



**Arbitration Act of
Brunei – Nation of Brunei
(Brunei - Nation du Brunei)**

**CONSTITUTION OF BRUNEI
DARUSSALAM
(Order under Article 83(31))**

**INTERNATIONAL ARBITRATION
ORDER, 2009**

In the exercise of the power conferred by Article 83(3) of the Constitution of Brunei Darussalam, His Majesty the Sultan and Yang Di-Pertuan hereby makes the following Order

PART I PRELIMINARY

Citation, commencement and long title.

1.

(1) This Order may be cited as the International Arbitration Order, 2009 and shall commence on the same date as the Arbitration Order, 2009.

(2) The long title of this Order is "An Order to provide for the reform of the law relating to international arbitration, the recognition and enforcement of arbitral awards and for matters relating thereto".

**PART II
INTERNATIONAL COMMERCIAL
ARBITRATION**

Interpretation of Part II.

2.

(1) In this Part, unless the context otherwise requires-

"arbitral tribunal" means a sole arbitrator, a panel of arbitrators or a permanent arbitral institution;

"appointing authority" means the authority designated under sections 8(2) or (3);

"arbitration agreement" means a written agreement referred to in Article 7 of

the Model Law and includes an agreement deemed or constituted under subsections (3) or (4);

"award" means a decision of the arbitral tribunal on the substance of the dispute and includes any interim, interlocutory or partial award, but excludes any orders or directions made under section 15;

"Model Law" means the UNCITRAL Model Law on International Commercial Arbitration adopted by the United Nations Commission on International Trade Law on 21st. June, 1985, the text in English of which is set out in the First Schedule;

"party" means a party to an arbitration agreement or, in any case where an arbitration does not involve all of the parties to the arbitration agreement, means a party to the arbitration.

(2) Except so far as a contrary intention appears, award or expression that is used both in this Part and in the Model Law (whether or not a particular meaning is given to it by the Model Law) has in the Model Law the same meaning as it has in this Part.

(3) Where in any arbitral or legal proceedings, a party asserts the existence of an arbitration agreement in a pleading, statement of case or any other document in circumstances in which the assertion calls for a reply and the assertion is not denied, there shall be deemed to be an effective arbitration agreement as between the parties to the proceedings.

(4) A reference in a bill of lading to a charter party or some other document containing an arbitration clause shall constitute an arbitration agreement if the reference is such as to make that clause part of the bill of lading.

Model Law to have force of law.

3.

(1) Subject to this Order, the Model Law, with the exception of Chapter VIII thereof shall have the force of law in Brunei Darussalam.

(2) In the Model Law -

"State" means Brunei Darussalam and any country or territory other than Brunei Darussalam;

"this State" means Brunei Darussalam.

Interpretation of Model Law by use of extrinsic material.

4.

(1) For the purposes of interpreting the Model Law, reference may be made to the documents of -

(a) the United Nations Commission on International Trade Law; and

(b) its working group for the preparation of the Model Law/ relating to the Model Law.

(2) Subsection (1) does not affect the application of section 7A of the Interpretation and General Clauses Act (Chapter 4) for the purposes of interpreting this Order.

Application of Part II.

5.

(1) This Part and the Model Law shall not apply to an arbitration which is not an international arbitration unless the parties agree in writing that this Part or the Model Law shall apply to that arbitration.

(2) Notwithstanding Article 1 (3) of the Model Law, an arbitration is international if -

(a) at least one of the parties to an arbitration agreement, at the time of the conclusion of the agreement, has its place of business in any State other than Brunei Darussalam;

(b) one of the following places is situated outside the State in which the parties have their places of business -

(i) the place of arbitration if determined in, or pursuant to, the arbitration agreement;

(ii) any place where a substantial part of the obligations of the commercial relationship is to be performed or the place with which the subject-matter of the dispute is most closely connected; or

(c) the parties have expressly agreed that the subject-matter of the arbitration agreement relates to more than one country or territory.

(3) For the purposes of subsection (2)-

(a) if a party has more than one place of business, the place of business shall be that which has the closest relationship to the arbitration agreement;

(b) if a party does not have a place of business, a reference to his place of business shall be construed as a reference to his habitual residence.

(4) Notwithstanding any provision to the contrary in the Arbitration Order, 2009, that Order shall not apply to any arbitration to which this Part applies.

Enforcement of international arbitration agreement.

6.

