

DRAFT

ARBITRATION (DOMESTIC) BILL

BILL NO. OF 199-

ARBITRATION (DOMESTIC) BILL 199-

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**A BILL
INTITULED**

AN ACT to make provision for domestic arbitrations in respect of civil matters.

[Words of Enactment]

PART I

PRELIMINARY

Short title
and
commencement

1. This Act may be cited as the Arbitration (Domestic) Act 199_ and shall come into operation on such date as the [President] [Governor-General] [Minister] may appoint by [Proclamation] [Order] published in the [Official] Gazette.

Interpretation

2. (1) In this Act, unless the context otherwise requires -

"arbitration agreement" has the same meaning as in article 7 of the UNCITRAL Model Law;

OR ["arbitration agreement" means an agreement in writing (including an agreement contained in an exchange of letters, telegrams, telex or fax messages or any other means of communication used in general business practice) to submit to arbitration present or future differences capable of settlement by arbitration whether an arbitrator is named therein or not;];

"Convention award" means an award to which Part iv applies being an award made in pursuance of an arbitration agreement in a State or territory other than [] which is a party to the New York Convention;

"Court" means the High Court;

"dispute" includes a difference;

"domestic arbitration agreement" means an arbitration agreement which is not an international arbitration agreement;

"international arbitration agreement" means an arbitration agreement pursuant to which an arbitration is, or if commenced would be, international within the meaning of article 1(3) of the UNCITRAL Model Law;

"the New York Convention" means the Convention on the Recognition and Enforcement of Foreign Arbitral Awards adopted by the United Nations Conference on International Commercial Arbitration on 10 June 1958, the text of which is set out in the schedule to this act;

"the UNCITRAL Model Law" means the Model Law on International Commercial Arbitration adopted by the United Nations Commission on International Trade Law on 21 June 1985.

Schedule

(2) In interpreting the UNCITRAL Model Law, recourse may be had to -

- (a) the Report of the United Nations Commission on International Trade Law on the work of its Eighteenth Session held from June 3 to 21, 1985 (United Nations Document A/40/17); and

- (b) the Analytical Commentary contained in the Report of the Secretary-General of the United Nations dated 25 March 1985 to the Eighteenth Session of the United Nations Commission on International Trade Law (United Nations Document A/CN.9/264).

PART II

CONCILIATION

Appointment
of conciliator

3. (1) In any case where an arbitration agreement provides for the appointment of a conciliator by a person who is not one of the parties and that person refuses to make the appointment or does not make it within the time specified in the agreement or, if no time is so specified, within a reasonable time of being requested by any party to the agreement to make the appointment, the Court or a Judge thereof may, on the application of any party to the agreement, appoint a conciliator who shall have the like powers to act in the conciliation proceedings as if he had been appointed in accordance with the terms of the agreement.
- (2) Where an arbitration agreement provides for the appointment of a conciliator and further provides that the person so appointed shall act as an arbitrator in the event the conciliation proceedings fail to produce a settlement acceptable to the parties -
- (a) no objection shall be taken to the appointment of such person as an arbitrator, or to his conduct of the

arbitration proceedings, solely on the ground that he has acted previously as a conciliator in connection with all or any of the matters referred to arbitration;

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

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

Power of
arbitrator to
act as
conciliator

4. (1) If all parties to a reference consent in writing, and for so long as no party withdraws in writing his consent, an arbitrator may act as a conciliator.

(2) An arbitrator acting as conciliator -

(a) may communicate with the parties to the reference collectively or separately;

(b) shall treat information obtained by him from a party to

the reference as confidential, unless that party otherwise agrees or unless subsection (3) applies.

- (3) Where confidential information is obtained by an arbitrator from a party to the reference during conciliation proceedings and those proceedings terminate without the parties reaching agreement in settlement of their dispute, the arbitrator shall, before resuming the arbitration proceedings, disclose to all other parties to the reference as much of that information as he considers material to the arbitration proceedings.
- (4) No objection shall be taken to the conduct of arbitration proceedings by an arbitrator solely on the ground that he had acted previously as a conciliator in accordance with this section.

PART III

ARBITRATION WITHIN []

Authority of
arbitrator to be
irrevocable

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

Death of a
party

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

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

(3) Nothing in this section shall be construed as affecting 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.

