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REPUBLIC OF SOUTH AFRICA

INTERNATIONAL ARBITRATION BILL

(As amended by the Portfolio Committee on Justice and Correctional Services)
(The English text is the official text of the Bill)

(MINISTER OF JUSTICE AND CORRECTIONAL SERVICES)

[B 10B—2017]

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BILL

To provide for the incorporation of the Model Law on International Commercial Arbitration, as adopted by the United Nations Commission on International Trade Law, into South African law; to provide anew for the recognition and enforcement of foreign arbitral awards; to repeal the Recognition and Enforcement of Foreign Arbitral Awards Act, 1977; to amend the Protection of Businesses Act, 1978, so as to delete an expression; and to provide for matters connected therewith.

PARLIAMENT of the Republic of South Africa enacts as follows:—

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CHAPTER 1

GENERAL PROVISIONS

Definitions

1. In this Act, unless the context otherwise indicates—

"arbitration agreement" means an arbitration agreement referred to in article 7 of the Model Law; 5

"conciliation" includes mediation;

"Constitution" means the Constitution of the Republic of South Africa, 1996;

"Model Law" means the UNCITRAL Model Law on International Commercial Arbitration adopted by the United Nations Commission on International Trade Law on 21 June 1985, as amended by the said Commission on 7 July 2006 and as adapted in Schedule 1; 10

"public body" includes—

(a) any department of state or administration in the national or provincial sphere of government or any municipality in the local sphere of government; or 15

(b) any other functionary or institution when—

(i) exercising a power or performing a duty in terms of the Constitution or a provincial constitution; or

(ii) exercising a public power or performing a public function in terms of any legislation. 20

"Republic" means the Republic of South Africa; and

"UNCITRAL" means the United Nations Commission on International Trade Law.

Interpretation

2. A word or expression used in Chapter 2 of this Act bears the same meaning as it has in the Model Law, unless inconsistent with the context and the Constitution. 25

Objects of Act

3. The objects of the Act are to—

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

(b) adopt the Model Law for use in international commercial disputes; 30

(c) facilitate 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), the text of which is set out in Schedule 3 to this Act, subject to the provisions of the Constitution. 35

Exclusion of Act 42 of 1965

4. (1) Subject to subsection (2), the Arbitration Act, 1965 (Act No. 42 of 1965), is not applicable to an arbitration agreement, arbitral award or reference to arbitration covered by this Act. 40

(2) Section 2 of the Arbitration Act, 1965, applies for purposes of Chapter 3 of this Act.

Act binds public bodies

5. This Act, subject to the provisions of section 13 of the Protection of Investment Act, 2015 (Act No. 22 of 2015), binds public bodies and applies to any international commercial arbitration in terms of an arbitration agreement to which a public body is a party. 45

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CHAPTER 2

INTERNATIONAL COMMERCIAL ARBITRATION

Model Law to have force of law

6. The Model Law applies in the Republic subject to the provisions of this Act.

Matters subject to international commercial arbitration

7. (1) For the purposes of this Chapter, any 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) such a dispute is not capable of determination by arbitration under any law of the Republic; or

(b) the arbitration agreement is contrary to the public policy of the Republic.

(2) Arbitration may not be excluded solely on the ground that an enactment 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. The material to which an arbitral tribunal or a court may refer in interpreting this Chapter and the Model Law includes relevant reports of UNCITRAL and its secretariat.

Immunity of arbitrators and arbitral institutions

9. (1) An arbitrator is not liable for any act or omission in the discharge or purported discharge of that arbitrator's functions as arbitrator unless the act or omission is shown to have been done in bad faith.

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

(3) An institution, authority or person referred to in subsection (2) by whom an arbitrator is appointed or nominated is not liable, by reason of having appointed or nominated such arbitrator, for any act or omission of such arbitrator in the discharge or purported discharge of the functions of the arbitrator.

(4) The provisions of this section also apply, with the changes required by the context, to—

(a) the employees of an arbitrator or persons appointed by the arbitral tribunal; or

(b) the officers and employees of an arbitral or other institution, authority or person referred to in subsection (2).

Consolidation of arbitral proceedings and concurrent hearings

10. (1) The parties to an arbitration agreement may agree that—

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

(b) concurrent hearings be held, on such terms as may be agreed.

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

Confidentiality of arbitral proceedings

11. (1) Arbitration proceedings to which a public body is a party are held in public, unless for compelling reasons, the arbitral tribunal directs otherwise.

