



**Isle of Man**

*Ellan Vannin*

**AT 24 of 1976**

**ARBITRATION ACT 1976**





**Isle of Man**

*Ellan Vannin*

## ARBITRATION ACT 1976

### Index

| Section   | Page      |
|---|-----------|
| <b>PART I – GENERAL PROVISIONS AS TO ARBITRATION</b>                        | <b>5</b>  |
| <hr/>   |           |
| <i>Effect of Arbitration Agreements, etc.</i>                               | <b>5</b>  |
| 1 Authority of arbitrators and umpires to be irrevocable .....              | 5         |
| 2 Death of party .....  | 5         |
| 3 Bankruptcy .....  | 6         |
| 4 Staying court proceedings where there is submission to arbitration .....  | 6         |
| 5 Staying court proceedings where party proves arbitration agreement .....  | 6         |
| 6 Reference of interpleader issues to arbitration .....                     | 7         |
| <i>Arbitrators and Umpires</i>  | <b>7</b>  |
| 7 When reference is to a single arbitrator .....                            | 7         |
| 8 Power of parties in certain cases to supply vacancy .....                 | 7         |
| 9 Umpires .....   | 8         |
| 10 Agreements for reference to three arbitrators .....                      | 8         |
| 11 Power of court in certain cases to appoint an arbitrator or umpire ..... | 9         |
| 12 Reference to special referee .....                                       | 10        |
| 12A Specific powers of arbitrator exercisable by High Court .....           | 10        |
| <i>Conduct of Proceedings, Witnesses etc.</i>                               | <b>11</b> |
| 13 Conduct of Proceedings, witnesses, etc .....                             | 11        |
| <i>Provisions as to Awards</i>  | <b>12</b> |
| 14 Time for making award .....  | 12        |
| 14A Want of prosecution .....   | 12        |
| 15 Interim awards .....   | 13        |
| 16 Specific performance .....   | 13        |
| 17 Awards to be final .....   | 13        |
| 18 Power to correct slips .....   | 13        |
| <i>Costs, Fees and Interest</i>   | <b>14</b> |
| 19 Costs .....  | 14        |
| 20 Taxation of arbitrator's or umpire's fees .....                          | 14        |
| 20A Power of arbitrator to award interest .....                             | 15        |
| 21 Interest on awards .....   | 15        |

|     |  |           |
|-----|--|-----------|
|     | <i>Special cases, Remission and Setting aside of Awards, etc.</i>  | 16        |
| 22  | Statement of case .....  | 16        |
| 23  | Power to remit award .....   | 16        |
| 24  | Removal of arbitrator and setting aside of award .....   | 16        |
| 25  | Power of court to give relief where arbitrator is not impartial or the<br>dispute involves question of fraud ..... | 17        |
| 26  | Power of court where arbitrator is removed or authority of arbitrator is<br>revoked .....                          | 17        |
|     | <i>Enforcement of Award</i>  | 18        |
| 27  | Enforcement of award .....   | 18        |
|     | <i>Miscellaneous</i>   | 18        |
| 28  | Power of court to extend time for commencing arbitration proceedings .....   | 18        |
| 28A | Limitation of time for commencing arbitration proceedings .....  | 19        |
| 29  | Terms as to costs, etc .....   | 20        |
| 30  | Government to be bound .....   | 20        |
| 31  | Application of Part I to statutory arbitrations .....  | 20        |
|     | <b>PART II – ENFORCEMENT OF CERTAIN FOREIGN AWARDS</b>   | <b>20</b> |
| 32  | Awards to which Part II applies .....  | 20        |
| 33  | Effect of foreign awards .....   | 21        |
| 34  | Conditions for enforcement of foreign awards .....   | 21        |
| 35  | Evidence .....   | 22        |
| 36  | Meaning of “final award” .....   | 23        |
|     | <b>PART III – ENFORCEMENT OF CONVENTION AWARDS</b>   | <b>23</b> |
| 37  | Replacement of Part II in certain cases .....  | 23        |
| 38  | Effect of Convention awards .....  | 23        |
| 39  | Evidence .....   | 23        |
| 40  | Refusal of enforcement .....   | 24        |
|     | <b>PART IV – SUPPLEMENTARY</b>   | <b>25</b> |
| 41  | Interpretation .....   | 25        |
| 42  | Transitional provisions and savings .....  | 25        |
| 43  | [Repealed] .....   | 26        |
| 44  | Short title and commencement .....   | 26        |
|     | <b>SCHEDULE 1</b>  | <b>27</b> |
|     | TRANSITIONAL PROVISIONS AND SAVINGS  | 27        |
|     | <b>SCHEDULE 2</b>  | <b>27</b> |
|     | <b>ENDNOTES</b>  | <b>29</b> |
|     | TABLE OF ENDNOTE REFERENCES  | 29        |

**Isle of Man***Ellan Vannin*

## ARBITRATION ACT 1976

*Received Royal Assent:* 27 October 1976  
*Passed:* 21 December 1976  
*Commenced:* See endnotes

**AN ACT** to consolidate with amendments the law relating to arbitration, and for connected purposes.

**GENERAL NOTE:** References to a Board of Tynwald are to be construed in accordance with the *Government Departments Act 1987 s 7*.

