# ARBITRATION BILL

AS REPORTED FROM THE GOVERNMENT ADMINISTRATION COMMITTEE

## COMMENTARY

### Recommendation

The Government Administration Committee has examined the Arbitration Bill and recommends that it be passed with the amendments shown.

### Conduct of the examination

The Arbitration Bill was introduced and referred to the Justice and Law Reform Committee on 20 September 1995. Following a resolution of the House the bill was later transferred to the Government Administration Committee on 8 May 1996. The closing date for submissions set by the Justice and Law Reform Committee was 17 November 1995. Submissions were heard by the Government Administration Committee and we received 14 submissions in all. Late supplementary submissions and one late submission were accepted. Witnesses invited to appear before the committee were Hon Justice Sir Kenneth Keith and Rt Hon Justice McKay, who as members of the judiciary were heard in private. Advice was received from the Ministry of Justice and the Department for Courts. We also sought advice from the Law Commission and, in regard to a specific item, the Department of Labour.

This commentary sets out the details of our consideration of the bill and the major issues we addressed.

### Purpose

This bill aims to facilitate the use of arbitration in New Zealand by:

- Providing a clear and modern law on arbitration.
- Limiting the scope for litigation about arbitration.
- Promoting confidence in New Zealand as a place for international arbitrations through the adoption of the UNCITRAL Model Law.
- Giving parties and arbitrators greater flexibility in the conduct of arbitrations.



*Price Code: K*

## Background

The existing statute law on arbitration in New Zealand, the Arbitration Act 1908 and the Arbitration Amendment Act 1938, is outdated and difficult to follow. These Acts are based on English models that have since been modified by reforms in England, reforms that have not been followed in New Zealand.

### UN Model Law

This bill follows the Law Commission's Report No. 20 entitled "Arbitration" (1991) based on the Model Law on International Commercial Arbitration adopted by the United Nations Commission on International Trade Law (UNCITRAL) in 1985. The objective of the UNCITRAL Model Law on arbitration is to allow parties to do what they want to do by limiting the scope for judicial intervention and by giving parties the power to agree on their own rules for the conduct of arbitrations and the determination of their disputes. Where the parties do not agree on the rules for arbitrations, the decision making power generally passes to the arbitrator.

The adoption of the Model Law will promote international consistency in legal regimes and harmonise our law with that of other jurisdictions, notably some of our key trading partners such as Australia, Canada, California and Hong Kong. This will advance New Zealand's objective of trade law harmonisation, for example, under the Closer Economic Relations agreement with Australia, and the Asia-Pacific Economic Council. A country that has adopted the Model Law is perceived as a suitable place for arbitration by the international trading community and such a perception can be only to New Zealand's advantage.

### Special features

A special feature of the bill is that the Model Law, which is intended to apply to international commercial arbitrations, would also apply to domestic arbitrations. In addition to the provisions of the Model Law which appear in the First Schedule to the bill, there are further provisions set out in the Second Schedule to the bill which apply to domestic arbitrations. Parties to an international arbitration are free to "opt into" these additional provisions in the Second Schedule, while parties to a domestic arbitration may choose to "opt out" of them. We are of the view that there is no need for two separate laws and any differences that exist between the two forms of arbitration will be accommodated by the provisions set out in the Second Schedule to the bill. It allows a continuing role for the High Court in determining points of law.

The bill also departs from the Model Law in one other important respect. This is that the bill is not restricted to commercial matters but will apply to disputes of all kinds, subject to other laws and to public policy.

The bill will give significant effect to the right of parties to commercial and similar contracts to choose their own method of resolving their disputes involving their own tribunal, procedure and law. If arbitration operates effectively disputes can be resolved more quickly, less formally, by a chosen expert and at less cost to the State as well as to the parties concerned. It is important also to remember that a fundamental aim of arbitration is to maintain, as much as possible, a working and co-operative relationship between the parties, which could be irrevocably damaged if a dispute went to litigation.

## Commencement

Clause 1 (2) provides that the bill is to come into force on 1 February 1996. We consider that due to the bill being transferred from the Justice and Law Reform Committee to the Government Administration Committee and the ensuing delays

it is appropriate for the commencement date to be changed to read 1 July 1997 and that the bill be amended accordingly.

The new commencement date will also allow an adequate lead-in period during which those who are likely to be referring disputes to arbitration can become familiar with the law before the Act comes into force.

## Definition of "arbitration agreement"

Three submissions suggested that the definition of "arbitration agreement" in clause 2 should be extended by removing the limitation in the definition as to a "defined legal relationship". One submission argued that it should be possible to arbitrate neighbourhood disputes and another suggested that the definition might be in conflict with clause 8 on arbitrability to the effect that anything can be arbitrated.

We note that the definition is taken from article 7 (1) of the Model Law. The definition indicates that there are limits to the matters that can be submitted to arbitration. We believe that there is nothing to stop parties from submitting matters outside the legal sphere to the decisions of a third party but there is a question whether that third party should have the legal powers that the bill confers on arbitrators. We also question whether such decisions should be enforceable in the way that awards are enforceable under the bill. We are of the view that disputes about social expectations, such as neighbourhood disputes, are outside the ambit of an arbitration agreement envisaged by the bill unless there is a legal or contractual basis to the dispute. We consider that what is arbitrable must have a legal basis and therefore recommend no change to the definition.

## Rules applying to arbitration

One submission pointed to an ambiguity in clause 6, suggesting that subclause (3) could be read as including situations where New Zealand was to be the place of arbitration but where the location within New Zealand had not yet been settled. The submission suggested that the words "or is still to be agreed" be replaced by "or that is still to be agreed . . ." in order to lessen any future confusion. We note that there is a need to make more explicit the intention of subclause (3). We, therefore, recommend that the bill be amended in the manner shown in new clause 6B.

## Arbitrability of disputes

One submission argued for the omission of clause 8. It suggested that there is uncertainty as to the meaning of the phrase "contrary to public policy" and as to the meaning of a dispute not being capable of determination by arbitration under any other law. The clause could be seen as giving arbitrators jurisdiction that should only be exercised by Judges.

We believe that clause 8 stipulates a presumption in favour of arbitrability. The words "public policy" may appear open to interpretation but we feel that the scope for interpretation is limited. We do not foresee a great deal of future disagreement over what is "contrary to public policy" and any differences in interpretation between parties is something that the courts should resolve. The clause does not specify what is and what is not arbitrable. This is no different from the existing law. Apart from questions of fraud, the existing law does not expressly bar subject matters from arbitration. We feel that the provision leaves some room for judicial discretion and provides meaningful guidance to those concerned. Omitting the clause would remove the presumption of arbitrability and extend the scope of the court's discretion too far.

Another option we considered would be to list the subjects that cannot be arbitrated. We are of the view that it would be inappropriate for such a list to be included in the legislation. The main disadvantage of this option is its inflexibility and the list could itself be subject to interpretation and would require amendment from time to time. Accordingly, we recommend no change to the clause.

## Consumer arbitration

One submission suggested that clause 9 might create uncertainty for commercial organisations dealing with consumers. It questioned whether the words "separate written agreement" requires the existence of a separate document or merely the existence of a separate clause, and whether such a document or consumer's certificate is binding on the consumer.

Another submission argued that arbitration can disadvantage consumers and questioned the safeguard of a further signature. It called for clause 9 to be amended to provide that arbitration agreements are only binding against a consumer if the arbitration agreement is entered into after a dispute has arisen.

We acknowledge that arbitration has the potential to disadvantage consumers in disputes with commercial organisations because commercial organisations are likely to have institutional advantages in determining the appointment of arbitrators and the rules governing the conduct of arbitrations. As the arbitrator's costs have to be paid for by the parties, arbitration may, in relation to the value of the subject matter in dispute, prove too costly for consumers. Legal aid is not available for arbitrations. Further, while privacy is normally one of the advantages associated with arbitration in a purely commercial context, for a consumer in a dispute with a commercial organisation the publicity of litigation may be a distinct advantage because commercial organisations will normally be sensitive to adverse effects on their reputations.

We note that clause 9 recognises that arbitration can work against consumers. This is the reason for the inclusion of the clause in the legislation. When looking at the clause we considered three options:

- To require the disclosure of prescribed information to the consumer (Option 1).
- To make consumer arbitration agreements only enforceable if entered into after the dispute (Option 2).
- To retain clause 9 in its present form with minor modifications (Option 3).

### Option 1

This option would mean that binding consumer agreements could be entered into at the time of the contract. We believe that the difficulty with this option would be in devising a form of words that gave an accurate and neutral account of the advantages and disadvantages of arbitration. To ensure that the information stayed up to date it would be necessary to permit amendments by an Order in Council.

### Option 2

Under this option an arbitration agreement can only be enforced against a consumer if at the time of the dispute the consumer chooses to proceed with arbitration. This option is broadly similar in approach to section 8 of the Insurance Law Reform Act 1977 which applies to every contract of insurance and provides that arbitration clauses are binding on the insured only if the insured agrees to arbitrate a dispute after the dispute has arisen. The second option would extend this situation to all arbitrations.

### Option 3

This option calls for clause 9 to be retained but with certain modifications. The advantages of this option is that it falls squarely within the framework of the Model Law and enables parties to enter into contracts with certainty that a dispute will be arbitrated if a dispute arises.

Clause 9 in its present form requires a consumer to sign a certificate that, having read and understood the arbitration agreement, he or she agrees to be bound by it. We believe that clause 9 will adequately protect consumers. However, we consider that certain modifications are required to this clause.

First, we note that a contract entered into by a consumer may exclude the Second Schedule. This schedule is generally intended to apply to domestic arbitrations. Therefore, if this schedule is to be excluded from an agreement, the certificate to be signed by the consumer should alert the consumer to that fact.

Second, we note that clause 9 (3) presently provides that the consumer protection afforded by the clause will not apply to a contract that is not governed by New Zealand law. We believe that this could be used to circumvent the safeguard given to consumers by clause 9. We consider that this safeguard should apply notwithstanding a provision in the contract to the effect that the contract is governed by a law other than New Zealand law.

Third, we note that, currently, section 8 of the Insurance Law Reform Act 1977 applies to all insured persons, not just consumers. As a consumer protection measure it is therefore too wide. We consider that if clause 9 were to be retained in its present form, section 8 could be retained in a modified form so as only to apply to consumer insurance. We believe that section 8 should be recast with a consumer focus. This would recognise the special nature of contracts of insurance and the particular dependence of consumers on insurance policies.

We recommend that the bill be amended in accordance with option 3.

## Powers of arbitral tribunal

Clause 10 enables arbitrators to award any remedy or relief that could have been ordered by the High Court if the dispute had been the subject to civil proceedings in that Court. One submission was concerned that the bill would allow arbitrators to exercise jurisdiction that should only be exercised by Judges and pointed to the possible risks. For example, such powers could lead to the validation of illegal contracts.

