

# **ARBITRATION ACT**

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11 of 1995.

**AN ACT** to provide for the conduct of Arbitration proceedings, to give effect to the convention on the recognition and enforcement of foreign arbitral awards, to repeal the Arbitration Ordinance and certain sections of the Civil Procedure Code and to provide for matters connected therewith or incidental thereto.

[Date of Commencement: *30th June, 1995*]

#### **1. Short title.**

This Act may be cited as the Arbitration Act.

**PART I**  
PRELIMINARY

**2. Application.**

(1) The provisions of this Act shall, subject to the provisions of Section 48, apply to all Arbitration proceedings commenced in Sri Lanka after the appointed date, whether the Arbitration agreement in pursuance of which such Arbitration proceedings are commenced, was entered into before or after the appointed date.

(2) Where Arbitration proceedings were commenced prior to the appointed date, the law in force prior to the appointed date, shall, unless the parties otherwise agree, apply to such Arbitration proceedings.

(3) Where the State is a party to an Arbitration agreement (whether in right of the Republic or in any other capacity) the State shall be bound by the provision of this Act.

**PART II**  
ARBITRATION AGREEMENT

**3. Form of Arbitration agreement.**

(1) An Arbitration agreement may be in the form of an Arbitration clause in a contract or in the form of a separate agreement.

(2) An Arbitration agreement shall be in writing. An agreement shall be deemed to be in writing if it is contained in a document signed by the parties or in an exchange of letters, telexes, telegrams or other means of telecommunication which provide a record of the agreement.

**4. Arbitrability of the dispute.**

Any dispute which the parties have agreed to submit to Arbitration under an Arbitration agreement may be determined by Arbitration unless the matter in respect of which the Arbitration agreement is entered into is contrary to public policy or, is not capable of determination by Arbitration.

**5. Jurisdiction of Court in respect of dispute covered by Arbitration agreement.**

Where a party to an Arbitration agreement institutes legal proceedings in a court against another party to such agreement in respect of a matter agreed to be submitted for Arbitration under such agreement, the Court shall have no jurisdiction to hear and determine such matter if the other party objects to the court exercising jurisdiction in respect of such matter.

**PART III**  
COMPOSITION OF THE ARBITRAL TRIBUNAL

**6. Number of Arbitrators.**

(1) The parties shall be free to determine the number of Arbitrators of an Arbitral Tribunal subject to the provisions of subsection (3) of this section.

(2) Where no such determination is made, the number of Arbitrators shall be three.

(3) Where the parties appoint an even number of Arbitrators, the Arbitrators so appointed shall jointly appoint an additional Arbitrator who shall act as Chairman.

**7. Appointment of Arbitrators.**

(1) The parties shall be free to agree on a procedure for appointing the Arbitrators, subject to the provisions of this Act.

(2) In the absence of such agreement—

(a) in an Arbitration with a sole Arbitrator if the parties are unable to agree on the Arbitrators, that Arbitrators shall be appointed, on the application of a party by the High Court;

(b) in an Arbitration with three Arbitrators, such party shall appoint one Arbitrator, and the two Arbitrators thus appointed shall appoint the third Arbitrators; if a party fails to appoint the Arbitrator within sixty days of receipt of a request to do so from the other party, or if the two Arbitrators fail to agree on the third Arbitrator within sixty days of their appointment, the appointment shall be made upon the application of a party, by the High Court.

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

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

(b) the parties, or the Arbitrators are unable to reach an agreement required of them under such procedure; or

(c) a third party, including an institution, fails to perform any function assigned to such third party under such procedure,

any party may apply to the High Court to take necessary measures towards the appointment of the Arbitrator or Arbitrators.

(4) The High Court shall in appointing an Arbitrator, have due regard to any qualifications required of an Arbitrator under the agreement between the parties and to such considerations as are likely to secure the appointment of an independent and impartial Arbitrator.