### PART I – GENERAL PROVISIONS AS TO ARBITRATION

*Effect of Arbitration Agreements, etc.*

#### **1 Authority of arbitrators and umpires to be irrevocable**

[P1950/27/1]

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

#### **2 Death of party**

[P1950/27/2]

- (1) An arbitration agreement shall not be discharged by the death of any party thereto, either as respects the deceased or any other party, but shall in such event be enforceable by or against the personal representative of the deceased.
- (2) The authority of an arbitrator shall not be revoked by the death of any party by whom he was appointed.
- (3) Nothing in this section shall be taken to affect the operation of any enactment or rule of law by virtue of which any right of action is extinguished by the death of a person.

### **3 Bankruptcy**

[P1950/27/3]

- (1) Where it is provided by a term in a contract to which a bankrupt is a party that any differences arising thereout or in connection therewith shall be referred to arbitration, the said term shall, if the trustee in bankruptcy adopts the contract, be enforceable by or against him so far as relates to any such differences.
- (2) Where a person who has been adjudged bankrupt had, before the commencement of the bankruptcy, become a party to an arbitration agreement, and any matter to which the agreement applies requires to be determined in connection with or for the purposes of the bankruptcy proceedings, then, if the case is one to which subsection (1) above does not apply, any other party to the agreement or the trustee in bankruptcy may apply to the Court for an order directing that the matter in question shall be referred to arbitration in accordance with the agreement, and the Court may, if it is of the opinion that having regard to all the circumstances of the case, the matter ought to be determined by arbitration, make in order accordingly.

### **4 Staying court proceedings where there is submission to arbitration**

[P1950/27/4(1)]

Subject to section 5 of this Act, if any party to an arbitration agreement, or any person claiming through or under him, commences any legal proceedings in the Court against any other party to the agreement, or any person claiming through or under him, in respect of any matter agreed to be referred, any party to those legal proceedings may at any time after appearance, and before delivering any pleadings or taking any other steps in the proceedings, apply to the Court to stay the proceedings; and the Court, if satisfied that there is no sufficient reason why the matter should not be referred in accordance with the agreement, and that the applicant was, at the time when the proceedings were commenced, and still remains, ready and willing to do all things necessary to the proper conduct of the arbitration, may make an order staying the proceedings.

### **5 Staying court proceedings where party proves arbitration agreement**

[P1975/3/1]

- (1) If any party to an arbitration agreement to which this section applies, or any person claiming through or under him, commences any legal proceedings in the Court against any other party to the agreement, or any person claiming through him or under him, in respect of any matter agreed to be referred, any party to the proceedings may at any time after appearance, and before delivering any pleadings or taking any other steps in the proceedings, apply to the Court to stay the proceedings; and the Court, unless satisfied that the arbitration 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 matter agreed to be referred, shall make an order staying the proceedings.

- (2) This section applies to any arbitration agreement which is not a domestic arbitration agreement; and section 4 of this Act shall not apply to an arbitration agreement to which this section applies.
- (3) In this section “domestic arbitration agreement” means an arbitration agreement which does not provide, expressly or by implication, for arbitration in a country other than the Island and to which neither —
  - (a) an individual who is a national of any state other than the United Kingdom, or who is habitually resident in any country other than the Island; nor<sup>1</sup>
  - (b) a body corporate which is incorporated in, or whose central management and control is exercised in, any country other than the Island,is a party at the time the proceedings are commenced.
- (4) In subsection (3), “the United Kingdom” means Great Britain, Northern Ireland, the Island and the Channel Islands, taken together.<sup>2</sup>

## **6 Reference of interpleader issues to arbitration**

[P1950/27/5]

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

### *Arbitrators and Umpires*

## **7 When reference is to a single arbitrator**

[P1950/27/6]

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

## **8 Power of parties in certain cases to supply vacancy**

[P1950/27/7]

- (1) Subject to subsection (2) below, where an arbitration agreement provides that the reference shall be to two arbitrators, one to be appointed by each party, then, unless a contrary intention is expressed therein —
  - (a) if either of the appointed arbitrators refuses to act, or is incapable of acting, or dies, the party who appointed him may appoint a new arbitrator in his place;

- (b) if, on such a reference, one party fails to appoint an arbitrator, either originally or by way of substitution as aforesaid, for seven clear days after the other party, having appointed his arbitrator, has served the party making default with notice to make the appointment, the party who has appointed an arbitrator may appoint that arbitrator to act as sole arbitrator in the reference, and his award shall be binding on both parties as if he had been appointed by consent.
- (2) The Court may set aside any appointment made in pursuance of this section.

## 9 Umpires

[P1950/27/8]

- (1) Unless a contrary intention is expressed therein, every arbitration agreement shall, where the reference is to two arbitrators, be deemed to include a provision that the two arbitrators shall appoint an umpire immediately after they are themselves appointed.
- (2) Unless a contrary intention is expressed therein, every arbitration agreement shall, where such a provision is applicable to the reference, be deemed to include a provision that, if the arbitrators have delivered to any party to the arbitration agreement, or to the umpire, a notice in writing stating that they cannot agree, the umpire may forthwith enter on the reference in lieu of the arbitrators.
- (3) At any time after the appointment of an umpire, however appointed, the Court may, on the application of any party to the reference and notwithstanding anything to the contrary in the arbitration agreement, order that the umpire shall enter upon the reference in lieu of the arbitrators and as if he were a sole arbitrator.

