

I assent.

(L.S.)

UGO MIFSUD BONNICI
President

13th February, 1996

ACT No. II of 1996

AN ACT to encourage and facilitate the settlement of disputes through arbitration in Malta, to establish the Malta Arbitration Centre as a centre for domestic arbitration and international commercial arbitration, to make provisions regulating the conduct of arbitration proceedings and the recognition and enforcement of certain arbitral awards.

BE IT ENACTED by the President, by and with the advice and consent of the House of Representatives, in this present Parliament assembled, and by the authority of the same, as follows:—

PART I

Preliminary

Short title and
commencement.

1. This Act may be cited as the Arbitration Act, 1996, and shall come into force on such date as the Minister responsible for justice may by notice in the Gazette establish and different dates may be so established for different provisions and different purposes of this Act.

Interpretation.

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

“arbitration agreement” means an agreement as defined in Article 7 of the Model Law;

“arbitral tribunal” means a sole arbitrator or a number of arbitrators;

“Board” means the Board of Governors of the Centre;

“Centre” means the Malta Arbitration Centre established by section 3 of this Act;

“Chairman” means the Chairman of the Board;

“financial period” means a period of five years commencing on the first January of one year and ending on the thirty first day of December of the fifth year thereafter; provided that the first financial period of the Centre shall be the period commencing with the coming into force of Part III of this Act and ending on the 31st day of December of the year next following that on which the said Part III shall have come into force;

“Minister” means the Minister responsible for justice;

“Model Law” means the Model Law on International Commercial Arbitration adopted on June 21, 1985 by the United Nations Commission on International Trade Law reproduced in the First Schedule to this Act;

“Registrar” means the registrar of the Centre.

PART II

Establishment and Functions of the Centre

3. (1) A centre, to be known as the Malta Arbitration Centre, is hereby established for the purposes and with the functions set out by this Act. Establishment of the Arbitration Centre.

(2) The Centre shall be a body corporate having a distinct legal personality and, subject to the provisions of this Act, shall be capable of entering into contracts, of acquiring, holding and disposing of any kind of property for the purposes of its functions, of suing and of being sued, and of doing all such things and entering into all such transactions as are incidental or conducive to the exercise or performance of its functions under this Act.

(3) Any document purporting to be an instrument made or issued by the Centre and signed by the Chairman or such other member of the Board, officer or employee of the Centre as may be set out in a notice issued by the Chairman and published in the Gazette, shall be received in evidence and shall, until the contrary is proved, be deemed to be an instrument made or issued by the Centre.

4. (1) There shall be a Board which shall be responsible for the policy and general administration of the affairs and business of the Centre. Establishment and composition of Board.

(2) The Board shall consist of not less than five and not more than nine members, appointed by the President of Malta acting on the advice of the Minister, one of whom shall be designated by the Minister as Chairman. The Minister shall also designate another member as Deputy Chairman and such member shall have all the powers and perform all the functions of the Chairman during his absence, or until a new Chairman has been appointed following the resignation, termination of appointment, or death of the Chairman.

(3) The Minister shall select the members of the Board from among persons who appear to him to be qualified by reason of having had experience of and shown capacity in matters relating to international or domestic arbitration, conciliation and the settlement of disputes, international trade, commerce, industry, investment and maritime affairs; the Attorney General shall be an *ex officio* member of the Board.

Qualifications of
Chairman and
Deputy.

5. A person shall not be qualified to be appointed Chairman or Deputy Chairman of the Board unless he has practised as an advocate in Malta for a period or periods amounting in the aggregate to not less than twelve years.

Duration of
appointment
of the Board.

6. Subject to the provisions of sections 4, 7 and 9 of this Act, the members of the Board shall hold office for a six year period and on such terms and conditions as the Minister may deem appropriate; and a member shall, on ceasing to be a member, be eligible for re-appointment:

Provided that the Minister may at any time, on the recommendation of the Commission for the Administration of Justice established under section 101A of the Constitution of Malta, terminate the appointment of a member of the Board if in his opinion, confirmed by the recommendation of the said Commission as aforesaid, such member is unfit to continue in office or has become incapable of properly performing his duties as member of the Board, and the said Commission is hereby vested with the function and power to make a recommendation to the Minister as aforesaid.

Disqualification
from or being a
member of the
Board.

7. A person shall be disqualified for appointment to, or from remaining, a member of the Board if he:

- (a) is legally incapacitated; or
- (b) has been adjudged bankrupt under the law of any country or has made a composition or arrangement with his creditors; or
- (c) has been convicted of a crime affecting public trust, or theft or fraud; or
- (d) save as provided in subsection (3) of section 4, is a public officer; or
- (e) has any financial or other interest in any enterprise or activity which is likely to affect prejudicially the discharge of his functions as a member of the Board.

8. (1) Any member of the Board may resign his office by letter addressed to the Minister. Resignations.

(2) The appointment of any person as member of the Board, and the termination of office or resignation of any such person, shall be notified in the Gazette.

9. (1) The Centre shall have a Registrar, who shall also be the Secretary of the Board. Registrar and other employees of the Centre.

(2) Subject to the provisions of the Constitution and of any other enactment applicable thereto, the Registrar and the other employees of the Centre shall be appointed by the Board under such terms and conditions as the said Board shall deem appropriate.

(3) The legal representation of the Centre shall be vested in the Registrar, or any other person so authorised by the Board.

10. (1) The functions of the Centre shall be: Functions of the Centre.

(i) (a) to promote Malta as a centre for international commercial arbitration;

(b) to provide for the conduct of international arbitration in Malta;

(c) to encourage domestic arbitration as a means of settling disputes;

(d) to provide the necessary facilities for the conduct of arbitration;

(e) to advise the Government on any of the matters mentioned in the foregoing subparagraphs of this paragraph of this subsection;

(f) to perform such other functions assigned to it by this or any other law; and

(g) to perform any other function supplementary or ancillary to the above.

(ii) Subject to the other provisions of this Act, the Centre, with the concurrence of the Minister, shall have power, exercisable through its Board, to make rules to be published in the Gazette providing for:

(a) procedure for arbitrations;

(b) the manner and requirements for registration of any document under this Act;

(c) guidelines and optional models or specimens for the drawing up of arbitration clauses and agreements; and

(d) any other matter in connection with which rules may be made under any provision of this Act.

(2) The Centre may, from time to time, draw up panels of arbitrators for domestic arbitration and panels of arbitrators for international commercial arbitration:

Provided however that a person may be included in more than one panel.

(3) Domestic arbitration panels may be appointed on matters related to commerce, insurance, traffic collisions, building construction, the maritime sector and such other fields as the Centre may deem expedient from time to time. The panels shall be composed of persons who in the opinion of the Centre are qualified to carry out the duties and functions of arbitrators in a particular field of expertise.

(4) The Centre shall establish an International Arbitral Advisory Committee of not more than five persons, including the Chairman of the Centre, which shall have the functions to advise the Centre on any matter relating to international commercial arbitration and to recommend to the Centre persons, who in its opinion, are qualified to carry out the duties and functions of arbitrators in international commercial arbitrations.

(5) The Centre shall, acting on the recommendation of the International Arbitral Advisory Committee, appoint panels of arbitrators for international commercial arbitration on matters such as international trade, commerce, insurance, investment and the maritime sector.

(6) A person may be removed from any panel by the Centre at any time, and a person may at any time resign by letter addressed to the Registrar:

Provided that any such removal or resignation shall not be deemed to include the removal or resignation of that person from any arbitration proceedings in which he may have already been appointed before his removal or resignation.

(7) For the purpose of encouraging settlement of a dispute, the Centre may, with the agreement of the parties and in accordance with rules made by the Centre under this Act, employ mediation, conciliation or other procedures at any time before or during the arbitration proceedings.

PART III

Finances

Estimates of the
Centre.