Through our consideration of this matter we identified a fundamental question: Should arbitrators have the power to decide matters which the parties could not have agreed for themselves? We note that arbitrators are not organs of the State exercising the powers of the State and that their powers are derived from agreements of parties to arbitration agreements. There is no reason why an arbitrator should not be able to do for the parties what the parties could have done for themselves. A party whose rights have been infringed by a breach of contract or trust is free to excuse that breach, and in most cases it should be possible for an arbitrator to excuse breaches of trust or contract if that is what the parties agree. In the case of illegal contracts parties can agree to vary or unwind an illegal contract. However, they cannot agree simply to continue with their illegal contract, nor could they agree to confer coercive powers on one another.

Another question we identified was whether powers exercised pursuant to clause 10 could be classified as "statutory powers" within the meaning of the Judicature Amendment Act 1972 and therefore be amenable to judicial review.

We compared clause 10 with section 4 of the Arbitration Act 1908 under which the parties to an arbitration agreement are, in the absence of a contrary intention,

taken to have agreed to confer certain specified powers on the arbitrator. These powers include powers which could be exercised by the courts. But the source of the powers is deemed to be the parties' agreement to arbitrate. By contrast, under clause 10 the source of the powers would be purely statutory. We feel that concerns expressed about clause 10 would be lessened if it were recast.

We are of the view that the arbitrator's powers should be sourced from the parties' agreement to arbitrate and not from a statutory provision such as clause 10. Accordingly, we suggest that, unless the parties otherwise agree an arbitration agreement should be deemed to include a term authorising the arbitral tribunal to award the remedies mentioned in paragraph (a) of clause 10 (1) and the interest mentioned in paragraph (b) of clause 10 (1). We recommend that the bill be amended accordingly.

## Liability of arbitrators

One submission raised the concern that the specific reference to fraud in clause 11 may give rise to unintended implications about other forms of liability. As the clause is concerned with negating liability for negligence it would be preferable just to deal with that topic. The submission suggested that the reference be omitted. We note that there are natural justice provisions in the schedules to the bill and rules against bias. We concur with the submission and recommend that the bill be amended accordingly.

## Confidentiality of arbitration agreements

One submission suggested that it is necessary to include a provision in the bill requiring parties to an arbitration to treat as confidential information disclosed in the course of the arbitration, in effect suggesting the creation of a statutory rule in this area. It added that an exception to the confidentiality rule would only be permitted if it was required by any other law or by an order of the High Court.

We believe that the privacy of the proceedings in an arbitration is a key advantage compared with litigation which is conducted in public. In selecting arbitration as their way of resolving disputes, parties would not contemplate that one of them might publicise or pass on information given in the course of the arbitration because such conduct would negate some of the advantages derived from arbitrating. Parties are free to include a confidentiality clause in their arbitration agreements. Not all parties will do so, however. Some parties might not do so because they did not consciously address the issue at the time. It is in such cases that legislation can be of assistance in providing default provisions reflecting generally presumed intentions. However, we do not feel that there is a need for a statutory rule as proposed in one submission in preference to a default provision for the following reasons:

- A statutory rule may infringe section 14 of the New Zealand Bill of Rights Act 1990.
- The statutory rule as proposed is unduly restrictive and costly because the parties would need to obtain a High Court order.
- A statutory rule would necessitate exceptions or defences.
- A statutory rule would override the Official Information Act 1982.

We recommend the inclusion of a new clause 11A to the effect that an arbitration agreement shall, unless the parties otherwise agree, be taken to include a term that the parties will keep confidential any information disclosed in the course of the arbitration and any award arising out of the arbitration, and that the bill be amended accordingly.

## First Schedule

The provisions of this schedule correspond, for the most part, to the provisions of the Model Law on International Commercial Arbitrations adopted by UNCITRAL on 21 June 1985, and approved by the General Assembly of the United Nations on 11 December 1985 (General Assembly Resolution 40/72). Certain changes have been made to amend or supplement the provisions of the Model Law in its application to New Zealand. So far as possible, the language of this schedule has been kept intact, so that, by adopting rather than adapting the Model Law, the New Zealand law on arbitration will be harmonised to the greatest extent possible with the international model.

### Oral arbitration agreements

One submission expressed concern that article 7 would recognise oral arbitration agreements. We note that the corresponding article in the Model Law only recognises agreements in writing. However, the Law Commission considered it necessary to extend recognised agreements to ones which had only been made orally. This would make the law as comprehensive as possible. The Commission pointed out that a requirement for a signature could exclude basic commercial documents such as bills of lading. It should be noted that oral agreements will not be possible for consumer arbitration agreements for which there is a written requirement pursuant to clause 9. Parties will not initiate an arbitration on the basis of an oral agreement unless it can be clearly proved. Accordingly, we recommend no change.

### Stay of proceedings

One submission suggested that the absolute requirement that a request for a stay of proceedings be made not later than the first statement of substance by a party wanting a stay is unnecessarily inflexible. Such a statement may need to be addressed within tight time frames. The submission suggested that the Court be given a discretion to order a stay at a later stage subject to considerations of prejudice and cost to any party. We note that the deadline for the "first statement on the substance of the dispute" by the party requesting a stay follows the Model Law. A key objective of that law and the bill is to provide certainty about the relationship between arbitrations and the courts. We feel that by the time a defendant submits a statement on the merits they should be in a position to be clear about the preferred choice of forum. There is a risk in allowing a referral to arbitration at any stage of the court proceeding that expenditure and time will be wasted. We consider that occasions where the defendant might become aware of an applicable arbitration agreement at a later stage of the court proceeding to be so rare that an amendment to the bill is unwarranted. Accordingly, we recommend no change.

### Three or more parties

One submission pointed to a possible gap in article 11 (3) (a) which provides that for an arbitration with three arbitrators, each party shall appoint one arbitrator, and the two arbitrators shall appoint the third arbitrator. The provision does not address the situation where there are more than two parties to an agreement. We recommend that the bill be amended to limit the operation of article 11 (3) (a) to cases where there are only two parties and to include the case of an arbitration with three arbitrators and more than two parties in paragraph (6), dealing with residual cases.

### Tribunal umpires

Article 29 covers decision making by a panel of arbitrators. One submission argued that for a tribunal with three persons New Zealand should continue with the current law under which the third arbitrator is an umpire authorised to make binding decisions in case of a deadlock. We note that the Model Law does not have the concept of umpire; the assumption is that all members of an arbitral tribunal are equal. However, there is nothing to stop the parties from agreeing to confer final decision making powers on one member of the tribunal. Accordingly, we recommend no change.

### Natural justice

Article 34 allows a party to apply to the High Court to set aside an award on one of a limited number of grounds. One such ground is that the award is in conflict with the public policy of New Zealand. Paragraph 6 of article 34 provides that an award is in conflict with public policy if a breach of natural justice occurred in connection with the making of the award. One submission argues that the natural justice ground is expressed too narrowly as breaches can occur during the course of the arbitration as well. We agree, and recommend that article 34 be extended to cover the entire course of the arbitration and for a corresponding change to be made to article 36, and that the bill be amended accordingly.

## Second Schedule

This schedule covers additional optional rules applying to arbitration. The provisions of the Second Schedule are related to the rules in the First Schedule and apply to domestic arbitrations unless the parties opt out, and apply to international arbitrations if the parties opt in.

### Default appointment of arbitrators

One submission raised the question previously raised in relation to article 11 of the First Schedule as to the appointment of arbitrators with three arbitrators and more than two parties. Clause 1 (2) provides that each party is to appoint one arbitrator, and the two arbitrators chosen are to appoint the third arbitrator. The submission proposed that in such cases there should only be one arbitrator if the parties do not decide otherwise.

We agree with the problem identified, but not with the proposed solution. It would not be acceptable to override the contractual intentions of parties who want to have three arbitrators by a statutory provision limiting arbitrations to one arbitrator. We believe that the solution is to limit subclause (2) to arbitration with three arbitrators and only two parties, and to extend subclause (3) to all cases not covered by subclause (2). This would be in keeping with the policy direction of the legislation which is to encourage autonomy, flexibility and choice, and recommend that the bill be amended accordingly.

We also recommend an amendment to the bill to cover the situation where the parties have agreed on two, four or more arbitrators but have not agreed on the procedure for appointing those arbitrators into office.

The submission mentioned above also referred to the provision in the Arbitration Act 1908 which provides that where an arbitration agreement only provides for two arbitrators, the two arbitrators shall immediately after their appointment appoint an umpire. We note that existing arbitration agreements may have been drafted in reliance on that provision and their conduct would be affected by the repeal of the 1908 Act. Unco-operative parties may not be prepared to renegotiate such provisions and there may be no clear way of resolving a deadlock between the two decision makers. However, the problem raised in the submission

is confined to the period of transition from the existing regime to the new one set out in the bill.

We recommend that the bill be amended to provide that where a subsisting arbitration agreement entered into before the commencement of the new Act provides for the appointment of only two arbitrators, the two arbitrators appointed shall immediately appoint an umpire unless a contrary intention is expressed in the arbitration agreement.

### Appeals on questions of law

Two submissions commented on clause 5 of the Second Schedule and were concerned that the bill fails to provide guidelines for appeal to the High Court on questions of law. One submission said that the Courts would have to extract relevant principles from English and Australian case law. It also called for parties to be able to appeal unless they agreed to exclude a right to appeal. The other submission noted that there were no guidelines as to when the Court should grant leave to appeal and suggested that New Zealand should adopt statutory guidelines on the granting of leave similar to those in Australian state legislation.

We believe that there are adequate guidelines in this legislation and note that clause 5 gives parties to whom the Second Schedule applies the right to appeal on questions of law. This is a significant difference from the Model Law under which the finality of awards is paramount. In the case of domestic arbitrations a right of appeal can be valuable because of the greater significance of national laws and the greater concern by the losing party where an award is wrong in terms of the national law. But the right needs to be balanced to ensure that the benefits of arbitration are not undone.

We note that parties to whom the provisions of the Second Schedule apply are free to exclude appeal rights. Conversely, they are free to provide appeal rights in which case there will be no need to obtain the prior leave of the Court. The leave of the Court is required where the agreement is silent on the point and one of the parties does not wish the appeal to proceed. We consider that clause 5 in its current form guards against delaying tactics by an unsuccessful party and, accordingly, recommend no change.

### Extension of time

One submission suggested that the bill should include a provision similar to section 18 (6) of the Arbitration Amendment Act 1938 which enables the Court to extend contractual time limits for the commencement of arbitrations where the Court is of the opinion that "undue hardship would otherwise be caused". We think that such a power on the part of the Court could usefully continue for domestic arbitrations as it has been part of domestic New Zealand law for nearly 60 years and may fulfil a need in avoiding hardship. In the international context different considerations apply however. First, there is no corresponding provision, and secondly, the level of professionalism is higher and the need for Court assistance less. We recommend that the power to extend contractual time limits, along the lines of section 18 (6) be included in the Second Schedule and that the bill be amended accordingly (See clause 7).

## Employment disputes

We considered whether parties can arbitrate a dispute between an employee and employer under the Employment Contracts Act 1991, within the regime of the Arbitration Act 1908 and are of the view that the answer is no. At the time of the passing of the Employment Contracts Act, the clear policy intent was for the Employment Tribunal and Employment Court to have exclusive jurisdiction for all matters founded on employment contracts. The arbitration procedures set out

in the bill are inconsistent with this exclusive jurisdiction, except in so far as they have been expressly permitted by section 177 of the Employment Contracts Act which deals with contracts entered into before the commencement of the Employment Contracts Act.