#### **8. Termination of Arbitrator's mandate and removal of Arbitrator.**

(1) The mandate of an Arbitrator shall terminate, if such Arbitrator becomes unable to perform the functions of that office or for any other reason fails to act without undue delay, or dies, or withdraws from office or the parties agree on the termination.

(2) Where an Arbitrator unduly delays in discharging the duties of his office the High Court may upon the application of a party, remove such Arbitrator and appoint another Arbitrator in his place. Provided however that where the parties have so agreed, such removal and appointment shall be made by an arbitral institution.

(3) Where the mandate of an Arbitrator is terminated, proceedings shall not be had *denovo* unless the parties otherwise agree.

#### **9. Appointment of substitute Arbitrator.**

Where the mandate of an Arbitrator terminates under section 8, a substitute Arbitrator shall be appointed in the manner applicable to the appointment of the Arbitrator whose mandate has terminated.

#### **10. Grounds for challenge.**

(1) Where a person is requested to accept appointment as an Arbitrator, he shall first disclose any circumstances likely to give rise to justifiable doubts as to his impartiality or independence, and shall, from the time of his appointment and throughout the arbitral proceedings, disclose without delay any circumstances referred to in this subsection to all the parties and to the other Arbitrators, unless they have already been so informed by the Arbitrator.

(2) An Arbitrator may be challenged only if circumstances exist that give rise to justifiable doubts as to his impartiality or independence. A party may challenge an Arbitrator appointed by him, or in whose appointment he has participated, only for reasons of which he becomes aware after the appointment was made.

(3) A party who seeks to challenge an Arbitrator shall, unless the parties have decided that the decision shall be taken by some other person, first do so before the Arbitral Tribunal, within thirty days of his becoming aware of the circumstances which give rise to doubts about the Arbitrators' impartiality or independence.

(4) Where a party who makes an application to an Arbitral Tribunal under this section, is dissatisfied with the order of the tribunal on such application, he may within thirty days of the receipt of the decision, appeals from that order to the High Court.

#### **PART IV**

#### **JURISDICTION OF THE ARBITRAL TRIBUNAL**

##### **11. Competence of Arbitral Tribunal.**

(1) An Arbitral tribunal may rule on its jurisdiction including any question, with respect to the existence or validity of the Arbitration agreement or as to whether such agreement is contrary to public policy or is incapable of being performed; but any party to the arbitral proceedings may apply to the High Court for a determination of any such question.

(2) Where an application has been made to the High Court under subsection (1) the Arbitral Tribunal may continue the arbitral proceedings pending the determination of such question by the High Court.

##### **12. Severability of agreement.**

An Arbitration agreement which forms part of another agreement shall be deemed to constitute a separate agreement when ruling upon the validity of that Arbitration agreement for the purpose of determining the jurisdiction of the Arbitral Tribunal.

##### **13. Interim measures of protection.**

(1) An Arbitral Tribunal may, at the request of a party, order any other party to take such Interim measures as it may consider necessary to protect or secure the claim which forms the subject matter of the dispute. The Arbitral Tribunal may also order the party making such request to provide the party ordered to take such interim measures, with security for any expense, loss or damage that may be caused in taking such interim measures:

Provided however that, other than in exceptional cases no such order shall be made except after hearing the other parties.

(2) An order of an Arbitral Tribunal requiring the taking of interim measures may be enforced by the High Court, on an application made therefore, by the party requesting the taking of such interim measures.

(3) An application to the High Court, under subsection (2), for the enforcement of interim measures, shall be deemed not to be incompatible with section 5 or the Arbitration agreement or a waiver of the agreement.

##### **14. Settlement.**

(1) It shall not be incompatible with Arbitration proceedings for an Arbitral Tribunal to encourage settlement of the dispute and, with the agreement of the parties, the Arbitral Tribunal may use mediation, conciliation or any other procedure at any time during the arbitral proceedings to encourage settlement.

(2) If, during arbitral proceedings the parties settle the dispute, the Arbitral Tribunal shall if requested by the parties, record the settlement in the form of an arbitral award on agreed terms.

