

LAWS OF BRUNEI

CHAPTER 173

ARBITRATION

ARRANGEMENT OF SECTIONS

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FIRST SCHEDULE

Convention on the Recognition and Enforcement
of Foreign Arbitral Awards
Done at New York, on 10th June, 1958

SECOND SCHEDULE

Application of this Act to Judge-Arbitrators

ARBITRATION ACT

An Act to make provisions for arbitration in civil matters

S.32/94
S.32/98*Commencement : 24th November 1994*

PART I

CITATION AND INTERPRETATION

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

Citation

2. In this Act, unless the context otherwise requires —

Interpreta-
tion

“arbitration agreement” means an agreement in writing (including an agreement contained in an exchange of letters, facsimiles or telegrams) to submit to arbitration present or future differences capable of settlement by arbitration whether an arbitrator is named therein or not ;

“Convention award” means an award to which Part IV applies, namely, an award made in pursuance of an arbitration agreement in a State or territory, other than Brunei Darussalam, which is a party to the New York Convention ;

“Court” means the High Court of Brunei Darussalam ;

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

First
Schedule

PART II

CONCILIATION

Appoint-
ment of
conciliator

3. (1) If an arbitration 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 not exceeding 2 months of being informed of the existence of the dispute, any party to the agreement may serve the person in question with a written notice to appoint a conciliator (and shall forthwith serve a copy of the notice on the other parties to the agreement) and if the appointment is not made within 7 clear days after service of the notice the Court or a judge thereof 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.

(2) 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 arbitration proceedings, solely on the ground that he had acted previously as a conciliator in connexion with some or all of the matters referred to 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.

(3) Unless a contrary intention appears therein, an arbitration agreement which provides for the appointment of a conciliator shall be deemed to contain a provision that in the event of the conciliation proceedings failing to produce a settlement acceptable to the parties within 3 months, or such longer period as the parties may agree to, of the date of the appointment of the conciliator or, where he is appointed by name in the arbitration agreement, of the receipt by him of written notification of the existence of a dispute the proceedings shall thereupon terminate.

(4) If the parties to an arbitration agreement which provides for the appointment of a conciliator reach agreement in settlement of their differences and sign an agreement containing the terms of settlement, such agreement shall, for the purposes of its enforcement, be treated as an award on an arbitration agreement and may, by leave of the Court or a judge thereof, 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 agreement.

PART III

ARBITRATION WITHIN BRUNEI DARUSSALAM

Effect of arbitration agreements etc.

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

Authority of
arbitrators
and umpires

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

Death of
party

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

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

Bankruptcy

6. (1) Where it is provided by a term in a contract which a bankrupt is a party that any differences arising thereout or in connexion therewith shall be referred to arbitration, the said term shall, if the trustee in bankruptcy adopts the contract, be enforceable by or against him so far as it relates to any such differences.

(2) Where a person who has been adjudged bankrupt had, before the commencement of the bankruptcy, become a party to an arbitration agreement, and any matter to which the agreement applies requires to be determined in connexion with or for the purposes of the bankruptcy proceedings, then, if the case is one to which subsection (1) does not apply, any other party to the agreement, or, with the consent of the committee of inspection, the trustee in bankruptcy, may apply to the Court for an order directing that the matter in question shall be referred to arbitration in accordance with the agreement, and the Court may, if it is of opinion that, having regard to all the circumstances of the case, the matter ought to be determined by arbitration, make an order accordingly.

Staying
Court
proceedings
if submission
to arbitration

7. If any party to an arbitration agreement, or any person claiming through or under him, commences any legal proceedings in any court against any other party to the agreement, or any person claiming through or under him, in respect of any matter agreed to be referred, any party to those legal proceedings may at any time after appearance, and before delivering any pleadings or taking any other steps in the proceedings, apply to that court to stay the proceedings, and that court or a judge thereof, if satisfied that there is no sufficient reason why the matter should not be referred in accordance with the agreement, and that the applicant was,

at the time when the proceedings were commenced, and still remains, ready and willing to do all things necessary to the proper conduct of the arbitration, may make an order staying the proceedings.

