

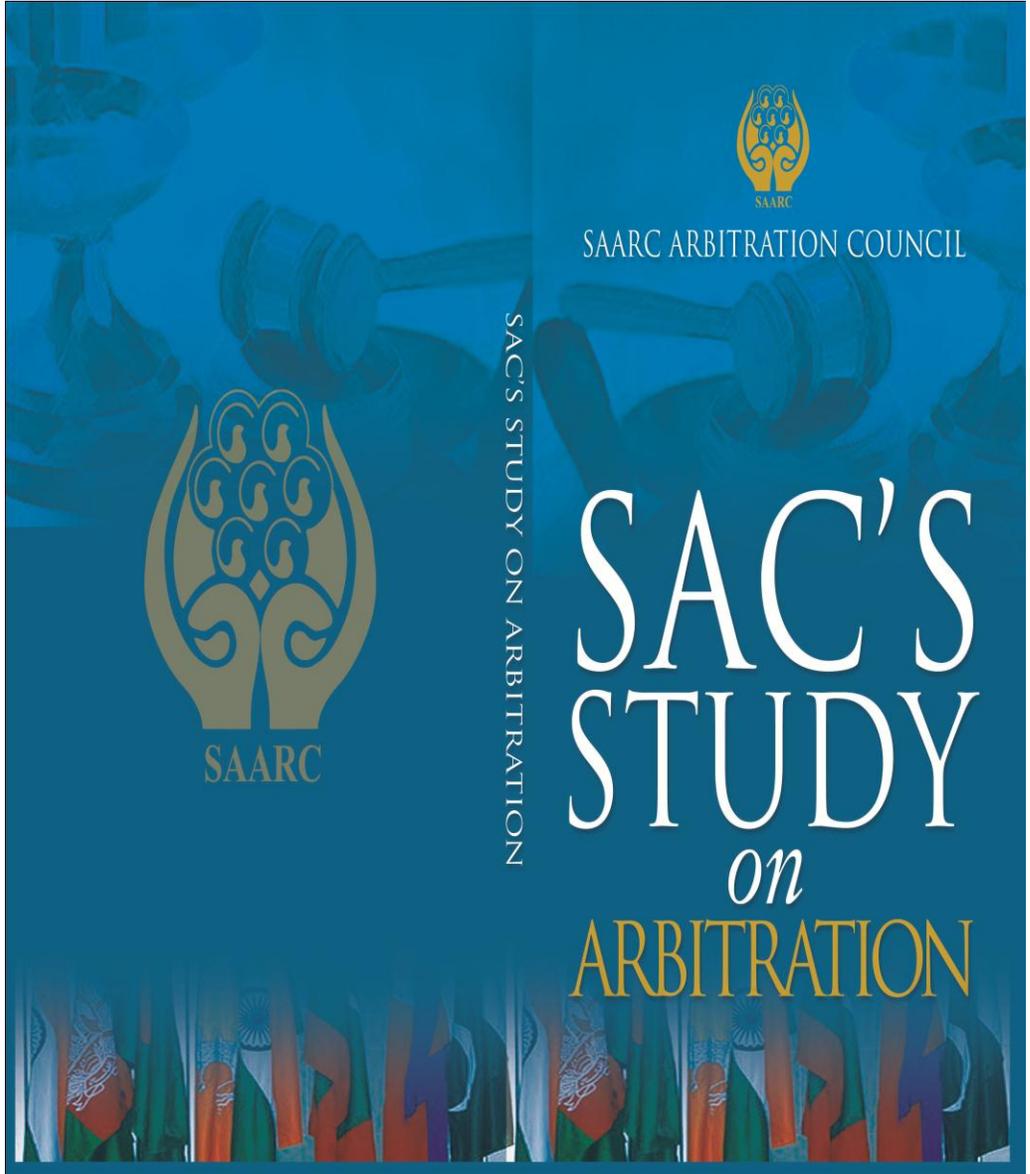


SAARC ARBITRATION COUNCIL

SAC'S STUDY ON ARBITRATION



SAC'S STUDY *on* ARBITRATION



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Preface

SAARC Arbitration Council Islamabad has been tasked with the daunting task to, inter-alia, study Arbitration Laws of all Member States, evolve common legal provisions available in Arbitration Laws prevalent in SAARC countries and also to reconcile dissimilarities, if any.

With a view to reconciling and harmonizing dissimilarities in the Arbitration Laws of SAARC countries it is imperative to first point out and array such dissimilarities. As such a humble and earnest endeavour has been made to highlight such dissimilarities. A browse of these dissimilarities will give insight to different Arbitration Laws of SAARC countries.

It will be interesting to note that while Arbitration Law of one country is a replica of Arbitration Law of another country, such laws of some countries are diametrically opposed to other countries' laws.

In this uphill and complex task I have received immense, valuable and able assistance from my colleague (Syed Nasir Ali Shah former District and Sessions Judge) who had the alacrity to volunteer his services and has promised to do so in the days to come.

Thus in the days to come serious, earnest and sustained efforts will have to be made to reconcile and harmonize these laws. The task through daunting is not insurmountable.

SYED SULTAN AHMED
Director General
SAARC Arbitration Council
Islamabad

Introduction to SAARC Arbitration Council

Consideration of the Concept Paper on SAARC Arbitration Council

A representative of the SAARC Chamber of Commerce and Industry, Mr. G.K. Kwatra, Executive Director, Indian Council of Arbitration made a presentation on need for establishment of Disputes Settlement Forum. Mr. Kwatra delineated the various aspects involved into setting up to such a dispute settlement forum. It was agreed that for the next Meeting the delegation of India would prepare drafts on the SAARC Arbitration Rules and the SAARC Arbitration Council.

Agreement for Establishment of SAARC Arbitration Council

The report of the thirty seventh session of Standing Committee (Thimphu, 25-26 April 2010) was approved by the thirty second session of SAARC Council of Ministers (Thimphu, 27 April, 2010) and Member States ratified the Agreement for Establishment of SAARC Arbitration Council on the dates as indicated below:-

Bangladesh	25 th January, 2006
Bhutan	28 th June, 2007
India	28 th December, 2005
Maldives	1 st April, 2007
Nepal	20 th March, 2007
Pakistan	5 th January, 2007
Sri Lanka	3 rd February 2006

A notification was issued by the SAARC Secretariat with regard to the completion of all formalities by the Member States, including ratification, on 2nd July, 2007. The agreement entered into force on the same date i.e. 2nd July 2007. First meeting of the Governing Board of SAARC Arbitration Council held at the SAARC Secretariat on 7-8 January, 2009.

Introduction

The Governments of the South Asian Association for Regional Cooperation (SAARC) Member States comprising the People's Republic of Bangladesh, the Kingdom of Bhutan, the Republic of India, the Republic of Maldives, the Kingdom of Nepal, the Islamic Republic of Pakistan and the Democratic Socialist Republic of Sri Lanka;

Desirous of creating conditions favourable for fostering greater investment by investors of one Member State in the territory of another Member State;

Desirous of providing a regional forum for settlement of commercial disputes by conciliation and arbitration.

Objectives and Functions of the Council are to

- (a) provide a legal framework within the region for fair and efficient settlement through conciliation and arbitration of commercial, investment and such other disputes as may be referred to the Council by agreement;
- (b) promote the growth and effective functioning of national arbitration institutions within the region;
- (c) provide fair, inexpensive and expeditious arbitration in the region;
- (d) promote international conciliation and arbitration in the region;
- (e) provide facilities for conciliation and arbitration;
- (f) act as a coordinating agency in the SAARC dispute resolution system;
- (g) coordinate the activities of and assist existing institutions concerned with arbitration, particularly those in the region;
- (h) render assistance in the conduct of ad hoc arbitration proceedings;
- (i) assist in the enforcement of arbitral awards;
- (j) maintain registers/panels of :
 - (i) expert witness, and

- (ii) suitably qualified persons to act as arbitrators as and when required; and
- (k) carry out such other activities as are conducive or incidental to its functions.

Appointment of Director General, SAARC Arbitration Council

According to the report of thirty seventh session of Standing Committee at Thimphu, 25-26 April, 2010 the Government of Pakistan nominated Syed Sultan Ahmed, Senior Joint Secretary, Law & Justice Division, Islamabad as the first Director General of SAARC Arbitration Council and so far all member states have conveyed their approval to his appointment and then the Committee agreed to recommend to the Council of Ministers the appointment of Syed Sultan Ahmed as the first Director General of the SAARC Arbitration Council. Further, an appointment letter was issued by Secretary General SAARC to Syed Sultan Ahmed, Senior Joint Secretary, Law & Justice Division, Islamabad, for the post of Director General, SAARC Arbitration Council on 17 August, 2010 through the Ministry of Foreign Affairs, Islamabad. Syed Sultan Ahmed accepted the offer on 25 August 2010. The acceptance letter received vide note verbal No. SAARC-2/5-D/2008 dated 25 August 2010 from the Ministry of Foreign Affairs, Islamabad. On 30th August, 2010, the Secretariat requested Syed Sultan Ahmed to assume the charge of the post of Director General of SAARC Arbitration Council with effect from 1st September 2010. He accordingly assumed the charge of the post on 1st September, 2010.

Composition of the Governing Board.

The Governing Board shall comprise one representative from all Member States, representative of the SAARC Secretary General, a representative from the Ministry of Foreign/External Affairs of the Host Government and the Director General of the Regional Centre. The fifth session of the Standing Committee (Colombo, 29-30 July, 2008) noted that all Member States have made their nominations on the Governing Board of SAARC Arbitration Council. It recommended that the first Meeting of the Governing Board may look into all administrative and financial matters of the Council.

**MEMBERS NOMINATED BY SAARC MEMBER STATES
ON THE GOVERNING BOARD OF
SAARC ARBITRATION COUNCIL**

Afghanistan

Mr. Mohammad Yusuf Rajabi,
Head of the Legal and
Regulatory Policy Department,
Government of the
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Kabul.

Bangladesh

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First Meeting of the Governing Board

The first meeting of the Governing Board of SAARC Arbitration Council was held at the SAARC Secretariat, Kathmandu on 7-8 January, 2009.

Steps to be taken by the SAARC Arbitration Council, Islamabad

- i. To call second meeting of the Governing Board at Islamabad.
- ii. Presentation of programming activities in second meeting of the Governing board at Islamabad :-
 - a) To study Arbitration Laws in Pakistan
 - b) To study Arbitration Laws prevailing in SAARC Countries and their comparative study.
 - c) Evolution of common legal provisions available in Arbitration Laws prevalent in SAARC countries and also to reconcile dissimilarities, if any.
 - d) To study legal status of SAARC Arbitration Council established by States so as to see whether its nature is judicial or administrative.
 - e) To study as to how arbitration is distinguished from other forms of dispute resolution.
 - f) Extensive study of Russel on Arbitration by David St. Jhon Sutton and International Law by Malcolm N. Shaw Q.C. to understand legal niceties to evolve smooth, alive and practical working of SAARC arbitration Council.
 - g) To study the scope of wider applicability of Arbitration Law and rules.
 - h) To study of any other book/paper/research on the subject.

Introduction to Arbitration

Arbitration Defined

There is no universal definition of arbitration. Within different legal systems the arbitration process carried out in different ways and subject to different legal rules. Each jurisdiction may apply its own 'spin' in deciding what may and what may not be arbitrated, who may arbitrate, and how the arbitral process is to be conducted. Arbitration rules, which the parties may be adopted, will also influence the conduct of the arbitration and the parties themselves may agree specific provisions. Different commentators have defined arbitration differently. However, there are core principles that can be found in all the definitions. The core principles include: the need for an arbitration agreement; a dispute; a reference to a third party for its determination; and an award by the third party. It has also been suggested that the process should be judicial and that it is implicit in the agreement to arbitrate that the parties agree to carry out the decision.

A distinction, however, needs then to be made between international arbitration and domestic arbitration. Although there are similarities in domestic arbitration and international arbitration they are in fact different animals. This is because there are factors which affect international arbitration but not domestic arbitration. First there are likely to be different laws which will be relevant to the arbitral process. Second, in international arbitrations the chairman of the arbitral tribunal may be from a different country to either of the parties. Third, the procedure adopted will often not mirror domestic litigation procedures. Fourth, international arbitration relies upon conventions to allow for enforcement of an arbitral award.

Characteristics of Arbitration

An arbitration agreement

Arbitration is creature of contract. It is the arbitration agreement that provides the arbitral tribunal with its jurisdiction to hear and determine the dispute. Without a valid and enforceable arbitration agreement the arbitral process fails. The requirement

of a valid arbitration agreement is recognized by conventions dealing with the recognition and enforcement of awards as well as the domestic laws of the country where the arbitration is taking place.

An arbitration tribunal

It is the parties who choose the arbitral tribunal or select a process by which the arbitral tribunal may be appointed. The process for the selection of the arbitral tribunal may be found in the arbitration agreement or in rules of arbitration which the parties have adopted. In default of any process being specified or agreed the courts at the seat of the arbitration may have to appoint the arbitral tribunal. In international commercial arbitrations there will often be three arbitrators appointed to determine the dispute. One arbitrator will be appointed by the claimant and one arbitrator will be appointed by the respondent. A chairman will then be appointed by the two party appointed arbitrators, by an arbitral institution or by the parties themselves. The mandate for the arbitral tribunal is to hear the evidence and resolve the dispute which has been referred to arbitration.

A dispute or difference

The arbitration process seeks to resolve disputes of difference between the parties to the arbitration agreement. The requirement for a dispute is a key element of the arbitral process. It distinguishes arbitration from the process of valuation.

A judicial process

Arbitration is a judicial process. This does not mean that the process ought to mirror judicial proceedings. In fact the procedure should be tailored to meet the demands of the case. Unless the parties have agreed otherwise there are no fixed rules. In international commercial arbitration the procedure that is often adopted reflects a unique approach to dispute resolution. It is common to find in international arbitrations that there will be memorials and that all documents on which a party seeks to rely will be included within those memorials. There will be no other disclosure of documents. It is also common to find in international commercial arbitrations that witness statements stand as evidence-in-chief and that there will be closing

submissions and closing briefs. However, there will still be a judicial process.

A binding award

An arbitral tribunal is obliged to resolve the dispute and make or deliver an award, unless the dispute settles. Once an award is made or delivered the arbitral tribunal is *functus officio* in respect of the matters that were decided within the award and the issues are thereafter *res judicata*. In international commercial arbitrations the award will inevitably have to be made in writing.

Benefits of Arbitration

Arbitration is perfect method of dispute resolution for international commercial disputes. It is also the preferred choice in many areas of industry. In particular, arbitration is seen as being preferable to litigation for the resolution of complex commercial disputes. It is therefore standard to find arbitration agreements in insurance contracts, in construction and engineering contracts, in shipping contracts and in aviation agreements. There is perception that arbitration is a cheaper and quicker method of dispute resolution than litigation. The arbitral process is considered as being more flexible than a rigid court procedure. Usually, an arbitration award will be easier to enforce from one country to another rather than a decision of the court. The arbitral process is also often thought of as being 'neutral' to the parties.

Arbitration Laws of
SAARC Member States

Afghanistan

Commercial Arbitration Law

Chapter one

General provisions

ARTICLE 1. Purpose:

This Law has been enacted to facilitate and encourage prompt, fair, and neutral resolution of commercial and economic disputes through arbitration, with respect to the agreements signed between Afghanistan and other states on commercial and economic arbitration and to regulate the relevant affairs.

ARTICLE 2. Definitions:

In this Law the following terms shall have the meanings set forth below:

1. Arbitrator: is a person who has the arbitration duty in commercial disputes.
2. Arbitration: is a binding proceeding whereby an Arbitrator or Arbitrators perform neutral services pursuant to a request by the parties or Court in order to resolve disputes under contracts for economic or commercial transactions.
3. "Arbitration agreement" is a written agreement between two parties as an article or otherwise for fully or partially transferring of a dispute arising from contract or otherwise to an arbitrator(s) or arbitrator tribunal.
4. Arbitration award: is a final decision taken by Arbitrator(s), Arbitral Tribunal, or Court to settle the dispute.
5. Business Transaction: means all commercial and economic natures and based on contract or otherwise.
6. Court: means the competent Commercial Court of Afghanistan.
7. Central Registry: means an authority office in which all documents related to Arbitration are registered and maintained.

ARTICLE 3. Arbitration Procedures:

Arbitration can be done in two ways, domestic or international.

An Arbitration is international:

If in the contract it is described as such;

If the transaction occurs between two or more countries although this has not been mentioned in the agreement.

If it has not been mentioned in the agreement, the law of the country where the parties are transacting business, shall be applicable;

In situations not stipulated by paragraph 1) of this article it is called domestic arbitration.

ARTICLE 4. Scope of application:

The provisions of this Law, except ARTICLES 11 and CHAPTER 7, apply only if the place of Arbitration is in Afghanistan.

This Law shall not apply to certain disputes which are not subject to Arbitration or the resolution of which is regulated under other legislation.

ARTICLE 5. Direct Negotiation:

This Law shall not prevent parties to a commercial dispute from negotiating a settlement of their dispute either through direct negotiations or through mediation, or other similar methods of resolving commercial disputes.

ARTICLE 6. Receiving Electronic Correspondence:

Unless otherwise agreed [by the parties], any written communication will be considered to have been received if it is delivered to the addressee personally or if it is delivered to his or her registered place of business in Afghanistan by registered letter or any other means that demonstrates an attempt to deliver it, and the communication will be considered to have been received on the day it is delivered. This ARTICLE applies only to communications regarding arbitration proceedings.

ARTICLE 7. Arbitration Proceeding:

Arbitration shall commence on the day of hearing the case. The Arbitrator shall determine a time period for the parties to respond. A party shall be deemed to have waived his or her right to object if the party does not present its documents within the determined time period.

ARTICLE 8. Intervention Prohibited in Arbitration Affairs:

In matters governed by this Law, no Court or government agency shall intervene except as provided by this Law.

ARTICLE 9. Consolidation of Arbitration Proceedings:

Arbitrators are authorized to consolidate proceedings and obtain agreement of parties to the same dispute or disputes to increase efficiency and avoid conflicting resolutions of disputes.

A Court, upon request by any party or parties to the same dispute or disputes, may order the consolidation of proceedings and joinder of parties if it determines that doing so will promote efficiency and uniformity of Awards.

ARTICLE 10. Maintaining Arbitration Awards:

Unless the parties agree otherwise, all Arbitral proceedings conducted and Awards made pursuant to this Law shall be kept confidential.

A Court shall, upon request by any party or Arbitrator, take reasonable actions to ensure that confidentiality.

ARTICLE 11. Immunity:

Arbitrators shall be immune from any inquiry /interrogation concerning their actions, inactions or Awards as Arbitrators, unless a party alleges that an Arbitrator 's actions, inactions or Awards resulted from undue influence, conflict of interest or bribery.

ARTICLE 12. Manner of Activity:

The arbitral tribunal or arbitrator may come into existence for performance of services relevant to settlement of the commercial and economic disputes as partnerships or corporations according to provisions of relevant law and shall be registered with the central registry. The Arbitrator must have at least a degree from a law or theology [Islamic Law faculty.

The Central Registry, after completion of registry process of the Arbitrator, maintains the files relating to the background, experience and education of each Arbitrator including evidence and showing diploma from the faculty of law or theology or that he is an active member of an arbitral association, which can be publicly accessible under the list of Arbitrators. Everybody can freely evaluate these files during the working hours. With completion of the registry process in the Central Registry, the Arbitrator may advertise and disseminate his/her occupation.

The parties are free to select Arbitrator(s) or arbitral tribunal (domestic or foreign).

Arbitrator(s) or an arbitral tribunal or a chamber of commerce or such others may create arbitral associations.

The Afghan Arbitral Association may ensure contacts and relations with foreign arbitral associations.

Arbitration agreement

ARTICLE 13. Arbitration Agreements:

Arbitration Agreements shall be written. An Agreement is in writing if it is:

1. Contained in a document signed by the parties;
2. In an exchange of letters or other written communications (including, but not limited to, electronic mail) which presents a record of the Agreement; or
3. In an exchange of statements of claim and defense in which the existence of an Agreement is alleged by one party and not denied by another.

ARTICLE 14. Arbitration Mentioned in Contract:

Inclusion in a contract of an Arbitration clause or provision constitutes an Arbitration Agreement provided that the contract is in writing.

ARTICLE 15. Court Proceeding in Arbitration:

If an action that is subject to an Arbitration Agreement is brought before a Court, the Court shall refer the matter to Arbitration if any of the parties requests, before timely filing with the Court his or her first substantive statement, and if the Court finds that the Arbitration Agreement meets the requirements of this Law.

If an action referred to in Paragraph 1) of this ARTICLE is brought but not resolved and settled, Arbitral proceedings may nevertheless be commenced or continued, and an Award may be made by the Arbitrator(s) or Arbitral Tribunal. However, the Court shall suspend its proceeding until the Arbitral proceeding is concluded.

During any Arbitral proceedings by an Arbitrator(s) or Arbitral Tribunal, a party may request and a Court may grant interim protection.

ARTICLE 16. Assignment of Dispute to Commercial Arbitration:

If there is no prior arbitration clause or Arbitration Agreement, the parties may nevertheless mutually decide to refer the dispute to the Commercial Arbitration Office. The written notice of such agreement to arbitrate must include:

1. Name, residence and business address, or postal address of each of the parties or its authorized agent;

2. Description of the issue in dispute (the claim and its amount), and compensation sought;
3. Reference to the underlying contract or agreement;
4. Arbitrator (s) chosen as well as their ID details.

Composition of arbitral tribunal

ARTICLE 17. Composition of Arbitral Tribunal:

The parties are free to determine the number of Arbitrators, but if they do not, the number of Arbitrators shall be one, unless one of the parties is a State, in which case the number of Arbitrators shall be three.

ARTICLE 18. Nationality Preclusion in Arbitral Proceeding:

No person shall be precluded by reason of his or her nationality from serving as an Arbitrator, unless otherwise agreed by the parties.

ARTICLE 19. Procedures for the Selection of Arbitrators:

If the Parties have not agreed on a procedure for appointing an Arbitrator or Arbitrators, then:

1. In an Arbitration with three Arbitrators, each party shall appoint one Arbitrator and the two Arbitrators thus appointed shall appoint the third Arbitrator and: (i) if a party fails to appoint an Arbitrator within 30 days of receipt of a request to do so from the other party; or (ii) if the two Arbitrators fail to agree on the third Arbitrator within 30 days of the appointment of the second Arbitrator, then the appointment shall be made within 30 days of either party's written request by the Court;
2. In an Arbitration with a sole Arbitrator, if the parties are unable to agree on the Arbitrator, an Arbitrator shall be appointed by the Court, within 30 days of a written request of a party to the Court.

If the parties have agreed to an appointment procedure: but (i) a party fails to act as required under such procedure; (ii) the parties or Arbitrators are unable to reach an Agreement expected of them under such procedure; or (iii) a third party, including an Arbitral [or other] institution, fails to perform any function entrusted to it under such procedure, then any party may request a Court to take the necessary measure, unless the Agreement on the appointment procedure provides otherwise.

A Court acting pursuant to Paragraph 1) or 2) of this ARTICLE shall have due regard to any qualifications required of the Arbitrator by the Agreement of the parties, to:

the potential Arbitrator's knowledge of the relevant Law and relevant commercial and economic experience,

Independence and impartiality of the Arbitrator

A citizenship other than those of the parties.

A decision by the Court on a matter subject to paragraphs 1) and 2) of this ARTICLE shall not be subject to further appeal.

ARTICLE 20. Introduction of the Arbitrator:

Any person appointed or selected as an Arbitrator, is obliged to provide necessary information to the parties before or upon appointment or during Arbitral proceedings concerning his personality or other personal details that will eliminate doubts as to his/her impartiality or independence, unless s/he has already provided such information.

ARTICLE 21. Challenge of Arbitrator:

An Arbitrator may be challenged only when there are doubts about his or her impartiality or independence or if he or she does not possess qualifications agreed to by the parties.

A party may not challenge an Arbitrator appointed by that party, or to whose appointment that party has consented, for any reason unless the party does not become aware of the absence of its qualifications until after the appointment of the Arbitrator.

The parties may agree on the procedure of refuse or challenge on arbitrator, upon consideration of Article 24 of this law.

ARTICLE 22. Arbitral Tribunal's Decision on the Rejection of the Arbitrator:

If the parties have not agreed on a procedure for challenging an Arbitrator, then a party who intends to challenge an Arbitrator may, within 15 days after becoming aware of the constitution of the Arbitral Tribunal or after becoming aware of any circumstance referred to in ARTICLE 23, send a written statement of the reasons for the challenge to the Arbitral Tribunal and, unless the challenged Arbitrator withdraws from his or her office or the other party agrees to the challenge, the Arbitral Tribunal shall decide on the challenge.

ARTICLE 23. Court Decision on Challenging the Arbitrator:

If a challenge under any procedure agreed upon by the parties or under the procedure of ARTICLE 22 is not successful, then the challenging party may request, within 30 days after having received notice of the decision of the Arbitral Tribunal rejecting the challenge, that a Court decide on the challenge, which decision shall not be subject to further appeal, but while such a request is pending, the Arbitral Tribunal, including the

challenged Arbitrator, may continue the Arbitral proceedings and make an Award.

ARTICLE 24. Termination of the Arbitrator's Duty :

1. The parties of the dispute may agree to terminate the duty of the Arbitrator(s) or the Arbitral Tribunal in the following cases:
 - 1- If an Arbitrator refuses to perform the Arbitration;
 - 2- If an Arbitrator fails to carry out his/her duties;
 - 3- If an Arbitrator withdraws or dies;
 - 4- If s/he fails to act without undue delay.
2. If there is a controversy regarding an Arbitrator's(s') inability to perform or act without undue delay, any party may request a Court to decide on terminating the Arbitrator's service on the Arbitral Tribunal, and the Court order is final.
3. If an Arbitrator(s) withdraws from his or her office or a party agrees to the termination of an Arbitrator's service on the Arbitral Tribunal, there shall be no implication as to the ability of the Arbitrator(s) in connection with any future duties.
4. When an Arbitrator's service on an Arbitral Tribunal is terminated, a substitute Arbitrator shall be appointed according to the rules that were applicable to the appointment of the Arbitrator being replaced.