## 10 Agreements for reference to three arbitrators

[P1950/27/9]

- (1) Where an arbitration agreement provides that the reference shall be to three arbitrators, one to be appointed by each party and the third to be appointed by the two appointed by the parties, the agreement shall have effect as if it provided for the appointment of an umpire, and not for the appointment of a third arbitrator, by the two arbitrators appointed by the parties.
- (2) Where an arbitration agreement provides that the reference shall be to three arbitrators to be appointed otherwise than as mentioned in subsection (1) above, the award of any two of the arbitrators shall be binding.
- (3) In any case where —



- (a) an arbitration agreement provides that the reference shall be to three arbitrators, one to be appointed by each party and the third to be appointed by the two appointed by the parties or in some other manner specified in the agreement; and
  - (b) one of the parties (“the party in default”) refuses to appoint an arbitrator or does not do so within the time specified in the agreement or, if no time is specified, within a reasonable time, the other party to the agreement, having appointed his arbitrator, may serve the party in default with a written notice to appoint an arbitrator and, if the appointment is not made within seven clear days after the service of the notice, the High Court or a judge thereof may, on the application of the party who gave the notice, appoint an arbitrator on behalf of the party in default who shall have the like powers to act in the reference and make an award (and, if the case so requires, the like duty in relation to the appointment of the third arbitrator) as if he had been appointed in accordance with the terms of the agreement.<sup>3</sup>
- (4) Except in a case where the arbitration agreement shows that it was intended that the vacancy should not be supplied, paragraph (b) of subsection (3) shall be construed as extending to any such refusal or failure by a person as is there mentioned arising in connection with the replacement of an arbitrator who was appointed by that person (or in default of being so appointed, was appointed under that subsection) but who refuses to act, or is incapable of acting or has died.<sup>4</sup>

## **11 Power of court in certain cases to appoint an arbitrator or umpire**

[P1950/27/10]

In any of the following cases —

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

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

## 12 Reference to special referee

[P1950/27/11]

- (1) The Deemsters may, subject to subsection (3) below, make rules prescribing the cases in which the jurisdiction or powers, or both, of the Court may be exercised by special referees and, without prejudice to the generality of the foregoing, such rules may —
  - (a) authorise the whole of any cause or matter or any question or issue therein to be ordered to be tried before, or any question arising in any cause or matter to be ordered to be referred for inquiry and report to, any such referee; and
  - (b) make any provision incidental to any of the matters in respect of which rules may be made under this subsection.
- (2) The decision of a special referee may be called in question in such manner, whether by —
  - (a) an appeal to the Staff of Government Division; or
  - (b) an appeal or application to the Court or to a Deemster in Chambers; or
  - (c) an adjournment to the Court or to a Deemster in Chambers.as may, subject to subsection (3) below, be prescribed by rules made by the Deemsters.
- (3) Rules under subsections (1) and (2) shall be laid before Tynwald as soon as practicable after they are made, and if Tynwald at the sitting at which the rules are laid or at the next following sitting resolves that they shall be annulled, they shall cease to have effect.<sup>5</sup>

## 12A Specific powers of arbitrator exercisable by High Court

In any cause or matter proceeding in the High Court in connection with any contract incorporating an arbitration clause which confers specific powers upon the arbitrator, the High Court may, if all parties to the proceedings agree, exercise any such powers.<sup>6</sup>

*Conduct of Proceedings, Witnesses etc.***13 Conduct of Proceedings, witnesses, etc**

[P1950/27/12]

- (1) Unless a contrary intention is expressed therein, every arbitration agreement shall, where such a provision is applicable to the reference, be deemed to contain a provision that the parties to the reference, and all persons claiming through them respectively, shall, subject to any legal objection, submit to be examined by the arbitrator or umpire, on oath or affirmation, in relation to the matters in dispute, and shall, subject as aforesaid, produce before the arbitrator or umpire all documents within their possession or power respectively which may be required or called for, and do all other things which during the proceedings on the reference the arbitrator or umpire may require.
- (2) Unless a contrary intention is expressed therein, every arbitration agreement shall, where such a provision is applicable to the reference, be deemed to contain a provision that the witnesses on the reference shall, if the arbitrator or umpire thinks fit, be examined on oath or affirmation.
- (3) An arbitrator or umpire shall, unless a contrary intention is expressed in the arbitration agreement, have power to administer oaths to, or take the affirmations of, the parties to and witnesses on a reference under the agreement.
- (4) Any party to a reference under an arbitration agreement may apply to the Court for a warrant to summon a witness to give evidence or to produce documentary evidence, but no person shall be compelled, under any such warrant, to produce any document which he could not be compelled to produce on the trial of an action; and the Court may, on any such application, order that such a warrant shall issue to compel the attendance of a witness before an arbitrator or umpire, wherever the witness may be within the Island.
- (5) A detainee may be brought up for examination before any arbitrator or umpire, pursuant to a direction of the Department of Home Affairs given under section 20(2) of the *Custody Act 1995*.<sup>7</sup>
- (6) Subject to subsection (7) below, the Court shall have, for the purpose of and in relation to a reference, the same power of making orders in respect of —
  - (a) security for costs;
  - (b) discovery of documents and interrogatories;
  - (c) the giving of evidence by affidavit;
  - (d) examination on oath of any witness before an officer of the Court or any other person, and the issue of a commission or request for the examination of a witness out of the jurisdiction;

