

Consolidated text

PROJET DE LOI

ENTITLED

The Arbitration (Guernsey) Law, 1982 *

[CONSOLIDATED TEXT]

NOTE

This consolidated version of the enactment incorporates all amendments listed in the footnote below. However, while it is believed to be accurate and up to date, it is not authoritative and has no legal effect, having been prepared in-house for the assistance of the Law Officers. No warranty is given that the text is free of errors and omissions, and no liability is accepted for any loss arising from its use. The authoritative text of the enactment and of the amending instruments may be obtained from Her Majesty's Greffier, Royal Court House, Guernsey, GY1 2PB.

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* Ordres en Conseil Vol. XXVII, p. 525; as amended by the Arbitration (Amendment) (Guernsey) Law, 1986 (Ordres en Conseil Vol. XXIX, p. 178).

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ARRANGEMENT OF SECTIONS

PART I

GENERAL PROVISIONS AS TO ARBITRATION

Effect of Arbitration Agreements, etc.

1. Authority of arbitrators and umpires to be irrevocable.
2. Death of party.
3. Insolvency.
4. Staying Court proceedings where there is submission to arbitration.
5. Staying Court proceedings where party proves arbitration agreement.

Arbitrators and Umpires

6. When reference is to a single arbitrator.
7. Power of parties in certain cases to supply vacancy.
8. Umpires.
9. Majority award of three arbitrators.
10. Power of Court in certain cases to appoint an arbitrator or umpire.

Conduct of Proceedings, Witnesses, etc.

11. Conduct of proceedings, witnesses, etc.

Provisions as to Awards

12. Time for making award.
13. Interim awards.
14. Awards to be final.
15. Power to correct slips.

Costs, Fees and Interest

Consolidated text

16. Costs.
17. Taxation of arbitrator's or umpire's fees.
18. Interest on awards.

Judicial Review, Remission and Setting aside of Awards, etc.

19. Judicial review of arbitration awards.
20. Determination of preliminary point of law by Court.
- 20A. Exclusion agreements affecting rights under sections 19 and 20.
21. Interlocutory orders.
22. Power to remit award.
23. Removal of arbitrator and setting aside of award.
24. Power of Court to give relief where arbitrator is not impartial or the dispute involves question of fraud.
25. Power of Court where arbitrator is removed or authority of arbitrator is revoked.

Enforcement of Award

26. Enforcement of award.

Miscellaneous

27. Power of Court to extend time for commencing arbitration proceedings.
28. Terms as to costs, etc.
29. Limitation of action.
30. Application of Part I to statutory arbitrations.

**PART II
ENFORCEMENT OF CERTAIN FOREIGN AWARDS**

31. Awards to which Part II applies.
32. Effect of foreign awards.
33. Conditions for enforcement of foreign awards.
34. Evidence.
35. Meaning of "final award".

**PART III
ENFORCEMENT OF CONVENTION AWARDS**

36. Replacement of Part II in certain cases.
37. Effect of Convention awards.
38. Evidence.
39. Refusal of enforcement.

PART IV
SUPPLEMENTARY

- 40. Rules of Court.
- 41. Service of notices.
- 42. Interpretation.
- 43. Transitional provisions and savings.
- 44. Repeals.
- 45. Citation.
- 46. Commencement.

FIRST SCHEDULE	Transitional provisions and savings.
SECOND SCHEDULE	Laws repealed.

PROJET DE LOI

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THE STATES, in pursuance of their Resolutions of the twelfth day of December, nineteen hundred and seventy-three and the twenty-eighth day of October, nineteen hundred and eighty-one, have approved the following provisions which, subject to the Sanction of Her Most Excellent Majesty in Council, shall have force of law in the Islands of Guernsey, Herm and Jethou.

PART I

GENERAL PROVISIONS AS TO ARBITRATION

Effect of Arbitration Agreements, etc.

Authority of arbitrators and umpires to be irrevocable.

1. The Authority of an arbitrator or umpire appointed by, or by virtue of, an arbitration agreement shall, unless a contrary intention is expressed in the agreement, be irrevocable except by leave of the Court.