# KEY TO SYMBOLS USED IN REPRINTED BILL

## AS REPORTED FROM A SELECT COMMITTEE

| | |
|---|---|
| *Struck Out (Unanimous)*<br>Subject to this Act, | Text struck out unanimously |
| *New (Unanimous)*<br>Subject to this Act, | Text inserted unanimously |
| *(Subject to this Act,)* | Words struck out unanimously |
| Subject to this Act, | Words inserted unanimously |

*Peter Hilt*

# ARBITRATION

ANALYSIS



A BILL INTITULED

**An Act to reform the law relating to arbitration**

BE IT ENACTED by the Parliament of New Zealand as follows:

**1. Short Title and commencement**—(1) This Act may be cited as the Arbitration Act **1995**.

(2) This Act shall come into force on the ***(1st day of February 1996)*** **1st day of July 1997**.

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

"Arbitral tribunal" means a sole arbitrator or a panel of arbitrators:

"Arbitration" means any arbitration whether or not administered by a permanent arbitral institution:

"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:

"Award" means a decision of the arbitral tribunal on the substance of the dispute and includes any interim, interlocutory or partial award:

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

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

(a) A reference to a Part, section, or Schedule, is a reference to a Part, section, or Schedule of this Act:

(b) A reference in a section to a subsection is a reference to a subsection of that section:

(c) A reference in a subsection to a paragraph is a reference to a paragraph of that subsection:

(d) A reference in a section to a paragraph is a reference to a paragraph of that section:

(e) A reference in a Schedule to an article is a reference to an article of that Schedule:

*Struck Out (Unanimous)*

(f) A reference in an article of a Schedule to a subclause is a reference to a subclause of that article:

(g) A reference in an article of a Schedule to a paragraph is a reference to a paragraph of that article:

(h) A reference in a subclause in a Schedule to a paragraph is a reference to a paragraph of that subclause.

*New (Unanimous)*

(f) A reference in an article of a Schedule to a paragraph is a reference to a paragraph of that article:

(g) A reference in a Schedule to a clause is a reference to a clause of that Schedule:

(h) A reference in a clause of a Schedule to a subclause is a reference to a subclause of that clause:

(i) A reference in a subclause of a clause of a Schedule to a paragraph is a reference to a paragraph of that subclause.

**3. Further provision relating to interpretation**—The

material to which an arbitral tribunal or a court may refer in interpreting this Act includes the documents relating to the Model Law referred to in **section 5 (b)** and originating from the United Nations Commission on International Trade Law, or its working group for the preparation of the Model Law.

**4. Act to bind the Crown**—This Act binds the Crown.

**5. Purposes of Act**—The purposes of this Act are—

(a) To encourage the use of arbitration as an agreed method of resolving commercial and other disputes; and

(b) To promote international consistency of arbitral regimes based on the Model Law on International Commercial Arbitration adopted by the United Nations Commission on International Trade Law on the 21st day of June 1985; and

(c) To promote consistency between the international and domestic arbitral regimes in New Zealand; and

(d) To redefine and clarify the limits of judicial review of the arbitral process and of arbitral awards; and

(e) To facilitate the recognition and enforcement of arbitration agreements and arbitral awards; and

(f) *(By so doing, to)* To give effect to the obligations of the Government of New Zealand under the Protocol on Arbitration Clauses (1923), the Convention on the Execution of Foreign Arbitral Awards (1927) and the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (1958) (the English texts of which are set out in **the Third Schedule**).

**6. Rules applying to arbitration in New Zealand—**

*Struck Out (Unanimous)*

(1) If the place of arbitration is in New Zealand, the arbitration is governed—

(a) By the provisions of **the First Schedule**; and

(b) By those provisions of **the Second Schedule** (if any) which apply to that arbitration under **subsection (2)**.

*New (Unanimous)*

(1) If the place of arbitration is, or would be, in New Zealand,—

(a) The provisions of **the First Schedule**; and

(b) Those provisions of **the Second Schedule** (if any), which apply to that arbitration under **subsection (2)**,—

apply in respect of the arbitration.

(2) A provision of **the Second Schedule** applies—

(a) To an arbitration referred to in **subsection (1)** which—

(i) Is an international arbitration as defined in article 1 (3) of **the First Schedule**; or

(ii) Is covered by the provisions of the Protocol on Arbitration Clauses (1923); or the Convention on the Execution of Foreign Arbitral Awards (1927), or both,—

only if the parties so agree; and

(b) To every other arbitration referred to in subsection (1), unless the parties agree otherwise.

*Struck Out (Unanimous)*

(3) If the place of arbitration is not in New Zealand, or is still to be agreed or determined, that arbitration is governed by the provisions of articles 8, 9, 11 (6), 35, and 36 of **the First Schedule**, so far as those provisions are applicable in the circumstances.

*New (Unanimous)*

**6A. Arbitrations and awards outside New Zealand**—If the place of arbitration is not in New Zealand, articles 8, 9, 35, and 36 of **the First Schedule**, with any necessary modifications, apply in respect of the arbitration.

**6B. Provisions applying where place of arbitration not agreed or determined**—If it still has to be agreed or determined whether the place of arbitration will be in New Zealand, articles 8 and 9 of **the First Schedule**, with any necessary modifications, apply in respect of the arbitration.

*Struck Out (Unanimous)*

**7. Arbitration under other enactments**—(1) Nothing in **section 6** affects any other enactment providing that any arbitration is governed, in whole or in part, by provisions other than those of **the First Schedule** and, to the extent that they would otherwise apply, those of **the Second Schedule.**

(2) No agreement of the parties under **section 6 (2)** shall be of any effect if it is inconsistent with any enactment referred to in **subsection (1).**

(3) For the purposes of applying the provisions of **the First Schedule** and **the Second Schedule** (so far as those provisions are applicable) to the arbitration of any question required by any other enactment to be determined by arbitration, those provisions shall be read as if—

(a) That other enactment were an arbitration agreement; and

(b) The arbitration were under an arbitration agreement; and

(c) The parties to the dispute were parties to an arbitration agreement;—

but subject to the provisions of that enactment.

*New (Unanimous)*

**7. Arbitration under other Acts**—(1) Where a provision of this Act is inconsistent with a provision of any other enactment,

*New (Unanimous)*

that other enactment shall, to the extent of the inconsistency, prevail.

(2) Subject to **subsection (1)**, where a provision of this Act applies to an arbitration under any other enactment, the provisions of that other enactment shall be read as if it were an arbitration agreement.

**8. Arbitrability of disputes**—(1) Any dispute which the parties have agreed to submit to arbitration under an arbitration agreement may be determined by arbitration unless the arbitration agreement is contrary to public policy or, under any other law, such a dispute is not capable of determination by arbitration.

(2) The fact that an enactment confers jurisdiction in respect of any matter on the High Court or a District Court but does not refer to the determination of that matter by arbitration does not, of itself, indicate that a dispute about that matter is not capable of determination by arbitration.

**9. Consumer arbitration agreements**—

*Struck Out (Unanimous)*

(1) Where—

(a) A contract contains an arbitration agreement; and

(b) A person enters into that contract as a consumer,—

the arbitration agreement is enforceable against the consumer only if the consumer, by separate written agreement, certifies that, having read and understood the arbitration agreement, the consumer agrees to be bound by it.

*New (Unanimous)*

(1) Where—

(a) A contract contains an arbitration agreement; and

(b) A person enters into that contract as a consumer,—

the arbitration agreement is enforceable against the consumer only if—

*New (Unanimous)*

(c) The consumer, by separate written agreement, certifies that, having read and understood the arbitration agreement, the consumer agrees to be bound by it; and

(d) The separate written agreement referred to in **paragraph (c)** discloses, if it is the case, the fact that all or any of the provisions of **the Second Schedule** do not apply to the arbitration agreement.

(2) For the purposes of this section, a person enters into a contract as a consumer if—

(a) That person enters into the contract otherwise than in trade; and

(b) The other party to the contract enters into that contract in trade.

*Struck Out (Unanimous)*

(3) Nothing in **subsection (1)** applies to a contract that is not governed by the law of New Zealand.

*New (Unanimous)*

(3) **Subsection (1)** applies to every contract containing an arbitration agreement entered into in New Zealand notwithstanding a provision in the contract to the effect that the contract is governed by a law other than New Zealand law.

(4) For the purposes of article 4 of **the First Schedule, subsection (1)** shall be treated as if it were a requirement of the arbitration agreement.

(5) Unless a party who is a consumer has, under article 4 of **the First Schedule,** waived the right to object to non-compliance with **subsection (1),** an arbitration agreement which is not enforceable by reason of non-compliance with **subsection (1)** shall be treated as inoperative for the purposes of article 8 (1) of **the First Schedule** and as not valid under the law of New Zealand for the purposes of articles 16 (1), 34 (2) (a) (i), and 36 (1) (a) (i) of **the First Schedule.**

*New (Unanimous)*

(6) Nothing in this section applies to a contract of insurance to which section 8 of the Insurance Law Reform Act 1977 applies.

**10. Powers of arbitral tribunal in deciding disputes—**

*Struck Out (Unanimous)*

(1) Without prejudice to the application of article 28 of **the First Schedule**, an arbitral tribunal, in deciding the dispute that is the subject of the arbitral proceedings,—

*New (Unanimous)*

(1) An arbitration agreement, unless otherwise agreed by the parties, is deemed to provide that an arbitral tribunal—

(a) May award any remedy or relief that could have been ordered by the High Court if the dispute had been the subject of civil proceedings in that Court:

(b) May award interest on the whole or any part of any sum which—

(i) Is awarded to any party, for the whole or any part of the period up to the date of the award; or

(ii) Is in issue in the arbitral proceedings but is paid before the date of the award, for the whole or any part of the period up to the date of payment.

(2) Nothing in this section affects the application of **section 8** or of article 34 (2) (b) or article 36 (1) (b) of **the First Schedule.**

**11. Liability of arbitrators**—An arbitrator is not liable for negligence in respect of anything done or omitted to be done in the capacity of arbitrator*, but is liable for fraud in respect of anything done or omitted to be done in that capacity*.

*New (Unanimous)*

**11A. Disclosure of information relating to arbitral proceedings and awards prohibited**—(1) Subject to **subsection (2)**, an arbitration agreement, unless otherwise agreed by the parties, is deemed to provide that the parties shall not publish, disclose, or communicate any information relating to arbitral proceedings under the agreement or to an award made in those proceedings.

(2) Nothing in **subsection (1)** prevents the publication, disclosure, or communication of information referred to in that subsection—

(a) If the publication, disclosure, or communication is contemplated by this Act; or

(b) To a professional or other adviser of any of the parties.