(1) Notwithstanding Article 8 of the Model Law, where any party to an arbitration agreement to which this Order applies institutes any proceedings in any court against any other party to the agreement in respect of any matter which is the subject of the agreement, any party to the agreement may, at any time after entering an appearance and before delivering any pleading or taking any other step in the proceedings, apply to that court to stay the proceedings so far as they relate to that matter.

(2) The court to which an application has been made in accordance with subsection (1) shall make an order, upon such conditions as it may think fit, staying the proceedings so far as they relate to that matter, unless it is satisfied that the arbitration agreement is void, inoperative or incapable of being performed.

(3) Where a court makes an order under subsection (2), the court may, for the purpose of preserving the rights of parties, make such interim or supplementary orders as it may think fit in relation to any property which is the subject of the dispute to which the order under that subsection relates.

(4) Where no party to the proceedings has taken any further step in the proceedings for a period of not less than 2 years after an order staying the proceedings has been made, the court may, on its own motion, make an order discontinuing the proceedings without prejudice to the right of any of the parties to apply for the discontinued proceedings to be reinstated.

(5) For the purposes of this section and sections 7 and 14-

(a) a reference to a party shall include a reference to any person claiming through or under such party;

(b) "court" means the High Court, an Intermediate Court, a Court of a Magistrate or any other court in which the proceedings are instituted.

Court's powers on stay of proceedings.

7.

(1) Where a court stays proceedings under section 6, it may, if in those proceedings property has been arrested or bail or other security has been given to prevent or obtain release from arrest, order -

(a) that the property arrested be retained as security for the satisfaction of any award made on the arbitration; or

(b) that the stay be conditional on the provision of equivalent security for the satisfaction of any such award.

(2) Subject to Rules of Court and to any necessary modifications, the same law and practice shall apply in relation to property retained in pursuance of an order under this section as would apply if it were held for the purposes of proceedings in the court which made the order.

Authorities specified for purposes of Article 6 of Model Law.

8.

(1) The High Court shall be taken to have been specified in Article 6 of the Model Law as a court competent to perform the functions referred to in that Article, except for Articles 11(3) and (4) of the Model Law.

(2) The President of the Arbitration Association Brunei Darussalam shall be taken to have been specified as the authority competent to perform the functions under Articles 11(3) and (4) of the Model Law and he shall only select an arbitrator from the panel of arbitrators maintained by the Arbitration Association Brunei Darussalam.

(3) The Chief Justice may, by notification published in the Gazette, appoint any other person to exercise the powers under subsection (2).

Application of Chapter 14.

9.

(1) The Limitation Act (Chapter 14) shall apply to arbitration proceedings as it applies to proceedings before any court and a reference in that Act to the commencement of any action shall be construed as a reference to the commencement of arbitration proceedings.

(2) The High Court may order that in computing the time prescribed by the Limitation Act for the commencement of proceedings (including arbitration

proceedings) in respect of a dispute which was the subject-matter of-

(a) an award which the High Court orders to be set aside or declares to be of no effect; or

(b) the affected part of an award which the High Court orders to be set aside in part or declares to be in part of no effect,

the period between the commencement of the arbitration and the date of the order referred to in paragraphs (a) or (b) shall be excluded.

(3) Notwithstanding any term in an arbitration agreement to the effect that no cause of action shall accrue in respect of any matter required by the agreement to be referred until an award is made under the agreement, the cause of action shall, for the purposes of the Limitation Act (Chapter 14), be deemed to have accrued in respect of any such matter at the time when it would have accrued but for that term in the agreement.

Number of arbitrators for purposes of Article 10(2) of Model Law.

10.

Notwithstanding Article 10(2) of the Model Law, if the number of arbitrators is not determined by the parties, there shall be a single arbitrator.

Default in appointment of arbitrators.

11.

(1) Notwithstanding Article 11(3) of the Model Law, in an arbitration with 3 arbitrators, each party shall appoint one arbitrator, and the parties shall by agreement appoint the third arbitrator.

(2) Where the parties fail to agree on the appointment of the third arbitrator within 30 days of the receipt of the first request by either party to do so, the appointment shall be made, upon the request of any party, by the appointing authority.

Appeal under Article 16(3) of Model Law.
12.

(1) Notwithstanding Article 16(3) of the Model Law, an appeal from a decision of the High Court made under Article 16(3) of the Model Law shall lie to the Court of Appeal only with the leave of the High Court.

