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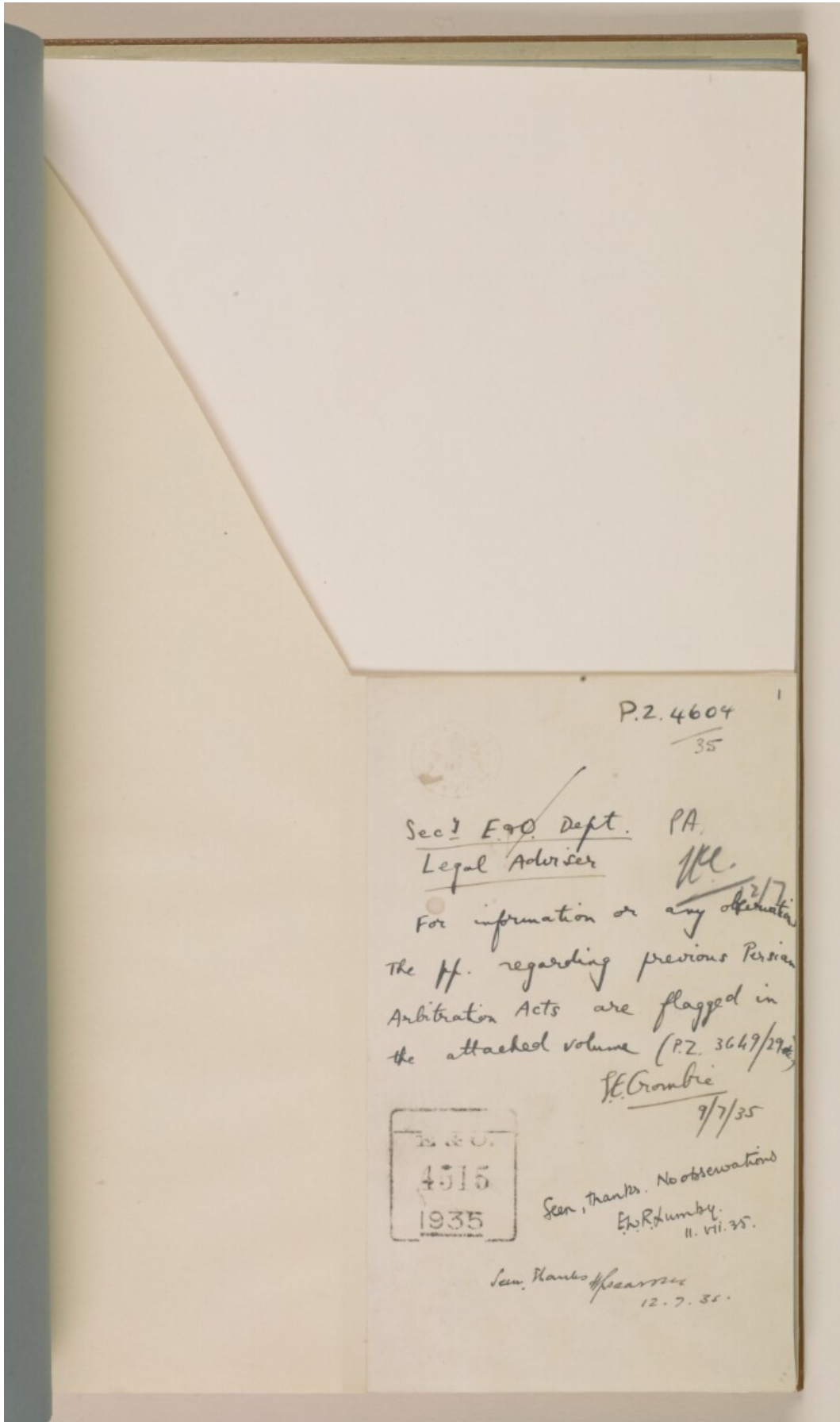
المراجع	IOR/L/PS/12/157
العنوان	سياسي (خارجي) ٣٥/٤٦٠٤ "قانون التحكيم الفارسي"
التاريخ/ التواريخ	يونيو ١٩٣٥-يوليو ١٩٣٥ (ميلادي)
لغة الكتابة	الإنجليزية في اللاتينية
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المؤسسة المالكة	المكتبة البريطانية: أوراق خاصة وسجلات من مكتب الهند
حق النشر	<u>غير معروف</u>

