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CHAPTER 110

1958-23.
L.N. 1968/
1967.

ARBITRATION

An Act to make provision for Arbitrations.

[15th August, 1958]

Commence-
ment.

1. This Act may be cited as the Arbitration Act.

Short title.

PART I

Preliminary

2. For the purposes of this Act, the expression—

“arbitration agreement” means a written agreement to submit present or future differences to arbitration, whether an arbitrator is named therein or not;

Inter-
pretation.

“Court” means the High Court or a Judge;

“reference” means a reference under an order made by the Court.

L.N. 168/
1967.

PART II

Effect of Arbitration Agreements

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

Authority of
arbitrators
and umpires
to be
irrevocable.

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

Death of
party.

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

(3) Nothing in this section shall be taken to affect the operation of any enactment or rule of law by virtue of which any right of action is extinguished by the death of a person.

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Bankruptcy
of party.

5. (1) Where it is provided by a term in a contract to which a bankrupt is a party that any differences arising thereout or in connection therewith shall be referred to arbitration, the said term shall, if the trustee in bankruptcy adopts the contract, be enforceable by or against him so far as relates to any such 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, any other party to the agreement or, with the consent of the committee of inspection, the trustee in bankruptcy, may apply to a court for an order directing that the matter in question shall be referred to arbitration in accordance with the agreement, and that court may, if it is of opinion that, having regard to all the circumstances of the case, the matter ought to be determined by arbitration, make an order accordingly.

Staying court
proceedings
where there
is submission
to
arbitration.

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

Reference of
interpleader
issues to
arbitration.

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

PART III

Arbitrators and Umpires

8. Unless a contrary intention is expressed therein, every arbitration agreement shall, where no other mode of reference is provided, be deemed to include a provision that the reference shall be to a single arbitrator. Reference to single arbitrator.

9. (1) Where an arbitration agreement provides that the reference shall be to two arbitrators, one to be appointed by each party, then, unless a contrary intention is expressed therein— Power of parties in certain cases to supply vacancy.

- (a) if either of the appointed arbitrators refuses to act, or is incapable of acting, or dies, the party who appointed him may appoint a new arbitrator in his place;
- (b) if, on such a reference, one party fails to appoint an arbitrator, either originally, or by way of substitution as aforesaid, for seven clear days after the other party, having appointed his arbitrator, has served the party making default with notice to make the appointment, the party who has appointed an arbitrator may appoint that arbitrator to act as sole arbitrator in the reference and his award shall be binding on both parties as if he had been appointed by consent.

(2) The Court may set aside any appointment made in pursuance of subsection (1).

10. (1) Unless a contrary intention is expressed therein, every arbitration agreement shall, where the reference is to two arbitrators, be deemed to include a provision that the two arbitrators shall appoint an umpire immediately after they are themselves appointed. Appointment of umpires.

(2) Unless a contrary intention is expressed therein, every arbitration agreement shall, where such a provision is applicable to the reference, be deemed to include a provision that if the arbitrators have delivered to any party to the arbitration agreement, or to the umpire, a notice in writing stating that they cannot agree, the umpire may forthwith enter on the reference in lieu of the arbitrators.

(3) At any time after the appointment of an umpire, how-

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ever appointed, the Court may, on the application of any party to the reference and notwithstanding anything to the contrary in the arbitration agreement, order that the umpire shall enter upon the reference in lieu of the arbitrators and as if he were a sole arbitrator.

Agreements
for reference
to three
arbitrators.

11. (1) Where an arbitration agreement provides that the reference shall be to three arbitrators, one to be appointed by each party and the third to be appointed by the two appointed by the parties, the agreement shall have effect as if it provided for the appointment of an umpire, and not for the appointment of a third arbitrator, by the two arbitrators appointed by the parties.

(2) Where an arbitration agreement provides that the reference shall be to three arbitrators to be appointed otherwise than as mentioned in subsection (1), the award of any two of the arbitrators shall be binding.

Power of
court in
certain cases
to appoint
an arbitrator
or umpire.