(2) There shall be no appeal against a refusal by the High Court of the grant of leave.

Public policy and arbitrability.

13.

(1) Any dispute which the parties have agreed to submit to arbitration under an arbitration agreement may be determined by arbitration unless it is contrary to public policy to do so.

(2) The fact that any written law confers jurisdiction in respect of any matter on any court of law but does not refer to the determination of that matter by arbitration shall not, of itself, indicate that a dispute about that matter is not capable of determination by arbitration.

Reference of interpleader issue to arbitration.

14.

Where in proceedings before any court relief by way of interpleader is granted and any issue between the claimants is one in respect of which there is an arbitration agreement between them, the court granting the relief may direct that the issue between the claimants to be determined in accordance with the agreement.

Powers of arbitral tribunal.

15.

(1) Without prejudice to the powers set out in any other provision of this Order and in the Model Law, an arbitral tribunal shall have power to make orders or give directions to any party for -

(a) security for costs;

(b) discovery of documents and interrogatories;

(c) giving of evidence by affidavit;

(d) the preservation, interim custody or sale of any property which is or forms part of the subject-matter of the dispute;

(e) samples to be taken from, or any observation to be made of or experiment conducted upon, any property which is or forms part of the subject-matter of the dispute;

(f) the preservation and interim custody of any evidence for the purposes of the proceedings;

(g) securing the amount in dispute;

(h) ensuring that any award which may be made in the arbitral proceedings is not rendered ineffectual by the dissipation of assets by a party; and

(i) an interim injunction or any other interim measure.

(2) An arbitral tribunal shall, unless the parties to an arbitration agreement have (whether in the arbitration agreement or in any other written document) agreed to the contrary, have power to administer oaths to the parties and witnesses.

(3) An arbitral tribunal shall, unless the parties to an arbitration agreement have (whether in the arbitration agreement or in any other written document) agreed to the contrary, have power to adopt if it thinks fit inquisitorial processes.

(4) The power of the arbitral tribunal to order a claimant to provide security for costs as referred to in subsection (1)(a) shall not be exercised by reason only that the claimant is -

(a) an individual ordinarily resident outside Brunei Darussalam ; or

(b) a corporation or an association incorporated or formed under the law of a country or territory outside Brunei Darussalam, or whose central management and control is exercised outside Brunei Darussalam.

(5) Without prejudice to the application of Article 28 of the Model Law, an arbitral tribunal, in deciding the dispute that is the subject of the arbitral proceedings -

(a) may award any remedy or relief that could have been ordered by the High Court if the dispute had been the subject of civil proceedings in that Court;

(b) may award interest (including interest on a compound basis) on the whole or any part of any sum which

(i) is awarded to any party, for the whole or any part of the period up to the date of the award; or

(ii) is in issue in the arbitral proceedings but is paid before the date of the award, for the whole or any part of the period up to the date of payment.

(6) All orders or directions made or given by an arbitral tribunal in the course of an arbitration shall, by leave of the High Court, be enforceable in the same manner as if they were orders made by a court and, where leave is so given, judgment may be entered in terms of that order or direction.

(7) The High Court shall have, for the purpose of and in relation to an arbitration to which this Part applies, the same power of making orders in respect of any of the matters set out in subsection (1) as it has for the purpose of and in relation to an action or matter in a court.

(8) For the purpose of this section and of section 16, "interim measure" means any temporary measure, whether in the form of an award or in another form, by which, at any time prior to the issue of the award by which the dispute is finally

decided, the arbitral tribunal orders a party to -

- (a) maintain or restore the status quo pending determination of the dispute;
- (b) take action that would prevent or refrain from taking action that is likely to cause, current or imminent harm or prejudice to the arbitral proceedings itself;
- (c) provide a means of preserving assets out of which a subsequent award may be satisfied; or
- (d) preserve evidence that may be relevant and material to the resolution of the dispute.

Conditions for granting interim measures.
16.

(1) The party requesting an interim measure under sections 15(8)(a), (b) and (c) shall satisfy the arbitral tribunal that -

(a) harm not adequately reparable by an award of damages is likely to result if the measure is not ordered, and such harm substantially outweighs the harm that is likely to result to the party against whom the measure is directed if the measure is granted; and

(b) there is a reasonable possibility that the requesting party will succeed on the merits of the claim. The determination of this possibility shall not affect the discretion of the arbitral tribunal in making any subsequent determination.