حول هذا السجل

يتعلق الملف بقانون فارسي جديد للتحكيم أقره المجلس في جلسته المنعقدة بتاريخ ١٧ فبراير ١٩٣٥. ويتألف الملف من مراسلات أرسلها جورج ويليام ريندل، رئيس الدائرة الشرقية في وزارة الخارجية، إلى مجلس التجارة، وإرسالية من هيو مونتجومري ناتشبول-هيوجنس، الوزير البريطاني في طهران، مرفق بها ترجمة للقانون.

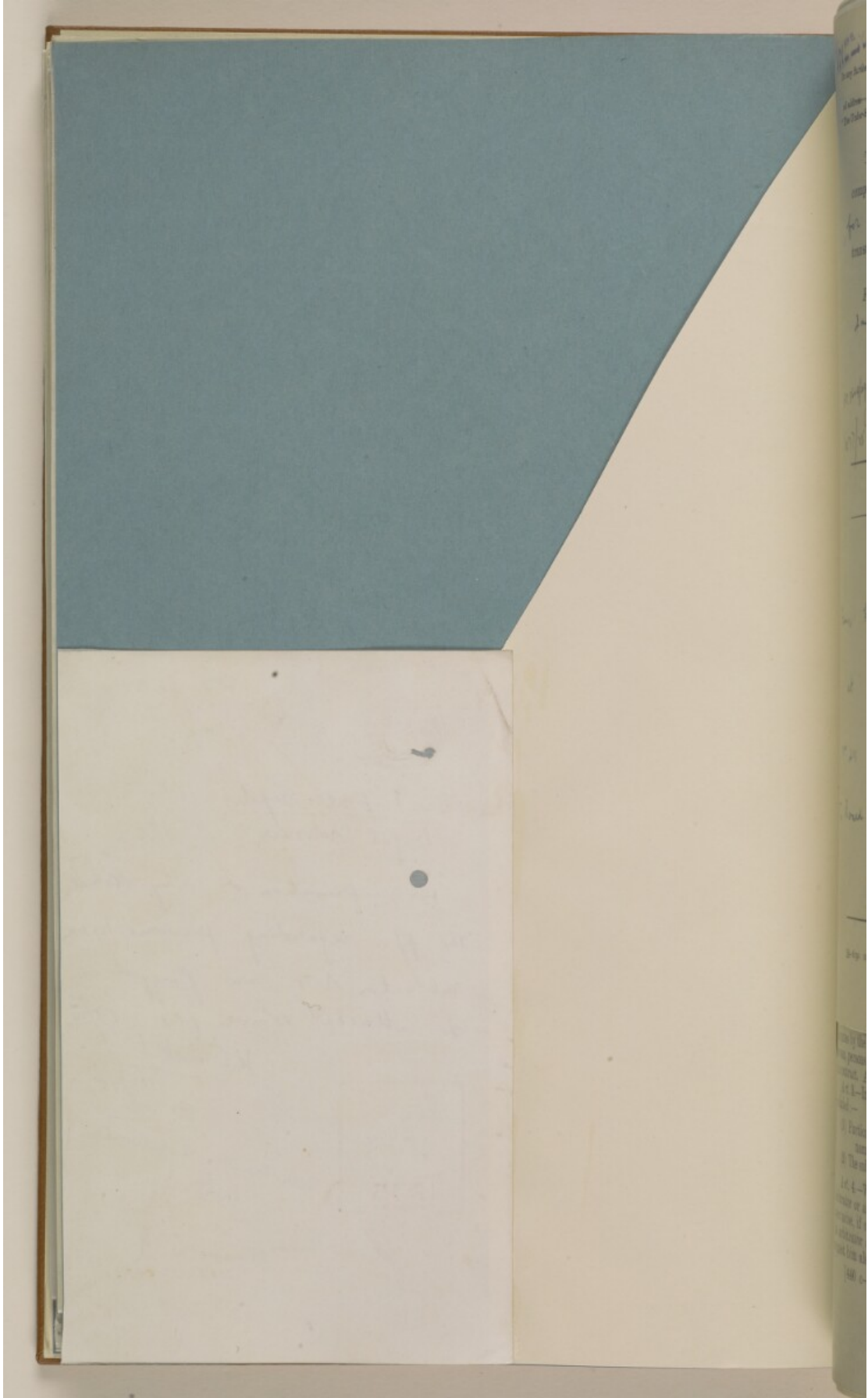


سياسي (خارجي) ٣٥/٤٦٠٤ "قانون التحكيم الفارسي" [١] (١٢/١)





سياسي (خارجي) ٣٥/٤٦٠٤ "قانون التحكيم الفارسي" [١ظ] (١٢/٢)





سياسي (خارجي) ٣٥/٤٦٠٤ "قانون التحكيم الفارسي" [١٢/٣] [١٩٢٥]

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No. E 3422 / 3435 / 34. 1. 2. 3.
and address—not to any person by name, but to
"The Under-Secretary of State," Foreign Office, London, S.W. 1.

4604

THE Under-Secretary of State for Foreign Affairs presents his
compliments to the Under-Secretary of State
for India, and, by direction of the Secretary of State,
transmits herewith copies of the undermentioned paper.

Foreign Office,
2nd July, 1925.

Reference to previous correspondence: F.O. letter E 2161/97/24 of 24th May, 1929.

Description of Enclosure.

Name and Date.	Subject.
From H.M. Representative at Tehran. N° 211 17th May. To Board of Trade. 29th June.	Persian Law of Arbitration.

Similar letter sent to
14-6130 10950 (2)

