



AN BILLE EADRÁNA 2008
ARBITRATION BILL 2008

Mar a tionscnaíodh
As initiated

ARRANGEMENT OF SECTIONS

PART 1

PRELIMINARY AND GENERAL

Section

1. Short title and commencement.
2. Interpretation.
3. Application of Act.
4. Repeals and effect of repeals.
5. Expenses.

PART 2

ARBITRATION

6. Adoption of Model Law.
7. Commencement of arbitral proceedings.
8. Construction of Model Law and construction of arbitration clauses.
9. Functions of High Court.
10. Court powers exercisable in support of arbitral proceedings.
11. Determination of court to be final.
12. Time limits for setting aside awards on grounds of public policy.
13. Default number of arbitrators.
14. Examination of witnesses.
15. Taking evidence in State in aid of foreign arbitration.

16. Consolidation of and concurrent arbitrations.
17. Reference of interpleader to arbitration.
18. Interest.
19. Security for costs.
20. Recoverability of costs, fees and expenses of tribunal.
21. Restriction on liability of arbitrators, etc.
22. Effect of award.
23. New York Convention, Geneva Convention and Geneva Protocol.
24. Non-application of provisions of Act to Washington Convention, save in certain circumstances.
25. Survival of agreement and authority of arbitral tribunal in event of death.
26. Provisions in event of bankruptcy.
27. Full applicability to State parties.
28. Application of Act to other arbitrations.
29. Exclusion of certain arbitrations.
30. Arbitration agreements and small claims, etc.

PART 3

REFERENCE TO ARBITRATION UNDER ORDER OF COURT

31. Power of High Court and Circuit Court to refer certain matters to arbitration.

PART 4

OPTIONAL ADDITIONAL GROUNDS FOR SETTING ASIDE AWARD IN STANDARD ARBITRATIONS

32. Additional grounds for setting aside arbitral award in standard arbitrations.

PART 5

SPECIAL OVERSIGHT IN CONSUMER ARBITRATIONS AND IN OTHER STANDARD ARBITRATIONS WHERE EXPRESSLY AGREED

33. Interpretation of Part.
34. Special oversight.
35. Consumer arbitrations.
36. Special oversight in other standard arbitrations where agreed.

SCHEDULE 1

TEXT OF UNCITRAL MODEL LAW ON INTERNATIONAL
COMMERCIAL ARBITRATION

SCHEDULE 2

TEXT OF 1958 CONVENTION ON THE RECOGNITION AND
ENFORCEMENT OF FOREIGN ARBITRAL AWARDS

SCHEDULE 3

TEXT OF 1965 CONVENTION ON THE SETTLEMENT OF
INVESTMENT DISPUTES BETWEEN STATES AND
NATIONALS OF OTHER STATES

SCHEDULE 4

TEXT OF 1927 CONVENTION ON THE EXECUTION OF
FOREIGN ARBITRAL AWARDS

SCHEDULE 5

TEXT OF 1923 PROTOCOL ON ARBITRATION CLAUSES

ACTS REFERRED TO

Arbitration Acts 1954 to 1998

Industrial Relations Act 1946

1946, No. 26

Landlord and Tenant (Ground Rents) Act 1967

1967, No. 3

Merchant Shipping Act 1894

57 & 58 Vict., c. 60



AN BILLE EADRÁNA 2008
ARBITRATION BILL 2008

BILL

entitled

5 AN ACT TO FURTHER AND BETTER FACILITATE RESOL-
UTION OF DISPUTES BY ARBITRATION; TO GIVE THE
FORCE OF LAW TO THE UNCITRAL MODEL LAW ON
INTERNATIONAL COMMERCIAL ARBITRATION (AS
10 AMENDED BY THE UNITED NATIONS COMMISSION
ON INTERNATIONAL TRADE LAW ON 7 JULY 2006) IN
RESPECT OF BOTH INTERNATIONAL ARBITRATION
AND OTHER ARBITRATION; TO GIVE THE FORCE OF
LAW IN PART TO THE PROTOCOL ON ARBITRATION
15 CLAUSES OPENED AT GENEVA ON THE 24TH DAY OF
SEPTEMBER 1923, THE CONVENTION ON THE EX-
ECUTION OF FOREIGN ARBITRAL AWARDS DONE AT
GENEVA ON THE 26TH DAY OF SEPTEMBER 1927, THE
CONVENTION ON THE RECOGNITION AND ENFORCE-
20 MENT OF FOREIGN ARBITRAL AWARDS DONE AT
NEW YORK ON 10 JUNE 1958 AND TO THE CONVEN-
TION ON THE SETTLEMENT OF INVESTMENT DIS-
PUTES BETWEEN STATES AND NATIONALS OF
OTHER STATES OPENED FOR SIGNATURE IN WASH-
25 INGTON ON 18 MARCH 1965; TO REPEAL THE ARBI-
TRATION ACTS 1954 TO 1998; AND TO PROVIDE FOR
RELATED MATTERS.

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

PART 1

PRELIMINARY AND GENERAL

30 **1.—(1)** This Act may be cited as the Arbitration Act 2008.

Short title and
commencement.

(2) This Act shall come into operation on such day or days as the Minister may appoint by order or orders either generally or with reference to any particular purpose or provision and different days may be so appointed for different purposes or provisions.

2.—(1) In this Act:

“arbitration” means—

- (a) an international commercial arbitration, or
- (b) a standard arbitration;

“arbitration agreement” shall be construed in accordance with 5
Option 1 of Article 7;

“award” includes a partial award;

“standard arbitration” means any arbitration which is not an inter-
national commercial arbitration;

“Geneva Convention” means the Convention on the Execution of 10
Foreign Arbitral Awards done at Geneva on the 26th day of
September, 1927, the text of which is set out in *Schedule 4*;

“Geneva Protocol” means the Protocol on Arbitration Clauses op-
ened at Geneva on the 24th day of September, 1923, the text of
which is set out in *Schedule 5*; 15

“Minister” means the Minister for Justice, Equality and Law Reform;

“Model Law” means the UNCITRAL Model Law on International
Commercial Arbitration (as adopted by the United Nations Com-
mission on International Trade Law on 21 June 1985, with amend-
ments as adopted by that Commission at its thirty-ninth session on 7 20
July 2006), the text of which is set out in *Schedule 1*;

“New York Convention” means the Convention on the Recognition
and Enforcement of Foreign Arbitral Awards, done at New York on
10 June 1958, the text of which is set out in *Schedule 2*;

“State authority” means— 25

- (a) a Minister of the Government,
- (b) the Commissioners of Public Works in Ireland,
- (c) the Irish Land Commission,
- (d) the Revenue Commissioners,
- (e) a body established by or under any enactment, and 30
financed wholly or partly, whether directly or indirectly,
by moneys provided, or loans made or guaranteed, by a
Minister of the Government or the issue of shares held
by or on behalf of any Minister of the Government;

“Washington Convention” means the Convention on the Settlement 35
of Investment Disputes between States and Nationals of Other States
opened for signature in Washington on 18 March 1965, the text of
which is set out in *Schedule 3*.

(2) In this Act—

(a) a word or expression that is used in this Act and that is also used in the Model Law has, unless the context otherwise requires, the same meaning in this Act as it has in the Model Law, and

5 (b) a reference to an Article is a reference to an Article of the Model Law.

3.—(1) This Act shall apply to arbitration agreements concerning— Application of Act.

(a) international commercial arbitrations, or

10 (b) standard arbitrations,

entered into on or after the commencement of this section.

(2) Where the parties so agree, this Act shall apply to an arbitration under an arbitration agreement entered into before the commencement of this section.

15 4.—(1) Subject to *subsection (2)*, the Arbitration Acts 1954 to 1998 are repealed. Repeals and effect of repeals.

(2) The repeal of the Acts referred to in *subsection (1)* shall not prejudice or affect any proceedings, whether or not pending at the time of the repeal, in respect of any right, privilege, obligation or liability and any proceedings taken under those Acts in respect of any such right, privilege, obligation or liability acquired, accrued or incurred under the Acts may be instituted, continued or enforced as if the Acts concerned had not been repealed.

20 (3) In this section “proceedings” includes arbitral proceedings and civil or criminal proceedings.

25 5.—The expenses incurred by the Minister in the administration of this Act shall, to such extent as may be sanctioned by the Minister for Finance, be paid out of moneys provided by the Oireachtas. Expenses.

PART 2

ARBITRATION

30 6.—Subject to this Act, the Model Law shall have the force of law in the State and shall apply to arbitration agreements concerning— Adoption of Model Law.

(a) international commercial arbitrations, or

(b) standard arbitrations.

35 7.—Article 21 applies for the purposes of commencement of arbitral proceedings under this Act and for the purposes of section 496 of the Merchant Shipping Act 1894. Commencement of arbitral proceedings.

Construction of Model Law and construction of arbitration clauses.

8.—(1) Judicial notice shall be taken of the *travaux préparatoires* of the United Nations Commission on International Trade Law and its working group relating to the preparation of the Model Law.

(2) The *travaux préparatoires* referred to in *subsection (1)* may be considered when interpreting the meaning of any provision of the Model Law and shall be given such weight as is appropriate in the circumstances. 5

(3) Where parties agree that disputes under a contract or agreement or disputes arising out of a contract or agreement shall be submitted to arbitration, this shall include disputes as to whether there was a contract or agreement at all, unless the parties agree otherwise. 10

Functions of High Court.

9.—(1) The High Court is—

(a) specified for the purposes of Article 6,

(b) the relevant court for the purposes of Article 9, and

(c) the court of competent jurisdiction for the purposes of Articles 17H, 17I, 17J, 27, 35 and 36. 15

(2) The functions of the High Court—

(a) under an Article referred to in *subsection (1)*,

(b) under *sections 10, 22 or 24*,

shall be performed by the President or by such other judge of the High Court as may be nominated by the President, subject to any rules of court made in that behalf. 20

(3) An application may be made in summary manner to the President or to such other judge of the High Court as may be nominated by the President under *subsection (2)*. 25

(4) In this section “President” means the President of the High Court.

