

## รายการอ้างอิง

### ภาษาไทย

ชนิษฐา เต็มตฤชณา. แนวความคิดในการแบ่งแยกอนุญาโตตุลาการภายในประเทศและอนุญาโตตุลาการต่างประเทศ, วิทยานิพนธ์ภาคศึกษานิติศาสตร์ จุฬาลงกรณ์มหาวิทยาลัย, 2541.

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ภาคผนวก

ពាក្យអង្គ ក.

## ARBITRATION ACT (CHAPTER 10)

1970 Ed. Cap. 16  
Ordinance 14 of 1953  
Amended by 14 of 1969  
2 of 1980  
LN 447/64  
#CAP 10  
#COMMDATE 04:05:1953

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**ARBITRATION ACT (CHAPTER 10)**

**PRELIMINARY**

**1. Short title.**

This Act may be cited as the Arbitration Act.

**2. Interpretation.**

In this Act, unless there is something repugnant in the subject or context --

"action" includes any proceeding in a court of law;

"arbitration agreement" means a written agreement to submit present or future differences to arbitration, whether an arbitrator is named therein or not;

"award" includes an interim award;

"court" means the High Court;

"Rules of Court" means rules made or deemed to have been made under section 80 of the Supreme Court of Judicature Act.

[Note: Cap. 322.]

**REFERENCES BY CONSENT OUT OF COURT**

**3. Arbitration agreement to be irrevocable and to have effect as order of court.**

Subject to the provisions of this Act, an arbitration agreement, unless a contrary intention is expressed therein, shall be irrevocable, except by leave of the court or a judge thereof, and shall have the same effect in all respects as if it had been made an order of court.

#### 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 an event be enforceable by or against the personal 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 be taken to affect the operation of any enactment or rule of law by virtue of which any right of action is extinguished by the death of a person.

#### 5. Provisions in case of bankruptcy.

(1) Where it is provided by a term in a contract to which a bankrupt is a party that any differences arising thereout or in connection therewith shall be referred to arbitration, the said term shall, if the Official Assignee of debtor's estates adopts the contract, be enforceable by or against him so far as it relates to any such differences.

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

#### 6. Provisions implied in arbitration agreements.

An arbitration agreement, unless a contrary intention is expressed therein, shall be deemed to include the provisions set out in the First Schedule so far as they are applicable to the reference under the arbitration agreement.

#### 7. Power to stay proceedings where there is an arbitration agreement.

(1) If any party to an arbitration agreement, or any person claiming through or under him, commences any legal proceedings against any other party to the arbitration agreement, or any person claiming through or under him, in respect of any matter agreed to be referred, any party to the legal proceedings may at any time after appearance, and before delivering any pleadings or taking any other steps in the proceedings, apply to the court to stay the proceedings.

(2) The court or a judge thereof, 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 the arbitration, may make an order staying the proceedings.

#### 8. Power of court in certain cases to appoint an arbitrator, umpire or third arbitrator.

(1) In any of the following cases:

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

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

(c) where the parties or two arbitrators are required or are at liberty to appoint an umpire or third arbitrator and do not appoint him;

(d) where an appointed umpire or third arbitrator refuses to act or is incapable of acting, or dies, and the arbitration agreement does not show that it was intended that the vacancy should not be supplied, and the parties or arbitrators do not supply the vacancy, any party may serve the other parties or the arbitrators, as the case may be, with a written notice to appoint or, as the case may be, concur in appointing, an arbitrator, umpire or third arbitrator.

[Note: 2/80.]

(2) If the appointment is not made within 7 clear days after the service of the notice, the court or a judge thereof may, on application by the party who gave the notice, appoint an arbitrator, umpire or third arbitrator who shall have the like powers to act in the reference and make an award as if he had been appointed by consent of all parties.

(3) In any case where --

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

(b) that person refuses to make the appointment or does not make it within the time specified in the agreement or, if no time is so specified, within a reasonable time, any party to the agreement may serve the person in question with a written notice to appoint an arbitrator or umpire and, if the appointment is not made within 7 clear days after the service of the notice, the court or a judge thereof may, on the application of the party who gave the notice, appoint an arbitrator or umpire who shall have the like powers to act in the reference and make an award as if he had been appointed in accordance with the terms of the agreement.

#### 9. Power for parties in certain cases to supply vacancy.

(1) Where an arbitration agreement provides that the reference shall be to two arbitrators, one to be appointed by each party, then, unless the arbitration agreement expresses a contrary intention –

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

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

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

#### 10. Majority award of 3 arbitrators.

Unless the contrary intention is expressed in the arbitration agreement, in any case where there is a reference to 3 arbitrators, the award of any two of the arbitrators shall be binding.

[Note: 2/80.]

#### 11. Provision relating to umpires.

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

#### 12. Power of court to give relief where arbitrator is not impartial or dispute referred involves question of fraud.

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

(2) Where an agreement between any parties provides that disputes which may arise in the future between them shall be referred to arbitration and a dispute which so arises involves the question whether any such party has been guilty of fraud, the court shall, so far as may be necessary to enable that question to be determined by the court, have power

to order that the agreement shall cease to have effect and power to give leave to revoke the authority of any arbitrator or umpire appointed by or by virtue of the agreement.

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

### 13. Powers of arbitrator.

The arbitrators or umpire acting under an arbitration agreement shall, unless the arbitration agreement expresses a contrary intention, have power –

(a) to administer oaths to, or take the affirmations of, the parties and witnesses; and

(b) to correct in an award any clerical mistake or error arising from any accidental slip or omission.

### 14. Witnesses may be summoned by subpoena.

Any party to an arbitration agreement may sue out a writ of subpoena ad testificandum or a writ of subpoena duces tecum, but no person shall be compelled under any such writ to produce any document which he could not be compelled to produce on the trial of an action.

### 15. Power to enlarge time for making award.

The time for making an award may be enlarged by order of the court or a judge thereof, whether the time for making the award has expired or not.

### 16. Power to remit award.

(1) In all cases of reference to arbitration the court or a judge thereof may remit the matters referred, or any of them to the reconsideration of the arbitrators or umpire.

(2) Where an award is remitted, the arbitrators or umpire shall, unless the order otherwise directs, make their award within 3 months after the date of the order.

### 17. Power to set aside award.

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

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

### 18. Arbitrators and umpires to use due dispatch.

(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) An arbitrator or umpire who is removed by the court under this section shall not be entitled to receive any remuneration in respect of his services.

(3) Subject to section 16 (2) and to anything to the contrary in the arbitration agreement, an arbitrator or umpire shall have power to make an award at any time.

