[TO BE INTRODUCED IN THE NATIONAL ASSEMBLY]

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BILL

THE ARBITRATION BILL, 2009

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THE FIRST SCHEDULE
Convention on the Recognition and Enforcement of Foreign Arbitral Awards

THE SECOND SCHEDULE
Convention on the Settlement of Investment Disputes between States and Nationals of Other States

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to re-enact, amend and consolidate the law relating to domestic arbitration, international commercial arbitration, recognition and enforcement of foreign arbitral awards as well as settlement of international investment dispute through arbitration and also to provide for conciliatory measures and for matters ancillary or incidental thereto or therewith

WHEREAS it is necessary to re-enact and revise the law relating to domestic arbitration keeping in view the changing international practices;

AND WHEREAS following international model law, rules and practices will help to develop harmonious international economic relations with other business partners in international trade and commerce;

AND WHEREAS the United Nations Commission on International Trade Law (UNCITRAL) has adopted the UNCITRAL Model Law on International Commercial Arbitration and Conciliation in 1985 and 2002, as well as Model Arbitration and Conciliation Rules in 1976 and 1980, respectively;

AND WHEREAS the General Assembly of the United Nations has recommended by its Resolutions that all countries give due consideration to the said Model Law in view of the desirability of uniformity of the law of arbitral procedures and conciliatory measures and also keeping in view the specific needs of international commercial arbitration and conciliation practices;

AND WHEREAS it is also desirable to institutionalize the services relating to arbitration and conciliation for their systematic development and regulation and to effectively collaborate and coordinate with similar forums at international level;

AND WHEREAS it is expedient to re-enact law of arbitration and provide for conciliation keeping in view the aforesaid Model Law and Rules thereof;

It is hereby enacted as follows :–

PART I
INTRODUCTORY

1. **Short title, extent and commencement.**– (1) This Act may be called the Arbitration Act, 2009.

(2) It extends to the whole of Pakistan.

(3) It shall come into force at once.

PART II
ARBITRATION

CHAPTER - I
General Provisions

2. **Definitions.**- (1) For the purposes of this Part and Part IV, unless there is anything repugnant in the subject or context ,–

(a) "arbitration" means any arbitration whether or not administered by a permanent arbitral institution;

(b) "arbitration agreement" means an agreement referred to in section 7;

(c) "arbitral award" includes an interim award or additional award;

(d) "arbitral tribunal" means a sole arbitrator or a panel of arbitrators;

(f) "conciliation" means conciliation as defined in Part 64;

(g) "conciliator" means a conciliator under section 68;

(h) "Court" means the principal civil court of original jurisdiction namely the court of the District Judge having jurisdiction to decide the question forming the subject-matter of the arbitration if the same had been the subject-matter of a suit; and includes–

(i) a High Court, in exercise of its ordinary original civil jurisdiction; and

(ii) the court of the Additional District Judge;

but does not include any civil court of a grade inferior to such principal civil court;

(i) "international commercial arbitration" includes an arbitration relating to certain disputes arising out of legal relationship, whether contractual or not, considered as commercial under the law in force in Pakistan where at least one of the parties is–

(i) an individual who is a national of any country, or habitually resident in another country other than Pakistan; or

(ii) a body corporate which is incorporated outside Pakistan in any other country; or

(iii) a company or an association of persons or a body of individuals whose principal office or central management and control is exercised from outside Pakistan in any other country; or

(iv) the Government of a foreign country;

(j) "legal representative" means a person who in law represents the estate of a deceased person, and includes a party acts in a representative character, the person on whom the estate devolves on the death of the party so acting;

(k) "party" means a party to an arbitration agreement, or, a party agreed for conciliation, as the case may be; and

(i) "reference" means a reference to arbitration or conciliation.

(2) This Part and Part IV shall apply where the place of arbitration or conciliation is in Pakistan.

(3) This Part and Part IV shall not affect any other law for the time being in force in Pakistan by virtue of which certain disputes may not be submitted to arbitration, conciliation or for alternative dispute resolution or may be submitted to arbitration or conciliation only according to the provisions of that law.

(4) This Part except sub-section (1) of section 40, sections 41 and 43 shall apply to every arbitration under any other enactment for the time being in force, 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 the provisions of this Part are inconsistent with that other enactment or with any rules made thereunder.

(5) Subject to the provisions of sub-section (4), and save in so far as is otherwise provided by any law for the time being in force or in any agreement in force between Pakistan and any other country or countries, this Part shall apply to all arbitrations and to all proceedings relating thereto.

(6) Where this Part or Part IV, except section 28, leaves the parties free to determine a certain issue, such freedom shall include the right of the parties to authorize any person including an institution, to determine that issue.

(7) An arbitral award made under this Part shall be considered as a domestic award.

(8) Where this Part refers to the fact that the parties have agreed or that they may agree, or, in any other way refers to an agreement of the parties, that agreement shall include any arbitration rules referred to in that agreement.

(9) Where this Part, other than clause (a) of section 25 or clause (a) of sub-section (2) of section 32, refers to a claim, it shall also apply to a counterclaim, and where it refers to a defence, it shall also apply to a defence to that counterclaim.

3. Receipt of written communications.– (1) Unless otherwise agreed by the parties,–

(a) any written communication is deemed to have been received if it is delivered to the addressee personally or at his place of business, habitual residence or mailing address;

(b) if none of the places referred to in clause (a) can be found after making a reasonable inquiry, a written communication is deemed to have been received if it is sent to the addressee's last known place of business, habitual residence or mailing address by registered letter or by any other means which provides a record of the attempt to deliver it; and

(c) the communication is deemed to have been received on the day it is so delivered.

(2) This section does not apply to written communications in respect of proceedings of any Court or judicial authority.

4. Waiver of right to object.– A party who knows that any provision of this Part from which the parties may derogate, or any requirement under the arbitration agreement, has not been complied with and yet proceeds with the arbitration without stating his objection to such non-compliance without undue delay or, if a time-limit is provided there for stating that objection, within such period of time, shall be deemed to have waived his right to so object.

5. Extent of Court or judicial intervention.– Notwithstanding anything contained in any other law for the time being in force, in matters governed by this Part, no judicial authority shall intervene except where so provided in this Part.

6. Administrative assistance for arbitration.– The parties, or the arbitral tribunal with the consent of the parties, in order to facilitate the conduct of the arbitral proceedings, may arrange for administrative assistance by a person or suitable institution.

CHAPTER - II
Arbitration Agreement

7. Definition and form of arbitration agreement.– (1) For the purposes of this Part, "arbitration agreement" means a written agreement to submit to arbitration all or certain differences or disputes, present or future, by the parties in respect of a defined legal relationship, whether contractual or not.

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

(3) An arbitration agreement is in writing if it is contained in–

(a) a document signed by the parties; or

(b) an exchange of letters, telex, telegrams or other means of telecommunication which provide a record of the agreement; or

(c) an exchange of statements of claim and defence in which the existence of the agreement is alleged by one party and not denied by the another.

(4) There reference in a contract to a document containing an arbitration clause constitutes an arbitration agreement provided that the contract is in writing and the reference is such as to make that arbitration clause part of the contract.

(5) Notwithstanding anything contained in a contract or unless any contrary intention appears in the subject or context, an arbitration clause shall be deemed to be the part of all commercial contracts.

8. Power to refer parties to arbitration.– (1) A Court before which an action is brought in a matter which is the subject of an arbitration agreement shall, if a party so applies not later than when submitting his first statement on the substance of the dispute, refer the parties to arbitration unless it finds that the arbitration agreement is null and void, inoperative or incapable of being performed.

(2) The Court shall not entertain an application referred to in sub-section (1) unless it is accompanied by the original arbitration agreement or a certified copy thereof.

(3) Notwithstanding that an application has been made under sub-section (1) and that the issue is pending before the Court, arbitration may be commenced or continued and an arbitral award made.

(4) Notwithstanding anything contained in sub-sections (1), (2) or (3), where in any suit all the parties interested agree that any dispute or matter in difference between them in the suit shall be referred to arbitration, they may, at any time before judgment is pronounced, apply in writing to the Court for an order of reference.

(5) Subject to sub-section (4), an arbitrator shall be appointed in such manner as may be agreed upon between the parties, or, where parties have failed to reach on an agreement as the Court may deem fit subject to the provisions of this Part where parties have failed to reach an agreement, as the case may be.

(6) Where a matter or dispute is referred to arbitration under sub-section (4), save in the manner and to the extent provided in this Part, the Court shall not deal with such matter or dispute which is the subject-matter of the suit.

(7) Where some only of the parties to a suit apply to have the matters in difference or dispute between them referred to arbitration in accordance with, and in the manner provided in sub-section (4), the Court may, if it thinks fit, so refer such matters or points of dispute to arbitration (provided that the same can be separated from the rest of the subject-matter of the suit) in the manner provided in sub-section (4), but the suit shall continue so far as it relates to the parties who have not joined in the said application and to matters not contained in the said reference as if no such application had been made, and an arbitral award made in pursuance of such a reference shall be binding only on the parties who have joined in the application.

9. Interim measures by Court.– A party may, before or during arbitral proceedings or at any time after the making of the arbitral award but before it is enforced in accordance with section 36, apply to a Court–

(a) for the appointment of a guardian for a minor or person of unsound mind for the purposes of arbitral proceedings; or

(b) for an interim measure of protection in respect of any of the following matters, namely:–

(i) the preservation, interim custody or sale of any goods which are the subject-matter of the arbitration agreement;

(ii) securing the amount in dispute in the arbitration;

(iii) the detention, preservation or inspection of any property or thing which is the subject-matter of the dispute in arbitration or reference, or as to which any question may arise therein and authorising for any of the aforesaid purposes any person to enter upon or into any land or building in the possession of any party to the reference, or authorising any samples to be taken or any observation to be made, or experiment to be tried, which may be necessary or expedient for the purpose of obtaining full information or evidence;

(iv) interim injunction or the appointment of a receiver;

(v) such other interim measure of protection as may appear to the court to be just and convenient,

and the Court shall have the same power for making orders as it has for the purpose of, and in relation to, any proceedings before it.

CHAPTER - III
Composition of Arbitral Tribunal

10. Number of arbitrators.– (1) The parties are free to determine the number of arbitrators, provided that such number shall not be an even number.

(2) Failing the determination referred to in sub-section (1), the arbitral tribunal shall consist of a sole arbitrator.

11. Appointment of arbitrators.– (1) Any person irrespective of his nationality may be an arbitrator, unless otherwise agreed by the parties.

(2) The parties are free to agree on a procedure for appointing the arbitrator or arbitrators subject to the provisions of sub-section (6).

(3) Failing such agreement referred to in sub-section (2), in an arbitration with three arbitrators, each party shall appoint one arbitrator, and the two appointed arbitrators shall appoint the third arbitrator who shall act as the presiding arbitrator.

(4) If the appointment procedure in sub-section (3) applies and a party fails to appoint an arbitrator within thirty days from the receipt of a request to do so from the other party; or the two appointed arbitrators fail to agree on the third arbitrator within thirty days from the date of their appointment, the appointment shall be made, upon request of a party, by the Court or any person or institution designated by him.

(5) Failing any agreement referred to in sub-section (2), in an arbitration with a sole arbitrator, if the parties fail to agree on the arbitrator within thirty days from receipt of a request by one party from the other party to so agree the appointment shall be made, upon request of a party, by the Court or any person or institution designated by him.

(6) Where, under an appointment procedure agreed upon by the parties,–

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

(b) the parties, or the two appointed arbitrators, fails to reach an agreement expected of them under that procedure; or

(c) a person, including an institution, fails to perform any function entrusted to him or it under that procedure,

a party may request the Court or any person or institution designated by him to take the necessary measure, unless the agreement on the appointment procedure provides other means for securing the appointment.

(7) A decision on a matter entrusted by sub-section (4) or sub-section (5) or sub-section (6) to the Court or the person or institution designated by him shall be final.

(8) The Court or the person or institution designated by him, in appointing an arbitrator, shall have due regard to any qualifications required of the arbitrator by the agreement of the parties; and other considerations as are likely to secure the appointment of an independent and impartial arbitrator.

(9) In the case of appointment of sole or third arbitrator in an international commercial arbitration, the Court or the person or institution designated by him may appoint an arbitrator of a nationality other than the nationalities of the parties where the parties belong to different nationalities.

(10) The High Court may make rules, as it may deem appropriate for dealing with matters entrusted by sub-section (4) or sub-section (5) or sub-section (6) to a Court.

(11) Where more than one request has been made under sub-section (4) or sub-section (5) or sub-section (6) to different Courts or their designates, the Court or his designate to whom the request has been first made under the relevant sub-section shall alone be competent to decide on the request.

(12) Where the matters referred to in sub-sections (4), (5), (6), (7), (8) and (10) arise in an international commercial arbitration, the reference to Court in those sub-sections shall be construed as a reference to the "Chief Justice of Pakistan".

(13) Where the matters referred to in sub-sections (4), (5), (6), (7), (8) and (10) arise in any other arbitration, the reference to "High Court" in those sub-sections shall be construed as a reference to the Court within whose local limits the principal civil Court referred to in clause (e) of sub-section (1) of section 2 is situate and, where the Court itself is the High Court referred to in that clause, to the Chief Justice of that Court.

12. Grounds for challenge.– (1) When a person is approached in connection with his possible appointment as an arbitrator, he shall disclose in writing any circumstances likely to give rise to justifiable doubts as to his impartiality or independence.

(2) An arbitrator, from the time of his appointment and throughout the arbitral proceedings, shall, without delay, disclose any such circumstances to the parties referred to in sub-section (1) unless they have already been informed of them by him.