- (e) the preservation, interim custody or sale of any goods which are the subject matter of the reference;
  - (f) securing the amount in dispute in the reference;
  - (g) the detention, preservation or inspection of any property or thing which is the subject of the reference or as to which any question may arise therein, and authorising for any of the purposes aforesaid any persons to enter upon or into any land in the possession of any party to the reference, or authorising any samples to be taken or any observation to be made or experiment to be tried which may be necessary or expedient for the purpose of obtaining full information or evidence; and
  - (h) interim injunctions of the appointment of a receiver,
- as it has for the purpose of and in relation to an action or matter in the Court.
- (7) Nothing in subsection (6) above shall be taken to prejudice any power which may be vested in an arbitrator or umpire of making orders with respect to any of the matters mentioned in that subsection.

*Provisions as to Awards*

#### **14 Time for making award**

[P1950/27/13]

- (1) Subject to the provisions of section 23(2) of this Act, and anything to the contrary in the arbitration agreement, an arbitrator or umpire shall have power to make an award at any time.
- (2) The time, if any, limited for making an award, whether under this Act or otherwise, may from time to time be enlarged by order of the Court, whether that time has expired or not.
- (3) The Court may, on the application of any party to a reference, remove an arbitrator or umpire who fails to use all reasonable dispatch in entering on and proceeding with the reference and making an award, and an arbitrator or umpire who is removed by the Court under this subsection shall not be entitled to receive any remuneration in respect of his services.
- (4) For the purposes of subsection (3) above, "proceeding with a reference" includes, in a case where two arbitrators are unable to agree, giving notice of that fact to the parties and to the umpire.

#### **14A Want of prosecution**

- (1) Unless a contrary intention is expressed in the arbitration agreement, the arbitrator or umpire shall have power to make an award dismissing the

claim in a dispute referred to him if it appears to him that the conditions mentioned in subsection (2) are satisfied.

- (2) The conditions are —
- (a) that there has been inordinate and inexcusable delay on the part of the claimant in pursuing the claim; and
  - (b) that the delay —
    - (i) will give rise to a substantial risk that it is not possible to have a fair resolution of the issues in that claim; or
    - (ii) has caused, or is likely to cause or to have caused, serious prejudice to the respondent.<sup>8</sup>

## 15 Interim awards

[P1950/27/14]

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

## 16 Specific performance

[P1950/27/15]

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

## 17 Awards to be final

[P1959/27/16]

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

## 18 Power to correct slips

[P1950/27/17]

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

*Costs, Fees and Interest***19 Costs**

[P1950/27/18]

- (1) Unless a contrary intention is expressed therein, every arbitration agreement shall be deemed to include a provision that the costs of the reference and award shall be in the discretion of the arbitrator or umpire, who may direct to and by whom and in what manner those costs or any part thereof shall be paid, and may tax or settle the amount of costs to be so paid or any part thereof, and may award costs to be paid as between attorney and client.
- (2) Any costs directed by an award to be paid shall, unless the award otherwise directs, be taxable by the Taxing Master.
- (3) Subject to subsection (4) below, any provision in an arbitration agreement to the effect that the parties or any party thereto shall in any event pay their or his own costs of the reference or award or any part thereof shall be void, and this Part shall, in the case of an arbitration agreement containing any such provision, have effect as if that provision were not contained therein.
- (4) Nothing in subsection (3) above shall invalidate such a provision when it is a part of an agreement to submit to arbitration a dispute which has arisen before the making of that agreement.
- (5) If no provision is made by an award with respect to the costs of the reference, any party to the reference may, within fourteen days of the publication of the award or such further time as the Court may direct, apply to the arbitrator for an order directing by and to whom those costs shall be paid, and thereupon the arbitrator shall, after hearing any party who may desire to be heard, amend his award by adding thereto such directions as he may think proper with respect to the payment of the costs of the reference.
- (6) Section 12 of the *Advocates' Act 1874* (which empowers a court before which any proceeding is being heard or is pending to charge property recovered or preserved in the proceeding with the payment of advocates' costs) shall apply as if an arbitration were a proceeding in the Court, and the Court may make declarations and orders accordingly.

**20 Taxation of arbitrator's or umpire's fees**

[P1950/27/19]

- (1) If, in any case, an arbitrator or umpire refuses to deliver his award except on payment of the fees demanded by him, the Court may, on application for the purpose, order that the arbitrator or umpire shall deliver the award to the applicant on payment into court by the applicant of the fees demanded, and further that the fees demanded shall be taxed by the

Taxing Master, and that out of the money paid into Court, there shall be paid out to the arbitrator or umpire, by way of fees, such sum as may be found reasonable on taxation, and that the balance of the money, if any, shall be paid out to the applicant.