(4) For the purposes of this section "proceeding with a reference" includes, in a case where two arbitrators are unable to agree, giving notice of that fact to the parties and to the umpire.

#### 19. Power of court where arbitrator is removed or authority of arbitrator is revoked.

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

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

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

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

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

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

#### 20. Enforcing award.

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



## REFERENCES UNDER ORDER OF COURT

### 21. Reference for report.

(1) Subject to Rules of Court, the court or a judge thereof may refer any question arising in any cause or matter, other than a criminal proceeding by the Public Prosecutor, for inquiry or report to any special referee.

(2) The report of a special referee may be adopted wholly or partially by the court or a judge thereof, and if so adopted may be enforced as a judgment or order to the same effect.

### 22. Power to refer in certain cases.

In any cause or matter, other than a criminal proceeding by the Public Prosecutor, --

(a) if all the parties interested who are not under disability consent;

(b) if the cause or matter requires any prolonged examination of documents or any scientific or local investigation which cannot, in the opinion of the court or a judge thereof, conveniently be conducted by the court through its ordinary officers; or

(c) if the question in dispute consists wholly or in part of matters of account.

the court or a judge thereof may at any time order the whole cause or matter or any question or issue of fact arising therein to be tried before a special referee or arbitrator respectively agreed on by the parties or before an officer of the court.

### 23. Powers and remuneration of referees and arbitrators.

(1) In all cases of reference to a special referee or arbitrator under an order of the court or a judge thereof in any cause or matter, the special referee or arbitrator shall be deemed to be an officer of the court and shall have such authority and shall conduct the reference in such manner as is prescribed by Rules of Court, and subject thereto as the court or a judge thereof directs.

(2) The report or award of any special referee or arbitrator on any such reference shall, unless set aside by the court or a judge thereof, be equivalent to the judgment of a judge.

(3) The remuneration to be paid to any special referee or arbitrator to whom any matter is referred under order of the court or a judge thereof shall be determined by the court or a judge thereof.

### 24. Court to have powers as in references by consent.

The court or a judge thereof shall, as to references under order of the court or a judge thereof, have all the powers which are by this Act conferred on the court or a judge thereof as to references by consent out of court.

### 25. Court of Appeal to have powers of court.

The Court of Appeal shall have all the powers conferred by this Act on the court or a judge thereof under the provisions relating to references under order of the court.

## GENERAL

### 26. Power to compel attendance of witness in any part of Singapore.

(1) The court or a judge thereof may order that a writ of subpoena ad testificandum or a writ of subpoena duces tecum shall issue to compel the attendance before a special referee or before any arbitrator or umpire of a witness wherever he may be within Singapore.

(2) The court or a judge thereof may also issue an order under section 27 of the Prisons Act to bring up a prisoner for examination before a special referee or before any arbitrator or umpire.

[Note: Cap. 247.]

### 27. Additional powers of court.

(1) The court shall have, for the purpose of and in relation to a reference, the same power of making orders in respect of any of the matters set out in the Second Schedule as it has or the purpose of and in relation to an action or matter in the court:

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

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

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

### 28. Judicial review of arbitration awards.

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

[Note: 2/80.]

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

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

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

and where the award is remitted under paragraph (b) the arbitrator or umpire shall, unless the order otherwise directs, make his award within 3 months of the date of the order.

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

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

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

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

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

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

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

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

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

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

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

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

(a) gives leave; and

(b) considers the question of law to which the decision relates either as one of general public importance or as one which for some other special reason should be considered by the Court of Appeal.

(8) Where the award of an arbitrator or umpire is varied on appeal, the award as varied

shall have effect (except for the purposes of this section) as if it were the award of the arbitrator or umpire.

**29. Determination of preliminary point of law by court.**

(1) Subject to subsection (2) and section 30, on an application to the court made by any of the parties to a reference --

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

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

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

[Note: 2/80.]

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

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

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

(3) A decision of the court under this section shall be deemed to be a judgment of the court within the meaning of section 29 of the Supreme Court of Judicature Act, but no appeal shall lie from such a decision unless the court or the Court of Appeal --

(a) gives leave; and

(b) considers the question of law to which the decision relates either as one of general public importance or as one which for some other special reason should be considered by the Court of Appeal. [28A]

[Note: Cap. 322.]

**30. Exclusion agreements affecting rights under sections 28 and 29.**

(1) Subject to this section and section 31 --

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

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

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

law,

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

[Note: 2/80.]

(2) An exclusion agreement may be expressed so as to relate to a particular award, to awards under a particular reference or to any other description of awards, whether arising out of the same reference or not; and an agreement may be an exclusion agreement for the purposes of this section whether it is entered into before or after 21st March 1980 and whether or not it forms part of an arbitration agreement.

[Note: 2/80.]

(3) In any case where --

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

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

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

then, except in so far as the exclusion agreement otherwise provides, the court shall not exercise its powers under section 12 (2) (to take steps necessary to enable the question to be determined by the court) in relation to that dispute.

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

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

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

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

(5) An exclusion agreement shall be of no effect in relation to an award made on, or a question of law arising in the course of a reference under, a statutory arbitration, that is to say, such an arbitration as is referred to in section 40.

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

commencement of the arbitration in which the award is made or, as the case may be, in which the question of law arises.

(7) In this section, "domestic arbitration agreement" means an arbitration agreement which does not provide, expressly or by implication, for arbitration in a State other than Singapore and to which neither --

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

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

is a party at the time the arbitration agreement is entered into. [28B]

31. Exclusion agreements not to apply in certain cases.

(1) Subject to subsection (3), if an arbitration award or a question of law arising in the course of a reference relates, in whole or in part, to --

(a) a question or claim falling within the Admiralty jurisdiction of the court;

(b) a dispute arising out of a contract of insurance; or

(c) a dispute arising out of a commodity contract,

an exclusion agreement shall have no effect in relation to the award or question unless either --

(i) the exclusion agreement is entered into after the commencement of the arbitration in which the award is made or, as the case may be, in which the question of law arises; or

(ii) the award or question relates to a contract which is expressed to be governed by a law other than the law of Singapore.

[Note: 2/80.]

(2) In subsection (1) (c), "commodity contract" means a contract --

(a) for the sale of goods regularly dealt with on a commodity market or exchange in Singapore which is specified for the purposes of this section by an order made by the Minister; and

(b) of a description so specified.

(3) The Minister may by order provide that subsection (1) --

(a) shall cease to have effect; or

(b) subject to such conditions as may be specified in the order, shall not apply to any exclusion agreement made in relation to an arbitration award of a description so specified,

and an order under this subsection may contain such supplementary, incidental and transitional provisions as appear to the Minister to be necessary or expedient.

