



Multilateral Investment Guarantee Agency Act 1988

CHAPTER 8

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SCHEDULE: Provisions of the Convention establishing the
Multilateral Investment Guarantee Agency.



Multilateral Investment Guarantee Agency Act 1988

1988 CHAPTER 8

An Act to enable the United Kingdom to give effect to the Convention establishing the Multilateral Investment Guarantee Agency. [24th March 1988]

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

Preliminary

1.—(1) In this Act “the Convention” means the Convention establishing the Multilateral Investment Guarantee Agency which was signed on behalf of the United Kingdom on 9th April 1986 and presented to Parliament as Command Paper No. Cm.150 on 25th June 1987.

The Convention establishing the Agency.

(2) The provisions of the Convention referred to in sections 2 to 7 below, together with certain related provisions, are set out in the Schedule to this Act.

Payments to and from the Agency

2.—(1) The Secretary of State may with the consent of the Treasury make out of money provided by Parliament—

Payments to and from the Agency.

- (a) any payment in cash required to be made by the United Kingdom under Article 7(i) of the Convention;
- (b) any payment required to be made by the United Kingdom for redeeming such notes or obligations as are there mentioned; and
- (c) any payment required to be made by the United Kingdom under Article 7(ii) of the Convention.

(2) The Secretary of State may with the consent of the Treasury by order make provision—

- (a) for the payment out of money provided by Parliament of any sums required by the Secretary of State for making any other payments by the United Kingdom under the Convention; and
- (b) for the payment into the Consolidated Fund of any sums received by the United Kingdom in pursuance of the Convention.

(3) The power to make an order under subsection (2) above shall be exercisable by statutory instrument; and no such order shall be made unless a draft of it has been laid before and approved by the House of Commons.

Status, privileges and immunities of the Agency

Status, privileges and immunities of the Agency.

3.—(1) The Articles of the Convention specified in subsection (2) below shall have the force of law in the United Kingdom.

(2) The Articles referred to in subsection (1) above are Articles 1(b), 44, 45, 46(a), 47, 48(i) and 50.

(3) Nothing in Article 47(a) shall be construed—

- (a) as entitling the Agency to import goods free of duty or tax without restriction on their subsequent sale in the country to which they were imported;
- (b) except as provided in subsection (4) below, as conferring on the Agency any exemption from duties or taxes which form part of the price of goods sold; or
- (c) as conferring on the Agency any exemption from duties or taxes which are no more than charges for services rendered.

(4) The Secretary of State shall make arrangements for refunding to the Agency, subject to compliance with such conditions as may be imposed in accordance with the arrangements, car tax paid on new vehicles, and value added tax paid on the supply of goods or services, which are necessary for the exercise of the official activities of the Agency.

(5) If in any proceedings any question arises whether a person is or is not entitled to any privilege or immunity by virtue of this section, a certificate issued by or under the authority of the Secretary of State stating any fact relevant to that question shall be conclusive evidence of that fact.

Arbitration proceedings under the Convention

Registration and enforcement of arbitration awards.

4.—(1) A party to a dispute which is the subject of an award rendered pursuant to Article 4 of Annex II to the Convention shall be entitled to have the award registered in the High Court subject to proof of such matters as are prescribed by rules of court and to the other provisions of this section.

(2) In addition to any sum payable under the award, the award shall be registered for the reasonable costs of and incidental to registration.

(3) If at the date of the application for registration any sum payable under the award has been partly paid, the award shall be registered only in respect of the balance and accordingly if that sum has then been wholly paid the award shall not be registered.

(4) An award registered under this section shall be of the same force and effect for the purpose of execution as if it had been a judgment of the High Court given when the award was rendered as mentioned in subsection (1) above and entered on the date of registration under this section and—

- (a) proceedings may be taken on the award;
- (b) any sum for which the award is registered shall carry interest; and
- (c) the High Court shall have the same control over the execution of the award,

as if the award had been such a judgment of the High Court.