Court powers exercisable in support of arbitral proceedings.

10.—(1) Subject to *subsection (2)*, the High Court shall have the same powers in relation to Articles 9 and 27 as it has in any other action or matter before the Court. 30

(2) When exercising any powers in respect of Articles 9 or 27, the High Court shall not, unless otherwise agreed by the parties, make any order relating to security for costs of the arbitration or make any order for discovery of documents.

Determination of court to be final.

11.—There shall be no appeal from— 35

(a) any court determination of a stay application, pursuant to Article 8(1) of the Model Law or Article II(3) of the New York Convention,

(b) any determination by the High Court—

(i) of an application for setting aside an award under Article 34 of the Model Law, or 40

(ii) of an application under Chapter VIII of the Model Law for the recognition and enforcement of an award made in an international commercial arbitration, or

5 (c) any determination by the High Court in relation to an application to recognise or enforce an arbitral award pursuant to the Geneva Convention, New York Convention or Washington Convention.

10 **12.**—Notwithstanding Article 34(3), an application to the High Court to set aside an award on the grounds that the award is in conflict with the public policy of the State shall, unless the parties otherwise agree, be made within a period of 56 days from the date on which the circumstances giving rise to the application became known or ought reasonably to have become known to the party
15 concerned.

Time limits for setting aside awards on grounds of public policy.

13.—Unless otherwise agreed by the parties, the arbitral tribunal shall consist of one arbitrator only.

Default number of arbitrators.

14.—Unless otherwise agreed by the parties, the arbitral tribunal may for the purposes of the arbitral proceedings concerned—

Examination of witnesses.

20 (a) direct that a party to an arbitration agreement or a witness who gives evidence in proceedings before the arbitral tribunal be examined on oath, and

(b) administer oaths for the purposes of the examination.

25 **15.**—The reference in Article 27 to an arbitral tribunal includes a reference to an arbitral tribunal conducting arbitral proceedings in a place other than the State.

Taking evidence in State in aid of foreign arbitration.

16.—(1) Where the parties to an arbitration agreement so agree—

Consolidation of and concurrent arbitrations.

30 (a) arbitral proceedings shall be consolidated with other arbitral proceedings, including arbitral proceedings involving a different party or parties with the agreement of that party or parties,

(b) concurrent hearings shall be held,

on such terms as may be agreed between the parties concerned.

35 (2) The arbitral tribunal shall not order the consolidation of proceedings or concurrent hearings unless the parties agree to the making of such an order.

40 **17.**—Where in legal proceedings, relief by way of interpleader is granted by a court and it appears to the court that the issue between the claimants is one in respect of which there is an arbitration agreement between the claimants, the court shall direct that the issue between the claimants be determined in accordance with the agreement.

Reference of interpleader to arbitration.

Interest.

18.—(1) The parties to an arbitration agreement may agree on the arbitral tribunal’s powers regarding the award of interest.

(2) Unless otherwise agreed by the parties, the arbitral tribunal may award simple or compound interest from the dates, at the rates and with the rests that it considers fair and reasonable— 5

(a) on all or part of any amount awarded by the arbitral tribunal, in respect of any period up to the date of the award, or

(b) on all or part of any amount claimed in the arbitration and outstanding at the commencement of the arbitration but paid before the award was made, in respect of any period up to the date of payment. 10

(3) Unless otherwise agreed by the parties, the arbitral tribunal may award simple or compound interest from the date of the award (or any later date) until payment, at the rates and with the rests that it considers fair and reasonable, on the outstanding amount of any award (including any award of interest under *subsection (2)* and any award of costs). 15

(4) References in this section to an amount awarded by the arbitral tribunal include an amount payable in consequence of a declaratory award by the arbitral tribunal. 20

(5) This section is without prejudice to any other power of the arbitral tribunal to award interest.

Security for costs.

19.—(1) Without prejudice to the generality of Article 19, the arbitral tribunal may, unless otherwise agreed by the parties, order a party to provide security for the costs of the arbitration. 25

(2) A party shall not be ordered by an arbitral tribunal to provide security for the costs of the arbitration solely on the ground that the party is—

(a) an individual who is domiciled, ordinarily resident, or carrying on business outside the State, or 30

(b) a body corporate established under a law of a place other than the State or whose central management and control is situated outside the State.

Recoverability of costs, fees and expenses of tribunal.

20.—(1) The parties to an arbitration agreement may make such provision as to the costs of the arbitration as they see fit. 35

(2) An agreement of the parties to arbitrate subject to the rules of an arbitral institution shall be deemed to be an agreement to abide by the rules of that institution as to the costs of the arbitration.

(3) Where no provision for costs is made as referred to in *subsection (1)*, the arbitral tribunal may, subject to *subsection (4)*, determine by award those costs as it sees fit. 40

(4) In the case of an arbitration (other than an international commercial arbitration) the arbitral tribunal shall, unless otherwise agreed by the parties— 45

(a) in a standard arbitration agreement, or

(b) at any time prior to the conclusion of an arbitral hearing,

5 make an order for the taxation of costs of the arbitration by a Taxing Master of the High Court or, as the case may be, the County Registrar, and the Taxing Master, or as the case may be, the County Registrar, shall have all the functions for the time being provided for in any enactment or in any rules of court relating to such matters.

(5) Where the arbitral tribunal makes a determination under *subsection (3)*, it shall specify—

(a) the grounds on which it acted,

10 (b) the items of recoverable costs, fees or expenses, as appropriate, and the amount referable to each, and

(c) by and to whom they shall be paid.

(6) In this section references to costs include costs as between the parties and the fees and expenses of the arbitral tribunal.

15 **21.**—(1) An arbitrator shall not be liable in any proceedings for anything done or omitted in the discharge or purported discharge of his or her functions. Restriction on liability of arbitrators, etc.

20 (2) *Subsection (1)* shall apply to an employee, agent or advisor of an arbitrator and to an expert appointed under Article 26, as it applies to the arbitrator.

(3) An arbitral or other institution or person designated or requested by the parties to appoint or nominate an arbitrator shall not be liable for anything done or omitted in the discharge or purported discharge of that function.

25 (4) An arbitral or other institution or person by whom an arbitrator is appointed or nominated shall not be liable for anything done or omitted by the arbitrator (or his or her employees or agents) in the discharge or purported discharge of his or her functions as arbitrator.

30 (5) *Subsections (3) and (4)* shall apply to an employee or agent of an arbitral or other institution or person as they apply to that arbitral or other institution or that person mentioned in those subsections.

35 (6) A witness who gives evidence in proceedings before an arbitral tribunal shall have the same privileges and immunities as witnesses have in proceedings before the High Court.

22.—(1) An award (other than an award within the meaning of *section 24*) made by an arbitral tribunal under an arbitration agreement shall be enforceable in the State either by action or, by leave of the High Court, in the same manner as a judgment or order of that Court with the same effect and where leave is given, judgment may be entered in terms of the award. Effect of award.

45 (2) An award that is enforceable under *subsection (1)* shall, unless otherwise agreed by the parties, be treated as binding for all purposes on the parties between whom it was made, and may accordingly be relied on by any of those parties by way of defence, set-off or otherwise in any legal proceedings in the State.

(3) Nothing in this section shall be construed as affecting the recognition or enforcement of an award under the Geneva Convention, the New York Convention or the Washington Convention.

New York Convention, Geneva Convention and Geneva Protocol.

23.—(1) Subject to this Act—

- (a) the New York Convention, 5
- (b) the Geneva Convention, and
- (c) the Geneva Protocol,

shall have the force of law in the State.

(2) Subject to this Act, Article II(2) and Article VII(1) of the New York Convention shall be interpreted in accordance with the recommendation adopted by the United Nations Commission on International Trade Law on 7 July 2006 at its thirty-ninth session concerning the interpretation of those Articles. 10

(3) Subject to this Act, Article II(3) of the New York Convention shall be construed in accordance with Article 8 of the Model Law. 15

(4) The Minister for Foreign Affairs may by order declare that any state specified in the order is a party to the New York Convention and, while such order is in force, the order shall be evidence that such state is a party to the Convention.

Non-application of provisions of Act to Washington Convention, save in certain circumstances.

24.—(1) This Act other than— 20

- (a) *sections 11, 15 and 16*, and
- (b) *section 6*, in so far as it gives the force of law to Article 8(1) of the Model Law,

shall not apply to proceedings pursuant to the Washington Convention. 25

(2) In this section, “award” means an award rendered pursuant to the Washington Convention and includes any decision made—

- (a) pursuant to Article 49(2) of that Convention in relation to any question which the Tribunal referred to in that Article had omitted to decide in the award, or in relation to the rectification of any clerical, arithmetical or similar error in the award, 30
- (b) pursuant to Articles 50, 51 and 52 of that Convention, interpreting, revising or annulling the award, and
- (c) pursuant to Article 61(2) of that Convention in relation to costs. 35

(3) Subject to this Act, the Washington Convention shall have the force of law in the State.

(4) The Minister for Finance may discharge any obligations of the Government arising under Article 17 of the Washington Convention and any sums required for this purpose; and any administrative expenses incurred by the Minister for Finance as a result of acceptance 40

by the State of the Washington Convention shall be paid out of moneys provided by the Oireachtas.

5 (5) The pecuniary obligations imposed by an award shall, by leave of the High Court, be enforceable in the same manner as a judgment or order of the High Court to the same effect and, where leave is so given, judgment may be entered for the amount due or, as the case may be, the balance outstanding under the award.