(4) In this section, "exclusion agreement" has the same meaning as in section 30. [28C]

### 32. Interlocutory orders.

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

[Note: 2/80.]

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

(3) Subsections (1) and (2) have effect notwithstanding anything in any agreement but do not derogate from any powers conferred on an arbitrator or umpire, whether by an arbitration agreement or otherwise. [28D]

### 33. Interest on awards.

A sum directed to be paid by an award shall, unless the award otherwise directs, carry interest as from the date of the award and at the same rate as a judgment debt. [29]

### 34. Provision as to costs of awards and reference.

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

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

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

(3) If no provision is made by an award with respect to the costs of the reference, any party to the reference may, within 14 days of the publication of the award or such further time as the court or a judge thereof may direct, apply to the arbitrator for an order directing by and to whom such costs shall be paid, and thereupon the arbitrator shall, after hearing any party who may desire to be heard, amend his award by adding thereto such directions as he may think proper with respect to the payment of the costs of the reference. [30]

### 35. Costs of orders.

Any order made under this Act may be made on such terms as to costs or otherwise as the authority making the order thinks just. [31]

### 36. Taxation of arbitrator's or umpires's fees.

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

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

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

(4) The arbitrator or umpire shall be entitled to appear and be heard on any taxation or review of taxation under this section. [32]

### 37. Extension of time for commencing arbitration proceedings.

Where the terms of an agreement to refer future disputes to arbitration provide that any claims to which the agreement applies shall be barred unless notice to appoint an arbitrator is given or an arbitrator is appointed or some other step to commence arbitration proceedings is taken within a time fixed by the agreement, and a dispute arises to which the agreement applies, the court, if it is of opinion that in the circumstances of the case undue hardship would otherwise be caused, and notwithstanding that the time so fixed has expired, may on such terms (if any) as the justice of the case may require, but without prejudice to section 30 of the Limitation Act, extend the time for such period as it thinks proper. [33]

[Note: Cap. 163.]

### 38. Court may charge property with payment of solicitors' costs in arbitration.



Section 113 of the Legal Profession Act (which empowers a court in which a solicitor has been employed in any proceeding to charge property recovered or preserved in the proceeding with the payment of his costs) shall apply as if an arbitration were a proceeding in the court, and the court may make declarations and orders accordingly. [34]  
[Note: Cap. 161.]

#### 39. Powers of judge and Registrar.

Provision may be made by Rules of Court for conferring on the Registrar or other officer of the court all or any of the jurisdiction conferred by this Act on the court or a judge thereof. [35]

#### 40. Application to references under statutory powers.

This Act, except the provisions set out in the Third Schedule, shall apply in relation to every arbitration under any other enactment passed before or after the commencement of this Act, as if the arbitration were pursuant to an arbitration agreement, except in so far as this Act is inconsistent with that enactment regulating the arbitration or with any rules or procedure authorised or recognised by that enactment. [36]

#### 41. Saving for pending arbitrations.

The provisions of this Act shall not affect any arbitration which was commenced within the meaning of section 30 of the Limitation Act before 4th May 1953, but shall apply to any arbitration so commenced after that date under an arbitration agreement made before that date. [37]

**FIRST SCHEDULE**  
**PROVISIONS TO BE IMPLIED IN ARBITRATION AGREEMENTS**

[Note: Section 6. 2/80.]

1. If no other mode of reference is provided, the reference shall be to a single arbitrator.
2. If the reference is to two arbitrators, the two arbitrators may appoint an umpire at any time after they are themselves appointed and shall do so forthwith if they cannot agree.
3. If the arbitrators have delivered to any party to the arbitration agreement, or to the umpire, a notice in writing stating that they cannot agree, the umpire may forthwith enter on the reference in place of the arbitrators.
4. The parties to the reference, and all persons claiming through them respectively, shall, subject to any legal objection, submit to be examined by the arbitrators or umpire, on oath or affirmation, in relation to the matters in dispute, and shall, subject as aforesaid, produce before the arbitrators or umpire all books, deeds, papers, accounts, writings and documents within their possession or power respectively which may be required or called for, and do all other things which during the proceedings on the reference the arbitrators or umpire may require.
5. The witnesses on the reference shall, if the arbitrators or umpire think fit, be examined on oath or affirmation.
6. The award to be made by the arbitrators or umpire shall be final and binding on the parties and the persons claiming under them respectively.
7. The costs of the reference and award shall be in the discretion of the arbitrators or umpire, who may direct to and by whom and in what manner those costs or any part thereof shall be paid, and may tax or settle the amount of costs to be so paid or any part thereof, and may award costs to be paid as between solicitor and client.
8. The arbitrators or umpire shall have the same power as the court to order specific performance of any contract other than a contract relating to land or any interest in land.
9. The arbitrators or umpire may, if they think fit, make an interim award.

**SECOND SCHEDULE  
MATTERS IN RESPECT OF WHICH THE COURT MAY MAKE ORDERS**

[Note: Section 27 (1).]

1. Security for costs.
2. Discovery of documents and interrogatories.
3. The giving of evidence by affidavit.
4. Examination on oath of any witness before an officer of the court or any other person, and the issue of a commission or request for the examination of a witness out of the jurisdiction.
5. The preservation, interim custody or sale of any goods which are the subject- matter of the reference.
6. Securing the amount in dispute in the reference.
7. The detention, preservation or inspection of any property or thing which is the subject of the reference or as to which any question may arise therein, and authorising for any of the purposes aforesaid any person to enter upon or into any land or building in the possession of any party to the reference or 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.
8. Interim injunctions or the appointment of a receiver.

**THIRD SCHEDULE  
PROVISIONS OF THE ACT WHICH DO NOT APPLY TO STATUTORY  
ARBITRATIONS**

[Note: Section 40.]

Section 4 (1).

Section 5.

Section 12.

Section 19.

Section 27 (2).

Section 34 (1).

Section 37.

ภาคผนวก ข.

**INTERNATIONAL ARBITRATION ACT (CHAPTER 143A)**

Act  
23 of 1994  
#CAP 143A  
#COMMDATE 27:01:1995

**Arrangement of Sections**

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## **Long Title**

An Act to make provision for the conduct of international commercial arbitrations based on the Model Law on International Commercial Arbitration adopted by the United Nations Commission on International Trade Law and conciliation proceedings and to give effect to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards and for matters connected therewith.

[27th January 1995]

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### **Part I PRELIMINARY**

#### **1. Short title.**

This Act may be cited as the International Arbitration Act.

