

LAWS OF BRUNEI

CHAPTER 279

INTERNATIONAL ARBITRATION

S 35/2009
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S 61/2016

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CHAPTER 279
INTERNATIONAL ARBITRATION

ARRANGEMENT OF SECTIONS

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SCHEDULE 1 — UNCITRAL MODEL LAW ON
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NEW YORK ON 10TH JUNE 1958

INTERNATIONAL ARBITRATION ACT

An Act to provide for the reform of the law relating to international arbitration, the recognition and enforcement of arbitral awards and for matters relating thereto

Commencement: 23rd February 2010

PART 1

PRELIMINARY

Citation

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

PART 2

INTERNATIONAL COMMERCIAL ARBITRATION

Interpretation of Part 2

2. (1) In this Part, unless the context otherwise requires —

“arbitral tribunal” means a sole arbitrator, a panel of arbitrators or a permanent arbitral institution;

“appointing authority” means the authority designated under section 8(2) or (3);

“arbitration agreement” means a written agreement referred to in Article 7 of the Model Law and includes an agreement deemed or constituted under subsection (3) or (4);

“award” means a decision of the arbitral tribunal on the substance of the dispute and includes any interim, interlocutory or partial award, but excludes any orders or directions made under section 15;

“Model Law” means the UNCITRAL Model Law on International Commercial Arbitration adopted by the United Nations Commission on International Trade Law on 21st June 1985, the text in English of which is set out in Schedule 1;

“party” means a party to an arbitration agreement or, in any case where an arbitration does not involve all of the parties to the arbitration agreement, means a party to the arbitration.

(2) Except so far as a contrary intention appears, a word or expression that is used both in this Part and in the Model Law (whether or not a particular meaning is given to it by the Model Law) has, in the Model Law, the same meaning as it has in this Part.

(3) Where in any arbitral or legal proceedings, a party asserts the existence of an arbitration agreement in a pleading, statement of case or any other document in circumstances in which the assertion calls for a reply and the assertion is not denied, there is deemed to be an effective arbitration agreement as between the parties to the proceedings.

(4) A reference in a bill of lading to a charterparty or some other document containing an arbitration clause shall constitute an arbitration agreement if the reference is such as to make that clause part of the bill of lading.

Model Law to have force of law

3. (1) Subject to this Act, the Model Law, with the exception of Chapter VIII thereof, shall have the force of law in Brunei Darussalam.

(2) In the Model Law —

“State” means Brunei Darussalam and any country or territory other than Brunei Darussalam;

“this State” means Brunei Darussalam.

Interpretation of Model Law by use of extrinsic material

4. (1) For the purposes of interpreting the Model Law, reference may be made to the documents of —

(a) the United Nations Commission on International Trade Law;
and

(b) its working group for the preparation of the Model Law,
relating to the Model Law.

(2) Subsection (1) does not affect the application of section 7A of the Interpretation and General Clauses Act (Chapter 4) for the purposes of interpreting this Act.

Application of Part 2

5. (1) This Part and the Model Law do not apply to an arbitration which is not an international arbitration unless the parties agree in writing that this Part or the Model Law apply to that arbitration.

(2) Notwithstanding Article 1(3) of the Model Law, an arbitration is international if —

(a) at least one of the parties to an arbitration agreement, at the time of the conclusion of the agreement, has its place of business in any State other than Brunei Darussalam;

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

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

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

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

(3) For the purposes of subsection (2) —

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

(b) if a party does not have a place of business, a reference to his place of business shall be construed as a reference to his habitual residence.

(4) Notwithstanding any provision to the contrary in the Arbitration Act (Chapter 280), that Act does not apply to any arbitration to which this Part applies.

Enforcement of international arbitration agreement

6. (1) Notwithstanding Article 8 of the Model Law, where any party to an arbitration agreement to which this Act applies institutes any proceedings in any court against any other party to the agreement in respect of any matter which is the subject of the agreement, any party to the agreement may, at any time after entering an appearance and before delivering any pleading or taking any other step in the proceedings, apply to that court to stay the proceedings so far as they relate to that matter.

(2) The court to which an application has been made in accordance with subsection (1) shall make an order, upon such conditions as it may think fit, staying the proceedings so far as they relate to that matter, unless it is satisfied that the arbitration agreement is void, inoperative or incapable of being performed.

(3) Where a court makes an order under subsection (2), the court may, for the purpose of preserving the rights of parties, make such interim or supplementary orders as it may think fit in relation to any property which is the subject of the dispute to which the order under that subsection relates.

(4) Where no party to the proceedings has taken any further step in the proceedings for a period of not less than 2 years after an order staying the proceedings has been made, the court may, on its own motion, make an order discontinuing the proceedings without prejudice to the right of any of the parties to apply for the discontinued proceedings to be reinstated.

(5) For the purposes of this section and sections 7 and 14 —

(a) a reference to a party shall include a reference to any person claiming through or under such party;

(b) “court” means the High Court, an Intermediate Court, a Court of a Magistrate or any other court in which the proceedings are instituted.

Court's powers on stay of proceedings

7. (1) Where a court stays proceedings under section 6, it may, if in those proceedings property has been arrested or bail or other security has been given to prevent or obtain release from arrest, order —

(a) that the property arrested be retained as security for the satisfaction of any award made on the arbitration; or

(b) that the stay be conditional on the provision of equivalent security for the satisfaction of any such award.

(2) Subject to Rules of Court and to any necessary modifications, the same law and practice apply in relation to property retained in pursuance of an order under this section as would apply if it were held for the purposes of proceedings in the court which made the order.

Authorities specified for purposes of Article 6 of Model Law

8. (1) The High Court shall be taken to have been specified in Article 6 of the Model Law as a court competent to perform the functions referred to in that Article, except for Article 11(3) and (4) of the Model Law.

(2) The Chairman of the Brunei Darussalam Arbitration Centre shall be taken to have been specified as the authority competent to perform the functions under Article 11(3) and (4) of the Model Law.

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(3) The Chief Justice may, by notification published in the *Gazette*, appoint any other person to exercise the powers under subsection (2).

Application of Chapter 14

9. (1) The Limitation Act (Chapter 14) applies to arbitration proceedings as it applies to proceedings before any court and a reference in that Act to the commencement of any action shall be construed as a reference to the commencement of arbitration proceedings.

(2) The High Court may order that in computing the time prescribed by the Limitation Act (Chapter 14) for the commencement of proceedings (including arbitration proceedings) in respect of a dispute which was the subject matter of —

(a) an award which the High Court orders to be set aside or declares to be of no effect; or

(b) the affected part of an award which the High Court orders to be set aside in part or declares to be in part of no effect,

the period between the commencement of the arbitration and the date of the order referred to in paragraph (a) or (b) shall be excluded.