Jurisdiction of the arbitral tribunal

ARTICLE 25. Jurisdiction of the Arbitral Tribunal:

The Arbitral Tribunal has the following powers:

To resolve any matter within its jurisdiction.

To resolve objections with respect to the existence or validity of the Arbitration Agreement.

A provision or clause that forms part of an Arbitration contract shall be treated as an independent Agreement and a decision by the Arbitral Tribunal that the contract is null and void shall not invalidate that provision or clause of the Arbitration contract.

ARTICLE 26. Claims against Jurisdiction of the Arbitral Tribunal:

A claim by a party that the Arbitral Tribunal does not have jurisdiction may be raised before the statement of defense is filed, except when:

1. A party that raises jurisdictional claims has appointed, or participated in the appointment of, an Arbitrator(s), or Arbitral Tribunal;
2. A party's claim that the Arbitral Tribunal is exceeding the scope of its authority is raised when the matter alleged to exceed the scope of its authority arises;
3. One of the parties claims a delay in Arbitration procedures and the Arbitral Tribunal considers the delay justified.

ARTICLE 27. Decisions of the Arbitral Tribunal:

The Arbitral Tribunal may decide on a claim referred to in ARTICLE 42 of this law either when it is raised or in an Award on the case.

ARTICLE 28. Issuance of an Order by a Court:

If the Arbitral Tribunal decides on a claim that it has jurisdiction, when it is raised, any party may request, within 30 days after receipt of notice, a ruling from a Court on the matter, which ruling shall not be subject to further appeal and, while such a request is pending, the Arbitral Tribunal may continue the Arbitral proceedings and make an Award.

ARTICLE 29. Taking Precautionary Measures:

1. Unless otherwise agreed by the parties, the Arbitral Tribunal may, at the request of a party, take measures and issue any interim orders it deems necessary during the proceedings to protect the subject matter of the Arbitration, including any measures for protecting the goods and commodities involved in the dispute, such as entrusting such items to third parties or selling perishable goods.
2. The Arbitral Tribunal may require the payment of expenses resulting from such measures mentioned in paragraph 1) of this article.
3. Requests or applications by either party for such an interim order of protection from the Court shall not be deemed inconsistent with the Arbitration Agreement or a waiver of such Agreement.

Conduct of the arbitral proceedings

ARTICLE 30. Fair Treatment:

Arbitrator(s) will treat the parties with equality and each party shall be given a full and fair opportunity to present his or her case.

ARTICLE 31. Proceedings According to Procedures:

1. The parties are free to agree on the procedure to be followed by the Arbitral Tribunal in conducting the proceedings.
2. If the parties have not or cannot agree on a procedure to be followed by the Arbitral Tribunal in conducting the proceedings, the Arbitral Tribunal may, subject to the provisions of this Law conduct the Arbitration as is appropriate including making determinations regarding the admissibility, relevance, materiality and weight of any evidence and compelling the production of evidence by sanctioning parties.

ARTICLE 32. Selection of Arbitral Institution:

Absent an Agreement by the parties to conduct an Arbitration without using an Arbitral institution, if the parties do not specify and cannot agree upon an Arbitral institution under which the Arbitration will be conducted, the Arbitral institution shall be determined by a Court, which decision shall not be subject to further appeal.

ARTICLE 33. Selection of Arbitration Location:

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. 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, for presence of the parties, or for inspection of goods, other property or documents.
3. For the inspection of goods, other property or documents, the Arbitral Tribunal shall determine a time for any hearing or meeting of the board and shall inform the parties.

ARTICLE 34. Starting of Arbitration Proceeding:

Unless otherwise agreed by the parties, the Arbitral proceedings with respect to a particular dispute shall commence on the date on which a demand for Arbitration is received by the respondent.

ARTICLE 35. Usage of Language in Arbitration Proceeding:

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. Any Agreement or determination as to language, unless otherwise agreed upon by the parties, shall apply to any written statement by a party, any hearing and any Award, decision or other communication by the Arbitral Tribunal. The Arbitral Tribunal may order that any documentary evidence be accompanied by a translation into the language or languages agreed upon by the parties or determined by the Arbitral Tribunal.

ARTICLE 36. Statement of Claim and Defense:

Unless the parties have otherwise agreed as to the elements of statements of claim or defense, within the period of time agreed by the parties or within 15 days of the Arbitration proceeding, the elements of claim or defense shall be stated, in compliance with the following:

- (a) The claimant(s) shall state the facts supporting his or her claim(s), the points at issue and the relief or remedy sought;
- (b) The respondent(s) shall state his or her defense regarding the points at issue and the relief or remedy sought and shall state the facts supporting counter-claim(s) he or she may have [against any claimant(s)];
- (c) The parties may submit with their statements all documents that are relevant to the case to the Arbitral Tribunal.

ARTICLE 37. Correction of the Defense:

Unless otherwise agreed by the parties, either party may amend or supplement his or her claim or defense during the course of the Arbitral proceedings, unless the Arbitral Tribunal, in the interest of fairness or of avoiding undue delay, or is violative of the Arbitration Agreement, considers it inappropriate to allow such amendment.

ARTICLE 38. Notice of the Meeting:

1. Subject to agreement by the parties, the Arbitral Tribunal may decide to hold oral hearings or on other matters, provided

that there shall be at least 30 days prior written notice to the parties of such a hearing.

2. If requested by a party, the Arbitral Tribunal may hold oral hearings at an appropriate stage of the proceedings, unless the parties have agreed otherwise.

ARTICLE 39. Collecting Information:

All statements, documents or other information, supplied to the Arbitral Tribunal by one party shall be provided to the other party. Any expert report or evidentiary document on which [the Arbitral Tribunal] may rely in making [its] decision shall be communicated to the parties.

ARTICLE 40. Continuation of Arbitration :

1. Unless otherwise agreed by the parties, the Arbitral Tribunal may continue the proceedings and make the Award on the evidence before it as appropriate under the circumstances.
2. If a claimant fails to communicate his or her statement of claim in accordance with sub 1

ARTICLE 54, the Arbitral Tribunal may terminate the proceedings.

3. If a respondent fails to communicate his or her statement of defense in accordance with sub 2 ARTICLE 54, the Arbitral Tribunal may continue the proceedings and determine a reasonable time for the respondent to communicate his/her defense.
4. If any one of the parties fails to appear at a hearing or to produce documentary evidence, the Arbitrator tribunal may continue the arbitration proceeding and based on the evidence already presented, issue its award.

ARTICLE 41. Appointment of Experts:

1. Unless otherwise agreed by the parties, the Arbitral Tribunal may appoint one or more experts to report to it on issues to be determined by the Arbitral Tribunal.
2. The Arbitral Tribunal 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 or her inspection.
3. The expert shall, after delivery of his or her written or oral report, participate in the hearing if requested by the parties or required by the Tribunal.

ARTICLE 42. Request for Evidence:

The Arbitral Tribunal or any one of the parties, when needed, may request the relevant documents or evidence from a Court.

Making of award and termination of proceedings

ARTICLE 43. Applicable law:

1. The Arbitral Tribunal shall decide the dispute in accordance with the rules of Law chosen by the parties.
2. Failing any designation by the parties or when there is a conflict of laws , the Arbitral Tribunal shall apply the Law it considers applicable.

ARTICLE 44. Arbitrator not Appointed as Mediator:

When requested by the parties, the Arbitral Tribunal shall not engage in Mediation with respect to disputes pending before it. However, the parties are free to appoint a third party as a mediator.

ARTICLE 45. Decision Making Manner:

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 authorized by the parties or the other members of the arbitral tribunal.

ARTICLE 46. Arbitral Award:

1. If, during Arbitral proceedings, the parties settle their 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 mentioned in Para 1) of this Article shall be made in accordance with Article 48 and shall have the same status and effect as any other Award on the merits of the case.

ARTICLE 47. Contents of the Award:

1. An Award shall:
 1. Be made in writing and 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. State the reasons upon which they are based, unless the parties have agreed that no reasons are to be given or the Award is an Award on agreed terms under ARTICLE 47;
 3. Include the date and place of Arbitration.
2. Arbitral proceedings by the Arbitral Tribunal are terminated by an Award concerning the disputed case.
 3. After an Award is made, a copy signed by the Arbitrators in accordance with Paragraph 1) of this ARTICLE shall be delivered to each party. Also, a copy shall be maintained by the office of the Tribunal.

ARTICLE 48. Termination of Arbitration Proceedings:

An Arbitral Tribunal shall issue a termination of the Arbitral proceedings:

1. When the claimant withdraws his or her claim, unless the respondent has a counter-claim against the claimant, or the respondent objects to the claimant withdrawing his or her claim and the arbitral tribunal recognizes a legitimate interest on the respondent's part in obtaining a final settlement of the dispute
2. The parties agree on the termination of the proceedings;
3. The Arbitral Tribunal finds that the continuation of the proceedings has for any other justifiable reason become unnecessary or impossible.

ARTICLE 49. Correction of Mistakes:

Within 30 days of receipt of the Award, unless another period of time has been agreed upon by the parties, a party, with notice to the other party, may request the Arbitral Tribunal to correct any errors in computation, any clerical or typographical errors or any errors of similar nature in the Award or 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 30 days of receipt of the request and the interpretation shall form part of the Award. An Arbitral Tribunal, on its own initiative, may correct any error of the type referred to in this ARTICLE on its own initiative.

ARTICLE 50. Issuance of Complementary [Additional] Award:

Parties, with notice to the other party, may within 30 days of receipt of the Award, request 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 decide on any additional Award within 60 days of receiving the request.

ARTICLE 51. Extension of Period:

The Arbitral Tribunal may extend for a reasonable period the time within which it shall make a correction, interpretation or an additional Award under ARTICLES 50 and 51.

ARTICLE 52. Adhering to Article 48:

The Arbitral Tribunal shall comply with the provisions of ARTICLE 48 of this law in a correction or interpretation of an Award or an additional Award.

Recourse against the award

ARTICLE 53. Setting Aside the Arbitral Award:

An Arbitral Award may be set aside by a Court based on the request or based on the objection of a party if:

1. A party to the Arbitration Agreement referred to in ARTICLE 14 was under legal incapacity;
2. The Arbitration Agreement has subjected the parties to a law that is not valid under the Laws of Afghanistan;
3. The party making the application was not given proper notice of the appointment of an Arbitrator, of the Arbitral proceedings or was otherwise unable to present his or her case as provided by this Law;
4. An Arbitrator was bribed, subject to undue influence or had a material conflict of interest with respect to a party, witness or the subject matter of the Arbitration that was not timely disclosed to the parties pursuant to this Law;
5. The Award deals with a dispute not contemplated by or not falling within the terms of the Arbitration Agreement or contains decisions on matters beyond the scope of the submission to Arbitration, but if the decisions on matters beyond the scope of the Arbitration can be separated from those not beyond the scope of the Arbitration, then only that part of the Award which contains decisions on matters beyond the scope of the Arbitration may be set aside;
6. The composition of the Arbitral Tribunal or the Arbitral procedure was not in accordance with the Agreement of the parties, unless the Agreement of the parties was in conflict with a provision of this Law from which the parties cannot deviate; or
7. The subject-matter of the dispute is not capable of settlement by Arbitration under the Laws of Afghanistan or the Award is in conflict with the public [State] policy of Afghanistan.

ARTICLE 54. Period for the Application to Set Aside [the Arbitral Award]:

An application to set aside an Award may be made within three months from the date on which an award was issued by the Arbitral Tribunal.

ARTICLE 55. Rehearing by the Arbitral Tribunal:

A Court, when an Award is set aside, may, where appropriate and so requested by a party, give the Arbitral Tribunal a reasonable 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 its Award.

Enforcement of awards

ARTICLE 56. Enforcement or Refusal of Awards:

- 1) An Arbitral Award, irrespective of the country in which it was made, shall be enforceable.
- 2) An Arbitral Award may be refused in the following cases:
 1. If a party to the Arbitration Agreement is under some incapacity;
 2. If the award has not been issued subject to the law set forth in the agreement by the parties;
 3. If the award is issued under a Law which is invalid;
 4. If the party against whom the Award is invoked was not given proper notice of the appointment of an Arbitrator or of the Arbitral proceedings or was otherwise unable to present his or her defense as provided for in this Law;
 5. If the Award deals with a dispute not contemplated by the Arbitration Agreement or not falling within the scope of its applicability, or it contains decisions on matters beyond the scope of the submission to Arbitration, but 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 submitted to Arbitration may be enforced;
 6. If 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;
 7. The Award has not yet become binding on the parties and has been set aside or suspended by a Court of the country in which, or under the Law of which, that Award was made;
 8. The subject-matter of the dispute is not capable of settlement by Arbitration under the Law of Afghanistan or enforcement of the Award would be contrary to the laws and regulations of Afghanistan.

ARTICLE 57. Presenting the Original of the Document:

The party relying on an Award or applying for its enforcement shall supply the duly authenticated original Award or a duly certified copy of the Award, the original Arbitration Agreement or a duly certified copy the Agreement and a duly certified translation thereof into one of official languages of Afghanistan.

ARTICLE 58. Provision of Security:

If an application to set aside or suspend an Award has been made to a Court, and if enforcement of the same Award is being sought in another Court, the Court considering the application to set aside or suspend the Award may adjourn its decision and may, at the request of the party claiming enforcement of the Award, order the other party to provide appropriate security.

Final provisions

ARTICLE 59. Enacting Regulations and Procedures:

The Ministry of Commerce and Industry ("MOCI"), for better implementation of this law, may propose regulations and enact and approve rules and procedures.

ARTICLE 60: Effective Date:

This Law is in effect from the date of [the President's] signature and shall be published in the Official Gazette. Upon the date this Law comes into effect, the regulations of the Commercial Arbitration Law of 1995, published in Official Gazette No. 779, dated July 1995 are null and void.

Bangladesh

Bangladesh

1 Arbitration Agreements

1.1 What, if any, are the legal requirements of an arbitration agreement under the laws of your country?

Arbitration in Bangladesh is governed by the Arbitration Act, 2001 ("the Act"). Section 9 of the Act sets out the necessary elements to be contained in an arbitration agreement and states that it may be in the form of an arbitration clause in a contract or in the form of a separate agreement. An arbitration agreement that would be recognized by the court includes written documents signed by the parties, exchange of letters, telex, telegrams, fax, e-mails or other means of telecommunication providing a record of the agreement or an exchange of statement of claim and defence in which existence of the agreement is alleged by one party and not denied by the other.

1.2 What other elements ought to be incorporated in an arbitration agreement?

The Agreement should contain all the ingredients of a usual agreement that would make it enforceable, i.e. the wordings of the agreement should be free of ambiguity, and should state the disputes to which the arbitration agreement would be applicable. It should also include the governing law for resolution of the dispute.

1.3 What has been the approach of the national courts to the enforcement of arbitration agreements?

Since the enactment of the Arbitration Act, 2001 there has been positive response both from the business community as well as from the Government. A specific Bench of the High Court Division of the Supreme Court of Bangladesh has been vested with the jurisdiction to appoint arbitrators in respect of an international commercial arbitration as defined in the Act.

2 Governing Legislation

2.1 What legislation governs the enforcement of arbitration agreements in your country?

As stated earlier, the Arbitration Act, 2001 governs the enforcement of arbitration agreements in Bangladesh.

2.2 Does the same arbitration law govern both domestic and international arbitration proceedings? If not, how do the law differ?

The Arbitration Act, 2001 governs both domestic and international arbitration proceedings. However, there are different procedures and Courts involved in enforcing an arbitration award depending on whether the award is domestic or foreign.

2.3 Is the law governing international arbitration based on the UNCITRAL Model Law? Are there significant differences between the governing law and the Model Law?

The Arbitration Act, 2001 is based on the UNCITRAL Model Law. However, on certain aspects the provisions of the 2001 Act differ and some of the major differences can be stated thus:

- Section 11 of the 2001 Act deals with the number of Arbitrators and mandates that, unless otherwise agreed between the parties, the number shall not be even.
- The Model Law permits the parties to approach a Court or Authority for appointment of a third Arbitrator or Sole Arbitrator as the case may be, in cases where the parties fail to reach an agreement.

Under the 2001 Act, this power in the case of the domestic arbitration is vested with the District Judge and in case of international commercial arbitration this power is given to the Chief Justice or any Judge of the Supreme Court designated by him.

- Matters which are dealt with by the 2001 Act on which the Model Law is silent are:
 - Award of interest by the Tribunal (Section 38(6))
 - Costs of arbitration (Section 38(7)).

- Enforceability of an award in the same manner as if it were a decree of a Court under Section 44 in situations where the award is not challenged within the prescribed period or the challenge has been unsuccessful.
- Appeals in respect of certain matters (Section 48).
- Fixing the amount of deposit as an advance for the cost of arbitration (Section 49).
- Non-discharge of arbitration agreement by death of a party (Section 51).
- Rights of a party to an arbitration agreement in relation to insolvency proceedings (Section 52).
- Identification of Court having exclusive jurisdiction over the arbitral proceedings (Section 53).
- Applicability of the Limitation Act, 1908 to arbitrations as it applies to proceedings in Court and related issues.

3. Jurisdiction

3.1 Are there any subject matters that may not be referred to arbitration under the governing law of your country? What is the general approach used in determining whether or not a dispute is “arbitrable”?

Section 54 of the Arbitration Act, 2001 states that the Act is not applicable to the Industrial Relations Ordinance, 1968 or to any other law making special provisions for arbitration.

The Arbitration (Protocol and Convention) Act, 1937 and the Arbitration Act, 1940 have been repealed by section 59(1). The saving clause provides that the repealed enactments shall be applied in relation to the proceedings which commenced before the Act came into force. Section 10(1) of the 2001 Act makes it obligatory on the part of the judicial authority to refer the parties to arbitration if action brought before it is a matter which is covered by the arbitration agreement, provided such request is made not later than submitting to the Court the first statement on the substance of the dispute. Pursuant to Section 10(2), the Court, if it is satisfied that an arbitration agreement exists, refers the parties to arbitration and stays the proceedings, unless it

finds that the arbitration agreement is void, inoperative or incapable of determination by arbitration.

Decisions under the old Arbitration Act, 1940 would have a bearing on this issue. Under the old Act a Court decided on the facts of each case whether sufficient cause had been made out or not for the dispute to be referred to arbitration and in doing so, the Court was not limited to the kind of causes referred to in the Arbitration Act. When the dispute required investigation into the charge of fraud the court could have refused to refer the matter to arbitration. When the dispute between the parties raised difficult and complicated question of law which required a decision by the court, it could have refused to refer the dispute to arbitration. The Court also considered the conduct of the applicant and considered whether such conduct was sufficient cause for not making the reference. Moreover, undue delay could be sufficient cause for not ordering the reference.

3.2 Is an arbitrator permitted to rule on the question of his or her own jurisdiction?

Yes.

3.3 Under what circumstances can a court address the issue of the jurisdiction and competence of the arbitral tribunal?

Section 20 of the Arbitration Act, 2001 states that the High Court Division may, on the application of any of the parties to the arbitration agreement, after serving notice upon all other parties, determine any question as to jurisdiction of the arbitral tribunal if it is satisfied that the determination of the question is likely to save substantial cost, the application was submitted without any delay and there is good reason why the matter should be decided by the Court. The application will have to state the reasons on which the matter should be decided by the High Court Division. However, even if such an application is pending before the Court, unless otherwise agreed by the parties, the arbitral tribunal is expected to continue the arbitration proceedings and make an arbitral award.

4 Selection of Arbitral Tribunal

4.1 Are there any limits to the parties' autonomy to select arbitrators?

No.

4.2 If the parties' chosen method for selecting arbitrators fails, is there a default procedure?

If the parties fail to select arbitrators, section 12 of the Arbitration Act, 2001 sets out the default procedure for such selection and states that the District Judge in case of arbitration other than international commercial arbitration and Chief Justice or a Judge of the Supreme Court designated by the Chief Justice in case of international commercial arbitration would select arbitrators. In order to invoke section 12, either party may apply to the Court for appointment of an arbitrator.

4.3 Can a court intervene in the selection of arbitrators? If so, how?

A court intervenes in the selection of arbitration if the parties fail to select arbitrators or if the arbitrators selected by the parties fail to select the chairman of the tribunal.

4.4 What are the requirements (if any) as to arbitrator independence, neutrality and/or impartiality?

The Act requires the arbitral tribunal to deal with any of the disputes submitted to it fairly and impartially and for this purpose each party would have to be given reasonable opportunity to present his case orally and/or in writing; each party shall be given reasonable opportunity to examine all the documents and other relevant materials filed by another party or any other person concerned. The arbitral tribunal is not bound to follow the provisions of the Code of Civil Procedure, 1908 and the Evidence Act, 1872 in disposing of a dispute under the Act. An arbitral award need not state any reason if the parties agree that reasons are not to be given.

5 Procedural Rules

5.1 Are there laws or rules governing the procedure of arbitration in your country? If so, do those laws or rules apply to all arbitral proceeding sited in your country?

Generally the procedure of arbitration is governed by the Arbitration Act, 2001. The only exceptions are those stated in 3.1 above. The Act, however, empowers the Supreme Court to frame Rules. There have not been any Rules framed as yet. A Rules Committee has been formed under the Chairmanship of the Chief Justice of Bangladesh.

5.2 In arbitration proceedings conducted in your country, are there any particular procedural steps that are required by law?

Although the parties have freedom to lay down the procedure to be followed by the arbitral tribunal for conducting the proceedings, there are procedures suggested by the 2001 Act that the parties would have to follow in the absence of any other agreement between them. For instance, Section 29(1) requires the claimant to state the facts supporting the claim, the points at issue and the relief or remedy sought, and for the respondent to state his defence in respect of these particulars. Subsection (2) of Section 30 requires the parties to be given sufficient advance notice of any hearing and of any meeting of the tribunal for the purposes of inspection of documents, goods or other property. Sub-section (3) of Section 22 states that an arbitral award on agreed terms should be made in accordance with the requirements provided in Section 38 of the 2001 Act and should state that it is an arbitral award on agreed terms. Section 38 sets out the form and content of arbitral award and requires, inter alia, the award to be written, that it contains signatures of majority of the members of the arbitral tribunal along with a valid reason for the omitted signature, to state the date and place of arbitration and to deliver signed copies of the arbitral tribunal to each party.

Mandatory provision set out in section 41 provides for the precise point of time at which the arbitral tribunal gets terminated and states that the proceedings can be terminated by the final award or in the event of withdrawal of the claim by the claimant or by agreement of the parties to terminate the proceedings or upon the finding of the tribunal that the continuation of the proceedings for any other reason(s) becomes unnecessary or impossible. Under

Section 40 the parties may request the tribunal, within a period of fourteen days from the receipt of the award, unless otherwise agreed, to correct any computation, clerical, typographical or similar errors, give an interpretation of a specific point or part of the award or make additional award as to the claims omitted from the original award.

5.3 Are there any rules that govern the conduct of an arbitration hearing?

No. The arbitral tribunal follows the procedure agreed on by the parties. In the absence of any such agreement, the tribunal decides on the procedure to be followed.

5.4 Do the national courts have jurisdiction to deal with procedural issues arising during an arbitration?

The Court's power to intervene is restricted to the following:

- _ Appeal against the decision of arbitral tribunal challenging arbitrator (Section 14(4)).
- _ Power to decide on termination of mandate of the arbitrator in the event of his inability to perform his functions or failing to act without undue delay (Section 15(2)).
- _ Powers of High Court Division in deciding jurisdiction (Section 20).
- _ Power to enforce interim measures taken by arbitral tribunal (Section 21(4)).
- _ Power to issue summons upon the application of the arbitral tribunal (Section 33).
- _ Power to direct determination of any question in connection with insolvency proceeding by arbitration under certain circumstances (Section 52).

6 Preliminary Relief and Interim Measures

6.1 Under the governing law, is an arbitrator permitted to award preliminary or interim relief? If so, what types of relief? Must an arbitrator seek the assistance of a court to do so?

Yes. The arbitral tribunals have been endowed with the power to pass an interim award which is enforceable as a final award by the Court. Under section 21 of the Act, the arbitral tribunal may, at the request of a party, order a party to take any interim measure of protection as the arbitral tribunal considers necessary in respect of the dispute and such an award is not appealable.

The interim measures covered by Section 21 are not exhaustive and may include preservation, custody, sale, protection of goods, protection of trade secrets, maintenance of machineries, works, continuation of certain works. A tribunal may also grant specific performance of part of a contract or injunction. The interim orders must, however, be in respect of subject matter of dispute. An order of the tribunal may be enforced by the Court on an application made by any of the parties.

6.2 Is a court entitled to grant preliminary or interim relief in proceedings subject to arbitration? In what circumstances? Can a party's request to a court for relief have any effect on the jurisdiction of the arbitration tribunal?

Under the old Arbitration Act, 1940, the Court had wide powers to grant interim relief. Though these provisions have been omitted, it can be reasonably anticipated that the Court may grant some interim relief in aid of the arbitration proceedings. A party's request to a court for relief will have no effect on the jurisdiction of the arbitration tribunal, subject to any order made by the Court.

6.3 In practice, what is the approach of the national courts to requests for interim relief by parties to arbitration agreements?

It is yet too early under the new Act to generalize about the approach of national courts to requests for interim relief.

7 Evidentiary Matters

7.1 What rules of evidence (if any) apply to arbitral proceedings in your country?

Section 34 of the Arbitration Act, 2001 provides that unless otherwise agreed by the parties, evidence may be given before the arbitral tribunal orally or in writing or by affidavit. The arbitral tribunal may also administer an oath or affirmation to a witness subject to his consent.

7.2 Are there limits on the scope of an arbitrator's authority to order the disclosure of documents and other disclosure of discovery (including third party disclosure)?

The only limit to the scope of the arbitrator's authority with respect to ordering the disclosure of documents is set out in Section 33(2) of the Arbitration Act, 2001 which states that a person shall not be compelled under any summons to produce any document or material which that person could not be compelled to produce at the trial in an action before the Court.