Bankruptcy

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

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

Staying court proceedings where there is submission to arbitration

8. If any party to an arbitration agreement, or any person claiming there is through or under him, commences any legal proceedings in any court against any other party to the agreement, or any person claiming through or under him, in respect of any matter agreed to be referred,

any party to those legal proceedings may at any time after appearance, and before delivering any pleadings or taking any other steps in the proceedings, apply to that court to stay the proceedings, and that court or a judge thereof, if satisfied that there is no sufficient reason why the matter should not be referred in accordance with the agreement, and that the applicant was, at the time when the proceedings were commenced and still remains ready and willing to do all things necessary to the proper conduct of the arbitration, may make an order staying the proceedings.

Consolidation of
arbitrations

9. (1) Where in relation to two or more arbitration proceedings in respect of identical parties it appears to the Court -

- (a) that some common question of law or fact arises in both or all of them, or
- (b) that the rights to relief claimed therein are in respect of or arise out of the same transaction or series of transactions, or
- (c) that for some other reason it is desirable to make an order under this section,

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

(2) Where the Court orders arbitration proceedings to be consolidated under subsection (1) and all parties to the

consolidated arbitration proceedings are in agreement as to the choice of arbitrator for those proceedings the same shall be appointed by the Court; but if all parties cannot agree, the Court shall have power to appoint an arbitrator for those proceedings.

Reference of
interpleader
issues to
arbitration

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

When reference
is to a single
arbitrator or to
two arbitrators

11. (1) Unless a contrary intention is expressed therein, every arbitration agreement shall, if no other mode of reference is provided, be deemed to include a provision that the reference shall be to a single arbitrator.
- (2) Unless a contrary intention is expressed therein, every arbitration agreement shall, where the reference is to two arbitrators, be deemed to include a provision that the two arbitrators may appoint a third arbitrator at any time after they are themselves appointed.

Power of parties
in certain cases
to fill vacancy

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

- (a) if either of the appointed arbitrators refuses to act, or is incapable of acting, or dies, the party who appointed him may appoint a new arbitrator in his place;
- (b) if, on such a reference, one party fails to appoint an

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

Provided that the Court or a judge thereof may set aside any appointment made in pursuance of this section.

Majority award of three arbitrators	13.	Unless the contrary intention is expressed in the arbitration agreement, in any case where there is a reference to three arbitrators arbitrators, the award of any two of the arbitrators shall be binding, and in the event that no two of the arbitrators agree to the award, the award of the arbitrator appointed by the arbitrators to be chairman shall be binding.
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Power of Court in certain to appoint arbitrator	14.	(1) In any of the following cases - <ul style="list-style-type: none">(a) where an arbitration agreement provides that the cases reference shall be to a single arbitrator, and all an the parties do not, after disputes have arisen, concur in the appointment of an arbitrator;(b) if an appointed arbitrator refuses to act, or is incapable of acting, or dies, and the arbitration agreement does not show that it was intended that the vacancy should not be filled and the parties do not fill the vacancy;(c) where a party or an arbitrator is required or is at liberty
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to appoint or concur in the appointment of an arbitrator and does not do so;

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

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

(2) In any case where -

- (a) an arbitration agreement provides for the appointment of an arbitrator by a person who is neither one of the parties nor an existing arbitrator (whether the provision applies directly or in default of agreement by the parties or otherwise); and
- (b) that person refuses to make the appointment or does not make it within the time specified in the agreement or, if no time is so specified, within a reasonable time,

any party to the agreement may serve the person in question with a written notice to appoint an arbitrator and, if the appointment is not made within [seven] [clear] days after the service of the notice, the Court or a judge thereof may, on the application of the party who gave the notice, appoint an arbitrator who shall have the like powers to act in the reference and make an award as if he had been appointed in accordance with the terms of the agreement.

Conduct of Proceedings

Proper law

15. An agreement out of which the dispute or arbitration arises shall, if the arbitration is held in [], be governed by the municipal law of [], unless -

- (a) the agreement expresses a contrary intention;
- (b) a subsequent agreement entered into by all the parties to the dispute or arbitration concerned expresses a contrary intention; or
- (c) the parties agree to leave the arbitrator to determine the proper law.

Procedural law

16. Unless a contrary intention is expressed in an arbitration agreement, where an arbitration is held in [], the arbitration proceedings shall be governed by the procedural law of [].