12. In any of the following cases—

- (a) where an arbitration agreement provides that reference shall be to a single arbitrator, and all the parties do not, after differences have arisen, concur in the appointment of an arbitrator;
- (b) where an appointed arbitrator refuses to act, or is incapable of acting, or dies, and the arbitration agreement does not show that it was intended that the vacancy should not be supplied and the parties do not supply the vacancy;
- (c) where the parties or two arbitrators are at liberty to appoint an umpire or third arbitrator and do not appoint him, or where two arbitrators are required to appoint an umpire and do not appoint him;
- (d) where an appointed umpire or third arbitrator refuses to act, or is incapable of acting, or dies, and the arbitration agreement does not show that it was intended that the vacancy should not be supplied, and the parties or arbitrators do not supply the vacancy,

any party may serve the other parties or the arbitrators, as the case may be, with a written notice to appoint, or as the case

may be, concur in appointing, an arbitrator, umpire or third arbitrator, and if the appointment is not made within seven clear days after the service of the notice, the Court may on application by the party who gave the notice, appoint an arbitrator, umpire or third arbitrator who shall have the like powers to act in the reference and make an award as if he had been appointed by consent of all parties.

13. Where an arbitration agreement provides that the reference shall be to an official referee, any official referee to whom application is made, shall, subject to any order of the Court as to transfer or otherwise, hear and determine the matters agreed to be referred.

Reference to
official
referee.

PART IV

Conduct of Proceedings and Provisions as to Awards

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

Conduct of
proceedings,
summoning
of witnesses
and making
of orders.

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

(b) the witnesses on the reference shall, if the arbitrator or umpire thinks fit, be examined on oath or affirmation.

(2) An arbitrator or umpire shall, unless a contrary intention is expressed in the arbitration agreement, have power to administer oaths to, or take the affirmations of, the parties to and witnesses on a reference under the agreement.

(3) Any party to a reference under an arbitration agreement may sue out a writ of *subpoena ad testificandum* or a writ of

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subpoena duces tecum, but no person shall be compelled under any such writ to produce any document which he could not be compelled to produce on the trial of an action, and the Court may order that a writ of *subpoena ad testificandum* or of *subpoena duces tecum* shall issue to compel the attendance before an arbitrator or umpire of a witness wherever he may be within the Island.

(4) The Court may order that a writ of *habeas corpus ad testificandum* shall issue to bring up a prisoner for examination before an arbitrator or umpire.

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

- (a) security for costs;
- (b) discovery of documents and interrogatories;
- (c) the giving of evidence by affidavit;
- (d) examination on oath of any witness before an officer of the Court or any other person, and the issue of a commission or request for the examination of a witness out of the jurisdiction;
- (e) the preservation, interim custody or sale of any goods which are the subject matter of the reference;
- (f) securing the amount in dispute in the reference;
- (g) the detention, preservation or inspection of any property or thing which is the subject of the reference or as to which any question may arise therein, and authorising for any of the purposes aforesaid any persons to enter upon or into any land or building in the possession of any party to the reference, or authorising any samples to be taken or any observation to be made or experiment to be tried which may be necessary or expedient for the purpose of obtaining full information or evidence; and
- (h) interim injunctions or the appointment of a receiver,

as it has for the purpose of and in relation to an action or matter in the Court.

(6) Nothing in subsection (5) shall be taken to prejudice any power which may be vested in an arbitrator or umpire of

making orders with respect to any of the matters mentioned in this section.

15. (1) Subject to subsection (2) of section 25, and anything to the contrary in the arbitration agreement, an arbitrator or umpire shall have power to make an award at any time.

Time for making award.

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

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

Removal by court of arbitrator or umpire for dilatoriness or misconduct.

(2) Where an arbitrator or umpire has misconducted himself or the proceedings, the Court may remove him.

(3) For the purposes of subsection (1), the expression "proceeding with a reference" includes, in a case where two arbitrators are unable to agree, giving notice of that fact to the parties and to the umpire.