**12. Certificates concerning parties to the Conventions**—A certificate purporting to be signed by the Secretary of Foreign Affairs and Trade, or a Deputy Secretary of Foreign Affairs and Trade, that, at the time specified in the certificate, any country had signed and ratified or had denounced, or had taken any other treaty action under, the Protocol on Arbitration Clauses (1923) or the Convention on the Execution of Foreign Arbitral Awards (1927) in respect of the territory specified in the certificate is presumptive evidence of the facts stated.

*New (Unanimous)*

**12A. Rules**—Rules may be made for the purposes of this Act,—

(a) In the case of the High Court, under section 51C of the Judicature Act 1908:

(b) In the case of District Courts, under section 122 of the District Courts Act 1947.

*Struck Out (Unanimous)*

**13. Repeals and amendments**—(1) The Arbitration Act 1908 and the Arbitration (Foreign Agreements and Awards) Act 1982 are hereby repealed.

(2) The Acts specified in **the Fourth Schedule** are hereby amended in the manner indicated in that Schedule.

*New (Unanimous)*

**13. Amendments to other Acts**—The Acts specified in **the Fourth Schedule** are hereby amended in the manner indicated in that Schedule.

**13A. Repeals**—The enactments specified in **the Fifth Schedule** are hereby repealed.

**14. Transitional provisions**—(1) Subject to ***(subsection (2))*** **subsections (2) and (2A)**,—

(a) This Act applies to every arbitration agreement, whether made before or after the commencement of this Act, and to every arbitration under such an agreement; and

(b) A reference in an arbitration agreement to the Arbitration Act 1908, or to a provision of that Act, shall be construed as a reference to this Act, or to any corresponding provision of this Act.

(2) Where the arbitral proceedings were commenced before the commencement of this Act, the law governing the arbitration agreement and the arbitration shall be the law which would have applied if this Act had not been passed.

*New (Unanimous)*

(2A) Where an arbitration agreement, which is made before the commencement of this Act, provides for the appointment of 2 arbitrators, and arbitral proceedings are commenced after the commencement of this Act,—

*New (Unanimous)*

(a) Unless a contrary intention is expressed in the arbitration agreement, the 2 arbitrators shall, immediately after they are appointed, appoint an umpire; and

(b) The law governing the arbitration agreement and the arbitration is the law that would have applied if this Act had not been passed.

(3) For the purposes of this section, arbitral proceedings are to be taken as having commenced on the date of the receipt by the respondent of a request for the dispute to be referred to arbitration, or, where the parties have agreed that any other date is to be taken as the date of commencement of the arbitral proceedings, then on that date.

(4) This Act applies to every arbitral award, whether made before or after the commencement of this Act.

*New (Unanimous)*

**14A. Act passed in substitution for Arbitration Act 1908**—For the avoidance of doubt, it is hereby declared that, for the purposes of section 21 of the Acts Interpretation Act 1924, this Act is passed in substitution for the Arbitration Act 1908.

# SCHEDULES

**Sections 6, 7**

## FIRST SCHEDULE

RULES (GOVERNING) APPLYING TO ARBITRATION GENERALLY

[The provisions of this Schedule correspond, for the most part, to the provisions of the Model Law on International Commercial Arbitration adopted by the United Nations Commission on International Trade Law on 21 June 1985, and approved by the General Assembly of the United Nations on 11 December 1985 (General Assembly Resolution 40/72). Certain changes have been made to amend or supplement the provisions of the Model Law in its application to New Zealand. The original numbering of the articles of the Model Law and their paragraphs has been retained.]

*New (Unanimous)*

CONTENTS

[*This table is not part of the Model Law on International Commercial Arbitration and is included for convenience*].

FIRST SCHEDULE—*continued*

RULES (GOVERNING) APPLYING TO ARBITRATION GENERALLY—*continued*

CHAPTER I—GENERAL PROVISIONS

**1. Scope of application**—(1) This Schedule applies as provided in (*sections 6 and 7*) **sections 6, 6A, 6B, and 7.**

(2) (*deleted*)

(3) An arbitration is international if—

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

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

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

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

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

(4) For the purposes of paragraph (3),—

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

(b) If a party does not have a place of business, reference is to be made to that party's habitual residence.

**2. Definitions and rules of interpretation**—For the purposes of this Schedule,—

(a) "Arbitration", "arbitration agreement", "arbitral tribunal", and "award" have the meanings assigned to those terms by (**section 4**) **section 2:**

(b) "Court" means a body or organ of the judicial system of a State:

(c) Where a provision of this Schedule, except article 28, leaves the parties free to determine a certain issue, such freedom includes the right of the parties to authorise a third party, including an institution, to make that determination:

(d) Where a provision of this Schedule refers to the fact that the parties have agreed or that they may agree or in any other way refers to an agreement of the parties, such agreement includes any arbitration rules referred to in that agreement:

(e) Where a provision of this Schedule, other than in articles 25 (a) and 32 (2) (a), refers to a claim, it also applies to a counter-claim, and where it refers to a defence, it also applies to a defence to such counter-claim:

(f) Article headings are for reference purposes only and are not to be used for purposes of interpretation.

**3. Receipt of written communications**—(1) Unless otherwise agreed by the parties,—

(a) Any written communication is deemed to have been received if it is delivered to the addressee personally or if it is delivered at the

FIRST SCHEDULE—*continued*

RULES (GOVERNING) APPLYING TO ARBITRATION GENERALLY—*continued*

CHAPTER I—GENERAL PROVISIONS—*continued*

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

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

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

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

**5. Extent of court intervention**—In matters governed by this Schedule, no court shall intervene except where so provided in this Schedule.

**6. Court or other authority for certain functions of arbitration assistance and supervision**—Any court having jurisdiction may perform any function conferred on a court by these articles, except where the article provides that the function shall be performed by a specified court or courts.

CHAPTER II—ARBITRATION AGREEMENT

**7. Form of arbitration agreement**—(1) An arbitration agreement may be made orally or in writing. Subject to **section 9**, an arbitration agreement may be in the form of an arbitration clause in a contract or in the form of a separate agreement.

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

**8. Arbitration agreement and substantive claim before court**—(1) A court before which proceedings are brought in a matter which is the subject of an arbitration agreement shall, if a party so requests not later than when submitting that party's first statement on the substance of the dispute, stay those proceedings and refer the parties to arbitration unless it finds that the agreement is null and void, inoperative, or incapable of being performed, or that there is not in fact any dispute between the parties with regard to the matters agreed to be referred.

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

FIRST SCHEDULE—*continued*

RULES (GOVERNING) APPLYING TO ARBITRATION GENERALLY—*continued*

CHAPTER II—ARBITRATION AGREEMENT—*continued*

**9. Arbitration agreement and interim measures by court**—(1) It is not incompatible with an arbitration agreement for a party to request, before or during arbitral proceedings, from a court an interim measure of protection and for a court to grant such measure.

(2) For the purposes of paragraph (1), the High Court or a District Court shall have the same power as it has for the purposes of proceedings before that court to make—

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

(b) An order securing the amount in dispute; or

(c) An order appointing a receiver; or

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

(e) An interim injunction or other interim order.

(3) Where a party applies to a court for an interim injunction or other interim order and an 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.

CHAPTER III—COMPOSITION OF ARBITRAL TRIBUNAL

**10. Number of arbitrators**—(1) The parties are free to determine the number of arbitrators.

(2) Failing such determination,—

(a) In the case of international arbitration, the number of arbitrators shall be 3:

(b) In every other case, the number of arbitrators shall be one.

**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, subject to the provisions of paragraphs (4) and (5).

(3) Failing such agreement,—

(a) In an arbitration with 3 arbitrators and 2 parties, each party shall appoint one arbitrator, and the 2 arbitrators thus appointed shall appoint the third arbitrator; if a party fails to appoint the arbitrator within 30 days of receipt of a request to do so from the other party, or if the 2 arbitrators fail to agree on the third arbitrator within 30 days of their appointment, the appointment shall be made, upon request of a party, by the High Court:

(b) In an arbitration with a sole arbitrator, if the parties are unable to agree on the arbitrator, that arbitrator shall be appointed, upon request of a party, by the High Court.

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

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

FIRST SCHEDULE—*continued*

RULES (GOVERNING) APPLYING TO ARBITRATION GENERALLY—*continued*

CHAPTER III—COMPOSITION OF ARBITRAL TRIBUNAL—*continued*

(b) The parties, or 2 arbitrators, are unable to reach an agreement expected of them under such procedure; or

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

any party may request the High Court to take the necessary measure, unless the agreement on the appointment procedure provides other means for securing the appointment.

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

*Struck Out (Unanimous)*

(6) In an international arbitration, where—

(a) The place of the arbitration has not been agreed; or

(b) The parties have agreed to an arbitration with 2, or 4 or more, arbitrators,—

and no procedure for the appointment of arbitrators has been agreed upon, the High Court may, upon request of a party, appoint the requisite number of arbitrators, having due regard to the matters referred to in paragraph (5).

*New (Unanimous)*

(6) In an arbitration, where—

(a) The parties have agreed to an arbitration with 2 or 4 or more arbitrators; or

(b) There are 3 arbitrators and more than 2 parties,—

and no procedure for the appointment of arbitrators has been agreed upon, the High Court may, upon request of a party, appoint the requisite number of arbitrators, having due regard to the matters referred to in paragraph (5).

**12. Grounds for challenge**—(1) A person who is approached in connection with that person's possible appointment as an arbitrator shall disclose any circumstances likely to give rise to justifiable doubts as to that person's impartiality or independence. An arbitrator, from the time of appointment and throughout the arbitral proceedings, shall without delay disclose any such circumstances to the parties unless they have already been informed of them by that arbitrator.

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

FIRST SCHEDULE—*continued*

RULES (GOVERNING) APPLYING TO ARBITRATION GENERALLY—*continued*

CHAPTER III—COMPOSITION OF ARBITRAL TRIBUNAL—*continued*

A party may challenge an arbitrator appointed by that party, or in whose appointment that party has participated, only for reasons of which that party becomes aware after the appointment has been made.

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

(2) Failing such agreement, a party who intends to challenge an arbitrator shall, within 15 days after becoming aware of the constitution of the arbitral tribunal or after becoming aware of any circumstance referred to in article 12 (2), send a written statement of the reasons for the challenge to the arbitral tribunal. Unless the challenged arbitrator withdraws from office or the other party agrees to the challenge, the arbitral tribunal shall decide on the challenge.

(3) If a challenge under any procedure agreed upon by the parties or under the procedure of paragraph (2) is not successful, the challenging party may request, within 30 days after having received notice of the decision rejecting the challenge, the High Court to decide on the challenge, which decision shall be subject to no appeal; while such a request is pending, the arbitral tribunal, including the challenged arbitrator, may continue the arbitral proceedings and make an award.

**14. Failure or impossibility to act**—(1) If an arbitrator becomes *de jure or de facto* (in law or in fact) unable to perform the functions of that office or for other reasons fails to act without undue delay, that arbitrator's mandate terminates on withdrawal from office or, if the parties agree, on the termination. Otherwise, if a controversy remains concerning any of those grounds, any party may request the High Court to decide on the termination of the mandate, which decision shall be subject to no appeal.