10 (6) Any person who applies to the High Court under *subsection (5)* for leave to enforce the pecuniary obligations imposed by an award shall lodge with his or her application a copy of the award certified in accordance with Article 54(2) of the Washington Convention.

15 (7) Where an application is made to the High Court pursuant to *subsection (5)*, the High Court shall, in any case where enforcement of an award has been stayed, whether provisionally or otherwise, in accordance with Articles 50, 51 or 52 of the Washington Convention, stay enforcement of the pecuniary obligations imposed by the award and may, in any case where an application has been made in accordance with any of those Articles which, if granted, might result in a stay on the enforcement of the award, stay enforcement of the pecuniary obligations imposed by the award.

25 **25.—**(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 representatives of the deceased. Survival of agreement and authority of arbitral tribunal in event of death.

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

30 (3) Nothing in this section shall 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.

35 **26.—**(1) Where an arbitration agreement forms part of a contract to which a bankrupt is a party, the agreement shall, if the assignee or trustee in bankruptcy does not disclaim the contract, be enforceable by or against him or her insofar as it relates to any dispute arising out of, or in connection with, such a contract. Provisions in event of bankruptcy.

(2) Where—

(a) a person who has been adjudicated bankrupt had, before the commencement of the bankruptcy, become a party to an arbitration agreement, and

40 (b) any matter to which the agreement applies requires to be determined in connection with or for the purposes of the bankruptcy proceedings, and

(c) the case is one to which *subsection (1)* does not apply,

45 then, any other party to the agreement or the assignee or, with the consent of the committee of inspection, the trustee in bankruptcy, 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 the opinion that having regard to all the circumstances of the case, the matter ought to be determined by arbitration, make an order accordingly.

(3) In this section “assignee” means the Official Assignee in Bankruptcy. 5

Full applicability to State parties. 27.—This Act shall apply to an arbitration under an arbitration agreement to which a State authority is a party.

Application of Act to other arbitrations. 28.—Subject to *section 29*, this Act shall apply to an arbitration under any other enactment in so far as its application is not incompatible with the provisions of the enactment concerned. 10

Exclusion of certain arbitrations. 29.—(1) This Act shall not apply to—
(a) an arbitration under an arbitration agreement providing for the reference to, or the settlement by, arbitration of any question relating to the terms or conditions of employment or the remuneration of any employees who are or were hired or engaged within the State, including persons employed by or under the State or local authorities, or 15
(b) an arbitration under section 70 of the Industrial Relations Act 1946. 20

(2) This Act, in so far as it provides for the enforcement of arbitration awards by courts or the award of costs, fees or expenses by the arbitral tribunal, shall not apply to an arbitration under section 17 of the Landlord and Tenant (Ground Rents) Act 1967.

Arbitration agreements and small claims, etc. 30.—(1) This Act shall not apply to an arbitration agreement which relates to a claim which does not exceed the monetary limit for the time being specified under rules of court for commencing and dealing with a civil proceeding in respect of a small claim (within the meaning of Order 53A of the District Court Rules 1997 (S.I. No. 93 of 1997)). 25 30

(2) A term of an arbitration agreement shall, for the purposes of the European Communities (Unfair Terms in Consumer Contracts) Regulations 1995 and 2000 (S.I. No. 307 of 2000), be deemed to be an unfair term if—

- (a) it relates to a claim of the kind referred to in *subsection (1)*, and 35
- (b) the term has not been individually negotiated by the parties.

PART 3

REFERENCE TO ARBITRATION UNDER ORDER OF COURT 40

Power of High Court and Circuit Court to refer certain matters to arbitration. 31.—(1) If, in any cause or matter (including any cause or matter to which a State authority is a party, but excluding both summary proceedings for offences prosecuted by a statutory body and criminal

proceedings at the suit of either the Director of Public Prosecutions or the Attorney General), the question in dispute consists wholly or in part of matters of account, estimation, calculation or assessment, the High Court or the Circuit Court may at any time order the whole cause or matter or any question or issue of fact arising therein to be tried before an arbitral tribunal agreed on by the parties or before an officer of the High Court or, as the case may be, the Circuit Court upon such terms as to costs or otherwise as the High Court or, as the case may be, the Circuit Court, sees fit.

(2) Where a matter is referred to an arbitral tribunal under an order pursuant to *subsection (1)*, the arbitrator shall be deemed to be an officer of the court, and, subject to rules of court, shall have such authority and conduct the reference in such manner as the court may direct.

(3) The award of an arbitral tribunal under this section shall, unless set aside by the court that referred the matter, be final.

(4) The fees and expenses to be paid to an arbitrator to whom any matter is referred under *subsection (1)* shall be determined by the court concerned.

(5) Where a court makes an order under *subsection (1)*, the court shall, in respect of the order concerned, have all the powers which this Act confers on the High Court with regard to arbitration under arbitration agreements.

(6) An arbitral tribunal—

(a) may at any stage of the proceedings under a reference under this section, and

(b) shall, if so directed by the court concerned,

state in the form of a special case for the opinion of the High Court or, as the case may be, the Circuit Court, any question of law arising in the course of the reference.

(7) The Supreme Court on appeal shall have all such powers as are conferred by this section on the High Court.

PART 4

OPTIONAL ADDITIONAL GROUNDS FOR SETTING ASIDE AWARD IN STANDARD ARBITRATIONS

32.—(1) Without prejudice to the generality of Article 34 and, in addition to the grounds laid down in paragraph (2) of that Article, the High Court may, in the case of a standard arbitration, set aside or remit to the arbitral tribunal an arbitral award where:

Additional grounds for setting aside arbitral award in standard arbitrations.

(a) there is an error of law on the face of the arbitral award which is so fundamental that it would be unjust not to set aside, or remit to the arbitral tribunal, the award or some part thereof;

(b) the conduct of the arbitral tribunal was so procedurally unfair that it would be unjust not to set aside, or remit to the arbitral tribunal, the award or some part thereof.

(2) The parties to a standard arbitration may agree, either in the arbitration agreement, or in writing at any time prior to the commencement of the arbitration hearing, that the High Court shall not have the power to set aside or remit an arbitral award on the additional grounds referred to in *subsection (1)*. 5

(3) This Part shall not apply to international commercial arbitrations.

PART 5

SPECIAL OVERSIGHT IN CONSUMER ARBITRATIONS AND IN OTHER STANDARD ARBITRATIONS WHERE EXPRESSLY AGREED 10

Interpretation of Part.

33.—In this Part—

“consumer” means a natural person (whether in the State or not) who is acting for purposes unrelated to the person’s trade, business or profession;

“consumer arbitration” means any standard arbitration where one party to the arbitration is a consumer; 15

“relevant court”, for the purpose of special oversight, shall have the meaning assigned to it in either *section 35* or *section 36* as appropriate;

“special oversight” means the rights and powers referred to in *section 34*; 20

“period for waiver” means the period of time between a party first giving notice in writing that it would like a given matter referred to arbitration and the commencement of the arbitration hearing.

Special oversight.

34.—For the purposes of this Part— 25

(a) the arbitrator shall have the power to state a case for the decision of the relevant court as to an award, any part of an award or any question of law arising in the course of the arbitration, and

(b) a party to an arbitration may apply to the relevant court seeking any of the following: 30

(i) a direction that an arbitral award be remitted to the arbitrator on the grounds that new evidence is available which could be likely to materially alter the decision in relation to the award, 35

(ii) a direction that an arbitrator state a case for the decision of the relevant court as to an award, any part of an award, or any question of law arising in the course of the arbitration.

Consumer arbitrations.

35.—(1) Unless the parties otherwise agree during the period for waiver, special oversight shall be available in all consumer arbitrations, regardless of whether the parties to an arbitration agreement purport to exclude special oversight or rights or facilities analogous thereto. 40

5 (2) In this section, “relevant court”, for the purposes of special oversight shall, having regard to the total monetary value of the subject matter of the dispute between the parties, be determined in accordance with the monetary limit of the jurisdiction of the courts being the monetary limit for the time being standing specified under law.

(3) Unless the parties otherwise agree during the period for waiver, an appeal shall lie, in accordance with law, from any decision of a court under this section.

10 **36.—**(1) Parties to a standard arbitration agreement which is not a consumer arbitration within the meaning of *section 33* may agree to include in an arbitration agreement all or any of the provisions of special oversight specified in *section 34*. Special oversight in other standard arbitrations where agreed.

15 (2) Where the parties so agree in accordance with *subsection (1)*, they may, during the period for waiver, agree to remove or disapply special oversight.

(3) In this section, “relevant court” for the purposes of special oversight, shall be the High Court, unless:

20 (a) the parties, either in the arbitration agreement or prior to commencement of the arbitration hearing, agree to specify another court, and

25 (b) the total monetary value of the subject matter of the dispute between the parties is within the monetary jurisdiction of the court so specified having regard to the monetary jurisdiction of that court which, for the time being, stands specified under law.

SCHEDULE 1

TEXT OF UNCITRAL MODEL LAW ON INTERNATIONAL COMMERCIAL ARBITRATION

(As adopted by the United Nations Commission on International
Trade Law on 21 June 1985, with amendments as adopted by that
Commission on 7 July 2006) 5

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. 10

(2) The provisions of this Law, except articles 8, 9, 17H, 17I, 17J, 35
and 36, apply only if the place of arbitration is in the territory of
this State.

(3) An arbitration is international if: 15

(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: 20

(i) the place of arbitration if determined in, or pursu-
ant to, the arbitration agreement;

(ii) any place where a substantial part of the obli-
gations of the commercial relationship is to be perfor-
med or the place with which the subject matter of the
dispute is most closely connected; or 25

(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: 30

(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. 35

(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 40

For the purposes of this Law:

(a) “arbitration” means any arbitration whether or not ad-
ministered by a permanent arbitral institution;

(b) “arbitral tribunal” means a sole arbitrator or a panel
of arbitrators; 45

(c) “court” means a body or organ of the judicial system of a State;

5 (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 authorize a third party, including an institution, to make that determination;

10 (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;

15 (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:

20 (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.