(3) Notwithstanding any term in an arbitration agreement to the effect that no cause of action shall accrue in respect of any matter required by the agreement to be referred until an award is made under the agreement, the cause of action shall, for the purposes of the Limitation Act (Chapter 14), be deemed to have accrued in respect of any such matter at the time when it would have accrued but for that term in the agreement.

Number of arbitrators for purposes of Article 10(2) of Model Law

10. Notwithstanding Article 10(2) of the Model Law, if the number of arbitrators is not determined by the parties, there shall be a single arbitrator.

Default in appointment of arbitrators

11. (1) Notwithstanding Article 11(3) of the Model Law, in an arbitration with three arbitrators, each party shall appoint one arbitrator, and the parties shall by agreement appoint the third arbitrator.

(2) Where the parties fail to agree on the appointment of the third arbitrator within 30 days of the receipt of the first request by either party to do so, the appointment shall be made, upon the request of any party, by the appointing authority.

Appeal under Article 16(3) of Model Law

12. (1) Notwithstanding Article 16(3) of the Model Law, an appeal from a decision of the High Court made under Article 16(3) of the Model Law shall lie to the Court of Appeal only with the leave of the High Court.

(2) There shall be no appeal against a refusal by the High Court of the grant of leave.

Public policy and arbitrability

13. (1) Any dispute which the parties have agreed to submit to arbitration under an arbitration agreement may be determined by arbitration unless it is contrary to public policy to do so.

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

Reference of interpleader issue to arbitration

14. Where in proceedings before any court relief by way of interpleader is granted and any issue between the claimants is one in respect of which there is an arbitration agreement between them, the court granting the relief may direct that the issue between the claimants to be determined in accordance with the agreement.

Powers of arbitral tribunal

15. (1) Without prejudice to the powers set out in any other provision of this Act and in the Model Law, an arbitral tribunal shall have power to make orders or give directions to any party for —

- (a) security for costs;
- (b) discovery of documents and interrogatories;
- (c) giving of evidence by affidavit;
- (d) the preservation, interim custody or sale of any property which is or forms part of the subject matter of the dispute;
- (e) samples to be taken from, or any observation to be made of or experiment conducted upon, any property which is or forms part of the subject matter of the dispute;
- (f) the preservation and interim custody of any evidence for the purposes of the proceedings;
- (g) securing the amount in dispute;

(h) ensuring that any award which may be made in the arbitral proceedings is not rendered ineffectual by the dissipation of assets by a party; and

(i) an interim injunction or any other interim measure.

(2) An arbitral tribunal shall, unless the parties to an arbitration agreement have (whether in the arbitration agreement or in any other written document) agreed to the contrary, have power to administer oaths to the parties and witnesses.

(3) An arbitral tribunal shall, unless the parties to an arbitration agreement have (whether in the arbitration agreement or in any other written document) agreed to the contrary, have power to adopt if it thinks fit inquisitorial processes.

(4) The power of the arbitral tribunal to order a claimant to provide security for costs as referred to in subsection (1)(a) shall not be exercised by reason only that the claimant is —

(a) an individual ordinarily resident outside Brunei Darussalam;
or

(b) a corporation or an association incorporated or formed under the law of a country or territory outside Brunei Darussalam, or whose central management and control is exercised outside Brunei Darussalam.

(5) Without prejudice to the application of Article 28 of the Model Law, an arbitral tribunal, in deciding the dispute that is the subject of the arbitral proceedings —

(a) may award any remedy or relief that could have been ordered by the High Court if the dispute had been the subject of civil proceedings in that Court;

(b) may award interest (including interest on a compound basis) on the whole or any part of any sum which —

(i) is awarded to any party, for the whole or any part of the period up to the date of the award; or

- (ii) is in issue in the arbitral proceedings but is paid before the date of the award, for the whole or any part of the period up to the date of payment.

(6) All orders or directions made or given by an arbitral tribunal in the course of an arbitration shall, by leave of the High Court, be enforceable in the same manner as if they were orders made by a court and, where leave is so given, judgment may be entered in terms of that order or direction.

(7) The High Court shall have, for the purpose of and in relation to an arbitration to which this Part applies, the same power of making orders in respect of any of the matters set out in subsection (1) as it has for the purpose of and in relation to an action or matter in a court.

(8) For the purpose of this section and of section 16, “interim measure” means any temporary measure, whether in the form of an award or in another form, by which, at any time prior to the issue of the award by which the dispute is finally decided, the arbitral tribunal orders a party to —

- (a) maintain or restore the *status quo* pending determination of the dispute;

- (b) take action that would prevent, or refrain from taking action that is likely to cause, current or imminent harm or prejudice to the arbitral proceedings itself;

- (c) provide a means of preserving assets out of which a subsequent award may be satisfied; or

- (d) preserve evidence that may be relevant and material to the resolution of the dispute.

Conditions for granting interim measures

16. (1) The party requesting an interim measure under section 15(8)(a), (b) and (c) shall satisfy the arbitral tribunal that —

- (a) harm not adequately reparable by an award of damages is likely to result if the measure is not ordered, and such harm substantially outweighs the harm that is likely to result to the party against whom the measure is directed if the measure is granted; and

(b) there is a reasonable possibility that the requesting party will succeed on the merits of the claim. The determination of this possibility shall not affect the discretion of the arbitral tribunal in making any subsequent determination.

(2) With regard to a request for an interim measure under section 15(8)(d), the requirements in section 15(8)(a) and (b) apply only to the extent the arbitral tribunal considers appropriate.

Applications for preliminary order and conditions for granting preliminary orders

17. (1) Unless otherwise agreed by the parties, a party may, without notice to any other party, make a request for an interim measure together with an application for a preliminary order directing a party not to frustrate the purpose of the interim measure requested.

(2) The arbitral tribunal may grant a preliminary order provided it considers that prior disclosure of the request for the interim measure to the party against whom it is directed risks frustrating the purpose of the measure.

(3) The conditions defined under section 16(1) apply to any preliminary order, provided that the harm to be assessed under paragraph (a) of that subsection, is the harm likely to result from the order being granted or not.

Specific regime for preliminary orders

18. (1) Immediately after the arbitral tribunal has made a determination in respect of an application for a preliminary order, it shall give notice to all parties of the request for the interim measure, the application for the preliminary order, the preliminary order, if any, and all other communications, including by indicating the content of any oral communication, between any party and the arbitral tribunal in relation thereto.

(2) At the same time, the arbitral tribunal shall give an opportunity to any party against whom a preliminary order is directed to present his case at the earliest practicable time.

