct in the award any errors in computation, any clerical or typographical errors, or any errors of similar nature;

(*b*) give an interpretation of a specific point of part of award, if so agreed by the parties.

(2) If the arbitral tribunal considers the request to be justified, it shall make the correction or give the interpretation within thirty days of receipt of the requests, and the correction or the interpretation shall form part of the award.

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

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

(5) If the arbitral tribunal considers the request to be justified, it shall make the additional award within forty-five days of receipt of the request.

(6) The arbitral tribunal may extend, if necessary, the period of time within which it shall make a correction, interpretation, or an additional award under subsection (2) or (5) but such extension shall not be more than forty-five days.

(7) The provisions of section 45 also apply to a correction, or interpretation of the award or to an additional award under this section.

PART VII

Recourse against Award

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

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

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

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

(i) a party to the arbitration was under some incapacity, or the arbitration agreement is not valid under the law to which the parties have subjected it, or, failing any indication on that question, under the laws of The Gambia,

(ii) the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings,

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

(iv) the composition for the arbitral tribunal or the arbitral procedure was not in accordance with the arbitration agreement or the agreement was in conflict with a provision of this Act from which the parties cannot derogate; or

(*b*) the High Court finds that—

(i) the subject matter of the dispute is not capable of settlement by arbitration under the laws of The Gambia, or

(ii) the award is in conflict with public policy.

(3) An application for setting aside shall be made within sixty days—

(*a*) from the date of the award; or

(*b*) if a request was made under section 48, from the date on which the request for additional award was disposed of by the arbitral tribunal.

(4) Where an application for setting aside is made on ground that the award was induced or affected by fraud, corruption or gross irregularity, the period of sixty days shall commence from the date the fraud, corruption, or gross irregularity, was discovered by the applicant or could have been discovered if the applicant had acted with reasonable diligence.

(5) The High Court, when asked to set aside an award, may, where appropriate and so requested by a party, suspend the setting aside proceedings for a period of time determined by it in order to give the arbitral tribunal an opportunity to—

(*a*) resume the arbitral proceedings; or

(*b*) take such other action as in the arbitral tribunal's opinion will eliminate the grounds for setting aside.

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

(7) For the avoidance of doubt, and without limiting the generality of subsection (2) (*b*) (ii), it is hereby declared that an award is in conflict with public policy if—

(*a*) the making of the award was induced or affected by fraud, corruption or gross irregularity; or

(*b*) a breach of the rules of natural justice occurred—

(i) during the arbitral proceedings, or

(ii) in connection with the making of the award.

PART VIII

Costs

50. Costs

(1) On the termination of the arbitral proceedings, the arbitral tribunal shall fix the cost of the arbitration and give written notice of the cost to the parties.

(2) The costs shall be borne equally by the parties, unless the award provides for a different apportionment.

(3) All other expenses incurred by a party shall be borne by the party.

(4) The fees of the arbitral tribunal shall be reasonable in amount, taking into account the amount in dispute, the complexity of the subject matter, the time spent by the arbitrators and any other relevant circumstances of the case.

(5) In the case of international arbitration, the arbitral tribunal shall take into account any schedule of fees issued by any appointing authority agreed on by the parties or designated by the Secretary-General of the Permanent Court of Arbitration at The Hague for arbitrators in international cases which it administers, to the extent that it considers appropriate in the circumstances of the case.

(6) If an appointing authority has not issued a schedule of fees for arbitrators in international cases, any party may at any time request the appointing authority to furnish a statement setting out the basis for establishing fees which is customarily followed in international cases in which the authority appoints arbitrators.

(7) If an appointing authority agrees to furnish the statement referred to in subsection (6), the arbitral tribunal shall, in fixing its fees, take the statement into account to the extent that it considers appropriate in the circumstances of the case.

(8) In cases referred to in subsections (5) and (6), if a party so requests and the appointing authority agrees to perform the function, the arbitral tribunal shall fix its fees only after consultation with the appointing authority, which may make any comment it deems appropriate to the arbitral tribunal concerning the fees.

(9) In this section, **"costs"** include only—

(*a*) the fees of the arbitral tribunal to be stated separately as to each arbitrator and to be fixed by the tribunal itself;

(*b*) the travel and other expenses incurred by the arbitrators;

(*c*) the cost of expert advice and of other assistance required by the arbitral tribunal;

(*d*) the travel and other expenses of witnesses to the extent that such expenses are approved by the arbitral tribunal; and

(*e*) the costs for legal representation and assistance of the successful party if such costs were claimed during the arbitral proceedings, and only to the extent that the arbitral tribunal determines that the amount of such costs is reasonable.

51. Deposit of costs

(1) The arbitral tribunal, on its establishment, may request each party to deposit an equal amount as an advance for the costs referred to in paragraphs (*a*), (*b*) and (*c*) of section 50 (9).

(2) During the course of the arbitral proceedings, the arbitral tribunal may request supplementary deposits from the parties.

(3) In the case of international arbitration, if an appointing authority agreed on by the parties or designated by the Secretary-General of the Permanent Court of Arbitration at The Hague, agrees, at the request of a party, to perform the function, the arbitral tribunal shall fix the amount of any deposits or supplementary deposits only after consultation with the appointing authority which may make to the arbitral tribunal any comments it deems appropriate concerning the amount of the deposits and supplementary deposits.

(4) If the required deposits are not paid in full within thirty days after the receipt of the requests, the arbitral tribunal shall so inform the parties in order that one or other of them may make the required payment, and if the payment is not made, the arbitral tribunal may order the suspension or termination of the arbitral proceedings.

(5) After an award has been made, the arbitral tribunal shall render an account to the parties of the deposits received and return any unexpended balance to the parties.

PART IX

Recognition and Enforcement of Awards

52. Recognition and enforcement

(1) An arbitral award, irrespective of the country in which it was made, shall be recognised as binding and, on application in writing to the High Court, shall be enforced by entry as a judgement in terms of the award, or by action, subject to the provisions of this section and section 53.

(2) The party relying on an award or applying for its enforcement shall—

(*a*) supply the duly authenticated original award or a duly certified copy; and

(*b*) if the award or agreement is not made in the English language, supply a duly certified translation into the English language.

53. Grounds for refusing recognition or enforcement

(1) The Court may refuse to recognise or enforce an arbitral award, irrespective of the country in which it was made—

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

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

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

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

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

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

(*b*) if the Court finds that—

(i) the subject matter of the dispute is not capable of settlement by arbitration under the laws of The Gambia, or

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

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

(3) For the avoidance of doubt, and without limiting the generality of subsection (1) (*b*) (ii), it is hereby declared that an award is contrary to public policy if—

(*a*) the making of the award was induced or affected by fraud, corruption or gross irregularity; or

(*b*) a breach of the rules of natural justice occurred—

(i) during the arbitral proceedings, or

(ii) in connection with the making of the award.

PART X

Additional Provisions Relating to International Commercial Arbitration

54. Application of this Part of this Act

The provisions of this Part apply solely to cases relating to international commercial arbitration in addition to the other provisions of this Act.

55. Application of UNCITRAL Arbitration Rules set out in the First Schedule

Notwithstanding the provisions of this Act, the parties to an international commercial agreement may agree that disputes shall be referred to arbitration in accordance with the UNCITRAL Arbitration Rules set out in the First Schedule, as amended from time to time, or any other international arbitration rules acceptable to the parties.

56. Application of the Convention of Recognition and Enforcement of Foreign Arbitral Awards, etc.

Without prejudice to sections 17 and 18, where the recognition and enforcement of any award arising out of an international commercial arbitration are sought, the Convention on the Recognition and Enforcement of Foreign Awards

(in this Part referred to as "the Convention") set out in the Second Schedule applies to any award made in The Gambia or in any contracting State, if—

(*a*) the contracting State has reciprocal legislation recognising the enforcement of arbitral awards made in The Gambia in accordance with the provisions of the Convention; and

(*b*) the differences arise out of a legal relationship that is contractual.

