

CHAPTER 19

ARBITRATION ACT

• Act • Subsidiary Legislation •

ACT

Act No. 2 of 1989

ARRANGEMENT OF SECTIONS

PART I

Preliminary

1. Short title.
2. Interpretation.

PART II

References by Consent out of Court

3. Agreement ordinarily irrevocable, etc.
4. Provisions of the First Schedule are to be implied.
5. Agreement is not discharged by death of party, etc.
6. Provisions in case of bankruptcy.
7. Power of Court to order stay of proceedings on application.
8. Court has power to appoint an arbitrator, or umpire, etc., in certain cases.
9. Provisions on the appointment of two arbitrators.
10. Provisions on the appointment of three arbitrators.
11. Arbitrators and umpires to use all reasonable dispatch, etc.
12. Power of Court to give relief where arbitrator is not impartial or dispute referred involves a question of fraud.
13. Where arbitrator is removed or appointment of arbitrator is revoked, etc.
14. When umpire is the sole arbitrator.
15. Powers of an arbitrator.
16. Witnesses may be summoned by subpoena.
17. Enlargement of time for making award.
18. Power of Court to remit matters for reconsideration.
19. Court's power to order removal and to set aside award.
20. Enforcement of award.
21. Awards may carry interest.
22. Provisions as to costs.
23. Limitation of time for commencing proceedings, etc.

PART III

References under an Order of the Court

24. Reference of questions to, and reports by, official or special referee.
25. Reference for trial.
26. Powers and remuneration of referees and arbitrators.
27. Powers of Court.
28. Powers of Court of Appeal.

PART IV

Miscellaneous Provisions

29.	Power to compel attendance of witnesses.
30.	Additional powers of Court.
31.	Statement of case by arbitrator or umpire.
32.	Costs.
33.	Power of Court to order delivery of award and to tax fees of arbitrator or umpire.
34.	Application of Act to Government in certain cases and to all other arbitrations.
First Schedule	Provisions to be Implied in Arbitration Agreements
Second Schedule	Matters in Respect of which the Court may make Orders

CHAPTER 19 ARBITRATION ACT

An Act relating to arbitrations.

[Act No. 2 of 1989.]

[27th January, 1989.]

PART I

Preliminary

1. Short title

This Act may be cited as the Arbitration Act.

2. Interpretation

(1) In this Act—

“agreement” means a written arbitration agreement to submit present or future differences to arbitration whether or not an arbitrator is named therein;

“Court” means the High Court;

“reference” means a reference under an order made by the Court;

“rules of court” means the Rules of the Supreme Court.

PART II

References by Consent out of Court

3. Agreement ordinarily irrevocable, etc.

Unless a contrary intention is expressed therein, an agreement is irrevocable, except by leave of the Court, and has the same effect in all respects as if it had been made an order of the Court.

4. Provisions of the First Schedule are to be implied

Unless a contrary intention is expressed therein, an agreement shall be deemed to include the provisions of the First Schedule so far as they are applicable to the reference under the agreement.

5. Agreement is not discharged by death of party, etc.

(1) An agreement is not discharged by the death of a party to the agreement, either as respects the deceased or any other party, but in such an event is enforceable by or against the personal representative of the deceased.

(2) The authority of an arbitrator is not revoked by the death of any party by whom he or she was appointed.

(3) This section does not affect the operation of any written law or rule of law by virtue of which a right of action is extinguished by the death of a person.

6. Provisions in case of bankruptcy

(1) Where a term in a contract to which a bankrupt is a party provides that any differences arising out of or in connection with the contract shall be referred to arbitration then, if the trustee in bankruptcy adopts the contract, the term is enforceable by or against that party so far as relates to any such differences.

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

7. Power of Court to order stay of proceedings on application

Where a party to an agreement or any person claiming through or under him or her, commences legal proceedings in the Court against another party to the agreement or any person claiming through or under him or her, in respect of any matter agreed to be referred then, at any time after appearance and before delivering any pleading or taking any other step in the proceedings, any party to those proceedings may apply to the Court to stay the proceedings. The Court may make an order staying the proceedings if satisfied—

- (a) that the applicant was at the time the proceedings were commenced, and still is, ready and willing to do everything necessary to the proper conduct of the arbitration; and
- (b) that there is no sufficient reason why the matter should not be referred in accordance with the agreement.