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

Article 4. Waiver of right to object

35 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

40 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

45 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

Option I

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. 5

(2) The arbitration agreement shall be in writing. 10

(3) An arbitration agreement is in writing if its content is recorded in any form, whether or not the arbitration agreement or contract has been concluded orally, by conduct, or by other means.

(4) The requirement that an arbitration agreement be in writing is met by an electronic communication if the information contained therein is accessible so as to be useable for subsequent reference; “electronic communication” means any communication that the parties make by means of data messages; “data message” means information generated, sent, received or stored by electronic, magnetic, optical or similar means, including, but not limited to, electronic data interchange (EDI), electronic mail, telegram, telex or telecopy. 15 20

(5) Furthermore, an arbitration agreement is in writing if it is contained 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 the other. 25

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

Option II 30

Article 7. Definition of arbitration agreement

“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. 35

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. 40

(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. 45

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. 50

CHAPTER III. COMPOSITION OF ARBITRAL TRIBUNAL

Article 10. Number of arbitrators

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

5 (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.

10 (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,

15 (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;

20 (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.

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

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

30 (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,

35 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.

40 (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. 5

(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. 10

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. 15 20

(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. 25

Article 14. Failure or impossibility to act 30

(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. 35

(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). 40

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. 45

CHAPTER IV. JURISDICTION OF ARBITRAL TRIBUNAL

Article 16. Competence of arbitral tribunal to rule on its jurisdiction 50

(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.

5 (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.

15 (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; 20 while such a request is pending, the arbitral tribunal may continue the arbitral proceedings and make an award.

CHAPTER IV A. INTERIM MEASURES AND PRELIMINARY ORDERS

Section 1. Interim measures

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

(1) Unless otherwise agreed by the parties, the arbitral tribunal may, at the request of a party, grant interim measures.

30 (2) An interim measure is any temporary measure, whether in the form of an award or in another form, by which, at any time prior to the issuance of the award by which the dispute is finally decided, the arbitral tribunal orders a party to:

(a) Maintain or restore the status quo pending determination of the dispute;

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

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

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

Article 17 A. Conditions for granting interim measures

(1) The party requesting an interim measure under article 17(2)(a), (b) and (c) shall satisfy the arbitral tribunal that:

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

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

5

(2) With regard to a request for an interim measure under article 17(2)(d), the requirements in paragraphs (1)(a) and (b) of this article shall apply only to the extent the arbitral tribunal considers appropriate.

Section 2. Preliminary orders

10

Article 17 B. Applications for preliminary orders and conditions for granting preliminary orders

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

15

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

20

(3) The conditions defined under article 17A apply to any preliminary order, provided that the harm to be assessed under article 17A(1)(a), is the harm likely to result from the order being granted or not.

Article 17 C. Specific regime for preliminary orders

25

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

30

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

35

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

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

40

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

45

Section 3. Provisions applicable to interim measures and preliminary orders

Article 17 D. Modification, suspension, termination

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

Article 17 E. Provision of security

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

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

Article 17 F. Disclosure

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

20 (2) The party applying for a preliminary order shall disclose to the arbitral tribunal all circumstances that are likely to be relevant to the arbitral tribunal's determination whether to grant or maintain the order, and such obligation shall continue until the party against whom the order has been requested has had an opportunity to
25 present its case. Thereafter, paragraph (1) of this article shall apply.

Article 17 G. Costs and damages

The party requesting an interim measure or applying for a preliminary order shall be liable for any costs and damages caused by the measure or the order to any party if the arbitral tribunal later determines that, in the circumstances, the measure or the order should
30 not have been granted. The arbitral tribunal may award such costs and damages at any point during the proceedings.

Section 4. Recognition and enforcement of interim measures

Article 17 H. Recognition and enforcement

35 (1) An interim measure issued by an arbitral tribunal shall be recognized as binding and, unless otherwise provided by the arbitral tribunal, enforced upon application to the competent court, irrespective of the country in which it was issued, subject to the provisions of article 17 I.

40 (2) The party who is seeking or has obtained recognition or enforcement of an interim measure shall promptly inform the court of any termination, suspension or modification of that interim measure.

45 (3) The court of the State where recognition or enforcement is sought may, if it considers it proper, order the requesting party to provide appropriate security if the arbitral tribunal has not already made a determination with respect to security or where such a decision is necessary to protect the rights of third parties.

Article 17 I. Grounds for refusing recognition or enforcement

(1) Recognition or enforcement of an interim measure may be refused only:

(a) At the request of the party against whom it is invoked if the court is satisfied that: 5

(i) Such refusal is warranted on the grounds set forth in article 36(1)(a)(i), (ii), (iii) or (iv); or

(ii) The arbitral tribunal's decision with respect to the provision of security in connection with the interim measure issued by the arbitral tribunal has not been complied with; or 10

(iii) The interim measure has been terminated or suspended by the arbitral tribunal or, where so empowered, by the court of the State in which the arbitration takes place or under the law of which that interim measure was granted; or 15

(b) If the court finds that:

(i) The interim measure is incompatible with the powers conferred upon the court unless the court decides to reformulate the interim measure to the extent necessary to adapt it to its own powers and procedures for the purposes of enforcing that interim measure and without modifying its substance; or 20

(ii) Any of the grounds set forth in article 36(1)(b)(i) or (ii), apply to the recognition and enforcement of the interim measure. 25

(2) Any determination made by the court on any ground in paragraph (1) of this article shall be effective only for the purposes of the application to recognize and enforce the interim measure. The court where recognition or enforcement is sought shall not, in making that determination, undertake a review of the substance of the interim measure. 30

Section 5. Court-ordered interim measures

Article 17 J. Court-ordered interim measures

A court shall have the same power of issuing an interim measure in relation to arbitration proceedings, irrespective of whether their place is in the territory of this State, as it has in relation to proceedings in courts. The court shall exercise such power in accordance with its own procedures in consideration of the specific features of international arbitration. 40

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 45

(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.

5 (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

10 (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.

15 (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

20 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

25 (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.

30 (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

35 (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
40 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.

45 *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.
50 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. 5

Article 25. Default of a party

Unless otherwise agreed by the parties, if, without showing sufficient cause, 10

(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; 15

(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. 20

Article 26. Expert appointed by arbitral tribunal

(1) Unless otherwise agreed by the parties, the arbitral tribunal 25

(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. 30

(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. 35

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. 40

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. 45
50

(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.

5 (3) The arbitral tribunal shall decide *ex aequo et bono* or as *amiable compositeur* only if the parties have expressly authorized 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

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

15 *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.

20 (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

25 (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.

30 (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.

35 (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

40 (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:

45 (a) the claimant withdraws his claim, unless the respondent objects thereto and the arbitral tribunal recognizes 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.

5

(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:

10

(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;

15

(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.

20

(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.

25

(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.

30

(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.

35

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.

40

(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:

45

(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

5 (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

10 (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

20 (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:

25 (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.

30 (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.

35 (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.

40 CHAPTER VIII. RECOGNITION AND ENFORCEMENT OF AWARDS

Article 35. Recognition and enforcement

45 (1) An arbitral award, irrespective of the country in which it was made, shall be recognized 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.

50 (2) The party relying on an award or applying for its enforcement shall supply the original award or a copy thereof. If the award is not made in an official language of this State, the court may request the party to supply a translation thereof into such language.

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: 5

(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 10

(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 15

(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 recognized and enforced; or 20 25

(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 30

(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: 35

(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. 40

(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. 45

SCHEDULE 2

TEXT OF 1958 CONVENTION ON THE RECOGNITION AND ENFORCEMENT OF FOREIGN ARBITRAL AWARDS

Article I

5 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
10 physical or legal. It shall also apply to arbitral awards not considered
as domestic awards in the State where their recognition and enforce-
ment are sought.

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

15 3. When signing, ratifying or acceding to this Convention, or notify-
ing extension under article X hereof, any State may on the basis of
reciprocity declare that it will apply the Convention to the recogni-
tion and enforcement of awards made only in the territory of another
Contracting State. It may also declare that it will apply the Conven-
20 tion 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

25 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.

30 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.

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

Article III

40 Each Contracting State shall recognise arbitral awards as binding and
enforce them in accordance with the rules of procedure of the terri-
tory 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
45 than are imposed on the recognition or enforcement of domestic
arbitral awards.

Article IV

50 1. To obtain the recognition and enforcement mentioned in the pre-
ceding 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 31 December 1958 for signature on behalf of any Member of the United Nations and also on behalf of any other State which is or hereafter becomes a member of any specialised agency of the United Nations, or which is or hereafter becomes a party to the Statute of the International Court of Justice, or any other State to which an invitation has been addressed by the General Assembly of the United Nations.

2. This Convention shall be ratified and the instrument of ratification shall be deposited with the Secretary-General of the United Nations.

Article IX

1. This Convention shall be open for accession to all States referred to in article VIII.

2. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

Article X

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

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

3. With respect to those territories to which this Convention is not extended at the time of signature, ratification or accession, each State concerned shall consider the possibility of taking the necessary steps in order to extend the application of this Convention to such territories, subject, where necessary for constitutional reasons, to the consent of the Governments of such territories. 5

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; 10

(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; 15 20

(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. 25 30

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. 35

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. 40

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. 45

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. 50

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.

5

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;

10

(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;

15

(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.