(3) The arbitral tribunal shall decide promptly on any objection to the preliminary order.

(4) A preliminary order shall expire after 20 days from the date on which it was issued by the arbitral tribunal. However, the arbitral tribunal may issue an interim measure adopting or modifying the preliminary order, after the party against whom the preliminary order is directed has been given notice and an opportunity to present his case.

(5) A preliminary order shall be binding on the parties but shall not be subject to enforcement by a court. Such a preliminary order does not constitute an award.

Modification, suspension or termination

19. The arbitral tribunal may modify, suspend or terminate an interim measure or a preliminary order it has granted, upon application of any party or, in exceptional circumstances and upon prior notice to the parties, on its own initiative.

Provision of security

20. (1) The arbitral tribunal may require the party requesting an interim measure to provide appropriate security in connection with such measure.

(2) The arbitral tribunal shall require the party applying for a preliminary order to provide security in connection with the order unless it considers it inappropriate or unnecessary to do so.

Disclosure

21. (1) The arbitral tribunal may require any party promptly to disclose any material change in the circumstances on the basis of which the measure was requested or granted.

(2) The party applying for a preliminary order shall disclose to the arbitral tribunal all circumstances that are likely to be relevant to the arbitral tribunal's determination whether to grant or maintain such order, and such obligation shall continue until the party against whom the order has been requested has had an opportunity to present his case, and thereafter subsection (1) applies.

Costs and damages

22. The party requesting an interim measure or applying for a preliminary order is liable for any costs and damages caused by such measure or order to any party if the arbitral tribunal later determines that, in the circumstances,

that measure or order should not have been granted. The arbitral tribunal may award such costs and damages at any point during the proceedings.

Witnesses may be summoned by subpoena

23. (1) Any party to an arbitration agreement may take out a subpoena to testify or to produce documents.

(2) The High Court may order that a subpoena to testify or to produce documents shall be issued to compel the attendance before an arbitral tribunal of a witness wherever he may be within Brunei Darussalam.

(3) The High Court may also issue an order under section 32(1) of the Prisons Act (Chapter 51) to bring up a prisoner for examination before an arbitral tribunal.

(4) No person shall be compelled under any such subpoena to produce any document which he could not be compelled to produce on the trial of an action.

Law of arbitration other than Model Law

24. (1) If the parties to an arbitration agreement, whether made before or after the commencement of this Act, have expressly agreed either —

(a) that the Model Law or this Part does not apply to the arbitration; or

(b) that the Arbitration Act (Chapter 280) or the repealed Arbitration Act (Chapter 173) (if applicable) applies to the arbitration,

then, both the Model Law and this Part do not apply to that arbitration but the Arbitration Act (Chapter 280) or the repealed Arbitration Act (Chapter 173) (if applicable) applies to that arbitration.

(2) For the avoidance of doubt, a provision in an arbitration agreement referring to or adopting any rules of arbitration shall not of itself be sufficient to exclude the application of the Model Law or this Part to the arbitration concerned.

Application of rules of arbitration

25. (1) It is hereby declared for the avoidance of doubt that a provision of rules of arbitration agreed to or adopted by the parties, whether made before

or after the commencement of the arbitration, applies and be given effect to the extent that such provision is not inconsistent with any provision of the Model Law or of this Part from which the parties cannot derogate.

(2) Without prejudice to subsection (1), subsections (3) to (6) apply for the purposes of determining whether a provision of rules of arbitration is inconsistent with any provision of the Model Law or of this Part.

(3) A provision of rules of arbitration is not inconsistent with the Model Law or this Part merely because it provides for a matter on which the Model Law and this Part is silent.

(4) Rules of arbitration are not inconsistent with the Model Law or this Part merely because the rules are silent on a matter covered by any provision of the Model Law or this Part.

(5) A provision of rules of arbitration is not inconsistent with the Model Law or this Part merely because it provides for a matter that is covered by a provision of the Model Law or this Part which allows the parties to make their own arrangements by agreement but which applies in the absence of such agreement.

(6) The parties may make the arrangements referred to in subsection (5) by agreeing to the application or adoption of rules of arbitration or by providing any other means by which a matter may be decided.

(7) In this section and section 24, “rules of arbitration” means the rules of arbitration agreed to or adopted by the parties, including the rules of arbitration of an institution or organisation.

Appointment of conciliator

26. (1) Where an agreement provides for the appointment of a conciliator by a person who is not one of the parties and that person refuses to make the appointment or does not make it within the time specified in the agreement or, if no time is so specified, within a reasonable time of being requested by any party to the agreement to make the appointment, the Chairman for the time being of the Brunei Darussalam Arbitration Centre may, on the application of any party to the agreement, appoint a conciliator who shall have the like powers to act in the conciliation proceedings as if he had been appointed in accordance with the terms of the agreement.

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(2) The Chief Justice may, by notification published in the *Gazette*, appoint any other person to exercise the powers of the Chairman of the Brunei Darussalam Arbitration Centre under subsection (1).

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(3) Where an arbitration agreement provides for the appointment of a conciliator and further provides that the person so appointed shall act as an arbitrator in the event of the conciliation proceedings failing to produce a settlement acceptable to the parties —

(a) no objection shall be taken to the appointment of such person as an arbitrator, or to his conduct of the arbitral proceedings, solely on the ground that he had acted previously as a conciliator in connection with some or all of the matters referred to in the arbitration;

(b) if such person declines to act as an arbitrator, any other person appointed as an arbitrator shall not be required first to act as a conciliator unless a contrary intention appears in the arbitration agreement.

(4) Unless a contrary intention appears therein, an agreement which provides for the appointment of a conciliator is deemed to contain a provision that in the event of the conciliation proceedings failing to produce a settlement acceptable to the parties within 4 months, or such longer period as the parties may agree, of the date of the appointment of the conciliator or, where he is appointed by name in the agreement, of the receipt by him of written notification of the existence of a dispute, the conciliation proceedings shall thereupon terminate.

(5) For the purposes of this section and of section 27 —

(a) any reference to “conciliator” includes a reference to any person who acts as a mediator;

(b) any reference to “conciliation proceedings” includes a reference to mediation proceedings.

Power of arbitrator to act as conciliator

27. (1) If all parties to any arbitral proceedings consent in writing and for so long as no party has withdrawn his consent in writing, an arbitrator or umpire may act as a conciliator.

(2) An arbitrator or umpire acting as conciliator —

(a) may communicate with the parties to the arbitral proceedings collectively or separately; and

(b) shall treat information obtained by him from a party to the arbitral proceedings as confidential, unless that party otherwise agrees or unless subsection (3) applies.