(3) An arbitral award on agreed terms shall be made in accordance with Section 25 and shall State that it is an arbitral award on agreed terms.

(4) An arbitral award on agreed terms has the same status and effect as any other arbitral award made in respect of the dispute.

#### **PART V**

#### **CONDUCT OF ARBITRATION PROCEEDINGS**

## **15. Duties of Arbitral Tribunal.**

(1) An Arbitral Tribunal shall deal with any dispute submitted to it for Arbitration in an Impartial, practical and expeditious manner.

(2) An Arbitral Tribunal shall afford all the parties an opportunity, of presenting their respective cases in writing or orally and to examine all documents and other material furnished to it by the other parties or any other person. The Arbitral Tribunal may, at the request of a party, have an oral hearing before determining any question before it.

(3) An Arbitral Tribunal may, notwithstanding the failure of a party without reasonable cause, to appear before it, or to comply with any order made by it, continue the arbitral proceedings and determine the dispute on the material available to it.

(4) Parties may, introduce new prayers for relief provided that such prayers for relief fall within the scope of the Arbitration agreement and it is not inappropriate to accept them having regard to the point of time at which they are introduced and to other circumstances. During the course of such proceedings, either party may, on like conditions, amend or supplement prayer for relief introduced earlier and rely on new circumstances in support of their respective cases.

## **16. Place of Arbitration.**

(1) The parties to an Arbitration proceeding shall be free to agree on the place of Arbitration. Failing such agreement, the place of Arbitration shall be determined by the Arbitral Tribunal having regard to the circumstances of the case, including the convenience of the parties.

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

## **17. Determination of rules of procedures.**

Subject to the provisions of this Act, the parties shall be free to agree on the procedure to be followed by the Arbitral Tribunal in conducting the proceedings. The power conferred upon the Arbitral Tribunal shall include the power to determine the admissibility, relevance, and weight of any evidence.

## **18. Commencement of arbitral proceedings.**

An Arbitration shall be deemed to have been commenced if—

(a) a dispute to which the relevant Arbitration agreement applies has arisen; and

(b) a party to the agreement—

(i) has received from another party to the agreement a notice requiring that party to refer, or to concur in the reference of the dispute to Arbitration; or

(ii) has received from another party to the agreement a notice requiring that party to appoint an Arbitral Tribunal or to join or concur in or approve the appointment of an Arbitral Tribunal in relation to the dispute.

## **19. Manner in which decisions are made.**

(1) Unless a contrary intention is expressed in the Arbitration agreement, any decision made in the course of arbitral proceedings, by a majority of the Arbitrators and failing a majority, the decision of the Arbitrator appointed by the other Arbitrators, or where in terms of the Arbitration agreement or this Act, there is Chairman, the decision of such Chairman, shall be binding.

(2) Where there is a Chairman of an Arbitral Tribunal, the Chairman shall have the power to administer the conduct of the arbitral proceedings.

## **20. Parties may obtain summons.**

(1) Any party to an Arbitration agreement having obtained the prior consent in writing of the Arbitral Tribunal may apply to the High Court for summons requiring a person to attend for examination before the tribunal and to produce to the tribunal any document or thing specified in the summons.

(2) A person shall not be compelled under any summons issued in accordance with subsection (1) to answer any question or produce any document or thing which that person could not be compelled to answer or produce at the trial in an action before court.

## **21. Refusal or failure to attend before Arbitral Tribunal.**

(1) Unless otherwise agreed upon by the parties, where any person not a party to the Arbitration agreement—

(a) refuses or fails to attend before the Arbitral Tribunal for examination when required under summons or by the Arbitral Tribunal to do so;

(b) appearing as a witness before the Arbitral Tribunal—

(i) refuses or fails to take an oath or make an affirmation or affidavit when required by the Arbitral Tribunal to do so; or

(ii) refuses or fails to answer a question that the witness is required by the Arbitral Tribunal to answer; or

(iii) refuses or fails to produce a document that he is required under summons or by the Arbitral Tribunal to produce; or

(c) refuses or fails to do any other thing which the Arbitral Tribunal may require,

the High Court may order the defaulter to appear before the court for examination or to produce to the court the relevant document or thing or to do any relevant thing if a party to the Arbitration proceedings makes an application to court in that behalf.

