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Act

No. 7 of 2024

I assent

DR. LAZARUS MCCARTHY CHAKWERA
PRESIDENT
31st January, 2024

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SCHEDULES

An Act to provide for international commercial arbitration based on the Model Law on International Commercial Arbitration, as adopted by the United Nations Commission on International Trade Law; give effect to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 1958 and matters connected therewith.

ENACTED by the Parliament of Malawi as follows—

PART I—PRELIMINARY

Short title and commencement

1. This Act may be cited as the International Arbitration Act, 2024, and shall come into operation on such date as the Minister may appoint by notice published in the *Gazette*.

Interpretation

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

"arbitration agreement" means an arbitration agreement referred to in article 7 of the Model Law;

"arbitral tribunal" means a sole arbitrator, panel of arbitrators or permanent arbitral institution and includes an emergency arbitrator appointed pursuant to the rules of arbitration agreed to, or adopted, by the parties to the arbitration agreement, including rules of arbitration of an institution or organization;

"award" means a decision of an arbitral tribunal on the substance of a dispute and includes any interim, interlocutory or partial award, but does not include a direction of an arbitrator;

"Model Law" means the Model Law on International Commercial Arbitration adopted on 21st June, 1985 by the United Nations Commission on International Trade Law (UNCITRAL) and as amended by the Commission, on 7 July 2006;

"mediation" includes conciliation; and

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

(2) Unless the context otherwise requires and except so far as the contrary intention appears in this Act, a word or expression used in this Act bears the same meaning as it has in the Model Law.

Objectives

3. The objectives of this Act are to—

(*a*) facilitate the use of arbitration as a method of resolution of international commercial disputes;

(*b*) adopt the Model Law for use in the resolution of international commercial disputes;

(*c*) provide for the recognition and enforcement of certain arbitration agreements and arbitral awards; and

(*d*) give effect to the obligations of the Republic under the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 1958.

Limited application of Arbitration Act Cap. 6:03

4. The Arbitration Act shall not apply to an arbitration agreement, arbitral award or reference to arbitration covered by this Act, except for arbitral agreements or foreign arbitral awards that are not enforceable under where Part III.

Act to bind Government and the Republic

5.—(1) This Act shall bind the Government and the Republic and shall apply to any international commercial arbitration under an arbitration agreement to which the Government or the Republic is a party.

(2) This Act shall not apply to an arbitration agreement between the Republic and—

(*a*) the government of a foreign country; or

(*b*) any undertaking or corporation which is wholly owned by, or is under the sole control of, the government of a foreign country, unless otherwise agreed between the Republic and that undertaking or corporation.

PART II—INTERNATIONAL COMMERCIAL ARBITRATION

Model Law to have force of law

6. The Model Law, the text of which is set out in the *First Schedule*, shall have the force of law in the Republic, subject to the Constitution and this Act.

Matters subject to international commercial arbitration

7.—(1) For purposes of this Part, an international commercial dispute which the parties have agreed to submit to arbitration under an arbitration agreement and which relates to a matter which the parties are entitled to dispose of by agreement may be determined by arbitration, unless—

(*a*) the dispute is not capable of determination by arbitration under any written law; or

(*b*) the arbitration agreement is contrary to public policy in Malawi.

(2) Arbitration shall not be excluded solely on the ground that a written law confers jurisdiction on a court or other tribunal to determine a matter falling within the terms of an arbitration agreement.

Interpretation of Model Law

8. Where the need to interpret the Model Law arises, reference may be made to the documents of the United Nations Commission on International Trade Law and the working group for preparation of the Model Law.

Immunity of arbitrators, arbitral tribunals, etc.

9.—(1) An arbitrator shall not be personally liable for any act or omission in the discharge or purported discharge of the functions of the arbitrator, unless the act or omission is shown to have been done in bad faith.

(2) An arbitral tribunal or any other institution, authority or person designated or requested by the parties or another arbitral institution to appoint an arbitrator shall not be liable for any act or omission in the discharge of that function or any other function in relation to the designation or request, unless the act or omission is shown to have been done in bad faith.

(3) An arbitral tribunal, institution, authority or person referred to in subsection (2), shall not be liable for any act or omission of the arbitrator so appointed in the discharge or purported discharge of the functions of the arbitrator, by reason only that the arbitral tribunal, institution, authority or person appointed the arbitrator.

(4) This section shall apply, with the necessary modifications, to—

(*a*) an employee of an arbitrator or a person appointed by an arbitral tribunal; or

(*b*) an officer and employee of an arbitral tribunal and any other institution, authority or person referred to in subsection (2).

Consolidation of arbitral proceedings and concurrent hearings

10.—(1) Subject to agreement of parties to an arbitration, an arbitral tribunal may order that—

(*a*) arbitral proceedings be consolidated with other arbitral proceedings; or

(*b*) concurrent hearings of arbitral proceedings be held, on such terms as agreed by the parties.