NOTE

The following cases have referred to this Law:

States v. Miller and Baird (C.I.) Limited 2005–06 GLR 295;
Wrench v. Albany Hotel Ltd (2006) (Unreported, Royal Court, 15th June) (Guernsey Judgment No. 31/2006);
Wrench v. Albany Hotel Limited 2007–08 GLR N-20;
Ferbrache and Richardson v. Kirk and Four Others 2007-08 GLR N-3;

Tostevin & Tostevin v Newhouse & Newhouse (2013) (Unreported, Royal Court, 28th January) (Guernsey Judgment No. 1/2013);
Smith v. Atlantique Holdings Limited (2013) (Unreported, Court of Appeal, 5th June) (Guernsey Judgment No. 14/2003).

Death of party.

2. (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 event be enforceable by or against the personal representative of the deceased.

(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.

Insolvency.

3. Where it is provided by a term in a contract to which a person who is insolvent is a party that any differences arising thereout or in connection therewith shall be referred to arbitration, the said term shall, if the trustee or other person acting on behalf of his creditors adopts the contract, be enforceable by or against him so far as relates to any such differences.

Staying Court proceedings where there is submission to arbitration.

4. Subject to the next succeeding section, if any party to an arbitration agreement, or any person claiming through or under him, commences any legal proceedings in the 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 those legal proceedings may at any time after appearance or after the inscription of the cause on the Pleading List but before delivering any pleadings or

taking any other steps in the proceedings, apply to the Court to stay the proceedings; and the Court, if satisfied that there is no sufficient reason why the matter should not be referred in accordance with the 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.

NOTE

The following cases have referred to section 4:

States v. Miller and Baird (C.I.) Limited 2005–06 GLR 295;
Smith v. Atlantique Holdings Limited (2013) (Unreported, Court of Appeal, 5th June) (Guernsey Judgment No. 14/2003).

Staying Court proceedings where party proves arbitration agreement.

5. (1) If any party to an arbitration agreement to which this section applies, or any person claiming through or under him, commences any legal proceedings in the Court against any other party to the agreement, or any person claiming through him or under him, in respect of any matter agreed to be referred, any party to the proceedings may at any time after appearance or after the inscription of the cause on the Pleading List but 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) This section applies to any arbitration agreement which is not a domestic arbitration agreement; and the last preceding section shall not apply to an arbitration agreement to which this section applies.

(3) In this section, the expression "**domestic arbitration agreement**" means an arbitration agreement which does not provide, expressly or by implication, for arbitration in a State other than the Island and to which neither –

- (a) an individual who is not –
 - (i) a citizen of the United Kingdom and Colonies,
or
 - (ii) a British subject without citizenship, or
 - (iii) a British protected person, or
 - (iv) a Stateless person,

or who is habitually resident in any State other than the Island, nor

- (b) a body corporate which is incorporated in, or whose central management and control is exercised in, any State other than the Island,

is a party at the time the proceedings are commenced.

NOTE

The following case has referred to section 5:

States v. Miller and Baird (C.I.) Limited 2005–06 GLR 295.

Arbitrators and Umpires

When reference is to a single arbitrator.

6. Unless a contrary intention is expressed therein, every arbitration agreement shall, if no other mode of reference is provided, be deemed to include a provision that the reference shall be to a single arbitrator.

Power of parties in certain cases to supply vacancy.

7. (1) Subject to the next succeeding subsection, where an arbitration agreement provides that the reference shall be to two arbitrators, one to be appointed by each party, then, unless a contrary intention is expressed therein –

- (a) if either of the appointed arbitrators refuses to act, or is incapable of acting, or dies, the party who appointed him may appoint a new arbitrator in his place,
- (b) if, on such a reference, one party fails to appoint an arbitrator, either originally or by way of substitution as aforesaid, for seven clear days after the other party, having appointed his arbitrator, has served the party making default with notice to make the appointment, the party who has appointed an arbitrator may appoint that arbitrator to act as sole arbitrator in the reference, and his award shall be binding on both parties as if he had been appointed by consent.

(2) The Court may set aside any appointment made in pursuance of this section.

Umpires.

8. (1) Unless a contrary intention is expressed therein, every arbitration agreement shall, where the reference is to two arbitrators, be deemed to include a provision that the two arbitrators may appoint an umpire at any time after they are themselves appointed and shall do so forthwith if they cannot agree.

(2) Unless a contrary intention is expressed therein, every arbitration agreement shall, where such a provision is applicable to the reference, be deemed to include a provision that, 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.

(3) 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 upon the reference in lieu of the arbitrators and as if he were a sole arbitrator.

Majority award of three arbitrators.

9. Unless the contrary intention is expressed in the arbitration agreement, in any case where there is a reference to three arbitrators, the award of any two of the arbitrators shall be binding.