(3) Where confidential information is obtained by an arbitrator or umpire from a party to the arbitral proceedings during conciliation proceedings and those proceedings terminate without the parties reaching agreement in settlement of their dispute, the arbitrator or umpire shall before resuming the arbitral proceedings disclose to all other parties to the arbitral proceedings as much of that information as he considers material to the arbitral proceedings.

(4) No objection shall be taken to the conduct of arbitral proceedings by any person solely on the ground that he had acted previously as a conciliator in accordance with this section.

Award by consent

28. If the parties to an arbitration agreement reach agreement in settlement of their dispute and the arbitral tribunal has recorded the terms of settlement in the form of an arbitral award on agreed terms in accordance with Article 30 of the Model Law, the award —

(a) shall be treated as an award on an arbitration agreement; and

(b) may, by leave of the High Court, be enforced in the same manner as a judgment or an order to the same effect, and where leave is so given, judgment may be entered in terms of the award.

Enforcement of awards

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

Awards made on different issues

30. (1) Unless otherwise agreed by the parties, the arbitral tribunal may make more than one award at different times during the arbitration proceedings on different aspects of the matters to be determined.

(2) The arbitral tribunal may, in particular, make an award relating to —

(a) an issue affecting the whole claim; or

(b) a part only of the claim, counterclaim or cross-claim, which is submitted to it for decision.

(3) If the arbitral tribunal makes an award under this section, it shall specify in its award, the issue, or claim or part of a claim, which is the subject matter of the award.

Effect of award

31. (1) An award made by the arbitral tribunal pursuant to an arbitration agreement is final and binding on the parties and on any persons claiming through or under them and may be relied upon by any of the parties by way of defence, set-off or otherwise in any proceedings in any court of competent jurisdiction.

(2) Except as provided in Articles 33 and 34(4) of the Model Law, upon an award being made, including an award made in accordance with section 30, the arbitral tribunal shall not vary, amend, correct, review, add to or revoke the award.

(3) For the purposes of subsection (2), an award is made when it has been signed and delivered in accordance with Article 31 of the Model Law.

(4) This section shall not affect the right of a person to challenge the award by any available arbitral process of appeal or review or in accordance with the provisions of this Act and the Model Law.

Interest on awards

32. Where an award directs a sum to be paid, that sum shall, unless the award otherwise directs, carry interest as from the date of the award and at the same rate as a judgment debt.

Taxation of costs

33. (1) Any costs directed by an award to be paid shall, unless the award otherwise directs, be taxable by the arbitrator.

(2) Unless the fees of the arbitral tribunal have been fixed by a written agreement or such agreement has provided for determination of the fees by a person or an institution agreed to by the parties, any party to the arbitration may require that such fees be taxed by the arbitrator.

(3) A certificate signed by the arbitrator on the amount of costs or fees taxed shall form part of the award of the arbitral tribunal.

(4) The Chief Justice may, by notification published in the *Gazette*, appoint any other person to exercise the powers of the taxation of costs under subsection (1).

Proceedings to be heard otherwise than in open court

34. Proceedings under this Act in any court shall, on the application of any party to the proceedings, be heard otherwise than in open court.

Restrictions on reporting of proceedings heard otherwise than in open court

35. (1) This section applies to proceedings under this Act in any court heard otherwise than in open court.

(2) A court hearing any proceedings to which this section applies shall, on the application of any party to the proceedings, give directions as to whether any and, if so, what information relating to the proceedings may be published.

(3) A court shall not give a direction under subsection (2) permitting information to be published unless —

(a) all parties to the proceedings agree that such information may be published; or

(b) the court is satisfied that the information, if published in accordance with such directions as it may give, would not reveal any matter, including the identity of any party to the proceedings, that any party to the proceedings reasonably wishes to remain confidential.

(4) Notwithstanding subsection (3), where a court gives grounds of decision for a judgment in respect of proceedings to which this section applies and considers that judgment to be of major legal interest, the court shall direct that reports of the judgment may be published in law reports and professional publications but, if any party to the proceedings reasonably wishes to conceal any matter, including the fact that he was such a party, the court shall —

(a) give directions as to the action that shall be taken to conceal that matter in those reports; and

(b) if it considers that a report published in accordance with directions given under paragraph (a) would be likely to reveal that matter, direct that no report shall be published until after the end of a period, not exceeding 10 years, as it considers appropriate.

Court may set aside award

36. Notwithstanding Article 34(1) of the Model Law, the High Court may, in addition to the grounds set out in Article 34(2) of the Model Law, set aside the award of the arbitral tribunal if —

(a) the making of the award was induced or affected by fraud or corruption; or

(b) a breach of the rules of natural justice occurred in connection with the making of the award by which the rights of any party have been prejudiced.

Liability of arbitrator

37. An arbitrator is not liable for —

(a) negligence in respect of anything done or omitted to be done in the capacity of arbitrator; and

(b) any mistake in law, fact or procedure made in the course of arbitral proceedings or in the making of an arbitral award.

Immunity of appointing authority and arbitral institutions etc.

38. (1) The appointing authority, or an arbitral or other institution or person designated or requested by the parties to appoint or nominate an arbitrator, is not liable for anything done or omitted in the discharge or

purported discharge of that function unless the act or omission is shown to have been in bad faith.

(2) The appointing authority, or an arbitral or other institution or person by whom an arbitrator is appointed or nominated, is not liable, by reason only of having appointed or nominated him, for anything done or omitted by the arbitrator, his employees or agents in the discharge or purported discharge of his functions as arbitrator.

(3) This section applies to an employee or agent of the appointing authority or of an arbitral or other institution or person as it applies to the appointing authority, institution or person himself.

Transitional provisions for this Part

39. (1) This Part does not apply in relation to an international arbitration between parties to an arbitration agreement that was commenced before the commencement of this Act unless the parties have (whether in the agreement or in any other written document) otherwise agreed.

(2) Subject to subsection (1), where the arbitral proceedings were commenced before the commencement of this Act, the law governing the arbitration agreement and the arbitration shall be the law which would have applied if this Act had not been made.

(3) In any written law, written agreement or other document, a reference to arbitration under the Arbitration Act (Chapter 280) shall, so far as relevant and unless the contrary intention appears, be construed to include a reference to arbitration under this Act.

(4) For the purposes of this section, arbitral proceedings are to be taken as having commenced on the date of the receipt by the respondent of a request for the dispute to be referred to arbitration, or, where the parties have agreed in writing that any other date is to be taken as the date of commencement of the arbitral proceedings, then on that date.

(5) Nothing in this Act shall affect any proceedings relating to arbitration which have been commenced in any court before the commencement of this Act.