Conduct of proceedings

17. (1) Unless a contrary intention is expressed therein, every arbitration agreement shall, where such a provision is applicable to the reference, be deemed to contain a provision that the parties to

the reference, and all persons claiming through them respectively, shall, subject to any legal objection, submit to be examined by the arbitrator on oath or affirmation, in relation to the matters in dispute, and shall, subject as aforesaid, produce before the arbitrator all documents within their possession or power respectively which may be required or called for, and do all other things which during the proceedings on the reference the arbitrator may require.

- (2) Unless a contrary intention is expressed therein, every arbitration agreement shall, where such a provision is applicable to the reference, be deemed to contain a provision that the witnesses on the reference shall, if the arbitrator thinks fit, be examined on oath or affirmation.
- (3) An arbitrator shall, unless a contrary intention is expressed in the arbitration agreement, have power to administer oaths to, or take the affirmations of, the parties to and witnesses on a reference under the agreement.
- (4) An arbitrator may receive any evidence that he considers relevant and shall not be bound by the rules of evidence.
- (5) Any party to a reference under an arbitration agreement may sue out a writ of subpoena ad testificandum or a writ of subpoena duces tecum, but no person shall be compelled under any such writ to produce any document which he could not be compelled to produce on the trial of an action, and the Court or a judge thereof may order that a writ of subpoena ad testificandum or of subpoena duces tecum shall issue to compel the attendance before an arbitrator of a witness wherever he

may be within [].

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

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

(a) security for costs;

(b) discovery of documents and interrogatories;

(c) the giving of evidence by affidavit;

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

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

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

(g) the detention, preservation or inspection of any property or thing which is the subject of the reference or as to which any question may arise therein, and authorising for any of the purposes aforesaid any person to enter upon or into any land or building in the possession of any party to the reference, or authorising any samples to be taken

or any observation to be made or experiment to be tried which may be necessary or expedient for the purpose of obtaining full information or evidence; and

(h) interim injunctions or the appointment of a receiver, as it was not the purpose of and in relation to an action or matter in the Court:

- Provided that nothing in this subsection shall be taken to prejudice any power which may be vested in an arbitrator of making orders in respect of any of the matters aforesaid.

Provisions Relating to Awards

Time for making award 18. (1) Subject to the provisions of section 31(2) and anything to the contrary in the arbitration agreement, an arbitrator shall have power to make an award at any time.

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

(3) The Court may, on the application of any party to the reference, remove an arbitrator who fails to use all reasonable despatch in entering upon and proceeding with the reference and making an award, and an arbitrator who is removed by the Court under this subsection shall not be entitled to receive any remuneration in respect of his services.

(4) For the purposes of subsection (3), the expression "proceeding with the reference" includes, in a case where two arbitrators are

unable to agree, giving notice of that fact to the parties and to the third arbitrator.

Interim
award

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

Specific
performance

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

Awards to
be final

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

Power to
correct slips

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

Costs, Fees and Interest

Costs

23. (1) Unless a contrary intention is expressed therein, every arbitration agreement shall be deemed to include a provision that the costs of the reference and award shall be in the discretion of the arbitrator, who may direct to and by whom and in what manner

those costs or any part thereof shall be paid, and may tax or settle the amount of costs to be so paid or any part thereof, and may award costs to be paid as between attorney and client.

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

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

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

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

Taxation of
fees of
arbitrator

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

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

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

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

Interest on
awards

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

Interest for
period prior to
payment

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

(a) on any sum which is the subject of the reference but

which is paid before the award, for such period ending not later than the date of payment as he thinks fit; and

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

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

Judicial Review, Determination of Preliminary Point of Law, Exclusion Agreements, Interlocutory Orders, Remission and Setting Aside of Awards

Judicial review
arbitral
awards

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

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

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

(b) remit the award to the reconsideration of the arbitrator together with the Court's opinion on the question of law which was the subject of the appeal, and where the award is remitted under paragraph (b),

the arbitrator shall, unless the order otherwise directs, make his award within three months after the date of the order.

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

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

(b) subject to section 29, with the leave of the Court.

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

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

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

(b) subject to section 29, with the leave of the Court,

it appears to the Court that the award does not or does not sufficiently set out the reasons for the award, the Court may order the arbitrator concerned to state the reasons for his award in sufficient detail to

enable the Court, on appeal brought under this section, to consider any question of law arising out of the award.

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

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

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

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

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

Determination of
preliminary point
of law by the Court

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

- (a) with the consent of an arbitrator who has entered on the reference; or

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

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

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

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

(b) the question of law is one in respect of which leave to appeal would be likely to be given under section 27(3)(b).