Power of Court in certain cases to appoint an arbitrator or umpire.

10. (1) In any of the following cases –

- (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,

- (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,
- (c) where the parties or two arbitrators are required or are at liberty to appoint an umpire or third arbitrator and do not appoint him,
- (d) where an appointed umpire or third arbitrator refuses to act, or is incapable of acting, or dies, and the 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 or, as the case may be, concur in appointing, an arbitrator, umpire or third arbitrator; and, if the appointment is not made within seven 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.

(2) In any case where –

- (a) an arbitration agreement provides for the appointment of an arbitrator or umpire by a person who is neither

one of the parties nor an existing arbitrator (whether the provision applies directly or in default of agreement by the parties or otherwise), and

- (b) that person refuses to make the appointment or does not make it within the time specified in the agreement or, if no time is so specified, within a reasonable time,

any party to the agreement may serve the person in question with a written notice to appoint an arbitrator or umpire and, if the appointment is not made within seven clear days after the service of the notice, the Court may, on the application of the party who gave the notice, appoint an arbitrator or umpire who shall have the like powers to act in the reference and make an award as if he had been appointed in accordance with the terms of the agreement.

Conduct of Proceedings, Witnesses, etc.

Conduct of proceedings, witnesses, etc.

11. (1) Unless a contrary intention is expressed therein, every arbitration agreement shall, where such a provision is applicable to the reference, be deemed to contain a provision that the parties to the reference, and all persons claiming through them respectively, shall, subject to any legal objection, submit to be examined by the arbitrator or umpire, on oath or affirmation, in relation to the matters in dispute, and shall, subject as aforesaid, produce before the arbitrator or umpire all 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 arbitrator or umpire may require.

(2) Unless a contrary intention is expressed therein, every arbitration agreement shall, where such a provision is applicable to the reference, be

Consolidated text

deemed to contain a provision that the witnesses on the reference shall, if the arbitrator or umpire thinks fit, be examined on oath or affirmation.

(3) An arbitrator or umpire shall, unless a contrary intention is expressed in the arbitration agreement, have power to administer oaths to, or take the affirmations of, the parties to and witnesses on a reference under the agreement.

(4) Any party to a reference under an arbitration agreement may apply to the Court for permission to summon a witness to give evidence or to produce documentary evidence and a party who is so authorised by the Court may cause a summons to be served on any person, in the same manner as a summons may be served upon any person in respect of a civil action before the Court, summoning that person to attend before the arbitrator or umpire for the purpose of giving evidence or producing any document likely to assist the arbitrator or umpire in determining the question in dispute; and a person so summoned shall be under a like obligation as to the giving of any evidence and the production of any document as if he were so summoned in respect of such an action.

(5) The Court shall have, for the purpose of and in relation to a reference under an arbitration agreement, the same power of making orders in respect of matters of procedure and other matters incidental to the reference as it has for the purpose of and in relation to a civil action before the Court.

Provisions as to Awards

Time for making award.

12. (1) Subject to the provisions of subsection (2) of section nineteen and subsection (2) of section twenty-two of this Law, and anything to the contrary in the arbitration agreement, an arbitrator or umpire shall have power to make an award at any time.

(2) The time, if any, limited for making an award, whether under this Law or otherwise, may from time to time be enlarged by order of the Court, whether that time has expired or not.

(3) The Court may, on the application of any party to a reference, remove an arbitrator or umpire who fails to use all reasonable despatch in entering on and proceeding with the reference and making an award, and an arbitrator or umpire who is removed by the Court under this subsection shall not be entitled to receive any remuneration in respect of his services.

(4) For the purposes of the last preceding subsection the expression "**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.

Interim awards.

13. Unless a contrary intention is expressed therein, every arbitration agreement shall, where such a provision is applicable to the reference, be deemed to contain a provision that the arbitrator or umpire may, if he thinks fit, make an interim award, and any reference in this Part of this Law to an award includes a reference to an interim award.

Awards to be final.

14. Subject to the provisions of section nineteen of this Law and unless a contrary intention is expressed therein, every arbitration agreement shall, where such a provision is applicable to the reference, be deemed to contain a provision that the award to be made by the arbitrator or umpire shall be final and binding on the parties and the persons claiming under them respectively.

Power to correct slips.

15. Unless a contrary intention is expressed in the arbitration agreement, the arbitrator or umpire shall have power to correct in an award any clerical mistake or error arising from any accidental slip or omission.