(2) With regard to a request for an interim measure under section 15(8)(d), the requirements in sections 15(8)(a) and (b) shall apply only to the extent the arbitral tribunal considers appropriate.

Applications for preliminary order and conditions for granting preliminary orders.
17.

(1) Unless otherwise agreed by the parties, a party may, without notice to

any other party, make a request for an interim measure together with an application for a preliminary order directing a party not to frustrate the purpose of the interim measure requested.

(2) The arbitral tribunal may grant a preliminary order provided it considers that prior disclosure of the request for the interim measure to the party against whom it is directed risks frustrating the purpose of the measure.

(3) The conditions defined under section 16(1) apply to any preliminary order, provided that the harm to be assessed under paragraph (a) of that subsection, is the harm likely to result from the order being granted or not.

Specific regime for preliminary orders.
18.

(1) Immediately after the arbitral tribunal has made a determination in respect of an application for a preliminary order, it shall give notice to all parties of the request for the interim measure, the application for the preliminary order, the preliminary order, if any, and all other communications, including by indicating the content of any oral communication, between any party and the arbitral tribunal in relation thereto.

(2) At the same time, the arbitral tribunal shall give an opportunity to any party against whom a preliminary order is directed to present his case at the earliest practicable time.

(3) The arbitral tribunal shall decide promptly on any objection to the preliminary order.

(4) A preliminary order shall expire after 20 days from the date on which it was issued by the arbitral tribunal. However, the arbitral tribunal may issue an interim measure adopting or modifying the preliminary order, after the party against whom the preliminary order is directed has been given notice and an opportunity to present his case.

(5) A preliminary order shall be binding on the parties but shall not be subject to enforcement by a court. Such a preliminary order does not constitute an award.

Modification, suspension or termination.

19. The arbitral tribunal may modify, suspend or terminate an interim measure or a preliminary order it has granted, upon application of any party or, in exceptional circumstances and upon prior notice to the parties, on its own initiative.

Provision of security

20.

(1) The arbitral tribunal may require the party requesting an interim measure to provide appropriate security in connection with such measure.

(2) The arbitral tribunal shall require the party applying for a preliminary order to provide security in connection with the order unless it considers it inappropriate or unnecessary to do so.

Disclosure.

21.

(1) The arbitral tribunal may require any party promptly to disclose any material change in the circumstances on the basis of which the measure was requested or granted.

(2) The party applying for a preliminary order shall disclose to the arbitral tribunal all circumstances that are likely to be relevant to the arbitral tribunal's determination whether to grant or maintain such order, and such obligation shall continue until the party against whom the order has been requested has had an opportunity to present his case, and thereafter subsection (1) shall apply.

Costs and damages.

22. The party requesting an interim measure or applying for a preliminary

order shall be liable for any costs and damages caused by such measure or order to any party if the arbitral tribunal later determines that, in the circumstances, that measure or order should not have been granted. The arbitral tribunal may award such costs and damages at any point during the proceedings.

Witnesses may be summoned by subpoena.

23.

(1) Any party to an arbitration agreement may take out a subpoena to testify or to produce documents.

(2) The High Court may order that a subpoena to testify or to produce documents shall be issued to compel the attendance before an arbitral tribunal of a witness wherever he may be within Brunei Darussalam.

(3) The High Court may also issue an order under section 32(1) of the Prisons Act (Chapter 51) to bring up a prisoner for examination before an arbitral tribunal.

(4) No person shall be compelled under any such subpoena to produce any document which he could not be compelled to produce on the trial of an action.

Law of arbitration other than Model Law.

24.

(1) If the parties to an arbitration agreement, whether made before or after the commencement of this Order, have expressly agreed either -

(a) that the Model Law or this Part shall not apply to the arbitration; or

(b) that the Arbitration Order, 2009 or the repealed Arbitration Act (Chapter 173) (if applicable) shall apply to the arbitration,

then, both the Model Law and this Part shall not apply to that arbitration but the Arbitration Order, 2009 or the

repealed Arbitration Act (Chapter 173) (if applicable) shall apply to that arbitration.

(2) For the avoidance of doubt, a provision in an arbitration agreement referring to or adopting any rules of arbitration shall not of itself be sufficient to exclude the application of the Model Law or this Part to the arbitration concerned.

Application of rules of arbitration.

25.