(3) An arbitrator may be challenged only if circumstances exist that give rise to justifiable doubts as to his independence or impartiality, or if he does not possess the qualifications agreed to by the parties.

(4) 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 has been made.

13. Challenge procedure.– (1) The parties are free to agree on a procedure for challenging an arbitrator, subject to sub-section (3).

(2) Failing any agreement referred to in sub-section (1), a party who intends to challenge an arbitrator shall, within fifteen days after becoming aware of the constitution of the arbitral tribunal or after becoming aware of any circumstances referred to in sub-section (3) of section 12, send a written statement of the reasons for the challenge to the arbitral tribunal :

Provided that the challenged arbitrator withdraws from his office or the other party agrees to the challenge, the arbitral tribunal shall decide on the challenge.

(3) If a challenge under any procedure agreed upon by the parties or under the procedure under sub-section (2) is not successful, the arbitral tribunal shall continue the arbitral proceedings and make an arbitral award.

(4) Where an arbitral award is made under sub-section (3), the party challenging the arbitrator may make an application for setting aside such an arbitral award in accordance with section 34.

(5) Where an arbitral award is set aside on an application made under sub-section (4), the Court may decide as to whether the arbitrator who is challenged is entitled to any fees or not.

14. Failure or impossibility to act.– (1) The mandate of an arbitrator shall terminate if he –

(a) becomes *de jure* or *de facto* unable to perform his functions or for other reasons fails to act without undue delay; and

(b) withdraws from his office or the parties agree to the termination of his mandate.

(2) If a controversy remains concerning any of the grounds referred to in clause (a) of sub-section (1), any party may apply to the Court to decide on the termination of the mandate unless otherwise agreed by the parties.

(3) If, under this section or sub-section (2) of section 13, an arbitrator withdraws from his office or a party agrees to the termination of the mandate of an arbitrator, it shall not imply acceptance of the validity of any ground referred to in this section or sub-section (3) and sub-section (4) of section 12.

15. Appointment of arbitrator by substitution on termination of mandate.– (1) The mandate of an arbitrator, in addition to the circumstances referred to in section 13 or section 14, shall terminate where he withdraws from office for any reason; or where parties revoke his mandate by an agreement.

(2) Where the mandate of an arbitrator terminates, a substitute arbitrator shall be appointed according to the rules that were applicable to the appointment of the arbitrator being replaced.

(3) Unless otherwise agreed by the parties,–

(a) where an arbitrator is replaced under sub-section (2), any hearings previously held may be repeated at the discretion of the arbitral tribunal; and

(b) an order or ruling of the arbitral tribunal made prior to the replacement of an arbitrator under this section shall not be invalid solely because there has been a change in the composition of the arbitral tribunal.

CHAPTER - IV
Jurisdiction of Arbitral Tribunals

16. Competence of arbitral tribunal to rule on its jurisdiction.– (1) The arbitral tribunal may rule on its own jurisdiction, including ruling on any objections with respect to the existence or validity of the arbitration agreement, and for that purpose,–

(a) an arbitration clause which forms part of a contract shall be treated as an agreement independent of the other terms of the contract; and

(b) a decision by the arbitral tribunal that the contract is null and void shall not entail *ipso jure* the invalidity of the arbitration clause.

(2) A plea that the arbitral tribunal does not have jurisdiction shall be raised not later than the submission of the statement of defence :

Provided that a party shall not be precluded from raising such a plea merely because that he has appointed, or participated in the appointment of, an arbitrator :

Provided further that a plea regarding exceeding the scope of arbitral tribunal's authority shall be raised as soon as the matter alleged to be beyond the scope of its authority is raised during the arbitral proceedings.

(3) The arbitral tribunal may, in either of the cases referred to in sub-section (2), admit a later plea if it considers the delay justified.

(4) The arbitral tribunal shall decide on a plea referred to in sub-section (2) as a preliminary question within thirty days; and, where the arbitral tribunal takes a decision rejecting the plea, continue with the arbitral proceedings and make an arbitral award on the merits :

Provided that no appeal shall lie against such decision of the arbitral tribunal.

(5) A party aggrieved by such an arbitral award may make an application for setting aside such an arbitral award in accordance with section 34.

17. Power of arbitral tribunal to order interim measures.– Unless otherwise agreed by the parties, the arbitral tribunal may, at the request of a party, order a party to take any interim measure of protection as the arbitral tribunal may consider necessary in respect of the subject-matter of the dispute :

Provided that the arbitral tribunal may require a party to provide appropriate security in connection with an interim measure so ordered.

CHAPTER - V
Conduct of Arbitral Proceedings

18. Equal treatment of parties.– The parties shall be treated with equality and each party shall be given a full opportunity to present his case.

19. Determination of rules of procedure.– (1) The arbitral tribunal shall not be bound by the provisions of the Code of Civil Procedure, 1908 (V of 1908) or the *Qanun-e-Shahadat*, 1984 (President's Order No. 10 of 1984).

(2) Subject to this Part, the parties are free to agree on the procedure to be followed by the arbitral tribunal in conducting its proceedings.

(3) Failing any agreement referred to in sub-section (2), the arbitral tribunal may, subject to this Part, conduct the arbitral proceedings in the manner it considers appropriate and necessary.

(4) The power of the arbitral tribunal under sub-section (3) includes the power to determine the admissibility, relevance, materiality and weight of any evidence.

20. Place of arbitration.– (1) The parties are free to agree on the place of arbitration and failing any 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 sub-section (1), the arbitral tribunal may, unless otherwise agreed 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.

21. Commencement of arbitral proceedings.– Unless otherwise agreed by the parties, the arbitral proceedings in respect of a particular dispute commence on the date on which a request for that dispute to be referred to arbitration is received by the respondent.

22. Language.– (1) The parties are free to agree on the language or languages to be used in the arbitral proceedings and failing such agreement, the arbitral tribunal shall determine the language or languages to be used in the arbitral proceedings.

(2) The agreement or determination, unless otherwise specified, shall apply to any written statement by a party, any hearing and any arbitral award, decision or other communication by the arbitral tribunal.

(3) The arbitral tribunal may order that any documentary evidence shall be accompanied by a translation into the language or languages agreed upon by the parties or determined by the arbitral tribunal.

23. Statements of claim and defence.– (1) Within the period of time agreed upon by the parties or determined by the arbitral tribunal, the claimant shall state the facts supporting his claim, the points at issue and the relief or remedy sought, and the respondent shall state his defence in respect of these particulars, unless the parties have otherwise agreed as to the required elements of those statements.

(2) The parties may submit with their statements all documents they consider to be relevant or may add a reference to the documents or other evidence they will submit.

(3) Unless otherwise agreed by the parties, either party may amend or supplement his claim or defence during the course of the arbitral proceedings, unless the arbitral tribunal considers it inappropriate to allow the amendment or supplement having regard to the delay in making it.

24. Hearings and written proceedings.– (1) Subject to any contrary agreement by the parties, the arbitral tribunal shall decide whether to hold oral hearings for the presentation of evidence or for oral argument, or whether the proceedings shall be conducted on the basis of documents and other materials :

Provided that the arbitral tribunal shall hold oral hearings, at an appropriate stage of the proceedings, on a request by a party, unless the parties have agreed that no oral hearing shall be held.

(2) The parties shall be given sufficient advance notice of any hearing and of any meeting of the arbitral tribunal for the purposes of inspection of goods, other property or documents.

(3) All statements, documents or other information supplied to, or applications made to the arbitral tribunal by one party shall be communicated to the other party, and any expert report or evidentiary document on which the arbitral tribunal may rely in making its decision shall be communicated to the parties.

25. Default of a party.– Unless otherwise agreed by the parties, where, without showing sufficient cause,–

(a) the claimant fails to communicate his statement of claim in accordance with sub-section (1) of section 23, the arbitral tribunal shall terminate the proceedings;

(b) the respondent fails to communicate his statement of defence in accordance with sub-section (1) of section 23, the arbitral tribunal shall continue the proceedings without treating that failure in itself as an admission of the allegations by the claimant; or

(c) any party fails to appear at a hearing or to produce documentary evidence, the arbitral tribunal may continue the proceedings and make the arbitral award on the evidence before it.

26. Expert appointed by arbitral tribunal.– (1) Unless otherwise agreed by the parties, the arbitral tribunal may–

(a) appoint one or more experts to report to it on specific issues to be determined by the arbitral tribunal, and

(b) require a party to give the expert any relevant information or to produce, or to provide access to, any relevant documents, goods or other property for his inspection.

(2) Unless otherwise agreed by the parties, if a party so requests or if the arbitral tribunal considers it necessary, the expert shall, after delivery of his written or oral report, participate in a hearing where the parties have the opportunity to put questions to him and to present expert witnesses in order to testify on the points at issue :

Provided that the expert shall, on the request of a party, make available to that party for examination all goods, other property or documents in his possession with which he was provided in order to prepare his report, unless otherwise agreed by the parties.

27. Court assistance in taking evidence.– (1) The arbitral tribunal, or a party with the approval of the arbitral tribunal, may apply to the Court for assistance in taking evidence.

(2) The application made under sub-section (1) shall specify–

(a) the names and addresses of the parties and the arbitrators;

(b) the general nature of the claim and the relief sought;

(c) the evidence to be obtained, in particular,–

(i) the name and address of any person to be heard as witness or expert witness and a statement of the subject-matter of the testimony required;

(ii) the description of any document to be produced or property to be inspected; or

(d) any other necessary fact for the purpose.

(3) The Court may, within its competence and according to its rules on taking evidence, execute the request by ordering that the evidence be provided directly to the arbitral tribunal.

(4) The Court may, while making an order under sub-section (3), issue the same processes to witnesses as it may issue in suits tried before it.

(5) Persons failing to attend in accordance with such process, or making any other default, or refusing to give their evidence, or guilty of any contempt to the arbitral tribunal during the conduct of arbitral proceedings, shall be subject to the like disadvantages, penalties and punishments by order of the Court on the representation of the arbitral tribunal as they would incur for the like offences in suits tried before the Court.

(6) In this section the expression "processes" includes summonses and commissions for the examination of witnesses and summonses to produce documents.

CHAPTER - VI
Making of Arbitral Award and Termination of Proceedings

28. Rules applicable to substance of dispute.– (1) Where the place of arbitration is situate in Pakistan,–

(a) in an arbitration other than an international commercial arbitration, the arbitral tribunal shall decide the dispute submitted to arbitration in accordance with the law for the time being in force in Pakistan;

(b) in international commercial arbitration,–

(i) the arbitral tribunal shall decide the dispute in accordance with the rules or law designated by the parties as applicable to the substance of the dispute;

(ii) any designation by the parties of the law or legal system of a given country shall be construed, unless otherwise expressed, as directly referring to the substantive law of that country and not to its conflict of laws or rules; or

(iii) failing any designation of the law under clause (a) by the parties, the arbitral tribunal shall apply the law or rules it considers to be appropriate, keeping in view all the circumstances relating to the dispute.

(2) The arbitral tribunal shall decide *ex aequo et bono* or as amiable *compositeur*, only if the parties have expressly authorised it to do so.

(3) In all cases, the arbitral tribunal shall decide in accordance with the terms of the contract and shall take into account the usages of the trade applicable to the transaction.

29. Decision making by panel of arbitrators.– (1) In arbitral proceedings with more than one arbitrator, any decision of the arbitral tribunal shall be made by a majority of all its members unless otherwise agreed by the parties :

Provided that questions of procedure may be decided by the presiding arbitrator if so authorised by the parties or all the members of the arbitral tribunal.

30. Settlement.– (1) The arbitral tribunal may use mediation, conciliation or other procedures at any time during the arbitral proceedings to encourage settlement if it is not contrary to the arbitration agreement or the agreement of the parties.

(2) If, during, arbitral proceedings, the parties settle the dispute, the arbitral tribunal shall terminate the proceedings and, if requested by the parties and not objected to by the arbitral tribunal, 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 the provisions of section 31 and shall state that it is an arbitral award and such arbitral award has the same status and effect as any other arbitral award on the substance and merits of the dispute.

31. Form and contents of arbitral award.– (1) An arbitral award shall be made in writing and shall be signed by the members of the arbitral tribunal :

Provided that in arbitral proceedings with more than one arbitrator, the signatures of the majority of all members of the arbitral tribunal shall be sufficient so long as the reason for any omitted signature is stated.

(2) The arbitral 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 arbitral award on agreed terms under section 30.

(3) The arbitral award shall state its date and the place of arbitration as determined in accordance with sub-section (1) of section 20 and the award shall be deemed to have been made at that place.

(4) After the arbitral award is made, a signed copy shall be delivered to each party, and to such Court if matter was referred by a Court.

(5) The arbitral tribunal may, at any time during the arbitral proceedings, make an interim arbitral award on any matter with respect to which it may make a final arbitral award.

(6) Unless otherwise agreed by the parties, where and in so far as an arbitral award is for the payment of money, the arbitral tribunal may include in the sum for which the award is made interest, at such rate as it deems reasonable, on the whole or any part of the money, for the whole or any part of the period between the date on which the cause of action arose and the date on which the award is made.

(7) Unless the arbitral award otherwise directs, a sum directed to be paid by an arbitral award shall carry interest at the per annum rate prevailing during such period for such bank loans and notified or declared by the State Bank of Pakistan from the date of the award to the date of payment.

(8) Unless otherwise agreed by the parties, the costs of the arbitration shall be fixed by the arbitral tribunal; and the arbitral tribunal shall also specify–

(a) the party entitled to costs,

(b) the party who shall pay the costs,

(c) the amount of costs or method of determining that amount, and

(d) the manner in which the costs shall be paid.