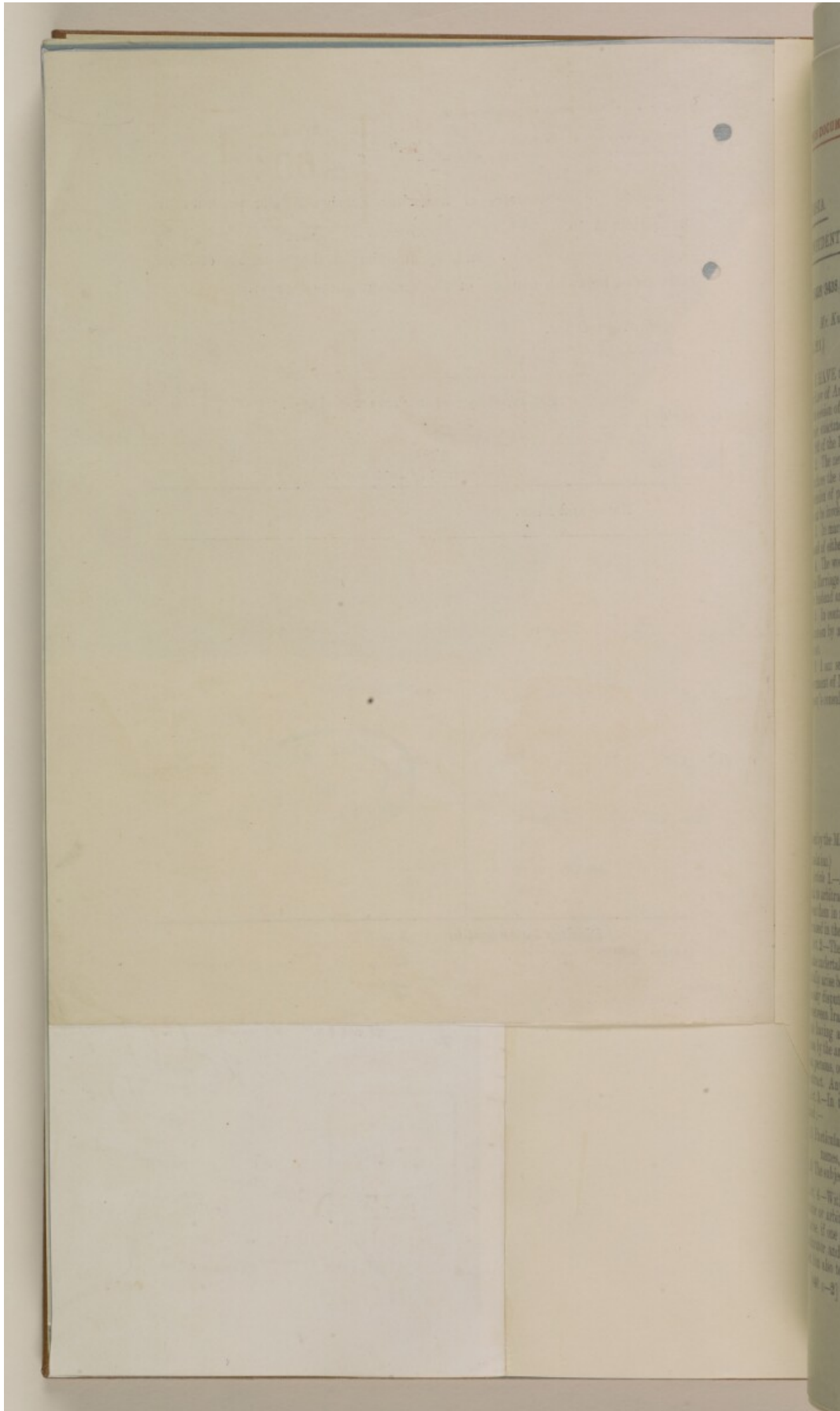
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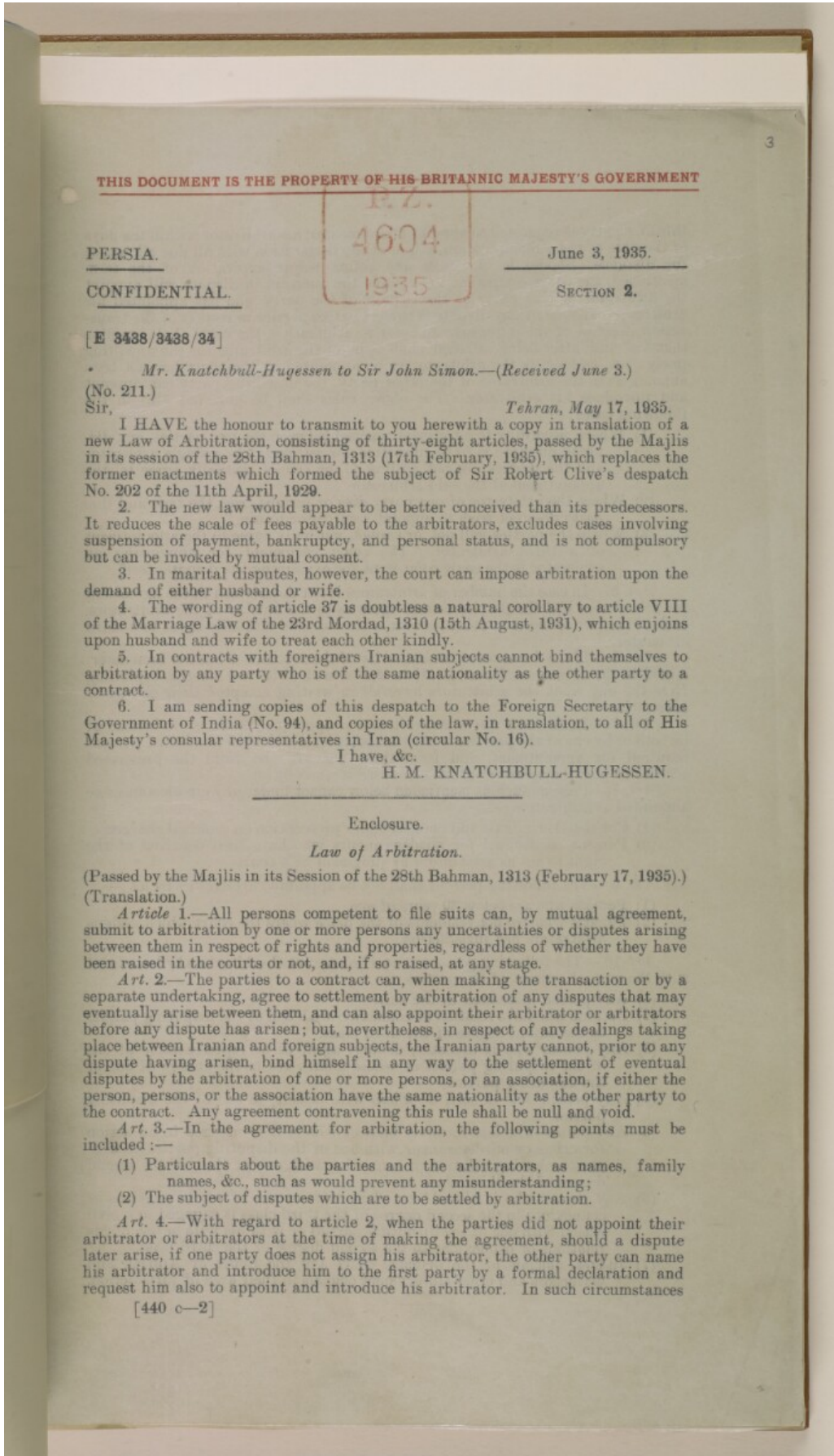
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سياسي (خارجي) ٣٥/٤٦٠٤ "قانون التحكيم الفارسي" [ظ٢] (١٢/٤)