PART 3

FOREIGN AWARDS

Interpretation of Part 3

40. (1) In this Part, unless the context otherwise requires —

“arbitral award” has the same meaning as in the Convention;

“arbitration agreement” means an agreement in writing of the kind referred to in paragraph 1 of Article II of the Convention;

“Convention” means the Convention on the Recognition and Enforcement of Foreign Arbitral Awards adopted in 1958 by the United Nations Conference on International Commercial Arbitration at its twenty-fourth meeting, the English text of which is set out in the Second Schedule;

“Convention country” means a country (other than Brunei Darussalam) that is a Contracting State within the meaning of the Convention;

“court” means the High Court;

“foreign award” means an arbitral award made in pursuance of an arbitration agreement in the territory of a Convention country other than Brunei Darussalam;

“written agreement” includes an agreement contained in an exchange of letters, telegrams, telefacsimile or in a communication by teleprinter.

(2) In this Part, where the context so admits, “enforcement”, in relation to a foreign award, includes the recognition of the award as binding for any purpose.

(3) For the purposes of this Part, a body corporate shall be taken to be habitually resident in a country or territory if it is incorporated or has its principal place of business in that country or territory.

Application of Part 3

41. (1) This Part applies to arbitration agreements made before the date of commencement of this Act as it applies to arbitration agreements made on or after that date.

(2) This Part does not apply to foreign awards made before 23rd October 1996.

Recognition and enforcement of foreign awards

42. (1) Brunei Darussalam will only apply the Convention to the recognition and enforcement of foreign awards made in the territory of another Convention country which recognises and will enforce awards made in Brunei Darussalam.

(2) Subject to this Part, a foreign award may be enforced in a court either by action or in the same manner as an award of an arbitrator made in Brunei Darussalam is enforceable under section 31.

(3) Any foreign award which is enforceable under subsection (1) shall be recognised as binding for all purposes upon the persons between whom it was made and may accordingly be relied upon by any of those parties by way of defence, set-off or otherwise in any legal proceedings in Brunei Darussalam.

Evidence

43. (1) In any proceedings in which a person seeks to enforce a foreign award by virtue of this Part, he shall produce to the court —

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

(b) the original arbitration agreement under which the award purports to have been made, or a duly certified copy thereof; and

(c) where the award or agreement is in a foreign language, a translation of it in the English language, duly certified in English as a correct translation by a sworn translator or by an official or by a diplomatic or consular agent of the country in which the award was made.

(2) A document produced to a court in accordance with this section shall, upon mere production, be received by the court as *prima facie* evidence of the matters to which it relates.

Refusal of enforcement

44. (1) In any proceedings in which the enforcement of a foreign award is sought by virtue of this Part, the party against whom the enforcement is sought may request that the enforcement be refused, and the enforcement in any of the cases mentioned in subsections (2) and (4) may be refused but not otherwise.

(2) A court so requested may refuse enforcement of a foreign award if the person against whom enforcement is sought proves to the satisfaction of the court that —

(a) a party to the arbitration agreement in pursuance of which the award was made was, under the law applicable to him, under some incapacity at the time when the agreement was made;

(b) the arbitration agreement is not valid under the law to which the parties have subjected it or, in the absence of any indication in that respect, under the law of the country where the award was made;

(c) he was not given proper notice of the appointment of the arbitrator or of the arbitration proceedings or was otherwise unable to present his case in the arbitration proceedings;

(d) subject to subsection (3), the award deals with a difference not contemplated by, or not falling within the terms of, the submission to arbitration or contains a decision on the matter beyond the scope of the submission to arbitration;

(e) 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

(f) the award has not yet become binding on the parties to the arbitral award or has been set aside or suspended by a competent authority of the country in which, or under the law of which, the award was made.

(3) When a foreign award referred to in subsection (2)(d) contains decisions on matters not submitted to arbitration but those decisions can be separated from decisions on matters submitted to arbitration, the award may be enforced to the extent that it contains decisions on matters so submitted.

(4) In any proceedings in which the enforcement of a foreign award is sought by virtue of this Part, the court may refuse to enforce the award if it finds that —

(a) the subject matter of the difference between the parties to the award is not capable of settlement by arbitration under the law of Brunei Darussalam; or

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

(5) Where, in any proceedings in which the enforcement of a foreign award is sought by virtue of this Part, the court is satisfied that an application for the setting aside or for the suspension of the award has been made to a competent authority of the country in which, or under the law of which, the award was made, the court may —

(a) if it considers it proper to do so, adjourn the proceedings or, as the case may be, so much of the proceedings as relates to the award; and

(b) on the application of the party seeking to enforce the award, order the other party to give suitable security.

Convention countries

45. (1) Where the Attorney General by an order published in the *Gazette* has declared that any State specified in that order is a Convention country, it shall, while in force, be evidence of that fact.

(2) For the purposes of this Part, a certificate signed by the Attorney General stating that a State specified in the certificate but not specified in any order made under subsection (1) which is in force is, or was at a time specified in the certificate, a Convention country shall, upon mere production, be *prima facie* evidence of that fact.

Enforcement of awards under other provisions of law

46. (1) Nothing in this Part shall affect the right of any person to enforce an arbitral award otherwise than as is provided for in this Part.

(2) Notwithstanding section 4 of the Reciprocal Enforcement of Foreign Judgments Act (Chapter 177), where a foreign award is both

enforceable under this Part and registrable as a judgment under that Act, proceedings to enforce the award under this Part may be commenced without any disentitlement to recover any costs of the proceedings, unless otherwise ordered by the court.

PART 4

GENERAL

Government to be bound

47. This Act applies to any arbitration to which the Government is a party.

Rules of Court

48. Subject to the provisions of this Act, the Chief Justice may, with the approval of His Majesty the Sultan and Yang Di-Pertuan makes Rules of Court for regulating the practice and procedure of any court in respect of any matter under this Act.

Enabling power

49. His Majesty the Sultan and Yang Di-Pertuan may by order make such provisions as may appear to him to be necessary or expedient —

(a) for giving effect to the provisions of this Act;

(b) for the purpose of bringing the provisions of any other written law (other than the Constitution of Brunei Darussalam) into accord with the provisions of this Act or any other Rules of Court made thereunder.

SCHEDULE 1

(section 2(1))

UNCITRAL MODEL LAW ON INTERNATIONAL COMMERCIAL ARBITRATION

CHAPTER I

GENERAL PROVISIONS

*Article 1. Scope of application**

*Article headings are for reference purposes only and are not to be used for purposes of interpretation.

(1) This Law applies to international commercial* arbitration, subject to any agreement in force between this State and any other State or States.