- (2) An application for the purposes of this section may be made by any party to the reference unless the fees demanded have been fixed by a written agreement between him and the arbitrator or umpire.
- (3) A taxation of fees under this section may be reviewed in the same manner as a taxation of costs.
- (4) The arbitrator or umpire shall be entitled to appear and be heard on any taxation or review of taxation under this section.

### **20A Power of arbitrator to award interest**

- (1) Unless a contrary intention is expressed therein, every arbitration agreement shall, where such provision is applicable to the reference, be deemed to contain a provision that the arbitrator or umpire may, if he thinks fit, award simple interest at such rate as he thinks fit —
  - (a) on any sum which is the subject of the reference but which is paid before the award for such period ending not later than the date of the payment as he thinks fit; and
  - (b) on any sum which he awards, for such period ending not later than the date of the award as he thinks fit.
- (2) The power to award interest conferred on an arbitrator or umpire by subsection (1) above is without prejudice to any other power of an arbitrator or umpire to award interest.<sup>9</sup>

### **21 Interest on awards**

[P1995/42/3]

- (1) A sum directed to be paid by an award shall, unless the award otherwise directs, carry interest from the date of the award.
- (2) The rate of interest shall be —
  - (a) the rate specified in or prescribed under section 9 of the *Administration of Justice Act 1981* at the date of the award, or
  - (b) if the power under subsection (3) is exercised, the rate specified in the award.
- (3) Where the sum is expressed in a currency other than sterling, the award may specify such rate as the arbitrator or umpire thinks fit instead of the rate mentioned in subsection (2)(a).<sup>10</sup>

*Special cases, Remission and Setting aside of Awards, etc.*

## **22 Statement of case**

[P1950/27/21]

- (1) An arbitrator or umpire may, and shall if so directed by the Court, state —
  - (a) any question of law arising in the course of the reference; or
  - (b) an award or any part of an award,in the form of a special case for the decision of the Court.
- (2) A special case with respect to an interim award or with respect to a question of law arising in the course of a reference may be stated, or may be directed by the Court to be stated, notwithstanding that proceedings under the reference are still pending.
- (3) An appeal shall lie to the Staff of Government Division from a decision of the Court under this section, but no appeal shall lie from the decision of the Court on any case stated under subsection (1)(a) without the leave of the Staff of Government Division.<sup>11</sup>

## **23 Power to remit award**

[P1950/27/22]

- (1) In all cases of reference to arbitration, the Court may from time to time remit the matters referred, or any of them, to the reconsideration of the arbitrator or umpire.
- (2) Where an award is remitted, the arbitrator or umpire shall, unless the order otherwise directs, make his award within three months after the date of the order.

## **24 Removal of arbitrator and setting aside of award**

[P1950/27/23]

- (1) Where an arbitrator or umpire has misconducted himself or the proceedings, the Court may remove him.
- (2) Where an arbitrator or umpire has misconducted himself or the proceedings, or an arbitration or award has been improperly procured, the Court may set the award aside.
- (3) Where an application is made to set aside an award, the Court may order that any money made payable by the award shall be brought into court or otherwise secured pending the determination of the application.



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

[P1950/27/24]

- (1) Where an agreement between any parties provides that disputes which may arise in the future between them shall be referred to an arbitrator named or designated in the agreement, and after a dispute has arisen any party applies, on the ground that the arbitrator so named or designated is not or may not be impartial, for leave to revoke the authority of the arbitrator or for an injunction to restrain any other party or the arbitrator from proceeding with the arbitration, it shall not be a ground for refusing the application that the said party at the time when he made the agreement knew, or ought to have known, that the arbitrator, by reason of his relation towards any other party to the agreement or of his connection with the subject referred, might not be capable of impartiality.
- (2) Where an agreement between any parties provides that disputes which may arise in the future between them shall be referred to arbitration, and a dispute which so arises involves the question whether any such party has been guilty of fraud, the Court shall, so far as may be necessary to enable that question to be determined by the Court, have power to order that the agreement shall cease to have effect and power to give leave to revoke the authority of any arbitrator or umpire appointed by or by virtue of the agreement.
- (3) In any case where, by virtue of this section, the Court has power to order that an arbitration agreement shall cease to have effect or to give leave to revoke the authority of an arbitration or umpire, the Court may refuse to stay any action brought in breach of the agreement.

**26 Power of court where arbitrator is removed or authority of arbitrator is revoked**

[P1959/27/25]

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

- (b) order that the arbitration agreement shall cease to have effect with respect to the dispute referred.
- (3) A person appointed under this section by the Court as an arbitrator or umpire shall have the like power to act in the reference, and to make an award, as if he had been appointed in accordance with the terms of the arbitration agreement.
- (4) Where it is provided (whether by means of a provision in the arbitration agreement or otherwise) that an award under an arbitration agreement shall be a condition precedent to the bringing of an action with respect to any matter to which the agreement applies, the Court, if it orders (whether under this section or under any other enactment) that the agreement shall cease to have effect as regards any particular dispute, may further order that the provision making an award a condition precedent to the bringing of an action shall also cease to have effect as regards that dispute.