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

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Right to conciliation process

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

Application of UNCITRAL Conciliation Rules 5

13. The parties to an arbitration agreement who intend to settle their dispute by conciliation may, subject to this Act, agree to use the UNCITRAL Conciliation Rules set out in Schedule 2 to this Act.

CHAPTER 3

RECOGNITION AND ENFORCEMENT OF ARBITRATION AGREEMENTS AND FOREIGN ARBITRAL AWARDS 10

Definitions

14. In this Chapter, unless the context otherwise indicates—

(a) **"certified copy"** means a copy authenticated in a manner in which foreign documents must be authenticated to enable them to be produced in any court; 15

(b) **"Convention"** means the Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958, the text of which is set out in Schedule 3;

(c) **"court"** means any Division of the High Court referred to in section 6(1) of the Superior Courts Act, 2013 (Act No. 10 of 2013), or any local seat thereof having jurisdiction; and 20

(d) **"foreign arbitral award"** means an arbitral award made in the territory of a state other than the Republic.

Determination of juridical seat of arbitration

15. For the purposes of this Chapter an award is deemed to be made at the juridical seat of arbitration determined in accordance with the provisions of articles 20(1) and 31(3) of the Model Law. 25

Recognition and enforcement of arbitration agreements and foreign arbitral awards

16. (1) Subject to section 18 an arbitration agreement and a foreign arbitral award must be recognised and enforced in the Republic as required by the Convention, subject to this Chapter. 30

(2) A foreign arbitral award is binding between the parties to that foreign arbitral award, and may be relied upon by those parties by way of defence, set-off or otherwise in any legal proceedings.

(3) A foreign arbitral award must, on application, be made an order of court and may then be enforced in the same manner as any judgment or order of court, subject to the provisions of this section and sections 17 and 18. 35

(4) Article 8 of the Model Law applies, with the necessary changes, to arbitration agreements referred to in subsection (1).

Evidence to be produced by party seeking recognition or enforcement 40

17. A party seeking the recognition or enforcement of a foreign arbitral award must produce—

(a) (i) the original award and the original arbitration agreement in terms of which an award was made, authenticated in a manner in which foreign documents must be authenticated to enable them to be produced in any court; or 45

(ii) a certified copy of that award and of that agreement; and

(b) a sworn translation of the arbitration agreement or arbitral award authenticated in a manner in which foreign documents must be authenticated for production in court, if the agreement or award is in a language other than one 50

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of the official languages of the Republic: Provided that the court may accept other documentary evidence regarding the existence of the foreign arbitral award and arbitration agreement as sufficient proof where the court considers it appropriate to do so.

Refusal of recognition or enforcement 5

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

(a) the court finds that—

(i) a reference to arbitration of the subject matter of the dispute is not permissible under the law of the Republic; or

(ii) the recognition or enforcement of the award is contrary to the public policy of the Republic; or 10

(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; 15

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

(iii) that he or she did not receive the required notice regarding the appointment of the arbitrator or of the arbitration proceedings or was otherwise not able to present his or her case; 20

(iv) the award deals with a dispute not contemplated by, or not falling within the terms of the reference to arbitration, or contains decisions on matters beyond the scope of the reference to arbitration, subject to the provisions of subsection (2); 25

(v) the constitution of the arbitration tribunal or the arbitration procedure was not in accordance with the relevant arbitration agreement or, if the agreement does not provide for such matters, with the law of the country in which the arbitration took place; or 30

(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 decisions on matters not submitted to arbitration may be recognised or enforced to the extent that it contains decisions on matters submitted to arbitration which can be separated from those on matters not so submitted. 35

(3) If an application for the setting aside or suspension of an award has been made to a competent authority referred to in subsection (1)*(b)*(vi), the court where recognition or enforcement is sought may, if it considers it appropriate—

(a) adjourn its decision on the enforcement of the award; and 40

(b) on the application of the party claiming enforcement of the award, order the other party to provide suitable security.

Savings

19. The provisions of this Chapter do not affect any other right to rely upon or to enforce a foreign arbitral award, including the right conferred by article 35 of the Model Law. 45

CHAPTER 4

TRANSITIONAL AND OTHER PROVISIONS

Transitional provisions

20. (1) Chapter 2 of this Act applies to international commercial arbitration agreements whether they entered into force before or after the commencement of Chapter 2 of this Act and to every arbitration under such an agreement but this section does not apply to arbitral proceedings which commenced before Chapter 2 of this Act came into force. 50

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(2) For purposes of this section, the date of commencement of the arbitration proceedings is the date upon which the parties agree as the date on which the arbitral proceedings commenced or failing such agreement, on the date of receipt by the respondent of a request for the dispute to be referred to arbitration.