[Second Schedule.]

CHAPTER III

Conciliation

57. Right to settle dispute by conciliation

Notwithstanding the other provisions of this Act, the parties to an agreement may seek amicable settlement of a dispute in relation to the agreement by conciliation under the provisions of this Chapter.

58. Application of provisions of this Chapter

(1) The provisions of this Chapter apply to conciliation of disputes arising from, or relating to, a contractual or other legal relationships where the parties seeking an amicable settlement of their dispute have agreed that the provisions shall apply.

(2) The parties may agree to exclude or vary any of the provisions of this Chapter at any time.

(3) Where any of the provisions of this Chapter is in conflict with a provision of this Act or any law from which the parties cannot derogate, that provision prevails.

59. Reference to conciliation by court

(1) A court before which an action is pending may at any stage of the proceedings, if it is of the view that conciliation will facilitate the resolution of the matter or part of the matter in dispute, refer the matter or any part of the matter to conciliation, notwithstanding that there is no conciliation agreement in respect of the matter in dispute.

(2) A party to an action before a court may, with the agreement of the other party and at any time before judgement is given, apply to the court, on notice, to have the whole action or part of the action referred to conciliation.

(3) A reference under subsection (1) or (2) shall—

(*a*) state—

(i) the reasons for the reference,

(ii) the nature of the dispute,

(iii) the monetary value of the claim, and

(iv) the remedy sought;

(*b*) have attached to it copies of the pleadings and any other documents the court considers relevant to it.

(4) A reference under this section serves as a stay of execution.

(5) Where a reference leads to the settlement of the dispute or part of the dispute, the settlement shall be—

(*a*) drawn up and filed in the court;

(*b*) recorded by the court as a judgement of the court;

(*c*) enforced by the court as its judgement.

(6) Where a reference does not lead to the settlement of the dispute or part of the dispute, as the case may be, the court shall continue with the proceedings from the point where the reference was made.

(7) A reference by a court shall specify the time within which a report on the reference shall be submitted to the court.

60. Commencement of conciliation proceedings

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

(2) The conciliation proceedings commence when the other party accepts the invitation to conciliate.

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

(4) If the party initiating conciliation does not receive a reply within thirty days from the date on which he or she sends the invitation, or within such other period of time as specified in the invitation, he or she may elect to treat the failure to respond as a rejection of the invitation to conciliate.

61. Number of conciliators

Where the request to conciliate is accepted, the parties shall refer the dispute to conciliation by one or three conciliators as the parties may decide.

62. Appointment of conciliators

(1) In conciliation proceedings with—

(*a*) one conciliator, the parties shall jointly appoint the conciliator;

(*b*) three conciliators—

(i) each party shall appoint one conciliator, and

(ii) the parties shall jointly appoint the third conciliator.

(2) The parties may enlist the assistance of an appropriate institution, including the Secretariat, or person in connection with the appointment of conciliators, and in particular—

(*a*) a party may request the institution or person to recommend the names of suitable individuals to act as conciliators; or

(*b*) the parties may agree that the appointment of one or more conciliators be made by the institution or person.

(3) In recommending or appointing individuals to act as conciliators, the institution or person shall have regard to such consideration as are likely to secure the appointment of an independent and impartial conciliator.

63. Submission of statement to conciliator

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

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

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

64. Representation and assistance

(1) The parties may be represented or assisted by persons of their choice.

(2) The name and address of any person appointed to represent or assist a party shall be communicated in writing to the other party and to the conciliator.

(3) The communication required to be made under subsection (2) shall specify whether the appointment is made for purposes of representation or assistance.

65. Role of conciliator

(1) The conciliator shall assist the parties in an independent and an 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, among other things, to the rights and obligations of

the parties, the practice of the trade concerned or subject matter of the dispute and the circumstances surrounding the dispute, including any business practices between the parties.

(3) The conciliator shall conduct the conciliation proceedings in such a manner as he or she 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 hears 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, which need not be in writing and need not be accompanied by a statement of the reasons for the proposals.

66. 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.

67. Communication between conciliator and parties

(1) The conciliator may invite the parties to a meeting or may communicate with them orally or in writing and may meet or communicate with the parties together or with each of them separately.

(2) Unless the parties have agreed on the place of the meeting, the conciliator shall determine the place, after consulting with the parties, having regard to the circumstances of the conciliation proceedings.

68. Disclosure of information

When the conciliator receives factual information concerning the dispute from a party, the conciliator shall disclose the substance of the information to the other party in order that the other party may have the opportunity to present any explanation, which he or she considers appropriate.

69. Co-operation of parties with conciliator

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

70. Suggestions by parties for settlement of dispute

(1) A party may, on his or her own initiative, or at the invitation of the conciliator, submit to the conciliator suggestions for the settlement of the dispute.

(2) When it appears to the conciliator that there exist elements of a settlement, which would be acceptable to the parties, he or she may formulate the terms of a possible settlement and submit them to the parties for their observation.

(3) After receiving the observations of the parties, the conciliator may reformulate the terms of a possible settlement in the light of the observations.

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

(5) The parties shall, by signing the settlement agreement, put an end to the dispute and are bound by the agreement.

71. Confidentiality

The conciliator and the parties shall keep confidential all matters relating to the conciliation proceedings, including the settlement agreement, except where its disclosure is necessary for purposes of implementation and enforcement.

72. Termination of conciliation proceedings

The conciliation proceedings are terminated by—

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

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

(*c*) 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*) a written declaration of one party to the other and the conciliator, to the effect that the conciliation proceedings are terminated, on the date of the declaration.

73. Resort to arbitral or judicial proceedings

The parties shall undertake not to initiate, during the conciliation proceedings, any arbitral or judicial proceedings in respect of the dispute that is the subject of the conciliation proceedings.

74. Costs

(1) On the termination of the conciliation proceedings, the conciliator shall fix the cost of the conciliation and give written notice of the cost to the parties.

(2) The costs shall be borne equally by the parties, unless the settlement agreement provides for a different apportionment.

(3) All other expenses incurred by a party shall be borne by the party.

(4) In this section, **"cost"** includes only—

(*a*) the fee of the conciliator which shall be a reasonable amount;

(*b*) the travel and other authorised expenses of the conciliator;

(*c*) the travel and other authorised expenses of witnesses called by the conciliator with the consent of the parties; and

(*d*) the cost of any assistance provided pursuant to sections 62 (2) (*b*) and 66.

75. Deposits

(1) A conciliator, on his or her appointment, may request each party to deposit an equal amount as an advance for the cost referred to in section 74 (4), which he or she expects will be incurred.

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

76. Role of conciliator in other proceedings

(1) The parties and the conciliator undertake that the conciliator shall not act as an arbitrator or as a representative or counsel of a party in any arbitral or judicial proceedings in respect of a dispute that is the subject of the conciliation proceedings.

(2) The conciliator shall not be presented as a witness in any arbitral or judicial proceedings in respect of a dispute that is the subject of the conciliation proceedings.

77. Admissibility of evidence in other proceeding

The parties undertake not to rely on or introduce as evidence in any arbitral or judicial proceedings, whether or not the 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*) admissions made by the other party in the course of the conciliation proceedings;

(*c*) proposals made by the conciliator; or

(*d*) the fact that the other party had indicated his or her willingness to accept a proposal for settlement made by the conciliator.

78. International Conciliation Rules

Notwithstanding the provisions of this Act, the parties to an international commercial agreement may agree in writing that disputes in relation to the agreement shall be settled by conciliation under the UNCITRAL Conciliation Rules set out in the Third Schedule, as amended, from time to time.

[Third Schedule.]