### *Enforcement of Award*

## **27 Enforcement of award**

[P1950/27/26]

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

### *Miscellaneous*

## **28 Power of court to extend time for commencing arbitration proceedings**

[P1950/27/27]

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

**28A Limitation of time for commencing arbitration proceedings**

[P1939/21/27]

- (1) The statutes of limitation shall apply to arbitrations as they apply to proceedings in the Court.
- (2) Notwithstanding any term in an arbitration agreement to the effect that no cause of action shall accrue in respect of any matter required by the agreement to be referred until an award is made under the agreement, a cause of action shall, for the purpose of the statutes of limitation (whether in their application to arbitrations or to other proceedings), be deemed to have accrued in respect of any such matter at the time when it would have accrued but for that term in the agreement.
- (3) For the purpose of this section and for the purpose of the statutes of limitation as applying to arbitrations, an arbitration shall be deemed to be commenced when one party to the arbitration agreement serves on the other party or parties a notice requiring him or them to appoint an arbitrator or to agree to the appointment of an arbitrator, or, where the arbitration agreement provides that the reference shall be to a person named or designated in the agreement, requiring him or them to submit the dispute to the person so named or designated.
- (4) Any such notice as is mentioned in subsection (3) may be served either —
  - (a) by delivering it to the person on whom it is to be served; or
  - (b) by leaving it at the usual or last known place of abode or business in the Island of that person; or
  - (c) by sending it by post by the recorded delivery service addressed to that person at his usual or last known place of abode;as well as in any other manner provided in the arbitration agreement; and where a notice is sent by post in accordance with paragraph (c), service shall, unless the contrary is proved, be deemed to have been effected at the time at which the letter would have been delivered in the ordinary course of post.
- (5) Where the Court orders that an award be set aside or orders, after the commencement of an arbitration, that the arbitration shall cease to have effect with respect to the dispute referred, the Court may further order that the period between the commencement of the arbitration and the date of the order of the Court shall be excluded in computing the time prescribed by the statutes of limitation for the commencement of proceedings (including arbitration) with respect to the dispute referred.
- (6) This section shall apply to an arbitration under any enactment as well as to an arbitration pursuant to an arbitration agreement, and subsections (3) and (4) shall have effect, in relation to an arbitration under an enactment, as if for the references to the arbitration agreement there were substituted references to such of the provisions of the

enactment or of any public document made thereunder as relate to the arbitration.

- (7) In this section the words “the statutes of limitation” includes any enactment limiting the time within which any particular proceeding may be commenced.<sup>12</sup>

## **29 Terms as to costs, etc**

[P1950/27/28]

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

## **30 Government to be bound**

[P1950/27/30]

- (1) This Part shall apply to any arbitration to which the Government is a party.
- (2) In this section “the Government” includes a Board of Tynwald and a Statutory Board.

## **31 Application of Part I to statutory arbitrations**

[P1950/27/31]

- (1) This Part, except the provisions thereof specified in subsection (2) below, shall apply to every arbitration under any other Act (whether passed before or after the appointed day) as if the arbitration were pursuant to an arbitration agreement and as if that other Act were an arbitration agreement, except in so far as this Act is inconsistent with that other Act or with any rules or procedure authorised or recognised thereby.
- (2) The provisions referred to in subsection (1) above are sections 2(1), 3, 5 6, 19(3), 25, 26 and 28.

# **PART II – ENFORCEMENT OF CERTAIN FOREIGN AWARDS**

## **32 Awards to which Part II applies**

[P1950/27/35]

- (1) Subject to section 37 of this Act, this Part applies to any award made after the 28th July 1924 –
- (a) in pursuance of an agreement for arbitration to which the Protocol applies; and
- (b) between persons of whom one is subject to the jurisdiction of some one of such Powers as Her Majesty may, by Order in Council, have declared to be parties to the Geneva Convention

and of whom the other is subject to the jurisdiction of some other of the Powers aforesaid; and

- (c) in one of such territories as Her Majesty may, by Order in Council, have declared to be territories to which the Geneva Convention applies,

and an award to which this Part applies is, in this Part, referred to as “a foreign award”.

- (2) In this section, “Order in Council” means an Order in Council which is in force and which —
  - (a) has been made under subsection (1)(b) or, as the case may be, subsection (1)(c) of section 35 of the Arbitration Act 1950 (an Act of Parliament); or
  - (b) has effect, by virtue of subsection (3) of that section, as if it had been so made.

### **33 Effect of foreign awards**

[P1950/27/36]

- (1) A foreign award shall, subject to the provisions of this Part, be enforceable in the Island either by action or in the same manner as the award of an arbitrator is enforceable by virtue of section 27 of this Act.
- (2) Any foreign award which would be enforceable under this Part shall be treated as binding for all purposes on the persons as between whom it was made, and may, accordingly, be relied on by any of those persons by way of defence, set off or otherwise in any legal proceedings in the Island, and any references in this Part to enforcing a foreign award shall be construed as including references to relying on an award.

