

ARBITRATION ACT

Principal Act

Act. No. 1895-10	<i>Commencement</i>	26.9.1895
	<i>Assent</i>	26.9.1895

With which are consolidated	Relevant current provisions
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Acts. 1932-03 1974-17	ss. 41-46 and Sch. 4 ss. 47-53
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Amending enactments	Relevant current provisions	Commencement Date
Acts. 1923-04	–	
1926-02	Sch. 3	
1934-31	ss. 2, 4-6, 9, 10(1), 12-15, 20-24, 32, 33, 35, 38, Sch. 1 and Sch. 2	
1949-25	–	
1983-12	–	

English sources

Arbitration Act 1889 (52 & 53 Vict. c.49)
 Arbitration Clauses (Protocol) Act 1924 (14 & 15 Geo. 5 c.39)
 Arbitration (Foreign Awards) Act 1930 (20 Geo. 5 c.15)
 Arbitration Act 1934 (24 & 25 Geo. 5 c.14)
 Arbitration Act 1975 (1975 c.3)

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This version is out of date

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Short Title.

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

PART I. GENERAL LAW.

Interpretation.

2. (1) In this Part, unless the context otherwise requires,— (1934 c.14, s.21)

“arbitration agreement” 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.

- (2) References in this Part to an award shall include references to an interim award.

References by consent out of Court.

Arbitration agreement irrevocable having effect as order of Court.

3. An arbitration agreement, 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 had been made an order of court. (1889 c.49, s.1)

Arbitration agreement not to be discharged by death of party thereto.

4. (1) An arbitration agreement shall not be discharged by the death of any party thereto, either as respects the deceased or any other party, but shall in such an event be enforceable by or against the personal representative of the deceased. (1934 c.14, s.1)

- (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.

Provisions in case of bankruptcy.

(1934 c.14,s.2) 5. (1) Where it is provided by a term in a contract to which a bankrupt is a party that any differences arising thereout or in connection therewith shall be referred to arbitration, the term shall, if the trustee in bankruptcy adopts the contract, be enforceable by or against him so far as relates to any such differences.

(2) Where a person who has been adjudged bankrupt had before the commencement of the bankruptcy become a party to an arbitration agreement and any matter to which the agreement applies requires to be determined in connection with or for the purposes of the bankruptcy proceedings, then, if the case is one to which subsection (1) does not apply, any other party to the agreement or 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 that court may, if it is of opinion that, having regard to all circumstances of the case, the matter ought to be determined by arbitration, make an order accordingly.

Provisions implied in arbitration agreements.

(1889 c.49, s.2) 6. An arbitration agreement, unless a contrary intention is expressed therein, shall be deemed to include the provisions set out in Schedule 1, so far as they are applicable to the reference under the arbitration agreement.

Reference to official referee.

(1889 c.49,s.3) 7. Where an arbitration agreement provides that a reference shall be to an official referee, any official referee to whom application is made shall, subject to any order of court as to transfer or otherwise, hear and determine the matters agreed to be referred.

Power to stay proceedings where there is an arbitration agreement.

(1889 c.49,s.4) 8. If any party to an arbitration agreement, or any person claiming through or under him, commences any legal proceedings in any court against any other party to the arbitration agreement, 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 any other steps in the proceedings, apply to that court to stay the proceedings, and that court, if satisfied that there is no sufficient reason why the matter should not be referred in accordance with the arbitration 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.

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

9. (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 arbitration agreement 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 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. *(1934 c.14, s.14)*

(2) Where an agreement between any parties provides that disputes which may arise in the future between them shall be referred 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 any arbitration agreement made thereunder.

(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 an arbitration agreement, the court may refuse to stay any action brought in breach of the agreement.

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

10. (1) In any of the following cases— *(1889 c.49, s.5)*
(1934 c.14, s.5)

- (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; or
- (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; or
- (c) where the parties or two arbitrators are at liberty to appoint an umpire or third arbitrator, or where two arbitrators are required to appoint an umpire, and do not appoint him; or

- (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 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.

Provisions on the appointment of two arbitrators.

