

CHAPTER 4

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CHAPTER 4

THE ARBITRATION AND CONCILIATION ACT.

Commencement: 19 May, 2000.

An Act to amend the law relating to domestic arbitration, international commercial arbitration and enforcement of foreign arbitral awards, to define the law relating to conciliation of disputes and to make other provision relating to the foregoing.

PART I—PRELIMINARY.

1. Application.

Except as otherwise provided in any particular case, the provisions of this Act shall apply to domestic arbitration and international arbitration.

2. Interpretation.

- (1) In this Act, unless the context otherwise requires—
 - (a) “appointing authority” means an institution, body or person appointed by the Minister to perform the functions of appointing arbitrators and conciliators;
 - (b) “arbitration” means any arbitration whether or not administered by a domestic or international institution where there is an arbitration agreement;
 - (c) “arbitration agreement” means 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;
 - (d) “arbitral award” means any award of an arbitral tribunal and includes an interim arbitral award;
 - (e) “arbitral tribunal” means a sole arbitrator or a panel of arbitrators, and includes an umpire;
 - (f) “court” means the High Court;
 - (g) “ICSID Convention award” has the meaning assigned to it in section 45;
 - (h) “New York Convention award” has the meaning assigned to it in section 39;

- (i) “party” means a party to an arbitration agreement and includes a person claiming through or under a party;
- (j) “umpire” means a third arbitrator appointed by two arbitrators appointed by the parties.

(2) Where a provision of this Act, except section 30, leaves the parties free to determine a certain issue, that freedom includes the right of the parties to authorise a third party, including an institution, to make that determination.

(3) Where a provision of this Act 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, that agreement includes any arbitration rules referred to in that agreement.

(4) Where a provision of this Act, other than sections 25 and 32(2)(a), refers to a claim, it also applies to a counterclaim, and where it refers to a defence it also applies to a defence to a counterclaim.

PART II—ARBITRATION.

3. Form of arbitration agreement.

(1) An arbitration agreement may be in the form of an arbitration clause in a contract or in the form of a separate agreement.

(2) An arbitration agreement shall be in writing.

(3) An arbitration agreement is in writing if it is contained in—

- (a) a document signed by the parties; or
- (b) an exchange of letters, a telex, a telegram or other means of telecommunication which provides a record of the agreement.

(4) The reference in a contract to a document containing an arbitration clause shall constitute an arbitration agreement if the contract is in writing and the reference is such as to make that arbitration clause part of the contract.

4. Waiver of right to object.

A party who knows of any provision of this Act from which the parties may

derogate or of any requirement under the arbitration agreement which has not been complied with and yet proceeds with the arbitration without stating his or her objection to the noncompliance without undue delay or, if a time limit is prescribed, within that period of time, shall be deemed to have waived the right to object.

5. Stay of legal proceedings.

(1) A judge or magistrate before whom proceedings are being brought in a matter which is the subject of an arbitration agreement shall, if a party so applies after the filing of a statement of defence and both parties having been given a hearing, refer the matter back to the arbitration unless he or she finds—

- (a) that the arbitration agreement is null and void, inoperative or incapable of being performed; or
- (b) that there is not in fact any dispute between the parties with regard to the matters agreed to be referred to arbitration.

(2) Notwithstanding that an application has been brought under subsection (1) and the matter is pending before the court, arbitral proceedings may be commenced or continued and an arbitral award may be made.

6. Interim measures by the court.

(1) A party to an arbitration agreement may apply to the court, before or during arbitral proceedings, for an interim measure of protection, and the court may grant that measure.

(2) Where a party applies to the court for an injunction or other interim order and the arbitral tribunal has already ruled on any matter relevant to the application, the court shall treat the ruling or any finding of fact made in the course of the ruling as conclusive for the purposes of the application.

7. Death of a party.

(1) An arbitration agreement is not discharged by the death of any party to the agreement, either as respects the deceased or any other party, but in that event the agreement is enforceable by or against the personal representative of the deceased.

(2) The authority of an arbitrator is not revoked by the death of any party by whom he or she was appointed.

(3) Nothing in this section affects the operation of any law by virtue of which any right of action is extinguished by the death of a person.

8. Receipt of written communications.

(1) Unless otherwise agreed by the parties—

- (a) any written communication is deemed to have been received if it is delivered to the addressee personally or if it is delivered at his place of business, habitual residence or mailing address; and
- (b) the communication is deemed to have been received on the day it is so delivered.

(2) If none of the places referred to in subsection (1)(a) 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 mail or by any other means which provides a record of the attempt to deliver it.

(3) This section does not apply to written communications in respect of court proceedings.

9. Extent of court intervention.

Except as provided in this Act, no court shall intervene in matters governed by this Act.

10. Determination of number of arbitrators.

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

(2) If the parties fail to determine the number of arbitrators under subsection (1), there shall be one arbitrator.

11. Appointment of arbitrators.

(1) No person shall be precluded by reason of that person's 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 and if there is no agreement—

- (a) in an arbitration with three arbitrators, each party shall appoint one arbitrator, and the two arbitrators so appointed shall appoint the third arbitrator;
- (b) in an arbitration with one arbitrator, the parties shall agree on the person to be appointed.

(3) Where—

- (a) in the case of three arbitrators, a party fails to appoint the arbitrator within thirty days after 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 after their appointment; or
- (b) in the case of one arbitrator, the parties fail to agree on the arbitrator,

the appointment shall be made, upon application of a party, by the appointing authority.