11. (1) The Centre shall cause to be prepared in every financial period, and shall not later than six months before the end of each financial period adopt, estimates of the income and expenditure of the Centre for the next following financial period.

(2) The estimates shall be made out in such form and shall contain such information and such comparisons with previous financial periods as the Minister may direct. The estimates shall take into account such government contribution, if any, to the revenues of the Centre as the Minister may indicate to the Centre that he will recommend to the House of Representatives for the financial period in consideration, in accordance with section 13 of this Act.

(3) A copy of the estimates of the Centre shall upon their adoption by the Centre, be sent forthwith by the Board to the Minister.

12. (1) The revenues of the Centre shall consist of the fees charged for the services provided by it under this Act and of any government contribution made in accordance with section 13 of this Act. Revenue of the Centre.

(2) The Minister, after consultation with the Centre, may establish by regulations the fees to be charged by the Centre for any services, facilities or any other matter provided by it in accordance with this Act or in pursuance of the exercise of its functions under this Act.

13. (1) The Minister may, after consultation with the Centre and with any other person or authority and with the concurrence of the Minister responsible for finance, indicate in writing to the Centre the amount of government contribution to be made to the Centre and to be included in its estimates for the next financial period. The indication made by the Minister as aforesaid shall be attached to the estimates of the Centre to be forwarded to the Minister. Government contribution.

(2) Upon the approval of the estimates with or without amendments as provided in this Act, the sum approved in the estimates as the government contribution shall be paid to the Centre out of the Consolidated Fund without any further authority other than this Act.

(3) Notwithstanding the provisions of subsections (1) and (2) of this section the government contribution for the first financial period of the Centre shall be of a sum of Lm200,000 and such sum shall be paid to the Centre out of the Consolidated Fund without any further authority other than this subsection.

PART IV

Domestic Arbitration

14. (1) A domestic arbitration agreement is an arbitration agreement which does not fall under Part V of this Act, and in particular under Article 1(3) of the Model Law. Domestic arbitration.

(2) Notwithstanding the provisions of subsection (1) of this section the parties may agree that such an agreement shall not be a domestic arbitration agreement, and shall be regulated by Part V of this Act; however in such cases the provisions of section 58 shall not apply.

Procedure in
domestic
arbitration.

15. (1) In the case of a domestic arbitration agreement, falling under subsection (1) of section 14, disputes shall be settled in accordance with the provisions of this Part, subject to such modification as (a) the parties may agree upon in writing, and (b) may be permitted by law.

(2) An arbitration agreement shall be valid if the subject matter of the dispute is capable of settlement by arbitration.

(3) Notwithstanding any provision of the Code of Organisation and Civil Procedure if any party to an arbitration agreement, or any person claiming through or under him, commences any legal proceedings in any court against any other party to the arbitration agreement or any person claiming through or under him, in respect of any matter agreed to be referred to arbitration, any party to such legal proceedings may at any time before delivering any pleadings or taking other steps in the proceedings, apply to that court to stay the proceedings, and that court or a judge thereof, unless satisfied that the arbitration agreement has become inoperative or cannot proceed, or that in fact there is no dispute between the parties with regard to the matter agreed to be referred, shall make an order staying the proceedings.

(4) Where the proceedings as are referred to in subsection (3) have been brought before a court, arbitral proceedings may nevertheless be commenced or continued and an award may be made while the issue is pending before the court.

(5) Any matter being the subject of a dispute even after an action thereon has been brought before a court, shall, unless such matter is one referred to in subsection (6) of this section, be capable of settlement by arbitration if all parties to the dispute agree.

(6) Disputes, concerning questions of personal civil status including those relating to personal separation and annulment of marriage, are not capable of settlement by arbitration.

(7) Any submission to domestic arbitration made by an administrator, or by any person who is not at liberty to dispose of the thing, is null.

Notice and
calculation
of periods of time.

16. (1) For the purposes of this Part, any notice, including a notification, communication or proposal, is deemed to have been received and duly notified if it is physically delivered to the addressee or if it is delivered at his habitual residence, place of business or mailing address, or, if none of these can be found after making reasonable enquiry, at the addressee's last-known residence or place of business. Notice shall be deemed to have been received on the day it is so delivered.

(2) For the purposes of calculating a period of time under this Part, such period shall begin to run on the day following the day when a notice, notification, communication or proposal is received. If

the last day of such period is a public holiday or a non-working day, the period is extended until the first working day which follows. Public holidays or non working days occurring during the running of the period of time are included in calculating the period.

17. (1) The party initiating recourse to arbitration (hereinafter called "the claimant") shall file with the Registrar, a notice of arbitration for registration by the Centre and for onward transmission to the other party (hereinafter called "the respondent").

Notice of
arbitration.

(2) Arbitral proceedings shall be deemed to commence on the date on which the notice of arbitration is received by the respondent.

(3) The notice of arbitration shall include the following:

- (a) a demand that the dispute be referred to arbitration;
- (b) the names and addresses of the parties;
- (c) a reference to the arbitration clause or the separate arbitration agreement that is invoked;
- (d) a reference to the contract out of which, or the defined legal relationship in respect to which, the dispute arises;
- (e) the general nature of the claim and an indication of the amount involved, if any;
- (f) the relief or remedy sought; and
- (g) a proposal as to the number of arbitrators if the parties have not previously agreed thereon.

(4) The notice of arbitration may also include:

- (a) the proposals for the appointment of a sole arbitrator;
- (b) the notification of the appointment of an arbitrator referred to in section 21; and
- (c) the statement of claim referred to in section 29.

18. (1) Subject to the provisions of subsection (2) of this section, the parties may be represented or assisted by persons of their choice. The names and addresses of such persons must be communicated in writing to the other party; such communication must specify whether the appointment is being made for purposes of representation or assistance.

Representation
and assistance.

(2) A legal practitioner or a person not qualified under the Laws of Malta may act on behalf of a party to an arbitral proceeding to which this Act applies, including appearing before the arbitral tribunal, and he shall not thereby be taken to have breached any law of Malta regulating the practice of the legal profession.

Number of
arbitrators.

19. If the parties have not previously agreed on the number of arbitrators, and if within fifteen days after the receipt by the respondent of the notice of arbitration, the parties have not agreed that there shall be only one arbitrator, three arbitrators shall be appointed:

Provided however that if the dispute amount is under 5,000 Maltese liri, there shall be a sole arbitrator.

Appointment
of arbitrators.

20. (1) If a sole arbitrator is to be appointed, either party may propose to the other the names of one or more persons, one of whom may serve as the sole arbitrator.

(2) If within thirty days after receipt by a party of a proposal made in accordance with subsection (1), the parties have not reached agreement on the choice of a sole arbitrator, the sole arbitrator shall be appointed by the Chairman.

(3) The Chairman shall, at the request of one of the parties, appoint the sole arbitrator as promptly as possible; his decision shall be final and binding.

(4) In making the appointment, the Chairman shall have regard to such considerations as are likely to secure the appointment of an independent and impartial arbitrator and to the members of the Domestic Arbitration Panels established under subsection (2) of section 10.

(5) An arbitrator shall not be liable in damages for negligence in anything done or omitted to be done by him as arbitrator:

Provided that an arbitrator shall be liable in respect of anything wilfully done or omitted to be done by him as arbitrator where his action or omission is attributable to malice or fraud on his part.

Presiding
arbitrator.

21. (1) If three arbitrators are to be appointed, each party shall appoint one arbitrator. The two arbitrators thus appointed shall choose the third arbitrator who will act as the presiding arbitrator of the arbitral tribunal.

(2) If within thirty days after the receipt of a party's notification of the appointment of an arbitrator, the other party has not notified the first party of the arbitrator he has appointed, the first party may request the Chairman to appoint the second arbitrator.

(3) If within thirty days after the appointment of the second arbitrator, the two arbitrators have not agreed on the choice of the presiding arbitrator, the presiding arbitrator shall be appointed by the Chairman.