8. (1) If any party to an arbitration agreement to which this section applies, or any person claiming through or under him, commences any legal proceedings in any Court against any other party to the agreement, or any person claiming through or under him, in respect of any matter agreed to be referred, any party to the proceedings may at any time after appearance, and before delivering any pleadings or taking any other steps in the proceedings, apply to the Court to stay the proceedings; and the Court, unless satisfied that the arbitration agreement is null and void, inoperative or incapable of being performed or that there is not in fact any dispute between the parties with regard to the matter agreed to be referred, shall make an order staying the proceedings.

Staying
Court
proceedings
if arbitration
agreement

(2) Subsection (1) —

(a) does not apply in relation to a domestic arbitration agreement, but

(b) applies, in relation to other arbitration agreements, instead of section 7.

(3) In this section “domestic arbitration agreement” means an arbitration agreement which does not provide, expressly or by implication, for arbitration in a State or territory other than Brunei Darussalam and to which neither —

(a) an individual who is a national of, or habitually resident in, any State or territory other than Brunei Darussalam; nor

(b) a body corporate which is incorporated in, or whose central management and control is exercised in, any State or territory other than Brunei Darussalam,

is a party at the time the proceedings are commenced.

Consolidation of arbitration

9. (1) Where in relation to two or more arbitration proceedings it appears to the Court —

(a) that some common question of law or fact arises in both or all of them ;

(b) that the rights to relief claimed therein are in respect of or arise out of the same transactions or series of transactions ; or

(c) that for some other reason it is desirable to make an order under this section,

the Court may order those arbitration proceedings to be consolidated on such terms as it thinks just or may order them to be heard at the same time, or one immediately after another, or may order any of them to be stayed until after the determination of any other of them.

(2) Where the Court orders arbitration proceedings to be consolidated under subsection (1) and all parties to the consolidated arbitration proceedings are in agreement as to the choice of arbitrator or umpire for those proceedings the same shall be appointed by the Court but if all parties cannot agree the Court shall have power to appoint an arbitrator or umpire for those proceedings.

(3) Where the Court makes an appointment under subsection (2) of an arbitrator or umpire for consolidated arbitration proceedings, any appointment of any other arbitrator or umpire that has been made for any of the arbitration proceedings forming part of the consolidation shall for all purposes cease to have effect on and from the appointment under subsection (2).

10. Where relief by way of interpleader is granted and it appears to the Court that the claims in question are matters to which an arbitration agreement, to which the claimants are parties, applies, the Court may direct the issue between the claimants to be determined in accordance with the agreement.

Reference of interpleader issues to arbitration

Arbitrators and umpires

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

When reference is to a single arbitrator

12. (1) Where an arbitration agreement provides that the reference shall be to two arbitrators, one to be appointed by each party, then, unless a contrary intention is expressed therein —

Power of parties to fill vacancy

(a) if either of the appointed arbitrators refuses to act, or is incapable of acting, or dies, the party who appointed him may appoint a new arbitrator in his place ;

(b) if, on such a reference, one party fails to appoint an arbitrator, either originally, or by way of substitution as aforesaid, for 7 clear days after the other party, having appointed his arbitrator, has served the party making default with notice to make the appointment, the party who has appointed an arbitrator may appoint that arbitrator to act as sole arbitrator in the reference and his award shall be binding on both parties as if he had been appointed by consent.

(2) The Court or a judge thereof may set aside any appointment made in pursuance of this section.

Umpires

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

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

(3) At any time after the appointment of an umpire, however appointed, the Court may, on the application of any party to the reference and notwithstanding anything to the contrary in the arbitration agreement, order that the umpire shall enter upon the reference in lieu of the arbitrators as if he were a sole arbitrator.

Majority award of three arbitrators

14. Unless the contrary intention is expressed in the arbitration agreement, in any case where there is a reference to three arbitrators, the award of any two of the arbitrators shall be binding and in the event that no two of the arbitrators agree the award, the award of the arbitrator appointed by the arbitrators to be chairman shall be binding.

