

CHAPTER 3.

ARBITRATION

ARRANGEMENT OF SECTIONS

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An Act to provide for a system of arbitration of controversies. [Section numbering style modified to conform to new Code format (Rev.2-003)]

Commencement: December 30, 1980
 Source: P.L. 1980-21

PART I - PRELIMINARY

§301. Short Title.

This Act may be cited as the Arbitration Act 1980. [P.L. 1980-21, §1.]

§302. Interpretation.

In this Act:

- (a) “agreement” includes, but is not limited to:
 - (i) an agreement providing for valuations, appraisals and similar proceedings;
 - and
 - (ii) an agreement between employers and employees, or between representatives of employers and employees;
- (b) “arbitration agreement” means, subject to Section 303 of this Act, a written agreement to submit a controversy to arbitration:
 - (i) whether the agreement is general or specific;

- (ii) whether or not a controversy that is the subject of the agreement already exists; and
- (iii) whether or not the agreement is part of or is associated with or related to some other agreement (oral or written);
- (c) “award” means an award made, in accordance with this Act, pursuant to an arbitration agreement, and includes an award made pursuant to an unwritten agreement to submit a controversy to arbitration;
- (d) “civil action” means a civil action in the High Court;
- (e) “controversy” means, subject to Section 303 of this Act, a controversy that is the subject of an arbitration agreement, whether the question is a question of law or of fact, or a mixed question of law and fact;
- (f) “neutral arbitrator” means an arbitrator who is:
 - (i) appointed jointly by the parties;
 - (ii) appointed jointly by the arbitrators selected by the parties; or
 - (iii) in default of appointment under Subparagraph (i) or (ii) of this Paragraph, appointed by the High Court;
- (g) “party”, in relation to an arbitration agreement, means a party to the agreement:
 - (i) who seeks to arbitrate a controversy to the agreement;
 - (ii) against whom the arbitration of a controversy pursuant to the agreement is sought; or
 - (iii) who is made a party to such an arbitration by order of the neutral arbitrator:
 - (A) on application by any party;
 - (B) on application by any party to the arbitration; or
 - (C) on his own motion;
- (h) “service” means personal service by registered or certified mail, on the person to be served or his attorney;
- (i) “written agreement” includes a written agreement that has been extended or renewed by an oral or implied agreement. [P.L. 1980-21, §2.]

§303. Application of this Act.

- (1) This Act does not apply to or in relation to an agreement that expressly excludes its application.
- (2) This Act applies to and in relation to an award whether or not it was made in the Republic. [P.L. 1980-21, §3.]

PART II- ENFORCEMENT OF ARBITRATION AGREEMENT

§304. Validity of arbitration agreements.

A written agreement to submit to arbitration an existing controversy or a controversy arising after the agreement, is valid, enforceable and, except on such grounds that exist for the revocation of any contract, irrevocable. [P.L. 1980-21, §4.]

§305. Orders to arbitrate.

(1) Subject to Subsections (2) and (3) of this Section, on the petition of a party to an arbitration agreement alleging that a party to the agreement refuses to arbitrate a controversy in accordance with the agreement, the High Court shall order the petitioner and the respondent to arbitrate the controversy, if it determines that a written agreement to arbitrate the controversy exists.

(2) The High Court may refuse to make an order under Subsection (1) of this Section if:

(a) the right to compel arbitration has been waived by the petitioner; or

(b) grounds exist for the revocation of the arbitration agreement; or

(c) subject to Subsection (3) of this Section, a party to the agreement is also a party to a pending court action or special proceeding with a third party, arising out of the same transaction or a related transaction, and there is a possibility of conflicting rulings on a common issue of law or fact.

(3) In a case to which Subsection (2)(c) of this Section applies, the High Court may, if it thinks proper to do so, make any order that is just and practicable in the circumstances including, but not limited to:

(a) an order delaying the issuing of an order to arbitrate;

(b) a stay of judicial proceedings; or

(c) an order permitting intervention or joinder in judicial proceedings referred to in that Paragraph. [P.L. 1980-21, §5.]

§306. Consolidation of arbitrations.

(1) Where there are separate arbitration agreements, either between the same parties or some of them, or between the same parties or some of them and other parties, the High Court may in an appropriate case, on petition by one of those parties, order a consolidation of any arbitration proceedings, if in its opinion it is just and convenient to do so.

(2) If in a case to which Subsection (1) of this Section applies different arbitrators have been selected, or if there is no provision for consolidation proceedings, the High Court may appoint the arbitrators under Section 307(2) of this Act. [P. L. 1980-2 1, §6.]

§307. Appointment of arbitrators.