Costs, Fees and Interest

Costs.

16. (1) Unless a contrary intention is expressed therein, every arbitration agreement shall be deemed to include a provision that the costs of the reference and award shall be in the discretion of the arbitrator or umpire, who may direct to and by whom and in what manner those costs or any part thereof shall be paid, and shall tax the amount of costs to be so paid.

(2) Subject to the provisions of the last preceding subsection in the event of any difference or dispute between any parties to any reference as to the fees, disbursements and allowances recoverable in pursuance of an award directing the payment of costs, the difference or dispute shall be referred to Her Majesty's Procureur, whose decision shall be final.

(3) Subject to the next succeeding subsection, 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 of this Law shall, in the case of an arbitration agreement containing any such provision, have effect as if that provision were not contained therein.

(4) Nothing in the last preceding subsection shall invalidate such a provision when it is a part of an agreement to submit to arbitration a dispute which has arisen before the making of that agreement.

(5) 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 the Court may direct, apply to the arbitrator for an order directing by and to whom those 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 of the payment of the costs of the reference and shall tax the amount of costs to be so paid.

Taxation of arbitrator's or umpire's fees.

17. (1) If, in any case, an arbitrator or umpire refuses to deliver his award except on payment of the fees demanded by him, the Court may, on 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 Her Majesty's Procureur, and that, out of the money paid into Court, there shall be paid out to the arbitrator or umpire, by way of fees, such sums 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 by Her Majesty's Procureur under this section shall be final.

(4) Any money required to be paid into Court under subsection (1) of this section shall be paid to Her Majesty's Greffier.

(5) The arbitrator or umpire shall be entitled to appear and be

heard on any taxation under this section.

Interest on awards.

18. 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.

Judicial Review, Remission and Setting aside of Awards, etc.

Judicial review of arbitration awards.

19. (1) Without prejudice to the right of appeal conferred by the next succeeding subsection, the Court shall not have jurisdiction to set aside or remit an award on an arbitration agreement on the ground of errors of fact or law on the face of the award.

(2) Subject to the next succeeding subsection, an appeal shall lie to the Court on any question of law arising out of an award made on an arbitration agreement; and on the determination of such an appeal the Court may by order –

- (a) confirm, vary or set aside the award, or
- (b) remit the award to the reconsideration of the arbitrator or umpire together with the Court's opinion on the question of law which was the subject of the appeal,

and where the award is remitted under paragraph (b) of this subsection the arbitrator or umpire shall, unless the order otherwise directs, make his award within three months after the date of the order.

(3) An appeal under this section may be brought by any of the

parties to the reference –

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

[(b) subject to section 20A of this Law, with the leave of the Court.]

(4) The Court shall not grant leave under paragraph (b) of the last preceding subsection unless it considers that, having regard to all the circumstances, the determination of the question of law concerned could substantially affect the rights of one or more of the parties to the arbitration agreement; and the Court may make any leave which it gives conditional upon the applicant complying with such conditions as it considers appropriate.

(5) Subject to the next succeeding subsection, if an award is made and, on an application made by any of the parties to the reference –

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

[(b) subject to section 20A of this Law, with the leave of the Court,]

it appears to the Court that the award does not or does not sufficiently set out the reasons for the award, the Court may order the arbitrator or umpire concerned to state the reasons for his award in sufficient detail to enable the Court, should an appeal be brought under this section, to consider any question of law arising out of the award.

(6) In any case where an award is made without any reason being given, the Court shall not make an order under the last preceding subsection unless it is satisfied –

- (a) that before the award was made one of the parties to the reference gave notice to the arbitrator or umpire concerned that a reasoned award would be required, or
- (b) that there is some special reason why such a notice was not given.

(7) No appeal shall lie to the Court of Appeal under section thirteen of the Law of 1961 from a decision of the Court on an appeal under this section unless –

- (a) the Court or the Court of Appeal gives leave, and
- (b) it is certified by the Court that the question of law to which its decision relates either is one of general public importance or is one which for some other special reason should be considered by the Court of Appeal.

(8) Where the award of an arbitrator or umpire is varied on appeal, the award as varied shall have effect (except for the purpose of this section) as if it were the award of the arbitrator or umpire.

(9) An appeal under the provisions of subsection (2) of this section shall be made to the Court within twenty-one days from the date of the publication of the award:

Provided that the Court may extend the period prescribed under this subsection for making an appeal upon application being made to the Court before the expiration of that period.

