

GAMBIA



ALTERNATIVE DISPUTE RESOLUTION ACT

Alternative Dispute Resolution Act, Chapter 6:08 of the Laws of The Gambia

PART V

Jurisdiction and Conduct of Arbitral Tribunal

42. Rules applicable to substance of dispute

(1) The arbitral tribunal shall decide a dispute in accordance with such rules of law as are chosen by the parties, as applicable to the substance of the dispute.

(2) A designation of the law or legal system of a given State shall be construed, unless otherwise expressed, as directly referring to the substantive law of that State and not to its conflict of law rules.

(3) Where the parties fail to designate the rules of law, the arbitral tribunal shall apply the law determined by the conflict of laws rules, which it considers applicable.

(4) The arbitral tribunal shall decide according to considerations of general justice and fairness only if the parties have expressly authorised it to do so.

(5) The arbitral tribunal shall, in all cases, decide in accordance with the terms of the contract between the parties and shall take into account any usage of the trade applicable to the transaction.

PART VI

Making of Award and Termination of Proceedings

46. Rules for the award

(1) The arbitral tribunal shall make an award in accordance with-

- (a) the law chosen by the parties as applicable to the substance of the dispute; and
- (b) such other considerations as are agreed by the parties or determined by the arbitral tribunal.

(2) The rules applicable to the substance of a dispute set out in section 42 are also applicable to the making of an award under this section.

PART IX

52. Recognition and enforcement

(1) An arbitral award, irrespective of the country in which it was made, shall be recognised as binding and, on application in writing to the High Court, shall be enforced by entry as a judgement in terms of the award, or by action, subject to the provisions of this section and section 53.

(2) The party relying on an award or applying for its enforcement shall

- (a) supply the duly authenticated original award or a duly certified copy; and
- (b) if the award or agreement is not made in the English language, supply a duly certified translation into the English language.

53. Grounds for refusing recognition or enforcement

(1) The Court may refuse to recognise or enforce an arbitral award, irrespective of the country in which it was made

(a) at the request of the party against whom it is invoked, if that party furnishes to the Court where recognition or enforcement is sought sufficient proof that-

(i) a party to the arbitration agreement was under some incapacity or the agreement is not valid under the law to which the parties have subjected it or, failing any indication on that question, under the law of the country where the award was made,

(ii) the party against whom the award is invoked was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his or her case,

(iii) the award deals with a dispute not contemplated by or not falling within the terms 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,

(iv) the composition of the arbitral tribunal 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

(v) the award has not yet become binding on the parties or has been set aside or suspended by a court of the country in which, or under the law of which, that award was made; or

(b) if the Court finds that-

(i) the subject matter of the dispute is not capable of settlement by arbitration under the laws of The Gambia, or

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

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

(3) For the avoidance of doubt, and without limiting the generality of subsection (1) (b) (ii), it is hereby declared that an award is contrary to public policy if

(a) the making of the award was induced or affected by fraud, corruption or gross irregularity; or

(b) a breach of the rules of natural justice occurred (i) during the arbitral proceedings, or (ii) in connection with the making of the award.

PART X

Additional Provisions Relating to International Commercial Arbitration

54. Application of this Part of this Act

The provisions of this Part apply solely to cases relating to international commercial arbitration in addition to the other provisions of this Act.

55. Application of UNCITRAL Arbitration Rules set out in the First Schedule

Notwithstanding the provisions of this Act, the parties to an international commercial agreement may agree that disputes shall be referred to arbitration in accordance with the UNCITRAL Arbitration Rules set out in the First Schedule, as amended from time to time, or any other international arbitration rules acceptable to the parties.

56. Application of the Convention of Recognition and Enforcement of Foreign Arbitral Awards, etc.

Without prejudice to sections 17 and 18, where the recognition and enforcement of any award arising out of an international commercial arbitration are sought, the Convention on the Recognition and Enforcement of Foreign Awards (in this Part referred to as "the Convention") set out in the Second Schedule applies to any award made in The Gambia or in any contracting State, if –

(a) the contracting State has reciprocal legislation recognising the enforcement of arbitral awards made in The Gambia in accordance with the provisions of the Convention; and

(b) the differences arise out of a legal relationship that is contractual.

CHAPTER III

Conciliation

78. International Conciliation Rules

Notwithstanding the provisions of this Act, the parties to an international commercial agreement may agree in writing that disputes in relation to the agreement shall be settled by conciliation under the UNCITRAL Conciliation Rules set out in the Third Schedule, as emended, from time to time.