(1889 c.49, s.6) 11. Where an arbitration agreement provides that a reference shall be to two arbitrators, one to be appointed by each party, then, unless the arbitration agreement 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; or
- (b) if, on such a reference, one party fails to appoint an arbitrator, either originally or by way of substitution, 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.

Provisions on the appointment of three arbitrators.

(1934 c.14, s.4) 12. (1) Where an arbitration agreement provides that the reference shall be to three arbitrators, one to be appointed by each party and the third to be appointed by the two appointed by the parties, the agreement shall have effect as if it provided for the appointment of an umpire, and not for the appointment of a third arbitrator, by the two arbitrators appointed by the parties.

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

Arbitrators and umpires to use due dispatch.

13. (1) The court may, on the application of any party to a reference, remove an arbitrator or umpire who fails to use all reasonable dispatch in entering on and proceeding with the reference and making an award. *(1934 c.14, s.6)*

(2) An arbitrator or umpire who is removed by the court under this section shall not be entitled to receive any remuneration in respect of his services.

(3) Subject to the provisions of section 19(2) and to anything to the contrary in the arbitration agreement, an arbitrator or umpire shall have power to make an award at any time.

(4) For the purposes of this section, “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.

Where arbitrator is removed or appointment of arbitrator is revoked.

14. (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. *(1934 c.14,s.3)*

(2) Where the appointment 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.

When umpire is the sole arbitrator.

(1934 c.14, s.5) 15. 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 on the reference in lieu of the arbitrators and as if he were a sole arbitrator.

Powers of arbitrator.

(1889 c.49, s.7; 1934 c.14, Sch.III) 16. The arbitrators or umpire acting under an arbitration agreement shall, unless the arbitration agreement expresses a contrary intention, have power—

- (a) to administer oaths to or take the affirmations of the parties and witnesses appearing; and
- (b) to correct in an award any clerical mistake or error arising from any accidental slip or omission.

Witnesses may be summoned by subpoena.

(1889 c.49, s.8) 17. Any party to an arbitration agreement 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.

Enlargement of time for making award.

((1889 c.49, s.9) 18. The time for 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.

Power to remit award.

(1934 c.14, s.10) 19. (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 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.

Power to set aside award.

20. (1) Where an arbitrator or umpire has misconducted himself or the proceedings, the court may remove him. *(1889 c.49, s.11; 1934 c.14, s.15)*

(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.

Enforcing award.

21. 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 in such case judgment may be entered in terms of the award. *(1889 c.49, s.12; 1934 c.14, s.10)*

Interest on awards.

22. A sum directed to be paid by an award shall, unless the award otherwise directs, carry interest as from the date of the award and at the same rate as a judgment debt. *(1934 c.14, s.11)*

Provisions as to costs.

23. (1) 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: *(1934 c.14, s.12)*

Provided that nothing herein shall invalidate such a provision when it is part of an agreement to submit to arbitration a dispute which has arisen before the making of such agreement.

(2) 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 a court may direct apply to the arbitrator for an order directing by and to whom such 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.

Limitation of time for commencing arbitration proceedings.

(1934 c.14, s.16) 24. (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 both as originally enacted and as applying to arbitrations, 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 purposes 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, 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 in Gibraltar of that person; or
- (c) by sending it by post in a registered letter addressed to that person at his usual or last known place of abode in Gibraltar,

as well as in any other manner provided in the arbitration agreement. Where a notice is sent by post in manner prescribed by paragraph (c), service thereof 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 terms of an agreement to refer future disputes to arbitration provide that any claims to which the agreement applies shall be barred unless notice to appoint an arbitrator is given or an arbitrator is appointed or some other step to commence arbitration proceedings is taken within a time fixed by the agreement, and a dispute arises to which the agreement applies, the court, if it is of opinion that in the circumstances of the case undue hardship would otherwise be caused, and notwithstanding that the time so fixed has expired, may, on such terms (if any) as the justice of the case may require, but without prejudice to the foregoing provisions of this section, extend the time for such period as it thinks proper.

(6) Where the court orders that an award be set aside or orders, after the commencement of an arbitration, that the arbitration agreement 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.

(7) For the purposes of this section, “the statutes of limitation” include any enactment limiting the time within which any particular proceeding may be commenced.