(1) It is hereby declared for the avoidance of doubt that a provision of rules of arbitration agreed to or adopted by the parties, whether made before or after the commencement of the arbitration, shall apply and be given effect to the extent that such provision is not inconsistent with any provision of the Model Law or of this Part from which the parties cannot derogate.

(2) Without prejudice to subsection (1), subsections (3) to (6) shall apply for the purposes of determining whether a provision of rules of arbitration is inconsistent with any provision of the Model Law or of this Part.

(3) A provision of rules of arbitration is not inconsistent with the Model Law or this Part merely because it provides for a matter on which the Model Law and this Part is silent.

(4) Rules of arbitration are not inconsistent with the Model Law or this Part merely because the rules are silent on a matter covered by any provision of the Model Law or this Part.

(5) A provision of rules of arbitration is not inconsistent with the Model Law or this Part merely because it provides for a matter that is covered by a provision of the Model Law or this Part which allows the parties to make their own arrangements by agreement but which applies in the absence of such agreement.

(6) The parties may make the arrangements referred to in subsection (5) by agreeing to the application or adoption of rules of arbitration or by providing any other means by which a matter may be decided.

(7) In this section and section 24, "rules of arbitration" means the rules of arbitration agreed to or adopted by the parties, including the rules of arbitration of an institution or organisation.

Appointment of conciliator.

26.

(1) Where an agreement provides for the appointment of a conciliator by a person who is not one of the parties and that person refuses to make the appointment or does not make it within the time specified in the agreement or, if no time is so specified, within a reasonable time of being requested by any party to the agreement to make the appointment, the President for the time being of the Arbitration Association of Brunei Darussalam may on the application of any party to the agreement, appoint a conciliator who shall have the like powers to act in the conciliation proceedings as if he had been appointed in accordance with the terms of the agreement.

(2) The Chief Justice may, by notification published in the Gazette, appoint any other person to exercise the powers of the President of the Arbitration Association of Brunei Darussalam under subsection (1).

(3) Where an arbitration agreement provides for the appointment of a conciliator and further provides that the person so appointed shall act as an arbitrator in the event of the conciliation proceedings failing to produce a settlement acceptable to the parties -

(a) no objection shall be taken to the appointment of such person as an arbitrator, or to his conduct of the arbitral proceedings, solely on the ground that he

had acted previously as a conciliator in connection with some or all of the matters referred to in the arbitration;

(b) if such person declines to act as an arbitrator, any other person appointed as an arbitrator shall not be required first to act as a conciliator unless a contrary intention appears in the arbitration agreement.

(4) Unless a contrary intention appears therein, an agreement which provides for the appointment of a conciliator shall be deemed to contain a provision that in the event of the conciliation proceedings failing to produce a settlement acceptable to the parties within 4 months, or such longer period as the parties may agree, of the date of the appointment of the conciliator or, where he is appointed by name in the agreement, of the receipt by him of written notification of the existence of a dispute, the conciliation proceedings shall there upon terminate.

(5) For the purposes of this section and of section 27 -

(a) any reference to "conciliator" includes a reference to any person who acts as a mediator;

(b) any reference to "conciliation proceedings" includes a reference to mediation proceedings.

Power of arbitrator to act as conciliator.

27.

(1) If all parties to any arbitral proceedings consent in writing and for so long as no party has withdrawn his consent in writing, an arbitrator or umpire may act as a conciliator.

(2) An arbitrator or umpire acting as conciliator -

(a) may communicate with the parties to the arbitral proceedings collectively or separately; and

(b) shall treat information obtained by him from a party to the arbitral proceedings as confidential, unless that party otherwise agrees or unless subsection (3) applies.

(3) Where confidential information is obtained by an arbitrator or umpire from a party to the arbitral proceedings during conciliation proceedings and those proceedings terminate without the parties reaching agreement in settlement of their dispute, the arbitrator or umpire shall before resuming the arbitral proceedings disclose to all other parties to the arbitral proceedings as much of that information as he considers material to the arbitral proceedings.

(4) No objection shall be taken to the conduct of arbitral proceedings by any person solely on the ground that he had acted previously as a conciliator in accordance with this section.

Award by consent.

28. If the parties to an arbitration agreement reach agreement in settlement of their dispute and the arbitral tribunal has recorded the terms of settlement in the form of an arbitral award on agreed terms in accordance with Article 30 of the Model Law, the award -

(a) shall be treated as an award on an arbitration agreement; and

(b) may, by leave of the High Court, be enforced in the same manner as a judgment or an order to the same effect, and where leave is so given, judgment may be entered in terms of the award.

