
CHAPTER 180
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ARRANGEMENT OF SECTIONS

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SCHEDULE — Provisions to be Implied in Submissions

CHAPTER 180

ARBITRATION

An Act for amending and consolidating the enactments relating to arbitration.

*52 of 53 Vict.,
c. 49
extended by 20 of
1899 and by 26 of
1925*

[Commencement 26th August, 1889]

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

Short title.

References by Consent out of Court

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

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

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

Provisions implied in submissions. Schedule

4. Where a submission provides that the reference shall be to an official referee, any official referee to whom application is made shall, subject to any order of the court or a judge as to transfer or otherwise, hear and determine the matters agreed to be referred.

Reference to official referee.

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

Power to stay proceedings where there is a submission.

Power for the court in certain cases to appoint an arbitrator, umpire, or third arbitrator.

6. In any of the following cases —
- (a) where a submission provides that the reference shall be to a single arbitrator, and all the parties do not, after differences have arisen, concur in the appointment of an arbitrator;
 - (b) if an appointed arbitrator refuses to act, or is incapable of acting, or dies, and the submission does not show that it was intended that the vacancy should not be supplied, and the parties do not supply the vacancy;
 - (c) where the parties or two arbitrators are at liberty to appoint an umpire or third arbitrator and do not appoint him;
 - (d) where an appointed umpire or third arbitrator refuses to act, or is incapable of acting, or dies, and the submission does not show that it was intended that the vacancy should not be supplied, and the parties or arbitrators do not supply the vacancy;

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

If the appointment is not made within seven clear days after the service of the notice, the court of a judge may, on application by the party who gave the notice, appoint an arbitrator, umpire, or third arbitrator, who shall have the like powers to act in the reference and make an award as if he had been appointed by consent of all parties.

Powers for parties in certain cases to supply vacancy.

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

- (a) If either of the appointed arbitrators refuses to act, or is incapable of acting, or dies, the party who appointed him may appoint a new arbitrator in his place;
- (b) If, on such a reference, one party fails to appoint an arbitrator, either originally or by way of substitution as aforesaid, for seven clear days after the other party, having appointed his arbitrator, has served the party making default

with notice to make the appointment, the party who has appointed an arbitrator may appoint that arbitrator to act as sole arbitrator in the reference, and his award shall be binding on both parties as if he had been appointed by consent:

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

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

Powers of arbitrator.

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

9. Any party to a submission may sue out a writ of *subpoena ad testificandum*, or a writ of *subpoena duces tecum*, but no person shall be compelled under any such writ to produce any document which he could not be compelled to produce on the trial of an action.

Witnesses may be summoned by subpoena.

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

Power to enlarge time for making award.

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

Power to remit award.

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

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

Power to set aside award.

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

Enforcing award.

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

References under Order of Court

Reference for report.

14. (1) Subject to rules of court and to any right to have particular cases tried by a jury, the court or a judge may refer any question arising in any cause or matter (other than a criminal proceeding by the Crown) for inquiry or report to any official or special referee.

(2) The report of an official or special referee may be adopted wholly or partially by the court or a judge, and if so adopted may be enforced as a judgment or order to the same effect.

Power to refer in certain cases.

15. In any cause or matter (other than a criminal proceeding by the Crown),

- (a) if all the parties interested who are not under disability consent; or
- (b) if the cause or matter requires any prolonged examination of documents or any scientific or local investigation, which cannot in the opinion of the court or a judge conveniently be made before a jury or conducted by the court through its other ordinary officers; or
- (c) if the question in dispute consists wholly or in part of matters of account;

the court or judge may at any time order the whole cause or matter, or any question or issue of fact arising therein, to be tried before a special referee or arbitrator respectively agreed on by the parties, or before an official referee or officer of the court.

Powers and remuneration of referees and arbitrators.

16. (1) In all case of reference to an official or special referee or arbitrator under an order of the court or a judge in any cause or matter, the official or special referee or arbitrator shall be deemed to be an officer of the court, and shall have such authority, and shall conduct the reference in such manner, as may be prescribed by rules of court, and subject thereto as the court or a judge may direct.

(2) The report or award of any official or special referee or arbitrator on any such reference shall, unless set aside by the court or a judge, be equivalent to the verdict of a jury.