25. *Repealed.*

References under Order of Court.

Reference for report.

26. (1) Subject to rules of court and to any right to have particular cases tried by a jury, the court may refer any question arising in any cause or matter (other than a criminal proceeding by the Crown) for inquiry or report to any official or special referee. (1889 c.49, s.13)

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

Power to refer in certain cases.

27. In any cause or matter (other than a criminal proceeding by the Crown)– (1889 c.49, s.14)

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

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

Powers and remuneration of referees and arbitrators.

(1889 c.49, s.15) 28. (1) In all cases of reference to an official or special referee or arbitrator under an order of the court in any cause or matter, the official 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.

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

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

Court to have powers as in references by consent.

(1889 c.49, s.14) 29. 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.

General.

Fees and appointment of official referee.

30. The Governor may from time to time appoint some fit and proper person to be the official referee, and may by notice in the Gazette prescribe a scale of fees to be taken by such official referee.

Power to compel attendance of witness and to order habeas corpus to issue.

((1889 c.49, s.18) 31. (1) The court may order that a writ of subpoena ad testificandum or of subpoena duces tecum shall issue to compel the attendance before an official or special referee, or before any arbitrator or umpire, of a witness who is in Gibraltar.

(2) The court may also order that a writ of habeas corpus ad testificandum shall issue to bring up a prisoner for examination before an official or special referee or before any arbitrator or umpire.

Additional powers of court.

(1934 c.14, s.8) 32. (1) The court shall have, for the purpose of and in relation to a reference, the same power of making orders in respect of any of the matters set out in Schedule 2 as it has for the purpose of and in relation to an action or matter in the court:

Provided that nothing in the foregoing provision shall be taken to prejudice any power which may be vested in an arbitrator or umpire of making orders with respect to any such matters.

(2) 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.

(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.

Statement of case by arbitrator or umpire.

33. (1) An arbitrator or umpire may, and shall if so directed by the court, *(1934 c.14,s.9)* 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) *Omitted.*

Costs.

34. Any order made under this Part may be made on such terms as to costs, *(1889 c.49, s.20)* or otherwise, as the court thinks just.

Taxation of arbitrator's or umpire's fees.

35. (1) If in any case an arbitrator or umpire refuses to deliver his award *(1934 c.14, s.13)* except on payment of the fees demanded by him, the court may, on an application for the purpose, order that the arbitrator or umpire shall deliver the award to the applicant on payment into court by the applicant of the fees demanded, and further that the fees demanded shall be taxed by the taxing officer and that out of the money paid into court there shall be paid out to the arbitrator or umpire by way of fees such sum as may be found

reasonable on taxation and that the balance of the money (if any) shall be paid out to the applicant.

(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.

Exercise of powers by Registrar and other officers.

(1889 c.49, s.21) 36. Provision may from time to time be made by rules of court for conferring on the Registrar, or other officer of the Supreme Court, all or any of the jurisdiction conferred by this Part on the court.

Crown to be bound.

(1889 c.49, s.23) 37. This Part shall, except as in this Part expressly mentioned, apply to any arbitration to which Her Majesty in right of the Crown is a party, but nothing in this Part shall empower the court to order any proceedings to which Her Majesty is a party, or any question or issue in any such proceedings, to be tried before any referee, arbitrator or officer without the consent of Her Majesty, or shall affect the law as to costs payable by the Crown.

Application of Act to references under statutory powers.

(1934 c.14, s.20) 38. This Part, except sections 4(1), 5, 9, 14, 23(1), 24 and 32(2) thereof, shall apply in relation to every arbitration under any other enactment passed before or after the coming into operation of this Act as if the arbitration were pursuant to an arbitration agreement and as if that other enactment were an arbitration agreement, except in so far as this Part is inconsistent with the other enactment regulating the arbitration or with any rules or procedure authorised or recognised by that other enactment.

39. *Omitted.*

PART II.
ARBITRATION PROTOCOL.

40. *Repealed.*

PART III.

AWARDS UNDER THE GENEVA CONVENTION.

Application of Part III.

