

CHAPTER 2

ARBITRATION

ARRANGEMENT OF SECTIONS

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CHAPTER 2

ARBITRATION

AN ACT TO PROVIDE A PROCEDURE FOR LOCAL ARBITRATION AND JUDICIAL REVIEW OF ARBITRATION AWARDS 23 of 1987

[1st December 1987]

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

Short Title

2. In this Act-

Interpretation

"Court" means the High Court;

"Registrar" means the Registrar of the High Court; and

"submission" means a written agreement to submit present or future differences to arbitration, whether an arbitrator is named therein or not.

3. A submission, unless a contrary intention is expressed therein, shall be irrevocable, except by leave of the Court and shall have the same effect in all respects as if it has been made an order of the Court.

Effect of a submission

4. A submission, unless a contrary intention is expressed therein, shall be deemed to include the provisions set forth in the First Schedule as far as they are applicable to the reference under the submission.

Provisions as to a submission
First Schedule

Stay of proceedings

5. If any party to a submission, or any person claiming through or under him, commences any legal proceedings in the Court against any other party to the submission, or any person claiming through or under him, in respect of any matter agreed to be referred, any party to such legal proceedings may at any time after appearance, and before delivering any pleadings or before taking any other steps in the proceedings, apply to the Court to stay the proceedings, and the Court, is satisfied that there is no sufficient reason why the matter should not be referred in accordance with the submission, 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.

6.-(1) In any of the following cases-

Notice to appoint
arbitrator or umpire

(a) where a submission 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 submission does not show that it was intended that the vacancy should not be filled and the parties do not fill the vacancy;

(c) where the parties or two arbitrators are at liberty to appoint an umpire or third arbitrator 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 submission does not show that it was intended that the vacancy should not be filled, and the parties or arbitrators do not fill the vacancy,

any party may serve the other parties or the arbitrators, as the case may be, with a written notice to appoint an arbitrator, umpire, or third arbitrator.

(2) 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.

7. Where a submission provides that the reference shall be to two arbitrators, one to be appointed by each party then, unless the submission expresses a contrary intention-

Refusal, incapacity or
death of arbitrator.
Failure to appoint
arbitrator

(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:

Provided that the Court may set aside any appointment made in pursuance of this section.

8. The arbitrators or umpire acting under a submission shall, unless the submission expresses a contrary intention, have power-

Powers of arbitrators or umpire

(a) to administer oaths to or take the affirmations of the parties and witnesses appearing;

(b) to state an award as to the whole or part thereof in the form of special case for the opinion of the Court; and

(c) to correct in an award any clerical mistake or error arising from any accidental slip or omission.

9.-(1) Where the arbitrators or umpire have made their award, they shall sign it, and shall give notice to the parties of the making and signing thereof, and of the amount of fees and charges payable to the arbitrators or umpire in respect of the arbitration and award.

Award to be signed and filed

(2) The arbitrators or umpire shall, at the request of any party to the submission or any party claiming under him, and upon payment of the fees and charges due in respect of the arbitration and award, cause the award, or a signed copy thereof, to be filed in the Court and notice of the filing shall be given by the arbitrators or umpire to the parties.

10. Any party to a submission may sue out a writ of *subpoena ad testificandum* or a writ of *subpoena duces tecum*, but no person shall be compelled under any such writ to produce any document which he could not be compelled to produce on the trial of an action.

Subpoena

11. The time of making an award may from time to time be enlarged by order of the Court whether the time for making the award has expired or not.

Enlargement of time for making award

12.-(1) In all cases of references to arbitration the Court may from time to time remit the matters referred, or any of them, to the reconsideration of the arbitrators or umpire.

Remission of matters by the Court for reconsideration of arbitrators or umpire

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

13.-(1) Where an arbitrator or umpire has misconducted himself, the Court may remove him.

Misconduct of arbitrator or umpire

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

14. An award on a submission may, by leave of the Court be enforced in the same manner as a judgment or order to the same effect.

Enforcement of awards

15.-(1) Subject to rules of Court and to any right to have particular cases tried before assessors, the Court may refer any question arising in any cause or matter (other than a criminal proceeding by the Crown) for enquiry or report to the Registrar or a Special Referee.

References by order of the Court

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

16. In any cause or matter (other than a criminal proceeding by the Director of Public Prosecutions)-

References by consent of parties in any cause or matter to Registrar or Special Referee

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

(b) if the cause or matter requires any prolonged examination of documents or any scientific or local investigation which cannot in the opinion of the Court conveniently be made before assessors; or

(c) if the question in dispute consists wholly or in part of matters of account,

the Court may at any time order the whole cause or matter, or any question or issue of fact arising therein, to be tried before an arbitrator agreed on by the parties, or before the Registrar or a Special Referee.

17.-(1) In all cases of reference to the Registrar or a Special Referee or arbitrator under an order of the Court in any cause or matter, the Registrar or Special Referee or arbitrator shall be deemed to be an officer of the Court, and shall have such authority, and shall conduct the reference in such manner, as may be prescribed by rules of court, and subject thereto as the Court may direct.