7.3 Under what circumstances, if any, is a court able to intervene in matters of disclosure/discovery?

The arbitral tribunal or a party to the arbitration proceedings may apply to the Court for issuing summons upon any person necessary for producing or submitting materials. If persons fail to comply with the summons, they may be subject to punishments by order of the Court as they would incur for like offences in suits tried before the Court.

7.4 What is the general practice for disclosure/discovery in international arbitration proceedings?

As stated in 7.3 above.

7.5 What, if any, laws, regulations or professional rules apply to the production of written and/or oral witness testimony? For example, must witnesses be sworn in before the tribunal? Is cross-examination allowed?

The rules of procedure to be followed by the tribunal are those agreed by the parties or decided by the tribunal. Unless otherwise agreed between the parties, the tribunal decides whether to hold oral hearings for the presentation of evidence or argument or whether the proceedings should be conducted on the basis of documents and other materials.

8 Making an Award

8.1 What, if any, are the legal requirements of an arbitral award?

Section 38 sets out the requirements relating to the form and content of an arbitral award and requires the award to be written and to contain the signatures of the majority of the members of the arbitral tribunal along with a valid reason for any omitted signature. The date and place of arbitration should be stated and signed copies of the arbitral tribunal should be delivered to each party. The Act does not require reasons to be given by the arbitral tribunal if the parties have agreed that no reasons are to be given or the award is an arbitral award on agreed terms (Section 38(3)).

9 Appeal of an Award

9.1 On what bases, if any, are parties entitled to appeal an arbitral award?

Section 43 of the Act provides the grounds for setting aside arbitral awards. Fraud, corruption or conflict with public policy of Bangladesh, violation of principles of natural justice, acting beyond the terms of the submission and deciding on matters which are legally not arbitrable are the grounds on which an award can be set aside.

10 Enforcement of an Award

10.1 Has your country signed and/or ratified the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards? What is the relevant national legislation?

Bangladesh has acceded to the New York Convention on Enforcement of Arbitration Agreements and Awards. The Arbitration Act, 2001 provides for direct enforcement of foreign arbitral awards as provided in the New York Convention.

10.2 What is the approach of the national courts in your country towards the enforcement of arbitration awards in practice?

An arbitral award is taken to be final and binding on both the parties and on any persons claiming through or under them. It is enforceable under the Code of Civil Procedure in the same manner as if it were a decree of the Court.

11 Confidentiality

11.1 Are arbitral proceedings sited in your country confidential? What, if any, law governs confidentiality?

Arbitral Proceedings sited in Bangladesh are not confidential, subject to any agreement between the parties, and there is no law governing confidentiality in Bangladesh.

11.2 Can information disclosed in arbitral proceedings be referred to and/or relied on in subsequent proceedings?

An admission before an arbitrator is admissible evidence. It is for the court dealing with the facts to attach whatever weight it thinks proper to such an admission.

11.3 In what circumstances, if any, are proceedings not protected by confidentiality?

Refer to 11.1 above.

12 Damages/interests/costs

12.1 Are there limits on the types of damages that are available in arbitration (E.g., punitive damages)?

There are no formal limits, but it is unlikely that punitive damages will be enforceable especially in commercial disputes.

12.2 What, if any, interest is available?

The arbitral award may include interest in the sum for which the award is made at such rate as the tribunal deems reasonable, on the whole or any part of the money, for the whole or any part of the period between the date on which the cause of action arose and the date on which the award is made. Subject to what is specified in the award, interest on the sum directed to be paid by the arbitral award at the rate

of 2% per annum more than the current Bangladesh Bank rate is payable for the period between the date of award and the date of payment.

12.3 Are parties entitled to recover fees and/or costs and, if so, on what basis? What is the general practice with regard to shifting fees and costs between the parties?

Parties are entitled to recover costs (which include fees and expenses of the arbitrators and witnesses, legal fees and other expenses) as agreed amongst themselves or as fixed by the arbitral tribunal. Arbitration costs include reasonable cost relating to the fees and expenses of the arbitrators and witnesses, legal fees and expenses, any administration fees of the institution supervising the arbitration and any other expense incurred in connection with the arbitral proceedings and the arbitral award. The arbitral tribunal should specify the party entitled to costs, the party who shall pay the costs, the amount of costs or methods of determining that amount and the manner in which the cost shall be paid.

12.4 Is an award subject to tax? If so, in what circumstances and on what basis?

No tax is payable on an arbitral award. However, income tax may be levied when the payment of award is actually made. Moreover, stamp duty and court fees are payable at the time of converting the arbitral award into a rule of the Court.

13 General

13.1 Are there noteworthy trends in the use of arbitration or arbitration institutions in your country? Are certain disputes commonly being referred to arbitration?

In Bangladesh, until very recently the law relating to arbitration used to be governed by the Arbitration Act, 1940. Many provisions of the Arbitration Act, 1940 were anachronistic vis-a`-vis the modern national arbitration laws which are found throughout the world. Factors which stood on the way of wider use of procedures of arbitration under the previous Arbitration Act, 1940 included extensive role of the courts in the process of arbitration, its supervision and enforcement of arbitral awards. The enforcement of arbitral award was found to be slow and cumbersome. An award could only be enforced after obtaining an order from the

District Court and that was a slow and much contested process. There was also considerable doubt whether it was possible to enforce arbitral awards despite the fact that Bangladesh acceded in 1992 to the New York Convention, 1958.

However, with the enactment of the new Arbitration Act, 2001, there is a general rise in the use of arbitration as an alternate dispute resolution procedure. The problems of the old regime have been addressed in the new Act. Most importantly the involvement of the judicial system has been kept to a minimum level essential for effective operation of the tribunal's work. Generally the court is bound to refer parties to arbitration where an arbitration agreement exists. No judicial authority is normally to hear any legal proceedings filed by one party to the arbitration agreement against the other till the arbitration process is exhausted and that hearing will be done in a manner prescribed by this Act. Disputes arising out of construction, engineering and infrastructure contracts are often referred to arbitration.

13.2 Are there any other noteworthy current issues affecting the use of arbitration in your country?

Bangladesh has begun to respond to the needs of reform and the new Arbitration Act, 2001 could be considered as a decisive step to this end. It is expected that the new Arbitration Act, 2001 would bring about an important change in at least one area of arbitration law in Bangladesh, i.e. in the area of enforcement of foreign arbitral awards as provided in the New York Convention, to which Bangladesh is a party. In fact, since the enactment of the 2001 Act there has been positive response both from the business community as well as from the Government. A specific Bench has been set up in the High Court Division with the jurisdiction of appointment of arbitrators in respect of international arbitration as defined in the 2001 Act.

Dr. Kamal Hossain and Associates

The firm is one of the largest integrated law firms in Bangladesh providing a comprehensive range of specialist legal services to both domestic and international clients. Its broadly based practice includes commercial arbitration,

energy, gas and oil related projects, customs and corporate law, admiralty and aviation, banking and financial regulation, constitutional and administrative law, and telecommunications. The firm has a well-established litigation team of experienced lawyers with a creative and solution-oriented approach.

The firm has international experience in a number of practice areas, including joint ventures, business transactions, energy and project finance. It has advised a range of clients on a broad spectrum of projects including power generating facilities, gas gathering and transmission systems, telecommunications and other infrastructure projects. The firm regularly advises multinationals and other international clients on their trade, business or investment interests in Bangladesh. It acts for international clients wishing to establish themselves or their products in the Bangladesh market.

Bhutan

Bhutan Arbitrator Directory

Bhutan Arbitration

Bhutan Arbitration is a dispute resolution process in which a neutral Bhutan Arbitrator is selected and empowered to make a decision between parties having complaints or dispute. The Bhutan Arbitrator hears the disagreement and evidence presented by each party. After careful review considering all relevant information, the Bhutan Arbitrator will issue an award to the party having the stronger case. Bhutan Arbitration decisions may be either binding or non-binding, depending on the terms of the arbitration clause agreement. Binding arbitration decisions have the same significance as a court judgment. The Bhutan Arbitrator award cannot be reviewed by a court, and there cannot be an appeal of the Bhutan Arbitrator's decision.

Bhutan Arbitration is considered less expensive and a quicker dispute resolution alternative than through Court litigation. Bhutan Arbitration can resolve disputes confidentially. Generally, an Arbitration Clause is inserted into an agreement contract between the parties which will specify Bhutan Arbitration instead of resolving disputes in Bhutan Court. Arbitration Clause should be reviewed by an attorney. If an Arbitration Clause does not exist, both parties can mutually agree to have their dispute resolved by Bhutan Arbitration.

The Bhutan Arbitrator is a knowledgeable trained professional who conducts the Bhutan Arbitration. In the Bhutan Arbitrator Directory you will find Bhutan Arbitrators and their expertise. Select the Bhutan Arbitrator who has expertise in your dispute. For example, a dispute involving an employment agreement may be best handled by the Bhutan Arbitrator with expertise in Bhutan employment law and labor contracts.

What types of disputes can be arbitrated through Bhutan Arbitration? Any type of disagreement can be arbitrated, including disputes involving businesses and consumers,

employment claims, real estate and construction issues. Bhutan Arbitration is utilized when there is an adversarial situation and the parties wish to resolve the dispute in private without court litigation.

If legal action is necessary, before contacting a Bhutan Arbitrator, we suggest that you educate yourself on law and the legal process by reading the books mentioned in our recommended reading section.

India

INDIAN BARE ACTS
THE ARBITRATION AND
CONCILIATION ACT, 1996

No.26 of 1996
[16th August, 1996]

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

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

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

AND WHEREAS the UNCITRAL has adopted the UNCITRAL Conciliation Rules in 1980;

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

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

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

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

PRELIMINARY

1. Short title, extent and commencement:

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

(2) It extends to the whole of India:

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

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

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

Chapter I
Arbitration

General provisions

2. Definitions

- (1) In this Part, unless the context otherwise requires:
- (a) "arbitration" means any arbitration whether or not administered by permanent arbitral institution;
 - (b) "arbitration agreement" means an agreement referred to in section 7;
 - (c) "arbitral award" includes an interim award;
 - (d) "arbitral tribunal" means a sole arbitrator or a panel of arbitrators;
 - (e) "Court" means the principal Civil Court of original jurisdiction in a district, and includes the High Court in exercise of its ordinary original civil jurisdiction, having jurisdiction to decide the questions forming the subject-matter of the arbitration if the same had been the subject-matter of a suit, but does not include any civil court of a grade inferior to such principal Civil Court, or any Court of Small Causes;
 - (f) "international commercial arbitration" means an arbitration relating to disputes arising out of legal relationships, whether contractual or not, considered as commercial under the law in force in India and where at least one of the parties is-
 - (i) an individual who is a national of, or habitually resident in, any country other than India; or
 - (ii) a body corporate which is incorporated in any country other than India; or
 - (iii) a company or an association or a body of individuals whose central management and

control is exercised in any country other than India; or

(iv) the Government of a foreign country;

(g) "legal representative" means a person who in law represents the estate of a deceased person, and includes any person who intermeddles with the estate of the deceased, and, where a party acts in a representative character, the person on whom the estate devolves on the death of the party so acting;

(h) "party" means a party to an arbitration agreement.

- (2) This Part shall apply where the place of arbitration is in India.
- (3) This Part shall not affect any other law for the time being in force by virtue of which certain disputes may not be submitted to arbitration.
- (4) This Part except sub-section (1) of section 40, sections 41 and 43 shall apply to every arbitration under any other enactment for the time being in force, as if the arbitration were pursuant to an arbitration agreement and as if that other enactment were an arbitration agreement, except in so far as the provision of this Part are inconsistent with that other enactment or with any rules made thereunder;
- (5) Subject to the provisions of sub-section (4), and save in so far as is otherwise provided by any law for the time being in force or in any agreement in force between India and any other country or countries, this Part shall apply to all arbitrations and to all proceedings relating thereto.
- (6) Where this Part, except section 28, leaves the parties free to determine a certain issue, that freedom shall include the right of the parties to authorise any person including an institution, to determine that issue.
- (7) An arbitral award made under this Part shall be considered domestic award.
- (8) Where this Part-

- (a) refers to the fact that the parties have agreed or that they may agree, or
 - (b) in any other way refers to an agreement of the parties, that agreement shall include any arbitration rules referred to in that agreement.
 - (9) Where this Part, other than clause (a) of section 25 or clause (a) of sub-section (2) of section 32, refers to a claim, it shall also apply to a counterclaim, and where it refers to a defence, it shall also apply to a defence to that counterclaim.
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 at his place of business, habitual residence or mailing address, and
 - (b) if none of the places referred to in clause (a) can be found after making a reasonable inquiry, a written communication is deemed to have been received if it is sent to the addressee's last known place of business, habitual residence or mailing address by registered letter or by any other means which provides a record of the attempt to deliver it.
- (2) The communication is deemed to have been received on the day it is so delivered.
 - (3) This section does not apply to written communications in respect of proceedings of any judicial authority.
4. Waiver of right to object: A party who knows that-
- (a) any provision of this Part from which the parties may derogate, or
 - (b) any requirement under the arbitration agreement, has not been complied with and yet proceeds with the arbitration without stating his objection to such non-compliance without undue delay or, if a time limit is provided for stating that objection, within that period of

time, shall be deemed to have waived his right to so object.

5. Extent of judicial intervention: Notwithstanding anything contained in any other law for the time being in force, in matters governed by this Part, no judicial authority shall intervene except where so provided in this Part.
6. Administrative assistance: In order to facilitate the conduct of the arbitral proceedings, the parties, or the arbitral tribunal with the consent of the parties, may arrange for administrative assistance by a suitable institution or person.

Chapter II
Arbitration agreement

7. Arbitration agreement: (1) In this Part, "arbitration agreement" means an agreement by the parties to submit to arbitration all or certain disputes which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not.
- (2) An arbitration agreement may be in the form of an arbitration clause in a contract or in the form of a separate agreement.
- (3) An arbitration agreement shall be in writing.
- (4) An arbitration agreement is in writing if it is contained in-
- (a) a document signed by the parties;
 - (b) an exchange of letters, telex, telegrams or other means of telecommunication which provide a record of the agreement; or
 - (c) an exchange of statements of claim and defence in which the existence of the agreement is alleged by one party and not denied by the other.
- (5) The reference in a contract to a document containing an arbitration clause constitutes an arbitration agreement if the contract is in writing and the reference is such as to make that arbitration clause part of the contract.
8. Power to refer parties to arbitration where there is an arbitration agreement: (1) A judicial authority before which an action is brought in a matter which is the subject of an arbitration agreement shall, if a party so applies not later than when submitting his first statement on the substance of the dispute, refer the parties to arbitration.
- (2) The application referred to in sub-section (1) shall not be entertained unless it is accompanied by the original arbitration agreement or a duly certified copy thereof.

- (3) Notwithstanding that an application has been made under sub-section (1) and that the issue is pending before the judicial authority, an arbitration may be commenced or continued and an arbitral award made.
9. Interim measures etc.by Court: A party may, before, or during arbitral proceedings or at any time after the making of the arbitral award but before it is enforced in accordance with section 36, apply to a court-
- (i) for the appointment of a guardian for a minor or person of unsound mind for the purposes of arbitral proceedings; or
 - (ii) for an interim measure or protection in respect of any of the following matters, namely:-
 - (a) the preservation, interim custody or sale of any goods which are the subject-matter of the arbitration agreement;
 - (b) securing the amount in dispute in the arbitration;
 - (c) the detention, preservation or inspection of any property or thing which is the subject-matter of the dispute in arbitration, or as to which any question may arise therein and authorising for any of the aforesaid purposes any person to enter upon any land or building in the possession of any party or authorising any samples to be taken or any observation to be made, or experiment to be tried, which may be necessary or expedient for the purpose of obtaining full information or evidence;
 - (d) interim injunction or the appointment of a receiver;
 - (e) such other interim measure of protection as may appear to the Court to be just and convenient, and the Court shall have the same power for making orders as it has for the purpose of, and in relation to, any proceedings before it.

Chapter III
Composition of arbitral tribunal

10. Number of arbitrators: (1) The parties are free to determine the number of arbitrators, provided that such number shall not be an even number.
 - (2) Failing the determination referred to in sub-section (1), the arbitral tribunal shall consist of a sole arbitrator.
11. Appointment of arbitrators:
 - (1) A person of any nationality may be an arbitrator, unless otherwise agreed by the parties.
 - (2) Subject to sub-section (6), the parties are free to agree on a procedure for appointing the arbitrator or arbitrators.
 - (3) Failing any agreement referred to in sub-section (2), in an arbitration with three arbitrators, each party shall appoint one arbitrator, and the two appointed arbitrators shall appoint the third arbitrator who shall act as the presiding arbitrator.
 - (4) If the appointment procedure in sub-section (3) applies and-
 - (a) a party fails to appoint an arbitrator within thirty days from the receipt of a request to do so from the other party; or
 - (b) the two appointed arbitrators fail to agree on the third arbitrator within thirty days from the date of their appointment, the appointment shall be made, upon request of a party, by the Chief Justice or any person or institution designated by him.
 - (5) Failing any agreement referred to in sub-section (2), in an arbitration with a sole arbitrator, if the parties fail to agree on the arbitrator within thirty days from receipt of a request by one party from the other party to so agree the appointment shall be made, upon request of a party, by the Chief Justice or any person or institution designated by him.

- (6) Where, under an appointment procedure agreed upon by the parties:
- (a) a party fails to act as required under that procedure; or
 - (b) the parties, or the two appointed arbitrators, fail to reach an agreement expected of them under that procedure; or
 - (c) a person, including an institution, fails to perform any function entrusted to him or it under that procedure, a party may request the Chief Justice or any person or institution designated by him to take the necessary measure, unless the agreement on the appointment procedure provides other means for securing the appointment.
- (7) A decision on a matter entrusted by sub-section (4) or sub-section (5) or sub-section (6) to the Chief Justice or the person or institution designated by him is final.
- (8) The Chief Justice or the person or institution designated by him, in appointing an arbitrator, shall have due regard to-
- (a) any qualifications required of the arbitrator by the agreement of the parties and
 - (b) other considerations as are likely to secure the appointment of an independent and impartial arbitrator.
- (9) In the case of appointment of sole or third arbitrator in an international commercial arbitration, the Chief Justice of India or the person or institution designated by him may appoint an arbitrator of a nationality other than the nationalities of the parties where the parties belong to different nationalities.
- (10) The Chief Justice may make such scheme as he may deem appropriate for dealing with matters entrusted by sub-section (4) or sub-section (5) or sub-section (6) to him.
- (11) Where more than one request has been made under sub-section (4) or sub-section (5) or sub-section (6) to the

Chief Justices of different High Courts or their designates, the Chief Justice or his designate to whom the request has been first made under the relevant sub-section shall alone be competent to decide on the request.

(12)

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

12. Grounds for challenge:

- (1) When a person is approached in connection with his possible appointment as an arbitrator, he shall disclose in writing any circumstances likely to give rise to justifiable doubts as to his independence or impartiality.
- (2) An arbitrator, from the time of his appointment and throughout the arbitral proceedings, shall, without delay, disclose to the parties in writing any circumstances referred to in sub-section (1) unless they have already been informed of them by him.
- (3) An arbitrator may be challenged only if-
 - (a) circumstances exist that give rise to justifiable doubts as to his independence or impartiality, or
 - (b) he does not possess the qualifications agreed to by the parties.
- (4) A party may challenge an arbitrator appointed by him, or in whose appointment he has participated, only for

reasons of which he becomes aware after the appointment has been made.

13. Challenge procedure:

- (1) Subject to sub-section (4), the parties are free to agree on a procedure for challenging an arbitrator.
- (2) Failing any agreement referred to in sub-section (1), a party who intends to challenge an arbitrator shall, within fifteen days becoming aware of the constitution of the arbitral tribunal or after becoming aware of any circumstances referred to in sub-section (3) of section 12, send a written statement of the reasons for the challenge to the arbitral tribunal.
- (3) Unless the arbitrator challenged under sub-section (2) withdraws from his office or the other party agrees to the challenge, the arbitral tribunal shall decide on the challenge.
- (4) If a challenge under any procedure agreed upon by the parties or under the procedure under sub-section (2) is not successful, the arbitral tribunal shall continue the arbitral proceedings and make an arbitral award.
- (5) Where an arbitral award is made under sub-section (4), the party challenging the arbitrator may make an application for setting aside such an arbitral award in accordance with section 34.
- (6) Where an arbitral award is set aside on an application made under sub-section (5), the Court may decide as to whether the arbitrator who is challenged is entitled to any fees.

14. Failure or impossibility to act:

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

- (2) If a controversy remains concerning any of the grounds referred to in clause (a) of sub-section (1), a party may, unless otherwise agreed by the parties, apply to the Court to decide on the termination of the mandate.
 - (3) If, under this section or sub-section (3) of section 13, an arbitrator withdraws from his office or a party agrees to the termination of the mandate of an arbitrator, it shall not imply acceptance of the validity of any ground referred to in this section or sub-section (3) of section 12.
15. Termination of mandate and substitution of arbitrator:
- (1) In addition to the circumstances referred to in section 13 or section 14, the mandate of an arbitrator shall terminate----
 - (a) where he withdraws from office for any reason; or
 - (b) by or pursuant to agreement of the parties.
 - (2) Where the mandate of an arbitrator terminates, a substitute arbitrator shall be appointed according to the rules that were applicable to the appointment of the arbitrator being replaced.
 - (3) Unless otherwise agreed by the parties, where an arbitrator is replaced under sub-section (2) , any hearings previously held may be repeated at the discretion of the arbitral tribunal.
 - (4) Unless otherwise agreed by the parties, an order or ruling of the arbitral tribunal made prior to the replacement of an arbitrator under this section shall not be invalid solely because there has been a change in the composition of the arbitral tribunal.

Chapter IV
Jurisdiction of arbitral tribunals

16. Competence of arbitral tribunal to rule on its jurisdiction:
- (1) The arbitral tribunal may rule on its own jurisdiction, including ruling on any objections with respect to the existence or validity of the arbitration agreement, and for that purpose:
 - (a) an arbitration clause which forms part of a contract shall be treated as an agreement independent of the other terms of the contract; and
 - (b) a decision by the arbitral tribunal that the contract is null and void shall not 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; however, a party shall not be precluded from raising such a plea merely because that he has appointed , or participated in the appointment of, an arbitrator.
 - (3) A plea that the arbitral tribunal is exceeding the scope of its authority shall be raised as soon as the matter alleged to be beyond the scope of its authority is raised during the arbitral proceedings.
 - (4) The arbitral tribunal may, in either of the cases referred to in sub-section (2) or sub-section (3), admit a later plea if it considers the delay justified.
 - (5) The arbitral tribunal shall decide on a plea referred to in sub-section (2) or sub-section (3) and, where the arbitral tribunal takes a decision rejecting the plea, continue with the arbitral proceedings and make an arbitral award.
 - (6) A party aggrieved by such an arbitral award may make an application for setting aside such an arbitral award in accordance with section 34.
17. Interim measures ordered by arbitral tribunal:

- (1) Unless otherwise agreed by the parties, the arbitral tribunal may, at the request of a party, order a party to take any interim measure of protection as the arbitral tribunal may consider necessary in respect of the subject matter of the dispute.
- (2) The arbitral tribunal may require a party to provide appropriate security in connection with a measure ordered under sub-section (1).

Chapter V
Conduct of arbitral proceedings

18. Equal treatment of parties: The parties shall be treated with equality and each party shall be given a full opportunity to present his case.
19. Determination of rules of procedure:
 - (1) The arbitral tribunal shall not be bound by the Code of Civil Procedure, 1908 or the Indian Evidence Act, 1872.
 - (2) Subject to this Part, the parties are free to agree on the procedure to be followed by the arbitral tribunal in conducting its proceedings.
 - (3) Failing any agreement referred to in sub-section (2), the arbitral tribunal may, subject to this Part, conduct the proceedings in the manner it considers appropriate.
 - (4) The power of the arbitral tribunal under sub-section (3) includes the power to determine the admissibility, relevance, materiality and weight of any evidence.
20. Place of arbitration:
 - (1) The parties are free to agree on the place of arbitration.
 - (2) Failing any agreement referred to in sub-section (1), the place of arbitration shall be determined by the arbitral tribunal having regard to the circumstances of the case, including the convenience of the parties.
 - (3) Notwithstanding sub-section (1) or sub-section (2), the arbitral tribunal may, unless otherwise agreed by the parties, meet at any place it considers appropriate for consultation among its members, for hearing witnesses, experts or the parties, or for inspection of documents, goods or other property.
21. Commencement of arbitral proceedings: Unless otherwise agreed by the parties, the arbitral proceedings, in respect of a particular dispute commence on the date on which a request for that dispute to be referred to arbitration is received by the respondent.

22. Language:

- (1) The parties are free to agree upon the language or languages to be used in the arbitral proceedings.
- (2) Failing any agreement referred to in sub-section (1), the arbitral tribunal shall determine the language or languages to be used in the arbitral proceedings.
- (3) The agreement or determination, unless otherwise specified, shall apply to any written statement by a party, any hearing and any arbitral award, decision or other communication by the arbitral tribunal.
- (4) The arbitral tribunal may order that any documentary evidence shall be accompanied by a translation into the languages agreed upon by the parties or determined by the arbitral tribunal.

23. Statements of claim and defence:

- (1) Within the period of time agreed upon by the parties or determined by the arbitral tribunal, the claimant shall state the facts supporting his claim, the points at issue and the relief or remedy sought, and the respondent shall state his defence in respect of these particulars, unless the parties have otherwise agreed as to the required elements of those statements.
- (2) The parties may submit with their statements all documents they consider to be relevant or may add a reference to the documents or other evidence they will submit.
- (3) Unless otherwise agreed by the parties, either party may amend or supplement his claim or defence during the course of the arbitral proceedings, unless the arbitral tribunal considers it inappropriate to allow the amendment or supplement having regard to the delay in making it.