this first party is requested to appoint and announce his arbitrator within ten days of the date of the communication to him of the declaration with all due allowance for distance. Should he not take any action before expiration of the term mentioned, the court competent to examine the question in dispute will appoint the arbitrator of this party at the request of the party who has appointed his arbitrator. In case of any dispute between the two parties in respect of the transaction itself or of the agreement to refer to arbitration, the court shall examine that first and, after being satisfied, shall appoint the arbitrator for the unwilling party; but, as long as the arbitrator to be appointed by the court has not been announced to the arbitrator of the other party, the unwilling party can appoint and introduce his arbitrator. The above rules shall be observed also in the following cases:—

- (1) Where, according to agreement reached between the two parties, any disputed question is to be submitted for settlement to a single arbitrator and the parties are not willing to, or cannot mutually agree to, the appointment of the said arbitrator.
- (2) Where the arbitrator of one party dies or resigns from the task and this party does not wish to appoint a successor to him.
- (3) Where the parties will not, or cannot, mutually agree to the appointment of a third arbitrator. The court competent for appointing an arbitrator is the court competent for examining the dispute itself.

Art. 5.—In case the number of arbitrators is not determined in the agreement for arbitration and the parties cannot agree as to the number of the arbitrators, each of the parties must appoint its own arbitrator and mutually agree to a third arbitrator.

Art. 6.—If the duration of the authority of the arbitrators has not been determined in the agreement for arbitration, the term shall be two months, beginning from the day when the arbitrators have all in writing accepted their charge of arbitration.

Art. 7.—In any case where an arbitrator is appointed by the court instead of by both or by one of the parties, it must name at least twice the number of persons required for appointment, and from those persons who fulfil the prescribed conditions pick the necessary arbitrator or arbitrators by lot.

Art. 8.—Persons such as mentioned below cannot under any circumstances be appointed as arbitrators:—

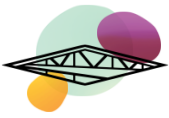
- (1) Convicted criminals and persons under prosecution on criminal charges.
- (2) Persons condemned for misdemeanours who have been deprived of the right to act as arbitrators by judgment of a court.

Art. 9.—The following persons shall not be appointed arbitrators by lot:—

- (1) Persons who are below 30 years of age.
- (2) Persons who are not residents of the place where the court which assigns arbitrators has jurisdiction.