Registrar or Special Referee to be officer of the Court

(2) The report or award of the Registrar or a Special Referee or arbitrator, on any such reference shall, unless set aside by the Court, be equivalent to the verdict of the Court.

(3) The remuneration to be paid to any Special Referee or arbitrator to whom any matter is referred under order of the Court shall be determined by the Court.

18. The Court shall, as to references under order of the Court, have all the powers which are by this Act conferred on the Court as to references by consent out of Court.

Power of Court as to references by order

19. The Court of Appeal shall have all the powers conferred by this Act on the Court thereof under the provisions relating to references under order of the Court.

Court of Appeal

20.-(1) The Court may order that a writ of *subpoena ad testificandum* or of *subpoena duces tecum* shall issue to compel the attendance before the Registrar or a Special Referee, or before any arbitrator or umpire, of a witness whenever he may be within Solomon Islands.

Court may order writ of subpoena

(2) The Court may also order that a writ of *habeas corpus and testificandum* shall issue to bring up a prisoner for examination before the Registrar or Special Referee or before any arbitrator or umpire.

21. The Registrar or any Special Referee, arbitrator, or umpire may at any stage of the proceedings under a reference, and shall, if so directed by the Court state in the form of a special case for the opinion of the Court any question of law arising in the course of the reference.

Stating case for opinion of the Court

Appeals

22.-(1) Subject to subsection (2), an appeal shall lie to the Court on any question of law arising out of an award made on an arbitration agreement; and on the determination of such an appeal the High Court may by order-

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

(b) remit the award to the reconsideration of the Registrar, Special Referee, arbitrator or umpire, as the case may be, together with the Court's opinion on the question of law which was the subject of appeal,

and where the award is remitted under paragraph (b) the Registrar, Special Referee, arbitrator or umpire, as the case may be, shall unless the order otherwise directs, make his award within three months after the date of the order.

(2) An appeal under this section may be brought by any of the parties to the submission or reference-

(a) with the consent of all the other parties to the submission or reference; or

(b) with the leave of Court.

(3) The Court shall not grant leave under subsection 2(b) 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 to the arbitration agreement; and the Court may make any leave it gives conditional upon the applicant complying with such conditions as it considers appropriate.

Bankruptcy

23.-(1) Where it is provided by a term in contract to which a bankrupt is a party that any differences arising therefrom or in connection therewith shall be referred to arbitration, that term shall, if the trustee in bankruptcy adopts the contract, be enforceable by or against him so far as it 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 a submission, and any matter to which the submission applies requires to be determined in connection with or for the purposes of the bankruptcy proceedings, then, if the case is one to which the provisions of subsection (1) do not apply, any other party may apply to the Court for an order directing that the matter in question be referred to arbitration in accordance with the submission and the Court may, if it is of opinion that, having regard to all the circumstances of the case, the matter ought to be determined by arbitration, make an order accordingly.

24. The forms set forth in the Second Schedule or forms similar thereto, with such

Forms
Second Schedule

variations as the circumstances for each case require, may be used for the respective purposes therein mentioned, and, if used, shall not be called in question.

25.-(1) Any order made under this Act shall sufficiently set out the reasons for the award to enable the Court, in the event of an appeal under section 22, to consider any question of law arising out of the award.

Terms of order

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

26. Any person who wilfully and corruptly gives false evidence before the Registrar, or any Special Referee, arbitrator or umpire shall be guilty of perjury, as if the evidence had been given in open Court, and may be dealt with, prosecuted, and punished accordingly.

Perjury

27. The Chief Justice may make rules of Court consistent with the provisions of this Act, as to-

Rules

(a) the filing of awards and all proceedings consequent thereon or incidental thereto;

(b) the filing and hearing of special cases and all proceedings consequent thereon or incidental thereto;

(c) the staying of any suit or proceeding in contravention of a submission to arbitration; and

(d) generally, all proceedings in Court under the provisions of this Act.

28. This Act shall, except as in this Act expressly mentioned, apply to any arbitration to which the Attorney-General, either in right of the Crown or otherwise, or the Attorney-General on behalf of the Crown or the Government of Solomon Islands is a party, but nothing in this Act shall empower the Court to order any proceedings to which the Attorney-General on behalf of the Crown or the Government of Solomon Islands is a party, or any question or issue in any such proceedings, to be tried before the Registrar or any Special Referee, arbitrator, or officer without the consent of the Attorney-General or shall affect the law as to costs payable by the Government.

Cases to which the Crown or Government is party

29. This Act shall apply to every arbitration under any laws passed before or after the commencement of this Act, as if the arbitration were pursuant to a submission, except in so far as this Act is inconsistent with the law regulating the arbitration, or with any rules or procedure authorised or recognised by that law.