(4) The Chairman shall apply the provisions of section 20, *mutatis mutandis*, in any appointment made under the provisions of subsections (2) or (3) of section 21.

22. (1) When the Chairman is requested to appoint an arbitrator pursuant to section 20 or 21, the party which makes the request shall file with the Registrar a notice for an appointment and refer therein to the notice of arbitration filed under section 17.

Request to the
Chairman to
appoint an
arbitrator.

(2) The Centre may require from either party such information as may be deemed necessary to fulfil its function.

(3) Where persons are proposed for appointment as arbitrators, their full names, addresses and nationalities together with a description of their profession, qualifications and experience shall be indicated.

23. (1) A person who is approached as a prospective arbitrator shall disclose to those who approach him in connection with his possible appointment any circumstances likely to give rise to justifiable doubts as to his impartiality or independence.

Impartiality or
independence.

(2) An arbitrator, once appointed or chosen, shall disclose to the parties the circumstances mentioned in the previous subsection unless the parties have already been informed by him of these circumstances.

24. (1) Any arbitrator may be challenged if circumstances exist that give rise to justifiable doubt as to the arbitrator's impartiality or independence.

Challenge of
arbitrator.

(2) A party may challenge the arbitrator appointed by him only for reasons of which he becomes aware after the appointment has been made.

25. (1) A party who intends to challenge an arbitrator, shall send notice of his challenge within fifteen days after the appointment of the challenged arbitrator has been notified to that party or within fifteen days after the circumstances mentioned in section 23 and 24 became known to that party.

Notification
of challenge.

(2) The challenge shall be notified to the Registrar, to the other party, to the arbitrator who is challenged and to the other members of the arbitral tribunal. The notification shall be in writing and shall state the reasons for the challenge.

(3) When an arbitrator has been challenged by one party the other party may agree to the challenge. The arbitrator may also, after the challenge, withdraw from his office. In neither case does this imply acceptance of the validity of the grounds for the challenge. In both cases the procedure provided in sections 20 and 21 shall be used in full for the appointment of the substitute arbitrator even if during the process of appointing the challenged arbitrator a party had failed to exercise his right to appoint or to participate in the appointment.

26. (1) If the other party does not agree to the challenge and the challenged arbitrator does not withdraw, the decision on the challenge will be made by the Chairman, and his decision shall be final and binding.

Non-withdrawal
of challenged
arbitrator.

(2) When the Chairman sustains the challenge, he shall appoint a substitute arbitrator.

Replacement
of an arbitrator.

27. (1) In the event of the death or resignation of an arbitrator during the course of the arbitral proceedings a substitute arbitrator shall be appointed or chosen pursuant to the procedure provided for in sections 20 to 23 which was applicable to the appointment or choice of the arbitrator being replaced.

(2) In the event that an arbitrator fails to act or in the event of the *de jure* or *de facto* impossibility of his performing his functions, the procedure in respect of the challenge and replacement of an arbitrator as provided in the preceding sections shall apply.

Language.

28. (1) Subject to an agreement by the parties, the arbitral tribunal shall, promptly after its appointment, determine the language or languages to be used in the proceedings; unless the parties agree otherwise, the language chosen shall be Maltese. This determination shall apply to the statement of claim, the statement of defence, and any further written statements and, if oral hearings take place, to the language or languages to be used in such hearings.

(2) The arbitral tribunal may order that any documents annexed to the statement of claim or statement of defence, and any supplementary documents or exhibits submitted in the course of the proceedings, shall be delivered in their original language or languages agreed on by the parties or determined by the arbitral tribunal.

Statement
of claim.

29. (1) Unless the statement of claim was contained in the notice of arbitration, within a period of time to be determined by the arbitral tribunal, the claimant shall communicate his statement of claim in writing to the respondent and to each of the arbitrators. A copy of the contract, and of the arbitration agreement if not contained in the contract, shall be annexed thereto.

(2) The statement of claim shall include the following particulars:

- (a) the names and addresses of the parties;
- (b) a statement of the facts supporting the claim;
- (c) the points at issue; and
- (d) the relief or remedy sought.

(3) The claimant may annex to this statement of claim all documents he deems relevant or may add a reference to the documents or other evidence he will submit.

Statement
of defence.

30. (1) The respondent shall communicate his statement of defence in writing to the claimant and to each of the arbitrators within a period of time to be determined by the arbitral tribunal.

(2) The statement of defence shall contain a reply to the particulars (b), (c) and (d) of the statement of claim referred to in subsection (2) of section 29. The respondent may annex to his statement the documents on which he relies for his defence or may add a reference to the documents or other evidence he will submit.

(3) In his statement of defence, or at a later stage in the arbitral proceedings, if the arbitral tribunal decides that the delay was justified under the circumstances, the respondent may make a counter-claim arising out of the same contract or rely on a claim arising out of the same contract for the purpose of a set-off.

(4) The provisions of subsection (2) of section 29 shall apply to a counter-claim and a claim relied on for the purpose of a set-off.

31. During the course of the arbitral proceedings either party may amend or supplement his claim or defence unless the arbitral tribunal considers it inappropriate to allow such amendment having regard to the delay in making it or prejudice to the other party or any other justifiable circumstances. However, a claim may not be amended in such a manner that the amended claim falls outside the scope of the clause or of the separate arbitration agreement.

Amendments
to the claim
or defence.

32. (1) The arbitral tribunal shall have the power to rule on objections that it has no jurisdiction, including any objections with respect to the existence or validity of the arbitration clause or of the separate arbitration agreement.

Pleas as to the
jurisdiction of the
arbitral tribunal.

(2) The arbitral tribunal shall have the power to determine the existence or the validity of the contract of which an arbitration clause forms part. For the purposes of section 32, an arbitration clause which forms part of a contract and which provides for arbitration under this Part 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.

(3) A plea that the arbitral tribunal does not have jurisdiction shall be raised not later than in the statement of defence or, with respect to a counter-claim, in the reply to the counter-claim.

(4) In general, the arbitral tribunal should rule on a plea concerning its jurisdiction as a preliminary question:

Provided that the arbitral tribunal may proceed with the arbitration and rule on such a plea in its final award.

33. The arbitral tribunal shall decide what further written statements, in addition to the statement of claim and the statement of defence, shall be required from the parties or may be presented by them and shall fix the periods of time for communicating such statements.

Further written
statements.

Periods of time. **34. (1)** The periods of time fixed by the arbitral tribunal for the communication of written statements (including the statement of claim and statement of defence) should not exceed forty-five days:

Provided that the arbitral tribunal may extend the time-limits if it considers that an extension is justified.

Burden of proof. **35. (1)** Each party shall have the burden of proving facts relied on to support his claim or defence.

(2) The arbitral tribunal may, if it considers it appropriate, require a party to deliver to the tribunal and to the other party, within such a period of time as the arbitral tribunal may decide, a summary of the documents and other evidence which that party intends to present in support of the facts in issue set out in his statement of claim or statement of defence.

(3) At any time during the arbitral proceedings the arbitral tribunal may require the parties to produce documents, exhibits or other evidence within such a period or time as the arbitral tribunal shall determine.

Evidence. **36. (1)** Subject to the provisions of section 37, the evidence of witnesses in an arbitration shall be produced either *viva voce* or by affidavit, and subject to the relevant sections of this Part, the rules of the Code of Organization and Civil Procedure and of any law from time to time in force in Malta shall apply to the production of evidence *viva voce* or by affidavit before the arbitral tribunal as they apply to the production of evidence before a court of civil jurisdiction.

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(2) The Centre may make rules setting down the terms within which the evidence is to be produced and the manner of its production, and the parties may, notwithstanding the foregoing and the provisions of subsection (1) of this section, agree that the evidence of witnesses is to be produced within such times and in such manner as may be determined by the parties:

Provided that such agreement may not be incompatible with any rule made by the Centre and declared by it to be inderogable.