*The term “commercial” should be given a wide interpretation so as to cover matters arising from all relationships of a commercial nature, whether contractual or not. Relationships of a commercial nature include, but are not limited to, the following transactions: 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 other forms of industrial or business co-operation; carriage of goods or passengers by air, sea, rail or road.

(2) The provisions of this Law, except Articles 8, 9, 35 and 36, apply only if the place of arbitration is in the territory of this State.

(3) An arbitration is international if:

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

(b) one of the following places is situated outside the State in which the parties have their places of business:

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

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

SCHEDULE 1 — *(continued)*

- (c) the parties have expressly agreed that the subject matter of the arbitration agreement relates to more than one country.
- (4) For the purposes of paragraph (3) of this Article:
- (a) if a party has more than one place of business, the place of business is that which has the closest relationship to the arbitration agreement;
- (b) if a party does not have a place of business, reference is to be made to his habitual residence.
- (5) This Law shall not affect any other law of this State by virtue of which certain disputes may not be submitted to arbitration or may be submitted to arbitration only according to provisions other than those of this Law.

Article 2. Definitions and rules of interpretation

For the purposes of this Law:

- (a) “arbitration” means any arbitration whether or not administered by a permanent arbitral institution;
- (b) “arbitral tribunal” means a sole arbitrator or a panel of arbitrators;
- (c) “court” means a body or organ of the judicial system of a State;
- (d) where a provision of this Law, except Article 28, leaves the parties free to determine a certain issue, such freedom includes the right of the parties to authorise a third party, including an institution, to make that determination;
- (e) where a provision of this Law refers to the fact that the parties have agreed or that they may agree or in any other way refers to an agreement of the parties, such agreement includes any arbitration rules referred to in that agreement;
- (f) where a provision of this Law, other than in Articles 25(a) and 32(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 such counterclaim.

SCHEDULE 1 — *(continued)*

Article 3. Receipt of written communications

(1) Unless otherwise agreed by the parties:

(a) any written communication is deemed to have been received if it is delivered to the addressee personally or if it is delivered at his place of business, habitual residence or mailing address; if none of these can be found after making a reasonable inquiry, a written communication is deemed to have been received if it is sent to the addressee's last-known place of business, habitual residence or mailing address by registered letter or any other means which provides a record of the attempt to deliver it;

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

(2) The provisions of this Article do not apply to communications in court proceedings.

Article 4. Waiver of right to object

A party who knows that any provision of this Law from which the parties may derogate or any requirement under the arbitration agreement has not been complied with and yet proceeds with the arbitration without stating his objection to such non-compliance without undue delay or, if a time-limit is provided therefor, within such period of time, shall be deemed to have waived his right to object.

Article 5. Extent of court intervention

In matters governed by this Law, no court shall intervene except where so provided in this Law.

Article 6. Court or other authority for certain functions of arbitration assistance and supervision

The functions referred to in Articles 11(3), 11(4), 13(3), 14, 16(3) and 34(2) shall be performed by [Each State enacting this Model Law specifies the court, courts or, where referred to therein, other authority competent to perform these functions.]

SCHEDULE 1 — *(continued)*

CHAPTER II

ARBITRATION AGREEMENT

Article 7. Definition and form of arbitration agreement

(1) “Arbitration agreement” is 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. An arbitration agreement may be in the form of an arbitration clause in a contract or in the form of a separate agreement.

(2) The arbitration agreement shall be in writing. An agreement is in writing if it is contained in a document signed by the parties or in an exchange of letters, telex, telegrams or other means of telecommunication which provide a record of the agreement, or in an exchange of statements of claim and defence in which the existence of an agreement is alleged by one party and not denied by another. The reference in a contract to a document containing an arbitration clause constitutes an arbitration agreement provided that the contract is in writing and the reference is such as to make that clause part of the contract.

Article 8. Arbitration agreement and substantive claim before court

(1) A court before which an action is brought in a matter which is the subject of an arbitration agreement shall, if a party so requests not later than when submitting his first statement on the substance of the dispute, refer the parties to arbitration unless it finds that the agreement is null and void, inoperative or incapable of being performed.

(2) Where an action referred to in paragraph (1) of this Article has been brought, arbitral proceedings may nevertheless be commenced or continued, and an award may be made, while the issue is pending before the court.

Article 9. Arbitration agreement and interim measures by court

It is not incompatible with an arbitration agreement for a party to request, before or during arbitral proceedings, from a court an interim measure of protection and for a court to grant such measure.

SCHEDULE 1 — *(continued)*

CHAPTER III

COMPOSITION OF ARBITRAL TRIBUNAL

Article 10. Number of arbitrators

- (1) The parties are free to determine the number of arbitrators.
- (2) Failing such determination, the number of arbitrators shall be three.

Article 11. Appointment of arbitrators

- (1) No person shall be precluded by reason of his nationality from acting as an arbitrator, unless otherwise agreed by the parties.
- (2) The parties are free to agree on a procedure of appointing the arbitrator or arbitrators, subject to the provisions of paragraphs (4) and (5) of this Article.
- (3) Failing such agreement,
 - (a) in an arbitration with three arbitrators, each party shall appoint one arbitrator, and the two arbitrators thus appointed shall appoint the third arbitrator; if a party fails to appoint the arbitrator within thirty days of receipt of a request to do so from the other party, or if the two arbitrators fail to agree on the third arbitrator within thirty days of their appointment, the appointment shall be made, upon request of a party, by the court or other authority specified in Article 6;
 - (b) in an arbitration with a sole arbitrator, if the parties are unable to agree on the arbitrator, he shall be appointed, upon request of a party, by the court or other authority specified in Article 6.
- (4) Where, under an appointment procedure agreed upon by the parties,
 - (a) a party fails to act as required under such procedure; or
 - (b) the parties, or two arbitrators, are unable to reach an agreement expected of them under such procedure; or
 - (c) a third party, including an institution, fails to perform any function entrusted to it under such procedure,

SCHEDULE 1 — *(continued)*

any party may request the court or other authority specified in Article 6 to take the necessary measure, unless the agreement on the appointment procedure provides other means for securing the appointment.

(5) A decision on a matter entrusted by paragraph (3) or (4) of this Article to the court or other authority specified in Article 6 shall be subject to no appeal. The court or other authority, in appointing an arbitrator, shall have due regard to any qualifications 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, in the case of a sole or third arbitrator, shall take into account as well the advisability of appointing an arbitrator of a nationality other than those of the parties.

Article 12. Grounds for challenge

(1) When a person is approached in connection with his possible appointment as an arbitrator, he shall disclose any circumstances likely to give rise to justifiable doubts as to his impartiality or independence. An arbitrator, from the time of his appointment and throughout the arbitral proceedings, shall without delay disclose any such circumstances to the parties unless they have already been informed of them by him.