(1) Subject to this Act, if an arbitration agreement provides for a method of appointing arbitrators, that method shall be followed.

(2) If an arbitration agreement does not provide for a method of appointing arbitrators, the method provided for fails or cannot be followed, or an arbitrator fails to act, the High Court shall, on petition by a party, appoint an arbitrator in the following manner:

(a) the Court shall nominate two or more neutral arbitrators from a list of possible arbitrators compiled by the parties jointly; or

(b) in default of such compilation or where the parties fail to agree on the appointment from the list, the Court shall nominate its own arbitrators. [P.L. 1980-21, §7.]

PART III - CONDUCT OF ARBITRATIONS

§308. Number of arbitrators.

(1) Unless otherwise provided in the arbitration agreement or otherwise agreed by the parties, an arbitration shall be made by a single neutral arbitrator.

(2) If there is more than one arbitrator, then:

(a) if there is no neutral arbitrator, the functions of the neutral arbitrator under this Act shall be performed by a majority of the arbitrators; and

(b) if there is more than one neutral arbitrator:

(i) the functions of the neutral arbitrator shall be exercised by a majority of the neutral arbitrators, and

(ii) by unanimous agreement of neutral arbitrators the functions of the neutral arbitrator (other than the power to make or correct an award) may be delegated to one of their number, and references in this Act to the neutral arbitrator shall be read and construed accordingly.

(3) A delegation under Subsection (2)(b)(ii) of this Section is revocable, in writing, at will, and no such delegation prevents the exercise of a function by a majority of the neutral arbitrators. [P.L. 1980-21, §8.]

§309. Procedure generally.

(1) Unless otherwise provided in the arbitration agreement or otherwise agreed by the parties, the succeeding provisions of this Section apply in arbitration.

(2) The neutral arbitrator shall appoint a time and place for hearing, and shall serve at least seven days' notice of the hearing on the parties.

(3) The neutral arbitrator may adjourn or postpone the hearing, but shall not postpone the hearing beyond the time (if any) provided in the arbitration agreement, or agreed to by the parties for the making of an award.

(4) The neutral arbitrator, or one of the arbitrators performing under Section 308(2) of this Act the functions of the neutral arbitrator elected by the arbitrators performing those functions, shall preside at the hearing.

(5) The neutral arbitrator shall rule on the admission and exclusion of evidence on questions of procedure, and has all powers necessary for the conduct of the proceedings.

(6) The parties are entitled to be heard, to present evidence and to cross-examine witnesses appearing at the hearing, but rules of judicial evidence and procedure need not be observed.

(7) On a party's request, testimony shall be under oath, and the neutral arbitrator may administer oaths for that purpose.

(8) If the High Court has ordered a party to arbitrate the controversy, the neutral arbitrator may hear and may determine the controversy notwithstanding the failure of that party to appear, provided that the party has been served with due notice to appear.

(9) If a neutral arbitrator who has been duly served with notice of the hearing fails to participate in the arbitration, the remaining neutral arbitrator or neutral arbitrators (if any) may make the award.

(10) If a neutral arbitrator intends to base an award on information not obtained at the hearing, he shall disclose the information and circumstances surrounding the acquisition of it, to all parties, and shall give all parties a chance to meet it. [P.L. 1980-21, §9.]

§310. Subpoenas.

(1) On application by a party or on his own motion, the neutral arbitrator may issue subpoenas for the attendance of witnesses or for the production of books, records, documents and other evidence.

(2) Except for the parties to the arbitration and their agents, officers and employees, all witnesses appearing in answer to a subpoena are entitled to receive fees and mileage in the same amount and in the same circumstances as witnesses in civil actions in the High Court.

(3) The fee and mileage of a subpoena witness are payable by the party that requested the subpoena, and in the case of a witness subpoenaed on the motion of the neutral arbitrator shall be paid in the manner provided for payment of the neutral arbitrator's fees and expenses under Section 319 of this Act. [P.L. 1980-21, §10.]

§311. Depositions.

(1) On application by a party, the neutral arbitrator may order the deposition of a witness to be taken for use as evidence, but not for discovery, if the witness cannot be compelled to attend the hearing or if such exceptional circumstances exist as make it desirable, in the interests of justice and with due regard to the importance of presenting evidence orally at the hearing, to allow the deposition to be taken.

(2) The deposition shall be taken in the same manner as in civil actions in the High Court. [P.L. 1980-21, §11.]

§312. Discovery in certain cases.

(1) Notwithstanding anything in this Act, the succeeding provisions of this Section apply in an arbitration under this Act:

(a) arising out of the death of or injury to a person caused by the wrongful act or neglect of another; or

(b) to which the parties agree that those provisions shall apply.