(2) The arbitral tribunal shall not order consolidation of arbitral proceedings or concurrent hearings, unless the parties agree.

Confidentiality of arbitral proceedings

11.—(1) Arbitral proceedings shall be held in camera, unless the parties agree otherwise.

(2) Where arbitral proceedings are held in camera, the award and all documents created for the arbitration which are not otherwise in the public domain shall, except to the extent that the disclosure of the documents is required by reason of a legal duty or to protect or enforce a legal right, be kept confidential by the parties and the arbitral tribunal, unless the parties agree otherwise.

Right to mediation

12. Parties to an arbitration agreement may, subject to the terms of the agreement, refer a dispute covered by the arbitration agreement to mediation, before or after referring the dispute to arbitration.

UNCITRAL Mediation Rules

13. The parties to an arbitration agreement who intend to settle their dispute through mediation may agree to use the UNCITRAL Mediation Rules, set out in *Second Schedule*.

Part III—Recognition and Enforcement of Arbitration Agreements and Foreign Arbitral Awards

Definitions

14. In this Part, unless the context otherwise requires—

"certified copy" means a copy of a document authenticated in a manner in which a foreign document intended to be produced in court is authenticated;

"Convention" means the Convention on the Recognition and Enforcement of Foreign Arbitral Awards adopted on 10th June 1958, the text of which is set out in the *Third Schedule*;

"court" means a division of the High Court having jurisdiction in the matter; and

"foreign arbitral award" means an arbitral award made in the territory of a state other than Malawi.

Determination of juridical seat of arbitration

15. For purposes of this Part, an arbitral award shall be deemed to have been made at the juridical seat of arbitration determined in accordance with the provisions of articles 20(1) and 31(3) of the Model Law.

Recognition and enforcement of arbitration agreements and foreign arbitral awards

16.—(1) Subject to section 18, in matters pertaining to a commercial relationship, an arbitration agreement and a foreign arbitral award shall be recognized and enforced in the Republic as required by the Convention, subject to this Part.

(2) A foreign arbitral award pertaining to a commercial relationship shall only be recognized and enforced if it is made in the territory of another Contracting State.

(3) Notwithstanding any provision to the contrary in this Part, the Republic shall only apply this Convention to a dispute arising out of a legal relationship, whether contractual or otherwise, which is considered as commercial under the laws of Malawi.

(4) A foreign arbitral award shall be binding between the parties to the award, and may be relied upon by each party in any legal proceedings by way of defence, set-off or otherwise.

(5) Subject to this section and sections 17 and 18, a foreign arbitral award shall, on application, be made an order of court and may be enforced in the same manner as a judgment or order of the court.

(6) Article 8 of the Model Law shall apply, with the necessary modifications, to an arbitration agreement recognized under subsection (1).

Evidence to be produced by party seeking recognition or enforcement

17.—(1) A party seeking the recognition or enforcement of a foreign arbitral award shall produce to court—

(*a*) certified copy of the original arbitral agreement which is the subject matter of the award;

(*b*) certified copy of that award; and

(*c*) if the arbitral agreement or award is in a language other than the English language, a translation of the certified copies of the arbitral agreement or award, as the case may be, which shall be verified by a sworn statement.

(2) Where the court considers it appropriate so to do, the court may accept any other documentary evidence, as sufficient proof of the existence of an arbitral agreement or foreign arbitral award.

Refusal of recognition or enforcement

18.—(1) A court may refuse to recognise or enforce a foreign arbitral award if—

(*a*) the court finds that—

(i) the reference to arbitration of the subject matter of the dispute is not permissible under the written laws of Malawi; or

(ii) recognition or enforcement of the award is contrary to public policy in Malawi; or

(*b*) the party against whom the award is invoked, proves to the satisfaction of the court that—

(i) a party to the arbitration agreement had no capacity to contract under the law applicable to that party;

(ii) the arbitration agreement is invalid under the law to which the parties have subjected the agreement, or where the parties have not subjected the agreement to any law, the arbitration agreement is invalid under the law of the country in which the award was made;

(iii) the party did not receive the required notice regarding the appointment of the arbitrator or the arbitral proceedings, or the party was otherwise not able to present his or her case;

(iv) the award deals with a dispute not contemplated by, or not falling within the terms of reference of, the arbitration or, subject to subsection (2), contains a decision on a matter beyond the scope of the reference to arbitration;

(v) the constitution of the arbitral tribunal or the arbitration procedure was not in accordance with the arbitration agreement or the law of the country in which the arbitration took place; or

(vi) the award is not yet 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, the award was made.

(2) An award which contains a decision on a matter not submitted to arbitration may be recognized or enforced to the extent that it contains a decision on a matter submitted to arbitration which can be separated from other matters not so submitted.