Explanation.– For the purpose of this sub-section, "costs" means reasonable costs relating to the fees and expenses of the arbitrators and witnesses, legal fees and expenses, any administrative expenses or fees of the institution supervising the arbitration, and any other expenses incurred in connection with the arbitral proceedings and the arbitral award.

(9) Notwithstanding anything contained in sub-section (8), the Court may determine the cost of arbitration where the matter is referred by the Court or as prescribed by the Centre.

32. Termination of proceedings.– (1) The arbitral proceedings shall be terminated by the final arbitral award or by an order of the arbitral tribunal under sub-section (2).

(2) The arbitral tribunal shall issue an order for the termination of the arbitral proceedings where–

(a) the claimant withdraws his claim, unless the respondent objects to the order and the arbitral tribunal recognises a legitimate interest on his part in obtaining a final settlement of the dispute,

(b) the parties agree on the termination of the proceedings, or

(c) the arbitral tribunal finds that the continuation of the proceedings has for any other reason become unnecessary or impossible.

(3) Subject to section 33 and sub-section (4) of section 34, the mandate of the arbitral tribunal shall terminate with the termination of the arbitral proceedings.

33. Correction and interpretation of arbitral award or additional award.– (1) Within thirty days from the date of receipt of the arbitral award including an additional award, unless another period of time has been agreed upon by the parties–

(a) a party, with notice to the other party, may request the arbitral tribunal to correct any errors in computation, any clerical or typographical errors or any other errors of a similar nature occurring in the award;

(b) if so agreed 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 made under sub-section (1) to be justified, it shall make the correction or give the interpretation within thirty days from the receipt of the request and the interpretation shall form part of the arbitral award and such interpretation shall be final for the purpose and on the point.

(3) The arbitral tribunal may correct any error of the type referred to in clause (a) of sub-section (1), on its own initiative, within thirty days from the date of the arbitral award.

(4) Unless otherwise agreed by the parties, a party with notice to the other party, may request, within thirty days from the receipt of the arbitral award, the arbitral tribunal to make an additional arbitral award as to claims presented in the arbitral proceedings but omitted from the arbitral award.

(5) If the arbitral tribunal considers the request made under sub-section (4) to be justified, it shall make the additional arbitral award within sixty days from the receipt of such request.

(6) The arbitral tribunal may extend, if necessary, the period of time within which it shall make a correction, give an interpretation or make an additional arbitral award under sub-section (2) or sub-section (5).

(7) Section 31 shall apply to a correction or interpretation of the arbitral award or to an additional arbitral award made under this section.

CHAPTER - VII
Recourse against Arbitral Award

34. Application for setting aside arbitral award.– (1) Recourse to a Court against an arbitral award may be made only by an application for setting aside such award in accordance with sub-section (2) and sub-section (3) unless the matter is referred by a Court for arbitration.

(2) An arbitral award may be set aside by the Court only if–

(a) the party making the application furnishes proof that–

(i) a party to the arbitration agreement was under some incapacity, or

(ii) the arbitration agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law for the time being in force; or

(iii) 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

(iv) the arbitral award deals with a 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 that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, only that part of the arbitral award which contains decisions on matters not submitted to arbitration may be set aside; or

(v) 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 a provision of this Part from which the parties cannot derogate, or, failing such agreement, was not in accordance with this Part; or

(b) the Court finds that–

(i) the subject-matter of the dispute is not capable of settlement by arbitration under the law for the time being in force, or

(ii) the arbitral award is in conflict with the public policy of Pakistan.

Explanation.– Without prejudice to the generality of expression public policy it also includes an arbitral award the making of which was induced or affected by fraud, misrepresentation or corruption and in violation of confidentiality.

(3) An application for setting aside may not be made after three months have elapsed from the date on which the party making that application had received the arbitral award or, if a request had been made under section 33, from the date on which that request had been disposed of by the arbitral tribunal :

Provided that if the Court is satisfied that the applicant was prevented by sufficient cause from making the application within the said period of three months it may entertain the application within a further period of thirty days, but not thereafter in any case.

(4) On receipt of an application under sub-section (1), the Court may, where it is appropriate and it is so requested by a party, adjourn the proceedings for a period of time determined by it in order to give the arbitral tribunal an opportunity to resume the arbitral proceedings or to take such other action as in the opinion of arbitral tribunal will eliminate the grounds for setting aside the arbitral award.

CHAPTER - VIII
Finality and Enforcement of Arbitral Awards

35. Finality of arbitral awards.– (1) Subject to this Part an arbitral award shall be final and binding on the parties and persons claiming under them respectively.

(2) Notwithstanding anything contained in sub-section (1), where the reference was made by the Court and the arbitral award is submitted to such Court, the Court shall, after the time for making an application to set aside the award has expired under section 34, or such application having been made, after refusing it, proceed to pronounce judgment according to the arbitral award, and upon the judgment so pronounced a decree shall follow for enforcement under section 36, and no appeal shall lie from such decree except on the ground that it is in excess of, or not otherwise in accordance with, the arbitral award.

36. Enforcement of arbitral awards.– Where the time for making an application to set aside the arbitral award under section 34 has expired, or such application having been made, it has been refused, the award shall be enforced under the Code of Civil Procedure, 1908 (V of 1908), in the same manner as if it were a decree of the Court.

CHAPTER - IX
Appeals

37. Appealable orders.– (1) An appeal shall lie from the following orders (and from no others) to the Court authorised by law to hear appeals from original decrees of the Court passing the order, namely:–

(a) granting or refusing to grant any interim measure under section 9;

(b) setting aside or refusing to set aside an arbitral award under section 34;

(c) against an order of the arbitral tribunal accepting the plea referred to in sub-section (2) of section 16; or

(d) again an order of the arbitral tribunal for granting or refusing to grant an interim measure under section 17.

(2) No second appeal shall lie from an order passed in appeal under this section, but nothing in this section shall affect or take away any right to appeal to the Supreme Court.

CHAPTER - X
Miscellaneous

38. Small Claims and Minor Offences Court not to have jurisdiction over arbitration save arbitration in suits before it.– A Small Claims and Minor Offences Court shall have no jurisdiction over any arbitration proceedings or over any application arising thereout save on application made under sub-section (4) of section 8.

39. Procedure, powers and jurisdiction of Court.– (1) Notwithstanding anything contained elsewhere in this Part or in any other law for the time being in force, where with respect to an arbitration agreement any application under this Part has been made in a Court, that Court alone shall have jurisdiction over the arbitral proceedings and all subsequent applications arising out of that agreement and the arbitral proceedings shall be made in that Court and in no other Court.

(2) Subject to the provisions of this Act and of rules made thereunder–

(a) the provisions of the Code of Civil Procedure, 1908 (V of 1908), shall apply to all proceedings before the Court, and to all appeals, under this Act; and

(b) the Court shall have, for the purpose of, and in relation to, arbitration proceedings, the same power of making orders in respect of any of the matters mentioned in different provisions of this Act as it has for the purpose of, and in relation to, any proceedings before the Court:

Provided that nothing in clause (b) shall be taken to prejudice any power which may be vested in an arbitral tribunal for making orders with respect to any of such matters relating to arbitration.

40. Deposits.– (1) The arbitral tribunal may fix the amount of the deposit or supplementary deposit, as the case may be, as an advance for the costs referred to in sub-section (8) of section 31, which it expects will be incurred in respect of the claim submitted to it :

Provided that where, apart from the claim, a counterclaim has been submitted to the arbitral tribunal, it may fix separate amount of deposit for such claim and counterclaim.

(2) The deposit referred to in sub-section (1) shall be payable in equal shares by the parties :

Provided that where one party fails to pay his share of the deposit, the other party may pay that share:

Provided further that where the other party also does not pay the aforesaid share in respect of the claim or the counterclaim, the arbitral tribunal may suspend or terminate the arbitral proceedings in respect of such claim or counterclaim, as the case may be.

(3) Upon termination of the arbitral proceedings, the arbitral tribunal shall render an accounting to the parties of the deposits received and shall return any unexpended balance to the party or parties, as the case may be, or also to such Court if the matter is referred by a Court.

41. Arbitration agreement not to be discharged by death of party thereto.– (1) An arbitration agreement shall not be discharged by the death of any party thereto either as respects the deceased or as respects any other party, but shall in such event be enforceable by or against the legal representative of the deceased.

(2) The mandate of an arbitrator shall not be terminated by the death of any party by whom he was appointed.

(3) Nothing in this section shall affect the operation of any law by virtue of which any right of action is extinguished by the death of a person.

42. Provisions in case of insolvency.– (1) Where it is provided by a term in a contract to which an insolvent is a party that any dispute arising thereout or in connection therewith shall be submitted to arbitration, the said term shall, if the receiver adopts the contract, be enforceable by or against him so far as it relates to any such dispute.

(2) Where a person who has been adjudged an insolvent had, before the commencement of the insolvency proceedings, become a party to an arbitration agreement, and any matter to which the agreement applies is required to be determined in connection with, or for the purposes of, the insolvency proceedings, then, if the case is one to which sub-section (1) does not apply, any other party or the receiver may apply to the Court or judicial authority having jurisdiction in the insolvency proceedings for an order directing that the matter in question shall be submitted to arbitration in accordance with the arbitration agreement, and the Court or judicial authority 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.

(3) In this section the expression "receiver" includes an Official Assignee.

43. Lien on arbitral award and deposits as to costs.– (1) Subject to the provisions of sub-section (2) and to any provision to the contrary in the arbitration agreement, the arbitral tribunal shall have a lien on the arbitral award for any unpaid costs of the arbitration.

(2) If in any case an arbitral tribunal refuses to deliver its award except on payment of the costs demanded by it, the Court may, on an application in this behalf, order that the arbitral tribunal shall deliver the arbitral award to the applicant on payment into Court by the applicant of the costs demanded, and shall, after such inquiry, if any, as it thinks fit, further order that out of the money so paid into Court there shall be paid to the arbitral tribunal by way of costs such sum as the Court may consider reasonable and that the balance of the money, if any, shall be refunded to the applicant.

(3) An application under sub-section (2) may be made by any party unless the fees demanded have been fixed by written agreement between him and the arbitral tribunal, and the arbitral tribunal shall be entitled to appear and be heard on any such application.

(4) The Court may make such orders as it thinks fit respecting the costs of the arbitration where any question arises respecting such costs and the arbitral award contains no sufficient provision concerning them.

44. Limitations.– (1) The Limitation Act, 1908 (IX of 1908), shall apply to arbitrations as it applies to proceedings in a court.

(2) For the purposes of this section and the Limitation Act, 1908 (IX of 1908), an arbitration shall be deemed to have commenced on the date referred in section 21.

(3) Where an arbitration agreement to submit future disputes to arbitration provides that any claim to which the agreement applies shall be barred unless some step to commence arbitral proceedings is taken within a time fixed by the agreement, and a dispute arises to which the agreement applies, the Court, if it is of opinion that in the circumstances of the case undue hardship would otherwise be caused, and notwithstanding that the time so fixed has expired, may on such terms, if any, as the justice of the case may require, extend the time for such period as it thinks proper.

(4) Where the Court orders that an arbitral award be set aside, the period between the commencement of the arbitration and the date of the order of the Court shall be excluded in computing the time prescribed by the Limitation Act, 1908 (IX of 1908), for the commencement of the proceedings (including arbitration) with respect to the dispute so submitted.

PART III
RECOGNITION AND ENFORCEMENT OF CERTAIN FOREIGN AWARDS, ETC.

CHAPTER - I
Arbitral Awards under the Convention on the Recognition and Enforcement of Foreign Arbitral Awards done at New York

45. Definitions.– For the purposes of this Chapter, unless there is anything repugnant in the subject or context,–

(a) "Contracting State" means a State which is a Party to the Convention;

(b) "Convention" means the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, done at New York on the 10th June, 1958, as set forth in the First Schedule to this Act;

(c) "Court" means a High Court and such other superior court in Pakistan as may be notified by the Federal Government in the official Gazette; and

(d) "foreign arbitral award" means an arbitral award made in a Contracting State and such other State as may be notified by the Federal Government, in the official Gazette.

46. Jurisdiction of Court.– (1) Notwithstanding anything contained in any other law for the time being in force, the Court shall exercise exclusive jurisdiction to adjudicate and settle matters related to or arising from or under this Chapter.

(2) An application to stay legal proceedings pursuant to the provisions of Article II of the Convention may be filed in the Court, in which the legal proceedings are pending.

(3) In exercise of its jurisdiction, the Court shall,–

(a) follow the procedure, as nearly as my be provided in the Code of Civil Procedure, 1908 (V of 1908); and

(b) have all the powers vested in a civil court under the Code of Civil Procedure, 1908 (V of 1908).

47. Enforcement of arbitration agreements.– (1) A party to an arbitration agreement against whom legal proceedings have been brought in respect of a matter which is covered by the arbitration agreement may, upon notice to the other party to the proceedings, apply to the court in which the proceedings have been brought to stay the proceedings in so far as they concern that matter.

(2) On an application under sub-section (1), the court shall refer the parties to arbitration, unless it finds that the arbitration agreement is null and void, inoperative or incapable of being preformed.

48. Furnishing of documents.– The party applying for recognition and enforcement of foreign arbitral award under this Chapter shall, at the time of the application, furnish documents to the Court in accordance with Article IV of the Convention.

49. Enforcement of foreign arbitral award.– (1) Unless the Court pursuant to section 51, refuses the application seeking recognition and enforcement of a foreign arbitral award, the Court shall recognise and enforce the award in the same manner as a judgment or order of a court in Pakistan.