CHAPTER IV

Mediation

79. Interpretation of this Chapter

In this Chapter, unless the context otherwise requires—

"mediation agreement" means an agreement by the parties to submit to mediation all or certain disputes which have arisen or may arise between them;

"mediator" includes a sole mediator or all the mediators where more than one is appointed.

80. Form of mediation agreement

A mediation agreement may be in the form of a mediation clause in a contract or in the form of a separate contract.

81. Right to settle dispute by mediation

Notwithstanding the other provisions of this Act, the parties to an agreement may seek amicable settlement of any dispute in relation to the agreement by mediation under the provisions of this Act.

82. Reference to mediation by court

(1) A court before which an action is pending may at any stage of the proceedings, if it is of the view that mediation will facilitate the resolution of the matter or part of the matter in dispute, refer the matter or any part of the matter to mediation, notwithstanding that there is no mediation agreement in respect of the matter in dispute.

(2) A party to an action before a court may, with the agreement of the other party and at any time before judgement is given, apply to the court, on notice, to have the whole action or part of the action referred to mediation.

(3) A reference under subsection (1) or (2) shall—

(*a*) state—

(i) the reasons for the reference,

(ii) the nature of the dispute,

(iii) the monetary value of the claim, and

(iv) the remedy sought;

(*b*) have attached to it copies of the pleadings and any other documents the court considers relevant to it.

(4) A reference under this section serves as a stay of execution.

(5) Where a reference leads to the settlement of the dispute or part of the dispute, the settlement shall be—

(*a*) drawn up and filed in the court;

(*b*) recorded by the court as a judgement of the court;

(*c*) enforced by the court as its judgement.

(6) Where a reference does not lead to the settlement of the dispute or part of the dispute, as the case may be, the court shall continue with the proceedings from the point where the reference was made.

(7) A reference by a court shall specify the time within which a report on the reference shall be submitted to the court.

83. Scope of application of this Part

(1) Where a mediation agreement provides for mediation under this Act, the provisions of this Chapter are deemed to form part of the mediation agreement.

(2) Unless the parties have agreed otherwise, the provisions of this Chapter as are in effect on the date of the commencement of the mediation shall apply.

84. Commencement of mediation

(1) A party to a mediation agreement who wishes to commence a mediation shall submit a Request for Mediation in writing to the Secretariat, and at the same time send a copy to the other party.

(2) The Request for Mediation shall contain or be accompanied by—

(*a*) the names, addresses and telephone or fax numbers, e-mail addresses or other communication references of the parties to the dispute and of the representative of the party filing the Request for Mediation, if any;

(*b*) a copy of the mediation agreement; and

(*c*) a brief statement of the nature of the dispute.

(3) A mediation commences on the date on which the Request for Mediation is received by the Secretariat.

(4) The Secretariat shall immediately inform the other party in writing of the receipt by it of the Request for Mediation and of the date of the commencement of the mediation.

85. Appointment of mediator

(1) Unless the parties have agreed on the mediator or on another procedure for appointing the mediator, the Secretariat shall appoint the mediator after consultation with the parties.

(2) The prospective mediator is, by accepting the appointment, deemed to have undertaken to make available sufficient time to enable the mediation to be conducted expeditiously.

(3) The mediator shall be neutral, impartial and independent.

(4) A party may, at any time during the mediation proceedings, reject a mediator who is not neutral, impartial or independent.

(5) Where a mediator is rejected under subsection (1), he or she shall be replaced with another appointed in accordance with this section.

86. Representation of parties and participation in meetings

(1) The parties may be represented or assisted at their meetings with the mediator.

(2) A party who wishes to be represented at meetings with the mediator shall, immediately after the appointment of the mediator, communicate to the mediator, Secretariat and other party, the name, address and position of the person who is to represent him or her or attend meetings on his or her behalf.

87. Conduct of mediation

(1) The mediation shall be conducted in the manner agreed by the parties, and if the parties have not made an agreement, the mediator shall, in accordance with this Chapter, determine the manner in which the mediation shall be conducted.

(2) Each party shall co-operate with the mediator to advance the mediation as expeditiously as possible.

(3) The mediator is free to meet and to communicate with a party on the clear understanding that information given at any meeting and in any communication shall not be disclosed to the other party without the express authorisation of the party giving the information.

(4) As soon as possible after being appointed, the mediator shall, in consultation with the parties, establish a timetable for the submission by each party, to the mediator and to the other party, of—

(*a*) a statement summarising the background of the dispute;

(*b*) the party's interests and contentions in relation to the dispute;

(*c*) the present status of the dispute; and

(*d*) such other information and material as the party considers necessary for the purposes of the mediation and, in particular, to enable the issues in dispute to be identified.

(5) The mediator may at any time during the mediation suggest that a party provide such additional information or material as the mediator deems useful.

(6) A party may at any time submit to the mediator, for consideration by the mediator only, written information or material which he or she considers to be confidential, and the mediator shall not, without the written authorisation of that party, disclose the information or material to the other party.

88. Role of mediator

The mediator shall promote the settlement of the issues in dispute between the parties in any manner that he or she believes to be appropriate, but shall not impose a settlement on the parties.

89. Power of mediator to propose alternative means for settlement

(1) Where the mediator believes that any issue in dispute between the parties are not susceptible to resolution through mediation, the mediator may propose, for the consideration of the parties, procedures or means for resolving the issues which he or she considers are most likely, having regard to the circumstances of the dispute and any business relationship between the parties, to lead to the most efficient, least costly and most productive settlement of those issues.

(2) The mediator may, pursuant to subsection (1), propose—

(*a*) an expert determination of one or more particular issues;

(*b*) arbitration under this Act;

(*c*) the submission of last offers of settlement by each party and, in the absence of a settlement through mediation, arbitration conducted on the basis of those last offers pursuant to an arbitral procedure in which the duty of the arbitral tribunal is confined to determining which of the last offers shall prevail; or

(*d*) arbitration in which the mediator will, with the express consent of the parties, act as sole arbitrator, it being understood that the mediator may, in the arbitral proceedings, take into account information received during the mediation.

90. Confidentiality

(1) The mediator and the parties shall keep confidential all matters relating to the mediation proceedings, including the settlement agreement, except where its disclosure is necessary for purposes of implementation and enforcement.

(2) Each person involved in the mediation, including, in particular, the mediator, the parties and their representatives and advisors, any independent experts and any other person present during the meeting of the parties with the mediator, shall—

(*a*) respect the confidentiality of the mediation and shall not, unless otherwise agreed by the parties and the mediator, use or disclose to any outside party any information concerning or obtained in the course of the mediation; and

(*b*) sign an appropriate confidentiality undertaking prior to taking part in the mediation.

(3) Unless otherwise agreed by the parties, each person involved in the mediation shall, on the termination of the mediation, return, to the party who provided it, any brief, document or other material supplied by a party, without retaining a copy.

(4) Unless otherwise agreed by the parties and subject to section 89 (2) (*c*) and (*d*), the mediator and the parties shall not introduce as evidence or in any manner whatsoever in any judicial or arbitral proceeding—

(*a*) any view expressed or suggestions made by a party with respect to a possible settlement of the dispute;

(*b*) any admission made by a party in the course of the mediation;

(*c*) any proposal made or view expressed by the mediator; or

(*d*) the fact that a party had or had not indicated a willingness to accept a proposal for settlement made by the mediator or by the other party.

91. Termination of mediation

(1) The mediation shall be terminated by—

(*a*) the signing of a settlement agreement by the parties covering any or all of the issues in dispute between the parties;

(*b*) the decision of the mediator if, in the mediator's judgement, further efforts at mediation are unlikely to lead to a resolution of the dispute; or

(*c*) a written declaration of a party at any time after attending the first meeting of the parties with the mediator and before the signing of any settlement agreement.