(4) Where, under a procedure agreed upon by the parties for the appointment of an arbitrator or arbitrators—

- (a) a party fails to act as required under that procedure;
- (b) the parties or two arbitrators fail to reach the agreement expected of them under that procedure; or
- (c) a third party, including an institution, fails to perform any function entrusted to it under that procedure,

any party may apply to the appointing authority to take the necessary measures, unless the agreement otherwise provides, for securing compliance with the procedure agreed upon by the parties.

(5) A decision of the appointing authority in respect of a matter under subsection (3) or (4) shall be final and not be subject to appeal.

(6) The appointing authority in appointing an arbitrator shall have due regard to any qualifications required of an arbitrator by the agreement of the parties and to such considerations as are likely to secure the appointment of an independent and impartial arbitrator.

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.

(2) An arbitrator may be challenged only if circumstances exist that give rise to justifiable doubts as to his or her impartiality and independence, or if he or she does not possess qualifications agreed to by the parties.

(3) A party may challenge an arbitrator appointed by him or her, or in whose appointment that party has participated, only for reasons of which he or she becomes aware after the appointment.

13. Challenge procedure.

(1) In this section, the parties are free to agree on a procedure for challenging an arbitrator.

(2) If there is no agreement under subsection (1), a party who intends to challenge an arbitrator shall, within fifteen days after becoming aware of the composition of the appointing authority or after becoming aware of any circumstances referred to in section 12(2) send a written statement of the reasons for the challenge to the appointing authority; and unless the arbitrator who is being challenged withdraws from his or her office or the other party agrees to the challenge, the appointing authority shall decide on the challenge within a period of thirty days from receipt of a written statement.

14. Failure or impossibility to act.

- (1) The mandate of an arbitrator shall terminate if—
 - (a) he or she, according to the parties, is unable to perform the functions of his or her office or for any reason fails to act without undue delay;
 - (b) he or she withdraws from his or her office; or
 - (c) he or she dies.

(2) If there is any dispute concerning any of the grounds referred to in subsection (1)(a), a party may apply to the centre to decide on the termination of the mandate.

(3) A decision of the centre under subsection (2) shall be final and shall not be subject to appeal.

15. Termination of mandate and substitution of arbitrator.

(1) Where the mandate of an arbitrator is terminated under section 13 or 14, a substitute arbitrator shall be appointed in accordance with the procedure that was applicable to the appointment of the arbitrator being replaced.

(2) Unless agreed by the parties—

- (a) where a sole arbitrator or the presiding arbitrator is replaced, any hearing previously held shall be held afresh; and
- (b) where an arbitrator, other than a sole arbitrator or a presiding arbitrator, is replaced, any hearings previously held may be held afresh at the discretion of the arbitral tribunal.

(3) Unless agreed by the parties, an order or ruling of the arbitral tribunal made before the replacement of an arbitrator under this section shall not be invalidated solely because there has been a change in the composition of the arbitral tribunal.

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

(1) The arbitral tribunal may rule on its own jurisdiction, including ruling on any objections with respect to the existence or validity of the arbitration agreement, and for that purpose—

- (a) an arbitration clause which forms part of a contract shall be treated as an agreement independent of the other terms of the contract; and
- (b) a decision by the arbitral tribunal that the contract is null and void shall not itself invalidate 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; but a party is not precluded from raising such a plea because he or she has appointed or participated in the appointment of an arbitrator.

(3) 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.

(4) The arbitral tribunal may, in either of the cases referred to in

subsection (2) or (3), admit a later plea if it considers the delay justified.

(5) The arbitral tribunal shall rule on a plea referred to in subsections (2) and (3) as a preliminary question.

(6) Where the arbitral tribunal rules as a preliminary question that it has jurisdiction, any party aggrieved by the ruling may apply to the court, within thirty days after having received notice of that ruling, to decide the matter.

(7) The decision of the court shall be final and shall not be subject to appeal.

(8) While an application under subsection (6) is pending before the court, the arbitral tribunal may continue the arbitral proceedings and make an arbitral award.

17. Power of arbitral tribunal.

(1) Unless the parties agree, the appointing authority may, at the request of a party, order any party to take such interim measure of protection as the arbitral tribunal may consider necessary in respect of the subject matter of the dispute, and the arbitral tribunal may require any party to provide appropriate security in connection with such measure.

(2) The appointing authority or a party with the approval of the appointing authority may seek assistance from the centre in the exercise of any power conferred on the appointing authority under subsection (1).

(3) If a request is made under subsection (2), the court shall have, for the purposes of the arbitral proceedings, the same power to make an order for the doing of anything which the arbitral tribunal is empowered to order under subsection (1) as it would have in civil proceedings before that court, but the arbitral proceedings shall continue notwithstanding that a request has been made and is being considered by the court.

18. Equal treatment of parties.

The parties shall be treated with equality, and each party shall be given reasonable opportunity for presenting his or her case.

19. Determination of rules of procedure.

(1) Subject to this Act, the parties are free to agree on the procedure to be followed by rules of the arbitral tribunal in the conduct of the proceedings.

(2) If there is no agreement under subsection (1), the arbitral tribunal may, subject to this Act, conduct the arbitration in the manner it considers appropriate.

(3) The power of the arbitral tribunal under subsection (2) includes the power to determine the admissibility, relevance, materiality and weight of any evidence.

(4) Every witness giving evidence and every person appearing before an arbitral tribunal shall have at least the same privileges and immunities as witnesses and advocates in proceedings before a court.