8. Court has power to appoint an arbitrator, or umpire, etc., in certain cases

(1) A party may serve on the other parties or on the arbitrators, as the case may be, written notice to appoint an arbitrator, an umpire, or a third arbitrator, in any of the following cases, namely, where—

- (a) the agreement provides that the reference shall be to a single arbitrator and after differences have arisen the parties do not concur in the appointment of an arbitrator;
- (b) an appointed arbitrator refuses to act, or is incapable of acting, or dies, or is absent from Grenada, and the agreement does not show that it was intended that the vacancy should not be supplied and the parties do not supply the vacancy;
- (c) the parties, or two arbitrators, being at liberty to appoint an umpire or a third arbitrator do not do so, or where two arbitrators are required to appoint an umpire and do not do so; or
- (d) an appointed umpire or third arbitrator refuses to act, or is incapable of acting, or dies, or is absent from Grenada, and the agreement does not

show that it was intended that the vacancy should not be supplied and the parties or arbitrators do not supply the vacancy.

(2) If the appointment is not made within seven clear days after service of the notice, the Court may, on application by the party who served the notice, appoint an arbitrator, umpire, or third arbitrator, as the case may be. The person appointed has the same powers to act in the reference and to make an award as if he or she had been appointed by consent of all parties.

9. Provisions on the appointment of two arbitrators

Unless a contrary intention is expressed in an agreement, if the agreement provides that a reference shall be to two arbitrators, one to be appointed by each party, then—

- (a) if either of the appointed arbitrators refuses to act, or is incapable of acting, or dies, or is absent from Grenada, the party who appointed him or her may appoint a new arbitrator in his or her place;
- (b) if one party fails to appoint an arbitrator, either originally or by way of substitution pursuant to paragraph (a), within seven clear days after the other party, having appointed an arbitrator himself or herself, has served a notice on him or her requiring the appointment, the party who has appointed an arbitrator may appoint that arbitrator to act in the reference as sole arbitrator and the award shall be binding on both parties as if he or she had been appointed by consent,

but the Court may set aside any appointment made in pursuance of this section.

10. Provisions on the appointment of three arbitrators

(1) Where an agreement provides that a reference shall be to three arbitrators, one to be appointed by each party and the third to be appointed by the parties, the agreement does not have effect for the appointment of a third arbitrator, it has effect as if it provided for the appointment of an umpire by the two arbitrators appointed by the parties.

(2) Where an agreement provides that a reference shall be to three arbitrators to be appointed otherwise than as mentioned in subsection (1), the award of any two of the arbitrators shall be binding.

11. Arbitrators and umpires to use all reasonable dispatch, etc.

(1) The Court may, on the application of any party to a reference, remove an arbitrator or umpire who fails to use all reasonable dispatch in entering on and proceeding with a reference and making an award. The expression "proceeding with a reference" includes, in a case where two arbitrators are unable to agree, giving notice of that fact to the parties and to the umpire.

(2) An arbitrator or umpire who is removed by the Court pursuant to subsection (1) is not entitled to receive any remuneration in respect of his or her services.

(3) Subject to section 18(2) and to any provision to the contrary in an agreement, an arbitrator or umpire has power to make an award at any time.

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

(1) Where an arbitrator is named or designated in an agreement and—

- (a) a party thereto applies, on the ground that the arbitrator is not or may not be impartial, to the Court for leave to revoke the agreement or for an injunction to restrain any other party or the arbitrator from proceeding with the arbitration, it is not a ground for refusing the application that the party applying knew, or ought to have known, at the time when he or she made the agreement that the arbitrator might not be capable of

impartiality by reason of the arbitrator's relation towards any other party or of the arbitrator's connection with the subject-matter being referred;

- (b) the agreement concerns a dispute involving an allegation of fraud committed by any party, then, so far as may be necessary for the determination of that allegation, the Court has power either to give leave to revoke the agreement or to order that it shall cease to have effect.

(2) In any case where, under subsection (1), it is open to the Court either to order that an agreement shall cease to have effect or to give leave to revoke an agreement, the Court may refuse to stay any action brought in breach of the agreement.