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

**15. Appointment of substitute arbitrator**—(1) Where the mandate of an arbitrator terminates under article 13 or 14, or because of withdrawal from office for any other reason, or because of the revocation of that arbitrator's mandate by agreement of the parties, or in any other case of termination of that mandate, a substitute arbitrator shall be appointed according to the rules that were applicable to the appointment of the arbitrator being replaced.

(2) Unless otherwise agreed by the parties,—

(a) Where the sole or the presiding arbitrator is replaced, any hearings previously held shall be repeated; and

(b) Where an arbitrator, other than a sole or a presiding arbitrator is replaced, any hearings previously held may be repeated at the discretion of the arbitral tribunal.

(3) Unless otherwise agreed by the parties, an order or ruling of the arbitral tribunal made prior to the replacement of an arbitrator under this

FIRST SCHEDULE—*continued*

RULES (GOVERNING) APPLYING TO ARBITRATION GENERALLY—*continued*

CHAPTER III—COMPOSITION OF ARBITRAL TRIBUNAL—*continued*

article is not invalid solely because there has been a change in the composition of the arbitral tribunal.

CHAPTER IV—JURISDICTION OF ARBITRAL TRIBUNAL

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

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

(3) The arbitral tribunal may rule on a plea referred to in paragraph (2) either as a preliminary question or in an award on the merits. If the arbitral tribunal rules on such a plea as a preliminary question, any party may request, within 30 days after having received notice of that ruling, the High Court to decide the matter, which decision shall be subject to no appeal; while such a request is pending, the arbitral tribunal may continue the arbitral proceedings and make an award.

**17. Power of arbitral tribunal to order interim measures**—(1) Unless otherwise agreed by the parties, the arbitral tribunal may, at the request of a party, order any party to take such interim measure of protection as the arbitral tribunal may consider necessary in respect of the subject-matter of the dispute. The arbitral tribunal may require any party to provide appropriate security in connection with such measure.

(2) Unless otherwise agreed by the parties, articles 35 and 36 apply to orders made by an arbitral tribunal under article 17 as if a reference in those articles to an award were a reference to such an order.

CHAPTER V—CONDUCT OF ARBITRAL PROCEEDINGS

**18. Equal treatment of parties**—The parties shall be treated with equality and each party shall be given a full opportunity of presenting that party's case.

**19. Determination of rules of procedure**—(1) Subject to the provisions of this Schedule, the parties are free to agree on the procedure to be followed by the arbitral tribunal in conducting the proceedings.

(2) Failing such agreement, the arbitral tribunal may, subject to the provisions of this Schedule, conduct the arbitration in such manner as it considers appropriate. The power conferred upon the arbitral tribunal

FIRST SCHEDULE—*continued*

RULES (GOVERNING) APPLYING TO ARBITRATION GENERALLY—*continued*

CHAPTER V—CONDUCT OF ARBITRAL PROCEEDINGS—*continued*

includes the power to determine the admissibility, relevance, materiality, and weight of any evidence.

(3) Every witness giving evidence, and every counsel or expert or other person appearing before an arbitral tribunal, shall have the same privileges and immunities as witnesses and counsel in proceedings before a court.

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

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

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

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

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

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

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

**24. Hearings and written proceedings**—(1) Subject to any contrary agreement by the parties, the arbitral tribunal shall decide whether to hold oral hearings for the presentation of evidence or for oral argument, or whether the proceedings shall be conducted on the basis of documents and other materials. However, unless the parties have agreed that no hearings

FIRST SCHEDULE—*continued*

RULES (GOVERNING) APPLYING TO ARBITRATION GENERALLY—*continued*

CHAPTER V—CONDUCT OF ARBITRAL PROCEEDINGS—*continued*

shall be held, the arbitral tribunal shall hold such hearings at an appropriate stage of the proceedings, if so requested by a party.

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

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

(4) At any hearing or any meeting of the arbitral tribunal of which notice is required to be given under paragraph (2), 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 otherwise agreed by the parties, if, without showing sufficient cause,—

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

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

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

(d) The claimant fails to prosecute the 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. Expert appointed by arbitral tribunal**—(1) Unless otherwise agreed by the parties, the arbitral tribunal—

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

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

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

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

(2) For the purposes of paragraph (1),—

FIRST SCHEDULE—*continued*

RULES (GOVERNING) APPLYING TO ARBITRATION GENERALLY—*continued*

CHAPTER V—CONDUCT OF ARBITRAL PROCEEDINGS—*continued*

(a) The High Court may make an order of subpoena or a District Court may issue a witness summons to compel the attendance of a witness before an arbitral tribunal to give evidence or produce documents:

(b) The High Court or a District Court may order any witness to submit to examination on oath or affirmation before the arbitral tribunal, or before an officer of the court, or any other person for the use of the arbitral tribunal:

(c) The High Court or a District Court shall have, for the purpose of the arbitral proceedings, the same power as it has for the purpose of proceedings before that court to make an order for—

(i) The discovery of documents and interrogatories:

(ii) The issue of a commission or request for the taking of evidence out of the jurisdiction:

(iii) The detention, preservation, or inspection of any property or thing which is in issue in the arbitral proceedings and authorising for any of those purposes any person to enter upon any land or building in the possession of a party, or authorising any sample 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.

CHAPTER VI—MAKING OF AWARD AND TERMINATION OF PROCEEDINGS

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

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

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

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

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

**30. Settlement**—(1) If, during arbitral proceedings, the parties settle the dispute, the arbitral tribunal shall terminate the proceedings and, if

FIRST SCHEDULE—*continued*

RULES (GOVERNING) APPLYING TO ARBITRATION GENERALLY—*continued*

CHAPTER VI—MAKING OF AWARD AND TERMINATION OF PROCEEDINGS—*continued*

requested by the parties and not objected to by the arbitral tribunal, record the settlement in the form of an arbitral award on agreed terms.

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

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

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

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

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

(5) Unless the arbitration agreement otherwise provides, or the award otherwise directs, a sum directed to be paid by an award shall carry interest as from the date of the award and at the same rate as a judgment debt.

**32. Termination of proceedings**—(1) The arbitral proceedings are terminated by the final award or by an order of the arbitral tribunal in accordance with paragraph (2).

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

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

(b) The parties agree on the termination of the proceedings:

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

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

(4) Unless otherwise agreed by the parties, the death of a party does not terminate the arbitral proceedings or the authority of the arbitral tribunal.

(5) Paragraph (4) does not affect any rule of law or enactment under which the death of a person extinguishes a cause of action.

**33. Correction and interpretation of award; additional award**—(1) Within 30 days of receipt of the award, unless another period of time has been agreed upon by the parties,—

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

FIRST SCHEDULE—*continued*

RULES (GOVERNING) APPLYING TO ARBITRATION GENERALLY—*continued*

CHAPTER VI—MAKING OF AWARD AND TERMINATION OF PROCEEDINGS—*continued*

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

If the arbitral tribunal considers the request to be justified, it shall make the correction or give the interpretation within 30 days of receipt of the request. The interpretation shall form part of the award.

(2) The arbitral tribunal may correct any error of the type referred to in paragraph (1)(a) on its own initiative within 30 days of the date of the award.

(3) Unless otherwise agreed by the parties, a party, with notice to the other party, may request, within 30 days of receipt of the award, the arbitral tribunal to make an additional award as to claims presented in the arbitral proceedings but omitted from the award. If the arbitral tribunal considers the request to be justified, it shall make the additional award within 60 days.

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

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

CHAPTER VII—RECOURSE AGAINST AWARD

**34. Application for setting aside as exclusive recourse against arbitral award**—(1) Recourse to a court against an arbitral award may be made only by an application for setting aside in accordance with paragraphs (2) and (3).

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

(a) The party making the application furnishes proof that—

(i) A party to the arbitration agreement was under some incapacity, or the said agreement is not valid under the law to which the parties have subjected it, or, failing any indication on that question, under the law of New Zealand; or

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

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

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

FIRST SCHEDULE—*continued*

RULES (GOVERNING) APPLYING TO ARBITRATION GENERALLY—*continued*

CHAPTER VII—RECOURSE AGAINST AWARD—*continued*

(b) The High Court finds that—

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

(ii) The award is in conflict with the public policy of New Zealand.

(3) An application for setting aside may not be made after 3 months have elapsed from the date on which the party making that application had received the award or, if a request had been made under article 33, from the date on which that request had been disposed of by the arbitral tribunal. This paragraph does not apply to an application for setting aside on the ground that the award was induced or affected by fraud or corruption.

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

(5) Where an application is made to set aside an award, the High 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.

(6) For the avoidance of doubt, and without limiting the generality of paragraph (2) (b) (ii), it is hereby declared that an award is in conflict with the public policy of New Zealand if—

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

*Struck Out (Unanimous)*

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

*New (Unanimous)*

(b) A breach of the rules of natural justice occurred—

(i) During the arbitral proceedings; or

(ii) In connection with the making of the award.

CHAPTER VIII—RECOGNITION AND ENFORCEMENT OF AWARDS

**35. Recognition and enforcement**—(1) An arbitral award, irrespective of the country in which it was made, shall be recognised as binding and, upon application in writing to the High Court, shall be enforced by entry as a judgment in terms of the award, or by action, subject to the provisions of this article and of article 36.

FIRST SCHEDULE—*continued*

RULES (GOVERNING) APPLYING TO ARBITRATION GENERALLY—*continued*

CHAPTER VIII—RECOGNITION AND ENFORCEMENT OF AWARDS—*continued*

(2) The party relying on an award or applying for its enforcement shall supply the duly authenticated original award or a duly certified copy and, if recorded in writing, the original arbitration agreement or a duly certified copy. If the award or agreement is not made in the English language, the party shall supply a duly certified translation into the English language.

**36. Grounds for refusing recognition or enforcement**—(1) Recognition or enforcement of an arbitral award, irrespective of the country in which it was made, may be refused only—

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

(i) A party to the arbitration agreement was under some incapacity; or the said agreement is not valid under the law to which the parties have subjected it or, failing any indication on that question, under the law of the country where the award was made; or

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

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

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

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

(b) If the court finds that—

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

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

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

FIRST SCHEDULE—*continued*

RULES (GOVERNING) APPLYING TO ARBITRATION GENERALLY—*continued*

CHAPTER VIII—RECOGNITION AND ENFORCEMENT OF AWARDS—*continued*

(3) For the avoidance of doubt, and without limiting the generality of paragraph (1) (b) (ii), it is hereby declared that an award is contrary to the public policy of New Zealand if—

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

*Struck Out (Unanimous)*

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

*New (Unanimous)*

(b) A breach of the rules of natural justice occurred—

(i) During the arbitral proceedings; or

(ii) In connection with the making of the award.

**Sections 6, 7** SECOND SCHEDULE

ADDITIONAL OPTIONAL RULES (GOVERNING) APPLYING TO ARBITRATION

*New (Unanimous)*

CONTENTS

*[This table is not part of the additional optional rules applying to arbitration and is included for convenience].*



**1. Default appointment of arbitrators**—(1) For the purposes of article 11 of **the First Schedule**, the parties shall be taken as having agreed on the procedure for appointing the arbitrator or arbitrators set out in subclauses (2) to (5), unless the parties agree otherwise.