(2) A foreign arbitral award which is enforceable under this Chatper, 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 Pakistan.

50. Unenforceable foreign arbitral awards.– The recognition and enforcement of a foreign arbitral awards shall not be refused except in accordance with Article V of the Convention.

51. Inconsistency.– In the event of any inconsistency between this Chapter, any other law, or any judgment of any court and the Convention, the Convention shall prevail to the extent of the inconsistency.

52. **Power to make rules.**– The Federal Government may, by notification in the official Gazette, make rules to carry out the purposes of this Chapter.

53. **Savings.**– Notwithstanding the repeal of the Arbitration (Protocol and Convention) Act, 1937 (VI of 1937), or the Recognition and Enforcement (Arbitration Agreements and Foreign Arbitral Awards) Ordinance, 2007 (LVIII of 2007), hereinafter in this section referred as "the Act" or "the Ordinance" respectively, the Act or the Ordinance shall continue to have effect in relation to foreign arbitral awards made,–

(a) before the date of commencement of this Act; and

(b) within the meaning of section 2 of the Act which are not foreign arbitral awards within the meaning of section 2 of the Ordinance and section 46 of this Act.

54. **Federal Government to amend the First Schedule.**– The Federal Government may, by notification in the official Gazette, amend the First Schedule in conformity with any amendments to the provisions of the Convention set out therein which may hereafter be duly made and adopted from time to time.

CHAPTER - II

Arbitration under the Convention on the Settlement of Investment Disputes between States and Nationals of Other States

55. **Definitions.**– For the purposes of this Chapter, unless there is anything repugnant in the subject or context,–

(a) "award" includes any decision interpreting, reversing or annulling an award, being a decision pursuant to the Convention, and any decision as to costs which under the Convention is to form part of the award;

(b) "Centre" means the International Centre for Settlement of Investment Disputes established by the Convention; and

(c) "Convention" means the Convention on the Settlement of Investment Disputes between States and Nationals of Other States incorporated in the Second Schedule to this Act.

56. **Registration of awards.**– (1) An award shall be deemed to have been rendered pursuant to the Convention on the date on which certified copies of the award were dispatched to the parties.

(2) Any person seeking recognition or enforcement of an award rendered pursuant to the Convention shall be entitled to have the award registered in the High Court subject to proof of any matters that may be prescribed and to the other provisions of this Chapter.

(3) In addition to the pecuniary obligations imposed by the award, the award shall be registered for the reasonable costs of and incidental to registration.

(4) If at the date of the application for registration the pecuniary obligations imposed by the award have been partly satisfied, the award shall be registered only in respect of the balance, and accordingly if those obligations have been wholly satisfied, the award shall not be registered.

57. Effect of registration.– Subject to the provisions of this Chapter, an award registered under section 57 shall, as respects the pecuniary obligations which it imposes, be of the same force and effect for the purposes of execution as if it had been a judgment of the High Court given when the award was rendered pursuant to the Convention and entered on the date of registration under this Act, and, so far as it relates to such pecuniary obligations:–

(a) proceedings may be taken on the award;

(b) the sum for which the award is registered shall carry interest; and

(c) the High Court shall have the same control over the execution of the award, as if the award had been a judgment of the High Court.

58. Binding on the Federal Government.– Sections 57 and 58 shall bind the Federal Government but not so as to make an award enforceable against the Federal Government in a manner in which a judgment would not be enforceable against the Federal Government.

59. Federal Government contribution to expenses under the Convention.– Any sums required to meet any obligations of the Federal Government arising out of Article 17 of the Convention (which obliges the Contracting States to meet any deficit of the Centre) shall be charged on and paid out of the Federal Consolidated Fund.

60. Exclusion of other provisions of the Act.– The provisions of this Act except this Chapter, shall not apply to proceedings pursuant to the Convention.

61. Certain provisions of Convention to have force of law.– (1) Notwithstanding anything to the contrary in any law, the provisions of Articles 18, 19, 20, 21(a), Article 22 as it applies to Article 21(a), 23(1) and 24 shall have the force of law.

(2) Nothing in Article 24(1) of the Convention shall be construed as–

(a) entitling the Centre to import into Pakistan goods free of any customs duty without restriction on their subsequent sale therein;

(b) conferring on the Centre any exemption from taxes or duties which form part of the price of goods sold; or

(c) conferring on the Centre any exemption from taxes or duties which are in fact no more than charges for services rendered.

(3) For the purposes of Article 20 and Article 21(a) of the Convention as given the force of law by this section, a statement to the effect that the Centre has waived an immunity in the circumstances specified in the statement, being a statement certified by the Secretary-General of the Centre, or by the person acting as Secretary-General, shall be conclusive evidence of such waiver.

62. Power to make rules.– The Federal Government may make rules,–

(a) to prescribe the procedure for applying for registration of an award under this Chapter, and to require the applicant to give prior notice of his intention to register to other parties;

(b) to prescribe matters to be proved on the application and the manner of proof, and in particular to require the applicant to furnish a copy of the award certified pursuant to the Convention;

(c) to provide for the service of notice of registration of the award by the applicant on other parties;

(d) to provide for the stay of execution whether provisionally or otherwise of any award registered under this Chapter in accordance with the provisions of the Convention; and

(e) on any other matter which may be necessary to carry out the purposes of this Chapter of the Act.

63. Federal Government to amend the Second Schedule.– The Federal Government may, by notification in the official Gazette, amend the Second Schedule in conformity with any amendments to the provisions of the Convention set out therein which may hereafter be duly made and adopted from time to time.

PART IV
CONCILIATION

64. Application and scope of conciliation.– (1) Save as otherwise provided by any law for the time being in force and unless the parties have otherwise agreed, this Chapter shall apply to conciliation of disputes arising out of legal relationship, whether contractual or not and to all proceedings relating thereto.

Explanation.– For the purposes of this Chapter, "conciliation" means a process, whether referred to by the expression conciliation, mediation, a traditional method of dispute settlement by amicable intervention of a third person, or an expression of similar import, whereby parties request a third person or persons (the conciliator) to assist them in their attempt to reach an amicable settlement of their dispute arising out of or relating to a contractual or other legal relationship and the conciliator does not have the authority to impose upon the parties a solution to the dispute.

(2) This Chapter shall not apply where by virtue of any law for the time being in force certain disputes may not be submitted to conciliation.

65. Application of certain laws barred.– The provisions of the Code of Civil Procedure, 1908 (V of 1908) or the *Qanun-e-Shahadat*, 1984 (President's Order No. 10 of 1984), shall not apply on conciliation proceedings.

66. Commencement of conciliation proceedings.– (1) The party initiating conciliation shall send to the other party a written invitation to conciliate under this Chapter, briefly identifying the subject of the dispute.

(2) Conciliation proceedings shall commence when the other party accepts in writing the invitation to conciliate.

(3) If the other party rejects the invitation, there will be no conciliation proceedings.

(4) If the party initiating conciliation does not receive a reply within thirty days from the date on which he sends the invitation, or within such other period of time as specified in the invitation, he may elect to treat this as a rejection of the invitation to conciliate and if he so elects, he shall inform in writing the other party accordingly.

67. Number of conciliators.– (1) There shall be one conciliator unless the parties agree that there shall be two or three conciliators.

(2) Where there is more than one conciliator, they ought, as a general rule, to act jointly.

68. Appointment of conciliators.– (1) Subject to sub-section (2),–

(a) in conciliation proceedings with one conciliator, the parties may agree on the name of a sole conciliator;

(b) in conciliation proceedings with two conciliators, each party may appoint one conciliator; and

(c) in conciliation proceedings with three conciliators, each party may appoint one conciliator and the parties may agree on the name of the third conciliator who shall act as the presiding conciliator.

(2) Parties may enlist the assistance of a suitable institution or person in connection with the appointment of conciliators, and in particular,–

(a) a party may request such an institution or person to recommend the names of suitable individuals to act as conciliator; or

(b) the parties may agree that the appointment of one or more conciliators be made directly by such an institution or person :

Provided that in recommending or appointing individuals to act as conciliator, the institution or person shall have regard to such considerations as are likely to secure the appointment of an independent and impartial conciliator and, with respect to a sole or third conciliator, shall take into account the advisability of appointing conciliators of a nationality other than the nationalities of the parties.

(3) When a person is approached in connection with his possible appointment as conciliator, he shall disclose circumstances likely to give rise to justifiable doubts as to his impartiality or independence unless the parties already have knowledge of such fact.

69. Administrative assistance for conciliation.– In order to facilitate the conduct of the conciliation proceedings, the parties, or the conciliator with the consent of the parties, may arrange for administrative assistance by a suitable institution or person.

70. Submission of statements to conciliator.– (1) Upon his appointment, the conciliator may request each party to submit a brief written statement describing the general nature of the dispute and the points at issue.

(2) The conciliator shall send a copy of statement under sub-section (1) to each party.

(3) The conciliator may request each party to submit a further written statement of his position and the facts and grounds in support thereof, supplemented by any document and other evidence that such party deems appropriate on receipt of copy of statement under sub-section (2) and such statement, documents and other evidence shall also be provided to the parties for their comments or reply.

(4) The conciliator may request a party to submit such additional information as he may deem appropriate at any stage of the conciliation proceedings.

Explanation.– Where there are more than one conciliator, the presiding conciliator shall coordinate between the other conciliators and the parties for provision of statements, documents and other evidence.

71. Conduct of conciliation proceedings.– (1) The conciliator shall assist the parties to reach an amicable settlement of their dispute in an independent and impartial manner.

(2) Subject to any agreement between the parties on the manner in which the conciliation proceedings are to be conducted, the conciliator may conduct the conciliation proceedings in such a manner as the conciliator considers appropriate, taking into account the circumstances of the case, any wishes that the parties may express and the need for a speedy settlement of the dispute.

(3) Among other things, the rights and obligations of the parties relating to the dispute, the conciliator shall follow the principles of objectivity, equity and justice while giving due consideration to the usages of the trade concerned and the prevailing circumstances including any previous business practices between the parties.

(4) The conciliator may, at any stage of the conciliation proceedings, make proposals for a settlement of the dispute and such proposals need not be in writing and need not be accompanied by a statement of the reasons therefor.

(5) Each party may, on his own initiative or at the invitation of the conciliator, submit to the conciliator suggestions for the settlement of the dispute.

(6) The parties shall in good faith cooperate with the conciliator and, in particular, shall endeavour to comply with requests by the conciliator to submit written materials, provide evidence and attend meetings.

72. Communication between conciliator and parties.– (1) The conciliator may invite the parties to meet him or may communicate with them orally or in writing.

(2) The conciliator may meet or communicate with the parties together or with each of them separately.

(3) Subject to convenience of the parties and unless otherwise agreed between the parties, the meeting with the conciliator shall be held at such place as may be determined by the conciliator, after consultation with the parties, having regard to the circumstances of the conciliation proceedings.

73. Disclosure of information.– When the conciliator receives information concerning the dispute from a party, he shall disclose the substance of that information to the other party in order that the other party may have the opportunity to present any explanation which he considers appropriate :

Provided that when a party gives any information to the conciliator subject to a specific condition that it be kept confidential, the conciliator shall not disclose that information to the other party to the conciliation.

74. Confidentiality.– (1) Notwithstanding anything contained in any other law for the time being in force, the conciliator and the parties shall keep confidential all matters and information relating to the conciliation proceedings.

(2) Confidentiality shall extend also to the settlement agreement except where its disclosure is necessary for purposes of implementation and enforcement.

75. Settlement agreement.– (1) During the conciliation proceedings, when it appears to the conciliator that there exist elements of a settlement which may be acceptable to the parties, he shall formulate the terms of a possible settlement and submit them to the parties for their observations and after receiving their observations, the conciliator may reformulate the terms of a possible settlement in the light of such observations.

(2) If the parties reach agreement on a settlement of the dispute, they may draw up and sign a written settlement agreement.

(3) Subject to sub-section (2), the conciliator may draw up, or assist the parties in drawing up, the settlement agreement if so requested by the parties.

(4) When the parties sign the settlement agreement, it shall be final and binding on the parties and persons claiming under them respectively and the conciliator shall authenticate the settlement agreement and furnish a copy thereof to each of the parties.

76. **Effect of settlement agreement.**– The settlement agreement shall have the same effect to the parties as if it is an arbitral award on agreed terms on the substance of the dispute rendered by an arbitral tribunal under section 30.

77. **Termination of conciliation proceedings.**– The conciliation proceedings shall be terminated–

(a) by the conclusion and signing of the settlement agreement by the parties, on the date of the agreement; or

(b) by a declaration in writing of the conciliator, after consultation with the parties, to the effect that further efforts at conciliation are no longer justified, on the date of the declaration; or

(c) by a declaration in writing of the parties addressed to the conciliator to the effect that the conciliation proceedings are terminated, on the date of the declaration; or

(d) by a declaration in writing of a party to the other party and the conciliator, if appointed, to the effect that the conciliation proceedings are terminated, on the date of the declaration.

78. **Resort to arbitral or judicial proceedings.**– The parties shall not initiate, during the conciliation proceedings, any arbitral or judicial proceedings in respect of a dispute that is the subject-matter of the conciliation proceedings except that a party may initiate arbitral or judicial proceedings where, in his opinion, such proceedings are necessary for preserving his rights.

79. **Costs.**– (1) Notwithstanding the costs prescribed by the Centre or as agreed between the parties, upon termination of the conciliation proceedings, the conciliator shall fix the costs of the conciliation and give written notice thereof to the parties.