(3) Where an application for recognition or enforcement of an arbitral agreement or foreign arbitral award is made to court and there is evidence that an application to set aside or suspend the agreement or award has been presented before a competent authority referred to in subsection (1)(*b*)(vi), the court may, if it considers it appropriate—

(*a*) adjourn the matter pending determination of the application to set aside or suspend the agreement or award; and

(*b*) on the application of the party seeking enforcement of the award, order the other party to provide such security as the court may determine appropriate.

Savings

19. The provisions of this Part shall not affect any other right to rely upon, or to enforce, a foreign arbitral award, except the right conferred by article 35 of the Model Law.

PART IV—TRANSITIONAL

Transitional

20.—(1) Part II shall apply to—

(*a*) an international commercial arbitration agreement, whether the agreement entered into force before, or after, the commencement of this Act;

(*b*) arbitral proceedings under an agreement referred to under paragraph (1) which are commenced after the commencement of this Act; and

(*c*) an arbitral award, whether the award was made before, or after, the date of commencement of this Act.

(2) Part III shall not apply to an arbitration agreement made before 2nd June, 2021 or to a foreign arbitral award made pursuant to such an arbitration agreement.

(3) For purposes of this section, the date of commencement of the arbitral proceedings shall be the date agreed upon by the parties as the commencement date of the proceedings or where there is no agreement, the date of receipt by the respondent of a request for the dispute to be referred to arbitration.

FIRST SCHEDULE (s.6)

UNCITRAL MODEL LAW ON INTERNATIONAL COMMERCIAL ARBITRATION

(As adopted by the United Nations Commission on International Trade Law on 21 June 1985, with amendments as adopted by the Commission on 7 July 2006, subject to certain adaptations set out below)

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CHAPTER I—GENERAL PROVISIONS

Article 1. SCOPE OF APPLICATION

(1) This Law applies to international commercial arbitration, subject to any agreement in force between the Republic and any other State or States.

(2) The provisions of this Law, except articles 8, 9, 17H, 17I, 17J, 35 and 36, apply only if the juridical seat of arbitration is in the territory of the Republic, save that articles 8, 35 and 36 shall have no application to arbitration agreements and foreign arbitral awards that are not enforceable under Chapter 3 of this Act.

(3) An arbitration is international if—

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

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

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

(ii) any place where a substantial part of the obligations of the commercial relationship is to be performed or the place with

which the subject-matter of the dispute is most closely connected; or

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

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

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

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

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

Article 2—Definitions and Rules of Interpretation

For the purposes of this Law—

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

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

(*c*) ''court'' means a court referred to in article 6(1) and includes, where appropriate, a body or organ of the judicial system of a foreign 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 authorize 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 2—International Origin and General Principles

(1) In the interpretation of this Law, regard is to be had to its international origin and to the need to promote uniformity in its application and the observance of good faith.

(2) Questions concerning matters governed by this Law which are not expressly settled in it are to be settled in conformity with the general principles on which this Law is based.

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

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

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

ARTICLE 4—WAIVER OF RIGHT TO OBJECT

A party who knows that any provision of this Law from which the parties may derogate or any requirement under the arbitration agreement has not been complied with and yet proceeds with the arbitration without stating his or her 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 or her 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 FOR CERTAIN FUNCTIONS OF ARBITRATION ASSISTANCE AND SUPERVISION

(1) Subject to paragraph (2), the functions referred to in articles 11(3), 11(4), 13(3), 14, 16 (3) and 34(2) shall be performed by—

(*a*) the High Court(Commercial Division) within the area of jurisdiction of which the arbitration is being, or is to be, or was held;

(*b*) the division with jurisdiction over a Malawian party, or if there is no Malawian party, the High Court (Commercial Division) seated in Blantyre or Lilongwe, if the place within the Republic where the arbitration is to take place has not yet been determined, until such place is determined.

(2) For purposes of article 8, ''court'' includes a magistrate's court.

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.

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

(4) The requirement that an arbitration agreement be in writing is met by an electronic communication if the information contained therein is accessible so as to be useable for subsequent reference.

(5) For purposes of paragraph (4), ''electronic communication'' means any communication that the parties make by means of data messages, and ''data message'' means information generated, sent, received or stored by electronic, magnetic, optical or similar means, including, but not limited to, electronic data interchange (EDI), electronic mail, telegram, telex or telecopy.

(6) Furthermore, an arbitration agreement is in writing if it is contained in an exchange of statements of claim and defence in which the existence of an agreement is alleged by one party and not denied by the other.

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

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 or her first statement on the substance of the dispute, stay those proceedings and refer the parties to arbitration unless it finds that the agreement is null and void, inoperative or incapable of being performed.

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

Article 9—Arbitration Agreement and Interim Measures by Court

(1) 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.

(2) The court has the powers contained in article 17J to grant interim measures in relation to arbitration proceedings.

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 one.

Article 11—Appointment of Arbitrators

(1) No person shall be precluded by reason of his or her 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 falls 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 specified in article 6;

(*b*) in an arbitration with a sole arbitrator, if the parties are unable to agree on the arbitrator, he or she shall be appointed, upon request of a party, by the court 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 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 specified in article 6 shall be subject to no appeal. The court, 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 or her possible appointment as an arbitrator, he or she shall disclose any circumstances likely to give rise to justifiable doubts as to his or her impartiality or independence. An arbitrator, from the time of his or her 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 or her.