(3) A decision of the Court under subsection (1) shall be deemed to be a judgment of the Court within the meaning of section [] of the High [Supreme] Court Act (appeals to the Court of Appeal) but no appeal shall lie from such a decision unless -

(a) the High Court or the Court of Appeal gives leave; and

(b) if it is certified by the High Court that the question of law to which the decision relates is one of general importance or is one which for some other special reason should be considered by the Court of Appeal.

(4) In the absence of such circumstances as may be prescribed by rules of court, proceedings in the Court or the Court of Appeal under this section and section 27 shall, on the application of any party to the proceedings, be conducted otherwise than in open court.

Exclusion
agreements
affecting
rights under
sections 27 and 28

29. (1) Subject to the following provisions of this section and section 30 -

- (a) the Court shall not, under section 27(3)(b), grant leave to appeal in respect of a question of law arising out of an award; and
- (b) the Court shall not under section 27(5)(b), grant leave to make an application in respect of an award; and
- (c) no application may be made under section 28(1)(a) in respect of a question of law,

if the parties to the reference in question have entered into an agreement in writing (in this section referred to as an "exclusion agreement") which excludes the right of appeal under section 27 in relation to that award or, in a case falling within paragraph (c), in relation to an award to which the determination of the question of law is material.

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

(3) An exclusion agreement may be expressed so as to relate to a particular award, to awards under a particular reference or to any other description of awards, whether arising out of the same reference or not; and an agreement may be an exclusion agreement for the purposes of this section whether it is entered

into before or after the enactment of this Act and whether or not it forms part of an arbitration agreement.

[(4) In any case where -

- (a) an arbitration agreement, other than a domestic arbitration agreement, provides for disputes between the parties to be referred to arbitration; and
- (b) a dispute to which the agreement relates involves the question whether a party has been guilty of fraud; and
- (c) the parties have entered into an exclusion agreement which is applicable to any awards made on the reference of that dispute,

then, except in so far as the exclusion agreement otherwise provides, the Court shall not exercise its powers under section 33(2) in relation to that dispute.]

[This provision which corresponds to section 3(3) of the Arbitration Act 1979 of the United Kingdom and similar provisions in the legislation of Bermuda and Hong Kong may need to be omitted because of the fact that separate legislation is to be enacted governing international commercial arbitrations.]

- (5) Except as provided by subsection (1), sections 27 and 28 shall have effect notwithstanding anything in any agreement purporting to -
 - (a) prohibit or restrict access to the Court; or
 - (b) restrict the jurisdiction of that Court; or

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

(6) An exclusion agreement shall be of no effect in relation to an award made on, or a question of law arising in the course of a reference under a statutory arbitration, that is to say, such an arbitration as is referred to in section 44(1).

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

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

(a) an individual who is a national of, or is permanently resident in, any State or territory other than []; nor

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

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

Interlocutory orders 30. (1) If any party to a reference under an arbitration agreement fails within the time specified in the order or, if no time is so

specified, within a reasonable time to comply with an order made by the arbitrator in the course of the reference, then, on the application of the arbitrator or of any party to the reference, the Court may make an order extending the powers of the arbitrator as mentioned in subsection (2).

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

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

Power to remit award 31. (1) In all cases of reference to arbitration, the Court or a judge thereof may from time to time remit the matters referred, or any of them, to the reconsideration of the arbitrator.

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

Removal of arbitrator and setting aside of award 32. (1) Where an arbitrator has misconducted himself or the proceedings, or an arbitration or award has been improperly procured, the Court may set the award aside.

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

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

Power of Court
to give relief
where
arbitrator is
not impartial or
the dispute
involves a
question of
fraud

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

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

revoke the authority of any arbitrator appointed by or by virtue of the agreement.

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

Power of Court
where
arbitrator is
removed or
authority of
arbitrator is
revoked

34. (1) Where an arbitrator, not being a sole arbitrator, or two or more arbitrators, not being all the arbitrators is or are removed by the Court, the Court may, on the application of any party to the arbitration agreement, appoint a person or persons to act as arbitrator or arbitrators in place of the person or persons so removed.
- (2) Where the authority of an arbitrator or arbitrators is revoked by leave of the Court, or a sole arbitrator or all the arbitrators is or are removed by the Court, the Court may, on the application of any party to the arbitration agreement, either -
- (a) appoint a person to act as sole arbitrator in place of the person or persons removed; or
- (b) order that the arbitration agreement shall cease to have effect in respect of the dispute referred.
- (3) A person appointed under this section by the Court as an arbitrator shall have the like power to act in the reference and to make an award as if he had been appointed in accordance with the terms of the arbitration agreement.