(3) Chapters 2 and 3 of this Act apply to every arbitral award whether it was made before or after the date of commencement of such Chapters, but— 5

(a) proceedings for the enforcement of an arbitral award under the Recognition and Enforcement of Foreign Arbitral Awards Act, 1977 (Act No. 40 of 1977); or

(b) proceedings for the enforcement, setting aside or remittal of an award under the Arbitration Act, 1965 (Act No. 42 of 1965), 10

which commenced before Chapters 2 and 3 of this Act came into force, continue until they are concluded as if Chapters 2 and 3 of this Act had not commenced.

Repeal or amendment of laws

21. The laws referred to in Schedule 4 are repealed or amended to the extent set out in the third column thereof. 15

Short title and commencement

22. This Act is called the International Arbitration Act, 2017.

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Schedule 1

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 said Commission on 7 July 2006, subject to certain adaptations set out below)

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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 said Commission on 7 July 2006, subject to certain adaptations set out below)

CHAPTER I. GENERAL PROVISIONS

Article I. 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.

(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 A. 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.

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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 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 South African party, or if there is no South African party, the Gauteng Division of the High Court seated in Johannesburg, 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.

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(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.

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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.

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(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 IVA. 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 (i)*(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.

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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(i)*(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;

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(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.

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.

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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;

(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 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

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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 compositeu*r 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

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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 arbitral 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;

(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 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

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(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,

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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.

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SCHEDULE 2

UNCITRAL CONCILIATION RULES

Approved by Resolution 35/52 of the General Assembly on 4 December 1980

APPLICATION OF THE RULES

Article 1

(1) These Rules apply to conciliation of disputes arising out of or relating to a contractual or other legal relationship where the parties seeking an amicable settlement of their dispute have agreed that the UNCITRAL Conciliation Rules apply.

(2) The parties may agree to exclude or vary any of these Rules at any time.

(3) Where any or these Rules is in conflict with a provision of law from which the parties cannot derogate, that provision prevails.

COMMENCEMENT OF CONCILIATION PROCEEDINGS

Article 2

(1) The party initiating conciliation sends to the other party a written invitation to conciliate under these Rules, briefly identifying the subject of the dispute.

(2) Conciliation proceedings commence when the other party accepts the invitation to conciliate. If the acceptance is made orally, it is advisable that it be confirmed in writing.

(3) If the other party rejects the invitation, there will be no conciliation proceedings.

(4) If the party initiating conciliation does not receive a reply within thirty days from the date on which he sends the invitation, or within such other period of time as specified in the invitation, he may elect to treat this as a rejection of the invitation to conciliate. If he so elects, he informs the other party accordingly.

NUMBER OF CONCILIATORS

Article 3

There shall be one conciliator unless the parties agree that there shall be two or three conciliators. Where there is more than one conciliator, they ought, as a general rule, to act jointly.

APPOINTMENT OF CONCILIATORS

Article 4

(1) *(a)* In conciliation proceedings with one conciliator, the parties shall endeavour to reach agreement on the name of a sole conciliator.

(b) In conciliation proceedings with two conciliators, each party appoints one conciliator.

(c) In conciliation proceedings with three conciliators, each party appoints one conciliator. The parties shall endeavour to reach agreement on the name of the third conciliator.

(2) Parties may enlist the assistance of an appropriate institution or person in connection with the appointment of conciliators. In particular—

(a) a party may request such an institution or person to recommend the names of suitable individuals to act as conciliator; or

(b) the parties may agree that the appointment of one or more conciliators be made directly by such an institution or person.

In recommending or appointing individuals to act as conciliator, the institution or person shall have regard to such considerations as are likely to secure the appointment of an independent and impartial conciliator and, with respect to a sole or third conciliator, shall take into account the advisability of appointing a conciliator of a nationality other than the nationalities of the parties.

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SUBMISSION OF STATEMENTS TO CONCILIATOR

Article 5

(1) The conciliator, upon his or her appointment, requests each party to submit to him or her a brief written statement describing the general nature of the dispute and the points at issue. Each party sends a copy of his or her statement to the other party.

(2) The conciliator may request each party to submit to him or her a further written statement of his or her position and the facts and grounds in support thereof, supplemented by any documents and other evidence that such party deems appropriate. The party sends a copy of his or her statement to the other party.