Power of Court to appoint

15. (1) In any of the following cases —

(a) where an arbitration agreement provides that the reference shall be to a single arbitrator, and all the parties do not, after differences have arisen, concur in the appointment of an arbitrator ;

(b) if an appointed arbitrator refuses to act, or is incapable of acting, or dies, and the arbitration agreement does not show that it was intended that the vacancy should not be filled and the parties do not fill the vacancy ;

(c) where a party or an arbitrator is required or is at liberty to appoint, or concur in the appointment of, an umpire or an arbitrator and does not do so ;

(d) where an appointed umpire or third arbitrator refuses to act, or is incapable of acting, or dies, and the arbitration agreement does not show that it was intended that the vacancy should not be supplied, and the parties or arbitrators do not supply the vacancy,

any party may serve the other parties or the arbitrators, as the case may be, with a written notice to appoint or concur in appointing, an arbitrator, umpire or third arbitrator, and if the appointment is not made within 7 clear days after the service of the notice, the Court or a judge thereof may, on application by the party who gave the notice, appoint an arbitrator, umpire or third arbitrator who shall have the like powers to act in the reference and make an award as if he had been appointed by consent of all parties.

(2) In any case where —

(a) an arbitration agreement provides for the appointment of an arbitrator or umpire by a person who is neither one of the parties nor an existing arbitrator (whether the provision applies directly or in default of agreement by the parties or otherwise) ; and

(b) that person refuses to make the appointment or does not make it within the time specified in the agreement or, if no time is so specified, within a reasonable time,

any party to the agreement may serve the person in question with a written notice to appoint an arbitrator or umpire and, if the appointment is not made within 7 clear days after the service of the notice, the Court or a judge thereof may, on

the application of the party who gave the notice, appoint an arbitrator or umpire who shall have the like powers to act in the reference and make an award as if he had been appointed in accordance with the terms of the agreement.

Power of
judges to
take
arbitrations

16. (1) Subject to the following provisions of this section a judge, magistrate or public officer may accept appointment as a sole or joint arbitrator, or as umpire, by virtue of an arbitration agreement.

(2) A judge or magistrate shall not accept appointment as an arbitrator or umpire unless the Chief Justice has informed him that, having regard to the state of business in the Courts, he can be made available to do so.

(3) A public officer shall not accept appointment as an arbitrator or umpire unless the chairman of the Public Service Commission. Minister of Law has informed him that he can be made available to do so.

(4) The fees payable for the services of a judge, magistrate or public officer as an arbitrator or umpire shall be paid into the Consolidated Fund.

Second
Schedule

(5) The Second Schedule shall have effect for modifying, and in certain cases replacing, provisions of this Act in relation to arbitration by a judge as a sole arbitrator or umpire and, in particular, for substituting the Court of Appeal for the Court in provisions whereby arbitrators and umpires, their proceedings and awards, are subject to control and review by the Court.

(6) Subject to section 31(3) any jurisdiction which is exercisable by the Court in relation to arbitrators and umpires otherwise than under this Act shall, in relation to a judge appointed as a sole arbitrator or umpire, be exercisable instead by the Court of Appeal.

Conduct of proceedings

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

Conduct of
proceedings

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

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

(4) Any party to a reference under an arbitration agreement may sue out a writ of subpoena ad testificandum or a writ of subpoena duces tecum, but no person shall be compelled under any such writ to produce any document which he could not be compelled to produce on the trial of an action, and the Court or a judge thereof may order that a writ of subpoena ad testificandum or of subpoena duces tecum shall issue to compel the attendance before an arbitrator or umpire of a witness wherever he may be within Brunei Darussalam.

(5) The Court or judge thereof may also order that a writ of habeas corpus ad testificandum shall issue to bring up a prisoner for examination before an arbitrator or umpire.

(6) The Court shall have, for the purpose of and in relation to a reference, the same power of making orders in respect of —

- (a) security for costs ;
- (b) discovery of documents and interrogatories ;
- (c) the giving of evidence by affidavit ;

(d) examination on oath of any witness before an officer of the Court or any other person, and the issue of a commission or request for the examination of a witness out of the jurisdiction ;

(e) the preservation, interim custody or sale of any goods which are the subject matter of the reference ;

(f) securing the amount in dispute in the reference ;

(g) the detention, preservation or inspection of any property or thing which is the subject of the reference or as to which any question may arise therein, and authorizing for any of the purposes aforesaid any person to enter upon or into any land or building in the possession of any party to the reference, or authorizing any samples to be taken or any observation to be made or experiment to be tried which may be necessary or expedient for the purpose of obtaining full information or evidence ; and

(h) interim injunctions or the appointment of a receiver,

as it has for the purpose of and in relation to an action or matter in the Court.