(3) Subject to the provisions of subsection (2) of section 37, where the evidence of any person is required, the Registrar may issue writs of subpoena to compel the attendance of a witness to give evidence or produce documents before an arbitral tribunal. The application for the issue of the writ shall be countersigned by the sole arbitrator, or the presiding arbitrator, and shall be filed in the registry of the Civil Court First Hall by the Registrar.

(4) The provisions of subsection (3) of this section shall apply *mutatis mutandis* where for the purposes of proceedings before an arbitral tribunal, a rogatory commission or letters of request are required to be issued in respect of, or an affidavit is required by, a person who is not resident within the jurisdiction of the courts of Malta.

(5) Upon the filing of an application to which subsections (3) and (4) apply, the Registrar of the Courts shall notify the writ or otherwise act on the application in the same manner as if such application or such writ had been issued or approved by the Civil Court First Hall.

(6) Where any person who has been regularly subpoenaed to appear before an arbitral tribunal in accordance with this section fails to appear before the said tribunal without reasonable excuse, the tribunal may make a report thereon to the Registrar who shall by application bring the report to the attention of the Civil Court First Hall requesting it to deal with the matter in the same manner as if the person concerned had failed to appear before that Court when regularly subpoenaed and thereupon the Court shall deal with the matter in the said manner.

37. (1) In the event of an oral hearing of the parties or of witnesses, the arbitral tribunal shall give the parties adequate advance notice of the date, time and place thereof. Oral hearing.

(2) If the witnesses are to be heard, each party shall communicate to the arbitral tribunal and to the other party, at least fifteen days before the hearing, the names and addresses of the witnesses he intends to present, the subject upon which and the languages in which such witnesses will give their testimony.

(3) The arbitral tribunal shall make arrangements for the translation of oral statements made at a hearing and for a record of the hearing if either is deemed necessary by the arbitral tribunal in the circumstances of the case, or if the parties have agreed thereto and have communicated such agreement to the arbitral tribunal at least fifteen days before the hearing.

(4) Hearings shall be held *in camera* unless the parties agree otherwise. The arbitral tribunal may require the retirement of any witness or witnesses during the testimony of other witnesses. The arbitral tribunal is free to determine the manner in which witnesses are examined.

(5) The arbitral tribunal shall determine the admissibility, relevance, materiality and weight of the evidence offered.

38. (1) Unless otherwise agreed by the parties, any party may request the Court to issue any of the precautionary acts listed in subsection (1) of section 830 of the Code of Organization and Civil Procedure subject to the provisions of the following subsections of this section. Interim measures and precautionary acts.
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(2) Where in accordance with subsection (1) of this section a precautionary act has been issued, such act shall remain in force until such time as it shall expire or be revoked in accordance with the provisions of the Code of Organization and Civil Procedure or until such time as the arbitral tribunal by an award given for that purpose shall order the party issuing the precautionary act to withdraw the same and issue the relative counter-warrant.

(3) Notwithstanding anything contained in the Code of Organization and Civil Procedure the time established therein within which the action is to be instituted in respect of the right stated in the precautionary act issued shall be of fifteen days from the filing of the judicial act whereby the court is requested to issue the precautionary act. The provisions of the said Code for the extension of the said time shall also apply.

(4) Action as is referred to in subsection (3) of this section shall be deemed to have been taken when the arbitration proceedings are commenced. For the purpose of this subsection arbitration proceedings shall be deemed to have commenced on the date referred to in subsection (2) of section 17.

(5) The party at whose request a precautionary act has been issued in accordance with this section shall, within the time specified in subsection (3) of this section, file a note in the records of the proceedings for the issue of the said precautionary act together with a certificate by the Registrar showing that he has commenced arbitration proceedings in accordance with subsection (4) of this section.

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

Experts

39. (1) The arbitral tribunal may appoint one or more experts to report to it, in writing, on specific issues to be determined by the tribunal. A copy of the expert's terms of reference, established by the arbitral tribunal, shall be communicated to the parties.

(2) The parties shall give the expert any relevant information or produce for his inspection any relevant documents or goods that he may require of them. Any dispute between a party and such expert as to the relevance of the required information or production shall be referred to the arbitral tribunal for decision.

(3) Upon receipt of the expert's report, the arbitral tribunal shall communicate a copy of the report to the parties who shall be given the opportunity to express, in writing, their opinion on the report. A party shall be entitled to examine any document on which the expert has relied in his report.

(4) At the request of either party the expert, after delivery of the report, may be heard at a hearing where the parties shall have the opportunity to be present and to interrogate the expert. At this hearing either party may present expert witnesses in order to testify on the points at issue. The provisions of section 36 shall be applicable to such proceedings.

Default

40. (1) If within the period of time fixed by the arbitral tribunal the claimant has failed to communicate his claim without showing sufficient cause for such failure, the arbitral tribunal shall issue an order for the termination of the arbitral proceedings. If, within the period of

time fixed by the arbitral tribunal, the respondent has failed to communicate his statement of defence without showing sufficient cause for such failure, the arbitral tribunal shall order that the proceedings continue.

(2) If one of the parties, duly notified under this Part, has to appear at a hearing, fails to do so without showing sufficient cause for such failure, the arbitral tribunal may proceed with the arbitration.

(3) If one of the parties duly invited to produce documentary evidence, fails to do so within the established period of time, without showing sufficient cause for such failure, the arbitral tribunal may make the award on the evidence before it.

41. (1) The arbitral tribunal may enquire of the parties if they have any further proof to offer or witnesses to produce or submissions to make and, if there are none, it shall declare the hearings closed. Closure of hearings.

(2) The arbitral tribunal may, if it considers it necessary owing to exceptional circumstances, decide, on its own motion or upon application of a party, to reopen the hearings at any time before the award is made.

42. A party who knows that any provision of, or requirement under, this Part has not been complied with and yet proceeds with the arbitration without promptly stating his objection to such non-compliance, shall be deemed to have waived its right to object. Waiver of rules

43. (1) When there are three arbitrators, any award or other decision of the arbitral tribunal shall be made by a majority of the arbitrators. Decisions.

(2) In the case of questions of procedure, when there is no majority or when the arbitral tribunal so authorises, the presiding arbitrator may decide on his own, subject to revision, if any, by the arbitral tribunal.

44. (1) In addition to making a final award, the arbitral tribunal shall be entitled to make interim, interlocutory, or partial awards. Form of the award, interim, interlocutory or partial award.

(2) The award shall be in writing and shall be made at the place of the arbitration. It shall be final and binding on the parties. The parties shall carry out the award without delay.

(3) The arbitral tribunal shall state the reasons upon which the award is based, unless the parties have agreed that no reasons are to be given.

(4) An award shall be signed by the arbitrators and it shall contain the date on which and the place where the award was deemed to have been made. Where there are three arbitrators and one of them fails to sign, the award shall state the reason for the absence of the signature.

(5) The award may be made public only with the consent of both parties.

(6) Copies of the award signed by the arbitrators shall be communicated to the parties by the arbitral tribunal.

(7) The arbitral tribunal shall, not later than ninety days from the date referred to in subsection (4) of this section, present the award to the Registrar for registration by the Centre and shall comply with the relevant provisions of this Act and the requirements of registration issued by the Centre.

Applicable law,
amiable
compositeur.

45. (1) The arbitral tribunal shall apply, subject to the provisions of this Act, the law designated by the parties as applicable to the substance of the dispute. Failing such designation by the parties, the arbitral tribunal shall apply Maltese law including the rules of Maltese law relative to the conflict of laws.

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

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

(4) Unless otherwise agreed to by the parties or otherwise provided for in or under this Act, the arbitral tribunal may conduct the arbitration in such manner it considers appropriate. The power conferred upon the arbitral tribunal includes the power to determine the admissibility, relevance, materiality and weight of any evidence.