24. Hearings and written proceedings:

- (1) Unless otherwise agreed by the parties, the arbitral tribunal shall decide whether to hold oral hearings for the presentation of evidence or for oral argument, or

whether the proceedings shall be conducted on the basis of documents and other materials;

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

- (2) The parties shall be given sufficient advance notice of any hearing and of any meeting of the arbitral tribunal for the purposes of inspection of documents, goods or other property.
 - (3) All statements, documents or other information supplied to, or applications made to, the arbitral tribunal by one party shall be communicated to the other party, and any expert report or evidentiary document on which the arbitral tribunal may rely in making its decision shall be communicated to the parties.
25. Default of a party: Unless otherwise agreed by the parties, where, without showing sufficient cause:
- (a) the claimant fails to communicate his statement of claim in accordance with sub-section (1) of section 23, the arbitral tribunal shall terminate the proceedings;
 - (b) the respondent fails to communicate his statement of defence in accordance with sub-section (1) of section 23, the arbitral tribunal shall continue the proceedings without treating that failure in itself as an admission of the allegations by the claimant.
 - (c) a party fails to appear at an oral hearing or to produce documentary evidence, the arbitral tribunal may continue the proceedings and make the arbitral award on the evidence before it.
26. Expert appointed by arbitral tribunal:
- (1) Unless otherwise agreed by the parties, the arbitral tribunal may---
 - (a) appoint one or more experts to report to it on specific issues to be determined by the arbitral tribunal, and
 - (b) require a party to give the expert any relevant information or to produce, or to provide access to,

any relevant documents, goods or other property for 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 on an oral 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.
 - (3) Unless otherwise agreed by the parties, the expert shall, on the request of a party, make available to that party for examination all documents, goods or other property in the possession of the expert with which he was provided in order to prepare his report.
27. Court assistance in taking evidence: (1) The arbitral tribunal, or a party with the approval of the arbitral tribunal, may apply to the Court for assistance in taking evidence.
- (2) The application shall specify---
 - (a) the names and addresses of the parties and the arbitrators.
 - (b) the general nature of the claim and the relief sought;
 - (c) the evidence to be obtained, in particular:
 - (i) the name and address of any person to be heard as witness or expert witness and a statement of the subject-matter of the testimony required;
 - (ii) the description of an document to be produced or property to be inspected.
 - (3) The Court may, within its competence and according to its rules on taking evidence, execute the request or ordering that the evidence be provided directly to the arbitral tribunal.
 - (4) The Court may, while making or order under sub-section (3), issue the same processes to witnesses as it may issue in suits tried before it.
 - (5) Persons failing to attend in accordance with such process, or making any other fault, or refusing to give their

evidence, or guilty of any contempt to the arbitral tribunal during the conduct of arbitral proceedings, shall be subject to the like disadvantages, penalties and punishments by order of the Court on the representation of the arbitral tribunal as they would incur for the like offences in suits tried before the Court.

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

Chapter VI
Making of arbitral award and termination of proceedings

28. Rules applicable to substance of dispute:

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

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

(b) in international commercial arbitration:

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

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

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

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

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

29. Decision making by panel of arbitrators:

- (1) Unless otherwise agreed by the parties, in arbitral proceedings with more than one arbitrator, any decision of the arbitral tribunal shall be made by a majority of all its members.
- (2) Notwithstanding sub-section (1), if authorised by the parties or all the members of the arbitral tribunal, questions of procedure may be decided by the presiding arbitrator.

30. Settlement:

- (1) It is not incompatible with an arbitration agreement for an arbitral tribunal to encourage settlement of the dispute and, with the agreement of the parties, the arbitral tribunal may use mediation, conciliation or other procedures at any time during the arbitral proceedings to encourage settlement.
- (2) If, during arbitral proceedings, the parties settle the dispute, the arbitral tribunal shall terminate the proceedings and, if requested by the parties and not objected to by the arbitral tribunal, record the settlement in the form of an arbitral award on agreed terms.
- (3) An arbitral award on agreed terms shall be made in accordance with section 31 and shall state that it is an arbitral award.
- (4) An arbitral award on agreed terms shall have the same status and effect as any other arbitral award on the substance of the dispute.

31. Form and contents of arbitral award:

- (1) An arbitral award shall be made in writing and shall be signed by the members of the arbitral tribunal.
- (2) For the purposes of sub-section (1), in arbitral proceedings with more than one arbitrator, the signatures of the majority of all the members of the arbitral tribunal shall be sufficient so long as the reason for any omitted signature is stated.
- (3) The arbitral award shall state the reasons upon which it is based, unless-----

- (a) the parties have agreed that no reasons are to be given, or
 - (b) the award is an arbitral award on agreed terms under section 30.
- (4) The arbitral award shall state its date and the place of arbitration as determined in accordance with section 20 and the award shall be deemed to have been made at that place.
- (5) After the arbitral award is made, a signed copy shall be delivered to each party.
- (6) The arbitral tribunal may, at any time during the arbitral proceedings, make an interim arbitral award on any matter with respect to which it may make a final arbitral award.
- (7)
- (a) Unless otherwise agreed by the parties, where and in so far as an arbitral award is for the payment of money, the arbitral tribunal may include in the sum for which the award is made interest, at such rate as it deems reasonable, on the whole or any part of the money, for the whole or any part of the period between the date on which the cause of action arose and the date on which the award is made.
 - (b) A sum directed to be paid by an arbitral award shall, unless the award otherwise directs, carry interest at the rate of eighteen per centum per annum from the date of the award to the date of payment.
- (8) Unless otherwise agreed by the parties:
- (a) the costs of an arbitration shall be fixed by the arbitral tribunal;
 - (b) the arbitral tribunal shall specify---
 - (i) the party entitled to costs,
 - (ii) the party who shall pay the costs,
 - (iii) the amount of costs or method of determining that amount, and
 - (iv) the manner in which the costs shall be paid.

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

- (i) the fees and expenses of the arbitrators and witnesses,
- (ii) legal fees and expenses,
- (iii) any administration fees of the institution supervising the arbitration, and
- (iv) any other expenses incurred in connection with the arbitral proceedings and the arbitral award.

32. Termination of proceedings:

- (1) The arbitral proceedings shall be terminated by the final arbitral award or by an order of the arbitral tribunal under sub-section (2).
- (2) The arbitral tribunal shall issue an order for the termination of the arbitral proceedings where----
 - (a) the claimant withdraws his claim, unless the respondent objects to the order and the arbitral tribunal recognises a legitimate interest on his part in obtaining a final settlement of the dispute,
 - (b) the parties agree on the termination of the proceedings, or
 - (c) the arbitral tribunal finds that the continuation of the proceedings has for any other reason become unnecessary or impossible.
- (3) Subject to section 33 and sub-section (4) of section 34, the mandate of the arbitral tribunal shall terminate with the termination of the arbitral proceedings.

33. Correction and interpretation of award; additional award:

- (1) Within thirty days from the receipt of the arbitral award, unless another period of time has been agreed upon by the parties--- -
 - (a) a party, with notice to the other party, may request the arbitral tribunal to correct any computation errors, any electrical or typographical errors or any other errors of a similar nature occurring in the award;

- (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.
- (2) If the arbitral tribunal considers the request made under sub-section (1) to be justified, it shall make the correction or give the interpretation within thirty days from the receipt of the request and the interpretation shall form part of the arbitral award.
- (3) The arbitral tribunal may correct an error of the type referred to in clause (a) of sub-section (1), on its own initiative, within thirty days from the date of the arbitral award.
- (4) Unless otherwise agreed by the parties, a party with notice to the other party, may request, within thirty days from the receipt of the arbitral award, the arbitral tribunal to make an additional arbitral award as so claims presented in the arbitral proceedings but omitted from the arbitral award.
- (5) If the arbitral tribunal considers the request made under sub-section (4) to be justified, it shall make the additional arbitral award within sixty days from the receipt of such request.
- (6) The arbitral tribunal may extend, if necessary, the period of time within which it shall make a correction, give an interpretation or make an additional arbitral award under sub-section (2) or sub-section (5).
- (7) Section 31 shall apply to a correction or interpretation of the arbitral award or to an additional arbitral award made under this section.

Chapter VII
Recourse against arbitral award

34. Application for setting aside arbitral award:

- (1) Recourse to a Court against an arbitral award may be made only by an application for setting aside such award in accordance with sub-section (2) and sub-section (3).
- (2) An arbitral award may be set aside by the Court only if--
 - (a) the party making the application furnishes proof that-----
 - (i) a party was under some incapacity, or
 - (ii) the arbitration agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law for the time being in force; or
 - (iii) the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or
 - (iv) the arbitral award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matter 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 arbitral award which contains decisions on matters not submitted to arbitration may be set aside; or
 - (v) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless such agreement was in conflict with a provision of this Part from which the parties cannot

derogate, or, failing such agreement, was not in accordance with this Part; or

(b) the Court finds that-----

(i) the subject-matter of the dispute is not capable of settlement by arbitration under the law for the time being in force, or

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

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

(3) An application for setting aside may not be made after three months have elapsed from the date on which the party making that application had received the arbitral award, or, if a request had been made under section 33, from the date on which that request had been disposed of by the arbitral tribunal:

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

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

Chapter VIII

Finality and enforcement of arbitral awards

35. Finality of arbitral awards: Subject to this Part an arbitral award shall be final and binding on the parties and persons claiming under them respectively.
36. Enforcement: Where the time for making an application to set aside the arbitral award under award shall be endorsed under the
Code of Civil Procedure, 1908 (5 of 1908) in the same manner as if it were a decree of the Court.

Chapter IX
Appeals

37. Appealable orders:

- (1) An appeal shall lie from the following orders (and from no others) to the Court authorised by law to hear appeals from original decrees of the Court passing the order, namely:---
 - (a) granting or refusing to grant any measure under section 9;
 - (b) setting aside or refusing to set aside an arbitral award under section 34.
- (2) Appeal shall also lie to a court from an order of the arbitral tribunal---
 - (a) accepting the plea referred to in sub-section (2) or sub-section (3) of section 16; or
 - (b) granting or refusing to grant an interim measure under section 17.
- (3) No second appeal shall lie from an order passed in appeal under this section, but nothing in this section shall affect or taken away any right to appeal to the Supreme Court.

Chapter X
Miscellaneous

38. Deposits:

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

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

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

Provided that where one party fails to pay his share of the deposit, the other party may pay that share:

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

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

39. Lien on arbitral award and deposits as to costs:

- (1) Subject to the provisions of sub-section (2) and to any provision to the contrary in the arbitration, agreement, the arbitral tribunal shall have a lien on the arbitral award for any unpaid costs of the arbitration.
- (2) If in any case an arbitral tribunal refuses to deliver its award except on payment of the costs demanded by it, the Court may, on an application in this behalf, order that the arbitral tribunal shall deliver the arbitral award to the applicant on payment into Court by the applicant

of the costs demanded, and shall, after such inquiry, in any, as it thinks, fit, further order that out of the money so paid into Court there shall be paid to the arbitral tribunal by way of costs such sum as the Court may consider reasonable and that the balance of the money, if any, shall be refunded to the applicant.

- (3) An application under sub-section (2) may be made by any party unless the fees demanded have been fixed by written agreement between him and the arbitral tribunal, and the arbitral tribunal shall be entitled to appear and be heard on any such application.
 - (4) The Court may make such orders as it thinks fit respecting the costs of the arbitration where any question arises respecting such costs and the arbitral award contains no sufficient provision concerning them.
40. Arbitration agreement not to be discharged by death of party thereto: (1) An arbitration agreement shall not be discharged by the death of any party thereto either as respects the deceased or as respects any other party, but shall in such event be enforceable by or against the legal representative of the deceased.
- (2) The mandate of an arbitrator shall not be terminated by the death of any party by whom he was appointed.
 - (3) Nothing in this section shall affect the operation of any law by virtue of which any right of action is extinguished by the death of a person.
41. Provisions in case of insolvency:
- (1) Where it is provided by a term in a contract to which an insolvent is a party that any dispute arising thereout or in connection therewith shall be submitted to arbitration, the said term shall, if the receiver adopts the contract, be enforceable by or against him so far as it relates to any such dispute.
 - (2) Where a person who has been adjudged an insolvent had, before the commencement of the insolvency proceedings, become a party to a arbitration agreement, and any matter to which the agreement applies is

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

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

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

43. Limitations:

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

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

(3) Where an arbitration agreement to submit further disputes to arbitration provides that any claim to which the agreement applies shall be barred unless some step to commence arbitral proceedings is taken within a time fixed by the agreement, and a dispute arises to which the agreement applies the Court, if it is of opinion that in the circumstances of the case undue hardship would otherwise be caused, and notwithstanding that the time so fixed has expired, may on such terms, if any, as the justice of the case may require, extend the time for such period as it thinks proper.

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

*Enforcement of Certain Foreign Awards -
New York Convention Awards*

44. Definition: In this Chapter, unless the context otherwise requires, "foreign award" means an arbitral award on differences between persons arising out of legal relationships, whether contractual or not, considered as commercial under the law in force in India, made on or after the 11th day of October, 1960-
- (a) in pursuance of an agreement in writing for arbitration to which the Convention set forth in the First Schedule applies, and
 - (b) in one of such territories as the Central Government, being satisfied that reciprocal provisions have been made may, by notification in the Official Gazette, declare to be territories to which the said Convention applies.
45. Power of judicial authority to refer parties to arbitration: Notwithstanding anything contained in Part I or in the Code of Civil Procedure, 1908 (5 of 1908), a judicial authority, when seized of an action in a matter in respect of which the parties have made an agreement referred to in section 44, shall, at the request of one of the parties or any person claiming through or under him, refer the parties to arbitration, unless it finds that the said agreement is null and void, inoperative or incapable of being performed.
46. When foreign award binding: Any foreign award which would be enforceable under this Chapter shall be treated as binding for all purposes on the persons as between whom it was made, and may accordingly be relied on by any of those persons by way of defence, set off or otherwise in any legal proceedings in India and any references in this Chapter to enforcing a foreign award shall be construed as including references to relying on an award.
47. Evidence:

- (1) The party applying for the enforcement of a foreign award shall, at the time of the application, produce before the court---
 - (a) the original award or a copy thereof, duly authenticated in the manner required by the law of the country in which it was made;
 - (b) the original agreement for arbitration or a duly certified copy thereof; and
 - (c) such evidence as may be necessary to prove that the award is a foreign award.
- (2) If the award or agreement to be produced under subsection (1) is in a foreign language, the party seeking to enforce the award shall produce a translation into English certified as correct by a diplomatic or consular agent of the country to which that party belongs or certified as correct in such other manner as may be sufficient according to the law in force in India.

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

48. Conditions for enforcement of foreign awards:

- (1) Enforcement of a foreign award may be refused, at the request of the party against whom it is invoked, only if that party furnishes to the court proof that---
 - (a) the parties to the agreement referred to in section 44 were, under the law applicable to them, under some incapacity, or the said agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law of the country where the award was made; or
 - (b) the party against whom the award is invoked was not given proper notice of the appointment of the

arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or

- (c) the 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 enforced; or

- (d) the composition of the arbitral authority or the arbitral procedure was not in accordance with the agreement of the parties, or, failing such agreement, was not in accordance with the law of the country where the arbitration took place ; or
- (e) the award has not yet become binding on the parties, or has been set aside or suspended by a competent authority of the country in which, or under the law of which, that award was made.

- (2) Enforcement of an arbitral award may also be refused if the court finds that-

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

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

- (3) If an application for the setting aside or suspension of the award has been made to a competent authority referred to in clause

- (e) of sub-section (1) the Court may, if it considers it proper, adjourn the decision on the enforcement of the award and may also, on the application of the

party claiming enforcement of the award, order the other party to give suitable security.

49. Enforcement of foreign awards: Where the Court is satisfied that the foreign award is enforceable under this Chapter, the award shall be deemed to be a decree of that Court.
50. Appealable orders:
 - (1) An appeal shall lie from the order refusing to---
 - (a) refer the parties to arbitration under section 45;
 - (b) enforce a foreign award under section 48, to the court authorised by law to hear appeals from such order.
 - (2) No second appeal shall lie from an order passed in appeal under this section, but nothing in this section shall affect or take away any right to appeal to the Supreme Court.
51. Saving: Nothing in this Chapter shall prejudice any rights which any person would have had of enforcing in India of any award or of availing himself in India of any award or of availing himself in India of any award if this Chapter had not been enacted.
52. Chapter II not to apply: Chapter II of this Part shall not apply in relation to foreign awards to which this Chapter applies.

Chapter II
Geneva Convention Awards

53. Interpretation: In this Chapter "foreign award" means an arbitral award on differences relating to matters considered as commercial under the law in force in India made after the 28th day of July, 1924:
- (a) in pursuance of an agreement for arbitration to which the Protocol set forth in the Second Schedule applies, and
 - (b) between persons of whom one is subject to the jurisdiction of some one of such Powers as the Central Government, being satisfied that reciprocal provisions have been made, may, by notification in the Official Gazette, declare to be parties to the Convention set forth in the Third Schedule, and of whom the other is subject to the jurisdiction of some other of the Powers aforesaid, and
 - (c) in one of such territories as the Central Government, being satisfied that reciprocal provisions have been made, may, by like notification, declare to be territories to which the said Convention applies, and for the purposes of this Chapter an award shall not be deemed to be final if any proceedings for the purpose of contesting the validity of the award are pending in the country in which it was made.
54. Power of judicial authority to refer parties to arbitration: Notwithstanding anything contained in Part I or in the Code of Civil Procedure, 1908 (5 of 1908), a judicial authority, on being seized of a dispute regarding a contract made between persons to whom section 53 applies and including an arbitration agreement, whether referring to present or further differences, which is valid under that section and capable of being carried into effect, shall refer the parties on the application of either of them or any person claiming through or under him to the decision of the arbitrators and such reference shall not prejudice the competence of the

judicial authority in case the agreement or the arbitration cannot proceed or becomes inoperative.

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

56. Evidence:

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

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

(b) evidence proving that the award has become final; and

(c) such evidence as may be necessary to prove that the conditions mentioned in clauses (a) and (c) of sub-section (1) of section 57 are satisfied.

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

Explanation:--In this section and all the following sections of this Chapter, "Court" means the principal Civil Court of original jurisdiction in a district, and includes the High Court in exercise of its ordinary original civil jurisdiction, having jurisdiction over the subject-matter of the award if the same had been the subject matter of a suit, but does not include any civil

court of a grade inferior to such principal Civil Court, or any Court of Small Causes.

57. Conditions for enforcement of foreign awards:

- (1) In order that a foreign award may be enforceable under this Chapter, it shall be necessary that---
 - (a) the award has been made in pursuance of a submission to arbitration which is valid under the law applicable thereto;
 - (b) the subject-matter of the award is capable of settlement by arbitration under the law of India;
 - (c) the award has been made by the arbitral tribunal provided for in the submission to arbitration or constituted in the manner agreed upon by the parties and in conformity with the law governing the arbitration procedure;
 - (d) the award has become final in the country in which it has been made, in the sense that it will not be considered as such if it is open to opposition or appeal or if it is proved that any proceedings for the purpose of contesting the validity of the award the pending;
 - (e) the enforcement of the award is not contrary to the public policy or the law of India.

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

- (2) Even if the conditions laid down in sub-section (1) are fulfilled, enforcement of the award shall be refused if the Court is satisfied that---
 - (a) the award has been annulled in the country in which it was made;
 - (b) the party against whom it is sought to use the award was not given notice of the arbitration proceedings in sufficient time to enable him to present his case;

or that, being under a legal incapacity, he was not properly represented;

- (c) the award does not deal with the differences contemplated by or falling within the terms of the submission to arbitration or that it contains decisions on matters beyond the scope for the submission or arbitration;

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

- (3) If the party against whom the award has been made proves that under the law governing the arbitration procedure there is a ground, other than the grounds referred to in clauses (a) and (c) of sub-section (1) and clauses (b) and (c) of sub-section (2) entitling him to contest the validity of the award, the Court may, if it thinks fit, either refuse enforcement of the award or adjourn the consideration thereof, giving such party a reasonable time within which to have the award annulled by the competent tribunal.

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

59. Appealable orders:

- (1) An appeal shall lie from the order refusing---
 - (a) to refer the parties to arbitration under section 54: and
 - (b) to enforce a foreign award under section 57,
- (2) No second appeal shall lie from an order passed in appeal under this section, but nothing in this section shall affect or take away any right to appeal to the Supreme Court.

60. Saving: Nothing in this Chapter shall prejudice any rights which any person would have had of enforcing in India of

any award or of availing himself in India of any award if this Chapter had not been enacted.

61. Application and scope:

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

62. Commencement of conciliation proceedings:

- (1) The party initiating conciliation shall send to the other party a written invitation to conciliate under this Part, briefly identifying the subject of the dispute.
- (2) Conciliation proceedings shall commence when the other party accepts in writing the invitation to conciliate.
- (3) If the other party rejects the invitation, there will be no conciliation proceedings.
- (4) If the party initiating conciliation does not receive a reply within thirty days from the date on which he sends the invitation, or within such other period of time as specified in the invitation, he may elect to treat this as a rejection of the invitation to conciliate and if he so elects, he shall inform in writing the other party accordingly.

63. Number of conciliators:

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

64. Appointment of conciliators:

- (1) Subject to sub-section (2)---
 - (a) in conciliation proceedings with one conciliator, the parties may agree on the name of a sole conciliator;

- (b) in conciliation proceedings with two conciliators, each party may appoint one conciliator;
 - (c) in conciliation proceedings with three conciliators, each party may appoint one conciliator and the parties may agree on the name of the third conciliator who shall act as the presiding conciliator.
- (2) Parties may enlist the assistance of a suitable institution or person in connection with the appointment of conciliators and in particular:
- (a) a party may request such an institution or person to recommend the names of suitable individuals to act as conciliator; or
 - (b) the parties may agree that the appointment of one or more conciliators be made directly by such an institution or person;

Provided that in recommending or appointing individuals to act as conciliator, the institution or person shall have regard to such considerations as are likely to secure the appointment of an independent and impartial conciliator and, with respect to a sole or third conciliator, shall take into account the advisability of appointing a conciliator of a nationality other than the nationalities of the parties.

65. Submission of statements to conciliator:

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

statement, documents and other evidence to the other party.

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

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

66. Conciliator not bound by certain enactments: The conciliator is not bound by the Code of Civil Procedure, 1908 (5 of 1908) or the Indian Evidence Act, 1872 (1 of 1872).
67. Role of conciliator:
 - (1) The conciliator shall assist the parties in an independent and impartial manner in their attempt to reach an amicable settlement of their dispute.
 - (2) The conciliator shall be guided by principles of objectivity, fairness and justice, giving consideration to, among other things, the rights and obligations of the parties, the usages of the trade concerned and the circumstances surrounding the dispute, including any previous business practices between the parties.
 - (3) The conciliator may conduct the conciliation proceedings in such a manner as he considers appropriate, taking into account the circumstances of the case, the wishes the parties may express, including any request by a party that the conciliator hear oral statements, and the need for a speedy settlement of the dispute.
 - (4) The conciliator may, at any stage of the conciliation proceedings, make proposals for a settlement of the dispute. Such proposals need not be in writing and need not be accompanied by a statement of the reasons therefor.
68. Administrative assistance: In order to facilitate the conduct of the conciliation proceedings, the parties, or the conciliator with the consent of the parties, may arrange for administrative assistance by a suitable institution or person.
69. Communication between conciliator and parties:

- (1) The conciliator may invite the parties to meet him or may communicate with them orally or in writing. He may meet or communicate with the parties together or with each of them separately.
- (2) Unless the parties have agreed upon the place where meetings with the conciliator are to be held, such place shall be determined by the conciliator, after consultation with the parties, having regard to the circumstances of the conciliation proceedings.

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

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

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

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

73. Settlement agreement:

- (1) When it appears to the conciliator that there exist elements of a settlement which may be acceptable to the parties, he shall formulate the terms of a possible settlement and submit them to the parties for their observations. After receiving the observations of the parties, the conciliator may reformulate the terms of a possible settlement in the light of such observations.
- (2) If the parties reach agreement on a settlement of the dispute, they may draw up and sign a written settlement

agreement. If requested by the parties, the conciliator may draw up, or assist the parties in drawing up, the settlement agreement.

- (3) When the parties sign the settlement agreement, it shall be final and binding on the parties and persons claiming under them respectively.
- (4) The conciliator shall authenticate the settlement agreement and furnish a copy thereof to each of the parties.

- 74. Status and effect of settlement agreement: The settlement agreement shall have the and effect as if it is an arbitral award on agreed terms on the substance of the dispute rendered by an arbitral tribunal under section 30.
- 75. Confidentiality: Notwithstanding anything contained in any other law for the time being in force, the conciliator and the parties shall keep confidential all matter relating to the conciliation proceedings. Confidentiality shall extend also to the settlement agreement, except where its disclosure is necessary for purposes of implementation and enforcement.
- 76. Termination of conciliation proceedings: The conciliation proceedings shall be terminated
 - (a) by the signing of the settlement agreement by the parties; on the date of the agreement; or
 - (b) by a written declaration of the conciliator, after consultation with the parties, in the effect that further efforts at conciliation are no longer justified, on the date of the declaration; or
 - (c) by a written declaration of the parties addressed to the conciliator to the effect that the conciliation proceedings are terminated, on the date of the declaration; or
 - (d) by a written declaration of a party to the other party and the conciliator, if appointed, to the effect that the conciliation proceedings are terminated, on the date of the declaration.
- 77. Resort to arbitral or judicial proceedings: The parties shall not initiate, during the conciliation proceedings, any arbitral or judicial proceedings in respect of a dispute that is the

subject- matter of the conciliation proceedings except that a party may initiate arbitral or judicial proceedings, where, in his opinion, such proceedings are necessary for preserving his rights.

78. Costs:

- (1) Upon termination of the conciliation proceedings, the conciliator shall fix the costs of the conciliation and given written notice thereof to the parties.
- (2) For the purpose of sub-section (1) , "costs" means reasonable costs relating to---
 - (a) the fee and expenses of the conciliator and witnesses requested by the conciliator, with the consent of the parties;
 - (b) any expert advice requested by the conciliator with the consent of the parties;
 - (c) any assistance provided pursuant to clause (b) of sub-section (2) of section 64 and section 68.
 - (d) any other expenses incurred in connection with the conciliation proceedings and the settlement agreement.
- (3) The costs shall be borne equally by the parties unless the settlement agreement provides for a different appointment. All other expenses incurred by a party shall be borne by that party.