20. Place of arbitration.

(1) The parties are free to agree on the place of arbitration.

(2) If the parties fail to agree under subsection (1), the place of arbitration shall be determined by the arbitral tribunal having regard to the costs and the circumstances of the case and to the convenience of the parties.

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

21. Commencement of arbitral proceedings.

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

22. Language.

(1) The arbitral proceedings will be conducted in the English language unless the parties otherwise agree to an interpreter.

(2) If the parties fail to agree under subsection (1), the arbitral tribunal shall determine the language or languages to be used in the arbitral proceedings.

(3) An agreement or determination under subsection (1) or (2) shall, unless specified, apply to any written statement by a party, any hearing and any arbitral award, decision or other communication by the arbitral tribunal.

(4) 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.

23. Statements of claim and defence.

(1) Within the period of time agreed upon 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 agreed as to the required particulars of such statements.

(2) The claimant shall have a right to file a reply to the defence.

(3) 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 to provide for a reply to the defence as a cardinal rule of law for a person to be heard.

(4) A 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 the amendment or supplement having regard to the delay in making it.

24. Hearing and written submissions.

(1) Subject to any agreement to the contrary by the parties, the arbitral tribunal shall decide whether to hold oral hearing for the presentation of evidence or have oral argument or written submissions.

(2) Unless the parties have agreed that no hearing shall be held, the

arbitral tribunal shall hold oral hearings at an appropriate stage of the proceedings.

(3) The arbitral tribunal shall have power to administer oaths to the parties and witnesses appearing.

(4) Rule 7 of Order 43 of the Civil Procedure Rules shall apply in the case of any arbitration agreement under this Act as it applies to a reference under Order 43 of those Rules.

(5) The parties shall be given sufficient advance notice of any hearing and of any meeting of the arbitral tribunal.

(6) All statements, documents or other information furnished to, or applications made to, the arbitral tribunal by one party shall be communicated to the other party, and any expert report or evidential document on which the arbitral tribunal may rely in making its decisions shall be communicated to the parties.

(7) At any hearing or meeting of the arbitral tribunal of which notice is required to be given under subsection (5), or in any proceedings conducted on the basis of documents or other materials, the parties may appear or act in person or may be represented by any other person of their choice.

25. Default of a party.

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

- (a) the claimant fails to communicate his or her statement of claim in accordance with section 23(1), the arbitral tribunal shall terminate the arbitral proceedings;
- (b) the respondent fails to communicate his or her statement of defence in accordance with section 23(1), the arbitral tribunal shall continue the proceedings without treating the failure by 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;
- (d) the claimant fails to proceed with his or her claim, the arbitral tribunal may make an award dismissing the claim or give directions, with or without conditions, for the speedy determination of the claim.

26. Experts.

- (1) Unless the parties agree otherwise, the arbitral tribunal may—
 - (a) appoint one or more experts to report to it on specific issues to be determined by the arbitral tribunal; and
 - (b) require a party to give the expert any relevant information or to produce or provide access to any relevant documents, goods or other property for inspection.

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

(3) Unless the parties agree otherwise, the expert shall, upon the request of a party, make available to that party for examination all documents, goods or other property in the expert's possession which was provided to him or her in order to prepare his or her report.

27. Court assistance in taking evidence.

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

28. Rules applicable to substance of dispute.

(1) The arbitral tribunal shall decide the dispute in accordance with the rules of law chosen by the parties as applicable to the substance of the dispute.

(2) The choice of the law or the legal system of any designated State shall be construed, unless otherwise agreed by the parties, as directly referring to the substantive law of that State and not to its conflict of laws rules.

(3) If there is no choice of the law under subsection (1) by the parties, the arbitral tribunal shall apply the rules of law it considers to be appropriate

given all the circumstances of the dispute.

(4) The arbitral tribunal shall decide on the substance of the dispute according to considerations of justice and fairness without being bound by the rules of law, except if the parties have expressly authorised it to do so.

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

29. Decision making by panel of arbitrators.

(1) In arbitral proceedings with more than one arbitrator, any decision of the arbitral tribunal shall be made by a majority of all its members.

(2) Notwithstanding subsection (1), if authorised by the parties or all the members of the arbitral tribunal, questions of procedure may be decided by a presiding arbitrator.

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, record the settlement in the form of an arbitral award on agreed terms.

(2) An arbitral award on agreed terms shall be made in accordance with section 31 and shall state that it is an arbitral award.

(3) An arbitral award on agreed terms has the same status and effect as any other arbitral award on the substance of the dispute.

31. Form and contents of arbitral award.

(1) The arbitrators shall make their award in writing within two months after entering on the reference, or after having been called on to act by notice in writing from any party to the submission, or on or before any later day to which the arbitrators, by any writing signed by them, may, from time to time, enlarge the time for making the award.

(2) If the arbitrators have allowed their time or extended time to

expire without making an award, or have delivered to any party to the submission or to the umpire a notice in writing stating that they cannot agree, the umpire may forthwith enter on the reference in place of the arbitrators.

(3) The umpire shall make his or her award within one month after the original or extended time appointed for making the award of the arbitrators has expired, or on or before any later day to which the umpire, by any writing signed by him or her, from time to time, enlarged the time for making his or her award.

(4) An arbitral award shall be made in writing and shall be signed by the arbitrator or the arbitrators.