(7) Nothing in subsection (6) shall be taken prejudice any power which may be vested in an arbitrator or umpire for making orders with respect to any of the matters aforesaid.

18. For the avoidance of doubt, it is hereby declared that sections 17, 18, 19 of the Legal Profession Act do not apply to —

Represent-
tation
Cap. 132

(a) arbitration proceedings ;

(b) the giving of advice and the preparation of documents for the purpose of arbitration proceedings ; and

(c) any other thing done in relation to arbitration proceedings, except where it is done in connection with court proceedings arising out of an arbitration agreement or arising in the course of, or resulting from, arbitration proceedings.

Provisions as to awards

19. (1) Subject to the provision of section 32(2) and anything to the contrary in the arbitration agreement, an arbitrator or umpire shall have power to make an award at any time.

Time for
making
award

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

(3) The Court may, on the application of any party to a reference, remove an arbitrator or umpire who fails to use all reasonable dispatch in entering on and proceeding with the

reference and making an award, and an arbitrator or umpire who is removed by the Court under this subsection shall not be entitled to receive any remuneration in respect of his services.

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

Interim
awards

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

Specific
perform-
ance

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

Awards to
be final

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

Power to
correct slips

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

Costs, fees and interest

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

(2) Any costs directed by an award to be paid shall, unless the award otherwise directs, be taxable in the Court.

(3) Any provision of any law which provides that no costs in respect of anything done by an unqualified person acting as a solicitor shall be recoverable in any action, suit or matter shall not apply to the recovery of costs directed by an award.

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

Provided that nothing in this subsection shall invalidate such a provision when it is a part of an agreement to submit to arbitration a dispute which has arisen before the making of that agreement.

(5) If no provision is made by an award with respect to the costs of the reference, any party to the reference may, within 14 days of the publication of the award or such further time as the Court or a judge thereof may direct, apply to the arbitrator for an order directing by and to whom those costs shall be paid, and thereupon the arbitrator shall, after hearing

any party who may desire to be heard, amend his award by adding thereto such directions as he may think proper with respect to the payment of the costs of the reference.

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(6) Section 58 of the Legal Profession Act, which empowers a court to declare an advocate and solicitor employed in any suit, matter or proceeding entitled to a charge on any property recovered or preserved therein for his taxed costs in relation thereto, shall apply as if an arbitration were a suit, matter or proceeding in the Court, and the Court may make declarations and orders accordingly.

Taxation of
arbitrator's
or umpire's
fees

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

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

(3) A taxation of fees under this section may be reviewed in the same manner as a taxation of costs.

(4) The arbitrator or umpire shall be entitled to appear and be heard on any taxation or review of taxation under this section.

Interest on
awards

26. A sum directed to be paid by an award shall, unless the award otherwise directs, carry interest as from the date of the award at the same rate as a judgment debt.

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

Interest for
period prior
to payment

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

(b) on any sum which he awards, for such period ending not later than the date of payment of that sum as he thinks fit.

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

Miscellaneous

28. (1) Without prejudice to the right of appeal conferred by subsection (2) the Court shall not have jurisdiction to set aside or remit an award on an arbitration agreement on the ground of errors of fact or law on the face of the award.

Judicial
review

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

(a) confirm, vary or set aside the award ; or

(b) remit the award to the reconsideration of the arbitrator or umpire together with the Court's opinion on the question of law which was the subject of the appeal,

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

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

(a) with the consent of all the other parties to the reference ; or

(b) subject to section 30, with the leave of the Court.

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

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

(a) with the consent of all the other parties to the reference ; or

(b) subject to section 30, with the leave of the Court,

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

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

(a) that before the award was made one of the parties to the reference gave notice to the arbitrator or umpire concerned that a reasoned award would be required ; or

(b) that there is some special reason why such a notice was not given.