NOTES

In section 19, paragraph (b) of subsection (3) and paragraph (b) of subsection (5) were substituted by the Arbitration (Amendment) (Guernsey) Law, 1986, respectively section 1(b)(i) and section 1(b)(ii), with effect from 6th May, 1986.

The following case has referred to section 19:

Tostevin & Tostevin v Newhouse & Newhouse (2013) (Unreported, Royal Court, 28th January) (Guernsey Judgment No. 1/2013).

Determination of preliminary point of law by Court.

20. (1) Subject [to section 20A of this Law and] to the next succeeding subsection, on an application to the Court made by any of the parties to a reference –

- (a) with the consent of an arbitrator who has entered on the reference or, if an umpire has entered on the reference, with his consent, or
- (b) with the consent of all the other parties,

the Court shall have jurisdiction to determine any question of law arising in the course of the reference.

(2) The Court shall not entertain an application under paragraph (a) of the last preceding subsection with respect to any question of law unless it is

satisfied that –

- (a) the determination of the application might produce substantial savings in costs to the parties, and
- (b) the question of law is one in respect of which leave to appeal would be likely to be given under paragraph (b) of subsection (3) of the last preceding section.

(3) A decision of the Court under this section shall be deemed to be a judgment of the Court for the purposes of appellate jurisdiction of the Court of Appeal in civil matters under section thirteen of the Law of 1961, but no appeal shall lie from such a decision unless –

- (a) the Court or the Court of Appeal gives leave, and
- (b) it is certified by the Court that the question of law to which its decision relates either is one of general public importance or is one which for some other special reason should be considered by the Court of Appeal.

NOTE

In section 20, the words in square brackets in subsection (1) were inserted by the Arbitration (Amendment) (Guernsey) Law, 1986, section 1(c), with effect from 6th May, 1986.

[Exclusion agreements affecting rights under sections 19 and 20.]

20A. (1) Subject to the following provisions of this section –

- (a) the Court shall not, under section 19(3)(b) of this Law, grant leave to appeal with respect to a question of law arising out of an award, and
- (b) the Court shall not, under section 19(5)(b) of this Law, grant leave to make an application with respect to an award, and
- (c) no application may be made under section 20(1)(a) of this Law with respect to a question of law,

if the parties to the reference in question have entered into an agreement in writing (in this section referred to as an "**exclusion agreement**") which excludes the right of appeal under section 19 of this Law in relation to that award or, in a case falling within paragraph (c) of this subsection in relation to an award to which the determination of the question of law is material.

(2) If the parties to an exclusion agreement subsequently enter into an agreement in writing to revoke the exclusion agreement the provisions of subsection (1) of this section shall cease to apply to the reference or references in question until such time as a further exclusion agreement is entered into by the parties.

(3) An exclusion agreement may be expressed so as to relate to a particular award, to awards under a particular reference or to any other description of awards, whether arising out of the same reference or not; and an agreement may be an exclusion agreement for the purposes of this section whether it is entered into before or after the coming into force of the Arbitration (Amendment) (Guernsey) Law, 1986, and whether or not it forms part of an arbitration agreement.

- (4) In any case where –
- (a) an arbitration agreement, other than a domestic arbitration agreement, provides for disputes between the parties to be referred to arbitration, and
 - (b) a dispute to which the agreement relates involves the question whether a party has been guilty of fraud, and
 - (c) the parties have entered into an exclusion agreement which is applicable to any award made on the reference of that dispute,

then, except in so far as the exclusion agreement otherwise provides, the Court shall not exercise its powers under section 24(2) of this Law (to take steps necessary to enable the question to be determined by the Court) in relation to that dispute.

(5) Except as provided by subsection (1) of this section, sections 19 and 20 of this Law shall have effect notwithstanding anything in any agreement purporting –

- (a) to prohibit or restrict access to the Court, or
- (b) to restrict the jurisdiction of the Court, or
- (c) to prohibit or restrict the making of a reasoned award.

(6) An exclusion agreement shall be of no effect in relation to an award made on, or a question of law arising in the course of a reference under, a

statutory arbitration, that is to say, such an arbitration as is referred to in subsection (1) of section 30 of this Law.

(7) An exclusion agreement shall be of no effect in relation to an award made on, or a question of law arising in the course of a reference under, an arbitration agreement which is a domestic arbitration agreement unless the exclusion agreement is entered into after the commencement of the arbitration in which the award is made or, as the case may be, in which the question of law arises.