13. Where arbitrator is removed or appointment of arbitrator is revoked, etc.

(1) If, not having entered on a reference, an arbitrator (not being a sole arbitrator), or two or more arbitrators (not being all the arbitrators), or an umpire is or are removed by order of the Court then, on the application of any party to the agreement, the Court may appoint a person or persons, as the case may be, to act in place of the person or persons so removed.

(2) Where the appointment, under an agreement, of an arbitrator or arbitrators or umpire is revoked by leave of the Court, or a sole arbitrator or all the arbitrators or an umpire, having entered on a reference, is or are removed by order of the Court then, on the application of any party to the agreement, the Court may—

- (a) appoint a person to act as sole arbitrator in place of any person removed; or
- (b) order that the agreement shall cease to have effect with respect to the dispute referred.

(3) A person appointed by the Court under this section has the same power to act in the reference and to make an award as if he or she had been appointed under the agreement.

(4) In this subsection, "relevant provision" means a provision (whether in an agreement or otherwise) that an award shall be a condition precedent to the bringing of an action with respect to any matter in dispute to which an agreement relates. Where there is a relevant provision, the Court, if it orders that the agreement shall cease to have effect as regards a matter in dispute, may also order that the provision shall cease to have effect as regards that matter.

14. When umpire is the sole arbitrator

On application by a party to an agreement, the Court may order that an umpire who has been appointed shall enter upon the reference in place of the arbitrators as if there were a sole arbitrator.

15. Powers of an arbitrator

Unless a contrary intention is expressed therein, the arbitrators or umpire appointed under an agreement have power—

- (a) to administer the oath to, and take the affirmation of, any party or witness appearing;
- (b) to correct in an award any clerical mistake or error arising from any accidental slip or omission.

16. Witnesses may be summoned by subpoena

A party to an agreement may issue a writ of *subpoena ad testificandum* or *subpoena duces tecum*, but no person shall be compelled thereby to produce any document which he or she could not be compelled to produce at the trial of an action.

17. Enlargement of time for making award

The Court has power to enlarge the time for the making of an award whether or not the time previously allowed has already expired.

18. Power of Court to remit matters for reconsideration

(1) In all cases where there has been a reference to arbitration the Court may, by order, remit for reconsideration by the arbitrator or umpire any or every matter contained in the reference.

(2) Where the Court has ordered that an award be remitted for reconsideration, the award must, unless the Court otherwise directs, be made within three months from the date of the order.

19. Court's power to order removal and to set aside award

(1) Where an arbitrator or umpire has misconducted himself or herself or the proceedings the Court has power to order his removal but, before making the order, the Court may if it thinks fit direct that the arbitrator or umpire be given the opportunity to show cause why the order should not be made.

(2) Where an arbitrator or umpire has misconducted himself or herself or the proceedings, and where an arbitration or award has been improperly procured, the Court may set aside the award.

20. Enforcement of award

With leave of the Court, an award may be enforced in the same manner and to the same effect as a judgement of the Court by the entering of judgement in terms of the award.

21. Awards may carry interest

A sum directed by an award to be paid shall, unless otherwise specified therein, carry interest from the date of the award at the same rate as a judgement debt.

22. Provisions as to costs

(1) Where any provision is contained in an agreement to the effect that any or every party is to pay the whole or any part of his or her own costs of the reference or the award in any event, that provision is void and this Act has effect as if the provision were not contained therein, but nothing in this subsection invalidates such a provision contained in an agreement to submit to arbitration a dispute that has already arisen before the making of the agreement.

(2) If provision for costs is not contained in an award any party may within fourteen days, or such further time as the Court may allow, after publication of the award apply to the arbitrator for an order directing by and to whom the costs of the reference shall be paid. The arbitrator, after hearing any party who desires to be heard, shall thereupon amend his or her award by the addition of directions that he or she thinks proper concerning the payment of those costs.

23. Limitation of time for commencing proceedings, etc.

(1) In this section, the expression "statutes of limitation" means the written and applied laws for the time being in force concerning the limits of time within which civil proceedings in the Court may properly be commenced.

(2) The accrual of a cause of action in respect of every matter required by an agreement to be referred to arbitration is to be determined in accordance with the statutes of limitation and, for that purpose, any provision in an agreement to the effect that the accrual of a cause of action does not arise until an award is made is to be disregarded.