Settlement or
other grounds
for termination.

46. (1) If before the award is made, the parties agree on a settlement of the dispute, the arbitral tribunal shall either issue an order for the termination of the arbitral proceedings or, if requested by both parties and accepted by the arbitral tribunal, record the settlement in the form of an arbitral award on agreed terms. The arbitral tribunal is not obliged to give reasons for such an award.

(2) If before the award is made, the continuation of the arbitral proceedings becomes unnecessary or impossible for any reason not mentioned in subsection (1), the arbitral tribunal shall inform the parties of its intention to issue an order for the termination of the proceedings. The arbitral tribunal shall have the power to issue such an order unless a party raises justifiable grounds for objection.

(3) Copies of the order for termination of the arbitral proceedings or of the award on agreed terms, signed by the arbitrators, shall be communicated by the arbitral tribunal to the parties and to the Registrar. Where an arbitral award on agreed terms is made, the provisions of subsections (2) and (4) to (7) of section 44 shall apply.

47. (1) Within fifteen days from the receipt of the award, either party, with notice to the other party, may request that the arbitral tribunal give an interpretation of the award. Interpretation of the award.

(2) The interpretation shall be given in writing within forty-five days after the receipt of the request. The interpretation shall form part of the award, and the provisions of subsections (2) to (7) of section 44 shall apply.

48. (1) Within fifteen days from the receipt of the award, either 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. The arbitral tribunal may within thirty days after the communication of the award, make such corrections on its own initiative. Correction of the award.

(2) Such corrections shall be in writing, and the provisions of subsections (2) to (7) of section 44 shall apply.

49. (1) Within fifteen days after the receipt of the award, either party, with notice to the other party, may request the arbitral tribunal to make an additional award as to claims presented in the arbitral proceedings but omitted from the award. Additional award

(2) If the arbitral tribunal considers the request for an additional award to be justified and considers that the omission can be rectified without any further hearings or evidence, it shall complete its award within forty-five days from the receipt of the request.

(3) When an additional award is made the provisions of subsections (2) to (7) of section 44 shall apply.

50. The arbitral tribunal shall fix the costs of arbitration in its award. The term "costs" includes only: Costs.

(a) the fees of the arbitral tribunal to be stated separately as to each arbitrator and to be fixed by the tribunal itself in accordance with section 51;

(b) the travel and other expenses incurred by the arbitrators;

(c) the costs of expert advice and of other assistance required by the arbitral tribunal;

(d) the travel and other expenses of witnesses to the extent such expenses are approved by the arbitral tribunal;

(e) the costs for legal representation and assistance of the successful party if such costs were claimed during the arbitral proceedings, and only to the extent that the arbitral tribunal determines that the amount of such costs is reasonable; and

(f) any fees and expenses payable to the Centre.

51. (1) The fees of the arbitral tribunal shall be reasonable, taking into account the amount in dispute, the complexity of the subject-matter, the time spent by the arbitrators and any other relevant circumstances of the case.

(2) The arbitral tribunal in fixing its fees shall take into account the schedule of fees for arbitration issued by the Centre to the extent that it considers appropriate in the circumstances of the case.

(3) The arbitral tribunal shall fix its fees only after consultation with the Centre which may make any comment it deems appropriate to the arbitral tribunal concerning the fees.

Costs in principle
to be borne by
unsuccessful
party.

52. (1) Except as provided in subsection (2) thereof, the costs of arbitration shall in principle be borne by the unsuccessful party. However, the arbitral tribunal may apportion such costs between the parties if it determines that apportionment is reasonable, taking into account the particular circumstances of the case.

(2) With respect of the costs of legal representation and assistance referred to in paragraph (e) of section 50, the arbitral tribunal, taking into account the particular circumstances of the case, shall be free to determine which party shall bear such costs or may apportion such costs between the parties if it determines that apportionment is reasonable.

(3) When the arbitral tribunal issues an order for the termination of the arbitral proceedings or makes an award on agreed terms, it shall in the text of that order or award, fix the costs of arbitration referred to in section 50 and section 51.

(4) No additional fees may be charged by an arbitral tribunal for interpretation or correction or completion of its award under sections 47 to 49.

Deposit of costs.

53. (1) The arbitral tribunal, on its establishment, may request each party to deposit with the Centre an equal sum between them as an advance payment for the costs referred to in paragraphs (a), (b), (c) and (f) of section 50.

(2) During the course of the arbitral proceedings the arbitral tribunal may request from the parties supplementary deposits to cover further costs.

(3) The arbitral tribunal shall fix the amounts of any deposits or supplementary deposits only after consultation with the Centre which may make to the arbitral tribunal any comments which it deems appropriate concerning the amount of such deposits and supplementary deposits.

(4) If the required deposits are not paid in full within thirty days from the receipt of the request, the arbitral tribunal shall so inform the parties in order that any one of them may make the required payment. If such payment is not made, the arbitral tribunal may order the suspension or termination of the arbitral proceedings.

(5) After the award has been made, the arbitral tribunal shall render an account to the parties of the deposits received and return to the parties any unexpended balance.

54. (1) Unless the parties agree otherwise, arbitral proceedings conducted under this Part of this Act shall be held at the premises provided by the Centre. Place of arbitral proceedings.

(2) The arbitral tribunal may meet at any place it deems appropriate for the inspection of goods, other property or documents. The parties shall be given sufficient notice to enable them to be present at such inspection.

PART V

International Commercial Arbitration

55. (1) Subject to this Part, the Model Law shall form part of the Laws of Malta and shall be enforceable as such. Model Law.

(2) In the Model Law;

“State” means Malta and any foreign country;

“this state” means Malta.

56. (1) For the purposes of interpreting the Model Law, reference may be made: Interpretation.

(a) to the works of the United Nations Commission on International Trade Law; and

(b) to the preparatory documents of the Model Law.

(2) Subsection (1) does not affect the application of the Interpretation Act for the purposes of interpreting this Act. Cap. 249.

57. The functions referred to in Article 6 of the Model Law shall be performed by: Article 6 of the Model Law.

(a) the Chairman in respect to Articles 11(3), 11(4), 13(3) and 14; and

(b) the Court of Appeal in respect to Articles 16(3), 34(2) and 35(1).

58. With reference to Articles 34(2)(b) (ii) and 36(1)(b) (ii) of the Model Law, for the purposes of the said Articles it is hereby declared that an award is in conflict with the public policy of Malta if: Articles 34 and 36 of the Model Law.

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

(b) a breach of the rules of natural justice occurred in connection with the making of the award.

Chapter VIII of Model Law not to apply in certain cases.

59. Where, but for the application of this section, both Chapter VIII of the Model Law and Part VII of this Act on the Recognition and Enforcement of Foreign Awards apply in relation to an award, Chapter VIII of the Model Law shall be considered not to apply in relation to the said award.

Settlement of dispute otherwise than in accordance with Model Law.

60. (1) If the parties to an arbitration agreement falling under this Part of this Act have (whether in the agreement or in any other document in writing) agreed that any dispute that has arisen or may arise between them is to be settled otherwise than in accordance with the Model Law, then the provisions governing domestic arbitration shall apply.

(2) In the case envisaged in the preceding subsection, the parties are obliged, prior to the appointment of the arbitral tribunal, to inform in writing the Registrar of the manner in which the dispute is to be settled.

Registration by the Centre.

61. (1) Before an award granted under the Model Law can be recognised and enforced by the Courts in Malta, it has to be registered by the Centre notwithstanding any provision of chapter VIII of the Model Law.

(2) With reference to subsection (1) hereof, any party may present the award to the Registrar for registration by the Centre, and shall comply with the relevant provisions of this Act and the requirements of registration according to rules made by the Centre.

Article 17 of the Model Law.