79. Deposits:

- (1) The conciliator may direct each party to deposit an equal amount as an advance for the costs referred to in subsection (2) of section 78 which he expects will be incurred.
- (2) During the course of the conciliation proceedings, the conciliator may direct supplementary deposits in an equal amount from each party.
- (3) If the required deposits under sub-sections (1) and (2) are not paid in full by both parties within thirty days, the conciliator may suspend the proceedings or may make a

written declaration of termination of the proceedings to the parties, effective on the date of that declaration.

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

80. Role of conciliator in other proceedings: Unless otherwise agreed by the parties:----

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

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

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

SUPPLEMENTARY PROVISIONS

82. Power of High Court to make rules: The High court may make rules consistent with this Act as to all proceedings before the court under this Act.
83. Removal of difficulties:
- (1) If any difficulty arises in giving effect to the provisions of this Act, the central Government may, by order published in the Official Gazette, make such provisions, not inconsistent with the provisions of this Act as appear to it to be necessary or expedient for removing the difficulty:
- Provided that no such order shall be after the expiry of a period of two years from the date of commencement of this Act.
- (2) Every order made under this section shall, as soon as may be after it is made, be laid before each Houses of Parliament.
84. Power to make rules:
- (1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the provisions of this Act.
- (2) Every rule made by the Central Government under this Act shall be laid, as soon as may be, after it is made before each House of Parliament while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

85. Repeal and savings:

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

(2) Notwithstanding such repeal:

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

(b) all rules made and notifications published, under the said enactments shall, to the extent to which they are not repugnant to this

Act, be deemed respectively to have been made or issued under this Act,

86. Repeal of Ordinance 27 of 1996 and saving:

(1) The Arbitration and Conciliation (Third) Ordinance, 1996 (Ord.27 of 1996) is hereby repealed. done or any action taken in pursuance of any provision of the said Ordinance shall be deemed to have been made, done or taken under the corresponding provisions of this Act.

THE FIRST SCHEDULE (See section 44)
CONVENTION ON THE
RECOGNITION AND ENFORCEMENT
OF FOREIGN ARBITRAL AWARDS

ARTICLE 1

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, and 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 undertakings under national law of the State making such declaration.

ARTICLE II

1. Each Contracting State shall recognise an agreement in writing under which the parties undertaking to submit to arbitration all or any differences which have arisen or which may arise between them in respect of defined legal relationship, whether contractual or not, concerning a subject-matter capable of settlement by arbitration.
2. The term "agreement in writing" shall include an arbitral clause in a contract or an arbitration agreement, signed by the parties or contained in an exchange of letters or telegrams.
3. The court of 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, shall, at the request of one of the parties, refer the parties to arbitration, unless it finds that the said agreement is null and void, inoperative or incapable of being performed.

ARTICLE III

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

ARTICLE IV

1. To obtain the recognition and enforcement mentioned in the preceding article, the party applying for recognition and enforcement shall, at the time of the application, supply:
 - (a) the duly authenticated original award or a duly certified copy thereof;
 - (b) the original agreement referred to in article II or a duly certified copy thereof.
2. If the said award or agreement is not made in an official language of the country in which the award is relied upon, the party applying for recognition and

enforcement of the award shall produce a translation of these documents into such language. The translation shall be certified by an official or sworn translator or by a diplomatic or consular agent.

ARTICLE V

1. Recognition and enforcement of the award may be refused, at the request of the party against whom it is invoked, only if that party furnishes to the competent authority where the recognition and enforcement is sought, proof that---
 - (a) the parties to the agreement referred to in article II were, under the law applicable to them, under some incapacity, or the said agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law of the country where the award was made; or
 - (b) the party against whom the award is invoked was not given proper notice of the appointment of the arbitrator or of the arbitration proceedings or was otherwise unable to present his case; or
 - (c) the award deals with a difference not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration, provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, that part of the award which contains decisions on matters submitted to arbitration may be recognised and enforced; or
 - (d) the composition of the arbitral authority or the arbitral procedure was not in accordance with the agreement of the parties, or, failing such agreement, was not in accordance with the law of the country where the arbitration took place; or
 - (e) the award has not yet become binding on the parties, or has been set aside or suspended by a competent authority of the country in which, or under the law of which, that award was made.

2. Recognition and enforcement of an arbitral award may also be refused if the competent authority in the country where recognition and enforcement is sought finds that----
 - (a) the subject matter of the difference is not capable of settlement by arbitration under the law of that country;
 - or (b) the recognition or enforcement of the award would be contrary to the public policy of that country.

ARTICLE VI

If an application for the setting aside or suspension of the award has been made to a competent authority referred to in article V(1)

(e), the authority before which the award is sought to be relied upon may, if it considers it proper, adjourn the decision on the enforcement of the award and may also, on the application of the party claiming enforcement of the award, order the other party to give suitable security.

ARTICLE VII

1. The provisions of the present Convention shall not affect the validity of multilateral or bilateral agreements concerning the recognition and enforcement of arbitral awards entered into by the Contracting States nor deprive any interested party of any right he may have to avail himself of an arbitral award in the manner and to the extent allowed by the law or the treaties of the country where such award is sought to be relied upon.
2. The Geneva Protocol on Arbitration Clauses of 1923 and the Geneva Convention on the Execution of Foreign Arbitral Awards of 1927 shall cease to have effect between Contracting States on their becoming bound and to the extent that they become bound by this Convention.

ARTICLE VIII

1. This Convention shall be upon 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 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 1X

1. This Convention shall be open for accession to all States referred to in article VIII.
2. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

ARTICLE X

1. Any State may, at the time of signature, ratification or accession, declare that this Convention shall extend to all or any of the territories for the international relations of which it is responsible. Such a declaration shall take effect when the Convention enters into force for the State concerned.
2. At any time thereafter any such extension shall be made by notification addressed to the Secretary-General of the United Nations and shall take effect as from the ninetieth day after the day of receipt by the Secretary-General of the United Nations of this notification, or as from the date of entry into force of the Convention for the State concerned, whichever is the later.
3. With respect to those territories to which this Convention is not extended at the time of signature, ratification or accession, each State concerned shall consider the possibility of taking the necessary steps in order to extend the application of this Convention to such territories, subject, where necessary for constitutional reasons, to the consent of the Governments of such territories.

ARTICLE XI

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

- (a) with respect of those articles of this Convention that come within the legislative jurisdiction of the federal authority, the obligations of the federal Government shall to this extent be

the same as those of Contracting States which are not federal States;

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

THE SECOND SCHEDULE (See section 53)
**PROTOCOL ON ARBITRATION
CLAUSES**

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

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

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

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

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

3. Each Contracting State undertakes to endure the execution by its authorities and in accordance with the provisions of its national law of arbitral awards made in its own territory under the preceding articles.

4. The Tribunals of the Contracting Parties, on being seized of a dispute regarding a contract made between persons to whom Article I applies and including an Arbitration Agreement whether referring to present or further differences with is valid in virtue of the said article and capable of being carried into effect, shall refer the parties on the application of either of them to the decision of the Arbitrators.

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

5. The present Protocol, which shall remain open for signature by all States, shall be ratified. The ratification shall be deposited as soon as possible with the Secretary, General of the League of Nations, who shall notify such deposit to all the Signatory States.
6. The present Protocol will come into force as soon as two ratifications have been deposited. Thereafter it will take effect, in the case of each Contracting State, one month after the notification by the Secretary-General of the deposit of its ratification.
7. The present Protocol may be denounced by any Contracting State on giving one year's notice. Denunciation shall be effected by a notification addressed to the Secretary-General of the League, who will immediately transmit copies of such notification to all the other Signatory States and inform them of the date on which it was received. The denunciation shall take effect one year after the date on which it was notified to the Secretary-General, and shall operate only in respect of the notifying State.
8. The Contracting States may declare that their acceptance of the present Protocol does not include any or all of the undermentioned territories; that is to say, their colonies, overseas possessions or territories, protectorates or the territories over which they exercise a mandate.

The said States may subsequently adhere separately on behalf of any territory thus excluded. The Secretary-General of the League of Nations shall be informed as soon as

possible of such adhesions. He shall notify such adhesions to all Signatory States. They will take effect on month after the notification by the Secretary-General to all Signatory states.

The Contracting States may also denounce the Protocol separately on behalf of any of the territories referred to above. Article 7 applies to such denunciation.

THE THIRD SCHEDULE (See sections 53)
**CONVENTION ON THE EXECUTION
OF FOREIGN ARBITRAL AWARDS**

ARTICLE 1

- (1) In the territories of any High Contracting Party to which the present Convention applies, an arbitral award made in pursuance of an agreement, whether relating the existing or future differences (hereinafter called "a submission to arbitration") covered by the Protocol on arbitration Clauses opened at Geneva on September 24th.1923, shall be recognised as binding and shall be enforced in accordance with the rules of the procedure of the territory where the award is relied upon, provided that the said award has been made in a territory of one of the High Contracting Parties to which the present Convention applies and between persons who are subject to the jurisdiction of one of the High Contracting Parties.
- (2) To obtain such recognition or enforcement, it shall, further, be necessary:---
 - (a) that the award has been made in pursuance of a submission to arbitration which is valid under the law applicable thereto;
 - (b) that the subject-matter of the award is capable of settlement by arbitration under the law of the country in which the award is sought to be relied upon;
 - (c) that the award has been made by the Arbitral Tribunal provided for in the submission to arbitration or constituted in the manner agreed upon by the parties and in conformity with the law governing the arbitration procedure;
 - (d) that the award has become final in the country in which it has been made, in the sense that it will not be considered as such if it is open to opposition, appeal or pourvoi en cassation (in the countries where such forms of procedure exist) or if it is proved that any proceedings

for the purpose of contesting the validity of the award are pending;

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

ARTICLE 2

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

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

If the award has not covered all the questions submitted to the arbitral tribunal, the competent authority of the country where recognition or enforcement of the award is sought can, if it thinks fit, postpone such recognition or enforcement or grant it subject to such guarantee as that authority may decide.

ARTICLE 3

If the party against whom the award has been made proves that, under the law governing the arbitration procedure, there is a ground, other than the grounds referred to in Article 1(a) and (c), and Article 2(b) and (c), entitling him to contest the validity of the award in a Court of Law, the Court may, if it thinks fit, either refuse recognition or enforcement of the award or adjourn the consideration thereof, giving such party a reasonable time within which to have the award annulled by the competent tribunal.

ARTICLE 4

The party relying upon an award or claiming its enforcement must supply, in particular:--

- (1) the original award or a copy thereof duly authenticated, according to the requirements of the law of the country in which it was made;
- (2) documentary or other evidence to prove that the award has become final, in the sense defined in Article 1 (d), in the country in which it was made;
- (3) when necessary, documentary or other evidence to prove that the conditions laid down in Article 1, Paragraph (1) and paragraph (2) (a) and (c), have been fulfilled.

A translation of the award and of the award and of the other documents mentioned in this Article into the official language of the country where the award is sought to be relied upon may be demanded. Such translations must be certified correct by a diplomatic or consular agent of the country to which the party who seeks to rely upon the award belongs or by a sworn translator of the country where the award is sought to be relied upon.

ARTICLE 5

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

ARTICLE 6

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

ARTICLE 7

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

It may be ratified only on behalf of those Members of the League of Nations and Non-member States on whose behalf the Protocol of 1923 on Arbitration Clauses, shall be ratified.

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

ARTICLE 8

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

ARTICLE 9

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

The denunciation shall come into force only in respect of the High Contracting Party which shall have notified it and one year after such notification shall have reached the Secretary -- General of the League of Nations.

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

ARTICLE 10

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

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

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

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

ARTICLE 11

A certified copy of the present Convention shall be transmitted by the Secretary-General of the league of Nations of every Member of the league of Nations and to every Non-Member State which sign the same.

K.L.MOHANPURIA,
Secy.to the Govt.of India

Maldives

Maldives Arbitrator Directory Maldives Arbitration

Maldives Arbitration is a dispute resolution process in which a neutral Maldives Arbitrator is selected and empowered to make a decision between parties having complaints or dispute. The Maldives Arbitrator hears the disagreement and evidence presented by each party. After careful review considering all relevant information, the Maldives Arbitrator will issue an award to the party having the stronger case. Maldives Arbitration decisions may be either binding or non-binding, depending on the terms of the arbitration clause agreement. Binding arbitration decisions have the same significance as a court judgment. The Maldives Arbitrator award cannot be reviewed by a court, and there cannot be an appeal of the Maldives Arbitrator's decision.

Maldives Arbitration is considered less expensive and a quicker dispute resolution alternative than through Court litigation. Maldives Arbitration can resolve disputes confidentially. Generally, an Arbitration Clause is inserted into an agreement contract between the parties which will specify Maldives Arbitration instead of resolving disputes in Maldives Court. Arbitration Clause should be reviewed by an attorney. If an Arbitration Clause does not exist, both parties can mutually agree to have their dispute resolved by Maldives Arbitration.

The Maldives Arbitrator is a knowledgeable trained professional who conducts the Maldives Arbitration. In the Maldives Arbitrator Directory you will find Maldives Arbitrators and their expertise. Select the Maldives Arbitrator who has expertise in your dispute. For example, a dispute involving an employment agreement may be best handled by the Maldives Arbitrator with expertise in Maldives employment law and labor contracts.

What types of disputes can be arbitrated through Maldives Arbitration? Any type of disagreement can be arbitrated, including disputes involving businesses and consumers, employment claims, real estate and construction issues.

Maldives Arbitration is utilized when there is an adversarial situation and the parties wish to resolve the dispute in private without court litigation.

If legal action is necessary, before contacting a Maldives Arbitrator, we suggest that you -educate yourself on law and the legal process by reading the books mentioned in our recommended reading section.

Nepal

Arbitration Act, 2055 (1999)

Date of authentication and publication:

2 Chaitra 2056 (April 15, 1999)

1. The Act Amending Some Nepal Acts, 2064

2064.5.9

Act No. 1 of the year 2056 (1999)

An act made to make legal provision on arbitration

Preamble: Whereas it is expedient to update the prevailing legal provisions relating to arbitration,

Now, therefore, be enacted by the Parliament in the 27th year of the reign of His Majesty King Birendra Bir Bikram Shah Dev.

Chapter 1

Preliminary

1. Short Title and Commencement:

- (1) This Act may be called as "Arbitration Act, 2056 (1999)."
- (2) It shall come into force immediately.

2. Definitions: In this Act, unless the subject or the context otherwise requires,-

- (a) "Agreement" means a written agreement reached between the concerned parties for a settlement through arbitration of any dispute concerning any specific legal issue that has arisen or may arise in the future under a contract or otherwise.

Explanation: For the purpose of this clause, the concerned parties shall be deemed to have entered into a written agreement in case any of the following documents exists:

- (1) Any contract containing provision for arbitration or any separate agreement signed in that connection.
- (2) Letter, telex, telegram or telefax message, or any other similar at time message exchanged through telecommunication media whose records can be

maintained in a written form, between the concerned parties which provide for referring their disputes to arbitration.

- (3) In case any party has presented a claim for referring any dispute to arbitration and the objection to that claim submitted by the party objecting to that claim without rejecting the proposal for referring the dispute to arbitration.
- (b) "Party" means any party connected with arbitration.
- (c) "District Court" means the District Court of the place prescribed in the agreement as the place of arbitration, if any, and if no such place has been prescribed, the place where the dispute has arisen or where the arbitration proceedings have been conducted and decisions taken, or the territorial jurisdiction over the place where any party generally resides.
- (d) "Appellate Court" means the Appellate Court of the place prescribed in the agreement as the place of arbitration, if any, and if no such place has been prescribed, the place where the dispute has arisen or where the arbitration proceedings have been conducted and decisions taken, or the territorial jurisdiction over the place where any party generally resided.
- (e) "Dispute" means a dispute which can be settled through arbitration under this Act.
- (f) "Counter-claim" means a claim made by the Respondent on the Claimants.
- (g) "Rejoinder" means a claim to the counter-claim by the Claimants.
- (h) "Arbitrator" means an arbitrator appointed for the settlement of a dispute and the term also includes a panel of arbitrators.

Chapter 2

Settlement of Disputes through Arbitration

3. Disputes to be Settled through Arbitration:

- (1) In case any agreement provides for the settlement of disputes through arbitration, the disputes connected with that agreement or with issues coming under that agreement shall be settled through arbitration according to the procedure prescribed in that agreement, if any, and if not, according to this Act.
- (2) Notwithstanding anything contained in Sub-section (1), in case of concerned parties to a civil suit of a commercial nature which has been filed in a court and which may be settled through arbitration according to prevailing laws, file an application for its settlement through arbitration, such dispute shall also be settled through arbitration.

4. Cancellation of Records of the Suit: (1) The court may order for cancellation of the records of a suit filed in connection with a dispute which the concerned parties have sought to settle through arbitration pursuant to Sub-section (2) of Section 3.

- (3) Notwithstanding anything contained in Sub-section (1), the court shall not order for the cancellation of a suit in the following circumstances:
 - (a) In case it is deemed necessary to pronounce a decision on any issue which cannot be arbitrated together with an issue which can be arbitrated, or
 - (b) In case there appears any appropriate reason why the dispute cannot be settled through arbitration.

Chapter 3

Appointment of Arbitrators and Their Office

5. Number of Arbitrators:

- (1) The number of arbitrators is as specified in the agreement. In case the agreement does not specify the number of arbitrators, there shall ordinarily be three arbitrators.

(2) In case the number of arbitrators appointed under the agreement is an even one, it shall be turned into an odd one by designating an additional arbitrator chosen by them.

6. **Appointment of Arbitrator:** (1) Notwithstanding otherwise contained in the agreement, the process of appointing arbitrators must be started within 30 days from the date when the reason for the settlement of a dispute through arbitration arises.

(2) In case the agreement mentions the names of arbitrators, they themselves shall be recognised as having been appointed as arbitrators.

(3) In case the agreement has made any separate provision for the appointment of arbitrators, arbitrators shall be appointed accordingly.

(4) Notwithstanding otherwise contained in the agreement, each party shall appoint one arbitrator each and the arbitrators shall appoint the third arbitrator who shall work as the chief arbitrator.

7. **Appointment of Arbitrators by Court:**

(1) Any party may submit an application to the Appellate Court for the appointment of arbitrators in the following circumstances:

(a) In case no arbitrator can be appointed upon following the procedure contained in the agreement.

(b) In case the agreement does not mention anything about the appointment of arbitrators.

(2) The application to be filed pursuant to Sub-section (1) must explicitly mention the full name, address, occupation and the field of specialisation of at least three persons who can be appointed as arbitrator, and also be accompanied by a copy of the agreement.

(3) Upon receiving of an application pursuant to Sub-section (1), the Appellate Court shall notify all the

parties and shall appoint arbitrators from the persons proposed by them in the case of consensus in that connection, and in the case of fail to consensus, the persons deemed appropriate by the Appellate Court, within 60 days from the date of receipt of the application. The decision taken by the court in that manner shall be final.

8. Fulfillment of Arbitrators in Special Circumstances:

- (1) In case appointed arbitrator for the purpose of arbitration falls vacant by reason of his resignation or refusal to function in that capacity or of his/her death or any other reason, it shall be filled up by appointing another arbitrator ordinarily within 30 days from the date when the vacancy has occurred in the manner in which the arbitrator had originally been appointed.
- (2) In case of vacant arbitrator was not filled up within the time limit mentioned in Sub-section (1), any party may apply to the Appellate Court within 15 days from the date of expiry of that time limit. In case such an application is filed, the Appellate Court shall appoint an arbitrator ordinarily within 15 days subject to section 7.

9. Arbitrators to Take Oath:

- (1) Before starting the proceedings of arbitration, the arbitrator must affix his signature on two copies of a written oath as indicated in the schedule regarding impartiality and honesty and send one copy thereof to the Appellate Court and keep the other copy in the case-file.
- (2) Before taking oath pursuant to Sub-section (1), the arbitrator must make clear matters, if any, which raise a reasonable doubt about his /her impartiality or independence in respect to the dispute which he/she has to settle.

10. Qualifications of Arbitrators: The following persons shall not be disqualified for appointment as arbitrators:

- (a) Disqualified for entering into contracts as per prevailing laws.

- (b) Punished by a court on criminal charges involving moral turpitude.
- (c) Become insolvent or been declared bankrupt.
- (d) Any personal interest in the dispute which has to be settled through arbitration.
- (e) Not having any specific qualification specified in the agreement for becoming eligible for appointment as an arbitrator.

11. Removed of Arbitrators:

- (1) The condition and procedure for removal of an arbitrator shall be as mentioned in the agreement.
- (2) In case the condition and procedure has not been mentioned in the agreement pursuant to Sub-section (1), any party may, in any of the following circumstances, submit an application to the arbitrator requesting for permission to remove an arbitrator within 15 days from the date of his/her appointment or from the date when the party learns that the concerned arbitrator has failed to act:
 - (a) In case any arbitrator is clearly seen to have shown a bias toward or discriminated against any party instead of working in an impartial manner;
 - (b) In case any arbitrator engages in improper conduct or commits fraud in the course of arbitration;
 - (c) In case any arbitrator frequently commits mistakes or irregularities in the course of arbitration;
 - (d) In case any arbitrator does not attend arbitration meetings or refuses to take part in arbitration proceedings for more than three times without furnishing satisfactory reasons with the objective of prolonging or delaying the arbitration proceedings in an improper manner;
 - (e) In case any arbitrator takes any action which is opposed to the principles or rules of natural justice;
or

- (f) In case any arbitrator is found to be lacking the necessary qualifications, or to have ceased to be qualified.
- (3) Upon received an application pursuant to Sub-section (2), the arbitrator whose removal has been demanded does not relinquish his/her post voluntarily, or other party does not agree with grounds on which his/her removal , the arbitrator must take a decision on the matter within 30 days from the date of application.
- (4) A complain may be filed before the Appellate Court against the decision pursuant to Sub-section (3), and the decision of the Appellate Court shall be final.

12. Location of Office of the Arbitrator:

- (1) The office of the arbitrator shall be located at the following place:
 - (a) At the place specified in the agreement, if any.
 - (b) If the agreement does not specify the location of the arbitrators office, at the place selected by the concerned parties.
 - (c) In case the concerned parties do not select such place within 15 days from the date of appointment of the arbitrator, or in case the concerned parties fail to reach an agreement in that connection, at the place specified by the arbitrator in the light of all the relevant circumstances.
- (2) Notwithstanding anything contained elsewhere in this Section, the arbitrators may, except when any other arrangement has been made by the concerned parties, designate through mutual consultations the location of their office at any other appropriate place which is convenient for them to record the statements of witnesses, obtain the opinion of experts, and inspect any document, object or place.

13. Language to be used by Arbitrators in their Proceedings:

The language to be used by the arbitrators in the proceedings shall be as specified in the agreement, if any. In case the agreement does not specify any such language, they shall use the language determined by them through mutual consultations. In case the arbitrators fail to determine the language to be used by them, the language used in the agreement shall be the language to be used by the arbitrators.

Chapter 4

Arbitration Proceedings and powers of Arbitrators

14. Submission of Claims, Counter-Claims, objections or Rejoinders:

- (1) The claimant shall submit its claim to the arbitrator in writing explicitly mentioning the details of the subject-matter of the dispute and the remedy sought, along with evidence, and also supply a copy thereof to the other party within the time limit mentioned in the agreement, if any, and within three months from the date when a dispute requiring arbitration has arisen in case only the name of the arbitration has been mentioned in the agreement without mentioning any time limit, and from the date of appointment of the arbitrator in case the arbitrator has been appointed after the dispute has arisen.
- (2) After a claim is filed pursuant to Sub-section (1), the other party shall submit its objection to it within 30 days from the date of receipt of the claim, unless otherwise provided for in the agreement.
- (3) The other party shall submit its objection, as well as its counterclaim, if any, in that connection within the time limit mentioned in Subsection (2). In case it submits a counter-claim also, the arbitrator shall provide a time limit of 15 days to claimant submit its rejoinder over such counter-claim. In case a rejoinder is so submitted a copy thereof shall be supplied to the party making the counter claim.
- (4) In case any party fails to submit its objection, or rejoinder within the time limit mentioned in Sub-section (2) or (3) due to circumstances beyond its control, it may submit an application to the arbitrator for an extension of the time limit within 15 days from the date of expiry of the time limit, explicitly mentioning satisfactory reasons for its failure to do so. The arbitrator may, if he/she finds the reasons mentioned in the application to

be satisfactory, extend the time limit for not more than seven days.

- (5) While submitting claims, counter-claims, objections or rejoinders under this section, all documents, as well as evidence substantiating them, if any, shall also be submitted. In case the parties wish to substantiate any point through witness, they must mention the full name and address of such witnesses in their claims, counter claims, objections or rejoinders, and they shall themselves be responsible for presenting such witnesses before the arbitrator on the day prescribed by him/her.
- (6) Each party submitting documents to the arbitrator in connection with arbitration proceedings under this Act shall supply copies thereof to the other party.

15. Circumstances in which Arbitration Proceedings shall Terminate or Continue: Except when otherwise provided for by the parties, arbitration proceedings shall terminate or continue in the following circumstances:

- (a) The arbitration proceedings shall terminate in case the claimant does not submit his/her claim within the time-limit mentioned in Section 14 (1).
- (b) Even if no objection is submitted within the time limit mentioned in Section 14 (2), this alone shall not be taken as the acceptance by the party not submitting its counter-claim to the claim made by the claimant, and the arbitrator shall continue proceedings in such a manner as to evaluate the claimant's claim and the evidence submitted to substantiate the claim.
- (c) The arbitrator may pronounce the verdict on the basis of the evidence that has been submitted or in case any party does not present itself or does not submit any written evidence at the time of hearing prescribed by the arbitrator. Arbitration shall send a copy of the verdict to the party not submitting its objection as well.