## **Part II INTERNATIONAL COMMERCIAL ARBITRATION**

### **2. Interpretation of Part II.**

**(1)** In this Part, unless the context otherwise requires --

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

"arbitration agreement" means an agreement in writing referred to in Article 7 of the Model Law and includes an arbitration clause contained or incorporated by reference in a bill of lading;

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

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

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

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

### **3. Model Law to have force of law.**

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

**(2)** In the Model Law --

"State" means Singapore and any country other than Singapore;

"this State" means Singapore.

### **4. Interpretation of Model Law by use of extrinsic material.**

**(1)** For the purposes of interpreting the Model Law, reference may be made to the documents of --

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

**(b)** its working group for the preparation of the Model Law,

relating to the Model Law.

**(2)** Subsection (1) shall not affect the application of section 9A of the Interpretation Act for the purposes of interpreting this Act.

[Note: Cap. 1.]

## **5. Application of Part II.**

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

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

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

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

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

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

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

**(3)** For the purposes of subsection (2) –

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

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

**(4)** Notwithstanding anything to the contrary in the Arbitration Act, that Act shall not apply to any arbitration to which this Part applies.

[Note: Cap. 10.]

## **6. Enforcement of international arbitration agreement.**



(1) Without prejudice to Article 8 of the Model Law, where any party to an arbitration agreement to which this Act applies institutes any legal proceedings in any court in Singapore against any other party to the agreement in respect of any matter which is the subject of the agreement, any party to the agreement may, at any time after appearance and before delivering any pleadings or taking any other steps in the proceedings, apply to that court to stay the proceedings.

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

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

(4) For the purposes of subsections (1), (2) and (3), a reference to a party includes a reference to any person claiming through or under such party.

#### **7. Court's powers on stay of Admiralty proceedings.**

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

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

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

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

#### **8. Authorities specified for purposes of Article 6 of Model Law.**

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

(2) The Chairman for the time being of the Singapore International Arbitration Centre, or such other person as the Chief Justice may by notification published in the Gazette appoint, shall be taken to have been specified as the authority competent to perform the function under Article 11 (3) and (4) of the Model Law.

## **9. Number of arbitrators for purposes of Article 10**

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

## **10. Appeal under Article 16**

Notwithstanding Article 16 (3) of the Model Law, an appeal from a decision of the High Court made under Article 16 (3) of the Model Law shall lie to the Court of Appeal only with the leave of the High Court; and there shall be no appeal against a refusal for grant of such leave.

## **11. Public policy and arbitrability.**

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

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

## **12. Powers of arbitral tribunal.**

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

- (a) security for costs;
- (b) discovery of documents and interrogatories;
- (c) giving of evidence by affidavit;
- (d) the preservation, interim custody or sale of any property which is the subject-matter of the dispute;
- (e) securing the amount in dispute;
- (f) ensuring that any award which may be made in the arbitral proceedings is not rendered ineffectual by the dissipation of assets by a party; and
- (g) an interim injunction or any other interim measure.

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

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

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

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

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

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

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

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

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

### **13. Witnesses may be summoned by subpoena.**

Any party to an arbitration agreement may take out a writ of subpoena ad testificandum or a writ of subpoena duces tecum, but no person shall be compelled under any such writ to produce any document which he could not be compelled to produce on the trial of an action.

### **14. Power to compel attendance of witness.**

(1) The High Court or a Judge thereof may order that a writ of subpoena ad testificandum or a writ of subpoena duces tecum shall issue to compel the attendance before an arbitral tribunal of a witness wherever he may be within Singapore.

**(2)** The High Court or a Judge thereof may also issue an order under section 27 of the Prisons Act to bring up a prisoner for examination before an arbitral tribunal.

[Note: Cap. 247.]

**15. Settlement or resolution of dispute otherwise than in accordance with Model Law.**

If the parties to an arbitration agreement have (whether in the arbitration agreement or in any other document in writing) agreed that any dispute that has arisen or may arise between them is to be settled or resolved otherwise than in accordance with this Part or the Model Law, this Part and the Model Law shall not apply in relation to the settlement or resolution of that dispute.

**16. Appointment of conciliator.**

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

**(2)** The Chief Justice may if he thinks fit, by notification published in the Gazette, appoint any other person to exercise the powers of the Chairman of the Singapore International Arbitration Centre under subsection (1).

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

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

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

**(4)** Unless a contrary intention appears therein, an agreement which provides for the appointment of a conciliator shall be deemed to contain a provision that in the event of the conciliation proceedings failing to produce a settlement acceptable to the parties within 4 months, or such longer period as the parties

may agree to, of the date of the appointment of the conciliator or, where he is appointed by name in the agreement, of the receipt by him of written notification of the existence of a dispute, the conciliation proceedings shall thereupon terminate.

#### **17. Power of arbitrator to act as conciliator.**

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

(2) An arbitrator or umpire acting as conciliator –

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

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

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

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

#### **18. Award by consent.**

If the parties to an arbitration agreement reach agreement in settlement of their dispute and the arbitral tribunal has recorded the terms of settlement in the form of an arbitral award on agreed terms in accordance with Article 30 of the Model Law, the award shall be treated as an award on an arbitration agreement and may, by leave of the High Court or a Judge thereof, be enforced in the same manner as a judgment or order to the same effect, and where leave is so given, judgment may be entered in terms of the award.

#### **19. Enforcement of awards.**

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

#### **20. Interest on awards.**

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

## **21. Taxation of costs.**

(1) Any costs directed by an award to be paid shall, unless the award otherwise directs, be taxable by the Registrar of the Singapore International Arbitration Centre (referred to in this section as the Registrar).

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

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

(4) The Chief Justice may if he thinks fit, by notification published in the Gazette, appoint any other person to exercise the powers of the Registrar under this section.

## **22. Proceedings to be heard otherwise than in open court.**

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

## **23. Restrictions on reporting of proceedings heard otherwise than in open court.**

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

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

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

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

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

(4) Notwithstanding subsection (3), where a court gives grounds of decision for a judgment in respect of proceedings to which this section applies and considers that judgment to be of major legal interest, the court shall direct that

reports of the judgment may be published in law reports and professional publications but, if any party to the proceedings reasonably wishes to conceal any matter, including the fact that he was such a party, the court shall –

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

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

#### **24. Court may set aside award.**

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

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

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

#### **25. Liability of arbitrator.**

An arbitrator shall not be liable for –

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

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

#### **26. Transitional provisions.**

(1) This Part shall not apply in relation to an international arbitration between parties to an arbitration agreement that was commenced before 27th January 1995 unless the parties have (whether in the agreement or in any other document in writing) otherwise agreed.