(2) In an arbitration with 3 arbitrators and 2 parties, each party shall appoint one arbitrator, and the 2 arbitrators thus appointed shall appoint the third arbitrator.

*Struck Out (Unanimous)*

(3) In an arbitration with a sole arbitrator, the parties shall agree on the person to be appointed as arbitrator.

*New (Unanimous)*

(3) In an arbitration with—

(a) A sole arbitrator; or

(b) Two or 4 or more arbitrators; or

(c) Three arbitrators and more than 2 parties,—

the parties shall agree on the person or persons to be appointed as arbitrator.

(4) Where, under (*paragraph (2) or paragraph (3)*) subclause (2) or subclause (3), or any other appointment procedure agreed upon by the parties,—

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

(b) The parties, or (2) the arbitrators, are unable to reach an agreement expected of them under such procedure; or

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

any party may, by written communication delivered to every such party, arbitrator or third party, specify the details of that person's default and propose that, if that default is not remedied within the period specified in the communication (being not less than 7 days after the date on which the

SECOND SCHEDULE—*continued*

ADDITIONAL OPTIONAL RULES (GOVERNING) APPLYING TO ARBITRATION—*continued*

communication is received by all of the persons to whom it is delivered), a person named in the communication shall be appointed to such vacant office of arbitrator as is specified in the communication, or the arbitral tribunal shall consist only of the person or persons who have already been appointed to the office of arbitrator.

(5) If the default specified in the communication is not remedied within the period specified in the communication,—

(a) The proposal made in the communication shall take effect as part of the arbitration agreement on the day after the expiration of that period; and

(b) The arbitration agreement shall be read with all necessary modifications accordingly.

**2. Consolidation of arbitral proceedings**—(1) (*This subclause applies to arbitral proceedings, all of which have the same arbitral tribunal.*) Where arbitral proceedings all have the same arbitral tribunal,—

(a) The arbitral tribunal may, on the application of at least one party in each of the arbitral proceedings, order—

(i) Those proceedings to be consolidated on such terms as the arbitral tribunal thinks just; or

(ii) Those proceedings to be heard at the same time, or one immediately after the other; or

(iii) Any of those proceedings to be stayed until after the determination of any other of them:

(b) If an application has been made to the arbitral tribunal under paragraph (a) and the arbitral tribunal refuses or fails to make an order under that paragraph, the High Court may, on application by a party in any of the proceedings, make any such order as could have been made by the arbitral tribunal.

(2) (*This subclause applies to arbitral proceedings, not all of which have the same arbitral tribunal.*) Where arbitral proceedings do not all have the same arbitral tribunal,—

(a) The arbitral tribunal for any one of the arbitral proceedings may, on the application of a party in the proceedings, provisionally order—

(i) The proceedings to be consolidated with other arbitral proceedings on such terms as the arbitral tribunal thinks just; or

(ii) The proceedings to be heard at the same time as other arbitral proceedings, or one immediately after the other; or

(iii) Any of those proceedings to be stayed until after the determination of any other of them:

(b) An order ceases to be provisional when consistent provisional orders have been made for all of the arbitral proceedings concerned:

(c) The arbitral tribunals may communicate with each other for the purpose of conferring on the desirability of making orders under this subclause and of deciding on the terms of any such order:

(d) If a provisional order is made for at least one of the arbitral proceedings concerned, but the arbitral tribunal for another of the proceedings refuses or fails to make such an order (having received an application from a party to make such an order), the

SECOND SCHEDULE—*continued*

ADDITIONAL OPTIONAL RULES (GOVERNING) APPLYING TO ARBITRATION—*continued*

High Court may, on application by a party in any of the proceedings, make an order or orders that could have been made under this subclause:

(e) If inconsistent provisional orders are made for the arbitral proceedings, the High Court may, on application by a party in any of the proceedings, alter the orders to make them consistent.

(3) When arbitral proceedings are to be consolidated under subclause (2), the arbitral tribunal for the consolidated proceedings shall be that agreed on for the purpose by all the parties to the individual proceedings, but, failing such an agreement, the High Court may appoint an arbitral tribunal for the consolidated proceedings.

(4) An order or a provisional order may not be made under this clause unless it appears—

(a) That some common question of law or fact arises in all of the arbitral proceedings; or

(b) That the rights to relief claimed in all of the proceedings are in respect of, or arise out of, the same transaction or series of transactions; or

(c) That for some other reason it is desirable to make the order or provisional order.

(5) Any proceedings before an arbitral tribunal for the purposes of this clause shall be treated as part of the arbitral proceedings concerned.

(6) Arbitral proceedings may be commenced or continued, although an application to consolidate them is pending under subclause (1) or (2) and although a provisional order has been made in relation to them under subclause (2).

(7) Subclauses (1) and (2) apply in relation to arbitral proceedings whether or not all or any of the parties are common to some or all of the proceedings.

(8) There shall be no appeal from any decision of the High Court under this clause.

(9) Nothing in this clause prevents the parties to 2 or more arbitral proceedings from agreeing to consolidate those proceedings and taking such steps as are necessary to effect that consolidation.

**3. Powers relating to conduct of arbitral proceedings**—(1) For the purposes of article 19 of **the First Schedule**, and unless the parties agree otherwise, the parties shall be taken as having agreed that the powers conferred upon the arbitral tribunal include the power to—

(a) Adopt inquisitorial processes:

(b) Draw on its own knowledge and expertise:

(c) Order the provision of further particulars in a statement of claim or statement of defence:

(d) Order the giving of security for costs:

(e) Fix and amend time limits within which various steps in the arbitral proceedings must be completed:

(f) Order the discovery and production of documents or materials within the possession or power of a party:

(g) Order the answering of interrogatories:

(h) Order that any evidence be given orally or by affidavit or otherwise:

SECOND SCHEDULE—*continued*

ADDITIONAL OPTIONAL RULES (GOVERNING) APPLYING TO ARBITRATION—*continued*

(i) Order that any evidence be given on oath or affirmation:

(j) Order any party to do all such other things during the arbitral proceedings as may reasonably be needed to enable an award to be made properly and efficiently: (*and*)

(k) Make an interim, interlocutory or partial award.

(2) Notwithstanding anything in article 5 of the First Schedule, the arbitral tribunal, or a party with the approval of the arbitral tribunal, may request from the court assistance in the exercise of any power conferred on the arbitral tribunal under subclause (1).

(3) If a request is made under subclause (2), the High Court or a District Court shall have, for the purposes of the arbitral proceedings, the same power to make an order for the doing of any thing which the arbitral tribunal is empowered to order under subclause (1) as it would have in civil proceedings before that court.

**4. Determination of preliminary point of law by court**—(1) Notwithstanding anything in article 5 of the First Schedule, on an application to the High Court by any party—

(a) With the consent of the arbitral tribunal; or

(b) With the consent of every other party,—

the High Court shall have jurisdiction to determine any question of law arising in the course of the arbitration.

(2) The High Court shall not entertain an application under subclause (1) (a) with respect to any question of law unless it is satisfied that the determination of the question of law concerned—

(a) Might produce substantial savings in costs to the parties; and

(b) Might, having regard to all the circumstances, substantially affect the rights of one or more of the parties.

(3) With the leave of the High Court, any party may, within one month from the date of any determination of the High Court, under this clause or within such further time as that Court may allow, appeal from that determination to the Court of Appeal.

(4) If the High Court refuses to grant leave to appeal under subclause (3), the Court of Appeal may grant special leave to appeal.

**5. Appeals on questions of law**—(1) Notwithstanding anything in articles 5 or 34 of the First Schedule, any party may appeal to the High Court on any question of law arising out of an award—

(a) If the parties have so agreed before the making of that award; or

(b) With the consent of every other party given after the making of that award; or

(c) With the leave of the High Court.

(2) The High Court shall not grant leave under subclause (1) (c) unless it considers that, having regard to all the circumstances, the determination of the question of law concerned could substantially affect the rights of one or more of the parties.

(3) The High Court may grant leave under subclause (1) (c) on such conditions as it sees fit.

(4) On the determination of an appeal under this clause, the High Court may, by order,—

SECOND SCHEDULE—*continued*

ADDITIONAL OPTIONAL RULES (GOVERNING) APPLYING TO ARBITRATION—*continued*

(a) Confirm, vary, or set aside the award; or

(b) Remit the award, together with the High Court's opinion on the question of law which was the subject of the appeal, to the arbitral tribunal for reconsideration or, where a new arbitral tribunal has been appointed, to that arbitral tribunal for consideration,—

and, where the award is remitted under paragraph (b), the arbitral tribunal shall, unless the order otherwise directs, make the award not later than 3 months after the date of the order.

(5) With the leave of the High Court, any party may appeal to the Court of Appeal from any refusal of the High Court to grant leave or from any determination of the High Court under this clause.

(6) If the High Court refuses to grant leave to appeal under subclause (5), the Court of Appeal may grant special leave to appeal.

(7) Where the award of an arbitral tribunal is varied on an appeal under this clause, the award as varied shall have effect (except for the purposes of this clause) as if it were the award of the arbitral tribunal; and the party relying on the award or applying for its enforcement under article 35 (2) of **the First Schedule** shall supply the duly authenticated original order of the High Court varying the award or a duly certified copy.

(8) Article 34 (3) and (4) of **the First Schedule** apply to an appeal under this clause as they do to an application for the setting aside of an award under that article.

(9) For the purposes of article 36 of **the First Schedule**,—

(a) An appeal under this clause shall be treated as an application for the setting aside of an award; and

(b) An award which has been remitted by the High Court under subclause 4 (b) to the original or a new arbitral tribunal shall be treated as an award which has been suspended.

**6. Costs and expenses of an arbitration**—(1) Unless the parties agree otherwise,—

(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 fixed and allocated by the arbitral tribunal in its award under article 31 of **the First Schedule**, or any additional award under article 33 (3) of **the First Schedule**; or

(b) In the absence of an award or additional award fixing and allocating 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.

(2) Unless the parties agree otherwise, the parties shall be taken as having agreed that,—

(a) If a party makes an offer to another party to settle the dispute or part of the dispute and the offer is not accepted and the award of the arbitral tribunal is no more favourable to the other party than was the offer, the arbitral tribunal, in fixing and allocating the costs and expenses of the arbitration, may take the fact of the offer into

SECOND SCHEDULE—*continued*

ADDITIONAL OPTIONAL RULES (GOVERNING) APPLYING TO ARBITRATION—*continued*

account in awarding costs and expenses in respect of the period from the making of the offer to the making of the award; and

(b) The fact that an offer to settle has been made shall not be communicated to the arbitral tribunal until it has made a final determination of all aspects of the dispute other than the fixing and allocation of costs and expenses.

(3) Where an award or additional award made by an arbitral tribunal fixes or allocates the costs and expenses of the arbitration, or both, the High Court may, on the application of a party, if satisfied that the amount or the allocation of those costs and expenses is unreasonable in all the circumstances, make an order varying their amount or allocation, or both. The arbitral tribunal is entitled to appear and be heard on any application under this subclause.