41. The provisions of this Part apply to any award made—

(1930 c.15, s.1)

- (a) in pursuance of an agreement for arbitration to which the Protocol signed on behalf of His Majesty at a meeting of the Assembly of the League of Nations on the 24th day of September, 1923, which Protocol is set out in Schedule 3, applies; and
 - (b) between persons of whom one is subject to the jurisdiction of some one of such Powers as Her Majesty, being satisfied that reciprocal provisions have been made, may by Order in Council declare to be parties to the Convention on the Execution of Foreign Arbitral Awards signed at Geneva on behalf of His Majesty on the 26th day of September, 1927, which Convention is set out in Schedule 4, and of whom the other is subject to the jurisdiction of some other of those Powers; and
 - (c) in one of such territories as Her Majesty, being satisfied that reciprocal provisions have been made, may by Order in Council declare to be territories to which the Convention applies,
- and an award to which the provisions of this Part apply is in this Part referred to as a “foreign award.”

Effect of foreign award.

42. (1) A foreign award shall, subject to the provisions of this Part, be enforceable either by action or under the provisions of section 21. (1930 c.15, s.2)

(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, and any references in this Part to enforcing a foreign award shall be construed as including references to relying on an award.

Conditions for enforcement of foreign awards.

43. (1) In order that a foreign award may be enforceable under this Part, it must have— (1930 c.15,s.3)

- (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 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 Gibraltar,

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

(2) Subject to the provisions of this subsection, a foreign award shall not be enforceable under this Part if the Supreme 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:

Provided that, 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 paragraphs (a), (b) and (c) of subsection (1), or the existence of the conditions specified in paragraphs (b) and (c) of subsection (2), 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.

Evidence.

(1930 c.15, s.4) 44. (1) The party seeking to enforce a foreign award must produce—

- (a) the original award or a copy thereof duly authenticated in manner required by the law of the country in which it was made; and
- (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 paragraphs (a), (b) and (c) of section 43(1) are satisfied.

(2) In any case where any document required to be produced under subsection (1) of this section 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 Gibraltar.

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

Meaning of final award.

45. 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. *(1930 c.15, s.5)*

Savings.

46. Nothing in this Part shall— *(1930 c.15, s.6)*

- (a) prejudice any rights which any person would have had of enforcing in Gibraltar any award, or of availing himself in Gibraltar of any award if this Part had not been enacted; or
- (b) apply to any award made on an arbitration agreement governed by the law of Gibraltar.

PART IV.

AWARDS UNDER THE NEW YORK CONVENTION.

Interpretation.

47. (1) In this Part— *(1975 c.3, s.7)*

“arbitration agreement” means 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;

“Convention award” means an award made in pursuance of an arbitration agreement in the territory of a State which is a party to the New York Convention; but does not include an award made in pursuance of an arbitration agreement in Gibraltar; and

“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 day of June 1958.

(2) If the Governor by notice in the Gazette states that Her Majesty by Order in Council has declared that any State specified in the Order is a party to the New York Convention, such notice shall, while in force, be conclusive evidence that that State is a party to that Convention.

Staying court proceedings.

(1975 c.3 s.1) 48. (1) Subject to the provisions of subsection (2), if any party to an arbitration agreement, or any person claiming through or under him, commences any legal proceedings in any court against any other party to the agreement, or any person claiming through or under him, in respect of any matter agreed to be referred, any party to the proceedings may at any time after acknowledgement of service, 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) Subsection (1)–

- (a) does not apply in relation to a domestic arbitration agreement, but
- (b) applies, in relation to other arbitration agreements, instead of section 8.

(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 Gibraltar and to which neither–

- (a) an individual who is not a Gibraltarian or who is habitually resident in any country other than Gibraltar; nor
- (b) a body corporate which is incorporated in, or whose central management and control is exercised in, any country other than Gibraltar,

is a party at the time the proceedings are commenced.

Replacement of former provisions.

49. Sections 50, 51, 52 and 53 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 III, that Part shall not apply to it. *(1975 c.3, s.2)*

Effect of Convention awards.