(2) No such application shall be made except after notice to the other parties and with the prior sanction or consent of the Arbitral Tribunal and no order shall be made under subsection (1), unless the court after hearing the defaulter considers that it is necessary in the circumstances to make such order.

(3) Where the court makes an order under subsection (1) it shall, in addition make an order for the transmission to the Arbitral Tribunal of—

(a) a record of any evidence given pursuant to an order made under subsection (1);

(b) any document or thing produced pursuant to an order under subsection (1) or a copy of any such document; or

(c) particulars of anything done pursuant to an order under subsection (1) and any such evidence, document or thing shall be deemed to have been given, produced or done, as the case may be, in the course of the Arbitration proceeding.

## **22. Evidence before Arbitral Tribunal.**

(1) Unless otherwise agreed upon by the parties, evidence before the Arbitral Tribunal may be given orally, in writing or by affidavit.

(2) Unless otherwise agreed upon by the parties, an Arbitral Tribunal may administer an oath or affirmation or take an affidavit for the purposes of proceedings under the agreement.

(3) Unless otherwise agreed upon by the parties, an Arbitral Tribunal in conducting proceedings in pursuance of an Arbitration agreement shall not be bound by the provisions of the Evidence Ordinance.

## **23. Representation.**

Unless otherwise agreed in writing by the parties to the Arbitration agreement, a party to an Arbitration agreement—

- (a) may appear before the Arbitral Tribunal personally or, where the party is a body of persons, whether corporate or unincorporated, by an officer, employee or agent of that body; and
- (b) may be represented by an attorney-at-law if the party so desires.

**24. Law applicable to the substance of dispute.**

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

(2) Failing any designation by the parties to any Arbitration agreement, the Arbitral Tribunal shall apply the law determined by the conflict of laws rules which it considers applicable.

(3) The provisions of subsection (1) and (2) shall apply only to the extent agreed to by the parties.

(4) The Arbitral Tribunal shall decide according to considerations of general justice and fairness or trade usages only if the parties have expressly authorised it to do so.

**PART VI**  
AWARDS

**25. Form and content of award.**

(1) The award shall be made in writing and shall be signed by the Arbitrators constituting the Arbitral Tribunal. In arbitral proceedings with more than one Arbitrator, the signatures of the majority of the members of the Arbitral Tribunal shall suffice, provided that the reason for any omitted signature is stated.

(2) The award shall state the reasons upon which it is based, unless the parties have agreed that no reasons are to be given or the award is an award on agreed terms under section 14.

(3) The award shall state its date and place of Arbitration as determined in accordance with section 16. The award shall be deemed to have been made at that place.

(4) After the award is made, a copy signed by the Arbitrators constituting the Arbitral Tribunal in accordance with subsection (1) of this section shall be delivered to each party.

**26. Award to be final.**

Subject to the provisions of Part VII of this Act, the award made by the Arbitral Tribunal shall be final and binding on the parties to the Arbitration agreement.

**27. Correction and interpretation of award. Additional awards.**

(1) Within fourteen days of receipt of the award, unless another period of time has been agreed upon by the parties, whether at the request of the Arbitral Tribunal or otherwise—

(a) a party, with notice to the other party, may request the Arbitral Tribunal—

- (i) to correct in the award any errors in computation, any clerical or typographical errors or omissions or any errors of a similar nature; or
- (ii) to modify the award where a part of the award is upon a matter not referred to Arbitration, provided such part can be separated from the other part and does not affect the decision on the matter referred;

(b) if so agreed upon by the parties, a party, with notice to the other party, may request the Arbitral Tribunal to give an interpretation of a specific point or part of the award.