Art. 10.—The following persons cannot be appointed arbitrators by lot, except with the mutual consent of the parties:—

- (1) Any person interested in the suit.
- (2) Persons who have relation or connexion with one of the disputing parties to the second degree of the third class.
- (3) Any person who is executor, deputy, agent of or representative of one of the disputing parties or whose affairs are in the charge of one of the disputing parties.
- (4) Any person who is heir, or whose wife is heir, to one of the disputing parties.
- (5) Any person who has formerly been or who still is engaged in an action for crime or misdemeanour with one of the disputing parties or with persons having relation or connexion with one of them to the second degree of the third class.
- (6) Any person who is himself, or whose wife or one of whose relations or connexions to the second degree of the third class is engaged in a civil action with one of the disputing parties or with his wife or one of his relations or connexions to the second degree of the third class.
- (7) Judges, officials of the primary court and the Court of Appeal, and Governors and other Government officials in their area of jurisdiction.



Art. 11.—After the drawing of lots and the appointment of arbitrator, each of the parties is entitled to refuse the arbitrator appointed within ten days of the date either of the announcement at the meeting in case of his presence there and/or of notification to him in the event of his absence from the meeting; if, however, the causes for refusal arise later, the period shall commence from the day when the cause commenced. The court shall examine the rejection on its being received and, in the event of finding it just, shall appoint another arbitrator in place of the arbitrator rejected.

Art. 12.—After the appointment of an arbitrator or arbitrators the parties are not entitled to discharge them except by mutual agreement.

Art. 13.—After accepting the charge of arbitration, the arbitrators are not entitled to resign unless they have satisfactory reasons, such as travel, sickness or the like. Any arbitrator resigning without any sufficient reason shall not be appointed arbitrator by lot for a period of five years. Should he be absent from two sittings without good reasons, the arbitrators present at the sittings will report the matter to the competent court, which will appoint another arbitrator in his place, unless the disputing parties agree that the same arbitrator should still act.

Art. 14.—Should the arbitrators fail to issue their finding within the period laid down in the agreement for arbitration or the period prescribed by law, their arbitration shall be considered as null and void unless the parties fix a further period.

Art. 15.—A third person who has been summoned according to law and who enters the suit either before or after submission of dispute to arbitration can come to an understanding with the original parties in the matter of submission of the question to arbitration and the appointment of the arbitrator or arbitrators selected; in the event of not reaching agreement, this (third party's) claim shall be independently examined in accordance with regulations.

Art. 16.—The parties must deliver their documents and evidence to their arbitrators, and the arbitrators can ask necessary explanations from them. If in the course of proceedings circumstances indicating a crime or misdemeanour are disclosed which affect the finding to be issued by the arbitrators, and if it is impossible to differentiate between the civil and criminal side of the question, and also if the dispute is relative to the matter of marriage, divorce or relationship, and the settlement of the disputed matter referred to arbitration depends upon prior examination of the marriage, divorce or relationship question, the arbitrators must return the suit to the court which referred it to them or submit it to a court competent for examining the original suit. After the issue of a definite decision in the criminal matter, or the matter of marriage, divorce or relationship, this decision shall be announced to the arbitrators and the legal term for arbitration shall be renewed from the date of the notification.

The arbitrators cannot issue findings contradicting the substance of any judgment issued in connexion with criminal matters or in connexion with marriage, divorce or relationship.

Claims in the matter of forgery or counterfeit in documents cannot be the basis of prosecutions for crime or misdemeanour if the forger or counterfeiter is not indicated or if there is no possibility of prosecuting the forger or counterfeiter for some legal reason.

Art. 17.—Arbitration becomes void in the following circumstances:—

- (1) In case the parties come to a written compromise.
- (2) In case of death or pilgrimage of one of the parties.

Art. 18.—In their proceedings and issue of opinion the arbitrators are not bound to follow the regulations governing civil procedure, but they must observe the conditions laid down in the agreement for arbitration.

The opinion given by the arbitrators must be reasonable and not in contradiction of natural laws (laws justifying rights ?).

Art. 19.—The arbitrators can settle the dispute peaceably if they have the authority for so doing.