(2) The parties have the right to make discovery in the same manner as in civil actions in the High Court and, by leave of the neutral arbitrator to have a deposition taken for the purposes of discovery.

(3) The neutral arbitrator may enforce the rights, remedies, procedures, duties, liabilities and obligations of discovery by the imposition of the same terms, conditions, consequences, liabilities, sanctions and penalties as can be imposed in the same circumstances in a civil proceeding in the High Court, but may not order arrest or imprisonment. [P.L. 1980-21, §12.]

§313. Making of awards.

An award shall be in accordance with the opinion of the majority of the arbitrators. [P.L. 1980-21, §13.]

§314. Form of awards.

(1) An award shall be in writing, signed by the arbitrators concurring in the decision and served on each party by the neutral arbitrator.

(2) An award shall include a determination of all the questions submitted to the arbitrators the decision of which is necessary in order to determine the controversy. [P.L. 1980-21, §14.]

§315. Time for making award.

(1) The award in an arbitration shall be made within such time:

(a) as is provided in the arbitration agreement;
 (b) as is agreed between the parties; or
 (c) in default of any such provision or agreement as is ordered by the High Court on application by a party.

(2) The parties may extend the time either before or after its expiration.

(3) A party shall be deemed to have waived his right to object unless he gives to the neutral arbitrator notice of his objection before service of a signed copy of the award on the applicant. [P.L. 1980-21, §15.]

§316. Correction of awards.

On written application by a party made within forty-five (45) days after service of a signed copy of the award on the applicant, the neutral arbitrator may correct the award as to:

- (a) an evident miscalculation of figures or an evident mistake in the description of any person, thing or property referred to in the award; or
- (b) a matter of form, not affecting the merits. [P.L. 1980-21, §16.]

§317. Powers of the High Court in relation to awards.

(1) Any party may petition the High Court to confirm, correct or vacate the award in the arbitration.

(2) Subject to the succeeding provisions of this Section, the High Court shall confirm the award, and enter judgment in conformity with it as if it were a judgment in a civil action before the High Court.

(3) In confirming an award, the High Court may:

- (a) exercise the powers of correction of the neutral arbitrator under Section 316 of this Act; or
- (b) otherwise correct the award if the arbitrator exceeded his powers but the award can properly be corrected without affecting the merits of the decision on the controversy, and judgment shall be entered under Subsection (2) of this Section accordingly.

(4) The High Court shall vacate the award if, and only if:

- (a) the award was procured by corruption, fraud or other improper means;
- (b) there was corruption in any of the arbitrators in his capacity as such;
- (c) the rights of a party were substantially prejudiced by the misconduct of a neutral arbitrator;
- (d) the arbitrator exceeded his powers and the award cannot properly be corrected under Subsection (3)(b) of this Section; or
- (e) the rights of a party were substantially prejudiced by:
 - (i) the refusal of the arbitrator to adjourn or postpone the hearing on sufficient cause being shown;
 - (ii) the refusal of the arbitrator to hear evidence material to the controversy;
 or
 - (iii) other conduct of the arbitrator contrary to this Act.

(5) If an award is vacated, the High Court may order a rehearing:

- (a) before new arbitrators; or
- (b) if the award was vacated under Subsection (4)(d) or (e) of this Section, before the

same arbitrators, and in the absence of agreement between the parties the High Court shall fix the time for the award to be made on the rehearing, and may give directions as to the rehearing as it thinks just and proper.

(6) Subject to Subsection(5) of this Section, the provisions of this Act shall apply to and in relation with a rehearing under that Subsection in the same way they apply to and in relation to an original hearing. [P.L. 1980-21, §17.]

§318. Effect of awards.

(1) If an award is confirmed, the judgment entered in accordance with Section 317(2) of this Act:

(a) has the same force and effect as any other judgment in a civil action before the High Court;

(b) is subject to all provisions of law relating to such a judgment; and

(c) may be enforced in the same manner as such a judgment.

(2) An award that has been vacated is null and void and of no effect.

(3) An award that has neither been confirmed nor vacated has the same force and effect as a written contract between the parties to the award. [P.L. 1980-21, §18.]

PART IV - MISCELLANEOUS

§319. Arbitrator's fees and expenses.

(1) Subject to Subsection (2) of this Section, unless the arbitration agreement provides otherwise or the parties agree otherwise, each party shall pay his pro rata share of the expenses and fees of the neutral arbitrator, together with other expenses of the arbitration incurred or approved by the neutral arbitrator, as assessed by the neutral arbitrator.

(2) Each party shall bear his own attorneys fees, witness fees and mileage for witnesses called by him and other expenses incurred for his own benefit. [P.L. 1980-21, §19.]

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