(2) If the Arbitral Tribunal considers the request to be justified, it shall make the correction, modification or give the interpretation within fourteen days of the receipt of the request, or such longer period as the parties may agree to, at the request of the Arbitral Tribunal. The interpretation shall form part of the award.

(3) The Arbitral Tribunal may correct any error of the type referred to in sub-paragraph (i) of paragraph (a) of subsection (1) of this section, on its own motion within fourteen days of the date of the award.

(4) Unless otherwise agreed upon by the parties, a party with notice to the other party, may request the Arbitral Tribunal within fourteen days of receipt of the award to make an additional award as to claims presented in the arbitral proceedings but omitted from the award. If the Arbitral Tribunal after hearing the other parties, considers the request to be justified, it shall make the additional award within thirty days of conclusion of the hearing.

(5) The provisions of section 26 shall apply to a correction, modification or interpretation of the award or to an additional award.

### **28. Interest.**

Unless otherwise agreed upon by the parties where an Arbitral Tribunal makes an award for the payment of money (whether on a claim for a liquidated or unliquidated amount), the Arbitral Tribunal may in the award, order interest, at the rate agreed upon between the parties in the Arbitration agreement or in the absence of any such agreement, at the legal interest prevailing at the time of making the arbitral award, to be paid on the principal sum awarded, from the date of commencement of arbitral proceedings to the date of the award, in addition to any interest awarded on such principal sum for any period prior to the institution of arbitral proceedings, with further interest at the aforesaid rate on the aggregate sum so awarded from the date of the award to the date of payment or such earlier date as the Arbitral Tribunal thinks fit.

### **29. Compensation of Arbitrators.**

(1) The parties shall be jointly and severally liable for the payment of reasonable compensation to the Arbitrators constituting the Arbitral Tribunal for their work and disbursements:

Provided however that when the Arbitral Tribunal declares in its award that it has no jurisdiction to decide the dispute, the party who did not request the Arbitration liable for such payment only if there are exceptional circumstances which warrant such payment by him.

(2) The final award shall order the payment of compensation to each of the Arbitrators constituting the Arbitral Tribunal in such sum, and with such period, as may be specified in the award, with legal interest on each such sum calculated with effect from the date of expiration of a period of one month from the date on which the award was delivered.

(3) The Arbitral Tribunal may order the payment of deposit of security by the parties, for the payment of the compensation of the Arbitrators constituting the Arbitral Tribunal, in such sum and within such period as may be specified in the order. Separate deposits of security may be ordered in respect of each prayer for relief.

(4) Where a party fails to pay his share of the deposit of security ordered by the Arbitral Tribunal within the period specified in the order for payment of deposit of security, the other party or parties may pay the whole of the deposit of security ordered.

(5) Where none of the parties pay the deposit of security ordered by the Arbitral Tribunal, within the period specified in the order for the payment of the deposit of security, the Arbitral Tribunal may terminate the arbitral proceedings.

(6) The Arbitrators constituting the Arbitral Tribunal may, during the course of arbitral proceedings, draw on such deposit or security, for the purpose of meeting their expenses.

**30. Award not to be withheld.**

An Arbitral Tribunal shall not withhold delivering its award pending the payment of the compensation payable to the Arbitrators constituting the Arbitral Tribunal.

**PART VII**

APPLICATION TO COURTS RELATING TO AWARDS (INCLUDING RECOGNITION AND ENFORCEMENT OF FOREIGN AWARD )

**31. Application for filing and enforcement of award.**

(1) A party to an Arbitration agreement pursuant to which an arbitral award is made may, within one year after the expiry of fourteen days of the making of the award, apply to the High Court for the enforcement of the award.

(2) An application to enforce the award shall be accompanied by—

- (a) the original of the award or a duly certified copy of such award; and
- (b) the original Arbitration agreement under which the award purports to have been made or a duly certified copy of such agreement.