(2) Subject to subsection (1), where the arbitral proceedings were commenced before 27 January 1995, the law governing the arbitration agreement and the arbitration shall be the law which would have applied if this Act had not been enacted.

(3) In any written law, agreement in writing or other document, a reference to arbitration under the Arbitration Act shall, so far as relevant and unless the

contrary intention appears, be construed to include a reference to arbitration under this Act.

[Note: Cap. 10.]

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

### **Part III FOREIGN AWARDS**

#### **27. Interpretation of Part III.**

(1) In this Part, unless the context otherwise requires --

"agreement in writing" includes an agreement contained in an exchange of letters, telegrams, telefacsimile or in a communication by teleprinter;

"arbitral award" has the same meaning as in the Convention;

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

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

"Convention country" means a country (other than Singapore) that is a Contracting State within the meaning of the Convention;

"court" means the High Court in Singapore;

"foreign award" means an arbitral award made in pursuance of an arbitration agreement in the territory of a Convention country other than Singapore.

(2) In this Part, where the context so admits, "enforcement", in relation to a foreign award, includes the recognition of the award as binding for any purpose, and "enforce" and "enforced" have corresponding meanings.

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

#### **28. Application of Part III.**

(1) This Part shall apply to arbitration agreements made before 27th January 1995 as it applies to arbitration agreements made on or after that date.



**(2)** This Part shall not apply to foreign awards made before 19th November 1986.

### **29. Recognition and enforcement of foreign awards.**

**(1)** Subject to this Part, a foreign award may be enforced in a court either by action or in the same manner as an award of an arbitrator made in Singapore is enforceable under section 19.

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

### **30. Evidence.**

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

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

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

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

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

### **31. Refusal of enforcement.**

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

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

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

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

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

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

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

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

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

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

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

**(b)** enforcement of the award would be contrary to the public policy of Singapore.

**(5)** Where, in any proceedings in which the enforcement of a foreign award is sought by virtue of this Part, the court is satisfied that an application for the setting aside or for the suspension of the award has been made to a competent authority of the country in which, or under the law of which, the award was made, the court may, if the court considers it proper to do so, adjourn the proceedings or, as the case may be, so much of the proceedings as relates to the award and may, on the application of the party seeking to enforce the award, order the other party to give suitable security.

### **32. Convention countries.**

(1) Where the Minister by an order published in the Gazette declares that any State specified in the order is a Convention country, the order, while in force, shall be evidence of that fact.

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

### **33. Enforcement of awards under other provisions of law.**

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

(2) Notwithstanding section 3 (5) of the Reciprocal Enforcement of Commonwealth Judgments Act, where a foreign award is both enforceable under this Part and registrable as a judgment under that Act, proceedings to enforce the award under this Part may be commenced without any disentitlement to recover any costs of the proceedings, unless otherwise ordered by the court.

[Note: Cap. 264.]

(3) Notwithstanding section 7 of the Reciprocal Enforcement of Foreign Judgments Act, proceedings to enforce a foreign award under this Part may be commenced where the award is both enforceable under this Part and registrable as a judgment under that Act.

[Note: Cap. 265.]

## **Part IV GENERAL**

### **34. Act to bind Government.**

This Act shall bind the Government.

### **35. Rules of Court.**

The Rules Committee constituted under section 80 of the Supreme Court of Judicature Act may make Rules of Court regulating the practice and procedure of any court in respect of any matter under this Act.

[Note: Cap. 322.]

### **36. Transitional.**

Any proceedings commenced by virtue of a provision under the repealed Arbitration (Foreign Awards) Act shall continue as if it had commenced by virtue of the corresponding provision of this Act.

[Note: Cap. 10A.]

## **FIRST SCHEDULE - UNCITRAL MODEL LAW ON INTERNATIONAL COMMERCIAL ARBITRATION**

[Note: Section 2.]

(As adopted by the United Nations Commission on International Trade Law on 21st  
June 1985)

### **CHAPTER I**

#### **GENERAL PROVISIONS**

##### **Article 1. Scope of application\***

- (1)** This Law applies to international commercial arbitration, subject to any agreement in force between this State and any other State or States.
- (2)** The provisions of this Law, except Articles 8, 9, 35 and 36, apply only if the place of arbitration is in the territory of this State.
- (3)** An arbitration is international if:
  - (a)** the parties to an arbitration agreement have, at the time of the conclusion of that agreement, their places of business in different States; or
  - (b)** one of the following places is situated outside the State in which the parties have their places of business:
    - (i)** the place of arbitration if determined in, or pursuant to, the arbitration agreement;
    - (ii)** any place where a substantial part of the obligations of the commercial relationship is to be performed or the place with which the subject-matter of the dispute is most closely connected; or
  - (c)** the parties have expressly agreed that the subject-matter of the arbitration agreement relates to more than one country.
- (4)** For the purposes of paragraph (3) of this Article:
  - (a)** if a party has more than one place of business, the place of business is that which has the closest relationship to the arbitration agreement;
  - (b)** if a party does not have a place of business, reference is to be made to his habitual residence.

**(5)** This Law shall not affect any other law of this State by virtue of which certain disputes may not be submitted to arbitration or may be submitted to arbitration only according to provisions other than those of this Law.

## **Article 2. Definitions and rules of interpretation**

For the purposes of this Law:

**(a)** "arbitration" means any arbitration whether or not administered by a permanent arbitral institution;

**(b)** "arbitral tribunal" means a sole arbitrator or a panel of arbitrators;

**(c)** "court" means a body or organ of the judicial system of a State;

**(d)** where a provision of this Law, except Article 28, leaves the parties free to determine a certain issue, such freedom includes the right of the parties to authorise a third party, including an institution, to make that determination;

**(e)** where a provision of this Law refers to the fact that the parties have agreed or that they may agree or in any other way refers to an agreement of the parties, such agreement includes any arbitration rules referred to in that agreement;

**(f)** where a provision of this Law, other than in Articles 25 (a) and 32 (2) (a), refers to a claim, it also applies to a counter-claim, and where it refers to a defence, it also applies to a defence to such counter-claim.

## **Article 3. Receipt of written communications**

**(1)** Unless otherwise agreed by the parties:

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

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

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

## **Article 4. Waiver of right to object**

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

#### **Article 5. Extent of court intervention**

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

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

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

## **CHAPTER II**

### **ARBITRATION AGREEMENT**

#### **Article 7. Definition and form of arbitration agreement**

(1) "Arbitration agreement" is an agreement by the parties to submit to arbitration all or certain disputes which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not. An arbitration agreement may be in the form of an arbitration clause in a contract or in the form of a separate agreement.