(5) For the purposes of subsection (1), in arbitral proceedings with more than one arbitrator, the signatures of the majority of all the arbitrators shall be sufficient so long as the reason for any omitted signature is stated.

(6) The arbitral award shall state the reasons upon which it is based, unless—

- (a) the parties have agreed that no reasons are to be given; or
- (b) the award is an arbitral award on agreed terms under section 30.

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

(8) After the arbitral award is made, a signed copy shall be delivered to each party.

(9) Unless otherwise agreed by the parties—

- (a) the costs and expenses of an arbitration, being the legal and other expenses of the parties, the fees and expenses of the arbitral tribunal and any other expenses related to the arbitration shall be as determined and apportioned by the arbitral tribunal in its award under this section, or any additional award under section 33(5); or
- (b) in the absence of an award or additional award determining and apportioning the costs and expenses of the arbitration, each party shall be responsible for the legal and other expenses of that party and for an equal share of the fees and expenses of the arbitral tribunal and any other expenses relating to the arbitration.

32. Termination of arbitral proceedings.

(1) The arbitral proceedings shall be terminated by the final arbitral award or by an order of the arbitral tribunal under subsection (2).

(2) The arbitral tribunal shall issue an order for the termination of the arbitral proceedings where—

- (a) the claimant withdraws his or her claim, unless the respondent objects to the order and the arbitral tribunal recognises 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 arbitral proceedings; or
- (c) the arbitral tribunal finds that the continuation of the proceedings has for any other reason become unnecessary.

(3) Notwithstanding subsection (2)(c), the arbitral tribunal may terminate the arbitral proceedings where there has been an unconscionable delay, on the application of either party or of its own motion.

(4) Subject to sections 33 and 34, the mandate of the arbitral tribunal shall terminate upon the termination of the arbitral proceedings.

33. Correction and interpretation of arbitral award; additional award.

(1) Within fourteen days after receipt of the arbitral award, unless a different period of time has been agreed upon by the parties—

- (a) a party may request the arbitral tribunal to correct in the arbitral award any computational errors, any clerical or typographical errors or any other errors of a similar nature; and
- (b) a party may, if agreed by the parties, request the arbitral tribunal to give an interpretation of a specific point or part of the arbitral award.

(2) If the arbitral tribunal considers the request made under subsection (1) to be justified, it shall make the correction or give the interpretation within fourteen days after receipt of the request, and the interpretation shall form part of the arbitral award.

(3) The arbitral tribunal may correct any error of the type referred to

in subsection (1)(a) on its own initiative within thirty days after the date of the arbitral award.

(4) A party may, within thirty days after receipt of the arbitral award, request the arbitral tribunal to make an additional arbitral award as to claims presented in the arbitral proceedings but omitted from the arbitral award.

(5) If the arbitral tribunal considers the request made under subsection (4) to be justified, it shall make the additional arbitral award within thirty days.

(6) The arbitral tribunal may extend, if necessary, the period of time within which it shall make a correction, give an interpretation or make an additional arbitral award under subsection (2) or (5) except that the extension does not exceed fourteen days.

(7) Section 31 shall apply to a correction or an interpretation of the arbitral award or to an additional arbitral award made under this section.

34. Application for setting aside arbitral award.

(1) Recourse to the court against an arbitral award may be made only by an application for setting aside the award under subsections (2) and (3).

(2) An arbitral award may be set aside by the court only if—

- (a) the party making the application furnishes proof that—
- (i) a party to the arbitration agreement was under some incapacity;
 - (ii) the arbitration agreement is not valid under the law to which the parties have subjected it or, if there is no indication of that law, the law of Uganda;
 - (iii) the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was unable to present his or her case;
 - (iv) the arbitral 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; except that if the decisions on matters referred to arbitration can be separated from those not so referred, only that part of the arbitral award which contains decisions on matters not referred to arbitration

- may be set aside;
- (v) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless that agreement was in conflict with a provision of this Act from which the parties cannot derogate, or in the absence of an agreement, was not in accordance with this Act;
- (vi) the arbitral award was procured by corruption, fraud or undue means or there was evident partiality or corruption in one or more of the arbitrators; or
- (vii) the arbitral award is not in accordance with the Act;
- (b) the court finds that—
 - (i) the subject matter of the dispute is not capable of settlement by arbitration under the law of Uganda; or
 - (ii) the award is in conflict with the public policy of Uganda.

(3) An application for setting aside the arbitral award may not be made after one month has elapsed from the date on which the party making that application had received the arbitral award, or if a request had been made under section 33, from the date on which that request had been disposed of by the arbitral award.

(4) The court, when required to set aside an arbitral award, may, where appropriate and if requested by a party, suspend the proceedings to set aside the arbitral award 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 opinion of the arbitral tribunal will eliminate the grounds for setting aside the arbitral award.

(5) If an application for the setting aside or suspension of an arbitral award has been made to a court, the court may, if it considers it proper, adjourn its decision and may also, on the application of the party claiming recognition or enforcement of the arbitral award, order the other party to provide appropriate security.

35. Recognition and enforcement of award.

(1) An arbitral award shall be recognised as binding and upon application in writing to the court shall be enforced subject to this section.

(2) Unless the court otherwise orders, the party relying on an arbitral

award or applying for its enforcement shall furnish—

- (a) the duly authenticated original arbitral award or a duly certified copy of it; and
- (b) the original arbitration agreement or a duly certified copy of it.

(3) If the arbitral award or arbitration agreement is not made in the English language, the party shall furnish a duly certified translation of it into the English language.