Enforcement of awards.

29.

An award on an arbitration agreement may, by leave of the High Court, be enforced in the same manner as a judgment or order to the same effect and, where leave is so given, judgment may be entered in terms of the award.

Awards made on different issues.

30.

(1) Unless otherwise agreed by the parties, the arbitral tribunal may make more than one award at different times during the arbitration proceedings on different aspects of the matters to be determined.

(2) The arbitral tribunal may, in particular, make an award relating to-

(a) an issue affecting the whole claim; or

(b) a part only of the claim, counter-claim or cross-claim, which is submitted to it for decision.

(3) If the arbitral tribunal makes an award under this section, it shall specify in its award, the issue, or claim or part of a claim, which is the subject-matter of the award.

Effect of award.

31.

(1) An award made by the arbitral tribunal pursuant to an arbitration agreement is final and binding on the parties and on any persons claiming through or under them and may be relied upon by any of the parties by way of defence, set-off or otherwise in any proceedings in any court of competent jurisdiction.

(2) Except as provided in Articles 33 and 34(4) of the Model Law, upon an award being made, including an award made in accordance with section 30, the arbitral tribunal shall not vary, amend, correct, review, add to or revoke the award.

(3) For the purposes of subsection (2), an award is made when it has been signed and delivered in accordance with Article 31 of the Model Law.

(4) This section shall not affect the right of a person to challenge the award by any available arbitral process of appeal or review or in accordance with the provisions of this Order and the Model Law.

Interest on awards.

32. Where an award directs a sum to be paid, that sum shall, unless the award otherwise directs, carry interest as from the date of the award and at the same rate as a judgment debt.

Taxation of costs.

33.

(1) Any costs directed by an award to be paid shall, unless the award otherwise directs, be taxable by the arbitrator.

(2) Unless the fees of the arbitral tribunal have been fixed by a written agreement or such agreement has provided for determination of the fees by a person or an institution agreed to by the parties, any party to the arbitration may require that such fees be taxed by the arbitrator.

(3) A certificate signed by the arbitrator on the amount of costs or fees taxed shall form part of the award of the arbitral tribunal.

(4) The Chief Justice may, by notification published in the Gazette, appoint any other person to exercise the powers of the taxation of costs under subsection (1).

Proceedings to be heard otherwise than in open court.

34. Proceedings under this Order in any court shall, on the application of any party to the proceedings, be heard otherwise than in open court.

Restrictions on reporting of proceedings heard otherwise than in open court.

35.

(1) This section shall apply to proceedings under this Order in any court heard otherwise than in open court.

(2) A court hearing any proceedings to which this section applies shall, on the

application of any party to the proceedings, give directions as to whether any and, if so, what information relating to the proceedings may be published.

(3) A court shall not give a direction under subsection (2) permitting information to be published unless -

(a) all parties to the proceedings agree that such information may be published; or

(b) the court is satisfied that the information, if published in accordance with such directions as it may give, would not reveal any matter, including the identity of any party to the proceedings, that any party to the proceedings reasonably wishes to remain confidential.

(4) Notwithstanding subsection (3), where a court gives grounds of decision for a judgment in respect of proceedings to which this section applies and considers that judgment to be of major legal interest, the court shall direct that reports of the judgment may be published in law reports and professional publications but, if any party to the proceedings reasonably wishes to conceal any matter, including the fact that he was such a party, the court shall -

(a) give directions as to the action that shall be taken to conceal that matter in those reports; and

(b) if it considers that a report published in accordance with directions given under paragraph {a} would be likely to reveal that matter, direct that no report shall be published until after the end of a period, not exceeding 10 years, as it considers appropriate.

Court may set aside award.

36. Notwithstanding Article 34(1) of the Model Law, the High Court may in addition to the grounds set out in Article 34(2) of the Model Law, set aside the award of the arbitral tribunal if -

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

(b) a breach of the rules of natural justice occurred in connection with the making of the award by which the rights of any party have been prejudiced.

Liability of arbitrator.

37.

An arbitrator shall not be liable for

(a) negligence in respect of anything done or omitted to be done in the capacity of arbitrator; and

(b) any mistake in law, fact or procedure made in the course of arbitral proceedings or in the making of an arbitral award.

Immunity of appointing authority and arbitral institutions etc.

38.