Art. 20.—In case any one of the arbitrators who has been present in time of examination and consultation fails to appear to give his opinion without any satisfactory excuse, or refuses to give his opinion, the opinion issued by the majority shall be binding; the absence of the arbitrator or his refusal to give his opinion or signature must be endorsed in the finding.



Art. 21.—After receiving the finding issued by the arbitrators the registrar shall, after informing the head of the court, record it in the relevant file, get the head of the court's certification and signature to the conformity of the record with the original finding, and send out the original finding for service on the parties to the dispute.

Art. 22.—In case the condemned party fails to comply willingly with the finding within ten days after service on him, the court which referred the disputed matter to arbitration or any court competent to examine the original claim is enjoined, at the request of the interested party, to issue a warrant of execution in accordance with the finding issued by the arbitrators.

Art. 23.—In case the parties to the dispute jointly reject the finding issued by arbitrators, the finding shall be without any effect.

Art. 24.—The arbitrators are enjoined to give their opinions during the period of arbitration, and should the opinions of arbitrators be issued after the expiration of the arbitration terms, each of the parties can, within ten days of the date of service and with the observation of the legal distance, request its cancellation by the court which has referred the suit to arbitration, or any court having competency for examination of the suit.

Art. 25.—In case the arbitrators have erred in some calculation which affects their opinion, or have not mentioned in their finding the amount claimed which was subject to their examination, the interested party can, in case the arbitral period has not expired, request correction from the arbitrators themselves, and otherwise, within ten days of notification of arbitrator's opinion, from the court having referred the case to arbitration or any competent court.

Art. 26.—In the following cases the arbitral finding shall be null and void and without any validity—

- (1) In case the finding is in contravention with the law.
- (2) In case the arbitrators have issued a finding beyond the limit of their authority or in respect of a matter which has not been the subject of arbitration.
- (3) In case they have issued a finding contravening a formal document which has not lost its validity for some legal reason.

Art. 27.—Under the circumstances of the preceding article, each of the parties can request cancellation of the arbitral award from the court which referred the suit to arbitration, or from any court having competency for the examination of the original claim. In such circumstances, the court is enjoined to consider the petition and to issue a decree cancelling the arbitral award if it is not justified in accordance with the above article. Any appeal for the rejection of a petition for cancellation of an arbitral award and the decree for its cancellation can only be heard in the Court of Appeal. An appeal can be heard in the Court of Cassation if such decrees have been issued by the Court of Appeal.

In respect of this article, in case a warrant of execution has been issued, the court must immediately, and prior to fixing a sitting, attend to the reasons put forward by the petitioner, and, in the event of finding them strong, issue an order for suspension of the warrant of execution.

Art. 28.—In case the suit has been submitted to arbitration when it is under consideration of the Court of Cassation, the request for cancellation must be made from the court which has issued the judgment required by the Court of Cassation(?).

The rejection of the request for cancellation, or the order of cancellation of the arbitral award issued from this court shall be liable to appeal in the Court of Cassation only.

Art. 29.—Petitions of appeal to the Courts of Appeal and Cassation are subject to the regulations governing civil procedure in respect of their cost, period, method of framing, as well as of the procedure of the case.

Art. 30.—The arbitral warrant shall be binding only in respect of the parties to the dispute, and those persons who have interfered and participated in the appointment of arbitrators and their successors; it shall not affect other persons outside the case.

Art. 31.—The fee payable to the arbitrator of each of the parties is to be met by the party himself, and the fee payable to the common arbitrator is chargeable to both parties, each having to pay a half. Nevertheless, the



arbitrators can, when giving their award, provide for the division of the fee in a different proportion, unless the parties have already agreed specially with regard to the payment of the fee payable to the arbitrators.

Art. 32.—In case no specific arrangement has been made between the arbitrator and one or both parties to the dispute, the fees payable to arbitrators shall be on the following basis :—

- 5 per cent. for all arbitrators of the amount of claims up to 100,000 rials.
- 4 per cent. for all arbitrators of the amount of claims from 100,001 rials to 200,000 rials.
- 3 per cent. for all arbitrators of the amount of claims from 200,001 rials to 500,000 rials.
- 2 per cent. for all arbitrators of the amount of claims from 500,000 rials upwards.