62. Subject to the provisions of section 61, Chapter VIII of the Model Law applies to orders by an arbitral tribunal made under Article 17 of the Model Law requiring a party:

- (a) to take an interim measure of protection; or
- (b) to provide security in connection with such a measure;

as if any reference in that Chapter to an arbitral award or an award were a reference to such an order.

Interest up to making of award.

63. (1) Unless the parties to an arbitration agreement falling under this Part of this Act have otherwise agreed, when an arbitral tribunal determines to make an award for the payment of money (whether on a claim for a liquidated or an unliquidated amount), the tribunal may, subject to subsection (2), include in the sum for which the award is made interest at such a reasonable rate as the tribunal may determine on the whole or any part of the money, and for the whole or any part of the period between the date on which the cause of action arose, and the date on which the award is made.

(2) Subsection (1) does not:

- (a) authorise the awarding of interest upon interest;
- (b) apply in relation to any amount upon which interest is payable as of right whether by virtue of an agreement or otherwise; and
- (c) affect the damages that may be recoverable as a result of a bill of exchange being dishonoured.

64. Unless the parties to an arbitration agreement falling under this Part of this Act have otherwise agreed, where an arbitral tribunal makes an award for the payment of money, the tribunal may direct that, interest at such reasonable rate as the tribunal may determine, is payable, from the date referred to in Article 31(3) of the Model Law or such later day as the tribunal specifies.

Interest on debt
under award.

65. (1) Unless the parties to an arbitration agreement falling under this Part of this Act have otherwise agreed, the arbitral tribunal shall fix the costs and fees of arbitration in the award in accordance with section 50, 51, 52 and 53 *mutatis mutandis*.

Costs and fees.

(2) If no provision is made by an award with respect to the costs and fees of the arbitration, a party to the arbitration agreement may, within fourteen days after receiving the award, apply to the arbitral tribunal for directions as to the payment of the said costs and fees, and thereupon the tribunal shall, after hearing the Registrar and any party who wishes to be heard, amend the award in accordance with section 65(1).

66. Subsection (5) of section 20 hereof applies to any arbitrator involved in arbitrations held under this Part of this Act.

Liability of
arbitrator.

67. With the agreement of the parties or at the request of a party, as the case may be, where the arbitral tribunal, in accordance with the Model Law, holds oral hearings or proceedings on the basis of documents or other materials, section 18 of this Act shall, without prejudice to the Model Law, apply.

Representation
in proceedings.

68. This Part does not apply in relation to an international commercial arbitration between parties to an arbitration agreement that was concluded before the commencement of this Part of this Act unless the parties have otherwise agreed.

Application
of this Part.

PART VI

Powers of the Court with respect to Arbitrations

69. Saving the provisions of the Constitution and of the European Convention Act, in matters governed by this Act, no court shall intervene or have jurisdiction in any matter except where so provided for in this Act.

Extent of Court
intervention.

Cap. 319.

Setting aside
of the award.

70. (1) An award given pursuant to an arbitration agreement in accordance with Part IV of this Act, shall upon its registration by the Centre, as provided in section 72 of this Act, constitute an executive title for the purposes of Title VII of Part I of Book Second of the Code of Organisation and Civil Procedure.

(2) Recourse against an arbitral award delivered under Part IV may be made only to the Court of Appeal by application praying that the award be set aside in accordance with the following subsections.

(3) Subject to the provisions of section 71, the Court of Appeal shall only decree that an award shall be set aside if:

(a) the applicant proves to the satisfaction of the Court of Appeal that:

(i) a party to the arbitration agreement was under some incapacity to enter the arbitration agreement; or that the said agreement was not valid under the law to which the parties have subjected it; or

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

(iii) the award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration:

Provided that if decisions on matters submitted to arbitration can be separated from those not so submitted, only that part of the award which contains decisions on matters not submitted to arbitration may be set aside; or

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

(b) the Court of Appeal finds that:

(i) the subject-matter of the dispute is not capable of settlement by arbitration under the Laws of Malta; or

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

(4) The application referred to in subsection (2) of this section shall be made within thirty days from the notification to the applicant by judicial act of the registration of the award by the Centre in accordance with this Act.

71. The Court of Appeal, when asked to set aside an award, may, where appropriate, and when so required 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 tribunal's opinion will eliminate the grounds for setting aside.

Resumption of
arbitral
proceedings.

72. (1) Where the registration of any award or document under this Act is required to be made with the Centre, the award or document, or an authentic copy thereof, shall be deposited with the Registrar together with such fee as may from time to time be prescribed for such registration.

Registration
with and by the
Centre.

(2) The Registrar shall refuse to register an award or a document if the same does not comply with any of the provisions of this Act or of the rules made by the Centre relative to such Act.

(3) In the case of an arbitration conducted under Part IV of this Act, the provisions of subsections (2), (3), (4) and (5) of section 38, section 70 and section 71 shall only apply and the proceedings shall only be valid where prior to the commencement of the proceedings, the arbitration agreement is registered by the Centre in accordance with section 17 of this Act.

(4) In the case of an arbitration, conducted under Part IV of this Act, the award shall not be registered unless the arbitration agreement was registered by the Centre in accordance with section 17 of this Act.

(5) Where the Registrar refuses the registration of any award or document, the party requesting registration may, within thirty days from such refusal, request the Chairman to order the Registrar to accept such registration, and the decision of the said Chairman shall be final and binding.

(6) The fact that an award or document has been accepted for registration by the Centre shall not preclude the challenge of the validity of such award or document under any provision of this Act.

73. (1) The Chairman shall regularly report to the Board any decision given by him pursuant to any power in or under this Act.

Chairman
to report.

(2) Any such decision shall not be subject to review by the Board, but any member of the said Board may request that any objection he may have to such a decision shall be recorded in the minutes of the Board and such member may, moreover, make a report thereon to the Minister.

PART VII

Recognition and Enforcement of Foreign Awards

74. (1) Saving the relevant sections of this Act, foreign arbitration awards, to which the treaties set out in the Second Schedule are applicable, shall upon their registration by the Centre be enforced

Enforcement
of foreign
arbitration
awards.

by the Courts of Malta in the same manner as if such awards were delivered under Part IV of this Act.

(2) The Minister may by notice in the Gazette add to, delete from or substitute the list of treaties to which Malta is a Party and contained in the Second Schedule to this Act.

(3) A certificate signed by the Minister responsible for foreign affairs, or by any public officer designated by the said Minister for such purpose by notice in the Gazette, purporting that, at the time specified in the certificate, any state has signed and ratified or has denounced, or has taken any other action under the treaties listed in the Schedules to this Act in respect of the state specified in the certificate, shall be conclusive evidence before any court or other authority of the facts therein stated.

(4) Notwithstanding the provisions of subsection (1) of section 74, any award delivered under a multilateral or bilateral agreement to which Malta is a party shall, upon its registration by the Centre, be enforced by the Courts of Malta in the same manner as if such award was delivered under Part IV of this Act.

Arbitration
under other laws.

75. (1) For the purposes of this Act, any question required to be determined by arbitration under any other law, foreign or domestic, the provisions of such law shall, unless they provide for arbitration by a board, tribunal or other authority set up for the purpose, be read as if that other law were an arbitration agreement.

(2) Any award delivered in terms of subsection (1) of this section shall be recognised and enforced by the Courts of Malta upon its registration by the Centre, in the same manner as if such award were delivered under Part IV of this Act.

Settlement of
international
investment
disputes.

76. (1) Awards delivered pursuant to the Convention on the Settlement of Investment Disputes between States and Nationals of other States, which convention was opened for signature in Washington on the 18th March, 1965, (which convention is hereafter in this section referred to as "the Convention" and is reproduced in the Third Schedule to this Act) shall be recognised and enforced by the Courts of Malta as if such awards were final judgements under the laws of Malta.

