

Arbitration Act [Cap 38]

LAWS OF FIJI

CHAPTER 38

ARBITRATION

Arrangement of Sections

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ARBITRATION

Ordinance No. 18 of 1965

**AN ACT TO PROVIDE FOR THE REFERENCE AND SUBMISSION OF
DISPUTES TO ARBITRATION.**

[10th June, 1965.]

Short title

1. This Act may be cited as the [Arbitration Act](#).

Interpretation

2. In this Act, unless the context otherwise requires-

"court" means the Supreme Court;

"submission" means a written agreement to submit present or future differences to arbitration whether an arbitrator-is named therein or not.

Submission to be irrevocable and have effect as an order of the court

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

Provisions implied in submission. First Schedule

4. A submission, unless a contrary intention is expressed therein, shall be deemed to include the provisions set forth in the First Schedule in so far as such provisions are applicable to the reference under submission.

Power to stay proceedings where there is a submission

5. If any party to a submission, or any person claiming through or under him, commences any legal proceedings in any court against any other party to the submission, or any other person claiming through or under him, in respect of any matter agreed to be referred, any party to such legal proceedings may, at any time after appearance and before delivering any pleadings or taking any other steps in the proceedings, apply to the court to stay the proceedings, and that court, if satisfied that there is no sufficient reason why the matter should not be referred in accordance with the submission and that the applicant was at the time when the proceedings were commenced and still remains ready and willing to do all things necessary to the proper conduct of the arbitration, may make an order staying the proceedings.

Power for the court in certain cases to appoint arbitrator, etc.

6.-(1) In any of the following cases:-

(a) where a submission provides that the reference shall be to a single arbitrator and all the parties do not, after differences have arisen, concur in the appointment of an arbitrator;

(b) where an appointed arbitrator refuses to act, or is incapable of acting, or dies, and the submission does not show that it was intended that the vacancy should not be filled and the parties do not fill the vacancy;

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

(d) where an appointed umpire or third arbitrator refuses to act, or is incapable of acting, or dies, and the submission does not show that it was intended that the vacancy should not be filled and the parties or arbitrators do not fill the vacancy,

any party may serve the other parties or arbitrators, as the case may be, with a written notice to appoint an arbitrator, umpire or third arbitrator.

(2) If no appointment is made in accordance with the provisions of subsection (1), within seven clear days after the service of the notice, the court may, on application by the party who gave the notice, appoint an arbitrator, umpire or third arbitrator, who shall have the like powers to act in the reference and make an award as if he had been appointed by consent of all parties.

Power for parties in certain cases to fill vacancies

7. Where a submission provides that the reference shall be to two arbitrators, one to be appointed by each party, then unless the submission expresses a contrary intention-

(a) if either of the appointed arbitrators refuses to act, or is incapable of acting, or dies, the party who appointed him may appoint a new arbitrator in his place;

(b) if, on 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:

Provided that the court may set aside any appointment made in pursuance of the provisions of this section.

Powers of arbitrator

8. The arbitrators or umpire acting under a submission shall, unless the submission expresses a contrary intention, have power-

- (a) to administer oaths to or take the affirmations of the parties and the witnesses appearing; and
- (b) to state an award as to the whole or part thereof in the form of a special case for the opinion of the court; and
- (c) to correct in an award any clerical mistake or error arising from any accidental slip or omission.

Award to be signed and filed

9.-(1) When the arbitrators or umpire have made their award, they shall sign it, and shall give notice to the parties of the making and signing thereof, and of the amount of the fees and charges payable to the arbitrators or umpire in respect of the arbitration and award.

(2) The arbitrators or umpire shall, at the request of any party to the submission or any person claiming under him, and upon payment of the fees and charges due in respect of the arbitration and award, cause the award, or a signed copy thereof, to be filed in the court and notice of the filing shall be given by the arbitrators or umpire to the parties.

(3) Where the arbitrators or umpire state a special case under the provisions of paragraph (b) of section 8 or of section 15, the court shall deliver its opinion thereon and such opinion shall be added to, and shall form part of the award.

Power to extend time for making award

10. The time for making an award may from time to time be extended by order of the court, whether the time for making the award has expired or not.

Power to remit award

11.-(1) In all cases of reference to arbitration, the court may from time to time remit the matters referred, or any of them, to the reconsideration of the arbitrators or umpire.

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

Power to set aside award

12.-(1) Where an arbitrator or umpire has misconducted himself, the court may remove him.

(2) Where an arbitrator or umpire has misconducted himself, or an arbitration or award has been improperly procured, the court may set the award aside.

Enforcing award

13.-(1) An award on a submission may by leave of the court be enforced in the same manner as a judgment or order to the same effect.

(2) An award may be conditional or in the alternative.

Power to compel attendance of witnesses

14.-(1) The court may order that a writ of subpoena *ad testificandum* or of subpoena *daces tecum* shall issue to compel the attendance before any arbitrator or umpire of a witness wherever he may be within Fiji.

(2) The court may also order that any prisoner be produced for examination before any arbitrator or umpire.

Statement of case pending arbitration

15. Any arbitrator or umpire may at any stage of the proceedings under a reference, and shall, if so directed by the court, state in the form of a special case for the opinion of the court any question of law arising in the course of the reference.

Costs

16. Any order made under the provisions of this Act may be made on such terms as to costs, or otherwise, as the authority making the order thinks just.

Forms

17. The forms set forth in the Second Schedule or forms similar thereto, with such variations as the circumstances of each case require, may be used for the respective purposes therein mentioned, and, if used, shall not be called in question.

Exercise of powers by officers of the court

18. Provision may be made from time to time by rules of court for conferring on any officer of the Supreme Court all or any of the jurisdiction conferred on the court by this Act.