(2) An arbitrator may be challenged only if circumstances exist that give rise to justifiable doubts as to his impartiality or independence, or if he does not possess qualifications agreed to by the parties. A party may challenge an arbitrator appointed by him, or in whose appointment he has participated, only for reasons of which he becomes aware after the appointment has been made.

Article 13. Challenge procedure

(1) The parties are free to agree on a procedure for challenging an arbitrator, subject to the provisions of paragraph (3) of this Article.

(2) Failing such agreement, 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 circumstance referred to in Article 12(2), send a written statement of the reasons for the challenge to the arbitral tribunal. Unless the challenged arbitrator withdraws from his office or the other party agrees to the challenge, the arbitral tribunal shall decide on the challenge.

(3) If a challenge under any procedure agreed upon by the parties or under the procedure of paragraph (2) of this Article is not successful, the challenging party may request, within thirty days after having received notice of the decision rejecting the challenge, the court or other authority specified in Article 6 to decide on the challenge, which decision shall be subject to no appeal; while such a request is pending, the arbitral tribunal including the challenged arbitrator, may continue the arbitral proceedings and make an award.

SCHEDULE 1 — *(continued)*

Article 14. Failure or impossibility to act

(1) If an arbitrator becomes de jure or de facto unable to perform his functions or for other reasons fails to act without undue delay, his mandate terminates if he withdraws from his office or if the parties agree on the termination. Otherwise, if a controversy remains concerning any of these grounds, any party may request the court or other authority specified in Article 6 to decide on the termination of the mandate, which decision shall be subject to no appeal.

(2) If, under this Article or Article 13(2), an arbitrator withdraws from his office or a party agrees to the termination of the mandate of an arbitrator, this does not imply acceptance of the validity of any ground referred to in this Article or Article 12(2).

Article 15. Appointment of substitute arbitrator

Where the mandate of an arbitrator terminates under Article 13 or 14 or because of his withdrawal from office for any other reason or because of the revocation of his mandate by agreement of the parties or in any other case of termination of his mandate, a substitute arbitrator shall be appointed according to the rules that were applicable to the appointment of the arbitrator being replaced.

CHAPTER IV

JURISDICTION OF ARBITRAL TRIBUNAL

Article 16. Competence of arbitral tribunal to rule on its jurisdiction

(1) The arbitral tribunal may rule on its own jurisdiction, including any objections with respect to the existence or validity of the arbitration agreement. For that purpose, an arbitration clause which forms part of a contract 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.

(2) A plea that the arbitral tribunal does not have jurisdiction shall be raised not later than the submission of the statement of defence. A party is not precluded from raising such a plea by the fact that he has appointed, or participated in the appointment of, an arbitrator. A plea that the arbitral tribunal is exceeding the scope of its authority shall be raised as soon as the matter alleged to be beyond the scope of its authority is raised during the arbitral proceedings. The arbitral tribunal may, in either case, admit a later plea if it considers the delay justified.

SCHEDULE 1 — *(continued)*

(3) The arbitral tribunal may rule on a plea referred to in paragraph (2) of this Article either as a preliminary question or in an award on the merits. If the arbitral tribunal rules as a preliminary question that it has jurisdiction, any party may request, within thirty days after having received notice of that ruling, the court specified in Article 6 to decide the matter, which decision shall be subject to no appeal; while such a request is pending, the arbitral tribunal may continue the arbitral proceedings and make an award.

Article 17. Power of arbitral tribunal to order interim measures

Unless otherwise agreed by the parties, the arbitral tribunal may, at the request of a party, 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. The arbitral tribunal may require any party to provide appropriate security in connection with such measure.

CHAPTER V

CONDUCT OF ARBITRAL PROCEEDINGS

Article 18. Equal treatment of parties

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

Article 19. Determination of rules of procedure

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

(2) Failing such agreement, the arbitral tribunal may, subject to the provisions of this Law, conduct the arbitration in such manner as it considers appropriate. The power conferred upon the arbitral tribunal includes the power to determine the admissibility, relevance, materiality and weight of any evidence.

Article 20. Place of arbitration

(1) The parties are free to agree on the place of arbitration. Failing such agreement, 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.

(2) Notwithstanding the provisions of paragraph (1) of this Article, 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.

SCHEDULE 1 — *(continued)*

Article 21. Commencement of arbitral proceedings

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

Article 22. Language

(1) The parties are free to agree on the language or languages to be used in the arbitral proceedings. Failing such agreement, the arbitral tribunal shall determine the language or languages to be used in the proceedings. This agreement or determination, unless otherwise specified therein, shall apply to any written statement by a party, any hearing and any award, decision or other communication by the arbitral tribunal.

(2) The arbitral tribunal may order that any documentary evidence shall be accompanied by a translation into the language or languages agreed upon by the parties or determined by the arbitral tribunal.

Article 23. Statements of claim and defence

(1) Within the period of time agreed by the parties or determined by the arbitral tribunal, the claimant shall state the facts supporting his claim, the points at issue and the relief or remedy sought, and the respondent shall state his defence in respect of these particulars, unless the parties have otherwise agreed as to the required elements of such statements. 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.

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

Article 24. Hearings and written proceedings

(1) Subject to any contrary agreement 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. However, unless the parties have agreed that no hearings shall be held, the arbitral tribunal shall hold such hearings at an appropriate stage of the proceedings, if so requested by a party.

(2) 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.

SCHEDULE 1 — *(continued)*

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

Article 25. Default of a party

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

- (a) the claimant fails to communicate his statement of claim in accordance with Article 23(1), the arbitral tribunal shall terminate the proceedings;
- (b) the respondent fails to communicate his statement of defence in accordance with Article 23(1), the arbitral tribunal shall continue the proceedings without treating such failure in itself as an admission of the claimant's allegations;
- (c) any 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.

Article 26. Expert appointed by arbitral tribunal

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

- (a) may appoint one or more experts to report to it on specific issues to be determined by the arbitral tribunal;
- (b) may require a party to give the expert any relevant information or to produce, or to provide access to, any relevant documents, goods or other property for his inspection.

(2) Unless otherwise agreed by the parties, if a party so requests or if the arbitral tribunal considers it necessary, the expert shall, after delivery of his written or oral report, participate in a hearing where the parties have the opportunity to put questions to him and to present expert witnesses in order to testify on the points at issue.

Article 27. Court assistance in taking evidence

The arbitral tribunal or a party with the approval of the arbitral tribunal may request from a competent court of this State assistance in taking evidence. The court may execute the request within its competence and according to its rules on taking evidence.