(2) The provisions of subsection (1) of this section shall apply only to such awards on disputes submitted to arbitration by the parties thereto in accordance with the Convention and not otherwise excluded in accordance with the same Convention.

(3) For the purposes of Article 54 of the Convention, the competent authority shall be the Centre.

(4) The Prime Minister may by order in the Gazette and notwithstanding any other law, make provision to give effect to any part of the Convention, and without prejudice to the generality of the foregoing may by such order grant such immunities and exemptions from any law as may be required by the Convention.

PART VIII

Miscellaneous

77. In case of any conflict between the Maltese and English text of any of the First, Second and Third Schedules to this Act, the English text shall prevail.

Language of
schedules.

78. (1) The Arbitration Clauses (Protocol) Ordinance and the Arbitration (Foreign Awards) Ordinance, are hereby repealed.

Repeal and
amendment of
other enactments.

(2) The enactments in the First Column in the Fourth Schedule to this Act shall have effect subject to the amendments appearing relative thereto in the Second Column of the said Schedule.

Cap. 82.
Cap. 83.

79. Subject to section 68, this Act applies to every arbitration agreement, whether made before or after the commencement of this Act, and to every arbitration under such an agreement:

Transitory
provision.

Provided that where arbitration proceedings had been commenced before the date of commencement of this Act and are still pending on that date then, notwithstanding any thing contained in this Act, those proceedings shall continue to be governed by the law applicable thereto before the commencement of this Act unless all the parties to those proceedings agree that this Act shall apply thereto with effect from the date of the agreement whereupon this Act shall apply accordingly.

FIRST SCHEDULE

**UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW:
MODEL LAW ON INTERNATIONAL COMMERCIAL ARBITRATION*
(ADOPTED, JUNE 21, 1985)**

UNCITRAL Model Law on International Commercial Arbitration

**(as adopted by the United Nations Commission on International
Trade Law on 21 June 1985)**

CHAPTER I. GENERAL PROVISIONS

Article 1. Scope of application**

(1) This law applies to international commercial*** arbitration, subject to any agreement in force between this State and any other State or States.

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

(3) An arbitration is international if:

(a) the parties to an arbitration agreement have, at the time of the conclusion of that agreement, their places of business in different States; or

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

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

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

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

(4) For the purposes of paragraph (3) of this article:

* Reproduced from the Report from the United Nations Commission on International Trade Law on the work of the eighteenth session (June 3–21, 1985), U.N. General Assembly Official Records Fortieth Session, Supplement No. 17 (A/40/17), Annex I, pp. 81–93.

** Article Headings are for the reference purposes only and are not to be used for purposes of interpretation.

*** The term "commercial" should be given a wide interpretation so as to cover matters arising from all relationships of a commercial nature, whether contractual or not. Relationships of a commercial nature include, but are not limited to, the following transactions; any trade transaction for the supply or exchange of goods or services; distribution agreement; commercial representation or agency; factoring; leasing; construction of works; consulting; engineering; licensing; investments; financing; banking; insurance; exploitation agreement or concession; joint venture and other forms of industrial or business co-operation; carriage of goods or passengers by air, sea, rail or road.

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

(b) if a party does not have a place of business, reference is to be made to his habitual residence.

(5) This Law shall not effect 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. Definition and Rules of Interpretation

For the purposes of this Law:

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

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

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

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

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

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

Article 3. Receipt of written communications

(1) Unless otherwise agreed by the parties:

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

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

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

Article 4. Waiver of right to object

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

Article 5. Extent of court intervention

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

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

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

CHAPTER II. ARBITRATION AGREEMENT

Article 7. Definition and form of arbitration agreement

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

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

Article 8. Arbitration agreement and substantive claim before court

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

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

Article 9. Arbitration agreement and interim measures by court

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

CHAPTER III. COMPOSITION OF ARBITRAL TRIBUNAL

Article 10. Number of arbitrators

- (1) The parties are free to determine the number of arbitrators.
- (2) Failing such determination, the number of arbitrators shall be three.

Article 11. Appointment of arbitrators

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

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

(3) Failing such agreement,

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

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

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

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

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

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

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

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

Article 12. Grounds for challenge

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

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

Article 13. Challenge procedure

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

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

(3) If a challenge under any procedure agreed upon by the parties or under the procedure of paragraph (2) of this article is not successful, the challenging party may request, within thirty days after having received notice of the decision rejecting the challenge, the court or other authority specified in article 6 to decide on the challenge, which decision shall be subject to no appeal; while such a request is pending, the arbitral tribunal, including the challenged arbitrator, may continue the arbitral proceedings and make an award.

Article 14. Failure or impossibility to act

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

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

Article 15. Appointment of substitute arbitrator

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

CHAPTER IV. JURISDICTION OF ARBITRAL TRIBUNAL

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

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

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

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

Article 17. Power of arbitral tribunal to order interim measures

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

CHAPTER V. CONDUCT OF ARBITRAL PROCEEDINGS

Article 18. Equal treatment of parties

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

Article 19. Determination of rules of procedure

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

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

Article 20. Place of arbitration

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

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

Article 21. Commencement of arbitral proceedings

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

Article 22. Language

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

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

Article 23. Statement of claim and defence

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

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

Article 24. Hearing and written proceedings

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

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

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

Article 25. Default of a party

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

(a) the claimant fails to communicate his statement of claim in accordance with article 23 (1), the arbitral tribunal shall terminate the proceedings;

(b) the respondent fails to communicate his statement of defence in accordance with article 23 (1), the arbitral tribunal shall continue the proceedings without treating such failure in itself as an admission of the claimant's allegations;

(c) any party fails to appear at a hearing or to produce documentary evidence, the arbitral tribunal may continue the proceedings and make the award on the evidence before it.

Article 26. Expert appointed by arbitral tribunal

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

(a) may appoint one or more experts to report to it on specific issues to be determined by the arbitral tribunal;

(b) may require a party to give the expert any relevant information or to produce, or to provide access to, any relevant documents, goods or other property for his inspection.

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

Article 27. Court assistance in taking evidence

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

**CHAPTER VI. MAKING OF AWARD AND TERMINATION
OF PROCEEDINGS**

Article 28. Rules applicable to substance of dispute

(1) The arbitral tribunal shall decide the dispute in accordance with such rules of law as are chosen by the parties as applicable to the substance of the dispute. Any designation of the law or legal system of a given State shall be construed, unless otherwise expressed, as directly referring to the substantive law of that State and not to its conflict of laws rules.

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

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

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

Article 29. Decision-making by panel of arbitrators

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

Article 30. Settlement

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

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

Article 31. Form and contents of award

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

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

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

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

Article 32. Termination of proceedings

(1) The arbitral proceedings are terminated by the final award or by an order of the arbitral tribunal in accordance with paragraph (2) of this article.

(2) The arbitral tribunal shall issue an order for the termination of the arbitral proceedings when:

(a) the claimant withdraws his claim, unless the respondent objects thereto and the arbitral tribunal recognises a legitimate interest on his part in obtaining a final settlement of the dispute;

(b) the parties agree on the termination of the proceedings;

(c) the arbitral tribunal finds that the continuation of the proceedings has for any other reason become unnecessary or impossible.

(3) The mandate of the arbitral tribunal terminates with the termination of the arbitral proceedings, subject to the provisions of articles 33 and 34 (4).

Article 33. Correction and interpretation of award, additional award

(1) Within thirty days of receipt of the award, unless another period of time has been agreed upon by the parties:

(a) a party, with notice to the other party, may request the arbitral tribunal to correct in the award any errors in computation, any clerical or typographical errors or any errors of similar nature;

(b) if so agreed by the parties, a party, with notice to the other party, may request the arbitral tribunal to give an interpretation of a specific point or part of the award.

If the arbitral tribunal considers the request to be justified, it shall make the correction or give the interpretation within thirty days of receipt of the request. The interpretation shall form part of the award.