(5) This section shall bind the Crown but not so as to make an award enforceable against the Crown in a manner in which a judgment would not be enforceable against the Crown; and an award shall not be enforceable against a State to which the provisions of Part I of the State Immunity Act 1978 apply except in accordance with those provisions. 1978 c. 33.

(6) In this section “award” includes any decision interpreting an award; and for the purposes of this section an award shall be deemed to have been rendered pursuant to Article 4 of Annex II when a copy of it is transmitted to each party as provided in paragraph (h) of that Article.

5. The power to make rules under section 84 of the Supreme Court Act 1981 shall include the power— Rules of court. 1981 c. 54.

- (a) to prescribe the procedure for applying for registration under section 4 above and to require an applicant to give prior notice of his intention to other parties;
- (b) to prescribe the matters to be proved on the application and the manner of proof;
- (c) to provide for the service of notice of registration of the award by the applicant on other parties; and
- (d) to make provision requiring the court on proof of such matters as may be prescribed by the rules to stay execution of an award registered under section 4 above in cases where enforcement of the award has been stayed pursuant to Article 4 of Annex II to the Convention.

6.—(1) The Lord Chancellor may by order made by statutory instrument direct that any of the provisions of section 12 of the Arbitration Act 1950 (attendance of witnesses, production of documents etc.) shall apply, with such modifications or exceptions as are specified in the order, to such arbitration proceedings pursuant to Annex II to the Convention as are specified in the order. Application of Arbitration Act. 1950 c. 27.

(2) Subject to subsection (1) above, no provision of the said Act of 1950 other than section 4 (stay of proceedings where there is a submission to arbitration) shall apply to any such proceedings as are mentioned in subsection (1) above.

- Scotland. 7. In the application of this Act to Scotland—
- (a) for any reference in section 4 to the High Court there shall be substituted a reference to the Court of Session;
 - (b) registration under that section shall be effected by registering in the Books of Council and Session, or in such manner as the Court of Session may by Act of Sederunt prescribe;
 - (c) for the reference in that section to costs there shall be substituted a reference to expenses;
 - (d) for the reference in that section to the entering of a judgment there shall be substituted a reference to the signing of the interlocutor embodying the judgment;
 - (e) the Court of Session shall have power by Act of Sederunt to make rules for the purposes specified in section 5;
 - (f) for the references in that section and Article 4 of Annex II to the Convention to the staying of proceedings and execution or enforcement of an award there shall be substituted references to the sist of such proceedings, execution or enforcement; and
 - (g) for section 6 above there shall be substituted the following section—
- “Proceedings in Scotland. 6. The Lord Advocate may by order made by statutory instrument make provision, in relation to such arbitration proceedings pursuant to Annex II to the Convention as are specified in the order, being proceedings taking place in Scotland, for the attendance of witnesses, the taking of evidence and the production of documents.”
- Northern Ireland. 8.—(1) Sections 5 and 6 above shall apply to Northern Ireland with the following modifications.
- 1981 c. 54.
1978 c. 23 (N.I.). (2) In section 5 for the reference to section 84 of the Supreme Court Act 1981 there shall be substituted a reference to section 55 of the Judicature (Northern Ireland) Act 1978.
- (3) In section 6—
- 1950 c. 27. (a) for the reference in subsection (1) to section 12 of the Arbitration Act 1950 there shall be substituted a reference to any corresponding enactments forming part of the law of Northern Ireland;
- 1937 c. 8 (N.I.). (b) for the references in subsection (2) to the said Act of 1950 and section 4 of that Act there shall be substituted references to the Arbitration Act (Northern Ireland) 1937 and section 4 of that Act.

Supplemental

Short title,
commencement
and extent.

- 9.—(1) This Act may be cited as the Multilateral Investment Guarantee Agency Act 1988.
- (2) This Act shall come into force on such date as the Secretary of State may appoint by an order made by statutory instrument.
- (3) This Act extends to Northern Ireland.

(4) Her Majesty may by Order in Council make provision for extending the provisions of sections 3, 4, 5 and 6 above, with such modifications and exceptions as may be specified in the Order, to any of the Channel Islands, the Isle of Man or any colony.