(2) On the termination of the mediation, the mediator shall—

(*a*) promptly send to the Secretariat and to the court, where there was a reference to mediation under section 82, a notice in writing that the mediation is terminated and indicate the date on which it terminated, whether or not the mediation resulted in a settlement of the dispute and, if so, whether the settlement was full or partial; and

(*b*) send to the parties a copy of the notice sent to the Secretariat.

(3) The Secretariat shall keep the notice of the termination of the mediation confidential and shall not, without the written authorisation of the parties, disclose either the existence or the result of the mediation to any person.

(4) The Secretariat may, include information concerning the mediation in any aggregate statistical data that it publishes concerning its activities, provided that the information does not reveal the identity of the parties or enable the particular circumstances of the dispute to be identified.

(5) Subject to section 89 (2) (*c*) and (*d*), or unless required by a court of law or authorised in writing by the parties, the mediator shall not act in any capacity whatsoever, otherwise than as a mediator, in any pending or future proceedings, whether judicial, arbitral, or otherwise relating to the subject matter of the dispute.

92. Administration fee

(1) The parties making a Request for Mediation shall pay to the Secretariat a non-refundable administration fee, the amount of which shall be fixed in accordance with the Schedule of Fees established by the Secretariat.

(2) No action shall be taken by the Secretariat on a Request for Mediation until the administration fee has been paid.

(3) If a party who has filed a Request for Mediation fails to pay the administration fee within fifteen days after a second reminder in writing from the Secretariat, the party shall be deemed to have withdrawn the Request for Mediation.

93. Fees of mediator

(1) The amount and currency of the fees of the mediator and the modalities and timing of their payment shall be fixed by the Secretariat, after consultation with the mediator and the parties.

(2) The amount of the fees shall, unless the parties and the mediator agree otherwise, be calculated on the basis of the hourly or, if applicable, daily indicative rates set out in the Schedule of Fees applicable on the date of the Request for Mediation, taking into account—

(*a*) the amount in dispute;

(*b*) the complexity of the subject matter of the dispute; and

(*c*) any other relevant circumstances of the case.

94. Deposits

(1) If a party fails to pay the required deposit, within fifteen days of a second reminder in writing from the Secretariat, the mediation shall be deemed to be terminated.

(2) The Secretariat shall, by notice in writing, inform the parties and the mediator of the termination and indicate the date of termination.

(3) After the termination of the mediation, the Secretariat shall render an accounting to the parties of any deposit made and return an expended balance to the parties or require the payment of any amount owing from the parties.

95. Costs

Unless the parties agree otherwise, the administration fee, the fees of the mediator and all other expenses of the mediation, including, in particular, the required travel expenses of the mediator and any expenses associated with obtaining expert advice, shall be borne in equal shares by the parties.

96. Exclusion of liability

Except in respect of deliberate wrong doing, the mediator, and the Secretariat are not liable to any party for any act or omission in connection with any mediation conducted under this Chapter.

97. Bar to action for defamation

The parties and, by accepting appointment, the mediator, agree that any statements or comments, whether written or oral, or used by them or their representatives in preparation for or in the course of the mediation shall not be relied upon to found or maintain an action for defamation libel, slander or any related complaint, and this section may be pleaded as a bar to the action.

98. Suspension of running of limitation period under the statute of limitations

The parties agree that, to the extent permitted by the applicable law, the running of the limitation period under the Statute of Limitations or an equivalent law shall be suspended in relation to the dispute that is the subject of the mediation from the date of the commencement of the mediation until the date of the termination of the mediation.

CHAPTER V

The Alternative Dispute Resolution Secretariat

99. Establishment of the Alternative Dispute Resolution Secretariat

There is hereby established a body to be known as the Alternative Dispute Resolution Secretariat.

100. Functions of the Secretariat

The Secretariat shall—

(*a*) provide such services and facilities, including secretarial, rooms, computers for parties and other persons, who wish to settle their disputes under the provisions of this Act, as it may determine;

(*b*) maintain a register of experienced arbitrators, conciliators and mediators from which parties may appoint their arbitrators, conciliators and mediators;

(*c*) render advice and other assistance to parties who request for advice or assistance relating to the settlement of disputes under this Act;

(*d*) exercise any power for alternative dispute resolution conferred on it by parties to the dispute;

(*e*) review, from time to time, the rules of arbitration, conciliation and mediation set out in this Act and recommend changes;

(*f*) conduct research, provide education and issue specialised publications on all forms of alternative dispute resolution;

(*g*) provide guidelines on fees for arbitrators, conciliators and mediators; and

(*h*) perform the other functions assigned to it under this Act.

101. Independence of the Secretariat

Subject to the Constitution and unless otherwise provided in this Act, the Secretariat is not under the direction or control of any person or authority in the performance of its functions under this Act.

102. Executive Secretary

(1) There shall be for the Secretariat an Executive Secretary who shall be appointed by the Minister.

(2) The Executive Secretary shall be the holder of at least a first degree or an advanced certificate in alternative dispute resolution from a recognised institution.

(3) The Executive Secretary shall be the chief executive of the Secretariat and be responsible for the day-to-day administration of the Secretariat.

103. Other staff

(1) The Executive Secretary shall, in consultation with the Attorney-General, appoint the other staff of the Secretariat from persons with appropriate or relevant qualifications.

(2) The remuneration of the Executive Secretary and other staff of the Secretariat shall, until such time as may be determined by the Minister, be provided for in the budget established for that purpose in the Ministry.

104. Schedule of Fees

The Secretariat shall establish a Schedule of Fees for the services it provides under this Act.

CHAPTER VI
Miscellaneous

105. Regulations

The Minister may make regulations for the better carrying into effect of the provisions of this Act.

106. Repeal

The Arbitration Act is hereby repealed.

[Act No. 6 of 2006.]

FIRST SCHEDULE

[Section 55.]

UNCITRAL Arbitration Rules

Section I.—Introductory Rules

Scope of Application

Article 1

1. Where the parties to a contract have agreed in writing* that disputes in relation to that contract shall be referred to arbitration under the UNCITRAL Arbitration Rules, then such disputes shall be settled in accordance with these Rules subject to such modification as the parties may agree in writing.

2. These Rules shall govern the arbitration except that where any of these Rules is in conflict with a provision of the law applicable to the arbitration from which the parties cannot derogate, that provision shall prevail.

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* Model Arbitration Clause

Any dispute, controversy or claim arising out of or relating to this contract, or the breach, termination or invalidity thereof, shall be settled by arbitration in accordance with the UNCITRAL Arbitration Rules as at present in force.

Note.– Parties may wish to consider adding—

(*a*) the appointing authority shall be ..... (name of institution or person);

(*b*) the number of arbitrators shall be ..... (one or three);

(*c*) the place of arbitration shall be ..... (town or country);

(*d*) the language(s) to be used in the arbitral proceedings shall be ..... .

Notice, Calculation of Periods of Time

Article 2

1. For the purposes of these Rules, any notice, including a notification, communication or proposal, is deemed to have been received if it is physically delivered to the addressee or if it is delivered at his habitual residence, place of business or mailing address, or, if none of these can be found after making reasonable inquiry, then at the addressees last-known residence or place of business. Notice shall be deemed to have been received on the day it is so delivered.

2. For the purposes of calculating a period of time under these Rules, such period shall begin to run on the day following the day when a notice, notification, communication or proposal is received. If the last day of such period is an official holiday or a non-business day at the residence or place of business of the addressee, the period is extended until the first business day which follows. Official holidays or non-business days occurring during the running of the period of time are included in calculating the period.

Notice of Arbitration

Article 3

1. The party initiating re-course to arbitration (hereinafter called the "claimant") shall give to the other party (hereinafter called the "respondent") a notice of arbitration.

2. Arbitral proceedings shall be deemed to commence on the date on which the notice of arbitration is received by the respondent.