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

(3) For purposes of paragraph (2), ''justifiable doubts'' require substantial grounds for contending that a reasonable apprehension of bias would be entertained by a reasonable person in possession of the correct facts.

Article 13—CHALLENGE PROCEDURE

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

(2) Failing such agreement, a party who intends to challenge an arbitrator shall, within fifteen days after becoming aware of the constitution of the arbitral tribunal or after becoming aware of any circumstance referred to in article 12(2), send a written statement of the reasons for the challenge to the arbitral tribunal. Unless the challenged arbitrator withdraws from 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 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 or her functions or for other reasons fails to act without undue delay, his or her mandate terminates if he or she withdraws from 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 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 or her 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 withdrawal from office for any other reason or because of the revocation of his or her mandate by agreement of the parties or in any other case of termination of his or her 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 or she 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 on such plea as a preliminary question, any party may request, within thirty days after having received notice of that ruling, the court specified in article 6 to decide the matter, which decision shall be subject to no appeal; while such a request is pending, the arbitral tribunal may continue the arbitral proceedings and make an award.

Chapter IV—A. Interim Measures

Section 1—Interim Measures

Article 17—Power of Arbitral Tribunal to order Interim Measures

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

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

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

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

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

(*d*) preserve evidence that may be relevant and material to the resolution of the dispute; or

(*e*) provide security for costs.

(3) A measure referred to in paragraph (2)(*e*) may only be ordered against a claiming or counter-claiming party.

Article 17A—Conditions for Granting Interim Measures

(1) The party requesting an interim measure under article 17(2)(*a*), (*b*), (*c*) or (*e*) shall satisfy the arbitral tribunal that—

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

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

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

Section 2 - PROVISIONS APPLICABLE TO INTERIM MEASURES

Article 17D—MODIFICATION, SUSPENSION, TERMINATION

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

Article 17E—PROVISION OF SECURITY

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

Article 17F—DISCLOSURE

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

Article 17G—COSTS AND DAMAGES

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

Section 3—RECOGNITION AND ENFORCEMENT OF INTERIM MEASURES

Article 17H—RECOGNITION AND ENFORCEMENT

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

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

(3) The court referred to in paragraph (1) where recognition or enforcement is sought may, if it considers it proper, order the requesting party to provide appropriate security if the arbitral tribunal has not already made a determination with respect to security or where such a decision is necessary to protect the rights of third parties.

Article 17I—GROUNDS FOR REFUSING RECOGNITION OR ENFORCEMENT

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

(*a*) at the request of the party against whom it is invoked if the court is satisfied that—

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

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

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

(*b*) if the court finds that—

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

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

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

Section 4—COURT-ORDERED INTERIM MEASURES

Article 17J—COURT-ORDERED INTERIM MEASURES

(1) The court, at the request of a party, shall have the same powers in relation to arbitration proceedings, irrespective of whether its juridical seat is in the territory of the Republic, as it has for the purposes of proceedings before that court to make—

(*a*) orders for the preservation, interim custody or sale of any goods which are the subject matter of the dispute;

(*b*) an order securing the amount in dispute but not an order for security for costs;

(*c*) an order appointing a liquidator;

(*d*) any other orders to ensure that any award which may be made in the arbitral proceedings is not rendered ineffectual by the dissipation of assets by the other party; or

(*e*) an interim interdict or other interim order.

(2) The court shall not grant an order in terms of paragraph (1) of this article unless—

(*a*) the arbitral tribunal has not yet been appointed and the matter is urgent;

(*b*) the arbitral tribunal is not competent to grant the order; or

(*c*) the urgency of the matter makes it impractical to seek such order from the arbitral tribunal,

and the court shall not grant any such order where the arbitral tribunal, being competent to grant the order, has already determined the matter.

(3) The decision of the court upon any request made in terms of paragraph (1) of this article shall not be subject to appeal.

(4) The court shall have no powers to grant interim measures other than those contained in this article.

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 reasonable opportunity of presenting his or her 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.

(3) The arbitral tribunal may direct that a party or witness shall be examined on oath or affirmation and may for that purpose administer or take the necessary oath or affirmation.

Article 20—JURIDICAL SEAT OF ARBITRATION

(1) The parties are free to agree on the juridical seat of arbitration. Failing such agreement, the juridical seat 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 geographic location it considers appropriate for consultation among its members, for hearing witnesses, experts or the parties, or for inspection of goods, other property or documents.