Section 1(2).

SCHEDULE

PROVISIONS OF THE CONVENTION ESTABLISHING THE
MULTILATERAL INVESTMENT GUARANTEE AGENCY.

CHAPTER I

Article 1. Establishment and Status of the Agency

(a) There is hereby established the Multilateral Investment Guarantee Agency (hereinafter called the Agency).

(b) The Agency shall possess full juridical personality and, in particular, the capacity to:

- (i) contract;
- (ii) acquire and dispose of movable and immovable property; and
- (iii) institute legal proceedings.

CHAPTER II

Article 7. Division and Calls of Subscribed Capital

The initial subscription of each member shall be paid as follows—

- (i) Within ninety days from the date on which this Convention enters into force with respect to such member, ten per cent. of the price of each share shall be paid in cash as stipulated in Section (a) of Article 8 and an additional ten per cent. in the form of non-negotiable, non-interest-bearing promissory notes or similar obligations to be encashed pursuant to a decision of the Board in order to meet the Agency's obligations.
- (ii) The remainder shall be subject to call by the Agency when required to meet its obligations.

Article 8. Payment of Subscription of Shares

(a) Payments of subscriptions shall be made in freely usable currencies except that payments by developing member countries may be made in their own currencies up to twenty-five per cent. of the paid-in cash portion of their subscriptions payable under Article 7(i).

(b) Calls on any portion of unpaid subscriptions shall be uniform on all shares.

(c) If the amount received by the Agency on a call shall be insufficient to meet the obligations which have necessitated the call, the Agency may make further successive calls on unpaid subscriptions until the aggregate amount received by it shall be sufficient to meet such obligations.

(d) Liability on shares shall be limited to the unpaid portion of the issue price.

CHAPTER V

Article 30. Structure of the Agency

The Agency shall have a Council of Governors, a Board of Directors, a President and staff to perform such duties as the Agency may determine.

Article 31. The Council

(b) The Council shall be composed of one Governor and one Alternate appointed by each member in such manner as it may determine. The Council shall select one of the Governors as Chairman.

Article 32. The Board

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(b) Each Director may appoint an Alternate with full power to act for him in case of the Director's absence or inability to act.

CHAPTER VII

Article 44. Legal Process

Actions other than those within the scope of Articles 57 and 58 may be brought against the Agency only in a court of competent jurisdiction in the territories of a member in which the Agency has an office or has appointed an agent for the purpose of accepting service or notice of process. No such action against the Agency shall be brought (i) by members or persons acting for or deriving claims from members or (ii) in respect of personnel matters. The property and assets of the Agency shall, wherever located and by whomsoever held, be immune from all forms of seizure, attachment or execution before the delivery of the final judgment or award against the Agency.

Article 45. Assets

(a) The property and assets of the Agency, wherever located and by whomsoever held, shall be immune from search, requisition, confiscation, expropriation or any other form of seizure by executive or legislative action.

(b) To the extent necessary to carry out its operations under this Convention, all property and assets of the Agency shall be free from restrictions, regulations, controls and moratoria of any nature; provided that property and assets acquired by the Agency as successor to or subrogee of a holder of a guarantee, a reinsured entity or an investor insured by a reinsured entity shall be free from applicable foreign exchange restrictions, regulations and controls in force in the territories of the member concerned to the extent that the holder, entity or investor to whom the Agency was subrogated was entitled to such treatment.

(c) For purposes of this Chapter, the term "assets" shall include the assets of the Sponsorship Trust Fund referred to in Annex I to this Convention and other assets administered by the Agency in furtherance of its objective.

Article 46. Archives and Communications

(a) The archives of the Agency shall be inviolable, wherever they may be.

Article 47. Taxes

(a) The Agency, its assets, property and income, and its operations and transactions authorised by this Convention, shall be immune from all taxes and customs duties. The Agency shall also be immune from liability for the collection or payment of any tax or duty.