(2) For the purpose of sub-section (1), "costs" means reasonable costs relating to–

(a) the fee and expenses of the conciliator and witnesses requested by the conciliator with the consent of the parties;

(b) any expert advice requested by the conciliator with the consent of the parties;

(c) any assistance provided pursuant to clause (b) of sub-section (2) of section 69 and section 70;

(d) any other expenses incurred in connection with the conciliation proceedings and the settlement agreement.

(3) The costs shall be borne equally by the parties unless the settlement agreement provides for a different apportionment :

Provided that all other expenses incurred by a party shall be borne by that party.

80. Deposits.– (1) Subject to sub-section (2) of section 80, the conciliator may direct each party to deposit an equal amount as an advance for the costs which he expects will be incurred.

(2) During the course of the conciliation proceedings, the conciliator may direct supplementary deposits in an equal amount from each party.

(3) If the required deposits under sub-sections (1) and (2) are not paid in full by both parties within thirty days, the conciliator may suspend the proceedings or may make a written declaration of termination of the proceedings to the parties, effective on the date of that declaration.

(4) Upon termination of the conciliation proceedings, the conciliator shall render an accounting to the parties of the deposits received and shall return any unexpended balance to the parties.

81. Role of conciliator in other proceedings.– Unless otherwise agreed by the parties, the conciliator shall not, act as an arbitrator or as a representative or counsel of a party in any arbitral or judicial proceedings in respect of a dispute that is the subject of the conciliation proceedings; or be presented by the parties as a witness in any arbitral or judicial proceedings in respect of another dispute that has arisen from the same contract or legal relationship or any related contract or legal relationship.

82. Admissibility of evidence in other proceedings.– The parties shall not rely on or introduce as evidence in arbitral or judicial proceedings, whether or not such proceedings relate to the dispute that is the subject of the conciliation proceedings,–

(a) an invitation by a party to engage in conciliation proceedings or the fact that a party was willing to participate in such proceedings;

(b) views expressed or suggestions made by the other party in respect of a possible settlement of the dispute in conciliation;

(c) statements or admissions made by the other party in the course of the conciliation proceedings;

(d) proposals made by the conciliator;

(e) the fact that the other party had indicated his willingness to accept a proposal for settlement made by the conciliator; or

(f) a document prepared solely for purposes of the conciliation proceedings.

PART V
PAKISTAN NATIONAL ARBITRATION AND CONCILIATION CENTRE

83. Definitions.– Nothing contained in Act and unless there is anything repugnant in the subject or context of this Chapter,–

(a) "arbitrator" means an arbitrator registered and affiliated with the Centre;

(b) "Centre" means the Pakistan National Arbitration and Conciliation Centre established under section 84;

(c) "conciliator" means a conciliator registered and affiliated with the Centre;

(d) "Director General" means the Director General of the Centre;

(e) "Fund" means the Fund of the Centre under section 88; and

(f) "prescribed" means prescribed by rules.

84. Establishment of the Pakistan National Arbitration and Conciliation Centre.– (1) There shall be established the Pakistan National Arbitration and Conciliation Centre for institutionalizing the services relating to arbitration, conciliation and alternative dispute resolution in the country in a systematic and regulated manner.

(2) The Centre shall be a body corporate having perpetual succession and common seal with powers to enter into agreements, contracts, acquire and hold property, both moveable and immovable, subject to the provisions of this Act and to sue and be sued in its name.

(3) The head office of the Centre shall be at Islamabad and the Federal Government may set up offices of the Centre at such places, as it may deem necessary, as and when required.

(4) The Centre shall consist of the Director General, such other officers and necessary supporting, as may be prescribed, by the rules.

(4) The Director General shall exercise the powers and functions of the Centre under this Act.

(5) The Director General may delegate any of his powers to any officer subordinate to him in writing by imposing such conditions as he deems fit and necessary.

85. Powers and functions of the Centre.– The powers and functions of the Centre shall be to,–

(a) conduct research in the fields of arbitration, conciliation and alternative dispute resolution methods;

(b) advise the Government of Pakistan on policy matters and modern international trends in the fields of arbitration, conciliations and other alternative dispute resolutions methods;

(c) coordinate, liaise or interact with other authorities, bodies or international organizations in any study or cooperation in the fields of arbitration, conciliation and alternative dispute resolution;

(d) enter into contracts for the supply of goods, materials and services or for the execution of works as may be necessary for the discharge of any of its powers and functions;

(e) determine qualifications, experience and other ancillary matters for arbitrators, conciliators or other persons providing services relating alternative dispute resolution in their areas of expertise except for persons enrolled as an advocate with any Bar Council in Pakistan who shall be entitled to act as arbitrator or conciliator or for alternative dispute resolution in fields of their expertise or interest;

(f) accredit, certify, register, prepare lists of arbitrators, conciliators and persons providing services for alternative dispute resolution and regulate their

conduct of business as such and fees for their registration or other matters relating to their conduct of performance and discipline;

(g) make rules and provide suitable penalties like imposition of fines, suspension and cancellation of registration of persons or institutions registered or affiliated with the Centre for providing arbitration, conciliation or alternative dispute resolution services, their appointment, registration or affiliation procedures, appeal procedure for any disciplinary action taken under such rules as prescribed;

(h) prescribe fees for arbitrators, conciliators or persons providing services for alternative dispute resolution;

(i) establish and provide infrastructural facilities for arbitration, conciliation and alternative dispute resolution purposes on reasonable cost to the arbitral tribunals, arbitrators, conciliators or persons providing alternative dispute resolution services or other parties related thereto;

(j) launch awareness campaigns in masses about the use, application and advantages of alternative dispute resolutions methods including arbitration and conciliation;

(k) develop working manuals, reference materials and procedures to assist the arbitral tribunals, arbitrators, conciliators or to persons providing services relating alternative dispute resolution and to educate the general public;

(l) adopt or make rules for the purposes of arbitration, conciliation and alternative dispute resolution or any matter mentioned in this Part or Act is specifically authorized; and

(m) perform and carry out any other act, thing or function relating to arbitration, conciliation or alternative dispute resolution or matters ancillary thereto or thereunder the Act.

86. Director General.– (1) There shall be a Director General, having reasonable experience in arbitration, conciliation or in alternative dispute resolution methodologies and qualifications in the fields of law, business or international trade, of the Centre who shall be appointed by the Federal Government on such other terms and conditions as may be prescribed.

(2) The Director General shall be the Chief Executive of the Centre and shall discharge such duties and perform such functions as are assigned to him by or under the Act or by the Federal Government and the Centre.

(3) The Director General shall hold office for a period of three years extendable for another term of three years keeping in view his meritorious services for the advancement of the purposes of the Centre and its functions under the Act.

(4) The Federal Government shall prescribe other terms and conditions relating to the appointment, service and office of the Director General.

87. Appointment of officers and staff of the Centre.– (1) The Director General may appoint such officers, experts, consultants and members of his staff as it may consider necessary for the efficient performance of its functions on such terms and conditions as may be prescribed under the rules made with the prior approval of the Federal Government.

(2) The Director General, officers, experts, consultants and members of staff of the Centre when acting or purporting to act under any of the provisions of this Act or rules

made thereunder shall be deemed to be public servants within the meaning of section 21 of the Pakistan Penal Code (Act XLV of 1860).

88. Fund.– (1) There shall be established a non-lapsable fund to be known as Pakistan National Arbitration and Conciliation Centre Fund which shall vest in the Centre and shall be utilized by the Centre to meet charges and expenditure in connection with its functions and operations under this Act including payment of salaries and other remuneration payable to the Director General, officers, experts, consultants and other staff members of the Centre.

(2) The Fund shall consist of –

(a) funds provided by the Federal Government for payment of salaries, establishing infrastructure and running the day to day business of the Centre;

(b) loans or grants by the Federal Government, any other Government, local authority or organization as well as from any other source recognized and allowed by the Federal Government;

(c) foreign aid, grants and loans negotiated and raised, or otherwise obtained, by the Centre;

(d) fees for registration of persons to serve individually or as panels of arbitrators, conciliators or persons providing alternative dispute resolution services or amounts generated from provision of infrastructural facilities for conciliation, arbitration or alternative dispute resolution;

(e) amounts received from fines, penalties or from other charges of the Centre;

(f) income from moveable or immovable property; and

(g) all other sums received by the Centre from different sources.

(3) The Fund shall be kept in one or more accounts maintained by the Centre in any currency in any schedule bank in Pakistan and shall be operated by the Director General in accordance with the directions of the Federal Government.

89. Accounts and audit.– (1) The Centre shall prepare its budget in respect of each financial year and submit for the approval of Federal Government on such date as may be prescribed for the purpose, in accordance with the prescribed procedure and shall maintain complete and accurate books of accounts of its actual expenses and receipts.

(2) The accounts of the Centre shall be maintained in the manner prescribed by the Controller General of Accounts.

(3) The Auditor-General of Pakistan shall conduct audit of the accounts of the Centre.

(4) A copy of the audit report shall be sent to the Federal Government, alongwith the comments of the Director General.

(5) The Federal Government may issue directions to the Director General for the rectification of any item objected to by the Auditor-General of Pakistan and the Director General shall comply with such directions.

90. Annual and other reports.– (1) Within three months of the conclusion of each calendar year, the Director General shall submit an annual report to the Federal Government in respect of activities of the Centre including the status of its programmes,

projects and future plans formulated in furtherance of its aims and objects and purposes of this Part.

(2) In addition to the annual report, the Director General shall, from time to time, if necessary, prepare such special reports relating to any special activity of the Centre and submit it to the Federal Government or the Federal Government may direct for preparation of a special report about any particular subject under the Act.

91. Power to make rules.– (1) The Director General, with the previous approval of the Federal Government, may make or adopt with certain variation rules for performance of different functions and powers under this Part.

(2) The rules made under sub-section (1) shall be effective after their publication in the official Gazette.

(3) The contravention of rules made under sub-section (1) shall be punishable with a penalty of fine, suspension or cancellation of registration or affiliation, etc., as the case may be, as prescribed by the rules, if relating to conduct and discipline of the persons or institutions registered, certified or affiliated to provide services as arbitrators, arbitral tribunal, conciliators, individually or as a panel, or for alternative dispute resolution purposes.

(4) No penalty shall be imposed under the rules on any person or institution without giving an opportunity of being heard.

PART VI
MISCELLANEOUS PROVISIONS

92. Power of the Federal Government to make rules.– (1) The Federal Government may, by notification in the official Gazette, make rules for carrying out the purposes of this Act except where such power shall be exercised by the High Court or any other person or authority.

93. Power of High Court to make rules.– The High Court may make rules consistent with this Act as to all proceedings before the Court under this Act as provided under different provisions of this Act.

94. Removal of difficulties.– (1) In case any difficulty arises in giving effect to provisions of this Act, the Federal Government may, for the purpose of removing such difficulty, make such order as it considers expedient and any such order shall be deemed to be, and given effect to, as a part of the provisions of this Act :

Provided that no such power shall be exercised after the expiry of three years from the commencement of this Act.

95. Repeal and savings.– (1) The Arbitration Act, 1940 (X of 1940), the Recognition and Enforcement (Arbitration Agreements and Foreign Arbitral Awards) Ordinance, 2007 (LVIII of 2007), and the Arbitration (International Investment Disputes) Ordinance, 2007 (XXXVIII of 2007), are hereby repealed.

(2) Notwithstanding such repeal,–

(a) the provisions of the said enactments shall apply in relation to arbitral proceedings which commenced before this Act came into force or any arbitral award made or its enforcement proceedings initiated unless otherwise agreed by the parties but this Act shall apply in relation to arbitral proceedings which commenced on or after this Act comes into force; and

(b) all rules made and actions taken under the said enactments shall, to the extent to which they are not repugnant to this Act, be deemed respectively to have been made or taken under this Act and shall continue in force until altered or rescinded by rules made or actions taken under this Act.

THE FIRST SCHEDULE

[See section 46*]*

CONVENTION ON THE RECOGNITION AND ENFORCEMENT OF FOREIGN ARBITRAL AWARDS

ARTICLE I

1. This Convention shall apply to the recognition and enforcement of arbitral awards made in the territory of a State other than the State where the recognition and enforcement of such awards are sought, and arising out of differences between persons, whether physical or legal. It shall also apply to arbitral awards not considered as domestic awards in the State where their recognition and enforcement are sought.

2. The term "arbitral awards" shall include not only awards made by arbitrators appointed for each case but also those made by permanent arbitral bodies to which the parties have submitted.

3. When signing, ratifying or acceding to this Convention, or notifying extension under article X hereof, any State may on the basis of reciprocity declare that it will apply the Convention to the recognition and enforcement of awards made only in the territory of another Contracting State. It may also declare that it will apply the Convention only to differences arising out of legal relationships, whether contractual or not, which are considered as commercial under the national law of the State making such declaration.

ARTICLE II

1. Each Contracting State shall recognise an agreement in writing under which the parties undertake to submit to arbitration all or any differences which have arisen or which may arise between them in respect of defined legal relationship, whether contractual or not, concerning a subject-matter capable of settlement by arbitration.

2. The term "agreement in writing" shall include all arbitral clauses in a contract or an arbitration agreement, signed by the parties or contained in an exchange of letters or telegrams.

3. The Court of a Contracting State, when seized of an action in a matter in respect of which the parties have made an agreement within the meaning of this article, shall, at the request of one of the parties, refer the parties to arbitration, unless it finds that the said agreement is null and void, inoperative and incapable of being performed.