Article 21—COMMENCEMENT OF ARBITRAL PROCEEDINGS

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

Article 22—LANGUAGE

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

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

Article 23—STATEMENTS OF CLAIM AND DEFENCE

(1) Within the period of time agreed by the parties or determined by the arbitral tribunal, the claimant shall state the facts supporting his or her claim, the points at issue and the relief or remedy sought, and the respondent shall state his or her 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 or her claim or defence during the course of the arbitral proceedings, unless the arbitral tribunal considers it inappropriate to allow such amendment having regard to the delay in making it.

Article 24—HEARINGS AND WRITTEN PROCEEDINGS

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

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

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

Article 25—DEFAULT OF A PARTY

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

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

(*b*) the respondent fails to communicate his or her 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; and

(*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; and

(*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 or her 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 or her written or oral report, participate in a hearing where the parties have the opportunity to put questions to him or her and to present expert witnesses in order to testify on the points at issue.

Article 27—COURT ASSISTANCE IN TAKING EVIDENCE

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

(2) For purposes of paragraph (1)—

(*a*) the Registrar of the Division of the High Court or the clerk of a magistrate's court in whose area of jurisdiction the arbitration takes place may, on the application of the arbitral tribunal or a party, with the approval of the arbitral tribunal, issue a subpoena to compel the attendance of a witness before an arbitral tribunal to give evidence or to produce documents; and

(*b*) the Division of the High Court shall, for the purposes of the arbitral proceedings, have the same powers as it has for the purposes of proceedings before that court to make an order for the issue of a commission or request for taking evidence out of its jurisdiction.

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 authorized it to do so.

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

Article 29—DECISION-MAKING BY PANEL OF ARBITRATORS

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

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 juridical seat of arbitration as determined in accordance with article 20(1). The award shall be deemed to have been made at the juridical seat.

(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.

(5) Unless otherwise agreed by the parties and subject to article 28, the arbitral tribunal may award interest on such basis and on such terms as the tribunal considers appropriate and fair in the circumstances, also having regard to the currency in which the award was made, commencing not earlier than the date on which the cause of action arose and ending not later than the date of payment.

(6) Unless otherwise agreed by the parties, the award of costs in connection with the reference and the award shall be in the discretion of the arbitral tribunal, which may specify the party entitled to costs, the party who shall pay the costs, the amount of costs or the method of determining that amount, and the manner in which the costs shall be paid.

(7) In exercising its discretion under paragraph (6) of this article, the tribunal may take into account the extent to which each party has conducted the arbitration in an expeditious and cost-effective manner.

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 or her claim, unless the respondent objects thereto and the arbitral tribunal recognizes a legitimate interest on his or her part in obtaining a final settlement of the dispute;

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

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

(3) 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; and

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

(2) If the arbitral tribunal considers the request 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.

(3) 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.

(4) 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 the Republic; 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 or her case; or

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

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

(*b*) the court finds that—

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

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

(3) An application for setting aside may not be made after three months have elapsed from the date on which the party making that application had received the award or, if a request had been made under article 33, from the date on which that request had been disposed of by the arbitral tribunal, unless the party making the application can prove that he or she did not know and could not, within that period, by exercising reasonable care, have acquired knowledge by virtue of which an award is liable to be set aside under paragraph (5)(*b*) of this article, in which event the period shall commence on the date when such knowledge could have been acquired by exercising reasonable care.

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

(5) For the purposes of avoiding any doubt, and without limiting the generality of paragraph (2)(*b*)(ii) of this article, it is declared that an award is in conflict with the public policy of the Republic if—

(*a*) a breach of the arbitral tribunal's duty to act fairly occurred in connection with the making of the award which has caused or will cause substantial injustice to the applicant; or

(*b*) the making of the award was induced or affected by fraud or corruption.

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 recognized as binding and, upon application in writing to the competent court, shall be enforced subject to the provisions of this article and of article 36.

(2) The party relying on an award or applying for its enforcement shall supply the original award or a copy thereof and if the award is not made in an official language of the Republic a translation thereof into such language.

Article 36—GROUNDS FOR REFUSING RECOGNITION OR ENFORCEMENT

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

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

(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 or her case; or

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

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

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

(*b*) if the court finds that—

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

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

(2) If an application for setting aside or suspension of an award has been made to a court referred to in paragraph (l)(*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.

(3) For the purposes of avoiding any doubt, and without limiting the generality of paragraph (1)(*b*)(ii) of this article, it is declared that the recognition or enforcement of an award is contrary to the public policy of the Republic if—

(*a*) a breach of the arbitral tribunal's duty to act fairly occurred in connection with the making of the award which has caused or will cause substantial injustice to the party resisting recognition or enforcement; or

(*b*) the making of the award was induced or affected by fraud or corruption.

SECOND SCHEDULE (s.13)

UNCITRAL MEDIATION RULES

Article 1—APPLICATION OF THE RULES

1. Where parties have agreed that disputes between them shall be submitted to mediation under the UNCITRAL Mediation Rules, then these Rules shall apply. The Rules may apply irrespective of the basis, whether contractual or not, upon which the mediation is carried out.