(3) The remuneration to be paid to any special referee or arbitrator to whom any matter is referred under order of the court or a judge shall be determined by the court or a judge.

17. The court or a judge shall, as to references under order of the court or a judge, have all the powers which are by this Act conferred on the court or a judge as to references by consent out of court.

Court to have powers as in references by consent.

General

18. (1) The court or a judge may order that a writ of *subpoena ad testificandum* or of *subpoena duces tecum* shall issue to compel the attendance before an official or special referee, or before any arbitrator or umpire, of a witness wherever he may be within The Bahamas.

Power to compel attendance of witness in any part of The Bahamas and to order *habeas corpus* to issue.

(2) The court or a judge may also order that a writ of *habeas corpus ad testificandum* shall issue to bring up a prisoner for examination before an official or special referee, or before any arbitrator or umpire.

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

Statement of case pending arbitration.

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

Costs.

21. Provision may from time to time be made by Rules of Court for conferring on the Registrar, or other officer of the Supreme Court, all or any of the jurisdiction conferred by this Act on the court or a judge.

Exercise of powers by masters and other officers.

22. Any person who wilfully and corruptly gives false evidence before any referee, arbitrator, or umpire shall be guilty of perjury, as if the evidence had been given in open court, and may be dealt with, prosecuted, and punished accordingly.

Penalty for perjury.

Crown to be bound.

23. This Act shall, except as in this Act expressly mentioned, apply to any arbitration to which Her Majesty the Queen, either in right of the Crown, or otherwise, is a party, but nothing in this Act shall empower the court or a judge to order any proceedings to which Her Majesty is a party, or any question or issue in any such proceedings, to be tried before any referee, arbitrator, or officer without the consent of Her Majesty, or shall affect the law as to costs payable by the Crown.

Application of Act to references under statutory powers.

24. This Act shall apply to every arbitration under any Act passed before or after the commencement of this Act as if the arbitration were pursuant to a submission, except in so far as this Act is inconsistent with the Act regulating the arbitration or with any rules or procedure authorised or recognised by that Act.

Definitions.

25. In this Act, unless the contrary intention appears —

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

“court” means the Supreme Court.

“judge” includes the Chief Justice and any Justice or the Supreme Court.

“Rules of Court” means the Rules of the Supreme Court made by the proper authority.

SCHEDULE (Section 3)

PROVISIONS TO BE IMPLIED IN SUBMISSIONS

- (a) If no other mode of reference is provided, the reference shall be to a single arbitrator.
- (b) If the reference is to two arbitrators, the two arbitrators may appoint an umpire at any time within the period during which they have power to make an award.
- (c) The arbitrators shall make their award in writing within three months after entering on the reference, or after having been called on to act by notice in writing from any party to the submission, or on or before any later day to which the arbitrators, by any writing signed by them, may from time to time enlarge the time for making the award.

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- (d) If the arbitrators have allowed their time or extended time to expire without making an award, or have delivered to any party to the submission, or to the umpire a notice in writing, stating that they cannot agree, the umpire may forthwith enter on the reference in lieu of the arbitrators.
 - (e) The umpire shall make his award within one month after the original or extended time appointed for making the award of the arbitrators has expired, or on or before any later day to which the umpire by any writing signed by him may from time to time enlarge the time for making his award.
 - (f) The parties to the reference, and all persons claiming through them respectively, shall, subject to any legal objection, submit to be examined by the arbitrators or umpire, on oath or affirmation, in relation to the matters in dispute, and shall, subject as aforesaid, produce before the arbitrators or umpire, all books, deeds, papers, accounts, writings, and documents within their possession or power respectively which may be required or called for, and do all other things which during the proceedings on the reference the arbitrators or umpire may require.
 - (g) The witnesses on the reference shall, if the arbitrators or umpire thinks fit, be examined on oath or affirmation.
 - (h) The award to be made by the arbitrators or umpire shall be final and binding on the parties and the persons claiming under them respectively.
 - (i) The costs of the reference and award shall be in the discretion of the arbitrators or umpire, who may direct to and by whom and in what manner those costs or any part thereof shall be paid, and may tax or settle the amount of costs to be paid or any part thereof, and may award costs to be paid as between solicitor and client.