(4) Where—

(a) An arbitral tribunal refuses to deliver its award before the payment of its fees and expenses; and

(b) An application has been made under subclause (3),—

the High Court may order the arbitral tribunal to release the award on such conditions as the Court sees fit.

(5) An application may not be made under subclause (3) after 3 months have elapsed from the date on which the party making the application received any award or additional award fixing and allocating the costs and expenses of the arbitration.

(6) There shall be no appeal from any decision of the High Court under this clause.

*New (Unanimous)*

**7. Extension of time for commencing arbitration proceedings**—(1) Where an arbitration agreement provides that no arbitral proceedings are to be commenced unless steps have been taken to commence the proceedings within the time specified in the agreement, the High Court or a District Court, as the case may be, may, notwithstanding that the specified time has expired, extend the time for such period as it thinks fit, if, in its opinion, undue hardship would otherwise be caused to the parties.

(2) An extension may be subject to any such conditions as the justice of the case may require.

Section 5

## THIRD SCHEDULE

## TREATIES RELATING TO ARBITRATION

### PROTOCOL ON ARBITRATION CLAUSES

[Opened for signature at Geneva on 24 September 1923]

THE undersigned, being duly authorised, declare that they accept, on behalf of the countries which they represent, the following provisions:

1. Each of the Contracting States recognises the validity of an agreement whether relating to existing or future differences between parties subject respectively to the jurisdiction of different Contracting States by which the parties to a contract agree to submit to arbitration all or any differences that may arise in connection with such contract relating to commercial matters or to any other matter capable of settlement by arbitration, whether or not the arbitration is to take place in a country to whose jurisdiction none of the parties is subject.

Each Contracting State reserves the right to limit the obligation mentioned above to contracts which are considered as commercial under its national law. Any Contracting State which avails itself of this right will notify the Secretary-General of the League of Nations, in order that the other Contracting States may be so informed.

2. The arbitral procedure, including the constitution of the arbitral tribunal, shall be governed by the will of the parties and by the law of the country in whose territory the arbitration takes place.

The Contracting States agree to facilitate all steps in the procedure which require to be taken in their own territories, in accordance with the provisions of their law governing arbitral procedure applicable to existing differences.

3. Each Contracting State undertakes to ensure the execution by its authorities and in accordance with the provisions of its national laws of arbitral awards made in its own territory under the preceding articles.

4. The tribunals of the Contracting Parties, on being seized of a dispute regarding a contract made between persons to whom Article 1 applies and including an arbitration agreement, whether referring to present or future differences, which is valid in virtue of the said article and capable of being carried into effect, shall refer the parties on the application of either of them to the decision of the arbitrators.

Such reference shall not prejudice the competence of the judicial tribunals in case the agreement or the arbitration cannot proceed or become inoperative.

5. The present protocol, which shall remain open for signature by all States, shall be ratified. The ratifications shall be deposited as soon as possible with the Secretary-General of the League of Nations, who shall notify such deposit to all the signatory States.

6. The present protocol shall come into force as soon as 2 ratifications have been deposited. Thereafter it will take effect, in the case of each Contracting State, 1 month after the notification by the Secretary-General of the deposit of its ratification.

7. The present protocol may be denounced by any Contracting State on giving one year's notice. Denunciation shall be effected by a notification

THIRD SCHEDULE—*continued*

TREATIES RELATING TO ARBITRATION—*continued*

addressed to the Secretary-General of the League, who will immediately transmit copies of such notification to all the other signatory States and inform them of the date on which it was received. The denunciation shall take effect one year after the date on which it was notified to the Secretary-General, and shall operate only in respect of the notifying State.

8. The Contracting States may declare that their acceptance of the present protocol does not include any or all of the under-mentioned territories—that is to say, their colonies, overseas possessions or territories, protectorates, or the territories over which they exercise a mandate.

The said States may subsequently adhere separately on behalf of any territory thus excluded. The Secretary-General of the League of Nations shall be informed as soon as possible of such adhesions. He shall notify such adhesions to all signatory States. They will take effect one month after the notification by the Secretary-General to all signatory States.

The Contracting States may also denounce the protocol separately on behalf of any of the territories referred to above. Article 7 applies to such denunciation.

CONVENTION ON THE EXECUTION OF FOREIGN ARBITRAL AWARDS

[Opened for signature at Geneva on 26 September 1927]

*Article 1*

IN the territories of any High Contracting Party to which the present convention applies, an arbitral award made in pursuance of an agreement, whether relating to existing or future differences (hereinafter called "a submission to arbitration") covered by the Protocol on Arbitration Clauses, opened at Geneva on September 24th, 1923, shall be recognised as binding and shall be enforced in accordance with the rules of the procedure of the territory where the award is relied upon, provided that the said award has been made in a territory of one of the High Contracting Parties to which the present convention applies and between persons who are subject to the jurisdiction of one of the High Contracting Parties.

To obtain such recognition or enforcement, it shall, further, be necessary—

(a) That the award has been made in pursuance of a submission to arbitration which is valid under the law applicable thereto:

(b) That the subject matter of the award is capable of settlement by arbitration under the law of the country in which the award is sought to be relied upon:

(c) That the award has been made by the arbitral tribunal provided for in the submission to arbitration, or constituted in the manner agreed upon by the parties and in conformity with the law governing the arbitration procedure:

(d) That the award has become final in the country in which it has been made, in the sense that it will not be considered as such if it is open to *opposition, appel* or *pourvoi en cassation* (in the countries where such forms of procedure exist) or if it is proved that any proceedings for the purpose of contesting the validity of the award are pending:

THIRD SCHEDULE—*continued*

TREATIES RELATING TO ARBITRATION—*continued*

(e) That the recognition or enforcement of the award is not contrary to the public policy or to the principles of the law of the country in which it is sought to be relied upon.

*Article 2*

Even if the conditions laid down in Article 1 hereof are fulfilled, recognition and enforcement of the award shall be refused if the Court is satisfied—

(a) That the award has been annulled in the country in which it was made:

(b) That the party against whom it is sought to use the award was not given notice of the arbitration proceedings in sufficient time to enable him to present his case; or that, being under a legal incapacity, he was not properly represented:

(c) That the award does not deal with the differences contemplated by or falling within the terms of the submission to arbitration or that it contains decisions on matters beyond the scope of the submission to arbitration.

If the award has not covered all the questions submitted to the arbitral tribunal, the competent authority of the country, where recognition or enforcement of the award is sought can, if it think fit, postpone such recognition or enforcement or grant it subject to such guarantee as that authority may decide.

*Article 3*

If the party against whom the award has been made proves that, under the law governing the arbitration procedure, there is a ground, other than the grounds referred to in Article 1 (a) and (c), and Article 2 (b) and (c), entitling him to contest the validity of the award in a Court of law, the Court may, if it thinks fit, either refuse recognition or enforcement of the award or adjourn the consideration thereof, giving such party a reasonable time within which to have the award annulled by the competent tribunal.

*Article 4*

The party relying upon an award or claiming its enforcement must supply, in particular:

(1) The original award or a copy thereof duly authenticated, according to the requirements of the law of the country in which it was made:

(2) Documentary or other evidence to prove that the award has become final, in the sense defined in Article 1 (d), in the country in which it was made:

(3) When necessary, documentary or other evidence to prove that the conditions laid down in Article 1, paragraph 1 and paragraph 2 (a) and (c), have been fulfilled.

A translation of the award and of the other documents mentioned in this article into the official language of the country where the award is sought to be relied upon may be demanded. Such translation must be certified correct by a diplomatic or consular agent of the country to which the party who seeks to rely upon the award belongs or by a sworn translator of the country where the award is sought to be relied upon.

THIRD SCHEDULE—*continued*

TREATIES RELATING TO ARBITRATION—*continued*

*Article 5*

The provisions of the above articles shall not deprive any interested party of the right of availing himself of an arbitral award in the manner and to the extent allowed by the law or the treaties of the country where such award is sought to be relied upon.

*Article 6*

The present convention applies only to arbitral awards made after the coming into force of the Protocol on the Arbitration Clauses, opened at Geneva on September 24th, 1923.

*Article 7*

The present convention, which will remain open to the signature of all the signatories of the Protocol of 1923 on Arbitration Clauses, shall be ratified.

It may be ratified only on behalf of those members of the League of Nations and non-member States on whose behalf the Protocol of 1923 shall have been ratified.

Ratifications shall be deposited as soon as possible with the Secretary-General of the League of Nations, who will notify such deposit to all the signatories.

*Article 8*

The present convention shall come into force 3 months after it shall have been ratified on behalf of 2 High Contracting Parties. Thereafter, it shall take effect, in the case of each High Contracting Party, 3 months after the deposit of the ratification on its behalf with the Secretary-General of the League of Nations.

*Article 9*

The present convention may be denounced on behalf of any member of the League or non-member State. Denunciation shall be notified in writing to the Secretary-General of the League of Nations, who will immediately send a copy thereof, certified to be in conformity with the notification, to all the other Contracting Parties, at the same time informing them of the date on which he received it.

The denunciation shall come into force only in respect of the High Contracting Party which shall have notified it, and one year after such notification shall have reached the Secretary-General of the League of Nations.

The denunciation of the Protocol on Arbitration Clauses shall entail, *ipso facto*, the denunciation of the present convention.

*Article 10*

The present convention does not apply to the colonies, protectorates, or territories under suzerainty or mandate of any High Contracting Party unless they are specially mentioned.

The application of this convention to one or more of such colonies, protectorates, or territories to which the Protocol on Arbitration Clauses, opened at Geneva on September 24th, 1923, applies, can be effected at any time by means of a declaration addressed to the Secretary-General of the League of Nations by one of the High Contracting Parties.

THIRD SCHEDULE—*continued*

TREATIES RELATING TO ARBITRATION—*continued*

Such declaration shall take effect 3 months after the deposit thereof.

The High Contracting Parties can at any time denounce the convention for all or any of the colonies, protectorates, or territories referred to above. Article 9 hereof applies to such denunciation.

*Article 11*

A certified copy of the present convention shall be transmitted by the Secretary-General of the League of Nations to every member of the League of Nations and to every non-member State which signs the same.

CONVENTION ON THE RECOGNITION AND ENFORCEMENT OF FOREIGN ARBITRAL AWARDS

[Adopted at New York by the United Nations Conference on International Commercial Arbitration on 10 June 1958]

*Article I*

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

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

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

*Article II*

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

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

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

THIRD SCHEDULE—*continued*

TREATIES RELATING TO ARBITRATION—*continued*

*Article III*

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

*Article IV*

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

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

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

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

*Article V*

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

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

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

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

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

*(e)* The award has not yet become binding on the parties, or has been set aside or suspended by a competent authority of the country in which, or under the law of which, that award was made.

THIRD SCHEDULE—*continued*

TREATIES RELATING TO ARBITRATION—*continued*

2. Recognition and enforcement of an arbitral award may also be refused if the competent authority in the country where recognition and enforcement is sought finds that:

*(a)* The subject matter of the difference is not capable of settlement by arbitration under the law of that country; or

*(b)* The recognition or enforcement of the award would be contrary to the public policy of that country.