### **34 Conditions for enforcement of foreign awards**

[P1950/27/37]

- (1) In order that a foreign award may be enforceable under this Part, it must have —
  - (a) been made in pursuance of an agreement for arbitration which was valid under the law by which it was governed;
  - (b) been made by the tribunal provided for in the agreement or constituted in the manner agreed upon by the parties;
  - (c) been made in conformity with the law governing the arbitration procedure;
  - (d) become final in the country in which it was made;
  - (e) been in respect of a matter which may lawfully be referred to arbitration under the law of the Island,

and the enforcement thereof must not be contrary to the public policy or the law of the Island.

- (2) Subject to the provisions of this subsection, a foreign award shall not be enforceable under this Part if the Court is satisfied that —
- (a) the award has been annulled in the country in which it was made; or
  - (b) the party against whom it is sought to enforce the award was not given notice of the arbitration proceedings in sufficient time to enable him to present his case, or was under some legal incapacity and was not properly represented; or
  - (c) the award does not deal with all the questions referred or contains decisions on matters beyond the scope of the agreement for arbitration;

but, if the award does not deal with all the questions referred, the Court may, if it thinks fit, either postpone the enforcement of the award or order its enforcement subject to the giving of such security by the person seeking to enforce it as the court may think fit.

- (3) If a party seeking to resist the enforcement of a foreign award proves that there is any ground other than the non-existence of the conditions specified in subsection (1)(a), (b) and (c) above, or the existence of the conditions specified in subsection (2)(b) and (c) above, entitling him to contest the validity of the award, the Court may, if it thinks fit, either refuse to enforce the award or adjourn the hearing until after the expiration of such period as appears to the Court to be reasonably sufficient to enable that party to take the necessary steps to have the award annulled by the competent tribunal.

### 35 Evidence

[P1950/27/38]

- (1) The party seeking to enforce a foreign award must produce —
- (a) the original award or a copy thereof duly authenticated in the manner required by the law of the country in which it was made;
  - (b) evidence proving that the award has become final; and
  - (c) such evidence as may be necessary to prove that the award is a foreign award and that the conditions mentioned in section 34(1)(a), (b) and (c) of this Act are satisfied.
- (2) In any case where any document required to be produced under subsection (1) above is in a foreign language, it shall be the duty of the party seeking to enforce the award to produce a translation certified as correct by a diplomatic or consular agent of the country to which that party belongs, or certified as correct in such other manner as may be sufficient according to the law of the Island.

- (3) Subject to the provisions of this section, rules of court may be made with respect to the evidence which must be furnished by a party seeking to enforce an award under this Part.

### **36 Meaning of “final award”**

[P1950/27/39]

For the purposes of this Part, an award shall not be deemed final if any proceedings for the purpose of contesting the validity of the award are pending in the country in which it was made.

## **PART III – ENFORCEMENT OF CONVENTION AWARDS**

### **37 Replacement of Part II in certain cases**

[P1975/3/2]

Sections 38 to 40 of, and paragraph 5 of Schedule 1 to, this Act shall have effect with respect to the enforcement of Convention awards; and, where a Convention award would, but for this section, be also a foreign award within the meaning of Part II of this Act, that Part shall not apply to it.

### **38 Effect of Convention awards**

[P1975/3/3]

- (1) A Convention award shall, subject to the following provisions of this Part, be enforceable either by action or in the same manner as the award of an arbitrator is enforceable by virtue of section 27 of this Act.
- (2) Any Convention award which would be enforceable under this Part shall be treated as binding for all purposes on the persons as between whom it was made, and may, accordingly, be relied on by any of those persons by way of defence, set off or otherwise in any legal proceedings in the Island; and any reference in this Part to enforcing a Convention award shall be construed as including references to relying on such an award.

### **39 Evidence**

[P1975/3/4]

The party seeking to enforce a Convention award must produce —

- (a) the duly authenticated original award or a duly certified copy of it;
- (b) the original arbitration agreement or a duly certified copy of it; and
- (c) where the award or agreement is in a foreign language, a translation of it certified by an official or sworn translator or by a diplomatic or consular agent.

## 40 Refusal of enforcement

[P1975/3/5]

- (1) Enforcement of a Convention award shall not be refused except in the cases mentioned in this section.
- (2) Enforcement of a Convention award may be refused if the person against whom it is invoked proves —
  - (a) that a party to the arbitration was (under the law applicable to him) under some incapacity; or
  - (b) that the arbitration agreement was not valid under the law to which the parties subjected it or, failing any indication thereon, under the law of the country where the award was made; or
  - (c) that he 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
  - (d) subject to subsection (4) below, that the award deals with a difference 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; or
  - (e) that the composition of the arbitral authority or the arbitral procedure was not in accordance with the agreement of the parties or, failing such agreement, with the law of the country where the arbitration took place; or
  - (f) that 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, it was made.
- (3) Enforcement of a Convention award may also be refused if the award is in respect of a matter which is not capable of settlement by arbitration, or if it would be contrary to public policy to enforce the award.
- (4) A Convention award which contains decisions on matters not submitted to arbitration may be enforced to the extent that it contains decisions on matters submitted to arbitration which can be separated from those on matters not so submitted.
- (5) Where an application for the setting aside or suspension of a Convention award has been made to such a competent authority as is mentioned in subsection (2)(f) above, the Court may, if it thinks fit, adjourn the proceedings and may, on the application of the party seeking to enforce the award, order the other party to give security.