ARTICLE III

Each Contracting State shall recognize arbitral awards as binding and enforce them in accordance with the rules of procedure of the territory where the award is relied upon, under the conditions laid down in the following articles. There shall not be imposed substantially more onerous conditions or higher fees or charges on the recognition or enforcement of

arbitral awards to which this Convention applies than are imposed on the recognition or enforcement of domestic arbitral awards.

ARTICLE IV

1. To obtain the recognition and enforcement mentioned in the preceding article, the party applying for recognition and enforcement shall, at the time of the application, supply–

(a) the duly authenticated original award or a duly certified copy thereof;

(b) the original agreement referred to in article II or a duly certified copy thereof.

2. If the said award or agreement is not made in an official language of the country in which the award is relied upon, the party applying for recognition and enforcement of the award shall produce a translation of these documents into such language. The translation shall be certified by an official or sworn translator or by a diplomatic or consular agent.

ARTICLE V

1. Recognition and enforcement of the award may be refused, at the request of the party against whom it is invoked, only if that party furnishes to the competent authority where the recognition and enforcement is sought, proof that–

(a) the parties to the agreement referred to in article II were, under the law applicable to them, under some incapacity, or the said agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law of the country where the award was made; or

(b) the party against whom the award is invoked 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

(c) the award deals with a difference 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 that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, that part of the award which contains decisions on matters submitted to arbitration may be recognised and enforced; or

(d) the composition of the arbitral authority or the arbitral procedure was not in accordance with the agreement of the parties, or, failing such agreement, was not in accordance with the law of the country where the arbitration took place; or

(e) 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, that award was made.

2. Recognition and enforcement of an arbitral award may also be refused if the competent authority in the country where recognition and enforcement is sought finds that–

(a) the subject-matter of the difference is not capable of settlement by arbitration under the law of that country; or

(b) the recognition or enforcement of the award would be contrary to the public policy of that country.

ARTICLE VI

If an application for the setting aside or suspension of the award has been made to a competent authority referred to in article V(1)(e), the authority before which the award is sought to be relied upon may, if it considers it proper, adjourn the decision on the enforcement of the award and may also, on the application of the party claiming enforcement of the award, order the other party to give suitable security.

ARTICLE VII

1. The provisions of the present Convention shall not affect the validity of multilateral or bilateral agreements concerning the recognition and enforcement of arbitral awards entered into by the Contracting States nor deprive any interested party of any right he may have to avail himself of an arbitral award in the manner and to the extent allowed by the law or the treaties of the country where such award is sought to be relied upon.

2. The Geneva Protocol on Arbitration Clauses of 1923 and the Geneva Convention on the Execution of Foreign Arbitral Awards of 1927 shall cease to have effect between Contracting States on their becoming bound and to the extent that they become bound by this Convention.

ARTICLE VIII

1. This Convention shall be open until 31st December, 1958 for signature on behalf of any Member of the United Nations and also on behalf of any other State which is or hereafter becomes member of any specialized agency of the United Nations, or which is or hereafter becomes a party to the Statute of the International Court of Justice, or any other State to which an invitation has been addressed by the General Assembly of the United Nations.

2. This Convention shall be ratified and the instrument of ratification shall be deposited with the Secretary-General of the United Nations.

ARTICLE IX

1. This Convention shall be open for accession to all States referred to in article VIII.

2. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

ARTICLE X

1. Any State may, at the time of signature, ratification or accession, declare that this Convention shall extend to all or any of the territories for the international relations of which it is responsible. Such a declaration shall take effect when the Convention enters into force for the State concerned.

2. At any time thereafter any such extension shall be made by notification addressed to the Secretary-General of the United Nations and shall take effect as from the ninetieth day after the day of receipt by the Secretary-General of the United Nations of this notification, or as from the date of entry into force of the Convention for the State concerned, whichever is the later.

3. With respect to those territories to which this Convention is not extended at the time of signature, ratification or accession, each State concerned shall consider the possibility of taking the necessary steps in order to extend the application of this Convention to such territories, subject, where necessary for constitutional reasons, to the consent of the Governments of such territories.

ARTICLE XI

In the case of a federal or non-unitary State, the following provisions shall apply–

(a) with respect of those articles of this Convention that come within the legislative jurisdiction of the federal authority, the obligations of the federal Government shall to this extent be the same as those of Contracting States which are not federal States;

(b) with respect to those articles of this Convention that come within the legislative jurisdiction of constituent States or provinces which are not, under the constitutional system of the federation, bound to take legislative action, the federal Government shall bring such articles with a favourable recommendation to the notice of the appropriate authorities of constituent States or provinces at the earliest possible moment;

(c) a federal State Party to this Convention shall, at the request of any other Contracting State transmitted through the Secretary-General of the United Nations, supply a statement of the law and practice of the federation and its constituent units in regard to any particular provision of this Convention, showing the extent to which effect has been given to that provision by legislative or other action.

ARTICLE XII

1. This Convention shall come into force on the ninetieth day following the date of deposit of the third instrument of ratification or accession.

2. For each State ratifying or acceding to this Convention after the deposit of the third instrument of ratification or accession, this Convention shall enter into force on the ninetieth day after deposit by such State of its instrument of ratification or accession.

ARTICLE XIII

1. Any Contracting State may denounce this Convention by a written notification to the Secretary-General of the United Nations. Denunciation shall take effect one year after the date of receipt of the notification by the Secretary-General.

2. Any State which has made a declaration or notification under article X may, at any time thereafter, by notification to the Secretary-General of the United Nations, declare that this Convention shall cease to extend to the territory concerned one year after the date of the receipt of the notification by the Secretary-General.

3. This Convention shall continue to be applicable to arbitral awards in respect of which recognition or enforcement proceedings have been instituted before the denunciation takes effect.

ARTICLE XIV

A Contracting State shall not be entitled to avail itself of the present Convention against other Contracting States except to the extent that it is itself bound to apply the Convention.

ARTICLE XV

The Secretary-General of the United Nations shall notify the States contemplated in Article VIII of the following:

(a) signatures and ratifications in accordance with Article VIII;

(b) accessions in accordance with Article IX;

(c) declarations and notifications under Articles I, X and XI;

(d) the date upon which this Convention enters into force in accordance with Article XII;

(e) denunciations and notifications in accordance with Article XIII.

ARTICLE XVI

1. This Convention, of which the Chinese, English, French, Russian and Spanish texts shall be equally authentic, shall be deposited in the archives of the United Nations.

2. The Secretary-General of the United Nations shall transmit a certified copy of this Convention to the States contemplated in Article XIII.

THE SECOND SCHEDULE

[See **section 56***]*

CONVENTION ON THE SETTLEMENT OF INVESTMENT DISPUTES BETWEEN STATES AND NATIONALS OF OTHER STATES

PREAMBLE

The Contracting States

CONSIDERING the need for international cooperation for economic development, and the role of private international investment therein;

BEARING IN MIND the possibility that from time to time disputes may arise in connection with such investment between Contracting States and nationals of other Contracting States;

RECOGNISING that while such disputes would usually be subject to national legal processes, international methods of settlement may be appropriate in certain cases;

ATTACHING PARTICULAR IMPORTANCE to the availability of facilities for international conciliation or arbitration to which Contracting States and nationals of other Contracting States may submit such disputes if they so desire;

DESIRING to establish such facilities under the auspices of the International Bank for Reconstruction and Development;

RECOGNIZING that mutual consent by the parties to submit such disputes to conciliation or to arbitration through such facilities constitutes a binding agreement which requires in particular that due consideration be given to any recommendation of conciliators, and that any arbitral award be complied with; and

DECLARING that no Contracting State shall by the mere fact of its ratification, acceptance or approval of this Convention and without its consent be deemed to be under any obligation to submit any particular dispute to conciliation or arbitration;

HAVE AGREED as follows:–

CHAPTER I
INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

SECTION 1 .– ESTABLISHMENT AND ORGANIZATION

ARTICLE 1

(1) There is hereby established the International Centre for Settlement of Investment Disputes (hereinafter called the Centre).

(2) The purpose of the Centre shall be to provide facilities for conciliation and arbitration of investment disputes between Contracting States and nationals of other Contracting States in accordance with the provisions of this Convention.

ARTICLE 2

The seat of the Centre shall be at the principal office for the International Bank for Reconstruction and Development (hereinafter called the Bank). The seat may be moved to another place by decision of the Administrative Council adopted by a majority of two-thirds of its members.

ARTICLE 3

The Centre shall have an Administrative Council and a Secretariat and shall maintain a Panel of Conciliators and a Panel of Arbitrators.

SECTION 2.– THE ADMINISTRATIVE COUNCIL

ARTICLE 4

(1) The Administrative Council shall be composed of one representative of each Contracting State. An alternate may act as representative in case of his principal's absence from a meeting or inability to act.

(2) In the absence of a contrary designation, each governor and alternate of the Bank appointed by a Contracting State shall be *ex-officio* its representative and its alternate respectively.

ARTICLE 5

The President of the Bank shall be *ex-officio* Chairman of the Administrative Council (hereinafter called the Chairman) but shall have no vote. During his absence or inability to act and during any vacancy in the office of President of the Bank, the person for the time being acting as President shall act as Chairman of the Administrative Council.

ARTICLE 6

(1) Without prejudice to the powers and functions vested in it by other provisions of this Convention, the Administrative Council shall:–

(a) adopt the administrative and financial regulations of the Centre;

(b) adopt the rules of procedure for the institution of conciliation and arbitration proceedings;

(c) adopt the rules of procedure for conciliation and arbitration proceedings (hereinafter called the Conciliation Rules and the Arbitration Rules);

(d) approve arrangements with the Bank for the use of the Bank's administrative facilities and services;

(e) determine the conditions of service of the Secretary-General and of any Deputy Secretary-General;

(f) adopt the annual budget of revenues and expenditures of the Centre;

(g) approve the annual report on the operation of the Centre.

The decisions referred to in sub-paragraphs (a), (b), (c) and (f) above shall be adopted by a majority of two-thirds of the members of the Administrative Council.

(2) The Administrative Council may appoint such committees as it considers necessary.

(3) The Administrative Council shall also exercise such other powers and perform such other functions as it shall determine to be necessary for the implementation of the provisions of the Convention.

ARTICAL 7

(1) The Administrative Council shall hold an annual meeting and such other meetings as may be determined by the Council, or convened by the Chairman, or convened by the Secretary-General at the request of not less than five members of the Council.

(2) Each member of the Administrative Council shall have one vote and, except as otherwise herein provided, all matters before the Council shall be decided by a majority of the votes cast.

(3) A quorum for any meeting of the Administrative Council shall be a majority of its members.

(4) The Administrative Council may establish, by a majority of two-thirds of its members, a procedure whereby the Chairman may seek a vote of the Council without convening a meeting of the Council. The vote shall be considered valid only if the majority of the members of the Council cast their votes within the time limit fixed by the said procedure.

ARTICLE 8

Members of the Administrative Council and the Chairman shall serve without remuneration from the Centre.

SECTION 3.– THE SECRETARIAT

ARTICLE 9

The Secretariat shall consist of a Secretary-General, one or more Deputy Secretaries-General and staff.

ARTICLE 10

(1) The Secretary-General and any Deputy Secretary-General shall be elected by the Administrative Council by a majority of two-thirds of its members upon the nomination of the Chairman for a term of service not exceeding six years and shall be eligible for re-election. After consulting the members of the Administrative Council, the Chairman shall propose one or more candidates for each such office.

(2) The offices of Secretary-General and Deputy Secretary-General shall be incompatible with the exercise of any political function. Neither the Secretary-General nor any Deputy Secretary-General may hold any other employment or engage in any other occupation except with the approval of the Administrative Council.

(3) During the Secretary-General's absence or inability to act, and during any vacancy of the office of Secretary-General, the Deputy Secretary-General shall act as

Secretary-General. If there shall be more than one Deputy Secretary-General, the Administrative Council shall determine in advance the order in which they shall act as Secretary-General.

ARTICLE 11

The Secretary-General shall be the legal representative and the principal officer of the Centre and shall be responsible for its administration, including the appointment of staff in accordance with the provisions of this Convention and the rules adopted by the Administrative Council. He shall perform the function of registrar and shall have the power to authenticate arbitral awards rendered pursuant to this Convention, and to certify copies thereof.

SECTUION 4.– THE PANELS

ARTICLE 12

The Panel of Conciliators and the Panel of Arbitrators shall each consist of qualified persons, designated as hereinafter provided, who are willing to serve thereon.

ARTICLE 13

(1) Each Contracting State may designate to each Panel four persons who may but need not be its nationals.

(2) The Chairman may designate ten persons to each Panel. The persons so designated to a Panel shall each have a different nationality.

ARTICLE 14

(1) Persons designated to serve on the Panels shall be persons of high moral character and recognized competence in the fields of law, commerce, industry or finance, who may be relied upon to exercise independent judgment. Competence in the field of law shall be of particular importance in the case of persons on the Panel or Arbitrators.

(2) The Chairman, in designating persons to serve on the Panels, shall in addition pay due regard to the importance of assuring representation on the Panels of the principal legal systems of the world and of the main forms of economic activity.

ARTICLE 15

(1) Panel members shall serve for renewable periods of six years.

(2) In case of death or resignation of a member of a Panel, the authority which designated the member shall have the right to designate another person to serve for the remainder of that member's term.

(3) Panel members shall continue in office until their successors have been designated.

ARTICLE 16

(1) A person may serve on both Panels.

(2) If a person shall have been designated to serve on the same Panel by more than one Contracting State, or by one or more Contracting States and the Chairman, he shall

be deemed to have been designated by the authority which first designated him or, if one such authority is the State or which he is a national, by that State.