(1) The appointing authority, or an arbitral or other institution or person designated or requested by the parties to appoint or nominate an arbitrator, shall not be liable for anything done or omitted in the discharge or purported discharge of that function unless the act or omission is shown to have been in bad faith.

(2) The appointing authority, or an arbitral or other institution or person by whom an arbitrator is appointed or nominated, shall not be liable, by reason only of having appointed or nominated him, for anything done or omitted by the arbitrator, his employees or agents in the discharge or purported discharge of his functions as arbitrator.

(3) This section shall apply to an employee or agent of the appointing authority or of an arbitral or other institution or person as it applies to the appointing authority, institution or person himself.

Transitional provisions for this Part.
39.

(1) This Part shall not apply in relation to an international arbitration between parties to an arbitration agreement that was commenced before the commencement of this Order unless the parties have (whether in the agreement or in any other written document) otherwise agreed.

(2) Subject to subsection (1), where the arbitral proceedings were commenced before the commencement of this Order, the law governing the arbitration agreement and the arbitration shall be the law which would have applied if this Order had not been made.

(3) In any written law, written agreement or other document, a reference to arbitration under the Arbitration Order, 2009 shall, so far as relevant and unless the contrary intention appears, be construed to include a reference to arbitration under this Order.

(4) For the purposes of this section, arbitral proceedings are to be taken as having commenced on the date of the receipt by the respondent of a request for the dispute to be referred to arbitration, or, where the parties have agreed in writing that any other date is to be taken as the date of commencement of the arbitral proceedings, then on that date.

(5) Nothing in this Order shall affect any proceedings relating to arbitration which have been commenced in any court before the commencement of this Order.

PART III FOREIGN AWARDS

Interpretation of Part III.
40.

(1) In this Part, unless the context otherwise requires -
"arbitral award" has the same meaning as in the Convention;

"arbitration agreement" means an agreement in writing of the kind referred to in paragraph 1 of Article II of the Convention;

"Convention" means the Convention on the Recognition and Enforcement of Foreign Arbitral Awards adopted in 1958 by the United Nations Conference on International Commercial Arbitration at its twenty-fourth meeting, the English text of which is set out in the Second Schedule;

"Convention country" means a country (other than Brunei Darussalam) that is a Contracting State within the meaning of the Convention;

"court" means the High Court;

"foreign award" means an arbitral award made in pursuance of an arbitration agreement in the territory of a Convention country other than Brunei Darussalam;

"written agreement" includes an agreement contained in an exchange of letters, telegrams, telefacsimile or in a communication by teleprinter.

(2) In this Part, where the context so admits, "enforcement", in relation to a foreign award¹ includes the recognition of the award as binding for any purpose.

(3) For the purposes of this Part, a body corporate shall be taken to be habitually resident in a country or territory if it is incorporated or has its principal place of business in that country or territory.

Application of Part III.

41.

(1) This Part shall apply to arbitration agreements made before the date of commencement of this Order as it applies to arbitration agreements made on or after that date.

(2) This Part shall not apply to foreign awards made before 23 October

1996.

Recognition and enforcement of foreign awards.

42.

(1) Brunei Darussalam will only apply the Convention to the recognition and enforcement of foreign awards made in the territory of another Convention country which recognises and will enforce awards made in Brunei Darussalam.

(2) Subject to this Part, a foreign award may be enforced in a court either by action or in the same manner as an award of an arbitrator made in Brunei Darussalam is enforceable under section 31.

(3) Any foreign award which is enforceable under subsection (1) shall be recognised as binding for all purposes upon the persons between whom it was made and may accordingly be relied upon by any of those parties by way of defence, set-off or otherwise in any legal proceedings in Brunei Darussalam.

Evidence.

43.

(1) In any proceedings in which a person seeks to enforce a foreign award by virtue of this Part, he shall produce to the court -

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

(b) the original arbitration agreement under which the award purports to have been made, or a duly certified copy thereof; and

(c) where the award or agreement is in a foreign language, a translation of it in the English language, duly certified in English as a correct translation by a sworn translator or by an official or by a diplomatic or consular agent of the country in which the award was made.

(2) A document produced to a court in accordance with this section shall, upon

mere production, be received by the court as prima facie evidence of the matters to which it relates.

Refusal of enforcement.

44.

(1) In any proceedings in which the enforcement of a foreign award is sought by virtue of this Part, the party against whom the enforcement is sought may request that the enforcement be refused, and the enforcement in any of the cases mentioned in subsections (2) and (4) may be refused but not otherwise.