## PART IV – SUPPLEMENTARY

### 41 Interpretation

[P1950/27/32; P1975/3/7]

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

“**the appointed day**” means the day on which this Act takes effect;

“**arbitration agreement**” means —

- (a) in section 5 and in the definition below of “Convention award”, an agreement in writing (including an agreement contained in an exchange of letters or telegrams) to submit to arbitration present or future differences capable of settlement by arbitration; and
- (b) elsewhere, a written agreement to submit present or future differences to arbitration, whether an arbitrator is mentioned therein or not;

“**Convention award**” means an award made in pursuance of an arbitration agreement in the territory of a State, other than the United Kingdom, which is a party to the New York Convention;

“**the Court**” means the High Court;

“**the Geneva Convention**” means the Convention on the Execution of Foreign Arbitral Awards signed at Geneva on behalf of His late Majesty, King George V, on the 26th September 1927;

“**the New York Convention**” means the Convention on the Recognition and Enforcement of Foreign Arbitral Awards adopted by the United Nations Conference on International Commercial Arbitration on the 10th June 1958;

“**the Protocol**” means the Protocol on Arbitration Clauses signed on behalf of His late Majesty, King George V, at a Meeting of the Assembly of the League of Nations held on the 24th September 1923.

(2) If Her Majesty by Order in Council declares that any State specified in the Order is a party to the New York Convention, the Order shall, while in force, be conclusive evidence that that State is a party to that Convention.

### 42 Transitional provisions and savings

The transitional provisions and savings in Schedule 1 to this Act shall have effect.

**43 [Repealed]**<sup>13</sup>**44 Short title and commencement**

- (1) This Act may be cited as the Arbitration Act 1976.
- (2) This Act shall come into operation when the Royal Assent thereto has been by the Governor announced to Tynwald and a certificate thereof has been signed by the Governor and the Speaker of the House of Keys, but shall not take effect until such day as the Governor may by order appoint.<sup>14</sup>

**SCHEDULE 1****TRANSITIONAL PROVISIONS AND SAVINGS**

Sections 37 and 42

1. Any proceedings under Part I of the *Arbitration (Foreign Awards) Act 1931* which are uncompleted on the appointed day may be carried on and completed under Part II of this Act as if they had been instituted thereunder.
2. Notwithstanding the repeal by this Act of the *Arbitration Act 1910*, the *Arbitration Clauses (Protocol) Act 1925* and the *Arbitration Act 1935*, those Acts shall continue to have effect to arbitrations commenced before the appointed day.
3. Any reference in any enactment or other document to any enactment repealed by this Act shall be construed as including a reference to the corresponding provision of this Act.
4. Nothing in Part II of this Act shall —
  - (a) prejudice any rights which any person would have had of enforcing in the Island any award, or of availing himself in the Island of any award, if neither that Part nor Part I of the said Act of 1931 had been enacted; or
  - (b) apply to any award made on an arbitration agreement governed by the law of the Island.
5. Nothing in Part III of this Act shall prejudice any right to enforce or rely on an award otherwise than under that Part or under Part II of this Act.
6. Nothing in this Schedule shall prejudice the provisions of section 10 of the *Interpretation Act 1970* (which relates to repeals).

**SCHEDULE 2<sup>15</sup>**



## ENDNOTES

### Table of Endnote References

---

- <sup>1</sup> Para (a) substituted by Statute Law Revision Act 1983 Sch 1 deemed operative 1/1/1983.
- <sup>2</sup> Subs (4) added by Statute Law Revision Act 1983 Sch 1 deemed operative 1/1/1983.
- <sup>3</sup> Subs (3) added by High Court Act 1991 Sch 3.
- <sup>4</sup> Subs (4) added by High Court Act 1991 Sch 3.
- <sup>5</sup> Subs (3) substituted by Administration of Justice Act 2008 s 30(2).
- <sup>6</sup> S 12A inserted by High Court Act 1991 Sch 3.
- <sup>7</sup> Subs (5) substituted by Custody Act 1995 Sch 4.
- <sup>8</sup> S 14A inserted by High Court Act 1991 Sch 3.
- <sup>9</sup> S 20A inserted by High Court Act 1991 Sch 3.
- <sup>10</sup> S 21 substituted by Law Reform Act 1997 s 29 with saving.
- <sup>11</sup> Subs (3) substituted by High Court Act 1991 Sch 3.
- <sup>12</sup> S 28A inserted by Limitation (Miscellaneous Provisions) Act 1981 s 3.
- <sup>13</sup> S 43 repealed by Statute Law Revision Act 1983 Sch 2.
- <sup>14</sup> ADO (s 2) 21/1/1977 (GC17/77); (remaining provisions) 1/7/1977 (GC142/77).
- <sup>15</sup> Sch 2 repealed by Statute Law Revision Act 1983 Sch 2.