16. Power of the Arbitrator to Determine Jurisdiction:

- (1) In case any party claims that the arbitrator has no jurisdiction over the dispute which has been referred to him/her for settlement, or that the contract because of which the dispute has emerged is itself illegal or null and void, it may claim so before the arbitrator. The arbitrator shall take a decision on his/her jurisdiction or the validity or effectiveness of the contract before starting the proceeding on the matter referred to him/her,
- (2) Any party is not satisfied with the decision taken under Subsection (2) may file an appeal with the Appellate Court within 30 days from the date of decision, and the decision taken by that court on the matter shall be final.
- (3) For the purpose of taking a decision on the validity or effectiveness of a contract pursuant to Sub-section (1), in case the contract contains provisions for the settlement of disputes through arbitration as its integral part, such provisions shall be taken as a separate agreement, and even if the arbitrator takes a decision holding the contract as null and void,

such provisions shall not be held to be legally null and void for that reason alone.
- (4) No claim may be made pursuant to Sub-section (1) after the expiry of the time limit for submitting objections prescribed pursuant to Sub-section (2) of section 14.
- (5) No party shall be deemed to have been deprived of the opportunity to claim pursuant to Sub-section (1) simply for the reason of having appointed an arbitrator on its behalf, or participated in or agreed to the appointment of the arbitrator.
- (6) The filling of a petition with the Appellate Court pursuant to Sub-section (2) shall not be deemed to have prejudiced the power of the arbitrator to continue the proceedings and pronounce the decision before the petition is finally disposed of by the court.

17. Procedure to be Adopted by Arbitrators:

- (1) The procedure to be adopted by the arbitrator while taking a decision on a dispute shall be as mentioned in the agreement, and in case no such procedure has been mentioned in the agreement, it shall be as laid down in this Act. Provided that the procedure not laid down in the Act shall be as prescribed by the arbitrator with the consent of the parties, and in case the parties fail to reach an agreement in that connection, it shall be as prescribed by the arbitrator him/herself.
- (2) The arbitrator shall start arbitration proceedings immediately after receiving all such claims, objections, counter-claims or rejoinders as need to be received by him/her.
- (3) The arbitrator must inform the parties about the type of proceedings to be held, and the day and time fixed for the purpose and also keep records thereof in the concerned case file.
- (4) In respect to a dispute which has been referred to three or more arbitrators, the arbitrators who are present may conduct all arbitration proceedings other than taking the final decision or issuing the final order.
- (5) The arbitrator may continue arbitration proceedings and pronounce his/her decision on the basis of the available evidence even if any party does not present itself on the day and at the time of arbitration proceedings after receiving a notice pursuant to Sub-section (3).
- (6) After the completion of the process of hearing, the arbitrator shall issue an order with the effect that the hearing has concluded and keep a record thereof in the case file. No evidence may be examined or the parties heard thereafter.
- (7) Notwithstanding otherwise claimant in the agreement, the arbitrator must read out his/her written decision within 30 days from the date of issue of an order pursuant to Sub-section (6).

18. Substantive Law to be followed by Arbitrators:

- (1) The Nepal Law shall be the substantive law to be followed by the arbitrator, except when otherwise provided for in the agreement.
- (2) The arbitrator may settle the dispute according to the principle of justice and conscience (*Ex aqua et bono*) or natural justice (amiable compositor) only when explicitly authorised by the parties to do so.
- (3) Notwithstanding anything contained elsewhere in this act, the arbitrator shall settle the dispute according to the conditions stipulated in the concerned contract. While doing so, arbitrator shall also pay attention to the commercial usages applicable to the concerned transaction.

19. Arbitration Hearings to be held in Camera: Except when otherwise desired by the parties, arbitration proceedings shall be held in-camera.

20. Saving Notices and Summon:

- (1) Notwithstanding anything contained in the prevailing law, any notice to be served in connection with arbitration, or any notice or summon to be furnished in the name of any party residing within or outside the Nepal in connection with the hearing by the arbitrator, or with the dispute under consideration of the arbitrator, may be delivered directly to the concerned party or sent to its telex, telefax or telegram address or to the address of any other communication media whose printed records can be maintained, if such address is mentioned in the agreement, or if the concerned parties have supplied such address to each other or to their respective arbitrators after signing the agreement, except when otherwise provided for in the agreement. In case the address of such communication media or any other address has not been supplied, such notices or summonses shall be served at the place of business or permanent residence of the concerned party. Notice or summon so served shall be deemed to have been duly served. Provided that notice or summon to be served by

the postal service shall be served only after registering it

.

- (2) Notwithstanding anything contained in Sub-section (1), this provision shall have no prejudicial impact on the function and proceeding of the court.

21. Power of the Arbitrator:

- (1) The powers of the arbitrator shall be as follows, except when otherwise provided for in the agreement:
 - (a) To direct the concerned parties to appear before him/her to submit documents, and record their statements as required .
 - (b) To record statements of the witness.
 - (c) To appoint expert and seek their opinion or cause examination on any specific issue.
 - (d) In case party is a foreign national so that the decision pronounced by the arbitrator is not likely to be implemented for that reason, to obtain a bank guarantee or any other appropriate guarantee as determined by the arbitrator.
 - (e) To inspect the concerned place, object, product, structure, production process or any other related matter which are connected with the dispute on the request of the parties or on his/her own initiative if he/she so deems appropriate, and in case there is any material or object which is likely to be destroyed or damaged, to sell them in consultation with the parties, and keep the sale proceeds as a deposit.
 - (f) To exercise any specific power conferred by the parties.
 - (g) To issue preliminary orders, or interim or interlocutory orders in respect to any matter connected with the dispute on the request of any party, or take a conditional decision.
 - (h) To issue certified copy of document.
 - (i) To exercise the other power conferred by this Act.

- (2) Any party which is not satisfied with the order issued by the arbitrator pursuant to Clause (g) of Sub-section (1) may submit an application to the appellate court within 15 days, and the decision made by the Appellate Court shall be final.

22. Parties to have Equal Opportunity:

- (1) Each party shall be provided with an equal and adequate opportunity In the arbitration proceedings to present its case subject to this Act.
- (2) Any party may attend the arbitration proceedings either in person or by proxy, and also designate a legal practitioner on its behalf.

23. Assistance of the Court May be Sought to Examine Any Evidence:

Notwithstanding anything contained in the prevailing law, in case the arbitrator requires the assistance of the court to examine any evidence concerning a dispute under the consideration, the arbitrator him/herself may, on his/her own or on the request of any party, request the District Court for such assistance. In case any such request is received, the District Court shall provide assistance in examining the evidence according to the prevailing law.

Chapter 5

Decision of the Arbitrator and Implementation

24. Period Within Which Decision Must Be Taken: Except when otherwise provided for in the agreement, the arbitrator shall pronounce the decision ordinarily within 120 days from the date of submission of documents under Section 14 pursuant to Sub-section (7) of Section 17.

25. Circumstances in Which Decisions Must Not Be Taken:

- (1) In case any issue requiring arbitration is found to be inextricably linked with any other issue on which the arbitrator cannot pronounce the decision, the arbitration shall not pronounce decision on that issue.

- (2) In a situation in which the arbitrator cannot take a decision pursuant to Sub-section (1), the arbitration must inform the concerned parties accordingly.
- (3) The concerned party may file a complaint to the Court within 35 days from the date of receipt of a notice pursuant Sub-section (2), Notwithstanding anything contained in the prevailing law.

26. Decision of Arbitrator:

- (1) In case there are three more arbitrators, the decision of the majority shall be deemed to be the decision of arbitration.
- (2) In case the arbitrators have dissenting opinions so that the majority (opinion) cannot be ascertained, the opinion of the chief arbitrator shall be deemed to be the decision of arbitration, except when otherwise provided for in the agreement.
- (3) Every arbitrator must affix signature on the decision subject to Sub-section
- (4) Provided that in case there is any special reason why any arbitrator cannot affix signature on the decision, the other arbitrators shall affix their signatures explicitly mentioning the reason .
- (5) In case any arbitrator does not agree with the decision of arbitration, he/she may express his/her dissenting opinion.

27. Matters to be mentioned in Decision: The arbitrator must explicitly mention the following matters in the decision, except when otherwise provided for in the agreement:

- (a) Brief particulars of the matter referred to for arbitration.
- (b) In case any party had questioned the jurisdiction of arbitration, grounds for deciding that the matter falls under the jurisdiction of arbitration.
- (c) The arbitrator's decision, and reasons and grounds for reaching that decision.

- (d) Claims which must be realized or amounts which must be compensated.
- (e) Interest on amount to be realized, and the additional rate of interest to be charged with after the expiry of the time limit for implementing the decision of the arbitrator in the event of the limit mentioned in section 31.
- (f) Place and date of decision.

28. Decision to be Read Out: The arbitrator shall read out the decision in the presence of the concerned parties, hand over a copy of that decision to each party, and keep evidence thereof in the case file. In case any party is absent at the time fixed for reading out the decision or refuses to accept a copy of the decision even after being present at the time fixed for reading out the decision, a notice shall be furnished to him/her along with a copy of the decision after indicating the same.

29. Prohibition to Revision of Decision:

- (1) Except the Appellate Court has issued an order under Section 30, the arbitrator shall not take another decision on the matter referred to him/her for arbitration after once reading out his decision on the matter, except correcting arithmetic, printing, typing or similar other minor errors and inserting omitted particulars without prejudice to the substance of the decision.
- (2) In case any party observes that any mistake contained in the decision of the arbitrator needs to be corrected pursuant Sub-section (1) one must submit an application to the arbitrator within 30 days from the date of receipt of a copy of the decision. In case the arbitrator deems it appropriate to correct such mistakes or insert any omitted particulars, he/her may prepare a separate note thereof and have the omitted particulars inserted or mistakes corrected within 15 days from the date of receipt of the application. In case the arbitrator the deems it appropriate to make such correction, he/she must do so by preparing a note thereof and informing the parties accordingly within 30 days from the date of decision.

- (3) Notwithstanding anything contained elsewhere in this Section, in case the arbitrator has not taken a decision on any point from among the points contained in the claims made by any party, the concerned party may submit an application for a decision on the point to the extent of the matter covered by it after securing the approval of the other party within 30 days from the date of decision by the arbitrator. In case such an application is received, a supplementary decision may be taken by confining in to the matter covered by the point within 45 days from the date of application.
- (4) If the parties so agree, any party may, by notifying the other party, request the arbitrator to explain any point contained in or any part of the arbitrator's decision which is not clear within 30 days from the date of decision. In case any such request is received, the arbitrator may explain and clarify any unclear point within 45 days.

30. Circumstances in which decision may be invalidated:

- (1) Any party dissatisfied with the decision taken by the arbitrator may, if one wishes to invalidate the decision file a petition to the Appellate Court alongwith the related documents and a copy of the decision within 35 days from the date the decision heard or notice received thereof under this Act.

Petition shall also supply a copy of that petition to the arbitrator and the other party.

- (2) In case a petition is filed pursuant Sub-section (1) the Appellate Court may, in case the petitioner proves that the arbitration decision contains any of the following matters, invalidate that decision or issue an order to have a fresh decision taken as per necessity:
 - (a) In case any party to the agreement was incompetent for any reason to sign the agreement at the time of signing the agreement, or in case the agreement is not valid under the law of that the nation which governs jurisdiction over the parties, or in case such

law is not clear and agreement is not valid under the laws of Nepal.

- (b) In case the due petition was not given a notice to appoint an arbitrator or about the arbitration proceedings in time.
 - (c) In case the decision has been taken on a that disputed matter which had not been referred to the arbitrator, or in a manner contrary to the conditions prescribed for the arbitrator, or by acting beyond the jurisdiction prescribed for the arbitrator.
 - (d) Except when an agreement has been signed contrary to the laws of Nepal, in case the procedure of designation of arbitrators or their functions and actions do not conform to the agreement signed between the parties, or in case there is no such agreement it has not been done as per this Act.
- (3) Notwithstanding anything contained in Sub-section (2), the Appellate Court may invalidate the decision of the arbitrator in the following circumstances in case a petition is filed pursuant to Sub-section (1):
- (a) In case the dispute settled by the arbitrator cannot be settled through arbitration under the laws of Nepal.
 - (b) In case the decision taken by the arbitrator is likely to be prove detrimental to the public interests or policies.

31. Implementation of Award: The concerned parties shall be under obligation to implement the award of the arbitrator within 45 days from the date when they receive a copy thereof.

32. Implementation of Award by Court: In case a award cannot be implemented within the time limit prescribed in Section 31 of this Act, the concerned party may file a petition to the District Court within 30 days from the date of expiry of the time limit prescribed for that purpose to implement the award In case such a petition is filed, the District Court shall implement the award ordinarily within 30 days as if its was its own judgment.

33. Interest to be paid: Except when otherwise provided for in the agreement, in case the arbitrator has taken an award providing for the payment of any amount by one party to another, the concerned party shall also pay interest at the rate prescribed by the arbitrator in the light also of the nature of the business related to the dispute and by ensuring that it is not higher than the rate of interest currently charged by commercial banks in respect to similar transactions.

Provided that no interest shall be charged for the period between the date of decision by the arbitrator and the time limit prescribed for the implementation of the award under this Act.

34. Implementation of award Taken in a Foreign Country:

(1) A party which is willing to implement an award made in a foreign country in Nepal

shall submit an application to the Appellate Court along with the following documents:

(a) The original or certified copy of the arbitrator's award

(b) The original or certified copy of the agreement.

(c) In case the arbitrator's award is not in the Nepali Language, an official translation thereof in Nepali language.

(2) In case Nepal is a party to any treaty which provides for recognition and implementation of decisions taken by arbitrators in foreign countries, any decision taken by an arbitrator after the commencement of this act within the area of the foreign country which is a party to that treaty shall be recognised and implemented in Nepal in the following circumstances subject to the provisions of that treaty and the conditions mentioned at the time of entering into the treaty .

(a) In case the arbitrator has been appointed and award made according to the laws and procedure mentioned in the agreement.

- (b) In case the parties had been notified about the arbitration proceedings in time.
 - (c) In case the decision has been taken according to the conditions mentioned in the agreement or upon confining only to the subject matters referred to the arbitrator.
 - (d) In case the decision has become final and binding on the parties according to the laws of the country where the decision has been taken.
 - (e) In case the laws of the country of the petitioner or the laws of the country where arbitration proceedings have been conducted, do not contain provision under which arbitration award taken in Nepal cannot be implemented.
 - (f) In case the application has been filed for the implementation of the award within 90 days from the date of award.
- (3) In case the Appellate Court is satisfied that the conditions mentioned in Sub-section (2) have been fulfilled in the an application filed pursuant to Sub-section (1) it shall forward the award to the District court for its implementations.
- (4) Notwithstanding anything contained in this Section, no award made by an arbitrator in a foreign country shall be implemented in the following circumstances.
- (a) In case the awarded settled dispute cannot be settled through arbitration under the laws of Nepal.
 - (b) In case the implementation of the award is detrimental to the public policy.

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MISCELLANEOUS

35. Cost of Arbitration Proceedings:

- (1) Except when otherwise provided for in the agreement, the parties seeking arbitration must pay to the arbitrator

the amount fixed their in consultation with parties for conducting the arbitration proceedings.

- (2) Except the otherwise provided in the agreement, each party shall bear the expenses required for the arbitration proceedings in the proportion prescribed by the arbitrator taking into account the relevant circumstances.

36. Arbitrator's Remuneration:

- (1) The arbitrator's remuneration shall be as prescribed in the agreement.
- (2) In case the arbitrator's remuneration is not mentioned in the agreement, the concerned parties shall pay the remuneration fixed by the arbitrator in consultation with them. Such remuneration shall be paid as a full payment or in the form of advance payment as ordered by the arbitrator in consultation with the concerned parties.

37. Arbitrator To Refund Payments: In case no hearing has been made on the dispute referred to the arbitrator, or the position of arbitrator falls vacant for any reason, the concerned arbitrator, if he/she has already received remuneration under Section 36, shall refund the balance left after deducting. The amount covering the period for which he has worked, in consultation with the parties.

Provided that in case any arbitrator is removed under Section 11, he/she shall fully refund the remuneration amount received by him/she prior to that, if any.

38. Devolution of Rights and Liabilities: In case any party dies, disappears or becomes insane after the commencement of arbitration proceedings under this Act, all his rights and liabilities shall devolve on his/her relative who is entitled to inherit his/her property upon the prevailing law.

39. Court to Have No Jurisdiction: Notwithstanding anything contained in the prevailing law, no court shall have jurisdiction over any matter regulated by this Act, except when otherwise provided for in this Act.

40. Parties may Compromise: In case the parties to a dispute which has been referred for arbitration under this Act desire to reach a compromise they may submit an application to the arbitrator explicitly mentioning the conditions under which they wish to do so. The arbitrator shall approve the application so filed, and no appeal may be filed against such award except on issues concerning actions not taken according to the condition for compromise.

41. Payment of Fees for Implementing the Award :

- (1) Notwithstanding anything contained in the prevailing law, a fee amounting to 0.5 percent of the amount received through the implementation of the award of the arbitrator shall be paid to the concerned court in the form of a fee for having implemented the award. In case the award to be so implemented does not concern payment of any amount, a fee amounting to 0.5 percent of the current market value or amount of the action to be taken or has to be taken according to the decision, if the same can be determined, and if not, a sum of Rs 500/- shall be paid by the party requesting for the implementation of the award.
- (2) In case any party who pays the fee mentioned in Sub-section (1) wishes to have it realized from the other party, the District Court shall have it realized from the other party as in the case of court fees according to the prevailing law.

42. Case Files Relating to Arbitrator:

- (1) The arbitrator shall prepare a case file of the document, evidence, statement of the concerned persons award and all other documents connected with arbitration mentioning date and time in a chronologically order .
- (2) After the finalization of the arbitration proceedings, the arbitrator shall submit the concerned case-file to the District Court. (3) The District Court shall keep the case-file received pursuant to Sub-section (2) as safely as it keeps the case-files of its judgments.

(4) Notwithstanding anything contained in the prevailing law, nocopy of the award and documents related thereto shall be given to any person other than the concerned parties without their approval.

43. Power to Frame Rules: The Supreme Court may frame necessary Rules in respect to the procedure of regulating the functions to be discharged by courts under this Act.

44. Repeal and Saving:

(1) The Arbitration Act, 2038 (1981) has been repealed.

(2) In the case of an arbitration whose proceedings have been started prior to the commencement of this Act, 2041(1984) the procedure laid down in the 1984 Arbitration Act itself shall be adopted.

(3) The Time limit and grounds for filing appeal against the award taken through arbitration under the Arbitration Act, 2038 (1981) shall be as mentioned in the Arbitration Act, 2038 (1981).

Schedule

(Relating to Section 9)

In the dispute referred to me/us for arbitration between
and, I/we shall work in an impartial and honest manner
without any bias toward any party.

Name Signature Date

Pakistan

THE ARBITRATION ACT

(X OF 1940)

[11th March, 1940]

An Act to consolidate and amend the law relating to Arbitration.

Preamble : Whereas it is expedient to consolidate and amend the law relating to Arbitration in Pakistan.

It is hereby enacted as follows:-

CHAPTER 1

Introductory

1. Short title, extent and commencement:

- (1) This Act maybe called the Arbitration Act, 1940.
- 2) It extends to the whole of Pakistan.
- 3) It shall come into force on the 1st day of July, 1940.

2. Definitions: In this Act, unless there is anything repugnant in the subject or context,-

- a) "arbitration agreement" means a written agreement to submit present or future differences to arbitration, whether an arbitrator is named therein or not
- b) "award" means an arbitration award;
- c) "Court" means a Civil Court having jurisdiction to decide the question forming the subject-matter of reference if the same had been the subject-matter of a suit, but does not, except for the purpose of arbitration proceedings under Section 21, include a Small Cause Court;
- d) "legal representative" means a person who in law represents the estate of a deceased person, and includes any person who intermeddles with the estate of the deceased, and, where a party acts in a representative character, the person on whom the estate devolves on the death of the party so acting;

e) "reference" means a reference to arbitration.

CHAPTER II

Arbitration without intervention of a court

1. **Provisions implied in arbitration agreement:** An arbitration agreement, unless a different intention is expressed therein, shall be deemed to include the provisions set out in the First Schedule in so far as they are applicable to the reference.
2. **Agreement that arbitrators be appointed by third party:** The parties to an arbitration agreement may agree that any reference thereunder shall be to an arbitrator or arbitrators to be appointed by a person designated in the agreement either by name or as the holder for the time being of any office or appointment.
3. **Authority of appointed arbitrator or umpire irrevocable except by leave of Court:** The authority of an appointed arbitrator or umpire shall not be revocable except with the leave of the Court, unless a contrary intention is expressed in the arbitration agreement.
4. **Arbitration agreement not to be discharged by death of party thereto :**
 - 1) An arbitration agreement shall not be discharged by the death of any party thereto, either as respects the deceased or any other party, but shall in such event be enforceable by or against the legal representative of the deceased.
 - (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 affect the operation of any law by virtue of which any right of section is extinguished by the death of a person.
5. **Provisions in case of insolvency:**
 - (1) Where it is provided by a term in a contract to which an insolvent is a party that any differences arising thereout or in connection therewith shall be referred to

arbitration, the said term shall, if the receiver adopts the contract, be enforceable by or against him so far as it relates to any such differences.

- (2) Where a person who has been adjudged an insolvent had before the commencement of the insolvency proceedings, become a party to an arbitration agreement, and any matter to which the agreement applies is required to be determined in connection with, or for the purposes of, the insolvency proceedings, then, if the case is one to which sub-section (1) does not apply, any other party to the agreement or the receiver may apply to the Court having jurisdiction in the insolvency proceedings 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 as order accordingly.
- (3) In this section the expression "receiver" includes an Official Assignee.

6. Power of Court to appoint arbitrator or umpire:

- (1) In any of the following cases –
 - (a) where an arbitration agreement provides that the reference shall be to one or more arbitrators to be appointed by consent of the parties, and all the parties do not, after differences have arisen, concur in the appointment or appointments; or
 - (b) if any appointed arbitrator or umpire neglects or 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 the arbitrators, as the case may be, do not supply the vacancy; or (c) where the parties or the arbitrators are required to appoint an umpire and do not appoint him; any party may serve the other parties or the arbitrators, as the case may be, with a written notice to concur in the appointment or appointments or in supplying the vacancy.

2) If the appointment is not made within fifteen clear days after the service of the said notice, the Court may, on the application of the party who gave the notice and after giving the other parties an opportunity of being heard, appoint an arbitrator or arbitrators or umpire, as the case may be, who shall have like power to act in the reference and to make an award as if he or they had been appointed by consent of all parties.

7. **Power to party to appoint new arbitrator, or, in certain cases, a sole arbitrator:** Where an arbitration agreement provides that a reference shall be to two arbitrators, one to be appointed by each party, then, unless a different intention is expressed in the agreement,-

(a) if either of the appointed arbitrators, neglects or 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 one party fails to appoint an arbitrator, either originally or by way of substitution as aforesaid, for fifteen clear days after the service by the other party of a notice in writing to make the appointment, such other party having appointed his arbitrator before giving the notice, 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. Provided that the Court may set aside any appointment as sole arbitrator made under clause (b) and either, on sufficient cause being shown, allow further time to the defaulting party to appoint an arbitrator or pass such other order as it thinks fit.

Explanation: The fact that an arbitrator or umpire, after a request by either party to enter on and proceed with the reference, does not within one month comply with the request may constitute a neglect or refusal to act within the meaning of Section 8 and this section.

8. **Provision as to appointment of three or more arbitrators:**

- (1) Where an arbitration agreement provides that a reference shall be to three arbitrators, one to be appointed by each party and the third by the two appointed arbitrators, the agreement shall have effect as if it provided for the appointment of an umpire, and not for the appointment of a third arbitrator, by the two arbitrators appointed by the parties.
- (2) Where an arbitration agreement provides that a reference shall be to three arbitrators to be appointed otherwise than as mentioned in sub-section (1), the award of the majority shall, unless the arbitration agreement otherwise provides, prevail.
- (3) Where an arbitration agreement provides for the appointment of more arbitrators than three, the award of the majority, or if the arbitrators are equally divided in their opinions, the award of the umpire shall, unless the arbitration agreement otherwise provides, prevail.

9. Power to Court to remove arbitrators or umpire in certain circumstances:

- (1) 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.
- (2) The Court may remove an arbitrator or umpire who has misconducted himself or the proceedings.
- (3) Where an arbitrator or the umpire is removed under this section, he shall not be entitled to receive any remuneration in respect of his services. (4) For the purposes of this section the expression "proceeding with the reference" includes, in a case where reference to the umpire becomes necessary, giving notice of that fact to the parties and to the umpire.

10. Power of Court where arbitrator is removed or his authority revoked:

- (1) Where the Court removes an umpire who has not entered on the reference or one or more arbitrators (not being all the arbitrators), the Court may, on the

application of any party to the arbitration agreement, appoint persons to fill the vacancies.

- (2) Where the authority of an arbitrator or arbitrators or an umpire is revoked by leave of the Court or where the Court removes an umpire who has entered on the reference or a sole arbitrator or all the arbitrators, the Court may, on the application of any party to the arbitration agreement, either *-(a)* appoint a person to act as sole arbitrator in the place of the person or persons displaced, or *(b)* order that the arbitration agreement shall cease to have effect with respect to the difference referred.
- (3) A person appointed under this section 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 arbitration agreement.

11. Powers of arbitrator:

The arbitrators or umpire shall, unless a different intention is expressed in agreement, have power to

- (a) administer oath to the parties and witnesses appearing;
- (b) state a special case for the opinion of the Court on any question of law involved, or state the award, wholly or in part, in the form of a special case of such question for the opinion of the Court;
- (c) make the award conditional or in the alternative;
- (d) correct in an award any clerical mistake or error arising from any accidental slip or omission;
- (e) administer to any party to arbitration such interrogatories as may, in the opinion of the arbitrators or umpire, be necessary.

12. Award to be signed and filed:

- (1) When the arbitrators or umpire have made their award, they shall sign it and shall give notice in writing to the parties of the making and signing thereof and of the amount of fees and charges payable in respect of the arbitration and award.
- (2) The arbitrators or umpire shall, at the request of any party to the arbitration agreement or any person claiming under such party or if so directed by the Court and upon payment of the fees and charges due in respect of the arbitration and award and of the costs and charges of filing the award, cause the award or a signed copy of it, together with any depositions and documents which may have been taken and proved before them, to be filed in the Court, and the Court shall thereupon give notice to the parties of the filing of the award.
- (3) Where the arbitrators or umpire state a special case under clause (b) of Section 13, the Court, after giving notice to the parties and hearing them, shall pronounce its opinion thereon and such opinion shall be added to, and shall form part of, the award.