For the purposes of this subsection a copy of an award or of the Arbitration agreement shall be deemed to have been duly certified if—

- (i) it purports to have been certified by the Arbitral Tribunal or, by a member of that tribunal, and it has not been shown to the court that it was not in fact so certified; or
- (ii) it has been otherwise certified to the satisfaction of the court.

(3) If a document or part of a document produced under subsection (2) is written in a language other than the official language of the court or other than in English, there shall be produced with the document a translation in such official language, or in the English Language, of that document or that part, as the case may be, certified to be a correct translation.

(4) For the purposes of subsection (3), a translation shall be certified by an official or a sworn translator or by a diplomatic or a consular agent in Sri Lanka of the country in which the award was made or otherwise to the satisfaction of the court.

(5) A document produced to the court in accordance with this section may upon its production be received by the court as sufficient evidence of the matters to which it relates.

(6) Where an application is made under subsection (1) of this section and there is no application for the setting aside of such award under section 32 or the court sees no cause to refuse the recognition and enforcement of such award under the provision contained in sections 33 and 34 of this Act, it shall on a day of which notice shall be given to the parties, proceed to file the award and give judgment according to the award. Upon the judgment so given a decree shall be entered.

**32. Application for setting aside arbitral award.**

(1) An arbitral award made in an Arbitration held in Sri Lanka may be set aside by the High Court, on application made therefore, within sixty days of this receipt of the award—

- (a) where the party making the application furnishes proof that—
  - (i) a party to the Arbitration agreement was under some incapacity or the said agreement is not valid under the law to which the parties have subjected it or failing any indication on that question, under the law of Sri Lanka; or
  - (ii) the party making the application was not given proper notice of the appointment of an Arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or

- (iii) the award deals with a dispute not contemplated by or not falling within the terms of the submission to Arbitration, or contains decisions on matters beyond the scope of the submission to Arbitration:

Provided however that, if the decision on matters submitted to Arbitration can be separated from those not so submitted, only that part of the award which contains decisions on matters not submitted to Arbitration may be set aside; or

- (iv) the composition of the Arbitral Tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless such agreement was in conflict with the provisions of this Act, or, in the absence of such agreement, was not in accordance with the provisions of this Act; or
- (b) where the High Court finds that—
- (i) the subject matter of the dispute is not capable of settlement by Arbitration under the law of Sri Lanka; or
  - (ii) the arbitral award is in conflict with the public policy of Sri Lanka.

(2) Where an application is made to set aside an award, the High Court may order that any money made payable by the award shall be brought into court or otherwise secured pending the determination of the application.

### **33. Recognition and enforcement of foreign arbitral award.**

A foreign arbitral award irrespective of the country in which it was made shall subject to the provision of section 34 be recognized as binding and, upon application by a party under section 31 to the High Court, be enforced by filing the award in accordance with the provision of that section.

### **34. Grounds for refusing recognition or enforcement.**

(1) Recognition or enforcement of a foreign arbitral award, irrespective of the country in which it was made, may be refused only—

- (a) on the objection of the party against whom it is invoked, if that party furnishes to the Court where recognition or enforcement is sought, proof that—
  - (i) a party to the Arbitration agreement was under some incapacity, or the said agreement is not valid under the law to which the parties have subjected it, or failing any indication as to the law to which the parties have subjected such agreement, under the law of the country where the award was made; or
  - (ii) the party against whom the award is invoked was not given proper notice of the appointment of an Arbitrator or of the arbitral proceeding or was otherwise unable to present his case; or
  - (iii) the award deals with the dispute not contemplated by or not falling within the terms of the submission to Arbitration, or it contains decisions on matters beyond the scope of the submission to Arbitration:

Provided, however that, if the decision on matters submitted to Arbitration can be separated from those not so submitted, that part of the award which contain a decision on matters submitted to Arbitration, may be recognized and enforced; or

- (iv) the composition of the Arbitral Tribunal or the arbitral procedure was not in accordance with the agreement of the parties or, in the absence of such agreement, was not in accordance with the law of the country where the Arbitration took place; or
  - (v) the award has not yet become binding on the parties or has been set aside or suspended by a court of the country in which, or under the law of which, that award was made; or
- (b) if the Court finds that—

(i) the subject matter of the dispute is not capable of settlement by Arbitration under the law of Sri Lanka; or

(ii) the recognition or enforcement of the award would be contrary to the public policy of Sri Lanka.