20

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

SCHEDULE 3

TEXT OF 1965 CONVENTION ON THE SETTLEMENT OF INVESTMENT DISPUTES BETWEEN STATES AND NATIONALS OF OTHER STATES

PREAMBLE 5

The Contracting States

Considering the need for international cooperation for economic development, and the role of private international investment therein;

Bearing in mind the possibility that from time to time disputes may arise in connection with such investment between Contracting States and nationals of other Contracting States; 10

Recognising that while such disputes would usually be subject to national legal processes, international methods of settlement may be appropriate in certain cases; 15

Attaching particular importance to the availability of facilities for international conciliation or arbitration to which Contracting States and nationals of other Contracting States may submit such disputes if they so desire;

Desiring to establish such facilities under the auspices of the International Bank for Reconstruction and Development; 20

Recognising that mutual consent by the parties to submit such disputes to conciliation or to arbitration through such facilities constitutes a binding agreement which requires in particular that due consideration be given to any recommendation of conciliators, and that any arbitral award be complied with; and 25

Declaring that no Contracting State shall by the mere fact of its ratification, acceptance or approval of this Convention and without its consent be deemed to be under any obligation to submit any particular dispute to conciliation or arbitration, 30

Have agreed as follows:

CHAPTER I

INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

SECTION 1 35

Establishment and Organisation

Article 1

(1) There is hereby established the International Centre for Settlement of Investment Disputes (hereinafter called the Centre).

(2) The purpose of the Centre shall be to provide facilities for conciliation and arbitration of investment disputes between Contracting States and nationals of other Contracting States in accordance with the provisions of this Convention. 40

Article 2

5 The seat of the Centre shall be at the principal office of the International Bank for Reconstruction and Development (hereinafter called the Bank). The seat may be moved to another place by decision of the Administrative Council adopted by a majority of two-thirds of its members.

Article 3

The Centre shall have an Administrative Council and a Secretariat and shall maintain a Panel of Conciliators and a Panel of Arbitrators.

10

SECTION 2

The Administrative Council

Article 4

15 (1) The Administrative Council shall be composed of one representative of each Contracting State. An alternate may act as representative in case of his principal's absence from a meeting or inability to act.

(2) In the absence of a contrary designation, each governor and alternate governor of the Bank appointed by a Contracting State shall be *ex officio* its representative and its alternate respectively.

20

Article 5

25 The President of the Bank shall be *ex officio* Chairman of the Administrative Council (hereinafter called the Chairman) but shall have no vote. During his absence or inability to act and during any vacancy in the office of President of the Bank, the person for the time being acting as President shall act as Chairman of the Administrative Council.

Article 6

(1) Without prejudice to the powers and functions vested in it by other provisions of this Convention, the Administrative Council shall

30 (a) adopt the administrative and financial regulations of the Centre;

(b) adopt the rules of procedure for the institution of conciliation and arbitration proceedings;

35 (c) adopt the rules of procedure for conciliation and arbitration proceedings (hereinafter called the Conciliation Rules and the Arbitration Rules);

(d) approve arrangements with the Bank for the use of the Bank's administrative facilities and services;

40 (e) determine the conditions of service of the Secretary-General and of any Deputy Secretary-General;

(f) adopt the annual budget of revenues and expenditures of the Centre;

(g) approve the annual report on the operation of the Centre.

The decisions referred to in sub-paragraphs (a), (b), (c) and (f) above shall be adopted by a majority of two-thirds of the members of the Administrative Council.

(2) The Administrative Council may appoint such committees as it considers necessary. 5

(3) The Administrative Council shall also exercise such other powers and perform such other functions as it shall determine to be necessary for the implementation of the provisions of this Convention.

Article 7

(1) The Administrative Council shall hold an annual meeting and such other meetings as may be determined by the Council, or convened by the Chairman, or convened by the Secretary-General at the request of not less than five members of the Council. 10

(2) Each member of the Administrative Council shall have one vote and, except as otherwise herein provided, all matters before the Council shall be decided by a majority of the votes cast. 15

(3) A quorum for any meeting of the Administrative Council shall be a majority of its members.

(4) The Administrative Council may establish, by a majority of two-thirds of its members, a procedure whereby the Chairman may seek a vote of the Council without convening a meeting of the Council. The vote shall be considered valid only if the majority of the members of the Council cast their votes within the time limit fixed by the said procedure. 20

Article 8 25

Members of the Administrative Council and the Chairman shall serve without remuneration from the Centre.

SECTION 3

The Secretariat

Article 9 30

The Secretariat shall consist of a Secretary-General, one or more Deputy Secretaries-General and staff.

Article 10

(1) The Secretary-General and any Deputy Secretary-General shall be elected by the Administrative Council by a majority of two-thirds of its members upon the nomination of the Chairman for a term of service not exceeding six years and shall be eligible for re-election. After consulting the members of the Administrative Council, the Chairman shall propose one or more candidates for each such office. 35

(2) The offices of Secretary-General and Deputy Secretary-General shall be incompatible with the exercise of any political function. Neither the Secretary-General nor any Deputy Secretary-General may hold any other employment or engage in any other occupation except with the approval of the Administrative Council. 40

(3) During the Secretary-General's absence or inability to act, and during any vacancy of the office of Secretary-General, the Deputy Secretary-General shall act as Secretary-General. If there shall be 45

more than one Deputy Secretary-General, the Administrative Council shall determine in advance the order in which they shall act as Secretary-General.

Article 11

- 5 The Secretary-General shall be the legal representative and the principal officer of the Centre and shall be responsible for its administration, including the appointment of staff, in accordance with the provisions of this Convention and the rules adopted by the Administrative Council. He shall perform the function of registrar and shall
10 have the power to authenticate arbitral awards rendered pursuant to this Convention, and to certify copies thereof.

SECTION 4

The Panels

Article 12

- 15 The Panel of Conciliators and the Panel of Arbitrators shall each consist of qualified persons, designated as hereinafter provided, who are willing to serve thereon.

Article 13

- (1) Each Contracting State may designate to each Panel four persons
20 who may but need not be its nationals.

(2) The Chairman may designate ten persons to each Panel. The persons so designated to a Panel shall each have a different nationality.

Article 14

- 25 (1) Persons designated to serve on the Panels shall be persons of high moral character and recognised competence in the fields of law, commerce, industry or finance, who may be relied upon to exercise independent judgment. Competence in the field of law shall be of
30 particular importance in the case of persons on the Panel of Arbitrators.

(2) The Chairman, in designating persons to serve on the Panels, shall in addition pay due regard to the importance of assuring representation on the Panels of the principal legal systems of the world and of the main forms of economic activity.

- 35 *Article 15*

(1) Panel members shall serve for renewable periods of six years.

(2) In case of death or resignation of a member of a Panel, the authority which designated the member shall have the right to designate another person to serve for the remainder of that member's term.

- 40 (3) Panel members shall continue in office until their successors have been designated.

Article 16

(1) A person may serve on both Panels.

- 45 (2) If a person shall have been designated to serve on the same Panel by more than one Contracting State, or by one or more Contracting

States and the Chairman, he shall be deemed to have been designated by the authority which first designated him or, if one such authority is the State of which he is a national, by that State.

(3) All designations shall be notified to the Secretary-General and shall take effect from the date on which the notification is received. 5

SECTION 5

Financing the Centre

Article 17

If the expenditure of the Centre cannot be met out of charges for the use of its facilities, or out of other receipts, the excess shall be borne by Contracting States which are members of the Bank in proportion to their respective subscriptions to the capital stock of the Bank, and by Contracting States which are not members of the Bank in accordance with rules adopted by the Administrative Council. 10

SECTION 6 15

Status, Immunities and Privileges

Article 18

The Centre shall have full international legal personality. The legal capacity of the Centre shall include the capacity

(a) to contract; 20

(b) to acquire and dispose of movable and immovable property;

(c) to institute legal proceedings.

Article 19

To enable the Centre to fulfil its functions, it shall enjoy in the territories of each Contracting State the immunities and privileges set forth in this Section. 25

Article 20

The Centre, its property and assets shall enjoy immunity from all legal process, except when the Centre waives this immunity. 30

Article 21

The Chairman, the members of the Administrative Council, persons acting as conciliators or arbitrators or members of a Committee appointed pursuant to paragraph (3) of Article 52, and the officers and employees of the Secretariat 35

(a) shall enjoy immunity from legal process with respect to acts performed by them in the exercise of their functions, except when the Centre waives this immunity;

(b) not being local nationals, shall enjoy the same immunities from immigration restrictions, alien registration requirements and national service obligations, the same facilities as regards exchange restrictions and the same treatment in respect of travelling facilities as are accorded by 40

Contracting States to the representatives, officials and employees of comparable rank of other Contracting States.

Article 22

5 The provisions of Article 21 shall apply to persons appearing in proceedings under this Convention as parties, agents, counsel, advocates, witnesses or experts; provided, however, that sub-paragraph (b) thereof shall apply only in connection with their travel to and from, and their stay at, the place where the proceedings are held.

Article 23

10 (1) The archives of the Centre shall be inviolable, wherever they may be.

(2) With regard to its official communications, the Centre shall be accorded by each Contracting State treatment not less favourable than that accorded to other international organisations.

15 *Article 24*

(1) The Centre, its assets, property and income, and its operations and transactions authorised by this Convention shall be exempt from all taxation and customs duties. The Centre shall also be exempt from liability for the collection or payment of any taxes or customs 20 duties.

(2) Except in the case of local nationals, no tax shall be levied on or in respect of expense allowances paid by the Centre to the Chairman or members of the Administrative Council, or on or in respect of salaries, expense allowances or other emoluments paid by the Centre 25 to officials or employees of the Secretariat.

(3) No tax shall be levied on or in respect of fees or expense allowances received by persons acting as conciliators, or arbitrators, or members of a Committee appointed pursuant to paragraph (3) of Article 52, in proceedings under this Convention, if the sole jurisdictional basis for such tax is the location of the Centre or the place 30 where such proceedings are conducted or the place where such fees or allowances are paid.