13. Power of Court to modify award :

The Court may by order modify or correct an award

- (a) Where it appears that a part of the award is upon a matter not referred to arbitration and such part can be separated from the other part and does not affect the decision on the matter referred; or
- (b) Where the award is imperfect in form, or contains any obvious error which can be amended without affecting such decision; or
- (c) Where the award contains a clerical mistake or an error arising from an accidental slip or omission.

14. Power to remit award:

- (1) The Court may from time to time remit the award or any matter referred to arbitration to the arbitrators or umpire for reconsideration upon such terms as it thinks fit
 - (a) where the award has left undetermined any of the matters referred to arbitration, or where it determines any matter not referred to arbitration, and such matters cannot be separated without affecting the determination of the matters referred; or
 - (b) where the award is so indefinite as to be incapable of execution; or (c) where an objection to the legality of the award is apparent upon the fact of it. (2) Where an award is remitted under sub-section (1) the Court shall fix the time within which the arbitrator or umpire shall submit his decision to the court:

Provided that any time so fixed may be extended by subsequent order of the Court.

- (3) An award remitted under sub-section (1) shall become void on the failure of the arbitrator or umpire to reconsider it and submit his decision within the time fixed.

15. Judgement in terms of award: Where the Court sees no cause to remit the award or any of the matters referred to arbitration for reconsideration or to set aside the award, the Court shall, after the time for making an application to set aside the award has expired, or such application having

been made, after refusing it, proceed to pronounce judgment according to the award, and upon the judgment so pronounced a decree shall follow and no appeal shall lie from such decree except on the ground that it is in excess of, or not otherwise in accordance with, the award.

16. Power of Court to pass interim orders:

- (1) Notwithstanding anything contained in Section 17, at any time after the filing of the award, whether notice of the filing has been served or not, upon being satisfied by affidavit or otherwise that a party has taken or is about to take steps to defeat, delay or obstruct the execution of any decree that may be passed upon the award, or that speedy execution of the award is just and necessary, the Court may pass such interim orders as it deems necessary.
- (2) Any person against whom such interim orders have been passed may show cause against such orders, and the Court, after hearing the parties, may pass such further orders as it deems necessary and just.

17. Power to supersede arbitration where award becomes void or is set aside:

Where an award has become void under sub-section (3) of Section 16 or has been set aside, the Court may by order supersede the reference and shall thereupon order that the arbitration agreement shall cease to have effect with respect to the difference referred.

CHAPTER III

Arbitration with intervention of a Court where there is no suit pending

18. Application to file in Court arbitration agreement:

- (1) Where any persons have entered into an arbitration agreement before the institution of any suit with respect to the subject-matter of the agreement or any part of it, and where a difference has arisen to which the agreement applies, they or any of them, instead of

proceeding under Chapter II, may apply to a Court having jurisdiction in the matter to which the agreement relates, that the agreement be filed in Court.

- (2) The application shall be in writing and shall be numbered and registered as a suit between one or more of the parties interested or claiming to be interested as plaintiff or plaintiffs and the remainder as defendant or defendants, if the application has been presented by all the parties, or, if otherwise, between the applicant as plaintiff and the other parties as defendants.
- (3) On such application being made, the Court shall direct notice thereof to be given to all parties to the agreement other than the applicants, requiring them to show cause within the time specified in the notice why the agreement should not be filed.
- (4) Where no sufficient cause is shown, the Court shall order the agreement to be filed, and shall make an order of reference to the arbitrator appointed by the parties, whether in the agreement or otherwise, or, where the parties cannot agree upon an arbitrator, to an arbitrator appointed by the Court.
- (5) Thereafter the arbitration shall proceed in accordance with, and shall be governed by, the other provisions of this Act so far as they can be made applicable.

CHAPTER IV

Arbitration in Suits

- 19. Parties to suit may apply for order of reference:** Where in any suit all the parties interested agree that any matter in difference between them in the suit shall be referred to arbitration, they may at any time before judgment is pronounced apply in writing to the Court for an order of reference.
- 20. Appointment of arbitrator:** The arbitrator shall be appointed in such manner as may be agreed upon between the parties.
- 21. Order of reference:**

- (1) The Court shall, by order, refer to the arbitrator the matter in difference which he is required to determine, and shall in the order specify such time as it thinks reasonable for the making of the award.
- (2) Where a matter is referred to arbitration, the Court shall not, save in the manner and to the extent provided in this Act, deal with such matter in the suit.

22. Reference to arbitration by some of the parties: Where some only of the parties to a suit apply to have the matters in difference between them referred to arbitration in accordance with, and in the manner provided by, Section 21, the Court may, if it thinks fit, so refer such matters to arbitration (provided that the same can be separated from the rest of the subject-matter of the suit) in the manner provided in that section, but the suit shall continue so far as it relates to the parties who have not joined in the said application and to matters not contained in the said reference as if no such application had been made, and an award made in pursuance of such a reference shall be binding only on the parties who have joined in the application.

23. Provisions applicable to arbitration under this Chapter: The provisions of the other chapters shall, so far as they can be made applicable, apply to arbitration under this Chapter: Provided that the Court may, in any of the circumstances mentioned in Sections 8, 10, 11 and 12, instead of filing up the vacancies or making the appointments, make an order superseding the arbitration and proceed with the suit, and where the Court makes an order superseding the arbitration under Sec.19, it shall proceed with the suit.

CHAPTER V

General

24. Application of Chapter: Save as otherwise provided in this Act, the provisions of this Chapter shall apply to all arbitrations.

[26-A Award to set out reasons:

- (1) The arbitrators or umpire shall state in the award the reasons for the award in sufficient detail to enable the Court to consider any question of law arising out of the award.
- (2) Where the award does not state the reasons in sufficient detail, the Court shall remit the award to the arbitrators or umpire and fix the time within which the arbitrator or umpire shall submit the award together with the reasons in sufficient detail: Provided that any time so fixed may be extended by subsequent order of the Court.
- (3) An award remitted under sub-section (2) shall become void on the failure of the arbitrators or umpire to submit it in accordance with the direction of the Court.]

25. Power of arbitrators to make an interim award:

- (1) Unless a different intention appears in the arbitration agreement, the arbitrators or umpire, may, if they think fit, make an interim award.
- (2). All references in this Act to an award shall include reference to an interim award made under sub-section (1).

26. Power to Court only to enlarge time for making award:

- (1) The Court may, if it thinks fit, whether the time for making the award has expired or not and whether the award has been made or not, enlarge from time to time the time for making the award.
- (2) Any provision in an arbitration agreement whereby the arbitrators or umpire may, except with the consent of all the parties to the agreement, enlarge the time for making the award, shall be void and of no effect.

27. Interest on awards: Where and in so far as an award is for the payment of money the Court may in the decree order interest, from the date of the decree at such rate as the Court deems reasonable, to be paid on the principal sum as adjudged by the award and confirmed by the decree.

28. Grounds for setting aside award: An award shall not be set aside on one or more of the following grounds, namely:

- (a) that an arbitrator or umpire has misconducted himself or the proceedings;
- (b) That an award has been made after the issue of an order by the Court superseding the arbitration or after the arbitration proceedings have become invalid under Section 35;
- (c) That an award has been improperly procured or is otherwise invalid.

29. Jurisdiction:

- (1) Subject to the provisions of this Act, an award may be filed in any Court having jurisdiction in the matter to which the reference relates.
- (2) Notwithstanding anything contained in any other law for the time being in force and save as otherwise provided in this Act, all questions regarding the validity, effect or existence of an award or an arbitration agreement between the parties to the agreement or persons claiming under them shall be decided by the Court in which the award under the agreement has been, or may be filed, and by no other court.
- (3) All applications regarding the conduct of arbitration proceedings or otherwise arising out of such proceedings shall be made to the Court where the award has been, or may be filed, and to no other Court.
- (4) Notwithstanding anything contained elsewhere in this Act or in any other law for the time being in force, where in any reference any application under this Act has been made in a Court competent to entertain it, that Court alone shall have jurisdiction over the arbitration

proceedings and all subsequent applications arising out of that reference and the arbitration proceedings shall be made in that Court and in no other Court.

- 30. Bar to suits contesting arbitration agreement or award:** Notwithstanding any law for the time being in force, no suit shall lie on any ground whatsoever for a decision upon the existence, effect or validity of an arbitration agreement or award, nor shall any arbitration agreement or award be enforced, set aside, amended, modified or in any way affected otherwise than as provided in this Act.
- 31. Arbitration agreement or award to be contested by application:** Any party to an arbitration agreement or any person claiming under him desiring to challenge the existence or validity of an arbitration agreement or an award or to have the effect of either determined shall apply to the Court and the Court shall decide the question on affidavits: Provided that where the Court deems it just and expedient, it may set down the application for hearing on other evidence also, and it may pass such orders for discovery and particulars as it may do in a suit.
- 32. Power to stay legal proceedings where there is an arbitration agreement:** Where any party to an arbitration agreement or any person claiming under him commences any legal proceedings against any other party to the agreement or any person claiming under him in respect of any matter agreed to be referred, any party to such legal proceedings may, at any time before filing a written statement or taking any other steps in the proceedings, apply to the judicial authority before which the proceedings are pending to stay the proceedings; and if satisfied that there is no sufficient reason why the matter should not be referred in accordance with the arbitration 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 arbitration, such authority may make an order staying the proceedings.
- 33. Effect of legal proceedings on arbitration:**

- (1) No reference nor award shall be rendered invalid by reason only of the commencement of legal proceedings upon the subject-matter of the reference, but when legal proceedings upon the whole of the subject-matter of the reference have been commenced between all the parties to the reference and a notice thereof has been given to the arbitrators or umpire, all further proceedings in a pending reference shall, unless a stay of proceedings granted under Section 34, be invalid.
- (2) In this section the expression "parties to the reference" includes any persons claiming under any of the parties and litigating under the same title.

34. Power of Court, where arbitration agreement is ordered not to apply to a particular difference, to order that a provision making an award a condition precedent to an action shall not apply to such difference: Where it is provided (whether 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 Act or any other law) that the agreement shall cease to have effect as regards any particular difference, may further order that the said provision shall also cease to have effect as regards that difference.

35. Limitations:

- (1) All the provisions of the Limitation Act, 1908 (IX of 1908), shall apply to arbitrations as they apply to proceedings in Court.
- (2) Notwithstanding any term in an arbitration agreement to the effect that no cause of action shall accrue in respect of any matter required by the agreement to be referred until an award is made under the agreement, a cause of action shall, for the purpose of limitation, 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.

- (3) For the purposes of this section and of the Limitation Act, 1908 (IX of 1908), an arbitration shall be deemed to be commenced when one party to the arbitration agreement serves on the other parties thereto, a notice requiring the appointment of an arbitrator, or where the arbitration agreement provides that the reference shall be to a person named or designated in the agreement, requiring that the difference be submitted to the person so named or designated.
- (4) Where the terms of an agreement to refer future differences 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 difference arises to which the agreement applies, the court, if it is of opinion that in the circumstances of the case undue hardship would otherwise be caused and notwithstanding that the time so fixed has expired, may on such terms, if any, as the justice of the case may require, extend the time for such period as it thinks proper.
- (5) Where the Court orders that an award be set aside or orders, after the commencement of an arbitration, that the arbitration agreement shall cease to have effect with respect to the difference referred, the period between the commencement of the arbitration and the date of the order of the Court shall be excluded in computing the time prescribed by the Limitation Act, 1908 (IX of 1908), for the commencement of the proceedings (including arbitration) with respect to the difference referred.

36. Disputes as to arbitrator's remuneration or costs:

- (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 in this behalf, 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 shall, after such inquiry, if any, as it thinks

fit, further order that out of the money so paid into Court there shall be paid to the arbitrator or umpire by way of fees such sum as the Court may consider reasonable and that the balance of the money, if any, shall be refunded to the applicant.

- (2) An application under sub-section (1) may be made by any party to the reference unless the fees demanded have been fixed by written agreement between him and the arbitrator or umpire, and the arbitrator or umpire shall be entitled to appear and be heard on any such application.
- (3) The Court may make such orders as it thinks fit respecting the costs of an arbitration where any question arises respecting such costs and the award contains no sufficient provision concerning them.

CHAPTER VI

Appeals

37. Appealable orders:

- (1) An appeal shall be lie from the following orders passed under this Act (and from no others) to the Court authorised by law to hear appeals from original decrees of the Court passing the order :-

An order-

- (i) superseding an arbitration;
- (ii) on an award stated in the form of a special case;
- (iii) modifying or correcting an award;
- (iv) filing or refusing to file an arbitration agreement;
- (v) staying or refusing to stay legal proceedings where there is an arbitration agreement;
- (vi) setting aside or refusing to set aside an award:

Provided that the provisions of this section shall not apply to any order passed by a Small Cause Court.

- (2) No second appeal shall lie from an order passed in appeal under this section, but nothing in this section

shall affect to take away any right to appeal to the Supreme Court.

- 38. Small Cause Court not to have jurisdiction over arbitrations save arbitrations in suits before it:** A Small Cause Court shall have no jurisdiction over any arbitration proceedings or over any application arising thereout save on application made under Section 21.

CHAPTER VII

Miscellaneous

- 39. Procedure and powers of Court:** Subject to the provisions of this Act and of rules made thereunder:-
- (a) the provisions of the Code of Civil Procedure, 1908, shall apply to all proceedings before the court, and to all appeals, under this Act; and
 - (b) the Court shall have, for the purpose of, and in relation to arbitration proceedings, the same power of making orders in respect of any of the matters set out in the Second Schedule as it has for the purpose of, and in relation to, any proceedings before the Court: Provided that nothing in clause
 - (b) shall be taken to prejudice any power which may be vested in an arbitrator or umpire for making orders with respect to any of such matters.
- 40. Service of notice by party or arbitrator:** Any notice required by this Act to be served otherwise than through the Court by a party to an arbitration agreement or by an arbitrator or umpire shall be served in the manner provided in the arbitration agreement, or if there is no such provision, either -(a) by delivering it to the person on whom it is to be served, or (b) by sending it by post in a letter addressed to that person at his usual or last known place of abode or business in Pakistan and registered under Chapter VI of the Post Office Act, 1898.
- 41. Power of Court to issue processes for appearance before arbitrator:**

- (1) The Court shall issue the same processes to the parties and witnesses whom the arbitrator or umpire desires to examine as the Court may issue in suits tried before it.
- (2) Persons, failing to attend in accordance with such process, or making any other default, or refusing to give their evidence, or guilty of any contempt to the arbitrator or umpire during the investigation of the reference, shall be subject to the like disadvantages, penalties and punishments by order of the Court on the representation of the arbitrator or umpire as they would incur for like offences in suits tried before the Court.
- (3) In this section the expression "processes" includes summonses and commissions for the examination of witnesses and summonses to produce documents.

42. Power to High Court to make rules: The High Court may make rules consistent with this Act as to

- (a) the filing of awards and all proceedings consequent thereon or incidental thereto;
- (b) the filing and hearing of special cases and all proceedings consequent thereon or incidental thereto;
- (c) the staying of any suit or proceeding in contravention of an arbitration agreement;
- (d) the forms to be used for the purposes of this Act;
- (e) generally, all proceedings in Court under this Act.

43. Government to be bound: The provisions of this Act shall be binding on the Government.

44. Application of Act to statutory arbitrations: The provisions of this Act except sub-section

- (1) of Section 6 and Sections 7, 12, 36 and 37, shall apply to every arbitration under any other enactment for the time being in force, as if the arbitration were pursuant to an arbitration agreement and as if that other enactment were an arbitration agreement, except in so far as this Act is inconsistent with that other enactment or with any rules made thereunder.

- 45. Act to apply to all arbitrations:** Subject to the provisions of Section 46, and save in so far as is otherwise provided by any law for the time being in force, the provisions of this Act shall apply to all arbitrations and to all proceedings thereunder: Provided that an arbitration award otherwise obtained may with the consent of all the parties interested be taken into consideration as a compromise or adjustment of a suit by any Court before which the suit is pending.
- 46. Saving for pending references:** The provisions of this Act shall not apply to any reference pending at the commencement of this Act, to which the law in force immediately before the commencement of this Act shall, notwithstanding any special repeal effected by this Act, continue to apply.
- 49. Repeals and amendments:** *[Repealed by Sec.2 and Schedule 1 of the Repealing and Amending Act, 1945 (6 of 1945)].*

Sri Lanka

PARLIAMENT OF THE DEMOCRATIC
SOCIALIST REPUBLIC OF
SRI LANKA

ARBITRATION
ACT NO. 11 OF 1995
(Certified on 30th June-1995)

Arbitration Act. No. 11 of 1995

(Certified on 30th June-1995)

L.D. - O.10/93

AN ACT TO PROVIDE FOR THE CONDUCT OF ARBITRATION PROCEEDINGS: TO GIVE EFFECT TO THE CONVENTION ON THE RECOGNITION AND ENFORCEMENT OF FOREIGN ARBITRAL AWARDS: TO REPEAL THE ARBITRATION ORDINANCE (CHAPTER 93) AND CERTAIN SECTIONS OF THE CIVIL PROCEDURE CODE (CHAPTER 101): AND TO PROVIDE FOR MATTERS CONNECTED THEREWITH OR INCIDENTAL THERETO.

WHEREAS it is necessary to make comprehensive legal provision for the conduct of arbitration proceedings and the enforcement of awards made thereunder:

AND WHEREAS it is necessary to make legal provision to give effect to the principles of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958:

BE It therefore enacted by the Parliament of the Democratic Socialist Republic of Sri Lanka as follows:

1. This Act may be cited as the Arbitration Act No. 11 of 1995 and shall come into operation on such date as the Minister

may appoint by Order published in the Gazette (hereinafter referred to as the “appointed date”).

PART I
PRELIMINARY

- 2 (1) The provisions of this Act shall, subject to the provisions of Section 48, apply to all arbitration proceedings commenced in Sri Lanka after the appointed date, whether the arbitration agreement in pursuance of which such arbitration proceedings are commenced, was entered into before or after the appointed date.
- (2) Where arbitration proceedings were commenced prior to the appointed date, the law in force prior to the appointed date, shall, unless the parties otherwise agree, apply to such arbitration proceedings.
- (3) Where the State is a party to an arbitration agreement (whether in right of the Republic or in any other capacity) the State shall be bound by the provision of this Act.

PART II

ARBITRATION AGREEMENT

3. (1) An arbitration agreement may be in the form of an arbitration clause in a contract or in the form of a separate agreement.
 - (2) An arbitration agreement shall be in writing. An agreement shall be deemed to be in writing if it is contained in a document signed by the parties or in an exchange of letters, telexes, telegrams or other means of telecommunication which provide a record of the agreement.
4. Any dispute which the parties have agreed to submit to arbitration under an arbitration agreement may be determined by arbitration unless the matter in respect of which the arbitration agreement is entered into is contrary to public policy or, is not capable of determination by arbitration.
5. Where a party to an arbitration agreement institutes legal proceedings in a court against another party to such agreement in respect of a matter agreed to be submitted for arbitration under such agreement, the Court shall have no jurisdiction to hear and determine such matter if the other party objects to the court exercising jurisdiction in respect of such matter.

PART III

COMPOSITION OF THE ARBITRAL TRIBUNAL

6. (1) The parties shall be free to determine the number of arbitrators of an arbitral tribunal subject to the provisions of subsection (3) of this section.
 - (2) Where no such determination is made, the number of arbitrators shall be three.
 - (3) Where the parties appoint an even number of arbitrators, the arbitrators so appointed shall jointly appoint an additional arbitrator who shall act as Chairman.

7. (1) The parties shall be free to agree on a procedure for appointing the arbitrators, subject to the provisions of this Act.
- (2) In the absence of such agreement –
 - (a) in an arbitration with a sole arbitrator if the parties are unable to agree on the arbitrators, that arbitrators shall be appointed, on the application of a party by the High Court;
 - (b) in an arbitration with three arbitrators, such party shall appoint one arbitrator, and the two arbitrators thus appointed shall appoint the third arbitrators; if a party fails to appoint the arbitrator within sixty 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 sixty days of their appointment, the appointment shall be made upon the application of a party, by the High Court.
- (3) 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 the arbitrators are unable to reach an agreement required of them under such procedure:
or
 - (c) a third party, including an institution, fails to perform any function assigned to such third party under such procedure, any party may apply to the High Court to take necessary measures towards the appointment of the arbitrator or arbitrators.
- (4) The High Court shall in appointing an arbitrator, have due regard to any qualifications required of an arbitrator under the agreement between the parties and to such considerations as are likely to secure the appointment of an independent and impartial arbitrator.

8. (1) The mandate of an arbitrator shall terminate if such arbitrator becomes unable to perform the functions of that office or for any other reason fails to act without undue delay, or dies, or withdraws from office or the parties agree on the termination.
 - (2) Where an arbitrator unduly delays in discharging the duties of his office the High Court may upon the application of a party, remove such arbitrator and appoint another arbitrator in his place.

Provided however that where the parties have so agreed, such removal and appointment shall be made by an arbitral institution.
 - (3) Where the mandate of an arbitrator is terminated, proceedings shall not be had denovo unless the parties otherwise agree.
9. Where the mandate of an arbitrator terminates under section 8, a substitute arbitrator shall be appointed in the manner applicable to the appointment of the arbitrator whose mandate has terminated.
10. (1) Where a person is requested to accept appointment as an arbitrator, he shall first disclose any circumstances likely to give rise to justifiable doubts as to his impartiality or independence, and shall, from the time of his appointment and throughout the arbitral proceedings, disclose without delay any circumstances referred to in this subsection to all the parties and to the other arbitrators, unless they have already been so informed by the arbitrator.
 - (2) An arbitrator may be challenged only if circumstances exist that give rise to justifiable doubts as to his impartiality or independence. 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 was made.
 - (3) A party who seeks to challenge an arbitrator shall, unless the parties have decided that the decision shall be taken by some other person, first do so before the arbitral

tribunal, within thirty days of his becoming aware of the circumstances which give rise to doubts about the arbitrators' impartiality or independence.

- (4) Where a party who makes an application to an arbitral tribunal under this section, is dissatisfied with the order of the tribunal on such application, he may within thirty days of the receipt of the decision, appeals from that order to the High Court.

PART IV

JURISDICTION OF THE ARBITRAL TRIBUNAL

11. (1) An Arbitral tribunal may rule on its jurisdiction including any question, with respect to the existence or validity of the arbitration agreement or as to whether such agreement is contrary to public policy or is incapable of being performed; but any party to the arbitral proceedings may apply to the High Court for a determination of any such question.
 - (2) Where an application has been made to the High Court under subsection (1) the arbitral tribunal may continue the arbitral proceedings pending the determination of such question by the High Court.
12. An arbitration agreement which forms part of another agreement shall be deemed to constitute a separate agreement when ruling upon the validity of that arbitration agreement for the purpose of determining the jurisdiction of the arbitral tribunal.
13. (1) An arbitral tribunal may, at the request of a party, order any other party to take such Interim measures as it may consider necessary to protect or secure the claim which forms the subject matter of the dispute. The arbitral tribunal may also order the party making such request to provide the party ordered to take such interim measures, with security for any expense, loss or damage that may be caused in taking such interim measures:

Provided however that, other than in exceptional cases no such order shall be made except after hearing the other parties.

- (2) An order of an arbitral tribunal requiring the taking of interim measures may be enforced by the High Court, on an application made therefore, by the party requesting the taking of such interim measures.
 - (3) An application to the High Court, under subsection (2), for the enforcement of interim measures, shall be deemed not to be incompatible with section 5 or the arbitration agreement or a waiver of the agreement.
14. (1) It shall not be incompatible with arbitration proceedings for an arbitral tribunal to encourage settlement of the dispute and, with the agreement of the parties, the arbitral tribunal may use mediation, conciliation or any other procedure at any time during the arbitral proceedings to encourage settlement.
- (2) If, during arbitral proceedings the parties settle the dispute, the arbitral tribunal shall if requested by the parties, record the settlement in the form of an arbitral award on agreed terms.
 - (3) An arbitral award on agreed terms shall be made in accordance with Section 25 and shall state that it is an arbitral award on agreed terms.
 - (4) An arbitral award on agreed terms has the same status and effect as any other arbitral award made in respect of the dispute.

PART V

CONDUCT OF ARBITRATION PROCEEDINGS

15. (1) An arbitral tribunal shall deal with any dispute submitted to it for arbitration in an Impartial, practical and expeditious manner.
 - (2) An arbitral tribunal shall afford all the parties an opportunity, of presenting their respective cases in writing or orally and to examine all documents and other material furnished to it by the other parties or any other person. The arbitral tribunal may, at the request of a party, have an oral hearing before determining any question before it.
 - (3) An arbitral tribunal may, notwithstanding the failure of a party without reasonable cause, to appear before it, or to comply with any order made by it, continue the arbitral proceedings and determine the dispute on the material available to it.
 - (4) Parties may, introduce new prayers for relief provided that such prayers for relief fall within the scope of the arbitration agreement and it is not inappropriate to accept them having regard to the point of time at which they are introduced and to other circumstances. During the course of such proceedings, either party may, on like conditions, amend or supplement prayer for relief introduced earlier and rely on new circumstances in support of their respective cases.
16. (1) The parties to an arbitration proceeding shall be 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 subsection (1) providing for the place of arbitration, the arbitral tribunal may, unless otherwise agreed upon 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.