(b) Except in the case of local nationals, no tax shall be levied on or in respect of expense allowances paid by the Agency to Governors and their Alternates or on or in respect of salaries, expense allowances or other emoluments paid by the Agency to the Chairman of the Board, Directors, their Alternates, the President or staff of the Agency.

(c) No taxation of any kind shall be levied on any investment guaranteed or reinsured by the Agency (including any earnings therefrom) or any insurance policies reinsured by the Agency (including any premiums and other revenues therefrom) by whomsoever held: (i) which discriminates against such investment or insurance policy solely because it is guaranteed or reinsured by the Agency; or (ii) if the sole jurisdictional basis for such taxation is the location of any office or place of business maintained by the Agency.

Article 48. Officials of the Agency

All Governors, Directors, Alternates, the President and staff of the Agency:

- SCH. (i) shall be immune from legal process with respect to acts performed by them in their official capacity;

Article 50. Waiver

The immunities, exemptions and privileges provided in this Chapter are granted in the interests of the Agency and may be waived, to such extent and upon such conditions as the Agency may determine, in cases where such a waiver would not prejudice its interests. The Agency shall waive the immunity of any of its staff in cases where, in its opinion, the immunity would impede the course of justice and can be waived without prejudice to the interests of the Agency.

CHAPTER IX

Article 56. Interpretation and Application of the Convention

(a) Any question of interpretation or application of the provisions of this Convention arising between any member of the Agency and the Agency or among members of the Agency shall be submitted to the Board for its decision. Any member which is particularly affected by the question and which is not otherwise represented by a national in the Board may send a representative to attend any meeting of the Board at which such question is considered.

(b) In any case where the Board has given a decision under Section (a) above, any member may require that the question be referred to the Council, whose decision shall be final. Pending the result of the referral to the Council, the Agency may, so far as it deems necessary, act on the basis of the decision of the Board.

Article 57. Disputes between the Agency and Members

(a) Without prejudice to the provisions of Article 56 and of Section (b) of this Article, any dispute between the Agency and a member or an agency thereof and any dispute between the Agency and a country (or agency thereof) which has ceased to be a member, shall be settled in accordance with the procedure set out in Annex II to this Convention.

(b) Disputes concerning claims of the Agency acting as subrogee of an investor shall be settled in accordance with either (i) the procedure set out in Annex II to this Convention, or (ii) an agreement to be entered into between the Agency and the member concerned on an alternative method or methods for the settlement of such disputes. In the latter case, Annex II to this Convention shall serve as a basis for such an agreement which shall, in each case, be approved by the Board by special majority prior to the undertaking by the Agency of operations in the territories of the member concerned.

Article 58. Disputes Involving Holders of a Guarantee or Reinsurance

Any dispute arising under a contract of guarantee or reinsurance between the parties thereto shall be submitted to arbitration for final determination in accordance with such rules as shall be provided for or referred to in the contract of guarantee or reinsurance.

ANNEX I

Article 2. Sponsorship Trust Fund

(a) Premiums and other revenues attributable to guarantees of sponsored investments, including returns on the investment of such premiums and revenues, shall be held in a separate account which shall be called the Sponsorship Trust Fund.

(b) All administrative expenses and payments on claims attributable to guarantees issued under this Annex shall be paid out of the Sponsorship Trust Fund.

(c) The assets of the Sponsorship Trust Fund shall be held and administered for the joint account of sponsoring members and shall be kept separate and apart from the assets of the Agency.

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ANNEX II

Article 1. Application of the Annex

All disputes within the scope of Article 57 of this Convention shall be settled in accordance with the procedure set out in this Annex, except in the cases where the Agency has entered into an agreement with a member pursuant to Section (b)(ii) of Article 57.

Article 4. Arbitration

(a) Arbitration proceedings shall be instituted by means of a notice by the party seeking arbitration (the claimant) addressed to the other party or parties to the dispute (the respondent). The notice shall specify the nature of the dispute, the relief sought and the name of the arbitrator appointed by the claimant. The respondent shall, within thirty days after the date of receipt of the notice, notify the claimant of the name of the arbitrator appointed by it. The two parties shall, within a period of thirty days from the date of appointment of the second arbitrator, select a third arbitrator, who shall act as President of the Arbitral Tribunal (the Tribunal).