CHAPTER II

JURISDICTION OF THE CENTRE

35 *Article 25*

(1) The jurisdiction of the Centre shall extend to any legal dispute arising directly out of an investment, between a Contracting State (or any constituent subdivision or agency of a Contracting State designated to the Centre by that State) and a national of another Contracting State, which the parties to the dispute consent in writing to 40 submit to the Centre. When the parties have given their consent, no party may withdraw its consent unilaterally.

(2) “National of another Contracting State” means:—

45 (a) any natural person who had the nationality of a Contracting State other than the State party to the dispute on the date on which the parties consented to submit such dispute to conciliation or arbitration as well as on the date on which the request was registered pursuant to paragraph

(3) of Article 28 or paragraph (3) of Article 36, but does not include any person who on either date also had the nationality of the Contracting State party to the dispute; and

(b) any juridical person which had the nationality of a Contracting State other than the State party to the dispute on the date on which the parties consented to submit such dispute to conciliation or arbitration and any juridical person which had the nationality of the Contracting State party to the dispute on that date and which, because of foreign control, the parties have agreed should be treated as a national of another Contracting State for the purposes of this Convention. 5 10

(3) Consent by a constituent subdivision or agency of a Contracting State shall require the approval of that State unless that State notifies the Centre that no such approval is required. 15

(4) Any Contracting State may, at the time of ratification, acceptance or approval of this Convention or at any time thereafter, notify the Centre of the class or classes of disputes which it would or would not consider submitting to the jurisdiction of the Centre. The Secretary-General shall forthwith transmit such notification to all Contracting States. Such notification shall not constitute the consent required by paragraph (1) 20

Article 26

Consent of the parties to arbitration under this Convention shall, unless otherwise stated, be deemed consent to such arbitration to the exclusion of any other remedy. A Contracting State may require the exhaustion of local administrative or judicial remedies as a condition of its consent to arbitration under this Convention. 25

Article 27 30

(1) No Contracting State shall give diplomatic protection, or bring an international claim, in respect of a dispute which one of its nationals and another Contracting State shall have consented to submit or shall have submitted to arbitration under this Convention, unless such other Contracting State shall have failed to abide by and comply with the award rendered in such dispute. 35

(2) Diplomatic protection, for the purposes of paragraph (1), shall not include informal diplomatic exchanges for the sole purpose of facilitating a settlement of the dispute.

CHAPTER III 40

CONCILIATION

SECTION 1

Request for Conciliation

Article 28

(1) Any Contracting State or any national of a Contracting State wishing to institute conciliation proceedings shall address a request to that effect in writing to the Secretary-General who shall send a copy of the request to the other party. 45

(2) The request shall contain information concerning the issues in dispute, the identity of the parties and their consent to conciliation in accordance with the rules of procedure for the institution of conciliation and arbitration proceedings.

5 (3) The Secretary-General shall register the request unless he finds, on the basis of the information contained in the request, that the dispute is manifestly outside the jurisdiction of the Centre. He shall forthwith notify the parties of registration or refusal to register.

SECTION 2

10 *Constitution of the Conciliation Commission*

Article 29

(1) The Conciliation Commission (hereinafter called the Commission) shall be constituted as soon as possible after registration of a request pursuant to Article 28.

15 (2) (a) The Commission shall consist of a sole conciliator or any uneven number of conciliators appointed as the parties shall agree.

(b) Where the parties do not agree upon the number of conciliators and the method of their appointment, the Commission shall consist of three conciliators, one conciliator appointed by each party and the third, who shall be the president of the Commission, appointed by agreement of the parties.

20

Article 30

If the Commission shall not have been constituted within 90 days after notice of registration of the request has been dispatched by the Secretary-General in accordance with paragraph (3) of Article 28, or such other period as the parties may agree, the Chairman shall, at the request of either party and after consulting both parties as far as possible, appoint the conciliator or conciliators not yet appointed.

25

30 *Article 31*

(1) Conciliators may be appointed from outside the Panel of Conciliators, except in the case of appointments by the Chairman pursuant to Article 30.

(2) Conciliators appointed from outside the Panel of Conciliators shall possess the qualities stated in paragraph (1) of Article 14.

35

SECTION 3

Conciliation Proceedings

Article 32

(1) The Commission shall be the judge of its own competence.

40 (2) Any objection by a party to the dispute that that dispute is not within the jurisdiction of the Centre, or for other reasons is not within the competence of the Commission, shall be considered by

the Commission which shall determine whether to deal with it as a preliminary question or to join it to the merits of the dispute.

Article 33

Any conciliation proceeding shall be conducted in accordance with the provisions of this Section and, except as the parties otherwise agree, in accordance with the Conciliation Rules in effect on the date on which the parties consented to conciliation. If any question of procedure arises which is not covered by this Section or the Conciliation Rules or any rules agreed by the parties, the Commission shall decide the question.

Article 34

(1) It shall be the duty of the Commission to clarify the issues in dispute between the parties and to endeavour to bring about agreement between them upon mutually acceptable terms. To that end, the Commission may at any stage of the proceedings and from time to time recommend terms of settlement to the parties. The parties shall cooperate in good faith with the Commission in order to enable the Commission to carry out its functions, and shall give their most serious consideration to its recommendations.

(2) If the parties reach agreement, the Commission shall draw up a report noting the issues in dispute and recording that the parties have reached agreement. If, at any stage of the proceedings, it appears to the Commission that there is no likelihood of agreement between the parties, it shall close the proceedings and shall draw up a report noting the submission of the dispute and recording the failure of the parties to reach agreement. If one party fails to appear or participate in the proceedings, the Commission shall close the proceedings and shall draw up a report noting that party's failure to appear or participate.

Article 35

Except as the parties to the dispute shall otherwise agree, neither party to a conciliation proceeding shall be entitled in any other proceeding, whether before arbitrators or in a court of law or otherwise, to invoke or rely on any views expressed or statements or admissions or offers of settlement made by the other party in the conciliation proceedings, or the report or any recommendations made by the Commission.

CHAPTER IV

ARBITRATION

SECTION 1

Request for Arbitration

Article 36

(1) Any Contracting State or any national of a Contracting State wishing to institute arbitration proceedings shall address a request to that effect in writing to the Secretary-General who shall send a copy of the request to the other party.

(2) The request shall contain information concerning the issues in dispute, the identity of the parties and their consent to arbitration in

accordance with the rules of procedure for the institution of conciliation and arbitration proceedings.

5 (3) The Secretary-General shall register the request unless he finds, on the basis of the information contained in the request, that the dispute is manifestly outside the jurisdiction of the Centre. He shall forthwith notify the parties of registration or refusal to register.

SECTION 2

Constitution of the Tribunal

Article 37

10 (1) The Arbitral Tribunal (hereinafter called the Tribunal) shall be constituted as soon as possible after registration of a request pursuant to Article 36.

(2) (a) The Tribunal shall consist of a sole arbitrator or any uneven number of arbitrators appointed as the parties shall agree.

15 (b) Where the parties do not agree upon the number of arbitrators and the method of their appointment, the Tribunal shall consist of three arbitrators, one arbitrator appointed by each party and the third, who shall be the president of the Tribunal, appointed by agreement of the parties.

20 *Article 38*

If the Tribunal shall not have been constituted within 90 days after notice of registration of the request has been despatched by the Secretary-General in accordance with paragraph (3) of Article 36, or such other period as the parties may agree, the Chairman shall, at
25 the request of either party and after consulting both parties as far as possible, appoint the arbitrator or arbitrators not yet appointed. Arbitrators appointed by the Chairman pursuant to this Article shall not be nationals of the Contracting State party to the dispute or of the Contracting State whose national is a party to the dispute.

30 *Article 39*

The majority of the arbitrators shall be nationals of States other than the Contracting State party to the dispute and the Contracting State whose national is a party to the dispute; provided, however, that the
35 foregoing provisions of this Article shall not apply if the sole arbitrator or each individual member of the Tribunal has been appointed by agreement of the parties.

Article 40

(1) Arbitrators may be appointed from outside the Panel of Arbitrators, except in the case of appointments by the Chairman pursuant
40 to Article 38.

(2) Arbitrators appointed from outside the Panel of Arbitrators shall possess the qualities stated in paragraph (1) of Article 14.

SECTION 3

Powers and Functions of the Tribunal

45 *Article 41*

(1) The Tribunal shall be the judge of its own competence.

(2) Any objection by a party to the dispute that that dispute is not within the jurisdiction of the Centre, or for other reasons is not within the competence of the Tribunal, shall be considered by the Tribunal which shall determine whether to deal with it as a preliminary question or to join it to the merits of the dispute. 5

Article 42

(1) The Tribunal shall decide a dispute in accordance with such rules of law as may be agreed by the parties. In the absence of such agreement, the Tribunal shall apply the law of the Contracting State party to the dispute (including its rules on the conflict of laws) and such rules of international law as may be applicable. 10

(2) The Tribunal may not bring in a finding of *non liquet* on the ground of silence or obscurity of the law.

(3) The provisions of paragraphs (1) and (2) shall not prejudice the power of the Tribunal to decide a dispute *ex aequo et bono* if the parties so agree. 15

Article 43

Except as the parties otherwise agree, the Tribunal may, if it deems it necessary at any stage of the proceedings,

(a) call upon the parties to produce documents or other evidence, and 20

(b) visit the scene connected with the dispute, and conduct such inquiries there as it may deem appropriate.

Article 44

Any arbitration proceeding shall be conducted in accordance with the provisions of this Section and, except as the parties otherwise agree, in accordance with the Arbitration Rules in effect on the date on which the parties consented to arbitration. If any question of procedure arises which is not covered by this Section or the Arbitration Rules or any rules agreed by the parties, the Tribunal shall decide the question. 25 30

Article 45

(1) Failure of a party to appear or to present his case shall not be deemed an admission of the other party's assertions.