(2) The arbitral tribunal may correct any error of the type referred to in paragraph (1) (a) of this article on its own initiative within thirty days of the date of the award.

(3) Unless otherwise agreed by the parties, a party, with notice to the other party, may request, within thirty days of receipt of the award, the arbitral tribunal to make an additional award as to claims presented in the arbitral proceedings but omitted from the award. If the arbitral tribunal considers the request to be justified, it shall make the additional award within sixty days.

(4) The arbitral tribunal may extend, if necessary, the period of time within which it shall make a correction, interpretation or an additional award under paragraph (1) or (3) of this article.

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

CHAPTER VII. RECOURSE AGAINST AWARD

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

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

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

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

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

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

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

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

(b) the court finds that:

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

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

CHAPTER VIII. RECOGNITION AND ENFORCEMENT OF AWARDS

Article 35. **Recognition and Enforcement**

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

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

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

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

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

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

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

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

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

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

* The conditions set forth in this paragraph are intended to set maximum standards. It would, thus, not be contrary to the harmonization to be achieved by the model law if a State retained even less onerous conditions.

(b) if the court finds that:

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

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

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

SECOND SCHEDULE

**THE UNITED NATIONS CONVENTION ON THE RECOGNITION AND
ENFORCEMENT OF FOREIGN ARBITRAL AWARDS
(NEW YORK 1958)**

ARTICLE I

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

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

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

ARTICLE II

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

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

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

ARTICLE III

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

ARTICLE IV

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

- (a) The duly authenticated original award or a duly certified copy thereof;
- (b) The original agreement referred to in article II or a duly certified copy thereof.

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

ARTICLE V

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

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

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

(c) The award deals with a difference not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration, provided that, if the decision 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 of Foreign Arbitral Awards 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.

ARTICLE XI

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

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

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

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

ARTICLE XII

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

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

ARTICLE XIII

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

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

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

ARTICLE XIV

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

ARTICLE XV

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

- (a) Signatures and ratifications in accordance with article VIII;
- (b) Accessions in accordance with article IX;
- (c) Declarations and notifications under articles I, X and XI;
- (d) The date upon which this Convention enters into force in accordance with article XII;
- (e) Denunciations and notifications in accordance with article XIII.

ARTICLE XVI

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

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

THIRD SCHEDULE

**CONVENTION ON THE SETTLEMENT OF INVESTMENT DISPUTES
BETWEEN STATES AND NATIONALS OF OTHER STATES
(WASHINGTON 1965)**

Preamble

The Contracting States

Considering the need for international co-operation 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;

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

Attaching particular importance to the availability of facilities for international conciliation or arbitration to which 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;

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

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;

Have agreed as follows:

CHAPTER I

INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

SECTION 1

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.

ARTICLE 2

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.

SECTION 2

The Administrative Council

ARTICLE 4

(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.

ARTICLE 5

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

- (a) adopt the administrative and financial regulations of the Centre;
- (b) adopt the rules of procedure for the institution of conciliation and arbitration proceedings;
- (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;
- (e) determine the conditions of service of the Secretary-General and of any Deputy Secretary-General;
- (f) adopt the annual budget of revenue 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.

(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.

(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.

(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 set by the said procedure.

ARTICLE 8

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

SECTION 3

The Secretariat

ARTICLE 9

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.

(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.

(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 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

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 have the power to authenticate arbitral awards rendered pursuant to this Convention, and to certify copies thereof.

SECTION 4

The Panels

ARTICLE 12

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 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

(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 judgement. Competence in the field of the law shall be of 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.

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.

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

ARTICLE 16

(1) A person may serve on both Panels.

(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.

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.

SECTION 6

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;
- (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.

ARTICLE 20

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

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

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

ARTICLE 22

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

(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.

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 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 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 where such proceedings are conducted or the place where such fees or allowances are paid.

CHAPTER II

JURISDICTION OF THE CENTRE

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 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:

(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.

(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.

(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).

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.

ARTICLE 27

(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.

(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

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.

(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.

(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 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.

(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.

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.

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.

SECTION 3

Conciliation Proceedings

ARTICLE 32

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

(2) Any objection by a party to the dispute 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 proceedings 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.

(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

(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.

(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.

ARTICLE 38

If the Tribunal 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 36, 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 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.

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 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 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

ARTICLE 41

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

(2) Any objection by a party to the dispute that 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.

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.

(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.

ARTICLE 43

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

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

(b) visit the scene connected with the dispute, and conduct such enquiries 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.

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 party does not intend to do so.

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.

ARTICLE 47

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

(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.

(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.

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.

(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 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

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.

(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 effect 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.

(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.

(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 stay of enforcement of the award in his application, enforcement shall be stayed provisionally until the Tribunal rules on such request.

ARTICLE 52

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

- (a) that the Tribunal was not properly constituted;
- (b) that the Tribunal had manifestly exceeded its powers;
- (c) that there was corruption on the part of a member of the Tribunal;
- (d) that the award has failed to state the reasons on which it is based.

(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.

(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).

(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) The Committee may, if it considers that 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.

(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

(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.

(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

(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 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 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 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.

(2) A member of the 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 an 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.

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.

ARTICLE 58

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.

CHAPTER VI

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.

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.

(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

(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.

(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 shall be paid. Such decision shall form part of the award.

CHAPTER VII

PLACE OF PROCEEDINGS

ARTICLE 62

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,

(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.

CHAPTER VIII

DISPUTES BETWEEN CONTRACTING STATES

ARTICLE 64

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

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 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 depository 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 depository of this Convention. The denunciation shall take effect six months after receipt of such notice.

ARTICLE 72

Notice by a Contracting State pursuant to Article 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 depository.

ARTICLE 73

Instruments of ratification, acceptance or approval of this Convention and of amendments thereto shall be deposited with the Bank which shall act as the depository of this Convention. The depository 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

The depository 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

The depository 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;
- (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
- (f) denunciation in accordance with Article 71.

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.

FOURTH SCHEDULE

*First Column**Second Column*

Code of
Organization and Civil
Procedure
(Cap. 12).

1. The words "or under an award made and deposited in accordance with the provisions contained in Title XVI of Book Third of this Code," in section 945 thereof shall be deleted, and the words "the judgment or award," in the said section shall be substituted by the words "the judgment,".

2. Section 968 thereof shall be substituted by the following new section:

*First Column**Second Column*

"Arbitra-
tion.

968. (1) Subject to the provision of subsection (2) of this section, any cause concerning any matter in dispute which has been brought before a court of civil jurisdiction in Malta may be submitted at the request of all the parties for determination by arbitration, under the provisions of the Arbitration Act, 1996, and the provisions of the aforesaid Act shall apply thereto.

(2) Any submission to arbitration in regard to any dispute concerning questions of personal status including those relating to separation or annulment of a marriage between husband and wife, or in regard to things or rights which may not form the subject-matter of a contract, whether absolutely or without certain formalities required by law, is null."

3. Sections 970 to 987 thereof shall be deleted.

Civil Code
(Cap. 16).

Immediately before Sub-title I of Title XXV thereof and after section 2117 thereof there shall be added the following new section:

"Prescrip-
tion and
arbitration
proceed-
ings.

2117A. With regard to prescription, the referral of any matter to arbitration in accordance with the provisions of the Arbitration Act, 1996 shall have the same effect as a judicial action before a competent court."

British Judgements
(Reciprocal
Enforcement) Act
(Cap. 52).

The words "and includes an award in proceedings on an arbitration if the award has, in pursuance of the law in force in the place where it was made, become enforceable in the same manner as a judgment given by a court in that place;" in the definition of the term "judgment" in section 2 thereof shall be deleted.

Passed by the House of Representatives at Sitting No. 500 of the 17th January, 1996.

LAWRENCE GONZI
Speaker

RICHARD J. CAUCHI
Clerk to the House of Representatives.