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

General

- Commencement of arbitration 35. (1) An arbitration shall be deemed to be commenced when one party to the arbitration agreement serves on the other party or parties a notice requiring him or them to appoint or concur in appointing an arbitrator, or, where the arbitration agreement provides that the reference shall be to a person named or designated in the agreement, requiring him or them to submit the dispute to the person so named or designated.
- (2) Any such notice as is mentioned in subsection (1) may be served either -
- (a) by delivering it to the person on whom it is to be served; or
 - (b) leaving it at the usual or last known place of abode in [] of that person; or
 - (c) by sending it by post in a registered letter addressed to

that person at his usual or last known place of abode in
[],

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

Power of
court to
extend time
for
commencing
arbitration
proceedings

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

Delay in
prosecuting
Claims

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

- (2) Where there has been undue delay by a claimant in instituting or prosecuting the claim pursuant to an arbitration agreement,

then on the application of any party to the arbitration proceedings, the Court may make an order terminating the arbitration proceedings and prohibiting the claimant from commencing further arbitration proceedings in respect of any matter which was the subject of the terminated proceedings.

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

(a) the delay has been intentional and contumacious; or

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

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

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

Terms as to
costs

38. Any order made under this Part may be made on such terms as to costs or otherwise (including in the case of an order under section 37,

the remuneration of the arbitrator in respect of his services) as the authority making the order thinks just.

Proceedings to
be heard otherwise
than in open court

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

Restrictions on
reporting of
proceedings
heard
otherwise
than in open
court

40. (1) This section applies to proceedings under this Act in the Court or the Court of Appeal heard otherwise than in open court.

- (2) A court in which proceedings to which this section applies are being heard shall, on the application of any party to the proceedings, give directions as to what information, if any, relating to the proceedings may be published.

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

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

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

- (4) Notwithstanding subsection (3), where a court gives a judgment in respect of proceedings to which this section applies and considers that judgment to be of major legal interest, it shall direct that reports of the judgment may be published in law

reports and professional publications but, if any party to the proceedings reasonably wishes to conceal any matter, including the fact that he was such a party the court shall -

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

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

Enforcement
of award

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

Crown [State]
to be bound

42. This Act binds the Crown [State].

Application of
this Act to
domestic arbitration
agreements

43. This Act applies to a domestic arbitration agreement and to an arbitration pursuant to a domestic arbitration agreement, except where a dispute has arisen and the parties to the dispute have subsequently agreed in writing -

(a) that the agreement is, or is to be treated as, an international agreement; or

(b) that the dispute is to be arbitrated as an international arbitration to which the International Arbitration Act 199- shall apply.

Application
to statutory
arbitrations

44. (1) This Act, except the provisions specified in sub-section (2), shall apply to every arbitration under any other enactment, whether enacted before or after the commencement of this Act, as if the arbitration were pursuant to a domestic arbitration agreement and as if that other enactment were a domestic arbitration agreement, except in so far as -

(a) this Act is inconsistent with that other enactment or with any rules or procedure authorised thereunder; or

(b) that other enactment otherwise provides.

(2) The provisions referred to in subsection (1) are sections 6, 7, 8, 23(3), 32, 33 and 35.

Transitional
provisions

45. This Act shall not affect any arbitration commenced, within the meaning of section 36, before the commencement of this Act but it shall apply to an arbitration so commenced after the commencement of this Act under an agreement made before the commencement of this Act.

Application
to transfer
arbitration

(1)

The Act, except the provisions specified in sub-section (2) shall apply to every arbitration on the day other enactment, whether enacted before or after the commencement of this Act, as if the arbitrators were persons in a domestic arbitration agreement and as if that other enactment were a domestic arbitration agreement except in so far as -

(2)

The Act is inconsistent with that other enactment or with any rule or procedure authorized thereunder or

(3)

that other enactment otherwise provides

(4)

The provisions referred to in sub-section (1) are sections 4, 5, 6, 7, 8, 9, 10, 11, 12, 13 and 14.

(5)

Transferred
provisions

The Act shall not apply to any arbitration agreement, which the transferee of section 13 before the commencement of this Act but it shall apply to an arbitration so commenced after the commencement of this Act under an agreement made before the commencement of this Act.