3. The notice of arbitration shall include the following—

(*a*) a demand that the dispute be referred to arbitration;

(*b*) the names and addresses of the parties;

(*c*) a reference to the arbitration clause or the separate arbitration agreement that is invoked;

(*d*) a reference to the contract out of or in relation to which the dispute arises;

(*e*) the general nature of the claim and an indication of the amount involved, if any;

(*f*) the relief or remedy sought;

(*g*) a proposal as to the number of arbitrators (i.e. one or three), if the parties have not previously agreed thereon.

4. The notice of arbitration may also include—

(*a*) the proposals for the appointments of a sole arbitrator and an appointing authority referred to in Article 6, paragraph 1;

(*b*) the notification of the appointment of an arbitrator referred to in Article 7;

(*c*) the statement of claim referred to in Article 18.

Representation and Assistance

Article 4

The parties may be represented or assisted by persons of their choice. The names and addresses of such persons must be communicated in writing to the other party; such communication must specify whether the appointment is being made for purposes of representation or assistance.

Section II.—Composition of the Arbitral Tribunal

Number of Arbitrators

Article 5

If the parties have not previously agreed on the number of arbitrators (i.e. one or three), and if within fifteen days after the receipt by the respondent of the notice of arbitration the parties have not agreed that there shall be only one arbitrator, three arbitrators shall be appointed.

Appointment of Arbitrators (*Articles 6 to 8*)

Article 6

1. If a sole arbitrator is to be appointed, either party may propose to the other—

(*a*) the names of one or more persons, one of whom would serve as the sole arbitrator; and

(*b*) if no appointing authority has been agreed upon by the parties, the name or names of one or more institutions or persons, one of whom would serve as appointing authority.

2. If within thirty days after receipt by a party of a proposal made in accordance with paragraph 1 the parties have not reached agreement on the choice of a sole arbitrator, the sole arbitrator shall be appointed by the appointing authority agreed upon by the parties. If no appointing authority has been agreed upon by the parties, or if the appointing authority agreed upon refuses to act or fails to appoint the arbitrator within sixty days of the receipt of a party's request therefore, either party may request the Secretary-General of the Permanent Court of Arbitration at The Hague to designate an appointing authority.

3. The appointing authority shall, at the request of one of the parties, appoint the sole arbitrator as promptly as possible. In making the appointment, the appointing authority shall use the following list-procedure, unless both parties agree that the list-procedure should not be used or unless the appointing authority determines in its discretion that the use of the list-procedure is not appropriate for the case—

(*a*) at the request of one of the parties the appointing authority shall communicate to both parties an identical list containing at least three names;

(*b*) within fifteen days after the receipt of this list, each party may return the list to the appointing authority after having deleted the name or names to which he objects and numbered the remaining names on the list in the order of his preference;

(*c*) after the expiration of the above period of time the appointing authority shall appoint the sole arbitrator from among the names approved on the lists returned to it and in accordance with the order of preference indicated by the parties;

(*d*) if for any reason the appointment cannot be made according to this procedure, the appointing authority may exercise its discretion in appointing the sole arbitrator.

4. In making the appointment, the appointing authority shall have regard to such considerations as are likely to secure the appointment of an independent and impartial arbitrator and shall take into account as well the advisability of appointing an arbitrator of a nationality other than the nationalities of the parties.

Article 7

1. If three arbitrators are to be appointed, each party shall appoint one arbitrator. The two arbitrators thus appointed shall choose the third arbitrator who will act as the presiding arbitrator of the tribunal.

2. If within thirty days after the receipt of a party's notification of the appointment of an arbitrator the other party has not notified the first party of the arbitrator he has appointed—

(*a*) the first party may request the appointing authority previously designated by the parties to appoint the second arbitrator; or

(*b*) if no such authority has been previously designated by the parties, or if the appointing authority previously designated refuses to act or fails to appoint the arbitrator within thirty days after receipt of a party's request therefore, the first party may request the Secretary-General of the Permanent Court of Arbitration at The Hague to designate the appointing authority. The first party may then request the appointing authority so designated to appoint the second arbitrator. In either case, the appointing authority may exercise its discretion in appointing the arbitrator.

3. If within thirty days after the appointment of the second arbitrator the two arbitrators have not agreed on the choice of the presiding arbitrator, the presiding arbitrator shall be appointed by an appointing authority in the same way as a sole arbitrator would be appointed under Article 6.

Article 8

1. When an appointing authority is requested to appoint an arbitrator pursuant to Article 6 or Article 7, the party which makes the request shall send to the appointing authority a copy of the notice of arbitration, a copy of the contract out of or in relation to which the dispute has arisen and a copy of the arbitration agreement if it is not contained in the contract. The appointing authority may require from either party such information as it deems necessary to fulfil its function.

2. Where the names of one or more persons are proposed for appointment as arbitrators, their full names, addresses and nationalities shall be indicated, together with a description of their qualifications.

Challenge of Arbitrators (Articles 9 to 12)

Article 9

A prospective arbitrator shall disclose to those who approach him in connection with his possible appointment any circumstances likely to give rise to justifiable doubts as to his impartiality or independence. An arbitrator, once appointed or chosen, shall disclose such circumstances to the parties unless they have already been informed by him of these circumstances.

Article 10

1. Any arbitrator may be challenged if circumstances exist that give rise to justifiable doubts as to the arbitrator's impartiality or independence.

2. A party may challenge the arbitrator appointed by him only for reasons of which he becomes aware after the appointment has been made.

Article 11

1. A party who intends to challenge an arbitrator shall send notice of his challenge within fifteen days after the appointment of the challenged arbitrator has been notified to the challenging party or within fifteen days after the circumstances mentioned in Articles 9 and 10 became known to that party.

2. The challenge shall be notified to the other party, to the arbitrator who is challenged and to the other members of the arbitral tribunal. The notification shall be in writing and shall state the reasons for the challenge.

3. When an arbitrator has been challenged by one party, the other party may agree to the challenge. The arbitrator may also, after the challenge, withdraw from his office. In neither case does this imply acceptance of the validity of the grounds for the challenge. In both cases the procedure provided in Article 6 or 7 shall be used in

full for the appointment of the substitute arbitrator, even if during the process of appointing the challenged arbitrator a party had failed to exercise his right to appoint or to participate in the appointment.

Article 12

1. If the other party does not agree to the challenge and the challenged arbitrator does not withdraw, the decision on the challenge will be made—

(*a*) when the initial appointment was made by an appointing authority, by that authority;

(*b*) when the initial appointment was not made by an appointing authority, but an appointing authority has been previously designated, by that authority;

(*c*) in all other cases, by the appointing authority to be designated in accordance with the procedure for designating an appointing authority as provided for in Article 6.

2. If the appointing authority sustains the challenge, a substitute arbitrator shall be appointed or chosen pursuant to the procedure applicable to the appointment or choice of an arbitrator as provided in Articles 6 to 9 except that, when this procedure would call for the designation of an appointing authority, the appointment of the arbitrator shall be made by the appointing authority which decided on the challenge.

Replacement of on Arbitrator

Article 13

1. In the event of the death or resignation of an arbitrator during the course of the arbitral proceedings, a substitute arbitrator shall be appointed or chosen pursuant to the procedure provided for in Articles 6 to 9 that was applicable to the appointment or choice of the arbitrator being replaced.

2. In the event that an arbitrator fails to act or in the event of the *de jure* or *de facto* impossibility of his performing his functions, the procedure in respect of the challenge and replacement of an arbitrator as provided in the preceding Articles shall apply.

Repetition of Hearings in the Event of the Replacement of an Arbitrator

Article 14

If under Articles 11 to 13 the sole or presiding arbitrator is replaced, any hearings held previously shall be repeated; if any other arbitrator is replaced, such prior hearings may be repeated at the discretion of the arbitral tribunal.