2. Mediation under the Rules is a process, whether referred to by the term mediation, conciliation or an expression of similar import, whereby parties request a third person or persons ("the mediator") to assist them in their attempt to reach an amicable settlement of their dispute. The mediator shall not have the authority to impose upon the parties a solution to the dispute.

3. The parties to a mediation shall be presumed to have referred to the Rules in effect on the date of commencement of the mediation, unless the parties have agreed to apply a particular version of the Rules.

4. The parties may agree to exclude or vary any provision of the Rules at any time.

5. Where any provision of these Rules is in conflict with a provision of the law applicable to the mediation from which the parties cannot derogate, including any applicable instrument or court order, that provision of law shall prevail.

Article 2—COMMENCEMENT OF MEDIATION

1. Mediation in respect of a dispute that has arisen shall be deemed to have commenced on the day on which the parties to that dispute agree to engage in mediation, unless otherwise agreed.

2. If a party that invited another party to mediate does not receive an acceptance of the invitation within 30 days from the day on which the invitation was sent by any means that provides for a record of its transmission, or within such other period of time as specified in the invitation, the party may elect to treat this as a rejection of the invitation to mediate.

Article 3—NUMBER AND APPOINTMENT OF MEDIATORS

1. There should be one mediator, unless otherwise agreed. Where there is more than one mediator, the mediators shall act jointly.

2. The parties should endeavour to appoint a mediator by agreement, unless a different appointment procedure applies. They may agree to replace a mediator at any time.

3. The parties may seek the assistance of an institution or person for appointing a mediator.

4. In recommending or selecting individuals to act as mediator, the institution or person shall have regard to—

   (*a*) the professional expertise and qualifications of the prospective mediator, experience as a mediator and ability to conduct the mediation;

   (*b*) any relevant accreditation and/or certification awarded to the prospective mediator by a recognized professional mediation standards body;

   (*c*) the availability of the mediator; and

   (*d*) such considerations as are likely to secure the appointment of an independent and impartial mediator.

5. If the parties have different nationalities, the institution or person, in consultation with the parties, may also take into account the advisability of appointing a mediator of a nationality other than the nationalities of the parties. In addition, the institution or person, in selecting, shall take into consideration geographical diversity and gender of the candidates.

6. When a person is approached in connection with a possible appointment as mediator, that person shall disclose any circumstances likely to give rise to justifiable doubts as to his or her impartiality or independence, including the disclosure of details of any personal, professional, financial or other interest that may influence the outcome of the dispute. A mediator, from the time of appointment and throughout the mediation, shall, without delay, disclose to the parties any such circumstances as they arise.

7. Prior to accepting the appointment, the prospective mediator shall ensure his or her availability to conduct the mediation diligently and efficiently.

8. In the event the mediator cannot perform her or his functions, the parties shall appoint a substitute mediator pursuant to the procedure mentioned in paragraphs 2, 3, 4, and 5. Paragraph 6 and 7 shall apply to the newly appointed mediator.

Article 4—Conduct of Mediation

1. The parties may agree on the manner in which the mediation is to be conducted. Otherwise, the mediator may determine the conduct of the mediation in consultation with the parties, taking into account the circumstances of the case, any wishes that the parties may express and the need for a speedy settlement of the dispute.

2. The mediator shall maintain fair treatment of the parties and, in so doing, shall take into account the circumstances of the case.

3. In order to facilitate the conduct of the mediation—

   (*a*) the parties and the mediator may convene a meeting at an early stage to agree on the organization of the mediation;

   (*b*) the parties, or the mediator with the consent of the parties, may arrange for administrative assistance by a suitable institution or person; and

   (*c*) the parties, or the mediator with the consent of the parties, may appoint experts.

4. In conducting the mediation, the mediator may, in consultation with the parties and taking into account the circumstances of the dispute, utilize any technological means as he or she considers appropriate, including to communicate with the parties and to hold meetings remotely.

5. A party may be represented or assisted by a person or persons of its choice. The name, address and function of such persons shall be communicated to all parties and to the mediator in advance of the mediation or without delay. This communication shall also indicate the scope of authority and whether the purpose of the appointment is for representation or assistance.

Article 5—COMMUNICATION BETWEEN THE PARTIES AND THE MEDIATOR

1. The mediator may meet or communicate with the parties together or with each of them separately.

2. At any stage of the mediation, the parties may submit information concerning the dispute, such as statements describing the general nature of the dispute, the points at issue, and any supporting document or additional information deemed appropriate. The information may also include a description of the goals, interests, needs and motivations of the parties as well as any relevant documents.

3. When the mediator receives information concerning the dispute from a party, the mediator shall keep such information confidential, unless that party indicates that the information is not subject to the condition that it should be kept confidential, or expresses its consent to the disclosure of such information to another party to the mediation.

Article 6—CONFIDENTIALITY

Unless otherwise agreed by the parties, all information relating to the mediation, including, if relevant, the settlement agreement, shall be kept confidential by those involved in the mediation, except where disclosure is required by the law or as referred to under article 8, paragraph 4.