(3) For the purposes of this section and the statutes of limitation, an arbitration is to be deemed to have commenced as soon as one party to an agreement serves on any other a valid notice either requiring the appointment of an arbitrator or requiring a disputed matter to be submitted to a person named or designated in the agreement.

(4) Service of the notice mentioned in subsection (3) may be effected—

- (a) by delivering it to the person to be served;
- (b) by leaving it at the usual or last known place of abode in Grenada of that person;
- (c) by sending it by registered post addressed to that person at his or her usual or last known place of abode in Grenada; or
- (d) in such manner as may be provided in the agreement.

(5) Where an agreement contains a provision to the effect that claims to which it relates will be barred unless notice to appoint an arbitrator has been given, or an arbitrator has been appointed, or some other step to commence arbitration proceedings has been taken, within a time fixed by the agreement, the Court, if it is of the opinion having regard to all the circumstances of the case that undue hardship would otherwise be caused, may (notwithstanding that the limit of time fixed by the agreement has expired) without prejudice to the foregoing provisions of this section extend the time for such period as it thinks proper and on such terms, if any, as the justice of the case may require.

(6) Where the Court orders that an award be set aside or, after the commencement of an arbitration, orders that an agreement shall cease to have effect with respect to the dispute referred, the Court may also order that the period between the commencement of the arbitration and the date of the order of the Court shall be excluded in computing the limit of time prescribed by the statutes of limitation for the commencement of proceedings with respect to the dispute referred.

PART III

References under an Order of the Court

24. Reference of question to, and reports by, official or special referee

(1) Subject to the rules of court and to the right in certain civil cases to trial by jury, the Court may refer any question arising in any civil cause or matter to an official or special referee for enquiry or report.

(2) The report of an official or special referee may be wholly or partly adopted by the Court and, if adopted, may be enforced to the same effect as a judgement or order.

25. Reference for trial

(1) Subject to subsection (2), the Court may at any time order that a civil cause or matter, or any question of fact arising therefrom, be heard and decided by a special referee or by an arbitrator agreed upon by the parties or, in default of agreement, by an official referee or other officer of the Court.

(2) An order pursuant to subsection (1) shall not be made unless at least one of the following conditions is satisfied—

- (a) that all the parties concerned (being persons not under a disability) consent to the making of the order;
- (b) that the cause or matter requires a prolonged examination of documents or some scientific or local investigation that cannot otherwise in the Court's opinion be conveniently dealt with;

- (c) that the question in dispute consists wholly or in part of matters of account.

(3) An order pursuant to subsection (1) shall not be made without the written consent of the Governor-General in any case where the Government or a public officer is a party to an arbitration concerning any act done or performed by the public officer or by his or her Ministry or Department.

26. Powers and remuneration of referees and arbitrators

(1) For the purposes of a reference, an official or special referee or an arbitrator is deemed to be an officer of the Court and, subject to the rules of the Court, each has such authority and shall conduct a reference in such manner as the Court may direct.

(2) The report or award on a reference shall be equivalent to the verdict of a jury in a civil cause.

(3) The remuneration to be paid to an official or special referee or an arbitrator to whom a matter is referred by the Court shall be determined by the Court.

27. Powers of Court

The Court, in relation to references, has all the powers conferred by this Act on the Court concerning references by consent.

28. Powers of Court of Appeal

The Court of Appeal, on an appeal relating to a reference, has the same powers as the Court.

PART IV

Miscellaneous Provisions

29. Power to compel attendance of witnesses

The Court may order the issue of writs of *subpoena ad testificandum* and *subpoena duces tecum* to compel the attendance of witnesses before an official or special referee or an arbitrator or umpire, and the issue of writs of *habeas corpus ad testificandum* to ensure the attendance of prisoners to give evidence.

30. Additional powers of Court

(1) The Court, in relation to references, has the same power to make orders concerning the matters listed in the Second Schedule as it has in relation to a civil cause or matter.

(2) Where relief by way of interpleader is granted and it appears to the Court that the claims in question are matters between parties to an agreement, the Court may direct that those matters be determined in accordance with the agreement.

(3) On an application to set aside an award the Court may order that any money payable under the award shall be paid into court or otherwise secured pending the Court's determination of the application.