Section III.—Arbitral Proceedings

General Provisions

Article 15

1. Subject to these Rules, the arbitral tribunal may conduct the arbitration in such manner as it considers appropriate, provided that the parties are treated with equality and that at any stage of the proceedings each party is given a full opportunity of presenting his case.

2. If either party so requests at any stage of the proceedings, the arbitral tribunal shall hold hearings for the presentation of evidence by witnesses, including expert witnesses, or for oral argument. In the absence of such a request, the arbitral tribunal shall decide whether to hold such hearings or whether the proceedings shall be conducted on the basis of documents and other materials.

3. All documents or information supplied to the arbitral tribunal by one party shall at the same time be communicated by that party to the other party.

Place of Arbitration

Article 16

1. Unless the parties have agreed upon the place where the arbitration is to be held, such place shall be determined by the arbitral tribunal, having regard to the circumstances of the arbitration.

2. The arbitral tribunal may determine the locale of the arbitration within the country agreed upon by the parties. It may hear witnesses and hold meetings for consultation among its members at any place it deems appropriate, having regard to the circumstances of the arbitration.

3. The arbitral tribunal may meet at any place it deems appropriate for the inspection of goods, other property or documents. The parties shall be given sufficient notice to enable them to be present at such inspection.

4. The award shall be made at the place of arbitration.

Language

Article 17

1. Subject to an agreement by the parties, the arbitral tribunal shall, promptly after its appointment, determine the language or languages to be used in the proceedings. This determination shall apply to the statement of claim, the statement of defence, and any further written statements and, if oral hearings take place, to the language or languages to be used in such hearings.

2. The arbitral tribunal may order that any documents annexed to the statement of claim or statement of defence, and any supplementary documents or exhibits submitted in the course of the proceedings, delivered in their original language, shall be accompanied by a translation into the language or languages agreed upon by the parties or determined by the arbitral tribunal.

Statement of Claim

Article 18

1. Unless the statement of claim was contained in the notice of arbitration, within a period of time to be determined by the arbitral tribunal, the claimant shall communicate his statement of claim in writing to the respondent and to each of the arbitrators. A copy of the contract, and of the arbitration agreement if not contained in the contract, shall be annexed thereto.

2. The statement of claim shall include the following particulars—

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

(*b*) a statement of the facts supporting the claim;

(*c*) the points at issue;

(*d*) the relief or remedy sought.

The claimant may annex to his statement of claim all documents he deems relevant or may add a reference to the documents or other evidence he will submit.

Statement of Defence

Article 19

1. Within a period of time to be determined by the arbitral tribunal, the respondent shall communicate his statement of defence in writing to the claimant and to each of the arbitrators.

2. The statement of defence shall reply to the particulars (*b*), (*c*) and (*d*) of the statement of claim (Article 18, paragraph 2). The respondent may annex to his statement the documents on which he relies for his defence or may add a reference to the documents or other evidence he will submit.

3. In his statement of defence, or at a later stage in the arbitral proceedings if the arbitral tribunal decides that the delay was justified under the circumstances, the respondent may make a counterclaim arising out of the same contract or rely on a claim arising out of the same contract for the purpose of a set-off.

4. The provisions of Article 18, paragraph 2, shall apply to a counterclaim and a claim relied on for the purpose of a set-off.

Amendments to the Claim or Defence

Article 20

During the course of the arbitral proceedings either party may amend or supplement his claim or defence unless the arbitral tribunal considers it in-appropriate to allow such amendment having regard to the delay in making it or prejudice to the other party or any other circumstances. However, a claim may not be amended in such a manner that the amended claim falls outside the scope of the arbitration clause or separate arbitration agreement.

Pleas as to the Jurisdiction of the Arbitral Tribunal

Article 21

1. The arbitral tribunal shall have the power to rule on objections that it has no jurisdiction, including any objections with respect to the existence or validity of the arbitration clause or of the separate arbitration agreement.

2. The arbitral tribunal shall have the power to determine the existence or the validity of the contract of which an arbitration clause forms a part. For the purposes of Article 21, an arbitration clause which forms part of a contract and which provides for arbitration under these Rules shall be treated as an agreement independent of the other terms of the contract. A decision by the arbitral tribunal that the contract is null and void shall not entail *ipso jure* the invalidity of the arbitration clause.

3. A plea that the arbitral tribunal does not have jurisdiction shall be raised not later than in the statement of defence or, with respect to a counterclaim, in the reply to the counterclaim.

4. In general, the arbitral tribunal should rule on a plea concerning its jurisdiction as a preliminary question. However, the arbitral tribunal may proceed with the arbitration and rule on such a plea in their final award.

Further Written Statements

Article 22

The arbitral tribunal shall decide which further written statements, in addition to the statement of claim and the statement of defence, shall be required from the parties or may be presented by them and shall fix the periods of time for communicating such statements.

Periods of Time

Article 23

The periods of time fixed by the arbitral tribunal for the communication of written statements (including the statement of claim and statement of defence) should not exceed forty-five days. However, the arbitral tribunal may extend the time-limits if it concludes that an extension is justified.

Evidence and Hearings (Articles 24 and 25)

Article 24

1. Each party shall have the burden of proving the facts relied on to support his claim or defence.

2. The arbitral tribunal may, if it considers it appropriate, require a party to deliver to the tribunal and to the other party, within such a period of time as the arbitral tribunal shall decide, a summary of the documents and other evidence which that party intends to present in support of the facts in issue set out in his statement of claim or statement of defence.

3. At any time during the arbitral proceedings the arbitral tribunal may require the parties to produce documents, exhibits or other evidence within such a period of time as the tribunal shall determine.

Article 25

1. In the event of an oral hearing, the arbitral tribunal shall give the parties adequate advance notice of the date, time and place thereof.

2. If witnesses are to be heard, at least fifteen days before the hearing each party shall communicate to the arbitral tribunal and to the other party the names and addresses of the witnesses he intends to present, the subject upon and the languages in which such witnesses will give their testimony.

3. The arbitral tribunal shall make arrangements for the translation of oral statements made at a hearing and for a record of the hearing if either is deemed necessary by the tribunal under the circumstances of the case, or if the parties have agreed thereto and have communicated such agreement to the tribunal at least fifteen days before the hearing.

4. Hearings shall be held in camera unless the parties agree otherwise. The arbitral tribunal may require the retirement of any witness or witnesses during the testimony of other witnesses. The arbitral tribunal is free to determine the manner in which witnesses are examined.

5. Evidence of witnesses may also be presented in the form of written statements signed by them.

6. The arbitral tribunal shall determine the admissibility, relevance, materiality and weight of the evidence offered.

Interim Measures of Protection

Article 26

1. At the request of either party, the arbitral tribunal may take any interim measures it deems necessary in respect of the subject matter of the dispute, including measures for the conservation of the goods forming the subject matter in dispute, such as ordering their deposit with a third person or the sale of perishable goods.

2. Such interim measures may be established in the form of an interim award. The arbitral tribunal shall be entitled to require security for the costs of such measures.

3. A request for interim measures addressed by any party to a judicial authority shall not be deemed incompatible with the agreement to arbitrate, or as a waiver of that agreement.

Experts

Article 27

1. The arbitral tribunal may appoint one or more experts to report to it, in writing, on specific issues to be determined by the tribunal. A copy of the expert's terms of reference, established by the arbitral tribunal, shall be communicated to the parties.

2. The parties shall give the expert any relevant information or produce for his inspection any relevant documents or goods that he may require of them. Any dispute between a party and such expert as to the relevance of the required information or production shall be referred to the arbitral tribunal for decision.

3. Upon receipt of the expert's report, the arbitral tribunal shall communicate a copy of the report to the parties who shall be given the opportunity to express, in writing, their opinion on the report. A party shall be entitled to examine any document on which the expert has relied in his report.

4. At the request of either party the expert, after delivery of the report, may be heard at a hearing where the parties shall have the opportunity to be present and to interrogate the expert. At this hearing either party may present expert witnesses in order to testify on the points at issue. The provisions of Article 25 shall be applicable to such proceedings.