36. Enforcement.

Where the time for making an application to set aside the arbitral award under section 34 has expired, or that application having been made, it has been refused, the award shall be enforced in the same manner as if it were a decree of the court.

37. Bankruptcy.

(1) Where it is provided by a term in a contract to which a bankrupt is a party that any differences arising out of or in connection with the contract shall be referred to arbitration, then if the trustee in bankruptcy adopts the contract, that term is enforceable by or against him or her so far as relates to those differences.

(2) Where a person who has been adjudged bankrupt had, before the commencement of the bankruptcy, become a party to an arbitration agreement, and any matter to which the agreement applies requires to be determined in connection with or for the purposes of the bankruptcy proceedings, then if the case is one to which subsection (1) does not apply—

- (a) any other party to the agreement or, with the consent of the committee of inspection, the trustee in bankruptcy may apply to the court having jurisdiction in the bankruptcy proceedings for an order directing that the matter in question shall be referred to arbitration in accordance with the agreement; and
- (b) the court, if it is of the opinion that, having regard to all the circumstances of the case, the matter ought to be determined by arbitration, may make an order accordingly.

(3) This section shall apply if the bankrupt person is a Ugandan or if the law of Uganda is applicable.

38. Questions of law arising in domestic arbitration.

- (1) Where in the case of arbitration, the parties have agreed that—
 - (a) an application by any party may be made to a court to determine any question of law arising in the course of the arbitration; or
 - (b) an appeal by any party may be made to a court on any question of law arising out of the award,

the application or appeal, as the case may be, may be made to the court.

(2) On an application or appeal being made to it under subsection (1), the court may, as appropriate—

- (a) determine the question of law arising;
- (b) confirm, vary or set aside the arbitral award or remit the matter to the arbitral tribunal for reconsideration or, where another arbitral tribunal has been appointed, to that arbitral tribunal for consideration.

(3) Notwithstanding sections 9 and 34, an appeal shall lie to the Court of Appeal against a decision of the court under subsection (2) if—

- (a) the parties have so agreed that an appeal shall lie; and
- (b) the court grants leave to appeal, or where the court fails to grant leave, the Court of Appeal grants special leave to appeal,

and on such appeal the Court of Appeal may exercise any of the powers which the court could have exercised under subsection (2).

(4) An application or appeal under this section shall be made within the time limit and in the manner prescribed by the rules of court applicable, as the case may be, in the court or in the Court of Appeal.

(5) When an arbitral award has been varied on appeal under this section, the award as varied shall have effect as if it were the award of the arbitral tribunal concerned.

PART III—ENFORCEMENT OF NEW YORK CONVENTION AWARDS.

39. Definition.

(1) A “New York Convention award” means an arbitral award made, in pursuance of an arbitration agreement, in the territory of a State (other than Uganda) which is a party to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the “New York Convention”)

adopted by the United Nations Conference on International Commercial Arbitration on 10th June, 1958.

(2) An award shall be treated as made at the seat of the arbitration, regardless of where it was signed, dispatched or delivered to any of the parties.

40. Power of judicial authority to refer parties to arbitration.

When seized of an action in a matter in respect of which the parties have made an arbitration agreement referred to in section 39, the court shall, at the request of one of the parties, refer the parties to arbitration, unless it finds that the agreement is null and void, inoperative or incapable of being performed.

41. When foreign award binding.

Any New York Convention award which would be enforceable under this Part shall be treated as binding for all purposes on the persons as between whom it was made, and may accordingly be relied on by any of those persons by way of defence, setoff or otherwise in any legal proceedings in Uganda; and any references in this Part to enforcing a foreign award shall be construed as including references to relying on an award.

42. Conditions for enforcement of New York Convention awards.

A New York Convention award shall be recognised and enforced pursuant to section 35.

43. Enforcement.

Where the court is satisfied that a New York Convention award is enforceable under this Part, the award shall be deemed to be a decree of that court.

44. Saving.

Nothing in this Part shall prejudice any rights which any persons would have had of enforcing in Uganda of any award or of availing himself or herself in Uganda of any award if this Part had not been enacted.

PART IV—ENFORCEMENT OF ICSID CONVENTION AWARDS.

45. Definition.

(1) An “ICSID Convention award” means an arbitral award rendered pursuant to the Convention on the Settlement of Investment Disputes between States and Nationals of other States (the “ICSID Convention”) which was opened for signature on 18th March, 1965.

- (2) For the purposes of this Part—
- (a) an ICSID Convention award shall include any decision interpreting, revising or annulling an award, being a decision pursuant to the ICSID Convention, and any decision as to costs which under the Convention is to form part of the award; and
 - (b) an award shall be deemed to have been rendered pursuant to the ICSID Convention on the date on which certified copies of the award were pursuant to the ICSID Convention dispatched to the parties.

46. Registration.

(1) A person seeking enforcement of an ICSID Convention award shall be entitled to have the award registered in the court subject to proof of the prescribed matters and to the other provisions of this Part.

(2) In addition to the pecuniary obligations imposed by the ICSID Convention award, the award shall be registered for the reasonable costs of and incidental to registration.

(3) If at the date of the application for registration the pecuniary obligations imposed by the ICSID Convention award have been partly satisfied, the award shall be registered only in respect of the balance, and if those obligations have been wholly satisfied, the award shall not be registered.