(2) A court so requested may refuse enforcement of a foreign award if the person against whom enforcement is sought proves to the satisfaction of the court that-

(a) a party to the arbitration agreement in pursuance of which the award was made was, under the law applicable to him, under some incapacity at the time when the agreement was made;

(b) the arbitration agreement is not valid under the law to which the parties have subjected it or, in the absence of any indication in that respect, under the law of the country where the award was made;

(c) he was not given proper notice of the appointment of the arbitrator or of the arbitration proceedings or was otherwise unable to present his case in the arbitration proceedings;

(d) subject to subsection (3), the award deals with a difference not contemplated by, or not falling within the terms of, the submission to arbitration or contains a decision on the matter beyond the scope of the submission to arbitration;

(e) 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

(f) the award has not yet become binding on the parties to the arbitral award or has been set aside or suspended by a competent authority of the country in which, or under the law of which, the award was made.

(3) When a foreign award referred to in subsection (2)(d) contains decisions on matters not submitted to arbitration but those decisions can be separated from decisions on matters submitted to arbitration, the award may be enforced to the extent that it contains decisions on matters so submitted.

(4) In any proceedings in which the enforcement of a foreign award is sought by virtue of this Part, the court may refuse to enforce the award if it finds that-

(a) the subject-matter of the difference between the parties to the award is not capable of settlement by arbitration under the law of Brunei Darussalam; or

(b) enforcement of the award would be contrary to the public policy of Brunei Darussalam.

(5) Where, in any proceedings in which the enforcement of a foreign award is sought by virtue of this Part, the court is satisfied that an application for the setting aside or for the suspension of the award has been made to a competent authority of the country in which, or under the law of which, the award was made, the court may

(a) if it considers it proper to do so, adjourn the proceedings or, as the case may be, so much of the proceedings as relates to the award; and

(b) on the application of the party seeking to enforce the award, order the other party to give suitable security.

Convention countries.

45.

(1) Where the Attorney General by an order published in the Gazette has declared that any State specified in that order is a Convention country, it shall, while in force, be evidence of that fact.

(2) For the purposes of this Part, a certificate signed by the Attorney General stating that a State specified in the certificate but not specified in any order made under subsection (1) which is in force is, or was at a time specified in the certificate, a Convention country shall, upon mere production, be prima facie evidence of that fact.

Enforcement of awards under other provisions of law.

46.

(1) Nothing in this Part shall affect the right of any person to enforce an arbitral award otherwise than as is provided for in this Part.

(2) Notwithstanding section 4 of the Reciprocal Enforcement of Foreign Judgments Act (Chapter 177), where a foreign award is both enforceable under this Part and registrable as a judgment under that Act, proceedings to enforce the award under this Part may be commenced without any disentitlement to recover any costs of the proceedings, unless otherwise ordered by the court.

PART IV GENERAL

Government to be bound.

47.

This Order shall apply to any arbitration to which the Government is a party.

Rules of Court.

48.

Subject to the provisions of this Order, the Chief Justice may, with the approval of His Majesty the Sultan and Yang Di-Pertuan makes Rules of Court for regulating the practice and

procedure of any court in respect of any matter under this Order.

Enabling power.

49.

His Majesty the Sultan and Yang Di-Pertuan may by order make such provisions as may appear to him to be necessary or expedient -

(a) for giving effect to the provisions of this Order;

(b) for the purpose of bringing the provisions of any other written law (other than the Constitution of Brunei Darussalam) into accord with the provisions of this Order or any other Rules of Court made there under.

**FIRST SCHEDULE
(section 2(1))**

**UNCITRAL MODEL LAW ON
INTERNATIONAL COMMERCIAL
ARBITRATION.**

[...]

**SECOND SCHEDULE
(section 40 (1))**

**CONVENTION ON THE RECOGNITION
AND ENFORCEMENT OF FOREIGN
ARBITRAL AWARDS CONCLUDED AT
NEW YORK ON 10TH JUNE 1958**

[...]

Made this 6th. day of Syaaban, 1430 Hijriah corresponding to the 28th. day of July 2009 at Our Istana Nurul Iman, Bandar Seri Begawan, Brunei Darussalam.

HIS MAJESTY
THE SULTAN AND YANG DI-PERTUAN
BRUNEI DARUSSALAM