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

#### **Article 8. Arbitration agreement and substantive claim before court**

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

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

#### **Article 9. Arbitration agreement and interim measures by court**

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

### **CHAPTER III**

#### **COMPOSITION OF ARBITRAL TRIBUNAL**

#### **Article 10. Number of arbitrators**

(1) The parties are free to determine the number of arbitrators.

(2) Failing such determination, the number of arbitrators shall be three.

#### **Article 11. Appointment of arbitrators**

(1) No person shall be precluded by reason of his nationality from acting as an arbitrator, unless otherwise agreed by the parties.

(2) The parties are free to agree on a procedure of appointing the arbitrator or arbitrators, subject to the provisions of paragraphs (4) and (5) of this Article.

(3) Failing such agreement,

(a) in an arbitration with three arbitrators, each party shall appoint one arbitrator, and the two arbitrators thus appointed shall appoint the third arbitrator; if a party fails to appoint the arbitrator within thirty days of receipt of a request to do so from the other party, or if the two arbitrators fail to agree on the third arbitrator within thirty days of their appointment, the appointment shall be made, upon request of a party, by the court or other authority specified in Article 6;

(b) in an arbitration with a sole arbitrator, if the parties are unable to agree on the arbitrator, he shall be appointed, upon request of a party, by the court or other authority specified in Article 6.

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

(a) a party fails to act as required under such procedure; or

(b) the parties, or two arbitrators, are unable to reach an agreement expected of them under such procedure; or

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

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

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

#### **Article 12. Grounds for challenge**

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

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

#### **Article 13. Challenge procedure**

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

(2) Failing such agreement, a party who intends to challenge an arbitrator shall, within fifteen days after becoming aware of the constitution of the arbitral tribunal or after becoming aware of any circumstance referred to in Article 12 (2), send a written statement of the reasons for the challenge to the arbitral tribunal. Unless the challenged arbitrator withdraws from his office or the other party agrees to the challenge, the arbitral tribunal shall decide on the challenge.

(3) If a challenge under any procedure agreed upon by the parties or under the procedure of paragraph (2) of this Article is not successful, the challenging party may request, within thirty days after having received notice of the decision rejecting the challenge, the court or other authority specified in Article 6 to decide on the challenge, which decision shall be subject to no



appeal; while such a request is pending, the arbitral tribunal, including the challenged arbitrator, may continue the arbitral proceedings and make an award.

#### **Article 14. Failure or impossibility to act**

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

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

#### **Article 15. Appointment of substitute arbitrator**

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

### **CHAPTER IV**

#### **JURISDICTION OF ARBITRAL TRIBUNAL**

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

(1) The arbitral tribunal may rule on its own jurisdiction, including any objections with respect to the existence or validity of the arbitration agreement. For that purpose, an arbitration clause which forms part of a contract shall be treated as an agreement independent of the other terms of the contract. A decision by the arbitral tribunal that the contract is null and void shall not entail ipso jure the invalidity of the arbitration clause.

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

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

#### **Article 17. Power of arbitral tribunal to order interim measures**

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

### **CHAPTER V**

#### **CONDUCT OF ARBITRAL PROCEEDINGS**

#### **Article 18. Equal treatment of parties**

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

#### **Article 19. Determination of rules of procedure**

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

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

#### **Article 20. Place of arbitration**

(1) The parties are free to agree on the place of arbitration. Failing such agreement, the place of arbitration shall be determined by the arbitral tribunal having regard to the circumstances of the case, including the convenience of the parties.

(2) Notwithstanding the provisions of paragraph (1) of this Article, the arbitral tribunal may, unless otherwise agreed by the parties, meet at any place it considers appropriate for consultation among its members, for hearing witnesses, experts or the parties, or for inspection of goods, other property or documents.

#### **Article 21. Commencement of arbitral proceedings**

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

#### **Article 22. Language**

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

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

#### **Article 23. Statements of claim and defence**

(1) Within the period of time agreed by the parties or determined by the arbitral tribunal, the claimant shall state the facts supporting his claim, the points at issue and the relief or remedy sought, and the respondent shall state his defence in respect of these particulars, unless the parties have otherwise agreed as to the required elements of such statements. The parties may submit with their statements all documents they consider to be relevant or may add a reference to the documents or other evidence they will submit.

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

#### **Article 24. Hearings and written proceedings**

(1) Subject to any contrary agreement by the parties, the arbitral tribunal shall decide whether to hold oral hearings for the presentation of evidence or for oral argument, or whether the proceedings shall be conducted on the basis of documents and other materials. However, unless the parties have agreed that no hearings shall be held, the arbitral tribunal shall hold such hearings at an appropriate stage of the proceedings, if so requested by a party.

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

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

### **Article 25. Default of a party**

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

- (a) the claimant fails to communicate his statement of claim in accordance with Article 23 (1), the arbitral tribunal shall terminate the proceedings;
- (b) the respondent fails to communicate his statement of defence in accordance with Article 23 (1), the arbitral tribunal shall continue the proceedings without treating such failure in itself as an admission of the claimant's allegations;
- (c) any party fails to appear at a hearing or to produce documentary evidence, the arbitral tribunal may continue the proceedings and make the award on the evidence before it.

### **Article 26. Expert appointed by arbitral tribunal**

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

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

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

### **Article 27. Court assistance in taking evidence**

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

## **CHAPTER VI**

### **MAKING OF AWARD AND TERMINATION OF PROCEEDINGS**

### **Article 28. Rules applicable to substance of dispute**

(1) The arbitral tribunal shall decide the dispute in accordance with such rules of law as are chosen by the parties as applicable to the substance of the dispute. Any designation of the law or legal system of a given State shall be

construed, unless otherwise expressed, as directly referring to the substantive law of that State and not to its conflict of laws rules.

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

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

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

#### **Article 29. Decision-making by panel of arbitrators**

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

#### **Article 30. Settlement**

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

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

#### **Article 31. Form and contents of award**

(1) The award shall be made in writing and shall be signed by the arbitrator or arbitrators. In arbitral proceedings with more than one arbitrator, the signatures of the majority of all members of the arbitral tribunal shall suffice, provided that the reason for any omitted signature is stated.

(2) The award shall state the reasons upon which it is based, unless the parties have agreed that no reasons are to be given or the award is an award on agreed terms under Article 30.

(3) The award shall state its date and the place of arbitration as determined in accordance with Article 20 (1). The award shall be deemed to have been made at that place.