(2) If a party fails to appear or to present his case at any stage of the proceedings the other party may request the Tribunal to deal with the questions submitted to it and to render an award. Before rendering an award, the Tribunal shall notify, and grant a period of grace to, the party failing to appear or to present its case, unless it is satisfied that that party does not intend to do so. 35 40

Article 46

Except as the parties otherwise agree, the Tribunal shall, if requested by a party, determine any incidental or additional claims or counter-claims arising directly out of the subject-matter of the dispute provided that they are within the scope of the consent of the parties and are otherwise within the jurisdiction of the Centre. 45

Article 47

5 Except as the parties otherwise agree, the Tribunal may, if it considers that the circumstances so require, recommend any provisional measures which should be taken to preserve the respective rights of either party.

SECTION 4

The Award

Article 48

10 (1) The Tribunal shall decide questions by a majority of the votes of all its members.

(2) The award of the Tribunal shall be in writing and shall be signed by the members of the Tribunal who voted for it.

(3) The award shall deal with every question submitted to the Tribunal, and shall state the reasons upon which it is based.

15 (4) Any member of the Tribunal may attach his individual opinion to the award, whether he dissents from the majority or not, or a statement of his dissent.

(5) The Centre shall not publish the award without the consent of the parties.

20 Article 49

(1) The Secretary-General shall promptly dispatch certified copies of the award to the parties. The award shall be deemed to have been rendered on the date on which the certified copies were dispatched.

25 (2) The Tribunal upon the request of a party made within 45 days after the date on which the award was rendered may after notice to the other party decide any question which it had omitted to decide in the award, and shall rectify any clerical, arithmetical or similar error in the award. Its decision shall become part of the award and shall be notified to the parties in the same manner as the award. The
30 periods of time provided for under paragraph (2) of Article 51 and paragraph (2) of Article 52 shall run from the date on which the decision was rendered.

SECTION 5

Interpretation, Revision and Annulment of the Award

35 Article 50

(1) If any dispute shall arise between the parties as to the meaning or scope of an award, either party may request interpretation of the award by an application in writing addressed to the Secretary-General.

40 (2) The request shall, if possible, be submitted to the Tribunal which rendered the award. If this shall not be possible, a new Tribunal shall be constituted in accordance with Section 2 of this Chapter. The Tribunal may, if it considers that the circumstances so require, stay enforcement of the award pending its decision.

Article 51

(1) Either party may request revision of the award by an application in writing addressed to the Secretary-General on the ground of discovery of some fact of such a nature as decisively to affect the award, provided that when the award was rendered that fact was unknown to the Tribunal and to the applicant and that the applicant's ignorance of that fact was not due to negligence. 5

(2) The application shall be made within 90 days after the discovery of such fact and in any event within three years after the date on which the award was rendered. 10

(3) The request shall, if possible, be submitted to the Tribunal which rendered the award. If this shall not be possible, a new Tribunal shall be constituted in accordance with Section 2 of this Chapter.

(4) The Tribunal may, if it considers that the circumstances so require, stay enforcement of the award pending its decision. If the applicant requests a stay of enforcement of the award in his application, enforcement shall be stayed provisionally until the Tribunal rules on such request. 15

Article 52

(1) Either party may request annulment of the award by an application in writing addressed to the Secretary-General on one or more of the following grounds: 20

- (a) that the Tribunal was not properly constituted;
- (b) that the Tribunal has manifestly exceeded its powers;
- (c) that there was corruption on the part of a member of the Tribunal; 25
- (d) that there has been a serious departure from a fundamental rule of procedure; or
- (e) that the award has failed to state the reasons on which it is based. 30

(2) The application shall be made within 120 days after the date on which the award was rendered except that when annulment is requested on the ground of corruption such application shall be made within 120 days after discovery of the corruption and in any event within three years after the date on which the award was rendered. 35

(3) On receipt of the request the Chairman shall forthwith appoint from the Panel of Arbitrators an *ad hoc* Committee of three persons. None of the members of the Committee shall have been a member of the Tribunal which rendered the award, shall be of the same nationality as any such member, shall be a national of the State party to the dispute or of the State whose national is a party to the dispute, shall have been designated to the Panel of Arbitrators by either of those States, or shall have acted as a conciliator in the same dispute. The Committee shall have the authority to annul the award or any part thereof on any of the grounds set forth in paragraph (1). 40 45

(4) The provisions of Articles 41-45, 48, 49, 53 and 54, and of Chapters VI and VII shall apply *mutatis mutandis* to proceedings before the Committee.

5 (5) The Committee may, if it considers that the circumstances so require, stay enforcement of the award pending its decision. If the applicant requests a stay of enforcement of the award in his application, enforcement shall be stayed provisionally until the Committee rules on such request.

10 (6) If the award is annulled the dispute shall, at the request of either party, be submitted to a new Tribunal constituted in accordance with Section 2 of this Chapter.

SECTION 6

Recognition and Enforcement of the Award

Article 53

15 (1) The award shall be binding on the parties and shall not be subject to any appeal or to any other remedy except those provided for in this Convention. Each party shall abide by and comply with the terms of the award except to the extent that enforcement shall have been stayed pursuant to the relevant provisions of this Convention.

20 (2) For the purposes of this Section, "award" shall include any decision interpreting, revising or annulling such award pursuant to Articles 50, 51 or 52.

Article 54

25 (1) Each Contracting State shall recognise an award rendered pursuant to this Convention as binding and enforce the pecuniary obligations imposed by that award within its territories as if it were a final judgement of a court in that State. A Contracting State with a federal constitution may enforce such an award in or through its federal courts and may provide that such courts shall treat the award
30 as if it were a final judgement of the courts of a constituent state.

(2) A party seeking recognition or enforcement in the territories of a Contracting State shall furnish to a competent court or other authority which such State shall have designated for this purpose a copy of the award certified by the Secretary-General. Each Contracting
35 State shall notify the Secretary-General of the designation of the competent court or other authority for this purpose and of any subsequent change in such designation.

(3) Execution of the award shall be governed by the laws concerning the execution of judgements in force in the State in whose territories
40 such execution is sought.

Article 55

Nothing in Article 54 shall be construed as derogating from the law in force in any Contracting State relating to immunity of that State or of any foreign State from execution.

CHAPTER V

REPLACEMENT AND DISQUALIFICATION OF
CONCILIATORS AND ARBITRATORS

Article 56

(1) After a Commission or a Tribunal has been constituted and proceedings have begun, its composition shall remain unchanged; provided, however, that if a conciliator or an arbitrator should die, become incapacitated, or resign, the resulting vacancy shall be filled in accordance with the provisions of Section 2 of Chapter III or Section 2 of Chapter IV. 5
10

(2) A member of a Commission or Tribunal shall continue to serve in that capacity notwithstanding that he shall have ceased to be a member of the Panel.

(3) If a conciliator or arbitrator appointed by a party shall have resigned without the consent of the Commission or Tribunal of which he was a member, the Chairman shall appoint a person from the appropriate Panel to fill the resulting vacancy. 15

Article 57

A party may propose to a Commission or Tribunal the disqualification of any of its members on account of any fact indicating a manifest lack of the qualities required by paragraph (1) of Article 14. A party to arbitration proceedings may, in addition, propose the disqualification of an arbitrator on the ground that he was ineligible for appointment to the Tribunal under Section 2 of Chapter IV. 20

Article 58

25

The decision on any proposal to disqualify a conciliator or arbitrator shall be taken by the other members of the Commission or Tribunal as the case may be, provided that where those members are equally divided, or in the case of a proposal to disqualify a sole conciliator or arbitrator, or a majority of the conciliators or arbitrators, the Chairman shall take that decision. If it is decided that the proposal is well-founded the conciliator or arbitrator to whom the decision relates shall be replaced in accordance with the provisions of Section 2 of Chapter III or Section 2 of Chapter IV. 30

CHAPTER VI

35

COST OF PROCEEDINGS

Article 59

The charges payable by the parties for the use of the facilities of the Centre shall be determined by the Secretary-General in accordance with the regulations adopted by the Administrative Council. 40

Article 60

(1) Each Commission and each Tribunal shall determine the fees and expenses of its members within limits established from time to time by the Administrative Council and after consultation with the Secretary-General. 45

(2) Nothing in paragraph (1) of this article shall preclude the parties from agreeing in advance with the Commission or Tribunal concerned upon the fees and expenses of its members.

Article 61

5 (1) In the case of conciliation proceedings the fees and expenses of members of the Commission as well as the charges for the use of the facilities of the Centre, shall be borne equally by the parties. Each party shall bear any other expenses it incurs in connection with the proceedings.

10 (2) In the case of arbitration proceedings the Tribunal shall, except as the parties otherwise agree, assess the expenses incurred by the parties in connection with the proceedings, and shall decide how and by whom those expenses, the fees and expenses of the members of the Tribunal and the charges for the use of the facilities of the Centre
15 shall be paid. Such decision shall form part of the award.

CHAPTER VII

PLACE OF PROCEEDINGS

Article 62

20 Conciliation and arbitration proceedings shall be held at the seat of the Centre except as hereinafter provided.

Article 63

Conciliation and arbitration proceedings may be held, if the parties so agree,

25 (a) at the seat of the Permanent Court of Arbitration or of any other appropriate institution, whether private or public, with which the Centre may make arrangements for that purpose; or

(b) at any other place approved by the Commission or Tribunal after consultation with the Secretary-General.

30 CHAPTER VIII

DISPUTES BETWEEN CONTRACTING STATES

Article 64

35 Any dispute arising between Contracting States concerning the interpretation or application of this Convention which is not settled by negotiation shall be referred to the International Court of Justice by the application of any party to such dispute, unless the States concerned agree to another method of settlement.