(3) At any stage of the conciliation proceedings the conciliator may request a party to submit to him or her such additional information as he deems appropriate.

REPRESENTATION AND ASSISTANCE

Article 6

The parties may be represented or assisted by persons of their choice. The names and addresses of such persons are to be communicated in writing to the other party and to the conciliator; such communication is to specify whether the appointment is made for purposes of representation or of assistance.

ROLE OF CONCILIATOR

Article 7

(1) The conciliator assists the parties in an independent and impartial manner in their attempt to reach an amicable settlement of their dispute.

(2) The conciliator will be guided by principles of objectivity, fairness and justice, giving consideration to, among other things, the rights and obligations of the parties, the usages of the trade concerned and the circumstances surrounding the dispute, including any previous business practices between the parties.

(3) The conciliator may conduct the conciliation proceedings in such a manner as he or she considers appropriate, taking into account the circumstances of the case, the wishes the parties may express, including any request by a party that the conciliator hear oral statements, and the need for a speedy settlement of the dispute.

(4) The conciliator may, at any stage of the conciliation proceedings, make proposals for a settlement of the dispute. Such proposals need not be in writing and need not be accompanied by a statement of the reasons therefor.

ADMINISTRATIVE ASSISTANCE

Article 8

In order to facilitate the conduct of the conciliation proceedings, the parties, or the conciliator with the consent of the parties, may arrange for administrative assistance by a suitable institution or person.

COMMUNICATION BETWEEN CONCILIATOR AND PARTIES

Article 9

(1) The conciliator may invite the parties to meet with him or her or may communicate with them orally or in writing. He or she may meet or communicate with the parties together or with each of them separately.

(2) Unless the parties have agreed upon the place where meetings with the conciliator are to be held, such place will be determined by the conciliator, after consultation with the parties, having regard to the circumstances of the conciliation proceedings.

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DISCLOSURE OF INFORMATION

Article 10

When the conciliator receives factual information concerning the dispute from a party, he or she discloses the substance of that information to the other party in order that the other party may have the opportunity to present any explanation which he or she considers appropriate. However, when a party gives any information to the conciliator subject to a specific condition that it be kept confidential, the conciliator does not disclose that information to the other party.

CO-OPERATION OF PARTIES WITH CONCILIATOR

Article 11

The parties will in good faith co-operate with the conciliator and, in particular, will endeavour to comply with requests by the conciliator to submit written materials, provide evidence and attend meetings.

SUGGESTIONS BY PARTIES FOR SETTLEMENT OF DISPUTE

Article 12

Each party may, on his or her own initiative or at the invitation of the conciliator, submit to the conciliator suggestions for the settlement of the dispute.

SETTLEMENT AGREEMENT

Article 13

(1) When it appears to the conciliator that there exist elements of a settlement which would be acceptable to the parties, he or she formulates the terms of a possible settlement and submits them to the parties for their observations. After receiving the observations of the parties, the conciliator may reformulate the terms of a possible settlement in the light of such observations.

(2) If the parties reach agreement on a settlement of the dispute, they draw up and sign a written settlement agreement. If requested by the parties, the conciliator draws up, or assists the parties in drawing up, the settlement agreement.[1]

(3) The parties by signing the settlement agreement put an end to the dispute and are bound by the agreement.

CONFIDENTIALITY

Article 14

The conciliator and the parties must keep confidential all matters relating to the conciliation proceedings. Confidentiality extends also to the settlement agreement, except where its disclosure is necessary for purposes of implementation and enforcement.

TERMINATION OF CONCILIATION PROCEEDINGS

Article 15

The conciliation proceedings are terminated:

(a) By the signing of the settlement agreement by the parties, on the date of the agreement; or

(b) By a written declaration of the conciliator, after consultation with the parties, to the effect that further efforts at conciliation are no longer justified, on the date of the declaration; or

[1] The parties may wish to consider including in the settlement agreement a clause that any dispute arising out of or relating to the settlement agreement shall be submitted to arbitration.

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(c) By a written declaration of the parties addressed to the conciliator to the effect that the conciliation proceedings are terminated, on the date of the declaration; or

(d) By a written declaration of a party to the other party and the conciliator, if appointed, to the effect that the conciliation proceedings are terminated, on the date of the declaration.

RESORT TO ARBITRAL OR JUDICIAL PROCEEDINGS

Article 16

The parties undertake not to initiate, during the conciliation proceedings, any arbitral or judicial proceedings in respect of a dispute that is the subject of the conciliation proceedings, except that a party may initiate arbitral or judicial proceedings where, in his or her opinion, such proceedings are necessary for preserving his or her rights.