Default

Article 28

1. If, within the period of time fixed by the arbitral tribunal, the claimant has failed to communicate his claim without showing sufficient cause for such failure, the arbitral tribunal shall issue an order for the termination of the arbitral proceedings. If, within the period of time fixed by the arbitral tribunal, the respondent has failed to communicate his statement of defence without showing sufficient cause for such failure, the arbitral tribunal shall order that the proceedings continue.

2. If one of the parties, duly notified under these Rules, fails to appear at a hearing, without showing sufficient cause for such failure, the arbitral tribunal may proceed with the arbitration.

3. If one of the parties, duly invited to produce documentary evidence, fails to do so within the established period of time, without showing sufficient cause for such failure, the arbitral tribunal may make the award on the evidence before it.

Closure of Hearings

Article 29

1. The arbitral tribunal may inquire of the parties if they have any further proof to offer or witnesses to be heard or submissions to make and, if there are none, it may declare the hearings closed.

2. The arbitral tribunal may, if it considers it necessary owing to exceptional circumstances, decide, on its own motion or upon application of a party, to reopen the hearings at any time before the award is made.

Waiver of Rules

Article 30

A party who knows that any provision of, or requirement under, these Rules has not been complied with and yet proceeds with the arbitration without promptly stating his objection to such non-compliance, shall be deemed to have waived his right to object.

Section IV.—The Award

Decisions

Article 31

1. When there are three arbitrators, any award or other decision of the arbitral tribunal shall be made by a majority of the arbitrators.

2. In the case of questions of procedure, when there is no majority or when the arbitral tribunal so authorises, the presiding arbitrator may decide on his own, subject to revision, if any, by the arbitral tribunal.

Form and Effect of the Award

Article 32

1. In addition to making a final award, the arbitral tribunal shall be entitled to make interim, interlocutory, or partial awards.

2. The award shall be made in writing and shall be final and binding on the parties. The parties undertake to carry out the award without delay.

3. The arbitral tribunal shall state the reasons upon which the award is based, unless the parties have agreed that no reasons are to be given.

4. An award shall be signed by the arbitrators and it shall contain the date on which and the place where the award was made. Where there are three arbitrators and one of them fails to sign, the award shall state the reason for the absence of the signature.

5. The award may be made public only with the consent of both parties.

6. Copies of the award signed by the arbitrators shall be communicated to the parties by the arbitral tribunal.

7. If the arbitration law of the country where the award is made requires that the award be filed or registered by the arbitral tribunal, the tribunal shall comply with this requirement within the period of time required by law.

Applicable Law, Amiable Compositeur

Article 33

1. The arbitral tribunal shall apply the law designated by the parties as applicable to the substance of the dispute. Failing such designation by the parties, the arbitral tribunal shall apply the law determined by the conflict of laws rules which it considers applicable.

2. The arbitral tribunal shall decide as *amiable compositeur* or *ex aequo et bono* only if the parties have expressly authorised the arbitral tribunal to do so and if the law applicable to the arbitral procedure permits such arbitration.

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

Settlement or other Grounds for Termination

Article 34

1. If, before the award is made, the parties agree on a settlement of the dispute, the arbitral tribunal shall either issue an order for the termination of the arbitral proceedings or, if requested by both parties and accepted by the tribunal, record the settlement in the form of an arbitral award on agreed terms. The arbitral tribunal is not obliged to give reasons for such an award.

2. If, before the award is made, the continuation of the arbitral proceedings becomes unnecessary or impossible for any reason not mentioned in paragraph 1, the arbitral tribunal shall inform the parties of its intention to issue an order for the termination of the proceedings. The arbitral tribunal shall have the power to issue such an order unless a party raises justifiable grounds for objection.

3. Copies of the order for termination of the arbitral proceedings or of the arbitral award on agreed terms, signed by the arbitrators, shall be communicated by the arbitral tribunal to the parties. Where an arbitral award on agreed terms is made, the provisions of Article 32, paragraphs 2 and 4 to 7, shall apply.

Interpretation of the Award

Article 35

1. Within thirty days after the receipt of the award, either party, with notice to the other party, may request that the arbitral tribunal give an interpretation of the award.

2. The interpretation shall be given in writing within forty-five days after the receipt of the request. The interpretation shall form part of the award and the provisions of Article 32, paragraphs 2 to 7, shall apply.

Correction of the Award

Article 36

1. Within thirty days after the receipt of the award, either party, with notice to the other party, may request the arbitral tribunal to correct in the award any errors in computation, any clerical or typographical errors, or any errors of similar nature. The arbitral tribunal may within thirty days after the communication of the award make such corrections on its own initiative.

2. Such corrections shall be in writing, and the provisions of Article 32, paragraphs 2 to 7, shall apply.

Additional Award

Article 37

1. Within thirty days after the receipt of the award, either party, with notice to the other party, may request the arbitral tribunal to make an additional award as to claims presented in the arbitral proceedings but omitted from the award.

2. If the arbitral tribunal considers the request for an additional award to be justified and considers that the omission can be rectified without any further hearings or evidence, it shall complete its award within sixty days after the receipt of the request.

3. When an additional award is made, the provisions of Article 32, paragraphs 2 to 7, shall apply.

Costs (Articles 38 to 40)

Article 38

The arbitral tribunal shall fix the costs of arbitration in its award. The term **"costs"** includes only—

(*a*) the fees of the arbitral tribunal to be stated separately as to each arbitrator and to be fixed by the tribunal itself in accordance with Article 39;

(*b*) the travel and other expenses incurred by the arbitrators;

(*c*) the costs of expert advice and of other assistance required by the arbitral tribunal;

(*d*) the travel and other expenses of witnesses to the extent such expenses are approved by the arbitral tribunal;

(*e*) the costs for legal representation and assistance of the successful party if such costs were claimed during the arbitral proceedings, and only to the extent that the arbitral tribunal determines that the amount of such costs is reasonable;

(*f*) any fees and expenses of the appointing authority as well as the expenses of the Secretary-General of the Permanent Court of Arbitration at The Hague.

Article 39

1. The fees of the arbitral tribunal shall be reasonable in amount, taking into account the amount in dispute, the complexity of the subject matter, the time spent by the arbitrators and any other relevant circumstances of the case.

2. If an appointing authority has been agreed upon by the parties or designated by the Secretary-General of the Permanent Court of Arbitration at The Hague, and if that authority has issued a schedule of fees for arbitrators in international cases which it administers, the arbitral tribunal in fixing its fees shall take that schedule of fees into account to the extent that it considers appropriate in the circumstances of the case.

3. If such appointing authority has not issued a schedule of fees for arbitrators in international cases, any party may at any time request the appointing authority to furnish a statement setting forth the basis for establishing fees which is customarily followed in international cases in which the authority appoints arbitrators. If the appointing authority consents to provide such a statement, the arbitral tribunal in fixing its fees shall take such information into account to the extent that it considers appropriate in the circumstances of the case.

4. In cases referred to in paragraphs 2 and 3, when a party so requests and the appointing authority consents to perform the function, the arbitral tribunal shall fix its fees only after consultation with the appointing authority which may make any comment it deems appropriate to the arbitral tribunal concerning the fees.

Article 40

1. Except as provided in paragraph 2, the costs of arbitration shall in principle be borne by the unsuccessful party. However, the arbitral tribunal may apportion each of such costs between the parties if it determines that apportionment is reasonable, taking into account the circumstances of the case.

2. With respect to the costs of legal representation and assistance referred to in Article 38, paragraph (*e*), the arbitral tribunal, taking into account the circumstances of the case, shall be free to determine which party shall bear such costs or may apportion such costs between the parties if it determines that apportionment is reasonable.