(7) No appeal shall lie to the Court of Appeal from a decision of the Court on an appeal under this section unless the Court or the Court of Appeal gives leave.

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

29. (1) Subject to subsection (2) and section 30, on an application to the Court made by any of the parties to a reference —

Preliminary
point of law

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

(b) with the consent of all the other parties,

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

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

(a) the determination of the application might produce substantial savings in costs to the parties ; and

(b) the question of law is one in respect of which leave to appeal would be likely to be given under section 28(3)(b).

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(3) A decision of the Court under subsection (1) shall be deemed to be a judgment of the Court within the meaning of section 20 of the Supreme Court Act (appeals to the Court of Appeal), but no appeal shall lie from such a decision unless the Court or the Court of Appeal gives leave.

(4) In the absence of such circumstances as may be prescribed by rules of court, proceedings in the Court or Court of Appeal under this section and section 28 shall, on the application of any party to the proceedings, be conducted otherwise than in open court.

Exclusion
agreements
affecting
rights

30. (1) Subject to the following provisions of this section and section 31 —

(a) the Court shall not, under section 28(3)(b), grant leave to appeal with respect to a question of law arising out of an award ; and

(b) the Court shall not, under section 28(5)(b), grant leave to make an application with respect to an award ; and

(c) no application may be made under section 29(1)(a) with respect to a question of law,

if the parties to the reference in question have entered into an agreement in writing (in this section referred to as an “exclusion agreement”) which excludes the right of appeal under section 28 in relation to that award or, in a case falling within paragraph (c), in relation to an award to which the determination of the question of law is material.

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

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

(4) In any case where —

(a) an arbitration agreement, other than a domestic arbitration agreement, provides for disputes between the parties to be referred to arbitration ; and

(b) a dispute to which the agreement relates involves the question whether a party has been guilty of fraud ; and

(c) the parties have entered into an exclusion agreement which is applicable to any award made on the reference of that dispute,

then, except in so far as the exclusion agreement otherwise provides, the Court shall not exercise its powers under section 34(2) in relation to that dispute.

(5) Except as provided by subsection (1), sections 28 and 29 shall have effect notwithstanding anything in any agreement purporting —

(a) to prohibit or restrict access to the Court ;

(b) to restrict the jurisdiction of the Court ; or

(c) to prohibit or restrict the making of a reasoned award.

(6) An exclusion agreement shall be of no effect in relation to an award made on, or a question of law arising in the course of a reference under, a statutory arbitration, that is to say, such an arbitration as is referred to in section 42(1).

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

(8) In this section “domestic arbitration agreement” means an arbitration agreement which does not provide, expressly or by implication, for arbitration in a State or territory other than Brunei Darussalam and to which neither —

(a) an individual who is a national of, or habitually resident in, any State or territory other than Brunei Darussalam ; nor

(b) a body corporate which is incorporated in, or whose central management and control is exercised in, any State or territory other than Brunei Darussalam,

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

Interlocutory
orders

31. (1) If any party to a reference under an arbitration agreement fails within the time specified in the order or, if no time is so specified, within a reasonable time to comply with an order made by the arbitrator or umpire in the course of the reference, then, on the application of the arbitrator or umpire

or of any party to the reference, the Court may make an order extending the powers of the arbitrator or umpire as mentioned in subsection (2).

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

(3) Section 16(6) shall not apply in relation to the power of the Court to make an order under this section, but in the case of a reference to a judge-arbitrator or judge-umpire that power shall be exercisable as in the case of any other reference to arbitration and also by the judge-arbitrator or judge-umpire himself.

(4) Anything done by a judge-arbitrator or judge-umpire in the exercise of the power conferred by subsection (3) shall be done by him in his capacity as judge of the Court and have effect as if done by that court.

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

(6) In this section “judge-arbitrator” and “judge-umpire” have the same meaning as in the Second Schedule.