(b) If the Tribunal shall not have been constituted within sixty days from the date of the notice, the arbitrator not yet appointed or the President not yet selected shall be appointed, at the joint request of the parties, by the Secretary-General of ICSID (the International Centre for Settlement of Investment Disputes). If there is no such joint request, or if the Secretary-General shall fail to make the appointment within thirty days of the request, either party may request the President of the International Court of Justice to make the appointment.

(c) No party shall have the right to change the arbitrator appointed by it once the hearing of the dispute has commenced. In case any arbitrator (including the President of the Tribunal) shall resign, die, or become incapacitated, a successor shall be appointed in the manner followed in the appointment of his predecessor and such successor shall have the same powers and duties of the arbitrator he succeeds.

(d) The Tribunal shall convene first at such time and place as shall be determined by the President. Thereafter, the Tribunal shall determine the place and dates of its meetings.

(e) Unless otherwise provided in this Annex or agreed upon by the parties, the Tribunal shall determine its procedure and shall be guided in this regard by the arbitration rules adopted pursuant to the Convention on the Settlement of Investment Disputes between States and Nationals of Other States.

(f) The Tribunal shall be the judge of its own competence except that, if an objection is raised before the Tribunal to the effect that the dispute falls within the jurisdiction of the Board or the Council under Article 56 or within the jurisdiction of a judicial or arbitral body designated in an agreement under Article 1 of this Annex and the Tribunal is satisfied that the objection is genuine, the objection shall be referred by the Tribunal to the Board or the Council or the designated body, as the case may be, and the arbitration proceedings shall be stayed until a decision has been reached on the matter, which shall be binding upon the Tribunal.

(g) The Tribunal shall, in any dispute within the scope of this Annex, apply the provisions of this Convention, any relevant agreement between the parties to the dispute, the Agency's by-laws and regulations, the applicable rules of international law, the domestic law of the member concerned as well as the

SCH. applicable provisions of the investment contract, if any. Without prejudice to the provisions of this Convention, the Tribunal may decide a dispute *ex aequo et bono* if the Agency and the member concerned so agree. The Tribunal may not bring a finding of *non liquet* on the ground of silence or obscurity of the law.

(h) The Tribunal shall afford a fair hearing to all the parties. All decisions of the Tribunal shall be taken by a majority vote and shall state the reasons on which they are based. The award of the Tribunal shall be in writing, and shall be signed by at least two arbitrators and a copy thereof shall be transmitted to each party. The award shall be final and binding upon the parties and shall not be subject to appeal, annulment or revision.

(i) If any dispute shall arise between the parties as to the meaning or scope of an award, either party may, within sixty days after the award was rendered, request interpretation of the award by an application in writing to the President of the Tribunal which rendered the award. The President shall, if possible, submit the request to the Tribunal which rendered the award and shall convene such Tribunal within sixty days after receipt of the application. If this shall not be possible, a new Tribunal shall be constituted in accordance with the provisions of Sections (a) to (d) above. The Tribunal may stay enforcement of the award pending its decision on the requested interpretation.

(j) Each member shall recognize an award rendered pursuant to this Article as binding and enforceable within its territories as if it were a final judgment of a court in that member. Execution of the award shall be governed by the laws concerning the execution of judgments in force in the State in whose territories such execution is sought and shall not derogate from the law in force relating to immunity from execution.

(k) Unless the parties shall agree otherwise, the fees and remuneration payable to the arbitrators shall be determined on the basis of the rates applicable to ICSID arbitration. Each party shall defray its own costs associated with the arbitration proceedings. The costs of the Tribunal shall be borne by the parties in equal proportion unless the Tribunal decides otherwise. Any question concerning the division of the costs of the Tribunal or the procedure for payment of such costs shall be decided by the Tribunal.

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