

To be construed with Ord 4 of 1931

CHAPTER 24.

ARBITRATION.

[No. XVII of 1916.]

[2nd September, 1916.]

1. This Ordinance may be cited as the Arbitration Ordinance. Short title.

2. In this Ordinance unless the contrary intention appears,— Interpretation.

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

“the Court” means the Supreme Court of British Guiana;

“judge” means a judge of the Court.

“rules of court” means rules and orders made under the Supreme Court of Judicature Ordinance. Chapter 10.

References by consent out of court.

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

4. A submission, unless a contrary intention is expressed therein, shall be deemed to include the provisions set forth in the first schedule to this Ordinance so far as they are applicable to the reference under the submission. Provisions implied in submissions; 1st schedule.

5. If any party to a submission, or any person claiming through or under him, commences any legal proceedings in any court against another party to the submission, or any person claiming through or under him, in respect of any matter agreed to be referred, any party to those legal proceedings may, at any time after appearance and before delivering any pleadings or taking any other steps in the proceedings, apply to that court to stay the proceedings, and that court or a judge thereof, if satisfied that there is Power to stay proceedings where there is a submission.

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.

Power for the Court in certain cases to appoint an arbitrator, umpire, or third arbitrator.

6.—(1) In any of the following cases,—

- (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 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;
- (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 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 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 or a judge 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.

Power for parties in certain cases to supply vacancy :

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,—

- (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 the 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 or a judge may set aside any appointment made in pursuance of this section. Proviso.

8. The arbitrators or umpire acting under a submission shall, unless the submission expresses a contrary intention, have power— Powers of arbitrator.

- (a) to administer oaths to or take the affirmations of the parties and witnesses appearing; and
- (b) to state an award as to the whole or part thereof in the form of a 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. 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 the writ to produce any document which he could not be compelled to produce on the trial of an action. Writ of subpoena.

10. The time for making an award may from time to time be enlarged by order of the Court or a judge, whether the time for making the award has expired or not. Enlargement of time for making award.

11. In all cases of reference to arbitration the Court or a judge may from time to time remit the matters referred, or any of them, to the reconsideration of the arbitrators or umpire, and 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. Power to remit award.

12. Where an arbitrator or umpire has misconducted himself, the Court may remove him, and where an Power to set aside award.

arbitrator or umpire has misconducted himself, or an arbitration or award has been improperly procured, the Court may set the award aside.

Enforcing
award.

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

References under order of court.

Reference
for report.

14.—(1) Subject to rules of court the court or a judge may refer to any special referee any question arising in any cause or matter (other than a criminal proceeding by the Crown) for inquiry or report.

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

Power to
refer in
certain cases.

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

- (a) if all the parties interested who are not under disability consent; or
- (b) if the cause or matter requires any prolonged examination of documents or any scientific or local investigation which cannot in the opinion of the Court be conducted by the Court through its other ordinary officers; or
- (c) if the question in dispute consists wholly or in part of matters of account,

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

Powers and
remuner-
ation of
referees and
arbitrators.

16.—(1) In all cases of reference to any special referee or arbitrator under an order of the Court or a judge in any cause or matter, the special referee or arbitrator shall be deemed to be an officer of the Court, and shall have the authority, and conduct the reference in the manner prescribed by rules of court, and subject thereto as the Court or a judge directs.

(2) The report or award of any special referee or arbitrator on the reference shall, unless set aside by the Court or a judge, be equivalent to the judgement 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 or a judge shall be determined by the Court or a judge.

17. The Court or a judge shall, as to references under order of the Court or a judge, have all the powers which are by this Ordinance conferred on the Court or a judge as to references by consent out of court.

Court to have powers as in references by consent.

18. The Full Court shall have all the powers conferred by this Ordinance on the Court or a judge thereof under the provisions relating to references under order of the Court.

Full Court to have powers of Court.

General.

19. The Court or a judge may order that a writ of subpoena ad testificandum or of a subpoena duces tecum shall issue to compel the attendance, before any special referee, or before any arbitrator or umpire, of a witness wherever he may be within the colony, and may also order that a writ of habeas corpus ad testificandum shall issue to bring up a prisoner for examination before any special referee, or before any arbitrator or umpire.

Power to compel attendance of witness in any part of the colony and to order habeas corpus to issue.

20. Any referee, arbitrator, or umpire, may at any stage of the proceedings under a reference, and shall, if so directed by the Court or a judge, 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.

Statement of case pending arbitration.

21. Any order made under this Ordinance may be made on those terms as to costs, or otherwise, which the authority making the order thinks just.

Costs.

22. Anyone who wilfully and corruptly gives false evidence before any 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.

Penalty for perjury.

Crown to be bound.

23. This Ordinance shall, except as in this Ordinance expressly mentioned, apply to any arbitration to which the Crown is a party, but nothing in this Ordinance shall empower the Court or a judge to order any proceedings to which the Crown is a party, or any question or issue in those proceedings, to be tried before any referee, arbitrator, or officer, without the consent of the Governor, or affect the law as to costs payable by the Crown.

Definition of the "protocol"; 2nd schedule.

Amended by Ord 4 of 1931

Staying proceedings as to matters to be referred under agreements to which the protocol applies.

24.—(1) In this section—

“the protocol” means the protocol on arbitration clauses set forth in the second schedule hereto and signed on behalf of His Majesty on the twenty-fourth day of September, nineteen hundred and twenty-three.

(2) Notwithstanding anything in this Ordinance contained, if any party to a submission made in pursuance of an agreement to which the protocol applies, or anyone claiming through or under him, commences any legal proceedings in any court against any other party to the submission or anyone 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 pleading or taking other steps in the proceedings, apply to that court to stay the proceedings and the court or a judge thereof, unless satisfied that the agreement or arbitration has become inoperative or cannot proceed, shall make an order staying the proceedings.

FIRST SCHEDULE.

(Section 4.)

PROVISIONS TO BE IMPLIED IN SUBMISSIONS.

(a) If no other mode of reference is provided, the reference shall be to a single arbitrator.

(b) 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.

(c) 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, from time to time enlarge the time for making the award.

(d) 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.

(e) 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 from time to time enlarges the time for making his award.

(f) The parties to the reference, and all parties 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 require.

(g) The witnesses on the reference, should the arbitrators or umpire think fit, shall be examined on oath or affirmation.

(h) 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.

(i) 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 so to be paid or any part thereof, and may award costs to be paid as between solicitor and client.

SECOND SCHEDULE.

(Section 24.)

PROTOCOL ON ARBITRATION CLAUSES.

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 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 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 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.