(8) In this section, the expression "**domestic arbitration agreement**" has the same meaning as in subsection (3) of section 5 of this Law, save that the said subsection (3) shall have effect as if for the words therein "is a party at the time the proceedings are commenced" there were substituted the words "is a party at the time the arbitration agreement is entered into".]

NOTE

Section 20A was inserted by the Arbitration (Amendment) (Guernsey) Law, 1986, section 1(d), with effect from 6th May, 1986.

Interlocutory orders.

21. (1) If any party to a reference under an arbitration agreement fails within the time specified in the order or, if no time is so specified, within a reasonable time to comply with an order made by the arbitrator or umpire in the course of the reference, then, on the application of the arbitrator or umpire or of any party to the reference, the Court may make an order extending the powers of the arbitrator or umpire as mentioned in the next succeeding subsection.

(2) If an order is made by the Court under this section, the arbitrator or umpire shall have power, to the extent and subject to any conditions

specified in that order, to continue with the reference in default of appearance or of any other act by one of the parties in like manner as the Court might continue with proceedings in the Court where a party fails to comply with an order of the Court or a requirement of Rules of Court.

(3) The preceding provisions of this section shall have effect notwithstanding anything in any agreement but shall not derogate from any powers conferred on an arbitrator or umpire, whether by an arbitration agreement or otherwise.

Power to remit award.

22. (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 arbitrator or umpire.

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

(3) An application to the Court to remit an award under subsection (1) of this section may be made at any time within six weeks after the award has been made and published to the parties.

Removal of arbitrator and setting aside of award.

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

(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.

(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.

(4) Any money ordered to be brought into Court under the last preceding subsection shall be paid to Her Majesty's Greffier.

(5) An application to the Court to set aside an award under subsection (2) of this section may be made at any time within six weeks after the award has been made and published to the parties.

NOTE

The following case has referred to section 23:

Wrench v. Albany Hotel Ltd (2006) (Unreported, Royal Court, 15th June) (Guernsey Judgment No 31/2006).

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

24. (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 authority of the arbitrator or for an order 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 said 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.

(2) Where an agreement between any parties provides that disputes which may arise in the future between them shall be referred to arbitration, 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 the authority of any arbitrator or umpire appointed by or by virtue of the agreement.

(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 the authority of an arbitrator or umpire, the Court may refuse to stay any action brought in breach of the agreement.

NOTE

The following case has referred to this section:

Ferbrache and Richardson v. Kirk and Four Others 2007-08 GLR N-3.

Power of Court where arbitrator is removed or authority of arbitrator is revoked.

25. (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.

(2) Where the authority 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.

Enforcement of Award

Enforcement of award.

26. 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, where leave is so given, the Act of Court shall specify the manner of enforcement.

NOTE

The following case has referred to section 26:

Wrench v. Albany Hotel Limited 2007–08 GLR N-20.

Miscellaneous

Power of Court to extend time for commencing arbitration proceedings.

27. Where the terms of an agreement to refer 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 the 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 provisions of any enactment limiting the time for the commencement of arbitration proceedings, extend the time for such period as it thinks proper.

Terms as to costs, etc.

28. Any order made under this Part of this Law may be made on such terms as to costs or otherwise as the authority making the order thinks just.

Limitation of action.

29. (1) Subject to the provisions of this section the provisions of any enactment relating to the limitation of actions shall apply to arbitrations as they apply to civil actions before the Court.

(2) No action to enforce an award on an arbitration agreement

shall be brought before the Court after the expiration of six years from the date on which the cause of action arose.

(3) 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, the cause of action shall, for the purpose of this section and of any such enactment as aforesaid (whether in their application to arbitrations or to other proceedings), 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.

(4) For the purpose of this section and of any such enactment as aforesaid, an arbitration shall be deemed to be commenced when one party to the arbitration serves on the other party or parties a notice requiring him or them to appoint an arbitrator or to agree to the appointment of 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.

(5) Where the Court orders that an award be set aside or orders, after the commencement of an arbitration, that the arbitration 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 this section or any such enactment as aforesaid for the commencement of proceedings (including arbitration) with respect to the dispute referred.

Application of Part I to statutory arbitrations.