The fees payable to arbitrators according to specific agreement between such arbitrators and the parties to the dispute shall be distributed between the arbitrators on that basis, and, if according to the scale laid down above, the fees collected shall be distributed between them equally.

Art. 33.—In respect of claims which have been submitted to arbitration under the Arbitral Law of Esfand 1306 and its amendments, should the arbitral term have expired in accordance with those laws after the present law has come into force and the arbitrators not having issued their award, should the disputing parties not agree to the renewal or prolongation of the arbitral term, the terms of this present law shall be applied.

Art. 34.—In respect of claims which one of the disputing parties has previously requested the court to submit to arbitration, and on which no judgment has been issued by the court on the date of approval of this law, if all the arbitrators, as provided in the Law of the 29th Esfand, 1306, have not yet been appointed, or if they have not yet been called, the request shall be considered as null, and action shall be taken in accordance with this present law.

Art. 35.—Regarding claims on which the first arbitrators have issued their award in accordance with the Arbitral Law of 1306, and at the request of one of the parties or both the matter has been submitted to arbitrators charged with reviewing the case, if such arbitrators have not yet expressed their view in respect of the case, these arbitrators shall be enjoined to issue and announce their award within a period of two months from the date of approval of this law; otherwise, each of the parties can, within ten days from the date of expiration of the said period, submit a petition of appeal to the Court of Appeal against the award issued by the arbitrators.

In such circumstances, the arbitral fee payable to the first arbitrators shall be collected and distributed after the issue of judgment by the Court of Appeal, in accordance with article 12 of the Arbitral Law of Esfand, 1306.

Art. 36.—The following claims cannot be submitted to arbitration :—

- (1) Claims in respect of suspension of payments and bankruptcy.
- (2) Claims in respect of marriage, divorce, cancellation of marriage, consequent time allowance and lineage.

Art. 37.—In respect of a dispute between wife and husband regarding maltreatment, non-submission, sustenance, clothing, dwelling and also the expenses of a child on the charge of the husband but under the protection of the wife, should either of the parties raise a complaint, the courts can, at the request of either party, submit the case to arbitration and, in the event of their not agreeing to the selection of arbitrator, appoint at least two men from among the relatives of both parties, or, if they have no relatives at their place of residence, from among persons who have friendship and acquaintance with them. The arbitrators thus appointed are enjoined to try their best to reconcile the husband and the wife and, in the event of failure, to give their opinion to the court, distinguishing the rightful party and indicating the amount of expense of the wife or the child, in case the claim refers to expense; the court shall, after receiving the arbitral award, issue its judgment accordingly. In case no concurrence of view is reached between the arbitrators (if votes are even), they can agree to the appointment of a man as the third arbitrator, and if no compromise is reached in this respect they can appoint another by lot, and the majority votes shall be binding.



The court must, while selecting the arbitrators, see that they are qualified as impartial and of good conduct.

Each of the parties having any complaint against the award issued by the arbitrators can submit his or her complaint to the court within a period of one month from the date of service of the award, and if the court accepts the complaint it shall itself treat the case and issue its judgment. This judgment shall be appealable only in the Court of Appeal. The court to be applied to in respect of the above-mentioned claims is the Primary Court. In cases where no primary court exists such claims can be submitted to the Justice of the Peace, and in places where no Justice of the Peace exists to officials attending to petty charges.

Art. 38.—This law shall come into force after promulgation, and the Arbitral Law of the 29th Esfand, 1306, and the law amending the Arbitral Law, dated the 11th Farvardin, 1308, shall then be repealed; articles 757 to 779 of the Code of Civil Procedure, which had been repealed by virtue of the Law of Esfand, 1306, shall so remain.

This law, consisting of thirty-eight articles, was passed by the Majlis in its session of the 28th Bahman, 1313.

DADGAR,
President of the Majlis.