- (4) The power to make rules of court under section 68 shall include power—
- (a) to prescribe the procedure for applying for registration under this Part, and to require an applicant to give prior notice of his intention to other parties;
 - (b) to prescribe the matters to be proved on the application and the

- manner of proof and, in particular, to require the applicant to furnish a copy of the award certified pursuant to the ICSID Convention; and
- (c) to provide for the service of notice of registration of the award by the applicant on other parties.

47. Enforcement.

(1) Subject to this Part, an ICSID Convention award registered under section 47 shall, as respects the pecuniary obligations which it imposes, be of the same force and effect for the purposes of execution as if it had been a judgment of the court given when the award was rendered pursuant to the ICSID Convention and entered on the date of registration under this Part, and, so far as relates to such pecuniary obligations—

- (a) proceedings may be taken on the award;
- (b) the sum for which the award is registered shall carry interest;
- (c) the court shall have the same control over the execution of the award as if the award had been a judgment of such court.

(2) Rules of court made under section 71 may contain provisions requiring the court on proof of the prescribed matters to stay execution of any ICSID Convention award registered under this Part so as to take account of cases where enforcement of the award has been stayed (whether provisionally or otherwise) pursuant to the ICSID Convention, and may provide for the provisional stay of execution of the award where an application is made pursuant to the ICSID Convention which, if granted, might result in a stay of enforcement of the award.

PART V—CONCILIATION.

48. Application and scope.

(1) Except as otherwise provided by any law for the time being in force, and unless the parties have otherwise agreed, this Part shall apply to conciliation of disputes arising out of a legal relationship, whether contractual or not, and to all proceedings relating to it.

(2) This Part shall not apply where by virtue of any law for the time being in force certain disputes may not be submitted to conciliation.

49. Commencement of conciliation proceedings.

(1) The party initiating conciliation shall send to the other party a written invitation to conciliate under this Part, briefly identifying the subject of the dispute.

(2) Conciliation proceedings shall commence when the other party accepts in writing the invitation to conciliate.

(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 twenty-one days from the date on which he or she sends the invitation, or within such other period of time as specified in the invitation, he or she may elect to treat that as a rejection of the invitation to conciliate; and if he or she so elects, he or she shall inform in writing the other party accordingly.

50. Number of conciliators.

(1) There shall be one conciliator unless the parties agree that there shall be two or three conciliators.

(2) Where there is more than one conciliator, the conciliators shall, as a general rule, act jointly.

51. Appointment of conciliators.

(1) Subject to subsection (2)—

(a) in conciliation proceedings with one conciliator, the parties may agree on the name of a sole conciliator;

(b) in conciliation proceedings with two conciliators, each party may appoint one conciliator;

(c) in conciliation proceedings with three conciliators, each party may appoint one conciliator, and the parties may agree on the name of the third conciliator who shall act as the presiding conciliator.

(2) Parties may enlist the assistance of the appointing authority or person in connection with the appointment of conciliators, and, in particular—

- (a) a party may request the appointing authority 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 the appointing authority.

(3) 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.

52. Submission of statements to conciliator.

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

(2) Each party shall send a copy of the statement to the other party.

(3) 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 of it, supplemented by any documents and other evidence that that party thinks appropriate.

(4) The party shall send a copy of the statement, documents and other evidence to the other party.

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

53. Role of conciliator.

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

(2) The conciliator shall 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.

(5) Proposals made under subsection (4) need not be in writing and need not be accompanied by a statement of the reasons for them.

54. Communication between conciliator and parties.

(1) The conciliator may invite the parties to meet him or her or may communicate with them orally or in writing.

(2) The conciliator may meet or communicate with the parties together or with each of them separately.

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

55. Disclosure of information.

When the conciliator receives factual information concerning the dispute from a party, he shall disclose 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 considers appropriate; except that when a party gives any information to the conciliator subject to a specific condition that it be kept confidential, the conciliator shall not disclose that information to the other party.

56. Cooperation of parties with conciliator.

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

57. Suggestions by parties for settlement of dispute.

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.

58. Settlement agreement.

(1) When it appears to the conciliator that there exist elements of a settlement which may be acceptable to the parties, he shall formulate the terms of a possible settlement and submit them to the parties for their observations.

(2) After receiving the observations of the parties, the conciliator may reformulate the terms of a possible settlement in the light of such observations.

(3) If the parties reach agreement on a settlement of the dispute, they may draw up and sign a written settlement agreement.

(4) If requested by the parties, the conciliator may draw up, or assist the parties in drawing up, the settlement agreement.

(5) When the parties sign the settlement agreement, it shall be final and binding on them.

(6) The conciliator shall authenticate the settlement agreement and furnish a copy of it to each of the parties.

59. Status and effect of settlement agreement.

The settlement agreement shall have the same status and effect as if it is an arbitral award under this Act.

60. Confidentiality.

(1) Notwithstanding anything in any other law for the time being in force, the conciliator and the parties shall keep confidential all matters relating to the conciliation proceedings.

(2) Confidentiality shall extend also to the settlement agreement, except where its disclosure is necessary for purposes of implementation and enforcement.

61. Termination of conciliation proceedings.

The conciliation proceedings shall be terminated—

- (a) by the signing of the settlement agreement by the parties on the date of the agreement;
- (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;
- (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.

62. Resort to arbitral or judicial proceedings.

The parties shall not initiate, during the conciliation proceedings, any arbitral or judicial proceedings in respect of a dispute that is the subject matter of the conciliation proceedings.