30. (1) This Part of this Law, except the provisions thereof specified in the next succeeding subsection shall apply to every arbitration under any other

enactment (whether passed before or after the coming into force of this Law) 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 Law is inconsistent with that other enactment or with any rules or procedure authorised or recognised thereby:

Provided that in any arbitration under the provisions of any other enactment any reference to the award made by an arbitrator or umpire being final and binding on the parties and the persons claiming under them respectively shall be deemed to include a reference to such provisions being subject to the provisions of section nineteen of this Law.

(2) The provisions referred to in the last preceding subsection are subsection (1) of section two, section three, section five, subsection (2) of section sixteen, section twenty-four, section twenty-five and section twenty-seven of this Law.

PART II

ENFORCEMENT OF CERTAIN FOREIGN AWARDS

Awards to which Part II applies.

31. (1) Subject to section thirty-six of this Law, this Part of this Law applies to any award made after the twenty-eighth day of July, nineteen hundred and twenty-four –

- (a) in pursuance of an agreement for arbitration to which the Protocol applies, and
- (b) between persons of whom one is subject to the jurisdiction of some one of such Powers as Her

Majesty may, by Order in Council, have declared to be parties to the Geneva Convention and of whom the other is subject to the jurisdiction of some other of the Powers aforesaid, and

- (c) in one of such territories as Her Majesty may, by Order in Council, have declared to be territories to which the Geneva Convention applies,

and an award to which this Part of this Law applies is, in this Part of this Law, referred to as "**a foreign award**".

(2) In this section the expression "**Order in Council**" means an Order in Council which is in force and which –

- (a) has been made under paragraph (b) of subsection (1) of section thirty-five of the Arbitration Act 1950, or
- (b) has effect, by virtue of subsection (3) of that section, as if it had been so made.

Effect of foreign awards.

32. (1) A foreign award shall, subject to the provisions of this Part of this Law, be enforceable in the Island either by action or in the same manner as the award of an arbitrator is enforceable by virtue of section twenty-six of this Law.

(2) Any foreign award which would be enforceable under this Part of this Law 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 the

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

Conditions for enforcement of foreign awards.

33. (1) In order that a foreign award may be enforceable under this Part of this Law, it must have –

- (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 the 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 the Island,

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

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

but, 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) of this section, or the existence of the conditions specified in paragraphs (b) and (c) of the last preceding subsection, 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.

- 34.** (1) The party seeking to enforce a foreign award must produce –

- (a) the original award or a copy thereof duly authenticated in the manner required by the law of the country in which it was made,
- (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 subsection (1) of the last preceding section are satisfied.

(2) In any case where any document required to be produced under the last preceding subsection is in a foreign language, it shall be the duty of the party seeking to enforce the award to produce a translation thereof in the English language certified as correct by an official or sworn translator or 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 the Island.

Meaning of "final award".

35. For the purposes of this Part of this Law, 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.

PART III

ENFORCEMENT OF CONVENTION AWARDS

Replacement of Part II in certain cases.

36. Sections thirty-seven, thirty-eight and thirty-nine of, and paragraph 3 of the First Schedule to, this Law shall have effect with respect of 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 II of this Law, that Part shall not apply to it.

Effect of Convention awards.

37. (1) A Convention award shall, subject to the following provisions of this Part of this Law, be enforceable in the Island either by action or in the same manner as the award of an arbitrator is enforceable by virtue of section twenty-six of this Law.

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

Evidence.

38. The party seeking to enforce a Convention award must produce –

- (a) the original award or a copy thereof duly authenticated in the manner required by the law of the country in which it was made,
- (b) the original arbitration agreement or a copy thereof duly authenticated in the manner required by the law of the country in which it was made, and
- (c) where the award or agreement is in a foreign language, a translation thereof in the English language

certified as correct by an official or sworn translator or 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 the Island.

Refusal of enforcement.

39. (1) Enforcement of a Convention award shall not be refused except in the cases mentioned in this section.

(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 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 subsection (4) of this section, 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 paragraph (f) of subsection (2) of this section, the Court 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.

PART IV
SUPPLEMENTARY

Rules of Court.

40. The Royal Court may, from time to time, make rules dealing generally with all matters of procedure and incidental matters arising under this Law and for carrying out this Law into effect.

NOTE

The following Rules have been made by Order of the Royal Court under section 40:

Royal Court (Arbitration) (Guernsey) Rules, 1983.

Service of notices.