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

### **35. Power to consolidate an application to set aside with an application for filing of an award.**

(1) Where applications filed in court to enforce an award and to set aside an award are pending, the court shall consolidate the applications.

(2) Where an application to set aside the award under section 32 has been refused, the court shall not permit a party to an Arbitration to object to the enforcement of the award on any of the grounds specified in section 34.

### **36. Remissions to Arbitral Tribunal.**

(1) The High Court may order the staying of an application to set aside an award for such period as it may consider necessary to enable the Arbitral Tribunal to resume arbitral proceedings or to take such measures as may be necessary to eliminate the grounds for invalidating the award.

(2) No order shall be made by the High Court under subsection (1) unless—

(a) all the parties to the Arbitration request the making of such order; or

(b) one of the parties to such Arbitration requests the making of such order and the Court is satisfied that there are grounds for invalidating the award.

### **37. Appeals.**

(1) Subject to subsection (2) of this section no appeal or revision shall lie in respect of any order, judgment or decree of the High Court in the exercise of its Jurisdiction under this Act except from an order, judgment or decree of the High Court under this Part of this Act.

(2) An appeal shall lie from an order, judgment or decree of the High Court referred to in subsection (1) to the Supreme Court only on a question of law and with the leave of the Supreme Court first obtained.

(3) The Supreme Court may in the exercise of its jurisdiction under subsection (2) of this section affirm, reverse or vary the order, judgment or decree of the High Court, subject to the provisions of this Act.

(4) The parties to an Arbitration agreement may agree in writing (hereinafter referred to as an "exclusion agreement") to exclude any right to appeal in relation to the award.

### **38. Exclusion Agreement.**

(1) The Supreme Court shall not in any event grant leave to appeal under subsection (2) of section 37 if there is in force an exclusion agreement between the parties to the Arbitration agreement in relation to the award appealed against.

(2) An exclusion agreement may be expressed so as to relate to a particular Award, to awards under a particular Arbitration agreement or to any other description of awards, whether arising out of the same Arbitration agreement or not.

(3) An agreement may be an exclusion agreement for the purposes of this section whether it is entered into before or after the appointed date and whether it forms part of an Arbitration agreement or not.

### **39. Delay in prosecuting claims.**

(1) It shall be an implied term of the Arbitration agreement that in the event of a dispute arising to which the agreement applies. It shall be the duty of the claimant to exercise due diligence in the prosecution of a claim.

(2) Where there has been undue delay by a claimant in instituting or prosecuting a claim pursuant to an Arbitration agreement, then, on the application of any party to the dispute, the Arbitral Tribunal may make an order terminating the Arbitration proceedings.

(3) The Arbitral Tribunal shall not make an order under subsection (2) unless it is satisfied—

- (a) that the delay has been intentional or inordinate; or
- (b) that the delay will give rise to a substantial risk of it not being possible to have a fair determination of the issues in the Arbitration proceedings or is such as it likely to cause or to have caused serious prejudice to the other parties to the Arbitration proceedings either as between themselves and the claimant or between each other or between them and a third party.

(4) A party aggrieved by any order of the Arbitral Tribunal made on an application under subsection (2) may appeal to the High Court.

## **PART VIII**

### **PROCEEDINGS BEFORE THE HIGH COURT**

### **40. Procedure.**

(1) Every application to the High Court under the provision of this Act, whether by way of appeal or otherwise, shall be by way of petition and affidavit and all parties to the Arbitration other than the petitioner or petitioners shall be named as respondents to such petition and shall be given notice of the same.