*Article VI*

If an application for the setting aside or suspension of the award has been made to a competent authority referred to in article V(1)(e), the authority before which the award is sought to be relied upon may, if it considers it proper, adjourn the decision on the enforcement of the award and may also, on the application of the party claiming enforcement of the award, order the other party to give suitable security.

*Article VII*

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

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

*Article VIII*

1. This Convention shall be open until 31 December 1958 for signature on behalf of any Member of the United Nations and also on behalf of any other State which is or hereafter becomes a member of any specialized agency of the United Nations, or which is or hereafter becomes a party to the Statute of the International Court of Justice, or any other State to which an invitation has been addressed by the General Assembly of the United Nations.

2. This Convention shall be ratified and the instrument of ratification shall be deposited with the Secretary-General of the United Nations.

*Article IX*

1. This Convention shall be open for accession to all States referred to in article VIII.

2. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

*Article X*

1. Any State may, at the time of signature, ratification or accession, declare that this Convention shall extend to all or any of the territories for

THIRD SCHEDULE—*continued*

TREATIES RELATING TO ARBITRATION—*continued*

the international relations of which it is responsible. Such a declaration shall take effect when the Convention enters into force for the State concerned.

2. At any time thereafter any such extension shall be made by notification addressed to the Secretary-General of the United Nations and shall take effect as from the ninetieth day after the day of receipt by the Secretary-General of the United Nations of this notification, or as from the date of entry into force of the Convention for the State concerned, whichever is the later.

3. With respect to those territories to which this Convention is not extended at the time of signature, ratification or accession, each State concerned shall consider the possibility of taking the necessary steps in order to extend the application of this Convention to such territories, subject, where necessary for constitutional reasons, to the consent of the Governments of such territories.

*Article XI*

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

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

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

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

*Article XII*

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

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

*Article XIII*

1. Any Contracting State may denounce this Convention by a written notification to the Secretary-General of the United Nations. Denunciation

THIRD SCHEDULE—*continued*

TREATIES RELATING TO ARBITRATION—*continued*

shall take effect one year after the date of receipt of the notification by the Secretary-General.

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

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

*Article XIV*

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

*Article XV*

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

*(a)* Signatures and ratifications in accordance with article VIII;

*(b)* Accessions in accordance with article IX;

*(c)* Declarations and notifications under articles I, X and XI;

*(d)* The date upon which this Convention enters into force in accordance with article XII;

*(e)* Denunciations and notifications in accordance with article XIII.

*Article XVI*

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

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

FOURTH SCHEDULE **Section 13**

ENACTMENTS AMENDED

| Enactment | Amendment |
|---|---|
| 1908, No. 56—The Evidence Act 1908 (R.S. Vol. 28, p. 451) | By omitting from the definition of the term "person acting judicially" in section 2 the words "or by consent of parties". |
| | *New (Unanimous)* |
| 1908, No. 89—The Judicature Act 1908 (R.S. Vol. 22, p. 107) | By repealing paragraph (a) of section 26I (2) (as substituted by section 2 of the Judicature Amendment Act 1994), and substituting the following paragraph:<br>"(a) Article 11 of the First Schedule to the Arbitration Act 1995:". |
| 1908, No. 117—The Mercantile Law Act 1908 (R.S. Vol. 10, p. 91) | By repealing section 26M (as inserted by section 5 of the Judicature Amendment Act 1986), and substituting the following section:<br>"26M. **Master may act as referee**—A Master may act as a referee under the High Court Rules in respect of any proceedings or any question arising in the course of any proceedings."<br>By inserting in paragraph (b) of section 26, after the word "legal", the words "or arbitral". |
| | *New (Unanimous)* |
| 1934, No. 11—The Reciprocal Enforcement of Judgments Act 1934 (R.S. Vol. 28, p. 841) | By omitting from the definition of the term "judgment" in section 2 (1) the words "(not being a foreign award within the meaning of Part II of the Arbitration Clauses (Protocol) and the Arbitration (Foreign Awards) Act 1933)", and substituting the words "(not being an award made outside New Zealand within the meaning of the Arbitration Act 1995)." |
| 1944, No. 20—The Frustrated Contracts Act 1944 (R.S. Vol. 6, p. 487) | By repealing section 2, and substituting the following section:<br>"2. **Interpretation**—In this Act the expression "Court" means, in relation to any matter, the Court before which the matter falls to be determined." |

FOURTH SCHEDULE—*continued*

ENACTMENTS AMENDED—*continued*

| Enactment | Amendment |
|---|---|
| 1945, No. 16—The Evidence Amendment Act 1945 (R.S. Vol. 28, p. 451)<br>1950, No. 65—The Limitation Act 1950 (R.S. Vol. 6, p. 845) | By repealing the definitions of the terms "proceedings" and "Court" in section 2.<br><br>By repealing the definitions of the terms "arbitration", "award", and "submission" in section 2.<br><br>*Struck Out (Unanimous)*<br><br>By repealing subsections (2), (3), and (4) of section 29.<br>By omitting from subsection (5) of section 29 the words "or orders, after the commencement of an arbitration, that the arbitration shall cease to have effect with respect to the dispute referred,".<br>By repealing subsection (6) of section 29, and substituting the following subsection:<br>"(6) This section applies to an arbitration under an Act as well as to an arbitration agreement."<br><br>*New (Unanimous)*<br><br>By repealing section 29, and substituting the following section:<br>"29. **Application of Act and other limitation enactments to arbitrations**—(1) This Act and any other enactment relating to the limitation of actions shall apply to arbitrations as they apply to actions.<br>"(2) For the purposes of this Act and of any such enactment, an arbitration shall be treated as being commenced in the same manner as provided in Article 21 of the First Schedule to the Arbitration Act 1996.<br>"(3) Where the High Court orders that an award be set aside, the Court may further order that the period between the commencement of the arbitration and the date of the order of the Court shall |

FOURTH SCHEDULE—*continued*

ENACTMENTS AMENDED—*continued*

| Enactment | Amendment |
|---|---|
| | *New (Unanimous)* |
| 1950, No. 65—The Limitation Act 1950 (R.S. Vol. 6, p. 845)—*continued* | be excluded in computing the time prescribed by this Act or any such enactment for the commencement of proceedings (including arbitration) with respect to the dispute referred.<br>"(4) This section applies to an arbitration under an Act as well as to an arbitration under an arbitration agreement." |
| | *New (Unanimous)* |
| 1965, No. 22—The Building Societies Act 1965 (R.S. Vol. 17, p. 41) | By repealing subsection (2) of section 113, and substituting the following subsection:<br>"(2) Clause 4 of the Second Schedule to the Arbitration Act 1995 shall not apply to any dispute that is so referred." |
| | *Struck Out (Unanimous)* |
| 1977, No. 14—The Insurance Law Reform Act 1977 (R.S. Vol. 28, p. 675) | By repealing section 8. |
| | *New (Unanimous)* |
| 1977, No. 14—The Insurance Law Reform Act 1977 (R.S. Vol. 28, p. 675) | By inserting in subsections (1) and (2) of section 8, after the words "contract of insurance", the words "entered into by an insured otherwise than in trade". |

FOURTH SCHEDULE—*continued*

ENACTMENTS AMENDED—*continued*

| Enactment | Amendment |
|---|---|
| | *Struck Out (Unanimous)* |
| 1977, No. 54—The Contractual Mistakes Act 1977 (R.S. Vol. 31, p. 181) | By repealing section 11. |
| 1979, No. 11—The Contractual Remedies Act 1979 | By repealing section 14 (2). |
| 1979, No. 39—The Arbitration (International Investment Disputes) Act 1979 | By repealing sections 3 to 9, and substituting the following sections:<br>"3. **Act to bind the Crown**—This Act binds the Crown.<br>"4. **Application of Convention to New Zealand**—(1) Articles 18 and 20 to 24, and chapters II to VII, of the Convention have the force of law in New Zealand in accordance with the provisions of this Act.<br>"(2) Nothing in the Arbitration Act 1995 applies to a dispute within the jurisdiction of the Centre or to an award made under the Convention.<br>"5. **Recognition and enforcement of awards**—(1) An award may be enforced by entry as a final judgment of the High Court in terms of the award.<br>"(2) The High Court is designated for the purposes of article 54 of the Convention.<br>"6. **Certificates concerning parties to Convention**—A certificate purporting to be signed by the Secretary of Foreign Affairs and Trade and stating that a State is, or was at the time specified, a Contracting State to the Convention and the territories (if any) for the international relations of which the Contracting State is responsible to which the Convention is not applicable is presumptive evidence of the facts stated." |
| 1980, No. 27—The Evidence Amendment Act (No. 2) 1980 (R.S. Vol. 28, p. 451) | By repealing the definitions of the terms "Court" and "proceedings". |

FOURTH SCHEDULE—*continued*

ENACTMENTS AMENDED—*continued*

| Enactment | Amendment |
|---|---|
| | *New (Unanimous)* |
| 1982, No. 118—The Friendly Societies and Credit Unions Act 1982 | By omitting from subsection (1) of section 80 the words "in the Arbitration Act 1908 or". |
| | *Struck Out (Unanimous)* |
| 1982, No. 132—The Contracts (Privity) Act 1982 | By repealing section 12. |
| | *New (Unanimous)* |
| 1989, No. 75—The Transit New Zealand Act 1989 | By repealing paragraph (c) of section 25 (2) (as substituted by section 18 of the Transit New Zealand Amendment Act 1995), and substituting the following paragraph:<br>"(c) Articles 35 and 36 of the First Schedule to the Arbitration Act 1995 (which relate to recognition and enforcement of an arbitral award) and clause 6 of the Second Schedule to that Act (which relates to costs and expenses of an arbitration) shall apply in relation to an arbitration under this subsection as if this subsection were an arbitration agreement within the meaning of that Act, but no other provisions of that Act shall apply in relation to an arbitration under this subsection." |
| | |

*New (Unanimous)*

FIFTH SCHEDULE Section 13A

ENACTMENTS REPEALED

1908, No. 8—The Arbitration Act 1908. (R.S. Vol. 1, p. 98.)
1915, No. 13—The Arbitration Amendment Act 1915. (R.S. Vol. 1, p. 108.)
1933, No. 4—The Arbitration Clauses (Protocol) and the Arbitration (Foreign Awards) Act 1933. (R.S. Vol. 1, p. 108.)
1938, No. 6—The Arbitration Amendment Act 1938. (R.S. Vol. 1, p. 117.)
1952, No. 27—The Arbitration Amendment Act 1952. (R.S. Vol. 1, p. 126.)
1957, No. 44—The Arbitration Clauses (Protocol) and the Arbitration (Foreign Awards) Amendment Act 1957. (R.S. Vol. 1, p. 126.)
1977, No. 54—The Contractual Mistakes Act 1977: Section 11.
1979, No. 11—The Contractual Remedies Act 1979: Section 14 (2).
1982, No. 21—The Arbitration (Foreign Agreements and Awards) Act 1982.
1982, No. 132—The Contracts (Privity) Act 1982: Section 12.

WELLINGTON, NEW ZEALAND: Published under the authority of the New Zealand Government—1995

74480 —96/NS