31. Statement of case by arbitrator or umpire

(1) An arbitrator or umpire may, and shall if so directed by the Court, state in the form of a special case for determination by the Court—

- (a) any question of law, arising in the course of a reference;
- (b) an award or any part of an award.

(2) A special case concerning an interim award or a question of law arising in the course of a reference may, and shall if so directed by the Court, be stated notwithstanding that proceedings under the reference are still pending.

(3) An appeal lies to the Court of Appeal from any decision of the Court under this section, but no appeal lies against the decision on a case stated pursuant to subsection (1)(a) except with the leave of the Court or the Court of Appeal.

32. Costs

Any order made under a power conferred by this Act may be made on such terms as to costs or otherwise as are deemed to be just.

33. Power of Court to order delivery of award and to tax fees of arbitrator or umpire

(1) If an arbitrator or umpire refuses to deliver his or her award except on payment of his or her fees the Court may, on the application of any party to the reference, order him or her to deliver the award on payment into court by the applicant of the fees demanded. After a payment into court the Court has power to order that the fees demanded shall be taxed by the Registrar of the Supreme Court and that out of the money paid into court there shall be paid out to the arbitrator or umpire by way of his or her fees such sum as to the Registrar seems reasonable on taxation and that any balance shall be repaid to the applicant. The taxation may be reviewed in the same manner as a taxation of costs and the arbitrator or umpire is entitled to appear and be heard on any application or taxation under this subsection.

(2) An application under subsection (1) shall not be made if the fees demanded have been fixed by a written agreement made between the arbitrator or umpire and the applicant.

34. Application of Act to Government in certain cases and to all other arbitrations

(1) This Act binds the Government where the Government or any public officer is a party to an arbitration concerning any act done or performed by the public officer or by his or her Ministry or Department.

(2) Subject to subsection (1), this Act applies with respect to every arbitration whether or not the same arises pursuant to an agreement and to the extent that it is not inconsistent with any other written law and, where there is an agreement, with the lawful terms of the agreement.

First Schedule **ARBITRATION ACT**

Provisions to be Implied in Arbitration Agreements

[Section 4.]

1. If no other mode of reference is provided, the reference shall be to a single arbitrator.

2. If the reference is to two arbitrators, the two arbitrators may appoint an umpire immediately once they are themselves appointed.

3. If the arbitrators have delivered a written notice to any party, or to the umpire, stating that they cannot agree, the umpire may forthwith enter upon the reference in lieu of the arbitrators.

4. If, after differences have arisen, the parties cannot agree the terms on which their differences are to be referred, any party may apply to a Judge in chambers by originating summons to settle the terms of reference.

5. Without prejudice to any lawful objection all parties and those claiming through them must submit themselves for examination on oath and produce all documents in their possession or power that the arbitrators or umpire may require for the purposes of the reference.

6. Witnesses shall be examined on oath if the arbitrators or umpire think fit.

7. The award of the arbitrators or umpire is to be final and binding.

8. The costs of the reference and the award shall be in the discretion of the arbitrators or umpire. They have power to direct to whom, by whom, and in what manner, the whole or any part of the costs are to be paid, power to tax or settle any amount of costs, and to award the payment of costs as between solicitor and client.

9. The arbitrators or umpire shall have the same power as the Court to order specific performance other than of a contract relating to land or any interest in land.

10. The arbitrators or umpire may make an interim award if they think fit.

Second Schedule
ARBITRATION ACT

Matters in Respect of which the Court may make Orders

[Section 30.]

1. Security for costs.

2. Discovery of documents and interrogatories.

3. Giving evidence on affidavit.

4. Examination of a witness on oath by an officer of the Court or some other person, and the issue of a commission or request for the examination of a witness outside the jurisdiction.

5. Security for the amount in dispute on a reference.

6. The preservation, interim custody or sale of goods the subject-matter of a reference.

7. The preservation, detention and inspection of the property or thing which is the subject of a reference or as to which any question may arise therein, and authorising for any of those purposes entry into land or buildings in the possession of any party to a reference, or authorising the taking of samples or the making of observations or experiments that may be necessary or expedient for the purpose of obtaining full information or evidence.

CHAPTER 19
ARBITRATION ACT

SUBSIDIARY LEGISLATION

No Subsidiary Legislation