3. When the arbitral tribunal issues an order for the termination of the arbitral proceedings or makes an award on agreed terms, it shall fix the costs of arbitration referred to in Article 38 and Article 39, paragraph 1, in the text of that order or award.

4. No additional fees may be charged by an arbitral tribunal for interpretation or correction or completion of its award under Articles 35 to 37.

Deposit of Costs

Article 41

1. The arbitral tribunal, on its establishment, may request each party to deposit an equal amount as an advance for the costs referred to in Article 38, paragraphs (*a*), (*b*) and (*c*).

2. During the course of the arbitral proceedings the arbitral tribunal may request supplementary deposits from the parties.

3. If an appointing authority has been agreed upon by the parties or designated by the Secretary-General of the Permanent Court of Arbitration at The Hague, and when a party so requests and the appointing authority consents to perform the function, the arbitral tribunal shall fix the amounts of any deposits or supplementary deposits only after consultation with the appointing authority which may make any comments to the arbitral tribunal which it deems appropriate concerning the amount of such deposits and supplementary deposits.

4. If the required deposits are not paid in full within thirty days after the receipt of the request, the arbitral tribunal shall so inform the parties in order that one or another of them may make the required payment. If such payment is not made, the arbitral tribunal may order the suspension or termination of the arbitral proceedings.

5. After the award has been made, the arbitral tribunal shall render an accounting to the parties of the deposits received and return any unexpended balance to the parties.

SECOND SCHEDULE

[Sections 1 (*a*) and 56.]

United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 10 June, 1958)

Article I

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

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

3. When signing, ratifying or acceding to this Convention, or notifying extension under Article X hereof, any State may on the basis of reciprocity declare that it will apply the Convention to the recognition and enforcement of awards made only in the

territory of another Contracting State. It may also declare that it will apply the Convention only to differences arising out of legal relationships, whether contractual or not, which are considered as commercial under the national law of the State making such declaration.

Article II

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

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

3. The court of a Contracting State, when seized of an action in a matter in respect of which the parties have made an agreement within the meaning of this Article, at the request of one of the parties, may 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.

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 extend that they become bound, by this Convention.

Article VIII

1. This Convention shall be open until 31 December, 1958, for signature on behalf of any Member of the United Nations and also on behalf of any other State which is or hereafter becomes a member of any 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*) a federal State Party to this Convention shall, at the request of any other Contracting State transmitted through the Secretary-General of the United Nations, supply a statement of the law and practice of the federation and its constituent units in regard to any particular provision of this Convention, showing the extent to which effect has been given to that provision by legislative or other action.

Article XII

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

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

Article XIII

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

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

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

Article XIV

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

Article XV

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

(*a*) signatures and ratifications in accordance with Article VIII;

(*b*) accessions in accordance with Article IX;

(*c*) declarations and notifications under Articles I, X and XI;

(*d*) the date upon which this Convention enters into force in accordance with Article XII;

(*e*) denunciations and notifications in accordance with Article 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.

THIRD SCHEDULE

[Section 78.]

UNCITRAL Conciliation Rules, 1980

UNCITRAL Conciliation Rules, 1980

Article 1 – Application of the Rules

1. These Rules apply to conciliation of disputes arising out of or relating to a contractual or other legal relationship where the parties seeking an amicable settlement of their dispute have agreed that the UNCITRAL Conciliation Rules apply.

2. The parties may agree to exclude or vary any of these Rules at any time.

3. Where any of these Rules is in conflict with a provision of law from which the parties cannot derogate, that provision prevails.

Article 2 – Commencement of conciliation proceedings

1. The party initiating conciliation sends to the other party a written invitation to conciliate under these Rules, briefly identifying the subject of the dispute.

2. Conciliation proceedings commence when the other party accepts the invitation to conciliate. If the acceptance is made orally, it is advisable that it he confirmed in writing.

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. If he so elects, he informs the other party accordingly.

Article 3 – Number of conciliators

There shall be one conciliator unless the parties agree that there shall be two or three conciliators. Where there is more than one conciliator, they ought, as a general rule, to act jointly.

Article 4 – Appointment of conciliators

1 (*a*) In conciliation proceedings with one conciliator, the parties shall endeavour to reach agreement on the name of a sole conciliator.

(*b*) In conciliation proceedings with two conciliators, each party appoints one conciliator.

(*c*) In conciliation proceedings with three conciliators, each party appoints one conciliator. The parties shall endeavour to reach agreement on the name of the third conciliator.

2. Parties may enlist the assistance of an appropriate institution or person in connexion with the appointment of conciliators. 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.

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 of a nationality other than the nationalities of the parties.

Article 5 – Submission of statements to conciliator

1. The conciliator, upon his appointment, requests each party to submit to him a brief written statement describing the general nature of the dispute and the points at issue. Each party sends a copy of his 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 sends a copy of his statement 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.

Article 6 – Representation and assistance

The parties may be represented or assisted by persons of their choice. The names and addresses of such persons are to be communicated in writing to the other party and to the conciliator; such communication is to specify whether the appointment is made for purposes of representation or of assistance.

Article 7 – Role of conciliator

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

2. The conciliator will 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 therefore.

Article 8 – 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.

Article 9 – Communication between conciliator and parties

1. The conciliator may invite the parties to meet with him or may communicate with them orally or in writing. He may meet or 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 will be determined by the conciliator, after consultation with the parties, having regard to the circumstances of the conciliation proceedings.

Article 10 – Disclosure of information

When the conciliator receives factual information concerning the dispute from a party, he discloses 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. However, when a party gives any information to the conciliator subject to a specific condition that it be kept confidential, the conciliator does not disclose that information to the other party.

Article 11 – Co-operation of parties with conciliator

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

Article 12 – Suggestions by parties for settlement of dispute

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

Article 13 – Settlement agreement

1. When it appears to the conciliator that there exist elements of a settlement, which would be acceptable to the parties, he formulates the terms of a possible settlement and submits 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 draw up and sign a written settlement agreement. If requested by the parties, the conciliator draws up, or assists the parties in drawing up, the settlement agreement.

3. The parties by signing the settlement agreement put an end to the dispute and are bound by the agreement.

Article 14 – Confidentiality

The conciliator and the parties must keep confidential all matters relating to the conciliation proceedings. Confidentiality extends also to the settlement agreement, except where its disclosure is necessary for purposes of implementation and enforcement.

Article 15 – Termination of conciliation proceedings

The conciliation proceedings are 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 efforts 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.

Article 16 – Resort to arbitral or judicial proceedings

The parties undertake not to initiate, during the conciliation proceedings any arbitral or judicial proceedings in respect of a dispute that is the subject 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.

Article 17 – Costs

1. Upon termination of the conciliation proceedings, the conciliator fixes the costs of the conciliation and gives written notice thereof to the parties. The term "costs" includes only—

(*a*) the fee of the conciliator which shall be reasonable in amount;

(*b*) the travel and other expenses of the conciliator;

(*c*) the travel and other expenses of witnesses requested by the conciliator with the consent of the parties;

(*d*) the cost of any expert advice requested by the conciliator with the consent of the parties;

(*e*) the cost of any assistance provided pursuant to Articles 4, paragraph (2) (*b*), and 8 of these Rules.

2. The costs, as defined above, are borne equally by the parties unless the settlement agreement provides for a different apportionment. All other expenses incurred by a party are borne by that party.

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

4. Upon termination of the conciliation proceedings, the conciliator renders an accounting to the parties of the deposits received and returns any unexpended balance to the parties.

Article 19 – Role of conciliator in other proceedings

The parties and the conciliator undertake that the conciliator will not act as an arbitrator or as a representative or counsel of a party in any arbitral or judicial proceedings in respect of a dispute that is the subject of the conciliation proceedings. The parties also undertake that they will not present the conciliator as a witness in any such proceedings.

Article 20 – Admissibility of evidence in other proceedings

The parties undertake not to 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.