Application of Act

30. Notwithstanding anything in this Act, if any party to a submission made in pursuance of an agreement to which the Protocol set forth in the Third Schedule, applies or any person claiming through or under him, commences any legal proceedings in any court against any other party to the submission, or any person claiming through or under him, in respect of any matter agreed to be referred, any party to such legal proceedings may at any time after appearance, and before delivering any pleadings or taking other steps in the proceedings, apply to that court to stay the proceedings, and that court or a Judge thereof, unless satisfied that the agreement or arbitration has become inoperative or cannot proceed, 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.

Staying of court proceedings in respect of matters to be referred to arbitration under commercial agreements Third Schedule

31. The Arbitration Act 1950 of the United Kingdom (which was of general application) is hereby repealed in so far as such Act formed part of the law of Solomon Islands.

Repeals

FIRST SCHEDULE

(Section 4)

1. If no other mode of reference is provided, the reference shall be to a single arbitrator.
2. If the reference is to two arbitrators, the two arbitrators may appoint an umpire at any time within the period during which they have power to make an award.
3. The arbitrators shall make their award in writing within three months after entering on the reference, or after having been called on to act by notice in writing from any party to the submission, or on or before any later day to which the arbitrators, by any writing signed by them, may from time to time enlarge the time for making the award.
4. If the arbitrators have allowed their time or extended time to expire without making an award, or have delivered to any party to the submission, or to the umpire a notice in writing stating that they cannot agree, the umpire may forthwith enter on the reference in lieu of the arbitrators.
5. The umpire shall make his award within one month after the original or extended time appointed for making the award of the arbitrators has expired, or on or before any later day to which the umpire, by any writing signed by him, may, from time to time enlarge the time of making this award.

6. The parties to the reference, and all persons claiming through them respectively, shall, subject to any legal objection, submit to be examined by the arbitrators or umpire, on oath or affirmation, in relation to the matters in dispute, and shall, subject as aforesaid, produce before the arbitrators or umpire all books, deeds, papers, accounts, writings and 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 arbitrators or umpire may require.

7. The witnesses on the reference shall, if the arbitrators or umpire think fit, be examined on oath or affirmation.

8. The award to be made by the arbitrators or umpire shall be final and binding on the parties and the persons claiming under them respectively.

9. The costs of the reference and award shall be in the discretion of the arbitrators or umpire, who may direct to and by whom and in what manner those costs or any part thereof shall be paid, and may tax or settle the amount of costs to be so paid or any part thereof, and may award costs to be paid as between solicitor and client.

SECOND SCHEDULE
(Section 24)

FORM 1

SUBMISSION TO SINGLE ARBITRATOR

In the matter of the Arbitration Act-

Whereas differences have arisen a.....nd are still subsisting between A.B.
ofand C.D. of
concerning

Now we, the said A.B. and C.D., do hereby agree to refer the said matters in difference to the award of X.Y.

(Signed) A.B.
C.D.

Dated the., 19. . . .

FORM II

APPOINTMENT OF SINGLE ARBITRATION UNDER AGREEMENT TO REFER FUTURE
DIFFERENCES TO ARBITRATION

In the matter of the Arbitration Act-

Whereas, by an agreement in writing, dated the
day of, 19, and made between A.B. of and C.D. of it is provided that
differences
arising between the parties thereto shall be referred to an arbitrator as therein mentioned.

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

Now we, the said parties, A.B. and C.D., do hereby refer the said matters in difference to the award
of X.Y.

(Signed) A.B.
C.D.

FORM III

EXTENSION OF TIME BY ARBITRATOR BY ENDORSEMENT ON SUBMISSION

In the matter of the Arbitration Act, and an arbitration between A.B.
of and C.D. of

I hereby extend the time of making my award in respect of the matters
in difference referred to me by the within (or above) submission until
the day of, 19

(Signed) X.Y.
Arbitrator

Dated the, 19

FORM IV

CASE STATED FOR OPINION OF COURT

In the matter of the Arbitration Act, and an arbitration between A.B.
of and C.D. of

The following special case is, pursuant to the provisions of paragraph (b) of section 8 of the said Act,
stated for the opinion of the

[Here state the facts concisely in numbered paragraphs.] The questions of law for the opinion of the
said court are-

First, whether

Secondly, whether

(Signed) X.Y.,
Arbitrator

Dated the, 19.....

FORM V

AWARD

In the matter of the Arbitration Act, and an arbitration between A.B.
of and C.D. of

Whereas, in pursuance of an agreement in writing dated the ...
day of 19, made between A.B. of
and C.D. of the said A.B. and C.D. have referred
to
me, X.Y., the matters in between them concerning (or as the case may be).

Now I, the said X.Y., having duly considered the matters submitted to me, do hereby make an award
as follows-

I award-

(1) That

(2) That

(Signed) X.Y.,
Arbitrator

Dated the, 19

THIRD SCHEDULE (Section 30)

Protocol on Arbitration clauses signed on behalf of His Majesty at a meeting of the Assembly of the League of Nations held on the 24th September 1923-

1. Each of the Contracting States recognizes 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 ratification 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 two ratifications have been deposited. Thereafter it will take effect, in the case of each Contracting State, one 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 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 undermentioned 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.

(No Subsidiary Legislation)