Death of party

19.-(1) A submission shall not be discharged by the death of any party thereto, either as respects the deceased or any other party, but shall in such an event be enforceable by or against the personal representative of the deceased.

(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.

Bankruptcy

20.-(1) Where it is provided by a term in a contract to which a bankrupt is a party that any differences arising thereout or in connexion therewith shall be referred to arbitration, the said term shall, if the trustee in bankruptcy adopts the contract, be enforceable by or against him so far as it relates to any such differences.

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

Rules

21. The Chief Justice may make rules of court, consistent with the provisions of this Act, as to-

- (a) the filing of awards and all proceedings consequent thereon or incidental thereto;
- (b) the filing and hearing of special cases and all proceedings consequent thereon or incidental thereto;
- (c) the staying of any suit or proceeding in contravention of a submission to arbitration; and
- (d) generally, all proceedings in court under the provisions of this Act.

Crown to be bound

22. The provisions of this Act shall be binding on the Crown.

Application to certain contracts

23. Whenever in any contract it is directed or agreed that any arbitration under or in pursuance of such contract shall be under the provisions of the Arbitration Act, 1950, of the United Kingdom, or of any Act repealed or replaced by that Act, such contract shall be read as if this Act were substituted for such Act.

FIRST SCHEDULE

(Section 4)

Provisions to be Implied in Submissions

1. If no other mode of reference is provided, the reference shall be to a single arbitrator.
2. If the reference is to two arbitrators, the two arbitrators may appoint an umpire at any time within the period during which they have power to make an award.
3. The arbitrators shall make their award in writing within three months after entering on the reference, or after having been called on to act by notice in writing from any party to the submission, or on or before any later day to which the arbitrators, by any writing signed by them, may, from time to time, extend the time for making the award.
4. If the arbitrators have allowed their time or extended time to expire without making an award, or have delivered to any party to the submission or to the umpire, a notice in writing stating that they cannot agree, the umpire may forthwith enter on the reference in lieu of the arbitrators.
5. The umpire shall make his award within one month after the original or extended time appointed for making the award of the arbitrators has expired, or on or before any later day to which the umpire, by any writing signed by him, may, from time to time, extend the time for making his award.
6. The parties to the reference, and all persons claiming through them respectively, shall, subject to the provisions of any law for the time being in force, submit to be examined by the arbitrators or umpire on oath or affirmation in relation to the matters in dispute, and shall, subject as aforesaid, produce before the arbitrators or umpire all books, deeds, papers, accounts, writings and documents within their possession or power respectively which may be required or called for, and do all other things which, during the proceedings on the reference, the arbitrators or umpire may require.
7. The witnesses on the reference shall, if the arbitrators or umpire think fit, be examined on oath.

8. The award to be made by the arbitrators or umpire shall be final and binding on the parties and the persons claiming under them respectively.

9. The costs of the reference and award shall be in the discretion of the arbitrators or umpire who may direct to and by whom, and in what manner, those costs or any part thereof shall be paid, and may tax or settle the amount of costs to be so paid or any part thereof, and may award costs to be paid as between solicitor and client.

SECOND SCHEDULE

(Section 17)

FORM I
SUBMISSION TO SINGLE ARBITRATOR

In the matter of the Arbitration Act-

Whereas differences have arisen and are still subsisting between
A.B. of..... and *C.D.* of.....

concerning.....

Now we, the said *A.B.* and *C.D.*, do hereby agree to refer the said matters in difference to the award of *X. Y.*

(Signed) *A.B.*

C.D.

Dated the, 19

FORM II
APPOINTMENT OF SINGLE ARBITRATOR UNDER
AGREEMENT TO REFER FUTURE DIFFERENCES TO
ARBITRATION

In the matter of the Arbitration Act-

Whereas, by an agreement in writing, dated the.....
day of..... 19....., and made between *A.B.* of

.....and *C.D.* of..... it is provided
that differences arising between the parties thereto shall be referred to an arbitrator as therein
mentioned.

And whereas differences within the meaning of the said provision have arisen and are still subsisting between the parties concerning

Now we, the said parties, *A.B.* and *C.D.*, do hereby refer the said matters in difference to the award of *X. Y.*

(Signed) *A.B.*
C.D.

Dated the....., 19.....

FORM III
EXTENSION OF TIME BY ARBITRATOR BY
ENDORSEMENT ON SUBMISSION

In the matter of the Arbitration Act, and an arbitration between *A.B.* of
..... and *C.D.*
of.....

I hereby extend the time of making my award in respect of the matters in difference referred to me by the within (or above) submission until the day of
....., 19

(Signed) *X.Y.*,
Arbitrator.

Dated the....., 19.....

FORM IV
CASE STATED FOR OPINION OF COURT

In the matter of the Arbitration Act, and an arbitration between *A.B.* of
.....and *C.D.*
of

The following special case is, pursuant to the provisions of paragraph (*b*) of section 8 of the said Act, stated for the opinion of the*
[Here state the facts concisely in numbered paragraphs.]

The questions of law for the opinion of the said court are:

First, whether

.....

Secondly, whether

.....

(Signed) *X.Y.*,
Arbitrator.

Dated the, 19

* Here specify the court.

FORM V
AWARD

In the matter of the Arbitration Act, and an arbitration between *A.B.* of

.....and *C.D.*

of

Whereas, in pursuance of an agreement in writing dated theday

of, 19, made between

A.B. of and *C.D.* of

the said *A.B.* and *C.D.* have referred to me, *X.Y.*, the matters in difference between them concerning (or as the case may be).

Now I, the said *X.Y.*, having duly considered the matters submitted to me, do hereby make an award as follows:—

I award:—

(1) That

.....

(2) That

.....

(Signed) *X.Y.*,
Arbitrator.

Dated the, 19

Controlled by the Ministry of Attorney-General