SCHEDULE 1 — *(continued)*

CHAPTER VI

MAKING OF AWARD AND TERMINATION OF PROCEEDINGS

Article 28. Rules applicable to substance of dispute

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

(2) Failing any designation by the parties, the arbitral tribunal shall apply the law determined by the conflict of laws rules which it considers applicable.

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

(4) 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.

Article 29. Decision-making by panel of arbitrators

In arbitral proceedings with more than one arbitrator, any decision of the arbitral tribunal shall be made, unless otherwise agreed by the parties, by a majority of all its members. However, questions of procedure may be decided by a presiding arbitrator, if so authorised by the parties or all members of the arbitral tribunal.

Article 30. Settlement

(1) If, during 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 shall be made in accordance with the provisions of Article 31 and shall state that it is an award. Such an award has the same status and effect as any other award on the merits of the case.

SCHEDULE 1 — *(continued)**Article 31. Form and contents of award*

- (1) The award shall be made in writing and shall be signed by the arbitrator or arbitrators. In arbitral proceedings with more than one arbitrator, the signatures of the majority of all members of the arbitral tribunal shall suffice, provided that the reason for any omitted signature is stated.
- (2) The award shall state the reasons upon 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 Article 30.
- (3) The award shall state its date and the place of arbitration as determined in accordance with Article 20(1). The award shall be deemed to have been made at that place.
- (4) After the award is made, a copy signed by the arbitrators in accordance with paragraph (1) of this Article shall be delivered to each party.

Article 32. Termination of proceedings

- (1) The arbitral proceedings are terminated by the final award or by an order of the arbitral tribunal in accordance with paragraph (2) of this Article.
- (2) The arbitral tribunal shall issue an order for the termination of the arbitral proceedings when:
 - (a) the claimant withdraws his claim, unless the respondent objects thereto and the arbitral tribunal recognises a legitimate interest on his part in obtaining a final settlement of the dispute;
 - (b) the parties agree on the termination of the proceedings;
 - (c) the arbitral tribunal finds that the continuation of the proceedings has for any other reason become unnecessary or impossible.
- (3) The mandate of the arbitral tribunal terminates with the termination of the arbitral proceedings, subject to the provisions of Articles 33 and 34(4).

Article 33. Correction and interpretation of award; additional award

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

SCHEDULE 1 — *(continued)*

(a) a 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;

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

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 request. The interpretation shall form part of the award.

(2) The arbitral tribunal may correct any error of the type referred to in paragraph (1)(a) of this Article on its own initiative within thirty days of the date of the award.

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

(4) The arbitral tribunal may extend, if necessary, the period of time within which it shall make a correction, interpretation or an additional award under paragraph (1) or (3) of this Article.

(5) The provisions of Article 31 shall apply to a correction or interpretation of the award or to an additional award.

CHAPTER VII

RECOURSE AGAINST AWARD

Article 34. 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 paragraphs (2) and (3) of this Article.

(2) An arbitral award may be set aside by the court specified in Article 6 only if:

(a) the party making the application furnishes proof that:

SCHEDULE 1 — *(continued)*

- (i) a party to the arbitration agreement referred to in Article 7 was 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 this State; or
 - (ii) the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or
 - (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 decisions 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 of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless such agreement was in conflict with a provision of this Law from which the parties cannot derogate, or, failing such agreement, was not in accordance with this Law; or
- (b) the court finds that:
- (i) the subject matter of the dispute is not capable of settlement by arbitration under the law of this State; or
 - (ii) the award is in conflict with the public policy of this State.
- (3) An application for setting aside may not be made after three months have elapsed from the date on which the party making that application had received the award or, if a request had been made under Article 33, from the date on which that request had been disposed of by the arbitral tribunal.
- (4) The 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 resume the arbitral proceedings or to take such other action as in the arbitral tribunal's opinion will eliminate the grounds for setting aside.

SCHEDULE 1 — *(continued)*

CHAPTER VIII

RECOGNITION AND ENFORCEMENT OF AWARDS*

*Chapter VIII does not have the force of law in Brunei Darussalam by virtue of section 3(1).

Article 35. Recognition and enforcement

(1) An arbitral award, irrespective of the country in which it was made, shall be recognised as binding and, upon application in writing to the competent court, shall be enforced subject to the provisions of this Article and of Article 36.

(2) The party relying on an award or applying for its enforcement shall supply the duly authenticated original award or a duly certified copy thereof, and the original arbitration agreement referred to in Article 7 or a duly certified copy thereof. If the award or agreement is not made in an official language of this State, the party shall supply a duly certified translation thereof into such language.*

*The conditions set forth in this paragraph are intended to set maximum standards. It would, thus, not be contrary to the harmonisation to be achieved by the Model Law if a State retained even less onerous conditions.

Article 36. Grounds for refusing recognition or enforcement

(1) Recognition or enforcement of an arbitral award, irrespective of the country in which it was made, may be refused only:

(a) at the request of the party against whom it is invoked, if that party furnishes to the competent court where recognition or enforcement is sought proof that:

- (i) a party to the arbitration agreement referred to in Article 7 was 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
- (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 case; or

SCHEDULE 1 — *(continued)*

- (iii) the award deals with a dispute 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
 - (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 law of this State; or
 - (ii) the recognition or enforcement of the award would be contrary to the public policy of this State.
- (2) If an application for setting aside or suspension of an award has been made to a court referred to in paragraph (1)(a)(v) of this Article, 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.

SCHEDULE 2

(section 40(1))

CONVENTION ON THE RECOGNITION AND ENFORCEMENT OF FOREIGN
ARBITRAL AWARDS CONCLUDED AT NEW YORK ON 10TH JUNE 1958

ARTICLE I

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

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

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

ARTICLE II

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

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, refer the parties to arbitration, unless it finds that the said agreement is null and void, inoperative or incapable of being performed.

SCHEDULE 2 — *(continued)*

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

SCHEDULE 2 — (*continued*)

(*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 5(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.

SCHEDULE 2 — (*continued*)

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

ARTICLE VIII

1. This Convention shall be open until 31st 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.

SCHEDULE 2 — *(continued)*

ARTICLE XI

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

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

ARTICLE XII

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

ARTICLE XIII

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

SCHEDULE 2 — *(continued)*

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

ARTICLE XIV

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

ARTICLE XV

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

- (a) signatures and ratifications in accordance with Article VIII;
- (b) accessions in accordance with Article IX;
- (c) declarations and notifications under Articles I, X and XI;
- (d) the date upon which this Convention enters into force in accordance with Article XII;
- (e) denunciations and notifications in accordance with Article 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.