63. Costs.

(1) Upon termination of the conciliation proceedings, the conciliator shall fix the costs of the conciliation and give written notice of it to the parties.

(2) For the purpose of subsection (1), “costs” means reasonable costs relating to—

- (a) the fee and expenses of the conciliator and witnesses requested by the conciliator with the consent of the parties;

- (b) any expert advice requested by the conciliator with the consent of the parties;
- (c) any assistance provided under section 51(2)(b);
- (d) any other expenses incurred in connection with the conciliation proceedings and the settlement agreement.

(3) The costs shall be borne equally by the parties unless the settlement agreement provides for a different apportionment.

(4) All other expenses incurred by a party shall be borne by that party.

64. Deposits.

(1) The conciliator may direct each party to deposit an equal amount as an advance for the costs referred to in section 63(2) which he expects will be incurred.

(2) If the required deposits under subsection (1) 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 of the proceedings to the parties, to take effect on the date of the declaration.

(3) Upon termination of the conciliation proceedings, the conciliator shall render an account to the parties of the deposits received and shall return any unexpected balance to the parties.

65. Role of conciliator in other proceedings.

(1) The conciliator shall not act as an arbitrator or as a representative or counsel of a party in any arbitral or judicial proceeding in respect of a dispute that is the subject of the conciliation proceedings.

(2) The conciliator shall not be presented by the parties as a witness in any arbitral or judicial proceedings.

66. Admissibility of evidence in other proceedings.

The parties shall not 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.

PART VI—THE CENTRE FOR ARBITRATION AND DISPUTE RESOLUTION.

67. The Centre for Arbitration and Dispute Resolution.

(1) There is established a body to be called the Centre for Arbitration and Dispute Resolution.

(2) The centre shall be a body corporate with perpetual succession and a common seal and shall be capable of suing or being sued in its corporate name and may borrow money, acquire and dispose of property and do all such other things as a body corporate may lawfully do.

68. Functions of the centre.

The functions of the Centre shall, in relation to arbitration and conciliation proceedings under this Act, include the following—

- (a) to perform the functions referred to in sections 11, 12, 13, 14, 15 and 51;
- (b) to perform the functions specified in the UNCITRAL Arbitration Rules of 1976;
- (c) to make appropriate rules, administrative procedure and forms for effective performance of the arbitration, conciliation or alternative dispute resolution process;
- (d) to establish and enforce a code of ethics for arbitrators, conciliators, neutrals and experts;
- (e) to qualify and accredit arbitrators, conciliators and experts;
- (f) to provide administrative services and other technical services in aid of arbitration, conciliation and alternative dispute resolution;
- (g) to establish appropriate qualifications for institutions, bodies and persons eligible for appointment;
- (h) to establish a comprehensive roster of competent and qualified arbitrators, conciliators and experts;
- (i) to facilitate certification, registration and authentication of

- arbitration awards and conciliation settlements;
- (j) to establish and administer a schedule of fees for arbitrators;
- (k) to avail skills, training and promote the use of alternative dispute resolution methods for stakeholders;
- (l) to do all other acts as are required, necessary or conducive to the proper implementation of the objectives of this Act.

69. Governing body of the Centre for Arbitration and Dispute Resolution.

(1) The governing body for the Centre for Arbitration and Dispute Resolution shall be a council.

(2) The council shall be responsible for the formulation and implementation of policy for the centre.

(3) The council shall consist of the following—

- (a) the chairperson appointed by the Minister on such terms and conditions as the Minister may determine;
- (b) the executive director of the centre appointed by the council on such terms and conditions as the council may determine;
- (c) the president of the Uganda commercial court;
- (d) three representatives appointed by the Minister from the existing private sector organisations or their representatives;
- (e) a representative of the Uganda Law Society.

(4) The members of the council, other than the executive director, shall hold office for a term of three years and shall be eligible for reappointment.

70. Secretariat of the centre.

(1) The centre shall have a secretariat consisting of an executive director and such other officers and staff as the council may from time to time appoint.

(2) The executive director shall be the administrative officer of the centre and as such shall be responsible for the day-to-day operations of the centre.

PART VII—MISCELLANEOUS.

71. Rules.

- (1) The centre may make rules for—
 - (a) the recognition and enforcement of arbitral awards and all proceedings consequent or incidental to them;
 - (b) the filing of applications for setting aside arbitral awards;
 - (c) the staying of any suit or proceedings instituted in an arbitration agreement;
 - (d) generally all proceedings in court under this Act.

(2) Until the rules committee makes rules of court to replace them, the rules specified in the First Schedule to this Act shall apply to arbitration in Uganda.

72. Forms.

The forms set out in the Second Schedule to this Act or forms similar to them, with such variations as the circumstances of each case require, may be used for the respective purposes in that Schedule and if used shall not be called in question.

73. Government to be bound.

This Act shall bind the Government.

74. Saving.

(1) The repeal of the Arbitration Act, Cap. 55, 1964 Revision, shall not affect any arbitral proceedings commenced before the coming into operation of this Act.

(2) For the purposes of this subsection, an arbitral proceeding shall be deemed to have commenced on the date the parties have agreed the proceeding should be commenced or, if the parties fail to agree, on the date of receipt by the respondent of a request for the dispute to be referred to arbitration.

SCHEDULES

First Schedule.

s. 71.

The Arbitration Rules.