(3) All designations shall be notified to the Secretary-General and shall take effect from the date on which the notification is received.

SECTUION 5.– FINANCING THE CENTRE

ARTICLE 17

If the expenditure of the Centre cannot be met out of charges for the use of its facilities, or out of other receipts, the excess shall be borne by Contracting States which are members of the Bank in proportion to their respective subscriptions to the capital stock of the Bank, and by Contracting States which are not members of the Bank in accordance with rules adopted by the Administrative Council.

SECTION 6.– STATUS, IMMUNITIES AND PRIVILEGES

ARTICLE 18

The Centre shall have full international legal personality. The legal capacity of the Centre shall include the capacity:

(a) to contract;

(b) to acquire and dispose of movable and immovable property;

(c) to institute legal proceedings.

ARTICLE 19

To enable the Centre to fulfil its functions, it shall enjoy in the territories of each Contracting State the immunities and privileges set forth in this Section.

ARTICLE 20

The Centre, its property and assets shall enjoy immunity from all legal process, except when the Centre waives this immunity.

ARTICLE 21

The Chairman, the members of the Administrative Council, persons acting as conciliators or arbitrators or members of a Committee appointed pursuant to paragraph (3) of Article 52, and the officers and employees of the Secretariat.

(a) shall enjoy immunity from legal process with respect to acts performed by them in the exercise of their functions, except when the Centre waives this immunity;

(b) not being local nationals, shall enjoy the same immunities from immigration restrictions, alien registration requirements and national service obligations, the same facilities as regards exchange restrictions and the same treatment in respect of travelling facilities as are accorded by Contracting States to the representatives, officials and employees of comparable rank of other Contracting States.

ARTICLE 22

The provisions of Article 21 shall apply to persons appearing in proceedings under this Convention as parties, agents, counsel, advocates, witnesses or experts; provided, however, that sub-paragraph (b) thereof shall apply only in connection with their travel to and from, and their stay at, the place where the proceedings are held.

ARTICLE 23

(1) The archives of the Centre shall be inviolable, wherever they may be.

(2) With regard to its official communications, the Centre shall be accorded by each Contracting State treatment not less favorable than that accorded to other international organizations.

ARTICLE 24

(1) The Centre, its assets, property and income, and its operations and transactions authorized by this Convention shall be exempt from all taxation and customs duties. The Centre shall also be exempt from liability for the collection or payment of any taxes or customs duties.

(2) Except in the case of local nationals, no tax shall be levied on or in respect of expense allowances paid by the Centre to the Chairman or members of the Administrative Council, or on or in respect of salaries, expense allowances or other emoluments paid by the Centre to officials or employees of the Secretariat.

(3) No tax shall be levied on or in respect of fees or expense allowances received by persons acting as conciliators, or arbitrators, or members of a Committee appointed pursuant to paragraph (3) of Article 52, in proceedings under this Convention, if the sole jurisdictional basis for such tax is the location of the Centre or the place where such proceedings are conducted or the place where such fees or allowances are paid.

CHAPTER II
JURISDICTION OF THE CENTRE

ARTICLE 25

(1) The jurisdiction of the Centre shall extend to any legal dispute arising directly out of an investment, between a Contracting State (or any constituent sub-division or agency of a Contracting State designated to the Centre by that State) and a national of another Contracting State, which the parties to the dispute consent in writing to submit to the Centre. When the parties have given their consent, no party may withdraw its consent unilaterally.

(2) "National of another Contracting State" means:

(a) any natural person who had the nationality of a Contracting State other than the State party to the dispute on the date on which the parties consented to submit such dispute to conciliation or arbitration as well as on the date on which the request was registered pursuant to paragraph (3) of Article 28 or paragraph (3) of Article 36, but does not include any person who on either date also had the nationality of the Contracting State party to the dispute; and

(b) any juridical person which had the nationality of a Contracting State other than the State party to the dispute on the date on which the parties consented to submit such dispute to conciliation or arbitration and any juridical person which had the nationality of the Contracting State party to the dispute on that

date and which, because of foreign control, the parties have agreed should be treated as a national of another Contracting State for the purposes of this Convention.

(3) Consent by a constituent sub-division or agency of a Contracting State shall require the approval of that State unless that State notifies the Centre that no such approval is required.

(4) Any Contracting State may, at the time of ratification, acceptance or approval of this Convention or at any time thereafter, notify the Centre of the class or classes of disputes which it would or would not consider submitting to the jurisdiction of the Centre. The Secretary-General shall forthwith transmit such notification to all Contracting States. Such notification shall not constitute the consent required by paragraph (1).

ARTICLE 26

Consent of the parties to arbitration under this Convention shall, unless otherwise stated, be deemed consent to such arbitration to the exclusion of any other remedy. A Contracting State may require the exhaustion of local administrative or judicial remedies as a condition of its consent to arbitration under this Convention.

ARTICLE 27

(1) No Contracting State shall give diplomatic protection, or bring an international claim, in respect of a dispute which one of its nationals and another Contracting State shall have consented to submit or shall have submitted to arbitration under this Convention, unless such other Contracting State shall have failed to abide by and comply with the award rendered in such dispute.

(2) Diplomatic protection, for the purposes of paragraph (1), shall not include informal diplomatic exchanges for the sole purpose of facilitating a settlement of the dispute.

CHAPTER III
CONCILIATION

SECTION 1.– REQUEST FOR CONCILIATION

ARTICLE 28

(1) Any Contracting State or any national of a Contracting State wishing to institute conciliation proceedings shall address a request to that effect in writing to the Secretary-General who shall send a copy of the request to the other party.

(2) The request shall contain information concerning the issues in dispute, the identity of the parties and their consent to conciliation in accordance with the rules of procedure for the institution of conciliation and arbitration proceedings.

(3) The Secretary-General shall register the request unless he finds, on the basis of the information contained in the request, that the dispute is manifestly outside the jurisdiction of the Centre. He shall forthwith notify the parties of registration or refusal to register.

SECTION 2.– CONSTITUTION PF THE CONCILIATION COMMISSION

ARTICLE 29

(1) The Conciliation Commission (hereinafter called the Commission) shall be constituted as soon as possible after registration of a request pursuant to Article 28.

(2) (a) The Commission shall consist of a sole conciliator or any uneven number of conciliators appointed as the parties shall agree.

(b) Where the parties do not agree upon the number of conciliators and the method of their appointment, the Commission shall consist of three conciliators, one conciliator appointed by each party and the third, who shall be the president of the Commission, appointed by agreement of the parties.

ARTICLE 30

If the Commission shall not have been constituted within 90 days after notice of registration of the request has been dispatched by the Secretary-General in accordance with paragraph (3) of Article 28, or such other period as the parties may agree, the Chairman shall, at the request of either party and after consulting both parties as far as possible, appoint the conciliator or conciliators not yet appointed.

ARTICLE 31

(1) Conciliators may be appointed from outside the Panel of Conciliators, except in the case of appointments by the Chairman pursuant to Article 30.

(2) Conciliators appointed from outside the Panel of Conciliators shall possess the qualities stated in paragraph (1) of Article 14.

SECTION 3.– CONCILIATION PROCEEDINGS

ARTICLE 32

(1) The Commission shall be the judge of its own competence.

(2) Any objection by a party to the dispute that the dispute is not within the jurisdiction of the Centre, or for other reasons is not within the competence of the Commission, shall be considered by the Commission which shall determine whether to deal with it as a preliminary question or to join it to the merits of the dispute.

ARTICLE 33

Any conciliation proceeding shall be conducted in accordance with the provisions of this Section and, except as parties otherwise agree, in accordance with the Conciliation Rules in effect on the date on which the parties consented to conciliation. If any question of procedure arises which is not covered by this Section or the Conciliation Rules or any rules agreed by the parties, the Commission shall decide the question.

ARTICLE 34

(1) It shall be the duty of the Commission to clarify the issues in dispute between the parties and to endeavor to bring about agreement between them upon mutually acceptable terms. To that end, the Commission may at any stage of the proceedings and from time to time recommend terms of settlement to the parties. The parties shall cooperate in good faith with the Commission in order to enable the Commission to carry out its functions, and shall give their most serious consideration to its recommendations.

(2) If the parties reach agreement, the Commission shall draw up a report noting the issues in dispute and recording that the parties have reached agreement. If, at any stage of

the proceedings, it appears to the Commission that there is no likelihood of agreement between the parties, it shall close the proceedings and shall draw up a report noting the submission of the dispute and recording the failure of the parties to reach agreement. If one party fails to appear or participate in the proceedings, the Commission shall close the proceedings and shall draw up a report noting that party's failure to appear or participate.

ARTICLE 35

Except as the parties to the dispute shall otherwise agree, neither party to a conciliation proceeding shall be entitled in any other proceeding, whether before arbitrators or in a court of law or otherwise, to invoke or rely on any views expressed or statements or admissions or offers of settlement made by the other party in the conciliation proceedings, or the report or any recommendations made by the Commission.

CHAPTER IV
ARBITRATION

SECTION 1.– REQUEST FOR ARBITRATION

ARTICLE 36

(1) Any Contracting State or any national of a Contracting State wishing to institute arbitration proceedings shall address a request to that effect in writing to the Secretary-General who shall send a copy of the request to the other party.

(2) The request shall contain information concerning the issues in dispute, the identity of the parties and their consent to arbitration in accordance with the rules of procedure for the institution of conciliation and arbitration proceedings.

(3) The Secretary-General shall register the request unless he finds, on the basis of the information contained in the request, that the dispute is manifestly outside the jurisdiction of the Centre. He shall forthwith notify the parties of registration or refusal to register.

SECTION 2.– CONSTITUTION OF THE TRIBUNAL

ARTICLE 37

(1) The Arbitral Tribunal (hereinafter called the Tribunal) shall be constituted as soon as possible after registration of a request pursuant to Article 36.

2 (a) The Tribunal shall consist of a sole arbitrator or any uneven number of arbitrators appointed as the parties shall agree.

(b) Where the parties do not agree upon the number of arbitrators and the method of their appointment, the Tribunal shall consist of three arbitrators, one arbitrator appointed by each party and the third, who shall be the president of the Tribunal, appointed by agreement of the parties.

ARTICLE 38

If the Tribunal shall not have been constituted within 90 days after notice of registration of the request has been dispatched by the Secretary-General in accordance with paragraph (3) of Article 36, or such other period as the parties may agree, the Chairman shall, at the request of either party and after consulting both parties as far as possible, appoint the arbitrator or arbitrators not yet appointed. Arbitrators appointed by the Chairman pursuant to

this Article shall not be nationals of the Contracting State party to the dispute or of the Contracting State whose national is a party to the dispute.

ARTICLE 39

The majority of the arbitrators shall be nationals of States other than the Contracting State party to the dispute and the Contracting State whose national is a party to the dispute; provided, however, that the foregoing provisions of this Article shall not apply if the sole arbitrator or each individual member of the Tribunal has been appointed by agreement of the parties.

ARTICLE 40

(1) Arbitrators may be appointed from outside the Panel of Arbitrators, except in the case of appointments by the Chairman pursuant to Article 38.

(2) Arbitrators appointed from outside the Panel of Arbitrators shall possess the qualities stated in paragraph (1) of Article 14.

SECTION 3.– POWERS AND FUNCTIONS OF THE TRIBUNAL

ARTICLE 41

(1) The Tribunal shall be the judge of its own competence.

(2) Any objection by a party to the dispute that that dispute is not within the jurisdiction of the Centre, or for other reasons is not within the competence of the Tribunal, shall be considered by the Tribunal which shall determine whether to deal with it as a preliminary question or to join it to the merits of the dispute.

ARTICLE 42

(1) The Tribunal shall decide a dispute in accordance with such rules of law as may be agreed by the parties. In the absence of such agreement, the Tribunal shall apply the law of the Contracting State party to the dispute (including its rules on the conflict of laws) and such rules of international law as may be applicable.

(2) The Tribunal may not bring in a finding of *non liquet* on the ground of silence or obscurity of the law.

(3) The provisions of paragraphs (1) and (2) shall not prejudice the power of the Tribunal to decide a dispute *ex aequo et bono* if the parties so agree.

ARTICLE 43

(1) Except as the parties otherwise agree, the Tribunal may, if it deems it necessary at any stage of the proceedings;

(a) call upon the parties to produce documents or other evidence; and

(b) visit the scene connected with the dispute, and conduct such inquiries there as it may deem appropriate.

ARTICLE 44

Any arbitration proceeding shall be conducted in accordance with the provisions of this Section and, except as the parties otherwise agree, in accordance with the Arbitration

Rules in effect on the date on which the parties consented to arbitration. If any question of procedure arises which is not covered by this Section or the Arbitration Rules or any rules agreed by the parties, the Tribunal shall decide the question.

ARTICLE 45

(1) Failure of a party to appear or to present his case shall not be deemed an admission of the other party's assertions.

(2) If a party fails to appear or to present his case at any stage of the proceedings the other party may request the Tribunal to deal with the questions submitted to it and to render an award. Before rendering an award, the Tribunal shall notify, and grant a period of grace to, the party failing to appear or to present its case, unless it is satisfied that that party does not intend to do so.

ARTICLE 46

Except as the parties otherwise agree, the Tribunal shall, if requested by a party, determine any incidental or additional claims or counter-claims arising directly out of the subject-matter of the dispute provided that they are within the scope of the consent of the parties and are otherwise within the jurisdiction of the Centre.

ARTICLE 47

Except as the parties otherwise agree, the Tribunal may, if it considers that the circumstances so require, recommend any provisional measures which should be taken to preserve the respective rights of either party.