41. A notice which may be served for the purpose of this Law shall be validly served –

- (a) on any person, if delivered to him, left, or sent by registered post or by recorded delivery service to him, at his usual or last known place of abode,
- (b) on any firm, if delivered to any partner of the firm or left at, or sent by registered post or by recorded delivery service to, the principal or last known principal place of business of the firm,
- (c) on any body corporate, if left at, or sent by registered post or by recorded delivery service to, its registered office if situate in the Island or, if its registered office is not so situate, its principal or last known principal place of business in the Island,

and a notice shall, as well, be validly served if served on any person, firm or body corporate in any other manner provided in the arbitration agreement.

Interpretation.

42. (1) In this Law, except where the context otherwise requires, the following expressions have the meanings hereby respectively assigned to them, that is to say –

"arbitration agreement" means –

- (a) in section five of this Law and in the definition below of **"Convention award"**, 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, and
- (b) elsewhere, a written agreement to submit present or future differences to arbitration, whether an arbitrator is mentioned therein or not,

"Convention award" means an award made in pursuance of an arbitration agreement in the territory of a State, other than the United Kingdom, which is a party to the New York Convention,

"the Court" means the Royal Court sitting as Ordinary Court,

"the Court of Appeal" means the Court of Appeal constituted under the Law of 1961,

"The Geneva Convention" means the Convention on the Execution of Foreign Arbitral Awards signed at Geneva on behalf of His late Majesty, King George V, on the 26th September, 1927,

"Her Majesty's Greffier" includes any Deputy Greffier,

"Her Majesty's Procureur" includes Her Majesty's Comptroller,

"the Island" means the Island of Guernsey and includes the Islands of Herm and Jethou,

"the Law of 1961" means the Court of Appeal (Guernsey) Law, 1961^a,

"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 June, 1958,

"the Protocol" means the Protocol on Arbitration Clauses signed on behalf of His late Majesty, King George V, at a Meeting of the Assembly of the League of Nations held on the 24th September, 1923.

(2) If Her Majesty by Order in Council declares that any State specified in the Order is a party to the New York Convention, the Order shall, while in force, be conclusive evidence that that State is a party to that Convention.

(3) Any reference in this Law to any other enactment shall,

^a Ordres en Conseil Vol. XVIII, p. 315.

except where the context otherwise requires, be construed as including a reference to that enactment as amended, repealed or replaced, extended or applied by or under any other enactment including this Law.

Transitional provisions and savings.

43. The transitional provisions and savings in the First Schedule to this Law shall have effect.

Repeals.

44. The Laws set out in the Second Schedule to this Law are hereby repealed.

Citation.

45. This Law may be cited as the Arbitration (Guernsey) Law, 1982.

Commencement.

46. This Law shall come into force on such day as the States may by Ordinance appoint, and different days may be so appointed for different provisions of this Law, or for different purposes.

NOTE

The Law was brought into force on 11th April, 1983 by the Arbitration (Guernsey) Law, 1982 (Commencement) Ordinance, 1983, section 1.

FIRST SCHEDULE

Sections thirty-six

and forty-three

TRANSITIONAL PROVISIONS AND SAVINGS

1. Any proceedings under the Law entitled "Loi donnant effet à une Convention sur l'Exécution des Jugements Arbitraux et portant amendement à la Loi donnant effet à un Protocole sur l'Arbitrage du 20 juillet 1925", registered on the twentieth day of December, nineteen hundred and thirty (hereinafter referred to as '**the Law of 1930**')^b which are uncompleted on the coming into force of this Law may be carried on and completed under Part II of this Law as if they had been instituted thereunder.

2. Nothing in Part II of this Law shall prejudice any rights which any person would have had of enforcing in the Island any award, or of availing himself in the Island of any award, if neither that Part nor the Law of 1930 had been enacted.

3. Nothing in Part III of this Law shall prejudice any right to enforce or rely on an award otherwise than under that Part or under Part II of this Law.

^b Ordres en Conseil Vol. VIII, p. 472.

SECOND SCHEDULE

Section forty-four

LAWS REPEALED

The Law entitled "Loi donnant effet à un Protocole sur l'Arbitrage" registered on the twentieth day of July, nineteen hundred and twenty-five^c.

The Law entitled "Loi donnant effet à une Convention sur l'Exécution des Jugements Arbitraux et portant amendement à la Loi donnant effet à un Protocole sur l'Arbitrage du 20 juillet 1925" registered on the twentieth day of December, nineteen hundred and thirty^d.

^c Ordres en Conseil Vol. VII, p. 375.

^d Ordres en Conseil Vol. VIII, p. 472.