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

Interim awards.

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

Specific performance.

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Awards to
be final.

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

Power to
correct slips.

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

PART V

Costs, Fees and Interest

Costs.

21. (1) Unless a contrary intention is expressed therein, every arbitration agreement shall be deemed to contain a provision that the costs of the reference and award shall be in the discretion of the arbitrator or umpire, who may direct to and by whom and in what manner those costs or any part thereof shall be paid, and may tax or settle the amount of costs to be so paid or any part thereof, and may award costs to be paid as between solicitor and client.

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

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

(4) Nothing in subsection (3) shall invalidate such a provision as is therein mentioned when it is a part of an agreement to submit to arbitration a dispute which has arisen before the making of that agreement.

(5) Where no provision is made by an award with respect to the costs of the reference, any party to the reference may within fourteen days of the publication of the award or such further time as the Court may direct, apply to the arbitrator

for an order directing by and to whom those costs shall be paid, and thereupon the arbitrator shall, after hearing any party who may desire to be heard, amend his award by adding thereto such directions as he may think proper with respect to the payment of the costs of the reference.

(6) Section 50 of the Solicitors Act (which empowers a court before which any proceeding is being heard or is pending to charge property recovered or preserved in the proceeding with the payment of solicitors' costs) shall apply as if an arbitration were a proceeding in the Court, and the Court may make declarations and orders accordingly. Cap. 373.

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

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

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

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

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

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PART VI

Special Cases, Remission and setting aside and enforcement of Awards

Statement of special case.

24. (1) An arbitrator or umpire may, and shall, if so directed by the Court, state—

(a) any question of law arising in the course of the reference; or

(b) an award or any part of an award,

in the form of a special case for the decision of the Court.

(2) A special case with respect to an interim award or with respect to a question of law arising in the course of a reference may be stated, or may be directed by the Court to be stated, notwithstanding that proceedings under the reference are still pending.

L.N. 168/1967.

(3) An appeal shall lie to the Court of Appeal from any decision of the Court under this section, but no appeal shall lie on any case stated under paragraph (a) of subsection (1) without leave of the Court or the Court of Appeal.

Power to remit award.

25. (1) In all cases of reference to arbitration the Court may from time to time remit the matters referred, or any of them, to the re-consideration of the arbitrator or umpire.

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

Setting aside award.

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

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

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

27. (1) Where an agreement between any parties provides that disputes which may arise in the future between them shall be referred to an arbitrator named or designated in the agreement, and after a dispute has arisen any party applies, on the ground that the arbitrator so named or designated is not or may not be impartial, for leave to revoke the authority of the

arbitrator or for an injunction to restrain any other party or the arbitrator from proceeding with the arbitration, it shall not be a ground for refusing the application that the said party at the time when he made the agreement knew, or ought to have known, that the arbitrator, by reason of his relation towards any other party to the agreement or his connection with the subject referred, might not be capable of impartiality.

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

- (a) to order that the agreement shall cease to have effect; and
- (b) to give leave to revoke the authority of any arbitrator or umpire appointed by or by virtue of the agreement.

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

28. (1) Where an arbitrator (not being a sole arbitrator), or two or more arbitrators (not being all the arbitrators), or an umpire who has not entered on the reference is or are removed by the Court, the Court may, on the application of any party to the arbitration agreement, appoint a person or persons to act as arbitrator or arbitrators or umpire in place of the person or persons so removed.

Power of court where arbitrator is removed or authority of arbitrator is revoked.

(2) Where the authority of an arbitrator or arbitrators or umpire is revoked by leave of the Court, or a sole arbitrator or all the arbitrators or an umpire who has entered on the reference is or are removed by the Court, the Court may, on the application of any party to the arbitration agreement, either—

- (a) appoint a person to act as sole arbitrator in place of the person or persons removed; or

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(b) order that the arbitration agreement shall cease to have effect with respect to the dispute referred.