CHAPTER IX

AMENDMENT

40 *Article 65*

Any Contracting State may propose amendment of this Convention. The text of a proposed amendment shall be communicated to the Secretary-General not less than 90 days prior to the meeting of the Administrative Council at which such amendment is to be considered

and shall forthwith be transmitted by him to all the members of the Administrative Council.

Article 66

(1) If the Administrative Council shall so decide by a majority of two-thirds of its members, the proposed amendment shall be circulated to all Contracting States for ratification, acceptance or approval. Each amendment shall enter into force 30 days after dispatch by the depositary of this Convention of a notification to Contracting States that all Contracting States have ratified, accepted or approved the amendment.

(2) No amendment shall affect the rights and obligations under this Convention of any Contracting State or of any of its constituent subdivisions or agencies, or of any national of such State arising out of consent to the jurisdiction of the Centre given before the date of entry into force of the amendment.

CHAPTER X

FINAL PROVISIONS

Article 67

This Convention shall be open for signature on behalf of States members of the Bank. It shall also be open for signature on behalf of any other State which is a party to the Statute of the International Court of Justice and which the Administrative Council, by a vote of two-thirds of its members, shall have invited to sign the Convention.

Article 68

(1) This Convention shall be subject to ratification, acceptance or approval by the signatory States in accordance with their respective constitutional procedures.

(2) This Convention shall enter into force 30 days after the date of deposit of the twentieth instrument of ratification, acceptance or approval. It shall enter into force for each State which subsequently deposits its instrument of ratification, acceptance or approval 30 days after the date of such deposit.

Article 69

Each Contracting State shall take such legislative or other measures as may be necessary for making the provisions of this Convention effective in its territories.

Article 70

This Convention shall apply to all territories for whose international relations a Contracting State is responsible, except those which are excluded by such State by written notice to the depositary of this Convention either at the time of ratification, acceptance or approval or subsequently.

Article 71

Any Contracting State may denounce this Convention by written notice to the depositary of this Convention. The denunciation shall take effect six months after receipt of such notice.

Article 72

5 Notice by a Contracting State pursuant to Articles 70 or 71 shall not affect the rights or obligations under this Convention of that State or of any of its constituent subdivisions or agencies or of any national of that State arising out of consent to the jurisdiction of the Centre given by one of them before such notice was received by the depositary.

Article 73

10 Instruments of ratification, acceptance or approval of this Convention and of amendments thereto shall be deposited with the Bank which shall act as the depositary of this Convention. The depositary shall transmit certified copies of this Convention to States members of the Bank and to any other State invited to sign the Convention.

Article 74

15 The depositary shall register this Convention with the Secretariat of the United Nations in accordance with Article 102 of the Charter of the United Nations and the Regulations thereunder adopted by the General Assembly.

Article 75

20 The depositary shall notify all signatory States of the following:

- (a) signatures in accordance with Article 67;
- (b) deposits of instruments of ratification, acceptance and approval in accordance with Article 73;
- 25 (c) the date on which this Convention enters into force in accordance with Article 68;
- (d) exclusions from territorial application pursuant to Article 70;
- (e) the date on which any amendment of this Convention enters into force in accordance with Article 66; and
- 30 (f) denunciations in accordance with Article 71.

35 DONE at Washington in the English, French and Spanish languages, all three texts being equally authentic, in a single copy which shall remain deposited in the archives of the International Bank for Reconstruction and Development which has indicated by its signature below its agreement to fulfil the functions with which it is charged under this Convention.

SCHEDULE 4

TEXT OF 1927 CONVENTION ON THE EXECUTION OF
FOREIGN ARBITRAL AWARDS

Article 1.

In the territories of any High Contracting Party to which the present Convention applies, an arbitral award made in pursuance of an agreement, whether relating to existing or future differences (hereinafter called "a submission to arbitration") covered by the Protocol on Arbitration Clauses, opened at Geneva on September 24th, 1923, shall be recognised as binding and shall be enforced in accordance with the rules of the procedure of the territory where the award is relied upon, provided that the said award has been made in a territory of one of the High Contracting Parties to which the present Convention applies and between persons who are subject to the jurisdiction of one of the High Contracting Parties.

To obtain such recognition or enforcement, it shall, further, be necessary:

(a) That the award has been made in pursuance of a submission to arbitration which is valid under the law applicable thereto;

(b) That the subject-matter of the award is capable of settlement by arbitration under the law of the country in which the award is sought to be relied upon;

(c) That the award has been made by the Arbitral Tribunal provided for in the submission to arbitration or constituted in the manner agreed upon by the parties and in conformity with the law governing the arbitration procedure;

(d) That the award has become final in the country in which it has been made, in the sense that it will not be considered as such if it is open to *opposition, appel or pourvoi en cassation* (in the countries where such forms of procedure exist) or if it is proved that any proceedings for the purpose of contesting the validity of the award are pending;

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

Article 2.

Even if the conditions laid down in Article 1 hereof are fulfilled, recognition and enforcement of the award shall be refused if the Court is satisfied:

(a) That the award has been annulled in the country in which it was made;

(b) That the party against whom it is sought to use the award was not given notice of the arbitration proceedings in sufficient time to enable him to present his case; or that, being under a legal incapacity, he was not properly represented;

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

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

10 *Article 3.*

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

Article 4.

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

(1) The original award or a copy thereof duly authenticated, according to the requirements of the law of the country in which it was made;

25 (2) Documentary or other evidence to prove that the award has become final, in the sense defined in Article 1(d), in the country in which it was made;

(3) When necessary, documentary or other evidence to prove that the conditions laid down in Article 1, paragraph
30 1 and paragraph 2(a) and (c), have been fulfilled.

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

Article 5.

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

Article 6.

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

Article 7.

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

It may be ratified only on behalf of those Members of the League of Nations and non-Member States on whose behalf the Protocol of 1923 shall have been ratified. 5

Ratifications shall be deposited as soon as possible with the Secretary-General of the League of Nations, who will notify such deposit to all the signatories. 10

Article 8.

The present Convention shall come into force three months after it shall have been ratified on behalf of two High Contracting Parties. Thereafter, it shall take effect, in the case of each High Contracting Party, three months after the deposit of the ratification on its behalf with the Secretary-General of the League of Nations. 15

Article 9.

The present Convention may be denounced on behalf of any Member of the League or non-Member State. Denunciation shall be notified in writing to the Secretary-General of the League of Nations, who will immediately send a copy thereof, certified to be in conformity with the notification, to all the other Contracting Parties, at the same time informing them of the date on which he received it. 20

The denunciation shall come into force only in respect of the High Contracting Party which shall have notified it and one year after such notification shall have reached the Secretary-General of the League of Nations. 25

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

Article 10. 30

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

The application of this Convention to one or more of such Colonies, Protectorates or territories to which the Protocol on Arbitration Clauses, opened at Geneva on September 24th, 1923, applies, can be effected at any time by means of a declaration addressed to the Secretary-General of the League of Nations by one of the High Contracting Parties. 35

Such declaration shall take effect three months after the deposit thereof. 40

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

Article 11.

A certified copy of the present Convention shall be transmitted by the Secretary-General of the League of Nations to every Member of the League of Nations and to every non-Member State which signs the same.

SCHEDULE 5

TEXT OF 1923 PROTOCOL ON ARBITRATION CLAUSES

1. Each of the Contracting States recognises the validity of an agreement whether relating to existing or future differences between parties subject respectively to the jurisdiction of different Contracting States by which the parties to a contract agree to submit to arbitration all or any differences that may arise in connection with such contract relating to commercial matters or to any other matter capable of settlement by arbitration, whether or not the arbitration is to take place in a country to whose jurisdiction none of the parties is subject. 5
10

Each Contracting State reserves the right to limit the obligation mentioned above to contracts which are considered as commercial under its national law. Any Contracting State which avails itself of this right will notify the Secretary-General of the League of Nations, in order that the other Contracting States may be so informed. 15

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

The Contracting States agree to facilitate all steps in the procedure which require to be taken in their own territories, in accordance with the provisions of their law governing arbitral procedure applicable to existing differences. 20

3. Each Contracting State undertakes to ensure the execution by its authorities and in accordance with the provisions of its national laws of arbitral awards made in its own territory under the preceding articles. 25

4. The tribunals of the Contracting Parties, on being seized of a dispute regarding a contract made between persons to whom Article 1 applies and including an arbitration agreement whether referring to present or future differences which is valid in virtue of the said article and capable of being carried into effect, shall refer the parties on the application of either of them to the decision of the arbitrators. 30

Such reference shall not prejudice the competence of the judicial tribunals in case the agreement or the arbitration cannot proceed or becomes inoperative. 35

5. The present Protocol, which shall remain open for signature by all States, shall be ratified. The ratifications shall be deposited as soon as possible with the Secretary-General of the League of Nations, who shall notify such deposit to all the Signatory States. 40

6. The present Protocol will come into force as soon as two ratifications have been deposited. Thereafter it will take effect, in the case of each Contracting State, one month after the notification by the Secretary-General of the deposit of its ratification.

7. The present Protocol may be denounced by any Contracting State on giving one year's notice. Denunciation shall be effected by a notification addressed to the Secretary-General of the League, who will immediately transmit copies of such notification to all the other Signatory States and inform them of the date on which it was received. The denunciation shall take effect one year after the date on which it was notified to the Secretary-General, and shall operate only in respect of the notifying State. 45
50

5 8. The Contracting States may declare that their acceptance of the present Protocol does not include any or all of the under-mentioned territories: that is to say, their colonies, overseas possessions or territories, protectorates or the territories over which they exercise a mandate.

10 The said States may subsequently adhere separately on behalf of any territory thus excluded. The Secretary-General of the League of Nations shall be informed as soon as possible of such adhesions. He shall notify such adhesions to all Signatory States. They will take effect one month after the notification by the Secretary-General to all Signatory States.

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

15 A certified copy of the present Protocol will be transmitted by the Secretary-General to all the Contracting States.