Second
Schedule

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

Power to
remit award

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

Removal of
arbitrator
and setting
aside of
award

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

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

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

Power of
Court to
give relief

34. (1) Where an agreement between any parties provides that disputes which may arise in the future between them shall be referred to an arbitrator named or designated in the agreement, and after a dispute has arisen any party applies, on the ground that the arbitrator so named or designated is not or may not be impartial, for leave to revoke the authority of the arbitrator or for an injunction to restrain any other party or the arbitrator from proceeding with the arbitration, it shall not be a ground for refusing the application that the said party at the time when he made the agreement knew, or ought to have known, that the arbitrator, by reason of his relation towards any other party to the agreement or of his connexion with the subject referred, might not be capable of impartiality.

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

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

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

Power of
Court where
arbitrator
is removed

(2) Where the authority of an arbitrator or arbitrators or umpire is revoked by leave of the Court, or a sole arbitrator or all the arbitrators or an umpire who has entered on the reference is or are removed by the Court, the Court may, on the application of any party to the arbitration agreement, either —

(a) appoint a person to act as sole arbitrator in place of the person or persons removed ; or

(b) order that the arbitration agreement shall cease to have effect with respect to the dispute referred.

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

(4) Where it is provided, whether by means of a provision in the arbitration agreement or otherwise, that an award under an arbitration agreement shall be a condition precedent to the bringing of an action with respect to any matter to which the agreement applies, the Court, if it orders, whether under this section or under any other law, that the

agreement shall cease to have effect as regards any particular dispute, may further order that the provision making an award a condition precedent to the bringing of an action shall also cease to have effect as regards that dispute.

Enforcement
of award

36. An award on an arbitration agreement may, by leave of the Court or a judge thereof, 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.

Power of
Court to
extend time

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

Delay in
prosecuting
claims

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

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

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

(a) there has been inordinate and inexcusable delay on the part of the claimant or his advisers ; and

(b) such delay will give rise to a substantial risk that it is not possible to have a fair trial of the issues in the arbitration proceedings or is such as is likely to cause or to have caused serious prejudice to the other parties to the arbitration proceedings either as between themselves and the claimant or between each other or between them and a third party.

(4) A decision of the Court under subsection (2) shall be deemed to be a judgment of the Court within the meaning of section 20 of the Supreme Court Act (appeals to the Court of Appeal), but no appeal shall lie from such a decision unless the Court or the Court of Appeal gives leave.

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39. Any order made under this Part may be made on such terms as to costs or otherwise (including in the case of an order under section 9 or 38, the remuneration of the arbitrator or umpire in respect of his services) as the authority making the order thinks just.

Terms as
to costs etc.

40. (1) An arbitration shall be deemed to be commenced when one party to the arbitration agreement serves on the other parties a notice requiring them to appoint or concur in appointing an arbitrator, or, where the arbitration agreement provides that the reference shall be to a person named or designated in the agreement, requiring them to submit the dispute to the person so named or designated.

Commence-
ment of
arbitration

(2) Any such notice as is mentioned in subsection (1) may be served either by —

(a) delivering it to the person on whom it is to be served ;

(b) leaving it at the usual or last known place of abode in Brunei Darussalam of that person ; or

(c) sending it by post in a registered letter addressed to that person at his usual or last known place of abode in Brunei Darussalam,

as well as in any other manner provided in the arbitration agreement, and where a notice is sent by post in the manner prescribed by paragraph (c), service thereof shall, unless the contrary is proved, be deemed to have been effected at the time at which the letter would have been delivered in the ordinary course of post.

Government
to be bound

41. This Part shall apply to any arbitration to which the Government of Brunei Darussalam is a party.

Application
of Part III
to statutory
arbitrations

42. (1) This Part, except the provisions thereof specified in subsection (2), shall apply to every arbitration under any other law, whether it came into force before or after the date of coming into force of this Act, as if the arbitration were pursuant to an arbitration agreement and as if that other law were an arbitration agreement, except in so far as this Act is inconsistent with that other law or with any rules or procedure authorized or recognized thereby.

(2) The provisions referred to in subsection (1) are sections 5(1), 6, 10, 24(4), 34, 35 and 37.

PART IV

ENFORCEMENT OF CONVENTION AWARDS

When Part
IV applies

43. This Part shall have effect with respect to the enforcement of Convention awards.

Effect of
Convention
awards

44. (1) A Convention award shall, subject to this Part, be enforceable either by action or in the same manner as the award of an arbitrator is enforceable by virtue of section 36.