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

**Article 32. Termination of proceedings**

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

**Article 33. Correction and interpretation of award; additional award**

- (1) Within thirty days of receipt of the award, unless another period of time has been agreed upon by the parties:
  - (a) a party, with notice to the other party, may request the arbitral tribunal to correct in the award any errors in computation, any clerical or typographical errors or any errors of similar nature;
  - (b) if so agreed by the parties, a party, with notice to the other party, may request the arbitral tribunal to give an interpretation of a specific point or part of the award.

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

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

## CHAPTER VII

### RECOURSE AGAINST AWARD

#### **Article 34. Application for setting aside as exclusive recourse against arbitral award**

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

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

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

(i) a party to the arbitration agreement referred to in Article 7 was under some incapacity; or the said agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law of this State; or

(ii) the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or

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

(iv) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless such agreement was in conflict with a provision of this Law from which the parties cannot derogate, or, failing such agreement, was not in accordance with this Law; or

(b) the court finds that:

(i) the subject-matter of the dispute is not capable of settlement by arbitration under the law of this State; or

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

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

(4) The court, when asked to set aside an award, may, where appropriate and so requested by a party, suspend the setting aside proceedings for a period of time determined by it in order to give the arbitral tribunal an opportunity to resume the arbitral proceedings or to take such other action as in the arbitral tribunal's opinion will eliminate the grounds for setting aside.

## **CHAPTER VIII**

### **RECOGNITION AND ENFORCEMENT OF AWARDS\***

[Note: \*Chapter VIII does not have the force of law in Singapore by virtue of section 3 (1).]

#### **Article 35. Recognition and enforcement**

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

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

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

#### **Article 36. Grounds for refusing recognition or enforcement**

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

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

(i) a party to the arbitration agreement referred to in Article 7 was under some incapacity; or the said agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law of the country where the award was made; or



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

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

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

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

(b) if the court finds that:

(i) the subject-matter of the dispute is not capable of settlement by arbitration under the law of this State; or

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

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

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

[Note: Section 27 (1).

**ARTICLE I**

1. This Convention shall apply to the recognition and enforcement of arbitral awards made in the territory of a State other than the State where the recognition and enforcement of such awards are sought, and arising out of differences between

persons, whether physical or legal. It shall also apply to arbitral awards not considered as domestic awards in the State where their recognition and enforcement are sought.

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

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

## ARTICLE II

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

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

3. The court of a Contracting State, when seized of an action in a matter in respect of which the parties have made an agreement within the meaning of this Article, at the request of one of the parties, refer the parties to arbitration, unless it finds that the said agreement is null and void, inoperative or incapable of being performed.

## ARTICLE III

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

## ARTICLE IV

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

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

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

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

## ARTICLE V

1. Recognition and enforcement of the award may be refused, at the request of the party against whom it is invoked, only if that party furnishes to the competent authority where the recognition and enforcement is sought, proof that –

**(a)** the parties to the agreement referred to in Article II were, under the law applicable to them, under some incapacity, or the said agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law of the country where the award was made; or

**(b)** the party against whom the award is invoked was not given proper notice of the appointment of the arbitrator or of the arbitration proceedings or was otherwise unable to present his case; or

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

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

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

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

**(a)** the subject-matter of the difference is not capable of settlement by arbitration under the law of that country; or

**(b)** the recognition or enforcement of the award would be contrary to the public policy of that country.

#### **ARTICLE VI**

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

#### **ARTICLE VII**

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

#### **ARTICLE VIII**

1. This Convention shall be open until 31st December 1958 for signature on behalf of any Member of the United Nations and also on behalf of any other State which is or hereafter becomes a member of any specialised agency of the United Nations, or which is or hereafter becomes a party to the Statute of the International Court of Justice, or any other State to which an invitation has been addressed by the General Assembly of the United Nations.
2. This Convention shall be ratified and the instrument of ratification shall be deposited with the Secretary-General of the United Nations.

#### **ARTICLE IX**

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

#### **ARTICLE X**

1. Any State may, at the time of signature, ratification or accession, declare that this Convention shall extend to all or any of the territories for the international relations of which it is responsible. Such a declaration shall take effect when the Convention enters into force for the State concerned.

2. At any time thereafter any such extension shall be made by notification addressed to the Secretary-General of the United Nations and shall take effect as from the ninetieth day after the day of receipt by the Secretary-General of the United Nations of this notification, or as from the date of entry into force of the Convention for the State concerned, whichever is the later.

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

### **ARTICLE XI**

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

(a) with respect to those Articles of this Convention that come within the legislative jurisdiction of the federal authority, the obligations of the federal Government shall to this extent be the same as those of Contracting States which are not federal States;

(b) with respect to those Articles of this Convention that come within the legislative jurisdiction of constituent States or provinces which are not, under the constitutional system of the federation, bound to take legislative action, the federal Government shall bring such articles with a favourable recommendation to the notice of the appropriate authorities of constituent States or provinces at the earliest possible moment;

(c) a federal State Party to this Convention shall, at the request of any other Contracting State transmitted through the Secretary-General of the United Nations, supply a statement of the law and practice of the federation and its constituent units in regard to any particular provision of this Convention, showing the extent to which effect has been given to that provision by legislative or other action.

### **ARTICLE XII**

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

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

### **ARTICLE XIII**

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

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

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

#### **ARTICLE XIV**

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

#### **ARTICLE XV**

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

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

#### **ARTICLE XVI**

1. This Convention, of which the Chinese, English, French, Russian and Spanish texts shall be equally authentic, shall be deposited in the archives of the United Nations.

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

## ภาคผนวก ค.

Table: Statutory and Similar Sources

singapore	model law	english 96	Cap10	Foreign Award
section	article	section	section	Section
1				
2	7			
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5	1	2,3		
6	8	9		
7		11		
8	11			
9	10(2)			
10	16	69(3)(b)		
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12	17			
12(1)		38(3)	Schedule 2	
12(2)		38(5)	Schedule 2	
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20		49	cap10 s. 29	
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28				fw, s.3
29				fw, s.4
30				fw, s.6
31				fw, s.7
32				fw, s.8
33				fw, s.9
34				
35				
36				

Singapore: International Arbitration 1994.

Model Law : Uncitral Model Law on International Commercial Arbitraion 1985

English 96: English Arbitration Act. 1996.

Cap10 : the Arbitration Act 1953 (Cap10)

Foreign Award: the Arbitration (Foreign Award) Act. 1986.