SECTION 4.– THE AWARD

ARTICLE 48

(1) The Tribunal shall decide questions by a majority of the votes of all its members.

(2) The award of the Tribunal shall be in writing and shall be signed by the members of the Tribunal who voted for it.

(3) The award shall deal with every question submitted to the Tribunal, and shall state the reasons upon which it is based.

(4) Any member of the Tribunal may attach his individual opinion to the award, whether he dissents from the majority or not, or a statement of his dissent.

(5) The Centre shall not publish the award without the consent of the parties.

ARTICLE 49

(1) The Secretary-General shall promptly dispatch certified copies of the award to the parties. The award shall be deemed to have been rendered on the date on which the certified copies were dispatched.

(2) The Tribunal upon the request of a party made within 45 days after the date on which the award was rendered may after notice to the other party decide any question which it had omitted to decide in the award, and shall rectify any clerical, arithmetical or similar error in the award. Its decision shall become part of the award and shall be notified to the parties in the same manner as the award. The periods of time provided for under

paragraph (2) of Article 51 and paragraph (2) of Article 52 shall run from the date on which the decision was rendered.

SECTION 5.– INTERPRETATION, REVISION AND ANNULMENT OF THE AWARD

ARTICLE 50

(1) If any dispute shall arise between the parties as to the meaning or scope of an award, either party may request interpretation of the award by an application in writing addressed to the Secretary-General.

(2) The request shall, if possible, be submitted to the Tribunal which rendered the award. If this shall not be possible, a new Tribunal shall be constituted in accordance with Section 2 of this Chapter. The Tribunal may, if it considers that the circumstances so require, stay enforcement of the award pending its decision.

ARTICLE 51

(1) Either party may request annulment of the award by an application in writing addressed to the Secretary-General on the ground of discovery of some fact of such a nature as decisively to affect the award, provided that when the award was rendered that fact was unknown to the Tribunal and to the applicant and that the applicant's ignorance of that fact was not due to negligence.

(2) The application shall be made within 90 days after the discovery of such fact and in any event within three years after the date on which the award was rendered.

(3) The request shall, if possible, be submitted to the Tribunal which rendered the award. If this shall not be possible, a new Tribunal shall be constituted in accordance with Section 2 of this Chapter.

(4) The Tribunal may, if it considers that the circumstances so require, stay enforcement of the award pending its decision. If the applicant requests a stay of enforcement of the award in his application, enforcement shall be stayed provisionally until the Tribunal rules on such request.

ARTICLE 52

(1) Either party may request annulment of the award by an application in writing addressed to the Secretary-General on one or more of the following grounds:–

(a) that the Tribunal was not properly constituted;

(b) that the Tribunal has manifestly exceeded its powers;

(c) that there was corruption on the part of a member of the Tribunal;

(d) that there has been a serious departure from a fundamental rule of procedure; or

(e) that the award has failed to state the reasons on which it is based.

(2) The application shall be made within 120 days after the date on which the award was rendered except that when annulment is requested on the ground of corruption

such application shall be made within 120 days after discovery of the corruption and in any event within three years after the date on which the award was rendered.

(3) On receipt of the request the Chairman shall forthwith appoint from the Panel of Arbitrators an *ad hoc* Committee of three persons. None of the members of the Committee shall have been a member of the Tribunal which rendered the award, shall be of the same nationality as any such member, shall be a national of the State party to the dispute or of the State whose national is a party to the dispute, shall have been designated to the Panel of Arbitrators by either of those States, or shall have acted as a conciliator in the same dispute. The Committee shall have the authority to annul the award or any part thereof on any of the grounds set forth in paragraph (1).

(4) The provisions of Articles 41, 45, 48, 49, 53 and 54, and of Chapters VI and VII shall apply *mutatis mutandis* to proceedings before the Committee.

(5) The Committee may, if it considers that the circumstances so require, stay enforcement of the award pending its decision. If the applicant requests a stay of enforcement of the award in his application, enforcement shall be stayed provisionally until the Committee rules on such request.

(6) If the award is annulled the dispute shall, at the request of either party, be submitted to a new Tribunal constituted in accordance with Section 2 of this Chapter.

SECTION 6.– RECOGNITION AND ENFORCEMENT OF THE AWARD

ARTICLE 53

(1) The award shall be binding on the parties and shall not be subject to any appeal or to any other remedy except those provided for in this Convention. Each party shall abide by and comply with the terms of the award except to the extent that enforcement shall have been stayed pursuant to the relevant provisions of this Convention.

(2) For the purposes of this Section, "award" shall include any decision interpreting, revising or annulling such award pursuant to Articles 50, 51 or 52.

ARTICLE 54

(1) Each Contracting State shall recognize an award rendered pursuant to this Convention as binding and enforce the pecuniary obligations imposed by that award within its territories as if it were a final judgment of a court in that State. A Contracting State with a federal constitution may enforce such an award in or through its federal courts and may provide that such courts shall treat the award as if it were a final judgment of the courts of a constituent state.

(2) A party seeking recognition or enforcement in the territories of a Contracting State shall furnish to a competent court or other authority which such State shall have designated for this purpose a copy of the award certified by the Secretary-General. Each Contracting State shall notify the Secretary-General of the designation of the competent court or other authority for this purpose and of any subsequent change in such designation.

(3) Execution of the award shall be governed by the laws concerning the execution of judgments in force in the State in whose territories such execution is sought.

ARTICLE 55

Nothing in Article 54 shall be construed as derogating from the law in force in any Contracting State relating to immunity of that State or of any foreign State from execution.

CHAPTER V
REPLACEMENT AND DISQUALIFICATION OF CONCILIATORS AND ARBITRATORS

ARTICLE 56

(1) After a Commission or a Tribunal has been constituted and proceedings have begun, its composition shall remain unchanged; provided, however, that if a conciliator or an arbitrator should die, become incapacitated, or resign, the resulting vacancy shall be filled in accordance with the provisions of Section 2 of Chapter III or Section 2 of Chapter IV.

(2) A member of a Commission or Tribunal shall continue to serve in that capacity notwithstanding that he shall have ceased to be a member of the Panel.

(3) If a conciliator or arbitrator appointed by a party shall have resigned without the consent of the Commission or Tribunal of which he was a member, the Chairman shall appoint a person from the appropriate Panel to fill the resulting vacancy.

ARTICLE 57

A party may propose to a Commission or Tribunal the disqualification of any of its members on account of any fact indicating a manifest lack of the qualities required by paragraph (1) of Article 14. A party to arbitration proceedings may, in addition, propose the disqualification of an arbitrator on the ground that he was ineligible for appointment to the Tribunal under Section 2 of Chapter IV.

ARTICLE 58

The decision on any proposal to disqualify a conciliator or arbitrator shall be taken by the other members of the Commission or Tribunal as the case may be, provided that where those members are equally divided, or in the case of a proposal to disqualify a sole conciliator or arbitrator, or a majority of the conciliators or arbitrators, the Chairman shall take that decision. If it is decided that the proposal well-founded the conciliator or arbitrator to whom the decision relates shall be replaced in accordance with the provisions of Section 2 of Chapter III or Section 2 of Chapter IV.

CHAPTER VI
COST OF PROCEEDINGS

ARTICLE 59

The charges payable by the parties for the use of the facilities of the Centre shall be determined by the Secretary-General in accordance with the regulations adopted by the Administrative Council.

ARTICLE 60

(1) Each Commission and each Tribunal shall determine the fees and expenses of its members within limits established from time to time by the Administrative Council and after consultation with the Secretary-General.

(2) Nothing in paragraph (1) of this Article shall preclude the parties from agreeing in advance with the Commission or Tribunal concerned upon the fees and expenses of its members.

ARTICLE 61

(1) In the case of conciliation proceedings the fees and expenses of members of the Commission as well as the charges for the use of the facilities of the Centre, shall be borne equally by the parties. Each party shall bear any other expenses it incurs in connection with the proceedings.

(2) In the case of arbitration proceedings the Tribunal shall, except as the parties otherwise agree, assess the expenses incurred by the parties in connection with the proceedings, and shall decide how and by whom those expenses, the fees and expenses of the members of the Tribunal and the charges for the use of the facilities of the Centre shall be paid. Such decision shall form part of the award.

CHAPTER VII
PLACE OF PROCEEDINGS

ARTICLE 62

Conciliation and arbitration proceedings shall be held at the seat of the Centre except as hereinafter provided.

ARTICLE 63

Conciliation and arbitration proceedings may be held, if the parties so agree,

(a) at the seat of the Permanent Court of Arbitration or of any other appropriate institution, whether private or public, with which the Centre may make arrangements for that purpose; or

(b) at any other place approved by the Commission or Tribunal after consultation with the Secretary-General.

CHAPTER VIII
DISPUTES BETWEEN CONTRACTING STATES

ARTICLE 64

Any dispute arising between Contracting States concerning the interpretation or application of this Convention which is not settled by negotiation shall be referred to the International Court of Justice by the application of any party to such dispute, unless the States concerned agree to another method of settlement.

CHAPTER IX
AMENDMENT

ARTICLE 65

Any Contracting State may propose amendment of this Convention. The text of a proposed amendment shall be communicated to the Secretary-General not less than 90 days prior to the meeting of the Administrative Council at which such amendment is to be

considered and shall forthwith be transmitted by him to all the members of the Administrative Council.

ARTICLE 66

(1) If the Administrative Council shall so decide by a majority of two-thirds of its members, the proposed amendment shall be circulated to all Contracting States for ratification, acceptance or approval. Each amendment shall enter into force 30 days after dispatch by the depository of the Convention of a notification to Contracting States that all Contracting States have ratified, accepted or approved the amendment.

(2) No amendment shall affect the rights and obligations under this Convention of any Contracting State or of any of its constituent sub-divisions or agencies, or of any national of such State arising out of consent to the jurisdiction of the Centre given before the date of entry into force of the amendment.

CHAPTER X
FINAL PROVISIONS

ARTICLE 67

This Convention shall be open for signature on behalf of States members of the Bank. It shall also be open for signature on behalf of any other State which is a party to the Statute of the International Court of Justice and which the Administrative Council, by a vote of two-thirds of its members, shall have invited to sign the Convention.

ARTICLE 68

(1) This Convention shall be subject to ratification, acceptance or approval by the signatory States in accordance with their respective constitutional procedures.

(2) This Convention shall enter into force 30 days after the date of deposit of the twentieth instrument of ratification, acceptance or approval. It shall enter into force for each State which subsequently deposits its instrument of ratification, acceptance or approval 30 days after the date of such deposit.

ARTICLE 69

Each Contracting State shall take such legislative or other measures as may be necessary for making the provisions of this Convention effective in its territories.

ARTICLE 70

This Convention shall apply to all territories for whose international relations a Contracting State is responsible, except those which are excluded by such State by written notice to the depository of this Convention either at the time of ratification, acceptance or approval or subsequently.

ARTICLE 71

Any Contracting State may denounce this Convention by written notice to the depositary of this Convention. The denunciation shall take effect six months after receipt of such notice.

Notice by Contracting State pursuant to Articles 70 or 71 shall not affect the rights or obligations under this Convention of that State or of any of its constituent sub-divisions or agencies or of any national of that State arising out of consent to the jurisdiction of the Centre given by one of them before such notice was received by the depositary.

ARTICLE 73

Instruments of ratification, acceptance or approval of this Convention and of amendments thereto shall be deposited with the Bank which shall act as the depositary of this Convention. The depositary shall transmit certified copies of this Convention to States members of the Bank and to any other State invited to sign the Convention.

ARTICLE 74

The depositary shall register this Convention with the Secretariat of the United Nations in accordance with Article 102 of the Charter of the United Nations and the Regulations thereunder adopted by the General Assembly.

ARTICLE 75

The depositary shall notify all signatory States of the following:–

(a) signatures in accordance with Article 67;

(b) deposits of instruments of ratification, acceptance and approval in accordance with Article 73;

(c) the date on which this Convention enters into force in accordance with Article 68;

(d) exclusions from territorial application pursuant to Article 70;

(e) the date on which any amendment of this Convention enters into force in accordance with Article 66; and

(f) denunciations in accordance with Article 71.

DONE at Washington, in the English, French and Spanish languages, all three texts being equally authentic, in a single copy which shall remain deposited in the archives of the International Bank for Reconstruction and Development, which has indicated by its signature below its agreement to fulfil the functions with which it is charged under this Convention.

STATEMENT OF OBJECTS AND REASONS

The United Nations Commission on International Trade Law (UNCITRAL) has adopted the UNCITRAL Model Law on International Commercial Arbitration and Conciliation in 1985 and 2002, as well as Model Arbitration and Conciliation Rules in 1976 and 1980, respectively. The General Assembly of the United Nations has recommended by its Resolutions that all countries give due consideration to the said Model Law in view of the desirability of uniformity of the law of arbitral procedures and conciliatory measures and also keeping in view the specific needs of international commercial arbitration and conciliation practices. The draft law is based on Model Law prepared by UNCITRAL and adopted by the United Nations and has been recommended by the Resolutions of the United Nations General Assembly for compliance and adoption by the Members States to create uniformity and harmony in domestic and international trade and trade law for dispute settlement by Arbitration and Conciliation. The draft law is a consolidated law comprising Arbitration, Conciliation, recognition and enforcement of foreign Arbitral Awards as well as Arbitration under the Convention on the Settlement of Investment Disputes between States and Nationals of Other States. It is a futuristic draft law catering the legal requirements for business, industry, international trade and ordinary litigants as well.

2. The Bill is designed to achieve the aforesaid objects.

DR. ZAHEER UDDIN BABAR AWAN
Minister-in-Charge