Article 7—INTRODUCTION OF EVIDENCE IN OTHER PROCEEDINGS

1. Unless otherwise agreed by the parties, a party to the mediation, the mediator and any third person, including those involved in the administration of the mediation shall not, in arbitral, judicial or other dispute resolution proceedings, rely on, introduce as evidence or give evidence regarding any of the following—
   (*a*) an invitation by a party to engage in mediation or the fact that a party was willing to participate in mediation;
   (*b*) views expressed, or suggestions made by a party in the mediation in respect of a possible settlement of the dispute;
   (*c*) statements or admissions made by a party in the course of the mediation;
   (*d*) proposals made by the mediator or the parties;
   (*e*) the fact that a party had indicated its willingness to accept a proposal (or parts thereof) for settlement made by the mediator or the parties; and
   (*f*) a document prepared primarily for purposes of the mediation.
2. Paragraph 1 applies irrespective of the form of the information or evidence referred to therein.
3. Paragraphs 1 and 2 apply whether or not the arbitral, judicial, or other dispute resolution proceedings relate to the dispute that is or was the subject matter of the mediation.
4. Subject to the limitations of paragraph 1, evidence that is otherwise admissible in arbitral, judicial, or other dispute resolution proceedings does not become inadmissible as a consequence of having been used or disclosed in the mediation.

Article 8—SETTLEMENT AGREEMENT

1. Once the parties agree on the terms of a settlement to resolve all or part of the dispute through mediation, they should prepare and sign a settlement agreement. If requested by the parties and if the mediator deems it appropriate, the mediator may provide support to the parties in preparing the settlement agreement.
2. Unless otherwise agreed by the parties, the mediator or the mediation institution may sign or stamp the settlement agreement or provide other evidence that the agreement resulted from mediation.
3. The requirement that a settlement agreement shall be signed by the parties is met in relation to an electronic communication if—
   (*a*) a method is used to identify the parties and to indicate the parties' intention in respect of the information contained in the electronic communication;

(*b*) the method is used either—

(i) as reliable as appropriate for the purpose for which the electronic communication was generated or communicated, in the light of all the circumstances, including any relevant agreement; or

(ii) proven in fact to have fulfilled the functions described in subparagraph (*a*) above, by itself or together with further evidence.

4. By signing the settlement agreement, the parties agree that the settlement agreement can be used as evidence that it results from mediation, and that it can be relied upon for seeking relief under the applicable law.

Article 9—TERMINATION OF MEDIATION

The mediation shall terminate—

(*a*) by the signing of the settlement agreement by the parties, on the date of the agreement or such other date as agreed by the parties in the settlement agreement;

(*b*) by a declaration of the parties to the mediator to the effect that the mediation is terminated, on the date of the declaration;

(*c*) by a declaration of a party to the other party and the mediator, if appointed, to the effect that it no longer wishes to pursue mediation, on the date of the declaration;

(*d*) by a declaration of the mediator, after consultation with the parties, to the effect that further efforts at mediation are no longer justified, on the date of the declaration;

(*e*) by a declaration of the mediator, after consultation with the parties, in the situation referred to in article 11, paragraph 5, on the date of the declaration; or

(*f*) at the expiration of any mandatory period in the applicable international instrument, court order or mandatory statutory provision, or as agreed upon by the parties.

Article 10—ARBITRAL, JUDICIAL, OR OTHER DISPUTE RESOLUTION PROCEEDINGS

1. Mediation may take place under the Rules at any time regardless of whether arbitral, judicial, or other dispute resolution proceedings have been already initiated.

2. Where the parties have agreed to mediate and have also expressly undertaken not to initiate, during a specified period of time or until a specified event has occurred, arbitral, judicial or other dispute resolution proceedings with respect to an existing or future dispute, such an undertaking shall be complied with, except to the extent necessary for a

party, in its opinion, to preserve its rights. Initiation of such proceedings is not of itself to be regarded as waiver of the agreement to mediate or as a termination of the mediation.

Article 11—Costs and Deposit of Costs

1. The method for fixing the costs of mediation should be agreed upon by the parties and the mediator as early as possible in the mediation. Upon termination of the mediation, the mediator shall fix the costs of the mediation, which shall be reasonable in amount and give written notice thereof to the parties. The term "costs" includes only—
   (*a*) the fees of the mediator;
   (*b*) the travel and other expenses of the mediator;
   (*c*) the cost of expert advice requested by the mediator with the agreement of the parties;
   (*d*) the cost of any assistance provided pursuant to article 3, paragraph 3, and article 4, paragraph 3, of the Rules; and
   (*e*) any other expenses that may have been accrued out of the mediation, including in relation to translation and interpretation services.
2. Unless otherwise agreed by the parties, the costs, referred to in paragraph 1, are borne equally by the parties and, in the case of multiparty mediation, they are shared pro rata. All other expenses incurred by a party are borne by that party.
3. The mediator, upon appointment, may request each party to deposit an equal amount as an advance for the costs referred to in paragraph 1, unless otherwise agreed by the parties and the mediator.
4. During the course of the mediation, the mediator may request supplementary deposits in an equal amount from each party, unless otherwise agreed by the parties and the mediator.
5. If the required deposits under paragraphs 3 and 4 are not paid in full by all parties within a reasonable period set by the mediator, the mediator may suspend the mediation or may declare the termination of the mediation, in accordance with article 9, subparagraph (*e*).
6. Upon termination of the mediation and if deposits were received, the mediator shall render an accounting to the parties of the deposits received and return any unexpended funds to the parties.