1. These Rules may be cited as the Arbitration Rules.
2. An award may be filed or registered in the court by a party with the registrar of the High Court or in the district registry of the High Court within the local limits of which the arbitration has been held.
3. An award on being filed or registered shall be given its serial number in the civil list, and all subsequent proceedings in connection with it shall be similarly numbered.
4. Any party filing an award shall serve notice of the filing or registering of an award upon the other parties and shall forthwith certify in writing to the registrar of the High Court the date and manner of each such service effected.
5. Where a special case has been stated under section 39 of the Act, the case stated and all relevant papers must be lodged with the registrar or a district registrar of the High Court, as the case may be, together with the necessary fees and the names of the parties interested and their addresses.
6. The court shall thereupon cause notice of hearing to be sent to the parties interested and after hearing such of them as desire to be heard shall transmit a certified copy of its finding to the arbitrators by whom the case was stated.
7. (1) Any party who objects to an award filed or registered in the court may, within ninety days after notice of the filing of the award has been served upon that party, apply for the award to be set aside and lodge his or her objections to it, together with necessary copies and fees for serving them upon the other parties interested.

(2) The parties on whom the objections are served may, within fourteen days after the date of service of the objections, lodge cross objections which shall be served on the original objector.

8. The objections to the award and the cross objections (if any) shall thereafter be set down for hearing, and the original objector shall occupy the position of plaintiff and the other parties that of defendants.
9. An application for stay of proceedings under section 5 of the Act shall be by motion, with notice to the party commencing legal proceedings, supported by affidavit.
10. If on the hearing of the motion the court orders the proceedings to be stayed, it may direct by whom the costs in the action are to be borne and may order the arbitrators or umpire to include in their award the taxed costs or such sum as the court may fix in lieu of taxed costs.
11. An application to enforce an award as a decree of court under section 35 of the Act shall not be made, if no objections to the award are lodged, until the expiration of ninety days after notice of the filing or registering of the award has been served upon the party against whom the award is to be enforced, and if objections are lodged, until the objections have been dealt with by the court.
12. Where a party who has been ordered by an award to pay a sum of money or to hand over movable property lodges objections to the award, any other party interested in the award may apply to the court for an order directing the objector to give security for the enforcement of the award and of any costs that may be ordered in the objection proceedings, and the court may thereupon order security to be given in like manner as though the objector were appealing against a decree.
13. All applications for the appointment of or challenge to arbitrators, and all other applications under the Act, other than those directed by these Rules to be otherwise made, shall be made by way of chamber summons supported by affidavit.
14. (1) The court fee payable on filing or registering an award in the court shall be ten thousand shillings.

(2) All other fees for other proceedings under the Act or these Rules shall be such fees as may be prescribed from time to time by rules of court in the table of fees leviable in the High Court in similar matters.

Second Schedule.

s. 72.

Forms.

Republic of Uganda

Form I.
Submission to a Single Arbitrator.

In the matter of the Arbitration and Conciliation Act—

Whereas differences have arisen and are still subsisting between _____ of _____ and _____ of _____ concerning _____.

Now we, _____ and _____ do agree to refer the matters in difference to the award of _____.

(Signed) _____

Dated the _____

Note: This form may be modified as necessary in the case of submission to more than one arbitrator.

Republic of Uganda

Form II.

Appointment of Single Arbitrator Under Agreement to Refer Future Differences to Arbitration.

In the matter of the Arbitration and Conciliation Act—

Whereas, by an agreement in writing, dated the _____ day of _____, and made between _____ of _____ and _____ of _____, it is provided that differences arising between the parties to the agreement shall be referred to an arbitrator as mentioned in the agreement:

And whereas differences within the meaning of that provision have arisen and are still subsisting between the parties concerning _____.

Now we, the parties, _____ and _____, do refer the matter in difference to the award of _____.

(Signed) _____

Dated the _____

Note: This form may be modified as necessary in the case of submission to more than one arbitrator.

Republic of Uganda

Form III.

Enlargement of Time by Arbitrator by Endorsement on Agreement.

In the matter of the Arbitration and Conciliation Act, and an arbitration between _____ of _____ and _____ of _____.

I enlarge the time of making my award in respect of the matters in difference referred to me by the within (*or* above) agreement until the _____ day of _____.

(Signed) _____
Arbitrator

Republic of Uganda

Form IV.
Special Case.

In the matter of the Arbitration and Conciliation Act, and an arbitration between _____ of _____ and _____ of _____.

The following special case is, pursuant to the provisions of section 39(2), stated for the opinion of the High Court.

(Here state the facts concisely in numbered paragraphs).

The questions of law for the opinion of that court are—

Firstly, whether

Secondly, whether

(Signed) _____
Arbitrator

Dated the _____

Republic of Uganda

Form V.
Award.

In the matter of the Arbitration and Conciliation Act, and an arbitration between _____ of _____ and _____ of _____.

Whereas, under an agreement in writing, dated the _____ day of _____, made between _____ of _____ and _____, _____ and _____ have referred to me _____ the matters in difference between them concerning (*or* as the case may be):

Now I, _____, having duly considered the matters submitted to me do make an award as follows—

I award—

1. That _____
2. That _____

(Signed) _____
Arbitrator

Dated the _____

History: Act 7/2000.

Cross References

Arbitration Act, 1964 Revision, Cap. 55.

Civil Procedure Rules.

Convention on the Recognition and Enforcement of Foreign Arbitral Awards.

Convention on the Settlement of Investment Disputes between States and
Nationals of other States.

UNCITRAL Arbitration Rules of 1976.