COSTS

Article 17

(1) Upon termination of the conciliation proceedings, the conciliator fixes the costs of the conciliation and gives written notice thereof to the parties. The term ''costs'' includes only:

(a) The fee of the conciliator which shall be reasonable in amount;

(b) The travel and other expenses of the conciliator;

(c) The travel and other expenses of witnesses requested by the conciliator with the consent of the parties;

(d) The cost of any expert advice requested by the conciliator with the consent of the parties;

(e) The cost of any assistance provided pursuant to articles 4, paragraph (2)*(b)*, and 8 of these Rules.

(2) The costs, as defined above, are borne equally by the parties unless the settlement agreement provides for a different apportionment. All other expenses incurred by a party are borne by that party.

DEPOSITS

Article 18

(1) The conciliator, upon his or her appointment, may request each party to deposit an equal amount as an advance for the costs referred to in article 17, paragraph (1) which he or she expects will be incurred.

(2) During the course of the conciliation proceedings the conciliator may request supplementary deposits in an equal amount from each party.

(3) If the required deposits under paragraphs (1) and (2) of this article are not paid in full by both parties within thirty days, the conciliator may suspend the proceedings or may make a written declaration of termination to the parties, effective on the date of that declaration.

(4) Upon termination off the conciliation proceedings, the conciliator renders an accounting to the parties of the deposits received and returns any unexpended balance to the parties.

ROLE OF CONCILIATOR IN OTHER PROCEEDINGS

Article 19

The parties and the conciliator undertake that the conciliator will not act as an arbitrator or as a representative or counsel of a party in any arbitral or judicial proceedings in respect of a dispute that is the subject of the conciliation proceedings. The parties also undertake that they will not present the conciliator as a witness in any such proceedings.

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ADMISSIBILITY OF EVIDENCE IN OTHER PROCEEDINGS

Article 20

The parties undertake not to rely on or introduce as evidence in arbitral or judicial proceedings, whether or not such proceedings relate to the dispute that is the subject of the conciliation proceedings:

(a) Views expressed or suggestions made by the other party in respect of a possible settlement of the dispute;

(b) Admissions made by the other party in the course of the conciliation proceedings;

(c) Proposals made by the conciliator;

(d) The fact that the other party had indicated his or her willingness to accept a proposal for settlement made by the conciliator.

MODEL CONCILIATION CLAUSE

Where, in the event of a dispute arising out of or relating to this contract, the parties wish to seek an amicable settlement of that dispute by conciliation, the conciliation shall take place in accordance with the UNCITRAL Conciliation Rules as at present in force.
(The parties may agree on other conciliation clauses.)

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SCHEDULE 3

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 1

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

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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 or her 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 or she may have to avail himself or herself 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

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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;
   - *(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.

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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.

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SCHEDULE 4

LAWS REPEALED OR AMENDED

Act No. and Year	Short title	Extent of repeal or amendment
Act No. 40 of 1977	Recognition and Enforcement of Foreign Arbitral Awards Act, 1977	The whole.
Act No. 99 of 1978	Protection of Businesses Act, 1978	**Amendment of the long title, section 1, section 1D and section 1G of Act 99 of 1978** The long title, section 1, section 1D and section 1G of the Protection of Businesses Act are hereby amended by the deletion of the expression **"arbitration award/awards"** where it occurs.
Act No. 1 of 1986	Carriage of Goods by Sea Act, 1986	The substitution for section 3 of Act 1 of 1986 of the following section: "**Jurisdiction of courts** 3. (1) Notwithstanding any purported ouster of jurisdiction, exclusive jurisdiction clause or agreement to refer any dispute to arbitration, and notwithstanding the provisions of the Arbitration Act, 1965 (Act No. 42 of 1965), **[and of]** section 7(1)*(b)* of the Admiralty Jurisdiction Regulation Act, 1983 (Act No. 105 of 1983) and the International Arbitration Act, 2017, any person carrying on business in the Republic and the consignee under, or holder of, any bill of lading, waybill or like document for the carriage of goods to a destination in the Republic or to any port in the Republic, whether for final discharge or for discharge or for discharge for further carriage, may bring any action relating to the carriage of the said goods or any such bill of lading, waybill or document in a competent court in the Republic. (2) The provisions of subsection (1) of this section shall not apply to arbitration proceedings to be held in the Republic which are subject to the provisions of the **[Arbitration Act, 1965]** arbitration laws of the Republic.".

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