Article 12—Role of The Mediator in other Proceedings

1. Unless otherwise agreed by the parties, the mediator shall not act as an arbitrator in respect of the dispute that was or is the subject of the mediation and of a dispute that has arisen from the same or a related contract or legal relationship.

2. The mediator shall not act as a representative or counsel of a party in any arbitral, judicial or other dispute resolution proceedings in respect of the dispute that was or is the subject of the mediation and of a dispute that has arisen from the same or a related contract or legal relationship.

3. The parties shall not present the mediator as a witness in any such proceedings.

Article 13—EXCLUSION OF LIABILITY

Save for intentional wrongdoing, the parties waive, to the fullest extent permitted under the applicable law, any claim against the mediator based on any act or omission in connection with the mediation.

ANNEX

Model mediation clauses

Mediation only

Any dispute, controversy or claim arising out of or relating to this contract, or the breach, termination, or invalidity thereof, shall be submitted to mediation in accordance with the UNCITRAL Mediation Rules.

Note: The parties should consider adding—

(*a*) the year of adoption of the version of the Rules;

(*b*) the parties agree that there will be one mediator, appointed by agreement of the parties, within 30 days of the mediation agreement, and if the parties cannot agree, the mediator shall be selected by [relevant selecting authority];

(*c*) the language of the mediation shall be; and

(*d*) the location of mediation shall be.

Multi-tiered clause

Any dispute, controversy or claim arising out of or relating to this contract, or the breach, termination, or invalidity thereof, shall be submitted to mediation in accordance with the UNCITRAL Mediation Rules.

Note: Parties should consider adding—

(*a*) The selecting authority shall be (name of institution or person);

(*b*) The language of the mediation shall be;

(*c*) The location of mediation shall be.

If the dispute, or any part thereof, is not settled within (60) days of the request to mediate under these Rules, the parties agree to resolve any remaining matters by arbitration in accordance with the UNCITRAL Arbitration Rules.

THIRD SCHEDULE (s.14)

CONVENTION ON THE RECOGNITION AND ENFORCEMENT OF FOREIGN ARBITRAL AWARDS

(Done at New York, June 10, 1958; entry into force June 7, 1959; published in 330 U.N.T.S. 38 (1959), no. 4739.)

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 recognize 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 relationship, whether contractual or not, concerning a subject matter capable of settlement by arbitration.

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

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

Article III

Each Contracting State shall recognize arbitral awards as binding and enforce them in accordance with the rules of procedure of the territory where the award

is relied upon, under the conditions laid down in the following articles. There shall not be imposed substantially more onerous conditions or higher fees or charges on the recognition or enforcement of arbitral awards to which this Convention applies than are imposed on the recognition or enforcement of domestic arbitral awards.

Article IV

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

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

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

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

Article V

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

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

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

   (*c*) the award deals with a difference not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration, provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, that part of the award which contains decision on matters submitted to arbitration may be recognized 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 paragraph (1)(*e*), the authority before which the award is sought to be relied upon may, if it considers it proper, adjourn the decision on the enforcement of the award and may also, on the application of the party claiming enforcement of the award, order the other party to give suitable security.

Article VII

1. The provisions of the present Convention shall not affect the validity of multilateral or bilateral agreements concerning the recognition and enforcement of arbitral awards entered into by the Contracting States nor deprive any interested party of any right he may have to avail himself of an arbitral award in the manner and to the extent allowed by the law or the treaties of the country where such award is sought to be relied upon.

2. The Geneva Protocol on Arbitration Clauses of 1923 and the Geneva Convention on the Execution of Foreign Arbitral Awards of 1927 shall cease to have effect between Contracting States on their becoming bound and to the extent that they become bound, by this Convention.

Article VIII

1. This Convention shall be open until 31 December 1958 for signature on behalf of any Member of the United Nations and also on behalf of any other State which is or hereafter becomes a member of any specialized 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

1. 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; and

   (*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 law and practice of the federation and its constituent units in regard to any particular provision

of this Convention, showing the extent to which effect has been given to that provision by legislative or other action.

Article XII

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

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

Article XIII

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

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

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

Article XIV

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

Article XV

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

(*a*) Signature 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.

Passed in Parliament this seventh day of December, two thousand and twenty three.

FIONA KALEMBA
Clerk of Parliament