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

45. The party seeking to enforce a Convention award must produce — Evidence

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

(b) the original arbitration agreement or a duly certified copy of it ; and

(c) where the award or agreement is in a foreign language, a translation of it certified by an official or sworn translator or by a diplomatic or consular agent.

46. (1) Enforcement of a Convention award shall not be refused except in the cases mentioned in this section. Refusal of enforcement

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

(a) that a party to the arbitration agreement was (under the law applicable to him) under some incapacity ;

(b) that the arbitration agreement was not valid under the law to which the parties subjected it or, failing any indication thereon, under the law of the country where the award was made ;

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

(d) subject to subsection (4), that the award deals with a difference not contemplated by or not falling within the terms of the submission to arbitration or contains decisions on matters beyond the scope of the submission to arbitration ;

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

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

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

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

(5) Where an application for the setting aside or suspension of a Convention award has been made to such a competent authority as is mentioned in subsection (2)(f), the court before which enforcement of the award is sought

may, if it thinks fit, adjourn the proceedings and may, on the application of the party seeking to enforce the award, order the other party to give security.

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

48. If the Attorney General by notification in the *Gazette* declares that any State or territory specified in the notification is a party to the New York Convention the notification shall, while in force, be conclusive evidence that that State or territory is a party to that Convention. Order to be conclusive evidence

FIRST SCHEDULE

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

Article I

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

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

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

Article II

1. Each Contracting State shall recognize 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 may, 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.

Article III

Each Contracting State shall recognize arbitral awards as binding and enforce them in accordance with the rules of procedure of the territory where the award is relied upon, under the conditions laid down in the following articles. There shall not be imposed substantially more onerous conditions or higher fees or charges on the recognition or enforcement of arbitral awards to which this Convention applies than are imposed on the recognition or enforcement of domestic arbitral awards.

Article IV

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

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

(b) the original agreement referred to in Article II or a duly certified copy thereof.

2. If the said award or agreement is not made in an official language of the country in which the award is relied upon, the party applying for recognition and enforcement of the award shall produce a translation of these documents into such language. The translation shall be certified by an official or sworn translator or by a diplomatic or consular agent.

Article V

1. Recognition and enforcement of the award may be refused, at the request of the party against whom it is invoked, only if 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 decision on matters submitted to arbitration may be recognized 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, the 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 of the treaties of the country where such award is sought to be relied upon.

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

Article VIII

1. This Convention shall be open until 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 specialized 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 States, 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 constituted 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.

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.

APPLICATION OF THIS ACT TO JUDGE-ARBITRATORS

1. In this Schedule “judge-arbitrator” and “judge-umpire” mean a judge appointed as sole arbitrator or, as the case may be, as umpire by or by virtue of an arbitration agreement.

2. In section 4 (authority of arbitrator to be irrevocable except by leave of the court), in its application to a judge-arbitrator or judge-umpire, the Court of Appeal shall be substituted for the Court.

3. The power of the Court under section 12 (vacancy among arbitrators filled by parties) to set aside the appointment of an arbitrator shall not be exercisable in the case of the appointment of a judge-arbitrator.

4. Section 13(3) (power of Court to order umpire to enter immediately on reference as sole arbitrator) shall not apply to a judge-umpire, but a judge-umpire may, on the application of any party to the reference and notwithstanding anything to the contrary in the arbitration agreement, enter on the reference in lieu of the arbitrators and as if he were the sole arbitrator.

5. (1) The powers conferred on the Court or a judge thereof by section 17(4), (5) and (6) (summoning of witnesses, interlocutory orders, etc.) shall be exercisable in the case of a reference to a judge-arbitrator or judge-umpire as in the case of any other reference to arbitration, but shall in any such case be exercisable also by the judge-arbitrator or judge-umpire himself.

(2) Anything done by an arbitrator or umpire in the exercise of powers conferred by this paragraph shall be done by him in his capacity as judge of the Court and have effect as if done by that court ; but nothing in this paragraph prejudices any power vested in the arbitrator or umpire in his capacity as such.