17. Subject to the provisions of this Act, the parties shall be free to agree on the procedure to be followed by the arbitral tribunal in conducting the proceedings. The power conferred upon the arbitral tribunal shall include the power to determine the admissibility, relevance, and weight of any evidence.
18. An arbitration shall be deemed to have been commenced if ---
 - (a) a dispute to which the relevant arbitration agreement applies has arisen: and
 - (b) a party to the agreement ---
 - (i) has received from another party to the agreement a notice requiring that party to refer, or to concur in the reference of, the dispute to arbitration; or
 - (ii) has received from another party to the agreement a notice requiring that party to appoint an arbitral tribunal or to join or concur in or approve the appointment of, an arbitral tribunal in relation to the dispute.
19. (1) Unless a contrary intention is expressed in the arbitration agreement, any decision made in the course of arbitral proceedings, by a majority of the arbitrators and failing a majority, the decision of the arbitrator appointed by the other arbitrators, or where in terms of the arbitration agreement or this Act, there is a Chairman, the decision of such Chairman, shall be binding.
 - (2) Where there is a Chairman of an arbitral tribunal, the Chairman shall have the power to administer the conduct of the arbitral proceedings.
20. (1) Any party to an arbitration agreement having obtained the prior consent in writing of the arbitral tribunal may apply to the High Court for summons requiring a person to attend for examination before the tribunal and to produce to the tribunal any document or thing specified in the summons.

- (2) A person shall not be compelled under any summons issued in accordance with subsection (1) to answer any question or produce any document or thing which that person could not be compelled to answer or produce at the trial in an action before court.
21. (1) Unless otherwise agreed upon by the parties, where any person not a party to the arbitration agreement ---
- (a) refuses or fails to attend before the arbitral tribunal for examination when required under summons or by the arbitral tribunal to do so ;
 - (b) appearing as a witness before the arbitral tribunal ---
 - (i) refuses or fails to take an oath or make an affirmation or affidavit when required by the arbitral tribunal to do so ; or
 - ii) refuses or fails to answer a question that the witness is required by the arbitral tribunal to answer ; or
 - (iii) refuses or fails to produce a document that he is required under summons or by the arbitral tribunal to produce; or
 - (c) Refuses or fails to do any other thing which the arbitral tribunal may require. the High Court may order the defaulter to appear before the Court for examination or to produce to the Court the relevant document or thing or to do any relevant thing if a party to the arbitration proceedings makes an application to Court in that behalf.
- (2) No such application shall be made except after notice to the other parties and with the prior sanction or consent of the arbitral tribunal and no order shall be made under subsection (1), unless the court after hearing the defaulter considers that it is necessary in the circumstances to make such order.
- (3) Where the court makes an order under subsection (1) it shall, in addition make an order for the transmission to the arbitral tribunal of ---

- (a) a record of any evidence given pursuant to an order made under subsection (1); Arbitration Act No. 11 of 1995 9
 - (b) any document or thing produced pursuant to an order under subsection (1) or a copy of any such document ; or
 - (c) particulars of anything done pursuant to an order under subsection (1) and any such evidence, document or thing shall be deemed to have been given, produced or done, as the case may be, in the course of the arbitration proceeding.
22. (1) Unless other wise agreed upon by the parties, evidence before the arbitral tribunal may be given orally, in writing or by affidavit.
- (2) Unless otherwise agreed upon by the parties, an arbitral tribunal may administer an oath or affirmation or take an affidavit for the purposes of proceedings under the agreement.
- (3) Unless otherwise agreed upon by the parties, an arbitral tribunal in conducting proceedings in pursuance of an arbitration agreement shall not be bound by the provisions of the Evidence Ordinance.
23. Unless otherwise agreed in writing by the parties to the arbitration agreement, a party to an arbitration agreement ---
- (a) may appear before the arbitral tribunal personally or, where the party is a body of persons, whether corporate or unincorporated, by an officer, employee or agent of that body ; and
 - (b) may be represented by an attorney-at-law if the party so desires.
24. (1) An 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 other wise expressed, as referring to the substantive law of that State and not to its conflict of laws rules.

- (2) Failing any designation by the parties to any arbitration agreement, the arbitral tribunal shall apply the law determined by the conflict of laws rules which it considers applicable.
- (3) The provision of subsection (1) and (2) shall apply only to the extent agreed to by the parties.
- (4) The arbitral tribunal shall decide according to considerations of general justice and fairness or trade usages only if the parties have expressly authorized it to do so.

PART VI AWARDS

25. (1) The award shall be made in writing and shall be signed by the arbitrators constituting the arbitral tribunal. In arbitral proceedings with more than one arbitrator, the signatures of the majority of the 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 section 14.
 - (3) The award shall state its date and place of arbitration as determined in accordance with Section 16. The award shall be deemed to have been made at that place.
 - (4) After the award is made, a copy signed by the arbitrators constituting the arbitral tribunal in accordance with subsection (1) of this section shall be delivered to each party.
26. Subject to the provisions of Part VII of this Act, the award made by the arbitral tribunal shall be final and binding on the parties to the arbitration agreement.
 27. (1) Within fourteen days of receipt of the award, unless another period of time has been agreed upon by the

parties, whether at the request of the arbitral tribunal or otherwise --- or

- (a) a party, with notice to the other party, may request the arbitral tribunal --
 - (i) to correct in the award any errors in computation, any clerical or typographical errors or omissions or any errors of a similar nature ; or
 - (ii) to modify the award where a part of the award is upon a matter not referred to arbitration, provided such part can be separated from the other part and does not affect the decision on the matter referred ;
- (b) if so agreed upon 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.
- (2) If the arbitral tribunal considers the request to be justified, it shall make the correction, modification or give the interpretation within fourteen days of the receipt of the request, or such longer period as the parties may agree to, at the request of the arbitral tribunal. The interpretation shall form part of the award.
- (3) The arbitral tribunal may correct any error of the type referred to in sub-paragraph (i) of paragraph (a) of subsection (1) of this section, on its own motion within fourteen days of the date of the award.
- (4) Unless otherwise agreed upon by the parties, a party with notice to the other party, may request the arbitral tribunal within fourteen days of receipt of the award to make an additional award as to claims presented in the arbitral proceedings but omitted from the award. If the arbitral tribunal after hearing the other parties, considers the request to be justified, it shall make the additional award within thirty days of conclusion of the hearing.
- (5) The provisions of section 26 shall apply to a correction, modification or interpretation of the award or to an additional award.

28. Unless otherwise agreed upon by the parties where an arbitral tribunal makes an award for the payment of money (whether on a claim for a liquidated or unliquidated amount), the arbitral tribunal may in the award, order interest, at the rate agreed upon between the parties in the arbitration agreement or in the absence of any such agreement, at the legal interest prevailing at the time of making the arbitral award, to be paid on the principal sum awarded, from the date of commencement of arbitral proceedings to the date of the award, in addition to any interest awarded on such principal sum for any period prior to the institution of arbitral proceedings, with further interest at the aforesaid rate on the aggregate sum so awarded from the date of the award to the date of payment or such earlier date as the arbitral tribunal thinks fit.
29. (1) The parties shall be jointly and severally liable for the payment of reasonable compensation to the arbitrators constituting the arbitral tribunal for their work and disbursements:
- Provided however that when the arbitral tribunal declares in its award that it has no jurisdiction to decide the dispute, the party who did not request the arbitration liable for such payment only if there are exceptional circumstances which warrant such payment by him.
- (2) The final award shall order the payment of compensation to each of the arbitrators constituting the arbitral tribunal in such sum, and with such period, as may be specified in the award, with legal interest on each such sum calculated with effect from the date of expiration of a period of one month from the date on which the award was delivered.
- (3) The arbitral tribunal may order the payment of deposit of security by the parties, for the payment of the compensation of the arbitrators constituting the arbitral tribunal, in such sum and within such period as may be specified in the order. Separate deposits of security may be ordered in respect of each prayer for relief.

- (4) Where a party fails to pay his share of the deposit of security ordered by the arbitral tribunal within the period specified in the order for payment of deposit of security, the other party or parties may pay the whole of the deposit of security ordered.
 - (5) Where none of the parties pay the deposit of security ordered by the arbitral tribunal, within the period specified in the order for the payment of the deposit of security, the arbitral tribunal may terminate the arbitral proceedings.
 - (6) The arbitrators constituting the arbitral tribunal may, during the course of arbitral proceedings, draw on such deposit or security, for the purpose of meeting their expenses.
30. An arbitral tribunal shall not withhold delivering its award pending the payment of the compensation payable to the arbitrators constituting the arbitral tribunal.

PART VII

APPLICATION TO COURTS RELATING TO AWARDS (INCLUDING RECOGNITION AND ENFORCEMENT OF FOREIGN AWARD)

31. (1) A party to an arbitration agreement pursuant to which an arbitral award is made may, within one year after the expiry of fourteen days of the making of the award, apply to the High Court for the enforcement of the award.
- (2) An application to enforce the award shall be accompanied by ---
- (a) the original of the award or a duly certified copy of such award : and
 - (b) the original arbitration agreement under which the award purports to have been made or a duly certified copy of such agreement.

For the purposes of this subsection a copy of an award or of the arbitration agreement shall be deemed to have been duly certified if ---

- (i) it purports to have been certified by the arbitral tribunal or, by a member of that tribunal, and it has not been shown to the Court that it was not in fact so certified : or
 - (ii) it has been otherwise certified to the satisfaction of the court.
- (3) If a document or part of a document produced under subsection (2) is written in a language other than the official language of the court or other than in English, there shall be produced with the document a translation in such official language, or in the English Language, of that document or that part, as the case may be, certified to be a correct translation.
- (4) For the purposes of subsection (3), a translation shall be certified by an official or a sworn translator or by a diplomatic or a consular agent in Sri Lanka of the country in which the award was made or otherwise to the satisfaction of the Court.
- (5) A document produced to the court in accordance with this section may upon its production be received by the Court as sufficient evidence of the matters to which it relates.
- (6) Where an application is made under subsection (1) of this section and there is no application for the setting aside of such award under section 32 or the court sees no cause to refuse the recognition and enforcement of such award under the provision contained in sections 33 and 34 of this Act, it shall on a day of which notice shall be given to the parties, proceed to file the award and give judgment according to the award. Upon the judgment so given a decree shall be entered.
32. (1) An arbitral award made in an arbitration held in Sri Lanka may be set aside by the High Court, on

application made therefore, within sixty days of this receipt of the award ---

(a) where the party making the application furnishes proof that ---

(i) a party to the arbitration agreement 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 on that question, under the law of Sri Lanka ; 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 however that, if the decision on matters submitted to arbitration can be separated from those not so submitted, only that part of the award which contains decisions on matters not submitted to arbitration may be set aside ; or

(iv) the composition 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 the provisions of this Act, or, in the absence of such agreement, was not in accordance with the provisions of this Act : or

(b) where the High Court finds that ---

(i) the subject matter of the dispute is not capable of settlement by arbitration under the law of Sri Lanka: or

- (ii) the arbitral award is in conflict with the public policy of Sri Lanka.
- (2) Where an application is made to set aside an award, the High Court may order that any money made payable by the award shall be brought into Court or otherwise secured pending the determination of the application.
- 33. A foreign arbitral award irrespective of the country in which it was made shall subject to the provision of section 34 be recognized as binding and, upon application by a party under section 31 to the High Court, be enforced by filing the award in accordance with the provision of that section.
- 34. (1) Recognition or enforcement of a foreign arbitral award, irrespective of the country in which it was made, may be refused only ---
 - (a) on the objection of the party against whom it is invoked, if that party furnishes to the Court where recognition or enforcement is sought, proof that ----
 - (i) a party to the arbitration agreement 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 as to the law to which the parties have subjected such agreement, 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 proceeding or was otherwise unable to present his case ; or
 - (iii) the award deals with the 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, however that, if the decision on matters submitted to arbitration can be separated from those not so submitted, that part of the award which contain a decision on matters submitted

to arbitration, may be recognized 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, in the absence of 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 Sri Lanka ; or

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

(2) If an application for setting aside or suspension of an award has been made to a court on the ground referred to in sub-paragraph (v) of paragraph (a) of subsection (1) of this section, 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.

35. (1) Where applications filed in court to enforce an award and to set aside an award are pending, the court shall consolidate the applications.

(2) Where an application to set aside the award under section 32 has been refused, the court shall not permit a party to an arbitration to object to the enforcement of the award on any of the grounds specified in section 34.

36. (1) The High Court may order the staying of an application to set aside an award for such period as it may consider

necessary to enable the arbitral tribunal to resume arbitral proceedings or to take such measures as may be necessary to eliminate the grounds for invalidating the award.

- (2) No order shall be made by the High Court under subsection (1) unless ---
 - (a) all the parties to the arbitration request the making of such order: or
 - (b) one of the parties to such arbitration requests the making of such order and the Court is satisfied that there are grounds for invalidating the award.
37. (1) Subject to subsection (2) of this section no appeal or revision shall lie in respect of any order, judgment or decree of the High Court in the exercise of its Jurisdiction under this Act except from an order, judgment or decree of the High Court under this Part of this Act.
- (2) An appeal shall lie from an order, judgment or decree of the High Court referred to in subsection (1) to the Supreme Court only on a question of law and with the leave of the Supreme Court first obtained.
 - (3) The Supreme Court may in the exercise of its jurisdiction under subsection
 - (2) of this section affirm, reverse or vary the order, judgment or decree of the High Court, subject to the provisions of this Act.
 - (4) The parties to an arbitration agreement may agree in writing (hereinafter referred to as an " exclusion agreement ") to exclude any right to appeal in relation to the award.
38. (1) The Supreme Court shall not in any event grant leave to appeal under subsection (2) of section 37 if there is in force an exclusion agreement between the parties to the arbitration agreement in relation to the award appealed against.

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

inordinate : or

- (b) that the delay will give rise to a substantial risk of it not being possible to have a fair determination of the issues in the arbitration proceedings or is such as it 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 party aggrieved by any order of the arbitral tribunal made on an application under subsection (2) may appeal to the High Court.

PART VIII

PROCEEDINGS BEFORE THE HIGH COURT

- 40. (1) Every application to the High Court under the provision of this Act, whether by way of appeal or otherwise, shall be by way of petition and affidavit and all parties to the arbitration other than the petitioner or petitioners shall be named as respondents to such petition and shall be given notice of the same.
- (2) Upon the petition and affidavit being presented to the court it shall by order appoint a day for the determination of the matter of the petition and grant the parties named as respondents to the petition a date to state their objections, if any, in writing supported by

affidavit, and making available a copy thereof to the petitioners.

- (3) In proceedings before the High Court evidence shall be given by affidavit. But where the court think it right so to do, it may take evidence viva voce in addition to evidence by affidavit.
 - (4) The High Court shall delay with every application under subsection (1) and deliver its determination thereon as expeditiously as possible.
41. Where a judgment is given according to an award and a decree En entered under the provisions of section 31 (6) it may be enforced in the same manner as a decree entered under the provision of the Civil Procedure Code (Chapter 101) and accordingly the provisions of that Code relating to the execution of decrees shall, mutatis mutandis, apply to, such enforcement.
 42. Where under this Act notice or summons is required or permitted to be served on any person, the notice or summons may be served in or out of Sri Lanka ---
 - (a) by sending it by registered post addressed to that person to be served at the usual or last known place of residence or business of that person ;
 - (b) if there is no appearance by that person on the date stated therein, by serving it personally on him through the Fiscal ; and
 - (c) if that person deliberately avoids accepting the notice or summons, by substituted service in accordance with the provisions of the Civil Procedure Code (Chapter 101).
 43. The Supreme Court may make rules with respect to ---
 - (a) any application or appeal made to any Court under this Act and the costs of such application or appeal;
and
 - (b) the payment of money into and out of the Court in satisfaction of a claim to which the arbitration agreements apply and the investment of such money ;

44. In calculating the period of prescription for the purpose of any action, the period that elapsed between the commencement of an arbitration and its completion or termination as the case may be, shall be excluded.

PART IX

GENERAL PROVISIONS AS TO ARBITRATION

45. An arbitrator shall not be liable for negligence in respect of anything done or omitted to be done by him in the capacity of arbitrator but shall be liable for fraud in respect of anything done or omitted to be done in that capacity.
46. (1) Unless a contrary intention is expressed in the arbitration agreement, where a party to an arbitration agreement dies, the agreement shall not be discharged and the mandate of the arbitrators constituting the arbitral tribunal shall not be revoked by the death of that party ; but the agreement shall be enforceable by or against the legal representative of the estate of the deceased.
- (2) Nothing in subsection (1) shall be taken to affect the operation of any enactment or rule of law by virtue of which a right of action is extinguished by the death of a person.
47. (1) The Arbitration Ordinance (Chapter 98) is hereby repealed.
- (2) Sections 693 to 698 of the Civil Procedure Code (Chapter 101) are hereby repealed.
48. For the avoidance of doubts, it is hereby declared that nothing in this Act shall apply to arbitral proceedings conducted under the Industrial Dispute Act or any other law, other than the Board of Investment of Sri Lanka Law, No. 4 of 1978, making special provision for arbitration.
49. In the event of any inconsistency between the Sinhala and Tamil texts of this Act, the Sinhala text shall prevail.
50. (1) In this Act, unless the context otherwise requires ---
- “ Arbitration Agreement “ means an agreement by the parties to submit to arbitration all or certain disputes which have arisen or which may arise between them in

respect of a defined legal relationship, whether contractual or not ;

“arbitration “ means any arbitration whether or not administered by a permanent arbitral institution;

“ arbitral tribunal “ means a panel of one or more arbitrators ;

“ award “ means a decision of the arbitral tribunal on the substance of the dispute ;

“ foreign arbitral award “ means an award made in an arbitration conducted outside Sri Lanka ;

“ High Court “ means the High Court of Sri Lanka, holden in the judicial zone of Colombo or holden in such other zone, as may be, designated by the Minister with the concurrence of the Chief Justice, by Order published in The Gazette ;

“ legal interest “ means interest at the rate specified in an Order made under Section 192 of the Civil Procedure Code and for the time being in force.

Dissimilarities

DISSIMILARITIES IN ARBITRATION LAWS IN DIFFERENT SAARC COUNTRIES.

- 1) Under Arbitration Act 1940 (Pakistan) an award is required to be made rule of court from the court. But under Arbitration and Conciliation. Act 1996 of India an award is executable as a decree of Civil Court.
- 2) Under Arbitration and Conciliation Act, 1996 (India) Arbitrator has power to pass interim orders but no such power exists in Arbitration Act 1940 (Pakistan).
- 3) There is less scope of judicial interference in the Arbitration and Conciliation Act, 1996 (India) than the Arbitration Act 1940 (Pakistan).
- 4) In Indian and Sri Lanka arbitration laws there are provisions of confidentiality. But no such provision is available in Pakistani law.
- 5) There is no clue how an award in Sri Lanka is to be executed as there is no intervention of court.
- 6) In the Sri Lanka law of arbitration time limit has been provided for certain process but no such provision is available in Indian, Pakistani or Bangladesh laws.
- 7) 1996 Act of India is applicable to both International and domestic arbitrations. But no such provision exists in Pakistani law.
- 8) There is a trend of fast track arbitration in the Indian Act 1996. The Arbitration and Conciliation (amendment) Act 2003, yet to be passed by the Parliament of India, proposes to introduce a single member fast track arbitral tribunal. There is no such provision in Pakistan law.
- 9) In the Act of 1996 (India) an award is normally challenged on the ground that it violates public policy as it has specifically been provided that no judicial authority shall intervene

except where so provided. But in Pakistan an award has to be made rule of court by the court.

- 10) The Act of 1996 (India) insulates arbitration proceedings against judicial interference. Such a provision is not available in Pakistan law.
- 11) Section 34 of the Act 1996 (India) makes a mere challenge to an award operate as an automatic stay even without an order of the court. There is no such automatic stay in the Act of 1940 which is in field in Pakistan.
- 12) Under Section 36 of the 1996 Act an arbitral award is enforceable as a decree of the court and could be executed like a decree in a suit under the provisions of CPC. No such provision is available in Pakistani law.
- 13) An international commercial award is also executable under 1996 Act (India). No such provision exists in the law which is in field in Pakistan.
- 14) 1996 Act confers powers on arbitral tribunals to issue interim reliefs pertaining to: (a) protection of subject matter in dispute; and (b) providing appropriate security in connection therewith. But tribunal has no mechanism to enforce its orders. So it is toothless and spineless. But in any event such a provision is not available in the Pakistani law.
- 15) The Arbitration Act 2056 (1999) Nepal is largely at variance with Arbitration Laws of India, Pakistan and Bangladesh. Unlike these laws the law of Nepal provides for filing of rejoinder.
- 16) There is provision for Chief Arbitrator who in certain cases tilts the scale of justice. No such provision is available in the arbitration laws of India and Pakistan.
- 17) The Law of Nepal unlike other laws provides for a time frame for every step in the Arbitration Proceedings.
- 18) In contrast to Indian law of Arbitration of 1996 the law of Nepal is under strict interpretation of courts as arbitrators are appointed by the courts, interim orders and final awards of arbitral tribunal are appealable before court. Such awards are filed in the court and enforced by the courts.

- 19) According to the law of arbitration of Nepal arbitrators are required to make oath. There are specific grounds under which they may be removed and also the grounds on which their awards may be set aside. There is provision that proceedings of arbitration will continue in the absence of one arbitrator but final decision shall not be made. There is no such provision in other SAARC countries' laws.
- 20) Unlike other SAARC countries laws proceedings of arbitration under Nepali law are held in camera.
- 21) There is also provision for demanding bank guarantee under Nepali law which is absent in other SAARC countries' laws. Arbitrators can issue attested copies of documents.
- 22) Unlike other SAARC countries laws arbitrators in Nepal can seek assistance from the court to record any evidence concerning the dispute.

- 23) In Nepali law of arbitration decisions are made on majority basis. But if there is no majority the decision of the Chief arbitrator will prevail. There is no such provision in Indian or Pakistani laws.
- 24) Under Nepalin law of arbitration arbitrators are empowered to correct errors in the award.
- 25) In the remaining matters of arbitration the jurisdiction of court has been barred under Nepalian law of arbitration.
- 26) In Maldives a party interested in having recourse to arbitration may apply to Secretariat. Such a provision is not available in other countries' laws.
- 27) Unlike other countries law on arbitration in Maldives respondent may submit counter claims.
- 28) In the Maldives law of arbitration it is for the court to decide whether there existed arbitration agreement and as such arbitral tribunal had the necessary jurisdiction. Such a provision is not available in Pakistani and Indian laws of arbitrations.
- 29) According to Maldives law of Arbitration a dispute is to be settled by a sole or three arbitrators. Both parties nominate

one arbitrator each and third one which is Chairman of the Arbitral tribunal is appointed by the court.

- 30) Unlike other laws challenge to arbitrator in Maldives will be made to the Secretariat and then will be decided by the court.
- 31) Unlike other laws in Maldives arbitral tribunal will draw terms of reference which will have to be approved by the court.
- 32) Unlike other laws there is also provision for provisional time table in Maldivian laws.
- 33) Unlike other laws there is provision for protecting trade secrets and confidential information in the Maldivian laws.
- 34) Like Indian law and unlike Pakistani law there is provision for conservatory and interim measures.
- 35) Unlike other countries laws in Maldives the award is to be made by majority and in the absence of majority by Chairman of the Arbitral Tribunal alone.
- 36) Unlike other countries laws in Maldives the draft of the arbitration award is to be submitted to the court which may lay down modification as to the form of the award and may draw its attention to its substance.
- 37) Arbitral Tribunal in Maldives can correct its errors but the same will have to be reapproved by the court.
- 38) An award in Maldives is binding on the parties.
- 39) Commercial Arbitration Law of Afghanistan deals both with domestic and International law. But court or Government agencies cannot intervene in the arbitration proceedings except as provided by law.
- 40) Unlike Pakistan law on arbitration in the arbitration law of Afghanistan certain qualifications have been prescribed for arbitrators and they are to be registered with central registry.
- 41) Unlike Pakistani law on arbitration there is a provision of ad-interim relief in the Afghanistan law.

- 42) Unlike Pakistani law in Afghanistan parties are free to determine the number of arbitrators but if they do not agree the number shall be one. But if State is a party the number shall be three.
- 43) Unlike other countries laws on arbitration in Afghanistan parties will appoint one arbitrator each and the two arbitrators so appointed will appoint the third one.
- 44) Unlike Pakistani law appointment of an arbitrator can be challenged in Afghanistan on the ground of impartiality and qualification. But this has first to be raised before the arbitral tribunal itself.
- 45) Unlike arbitration laws of other countries in Afghanistan Arbitral Tribunal may appoint one or more experts.
- 46) Unlike Pakistani law on arbitration Arbitral Tribunal in Afghanistan may request relevant document and evidence from a court.
- 47) Unlike other countries law in Afghanistan parties are free to appoint a third party as a mediator.
- 48) In Afghanistan decision of the arbitral tribunal shall be by majority. This is dissimilar from Pakistan.
- 49) Unlike other countries laws on arbitration Arbitral Tribunal has power to correct its errors.
- 50) Unlike arbitration law in India an arbitral award may be set aside by a court.
- 51) Unlike Indian law an application has to be made to the court for the enforcement of Award in Afghanistan.
- 52) In Bhuttan a neutral arbitrator is selected and empowered to resolve disputes.
- 53) Unlike other countries of SAARC arbitration awards in Bhuttan are either binding or non binding in nature. Binding awards are like judgments of courts.
- 54) Unlike other countries laws on arbitration award in Bhuttan cannot be reviewed and there cannot be appeal from the decision of arbitrator's decision.

- 55) If an agreement does not contain a provision for arbitration, under Bhutan law, matter can be referred to arbitrator by mutual agreement.
- 56) Bangladesh is governed by Arbitration Act, 2001.
- 57) Unlike other countries laws on arbitration in Bangladesh in case of failure of the parties, to appoint an arbitrator, on the request of any of the parties District Judge will appoint arbitrator in case of domestic Arbitration and Chief Justice of Supreme Court of his nominated person in case of international arbitration. In case of three arbitrators two will be appointed by both parties each and third by the two arbitrators so appointed. In case parties fail to appoint third arbitrator the same shall be appointed by the court who will be Chairman of the arbitral tribunal.
- 58) Unlike other countries laws on arbitration in Bangladesh an arbitral tribunal may apply to the court for issuing a summons upon any person for witness purposes and the court shall issue such summons.
- 59) Unlike Pakistani law on arbitration in Bangladesh interim orders can be passed by arbitral tribunal.
- 60) In Bangladesh an award may be made by majority.
- 61) Bangladesh is signatory to Newyork convention on the recognition and enforcement of Foreign Arbitral Award 1958 but has not yet formally ratified it. But foreign award in Bangladesh is enforced through execution by the court in the same manner as if it were a decree of the court.