(2) Upon the petition and affidavit being presented to the court it shall by order appoint a day for the determination of the matter of the petition and grant the parties named as respondents to the petition a date to state their objections, if any, in writing supported by affidavit, and making available a copy thereof to the petitioners.

(3) In proceedings before the High Court evidence shall be given by affidavit. But where the court think it right so to do, it may take evidence *viva voce* in addition to evidence by affidavit.

(4) The High Court shall delay with every application under subsection (1) and deliver its determination thereon as expeditiously as possible.

### **41. Enforcement.**

Where a judgment is given according to an award and a decree entered under the provisions of section 31(6) it may be enforced in the same manner as a decree entered under the provision of the Civil Procedure Code and accordingly the provisions of that Code relating to the execution of decrees shall, *mutatis mutandis*, apply to, such enforcement.

### **42. Service of notices and summons.**

Where under this Act notice or summons is required or permitted to be served on any person, the notice or summons may be served in or out of Sri Lanka—

- (a) by sending it by registered post addressed to that person to be served at the usual or last known place of residence or business of that person;
- (b) if there is no appearance by that person on the date stated therein, by serving it personally on him through the Fiscal; and
- (c) if that person deliberately avoids accepting the notice or summons, by substituted service in accordance with the provisions of the Civil Procedure Code.

#### **43. Rules of the Supreme Court.**

The Supreme Court may make rules with respect to—

- (a) any application or appeal made to any Court under this Act and the costs of such application or appeal; and
- (b) the payment of money into and out of the Court in satisfaction of a claim to which the Arbitration agreements apply and the investment of such money.

#### **44. Calculation of time.**

In calculating the period of prescription for the purpose of any action, the period that elapsed between the commencement of an Arbitration and its completion or termination as the case may be, shall be excluded.

### **PART IX**

#### **GENERAL PROVISIONS AS TO ARBITRATION**

#### **45. Liability of Arbitrators.**

An Arbitrator shall not be liable for negligence in respect of anything done or omitted to be done by him in the capacity of Arbitrator but shall be liable for fraud in respect of anything done or omitted to be done in that capacity.

#### **46. Death of party.**

(1) Unless a contrary intention is expressed in the Arbitration agreement, where a party to an Arbitration agreement dies, the agreement shall not be discharged and the mandate of the Arbitrators constituting the Arbitral Tribunal shall not be revoked by the death of that party; but the agreement shall be enforceable by or against the legal representative of the estate of the deceased.

(2) Nothing in subsection (1) shall be taken to affect the operation of any enactment or rule of law by virtue of which a right of action is extinguished by the death of a person.

#### **47. Repeals.**

(1) The Arbitration Ordinance is hereby repealed.

(2) Sections 693 to 698 of the Civil Procedure Code are hereby repealed.

#### **48. Application to other laws providing for Arbitration.**

For the avoidance of doubts, it is hereby declared that nothing in this Act shall apply to arbitral proceedings conducted under the Industrial Dispute Act or any other law, other than the Board of Investment of Sri Lanka Law, No. 4 of 1978, making special provision for Arbitration.

#### **49. Sinhala text to prevail in case of inconsistency.**

In the event of any inconsistency between the Sinhala and Tamil texts of this Act, the Sinhala text shall prevail.

#### **50. Interpretation.**

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

"Arbitration Agreement" means an agreement by the parties to submit to Arbitration all or certain disputes which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not;

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

"Arbitral Tribunal" means a panel of one or more Arbitrators;

"award" means a decision of the Arbitral Tribunal on the substance of the dispute;

"foreign arbitral award" means an award made in an Arbitration conducted outside Sri Lanka;

"High Court" means the High Court of Sri Lanka, holden in the judicial zone of Colombo or holden in such other zone, as may be, designated by the Minister with the concurrence of the Chief Justice, by Order published in the *Gazette*;

"legal interest" means interest at the rate specified in an Order made under Section 192 of the Civil Procedure Code and for the time being in force.