(3) A person appointed under this section by the Court as an arbitrator or umpire shall have the like power to act in the reference and to make an award as if he had been appointed in accordance with the terms of the arbitration agreement.

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

Enforcement of award.

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

PART VII

References under Order of Court

Reference for enquiry and report.

30. (1) Subject to rules of court and to any right to have particular cases tried with a jury, the Court may refer to an official or special referee for enquiry or report any question arising in any cause or matter, other than a criminal proceeding by the Crown.

(2) The report of an official or special referee may be adopted wholly or partially by the Court, and if so adopted may be enforced as a judgment or order to the same effect.

Reference for trial.

31. In any cause or matter (other than a criminal proceeding by the Crown)—

(a) if all the parties interested who are not under disability consent; or

- (b) if the cause or matter requires any prolonged examination of documents or any scientific or local investigation which cannot in the opinion of the Court conveniently be made before a jury or conducted by the Court through its other ordinary officers; or
- (c) if the question in dispute consists wholly or in part of matters of account,

the Court may at any time order the whole cause or matter, or any question or issue of fact arising therein, to be tried before a special referee or arbitrator agreed on by the parties, or in default of agreement, before an official referee or officer of the Court.

32. (1) In all cases of reference to an official or special referee or arbitrator, the official or special referee or arbitrator shall be deemed to be an officer of the Court, and subject to rules of court shall have such authority and conduct the reference in such manner as the Court may direct.

Powers and remuneration of referees and arbitrators.

(2) The report or award of any official or special referee or arbitrator, or any such reference shall, unless set aside by the Court, be equivalent to the verdict of a jury.

(3) The remuneration to be paid to an official or a special referee or arbitrator to whom any matter is referred under an order of the Court shall be determined by the Court.

33. The Court shall, in relation to references, have all the powers which are by this Act conferred on the Court as to references by consent out of court.

Court to have powers as in references by consent.

34. The Court of Appeal shall, on an appeal, have all such powers as are conferred by the provisions of this Act on the Court in relation to references.

Powers of Court of Appeal. L. N.168/1967.

PART VIII

Miscellaneous

35. Where the terms of an agreement to refer future disputes to arbitration provide that any claims to which the agreement applies shall be barred unless notice to appoint an arbitrator

Power of court to extend time for commencing arbitration proceedings.

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

Terms as to costs.

36. Any order made under this Act may be made on such terms as to costs or otherwise as the authority making the order thinks just.

Crown to be bound.

37. This Act shall, except as herein expressly mentioned, apply to any arbitration to which the Crown, or any public officer in respect of any act or omission by him or by his department is a party, but nothing in this Act shall empower the Court to order any proceedings to which the Crown is a party or any question or issue in any such proceedings, to be tried before any referee, arbitrator, or officer without the consent in writing of the Governor-General.

Application of Act to references under statutory powers.

38. This Act shall apply in relation to every arbitration under any other enactment passed before or after the 15th August, 1958, as if the arbitration were pursuant to an arbitration agreement and as if that other enactment were an arbitration agreement, except in so far as this Act is inconsistent with the other enactment regulating the arbitration or with any rules or procedure authorised or recognised by that other enactment.

Saving for pending arbitrations.

39. (1) This Act shall not affect any arbitration which has commenced before the 15th August, 1958, but shall apply to any arbitration commenced after that date under any agreement or order made before that date.

(2) For the purposes of this section, an arbitration shall be deemed to have commenced when one party to the arbitration agreement serves on the other party or parties a notice requir-

ing him or them to appoint an arbitrator, or, where the arbitration agreement provides that the reference shall be to a person named or designated in the agreement, requiring him or them to submit the dispute to the person so named or designated.

40. Rules may be made in like manner as rules may be made under and for the purposes of the Supreme Court of Judicature Act, for carrying the purposes of this Act into effect, and for regulating the form and mode of procedure and, generally, the practice of the Court in respect of the matters to which this Act relates, and for regulating the fees and allowances to all officers and solicitors of the Court in respect of such matters.

Rules.

Cap. 117.