## ภาคผนวก ง.

## Comparative Table of Topics Covered by IAA and Arbitration Act.

<b>International Arbitration Act (IAA)</b> <b>(Sections refer to those in the Act;</b> <b>Articles refer to those of the Model</b> <b>Law)</b>	<b>Arbitration Act. (Cap. 10)</b>
1. Applies to international arbitrations unless parties opt out, and to non-international arbitrations if “international arbitrations” given separate definition in Part III (New York Convention) for enforcement of foreign awards.	1. Applies to domestic and international arbitrations; definition of “domestic arbitration” given only for purposes of exclusion agreements under s. 30
2. Reference to travaux préparatoires allowed for interpretation (s. 4)	2. Not applicable
3. Requirement that arbitration agreement be in writing, with examples given (s.2(1) and Art. 7)	3. Requirement that arbitration agreement be in writing (s.2)
4. Receipt of written communications (Art. 3)	4. Silent
5. Waiver of right to object (Art. 4.)	5. Silent
6. Court intervention: ss 6-8, 10, 12,14, 18,19-24, 31 and Arts. 5, 8-9, 11(3)-(5), 16(3), 27, 34 Appeals from High Court to Court of Appeals (s. 10): Limited avenue of appeal	6. Court intervention; ss 7-8, 9(2), 11-12, 15, 16, 17-19, 21-32 s. 28 Judicial review of awards: when appeals from arbitrator’s decision to court s. 29 Determination of preliminary question by court Ss 30-31 Exclusion agreements excluding appeals to Court of Appeal
7. Court to enforce arbitration	7. S. 7: Court to enforce unless as

agreement (ss 6, 11 and Art. 8) unless arbitration is null and void or inoperative or incapable of being performed, or arbitration agreement if contrary to public policy	set out in s 7(2) Arbitration agreement irrevocable unless parties agree to contrary (s. 3) No grounds stated for refusal to enforce agreement
8. Number of arbitrators where parties do not state to be one (s. 9)	8. Same: First Schedule , para 1
9. Appointment of arbitrators (Art. 11)	9. Appointment by parties: First Schedule, paras 1-2, and power of court to appoint (ss. 8-9, 19)
10. Challenge of arbitrator (Art. 12-13)	10. Ss. 12, 18-19.
11. Failure/impossibility to act and substitution (Art. 14-15)	11. S. 8
12. Public policy against arbitration agreement and arbitrability	12. Absent
13. Power of tribunal to make interim orders (s. 12 and Art. 17) Power of court to make interim and other orders (ss 6(3), 7, and Art. 12(6))	13. Power of court to make interim orders (s. 32 and Second Schedule)
14. Oaths, witnesses and production of documents (ss 13, 14, and Art. 27)	14. Ss 13-14, 26.
15. Jurisdiction of tribunal including Kompetenz-kompetenz (Art. 6)	15. Silent
16. Principles for conduct of arbitral proceedings (Arts 18-27): (a) Equal Treatment of parties (b) Rules of procedure	16. Generally, First Schedule  Silent Silent

<p>(c) Place of arbitration  (d) Commencement of arbitral proceedings  (e) Language(s) of the arbitration  (f) Statements of claim and defence  (g) Hearings and written proceedings  (h) Default of party  (i) Appointment of expert by tribunal  (j) Court assistance in taking evidence (s 14 as well)</p>	<p>Silent  S 37    Silent  Silent    Silent    First Schedule, para 4-5  Silent    S 14</p>
<p>17. Conciliation be force arbitration if agreed (ss. 16-17)</p>	<p>17. Silent</p>
<p>18. Award-making/termination of proceedings  (a) Applicable law (Art. 28)  28(1): law chosen by parties  28(2): conflict of law rules  28(3): ex aequo et bono and amiable compositeur if agreed  28(4): terms of contract and trade usages applicable  (b) Decision-making by panel  (c) Settlement and record in award (s. 18 and Art. 30)  (d) Form and contents of award (Art. 31)  (e) Termination of proceedings (Art. 32)  (f) Correction and interpretation of award, additional award (Art. 33)  Relief which can be granted:  Section 12(4)  Silent</p>	<p>18. S 15 and First Schedule, para 6    Silent        S. 10  Silent    Silent    Silent    Silent    Silent    Court can enlarge time for making award: s. 15.</p>
<p>19. Enforcement of awards (s. 19 for PartII awards, and Part III for foreign awards); procedure not</p>	<p>19. S. 20: Enforcement as if High Court judgement. Procedure for registration and enforcement of</p>

set out.	awards set out in Order 69, Rules 6 and 7, Rules of the Supreme Court, 1990 Ed, Subsidiary Legislation 274/70
20. Interest on awards (s. 20)	20. S. 33
21. Taxation and costs (s. 24)	21. S. 34-36 and First Schedules, para 7
22. Whether court proceedings to be in open court (s. 23)	22. Silent
23. Power of Court to set aside award (s. 24 and Art. 34)	23. Power of Court to set aside award (s. 17)
24. Immunity of arbitrators	24. Silent
25. Opt-in/opt-out choice (ss. 5(1) and 15)	25. Parties' contrary intention provided for in some section, eg, ss 3 and 6
26. Silent	26. Death or bankruptcy of party (ss 4-5)
27. Absent	27. Appointment of umpire (s. 11 and First Schedule, paras 2-3)
28. Not expressly stated	28. Award to be final and binding (First Schedule, para 6)
29. Absent	29. Arbitrators may order specific performance (First Schedule, para 8) in cases other than those relating to land
30. Not expressly stated but s. 2(1) definition of "award" includes "any interim, interlocutory or partial award"	30. Arbitrators may make interim awards (First Schedule, para 9)

31. Absent	31. Procedure for court to refer case to special referee (ss 21-25)
32. Absent	32. Powers of court (s. 27 and Second Schedule)
33. Absent	33. Court may order charge over property (s. 38)

## ประวัติผู้เขียน

นางสาวลัดดาวัลย์ อรุณขจรศักดิ์ เกิดวันที่ 24 ธันวาคม 2517 จบการศึกษาระดับปริญญาตรีชั้นต้น จากโรงเรียนพาณิชย์การราชดำเนินธนบุรี เมื่อปี 2535 และเข้าศึกษาต่อในระดับปริญญาตรีที่ มหาวิทยาลัยอัสสัมชัญ คณะนิติศาสตร์ โดยสำเร็จการศึกษาในปี 2539 จากนั้นเข้าทำงานที่สำนักกฎหมายมนตรี อานุกาฬ และอุกฤษฏ์ จำกัด และได้เข้าศึกษาต่อในระดับปริญญาโทที่ จุฬาลงกรณ์มหาวิทยาลัย คณะนิติศาสตร์ สาขากฎหมายระหว่างประเทศ ในปี 2540