6. Sections 19(2) and (3) (extension of time for making award ; provision for ensuring that reference is conducted with reasonable dispatch) shall not apply to a reference to a judge-arbitrator or judge-umpire ; but a judge-arbitrator or judge-umpire may enlarge any time limited for making his award (whether under this Act or otherwise), whether that time has expired or not.

7. (1) Section 24(5) (provision enabling a party in an arbitration to obtain an order for costs) shall apply, in the case of a reference to a judge-arbitrator, with the omission of the following —

“within 14 days of the publication of the award or such further time as the Court or a judge thereof may direct,”.

(2) The power of the Court to make declarations and orders for the purposes of section 24(6) (charging order for solicitor's costs) shall be exercisable in the case of an arbitration by a judge-arbitrator or judge-umpire as in the case of any other arbitration, but shall in any such case be exercisable also by the judge-arbitrator or judge-umpire himself.

(3) A declaration or order made by an arbitrator or umpire in the exercise of the power conferred by sub-paragraph (2) shall be made by him in his capacity as judge of the Court and have effect as if made by that court.

8. (1) Section 25 (power of Court to order delivery of award on payment of arbitrator's fees into Court) shall not apply with respect to the award of a judge-arbitrator or judge-umpire.

(2) A judge-umpire may withhold his award until the fees payable to the arbitrators have been paid into the Court.

(3) Arbitrators' fees paid into court under this paragraph shall be paid out in accordance with rules of court, subject to the right of any party to the reference to apply in accordance with the rules for any fee to be taxed, not being a fee which has been fixed by written agreement between him and the arbitrator.

(4) A taxation under this paragraph may be reviewed in the same manner as a taxation of the costs of an award.

(5) On a taxation under this paragraph, or on a review thereof, an arbitrator shall be entitled to appear and be heard.

9. (1) In the application of —

(a) section 28 (appeal on a question of law) to the award of a judge-arbitrator or judge-umpire ; and

(b) section 29(4) (conduct of proceedings in open court), and section 30 (exclusion of certain agreements) other than subsection (5) thereof, to proceedings under section 28 relating to the award of a judge-arbitrator or judge-umpire,

the Court of Appeal shall be substituted for the Court.

(2) Where sub-paragraph (1) applies —

(a) section 28 shall have effect as if subsection (7) thereof were omitted ; and

(b) in section 30(5) references to the Court included references to the Court of Appeal.

10. Section 29 (determination of a preliminary point of law by Court), other than subsection (4) thereof as modified by virtue of paragraph 9, shall not apply to a reference to a judge-arbitrator or judge-umpire.

11. In sections 32 and 33 (remission and setting aside of awards, etc.), in their application to a judge-arbitrator or judge-umpire, and to a reference to him and to his award thereon, the Court of Appeal shall be substituted for the Court.

12. (1) Section 34(2) (removal of issue of fraud for trial in the Court) shall not apply to an agreement under or by virtue of which a judge-arbitrator or judge-umpire has been appointed ; nor shall leave be given by the Court under that subsection to revoke the authority of a judge-arbitrator or judge-umpire.

(2) Where, on a reference of a dispute to a judge-arbitrator or judge-umpire, it appears to the judge that the dispute involves the question whether a party to the dispute has been guilty of fraud, he may, so far as may be necessary to enable that question to be determined by the Court, order that the agreement by or by virtue of which he was appointed shall cease to have effect and revoke his authority as arbitrator or umpire.

(3) An order made by a judge-arbitrator or judge-umpire under this paragraph shall have effect as if made by the Court.

13. Section 35 (powers of Court on removal of arbitrator or revocation of arbitration agreement) shall be amended as follows —

(a) after the words “the Court” where they first occur in subsection (1), where they occur for the first and second time in subsection (2), and in subsections (3) and (4), there shall be inserted the words “or the Court of Appeal” ; and

(b) after those words where they occur for the second time in subsection (1) and for the third time in subsection (2) there shall be inserted the words “or the Court of Appeal, as the case may be”.

14. The leave required by section 36 (enforcement in Court) for an award on an arbitration agreement to be enforced as mentioned in that section may, in the case of an award by a judge-arbitrator or a judge-umpire, be given by the judge-arbitrator or judge-umpire himself.