50. (1) A Convention award shall, subject to the following provisions of this Act, be enforceable in Gibraltar, either by action or in the same manner as the award of an arbitrator is enforceable by virtue of section 21. *(1975 c.3 s.3)*

(2) Any Convention award which would be enforceable under this Act 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 Gibraltar; and any reference in this Act to enforcing a Convention award shall be construed as including references to relying on such an award.

Evidence.

51. The party seeking to enforce a Convention award must produce— *(1975 c.3, s.2)*

- (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.

Refusal of enforcement.

52. (1) Enforcement of a Convention award shall not be refused except in the cases mentioned in this section. *(1975 c.3 s.5)*

(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 agreement 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 the provisions of subsection (4),) 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) the court before which enforcement of the award is sought 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.

Right to enforce or rely on an award.

This version is out of date

53. Nothing in this Act shall prejudice any right to enforce or rely on an award otherwise than under Parts III and IV.

54. *Omitted.*

SCHEDULE 1.

Section 6.

*(1889 c.49,
Sch.1 and
1934 c.14, ss.5
and 7)*

PROVISIONS TO BE IMPLIED IN ARBITRATION AGREEMENTS.

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 shall appoint an umpire immediately after they are themselves appointed.
3. 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.
4. 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.
5. The witnesses on the reference shall, if the arbitrators or umpire think fit, be examined on oath or affirmation.
6. 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.
7. 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.

SCHEDULE 2.

Section 32.

MATTERS IN RESPECT OF WHICH THE COURT MAY MAKE
ORDERS.

*(1934 c.14,
Sch.1)*

1. Security for costs.
2. Discovery of documents and interrogatories.
3. The giving of evidence by affidavit.
4. 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.
5. The preservation, interim custody or sale of any goods which are the subject-matter of the reference.
6. Securing the amount in dispute in the reference.
7. 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 authorizing for any of the purposes aforesaid any persons to enter upon or into any land or building in the possession of any party to the reference, or authorizing 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.
8. Interim injunctions or the appointment of a receiver.

SCHEDULE 3.

Section 41.

*(1924 c.39,
Sch.)*

PROTOCOL ON ARBITRATION CLAUSES.

The undersigned, being duly authorized, declare that they accept, on behalf of the countries which they represent, the following provisions:—

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 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 becomes 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 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.

SCHEDULE 4.

Section 41.

(1930 c.15,
Sch.)

CONVENTION ON THE EXECUTION OF FOREIGN ARBITRAL
AWARDS.

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

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

- (a) that the award has been made in pursuance of a submission to arbitration which is valid under the law applicable thereto;
- (b) that the subject-matter of the award is capable of settlement by arbitration under the law of the country in which the award is sought to be relied upon;
- (c) that the award has been made by the arbitral tribunal provided for in the submission to arbitration or constituted in the manner agreed upon by the parties and in conformity with the law governing the arbitration procedure;
- (d) that the award has become final in the country in which it has been made, in the sense that it will not be considered as such if it is open to *opposition*, *appel* or *pourvoi en cassation* (in the countries where such forms of procedure exist) or if it is proved that any proceedings for the purpose of contesting the validity of the award are pending;
- (e) that the recognition or enforcement of the award is not contrary to the public policy or to the principles of the law of the country in which it is sought to be relied upon.

* The adherence of Gibraltar took effect from the 8th day of May, 1926.

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

- (a) that the award has been annulled in the country in which it was made;
- (b) that the party against whom it is sought to use the award was not given notice of the arbitration proceedings in sufficient time to enable him to present his case; or that, being under a legal incapacity, he was not properly represented;
- (c) that the award does not deal with the differences contemplated by or falling within the terms of the submission to arbitration or that it contains decisions on matters beyond the scope of the submission to arbitration.

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

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

4. The party relying upon an award or claiming its enforcement must supply, in particular—

- (a) the original award or copy thereof duly authenticated, according to the requirements of the law of the country in which it was made;
- (b) documentary or other evidence to prove that the award has become final, in the sense defined in Article 1 (d), in the country in which it was made;
- (c) when necessary, documentary or other evidence to prove that the conditions laid down in Article 1, Paragraph 1 and Paragraph 2 (a) and (c), have been fulfilled.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

* *The declaration of the application of this convention to Gibraltar took effect on the 26th day of August 1931.*