

CAYMAN ISLANDS



ARBITRATION LAW, 2012

(Law 3 of 2012)

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CAYMAN ISLANDS



ARBITRATION LAW, 2012

(Law 3 of 2012)

A LAW TO MODERNISE THE CONDUCT OF ARBITRATION PROCEEDINGS IN THE CAYMAN ISLANDS; TO REPEAL THE ARBITRATION LAW (2001 REVISION); AND FOR INCIDENTAL AND CONNECTED PURPOSES

ENACTED by the Legislature of the Cayman Islands.

PART I - PRELIMINARY

Short title and commencement

1. This Law may be cited as the *Arbitration Law, 2012* and shall come into force on such date as may be appointed by order made by the Governor in Cabinet.

Interpretation

2. (1) In this Law —

“**appointing authority**” means —

- (a) any person or authority chosen by the parties to appoint an arbitrator; or
- (b) any person or authority designated by the court to appoint an arbitrator in circumstances where the parties fail to agree on the appointment of an arbitrator;

“**arbitrator**” means a member of an arbitral tribunal;

“**arbitral tribunal**” means a sole arbitrator, a panel of arbitrators or an arbitral institution and the expression “**tribunal**” shall be construed accordingly;

“**arbitration agreement**” means an agreement by parties to submit to arbitration all or certain disputes which have arisen or which may arise between them in respect of a defined legal relationship, whether or not contractual;

“**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 order or direction made under section 38(2);

“**Clerk of the Court**” means the person appointed under section 7 of the *Grand Court Law (2008 Revision)*;

“**confidential information**” in relation to arbitral proceedings includes —

- (a) information that relates to the arbitral proceedings or to an award made in those proceedings;
- (b) the statement of claim, statement of defence, and all other pleadings, submissions, statements, or other information supplied to the arbitral tribunal by a party;
- (c) any evidence supplied to the arbitral tribunal;
- (d) any notes made by the arbitral tribunal of oral evidence or submissions given before the arbitral tribunal;
- (e) any transcript of oral evidence or submissions given before the arbitral tribunal;
- (f) any rulings of the arbitral tribunal; or
- (g) any award of the arbitral tribunal;

“**court**” means the Grand Court or where the context requires, any other court of competent jurisdiction;

“**disclosure**” in relation to confidential information, includes publishing or communicating or otherwise supplying the confidential information;

“**legal practitioner**” means a person who is admitted or entitled to practise as an attorney-at-law in the Islands or in any other place other than the Islands;

“**party**”, unless the context otherwise requires, means —

- (a) a party to an arbitration agreement;
- (b) a person involved in the arbitration proceedings; or
- (c) any person claiming through or under a party to an arbitration agreement or a party to the arbitration proceedings;

“**public general holiday**” has the meaning assigned by the *Public Holidays Law (2007 Revision)*;



“**reference**”, unless the context otherwise requires, means the referral of a dispute to arbitration;

“**Rules of Court**” mean the Rules of the Grand Court; and

“**seat of the arbitration**” means the juridical seat of the arbitration designated by —

- (a) the parties to the arbitration agreement; or
 - (b) any arbitral tribunal or person authorised by the parties for that purpose, or, in the absence of such designation, determined by the court, having regard to the arbitration agreement and all relevant circumstances.
- (2) Where any provision in this Law allows the parties to determine any issue, the parties may authorise a third party, including an arbitral tribunal, to make the determination.
 - (3) Where any provision in this Law refers to the fact that the parties have agreed or that they may agree, or in any other way refers to an agreement of the parties, such agreement includes any arbitration rules incorporated in that agreement.
 - (4) Where any provision in this Law refers to a claim, it also applies to a cross-claim or counter-claim, and where such provision refers to a defence, it also applies to a defence to a cross-claim or counter-claim.

Application of this Law and general principles

3. (1) The provisions of this Law apply where the seat of the arbitration is in the Islands.
- (2) The provisions of this Law apply to every arbitration under any other enactment whether enacted before or after the commencement of this Law, except in so far as —
 - (a) this Law is inconsistent with that other enactment or with any rules or procedures authorised thereunder; or
 - (b) that other enactment otherwise provides.
- (3) The provisions of this Law are founded on the following principles, and shall be construed accordingly —
 - (a) the object of arbitration is to obtain the fair resolution of disputes by an impartial arbitral tribunal without undue delay or undue expense;
 - (b) the parties should be free to agree how their disputes are resolved, subject only to such safeguards as are necessary in the public interest; and
 - (c) in matters governed by this Law the court should not intervene except as provided in this Law.

PART II - ARBITRATION AGREEMENT

Arbitration agreement and model arbitration clause

4. (1) An arbitration agreement may be in the form of an arbitration clause in a contract or in the form of a separate agreement.
- (2) Parties may agree to adopt or adapt the model arbitration clause provided in the Schedule if they are unable to independently formulate an appropriate arbitration clause for the purposes of arbitral proceedings.
- (3) An arbitration agreement, except as provided for in subsections (4) and (5), shall be in writing and contained in —
- (a) a document signed by the parties; or
 - (b) an exchange of letters, facsimile, telegrams, electronic communications or other means of communication that provide a record of the agreement.
- (4) 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.
- (5) An arbitration agreement which forms, or was intended to form part of, an agreement shall be treated as a distinct agreement.
- (6) An arbitration agreement is not void, voidable or otherwise unenforceable only because the agreement of which it forms part is void, voidable or otherwise unenforceable.
- (7) A dispute about the validity of an agreement which includes an arbitration agreement may be arbitrated in accordance with that arbitration agreement.
- (8) Where parties agree otherwise than in writing by reference to terms which are in writing, they may make an agreement in writing.
- (9) A reference in —
- (a) a bill of lading to a charter party or other document; or
 - (b) an agreement to any other document,
- containing an arbitration clause shall constitute an arbitration agreement if the reference is such as to make that clause a part of the bill of lading or the original agreement.
- (10) In this section —
- “**electronic communications**” means —
- (a) communication of information in the form of data, text or images by means of guided or unguided electromagnetic energy, or both; or



- (b) communication of information in the form of sound by means of guided or unguided electromagnetic energy, or both where the sound is processed at its destination by an automated voice recognition system.

Arbitration agreement enforceable after death of a party to the agreement

5. (1) Unless otherwise agreed by the parties, an arbitration agreement is not discharged by the death of a party and may be enforced by or against the personal representatives of that party.
- (2) The authority of an arbitrator shall not be revoked by the death of a party by whom he was appointed.
- (3) Nothing in this section shall be taken to affect the operation of any law by virtue of which any right of action is extinguished by the death of a person.

Arbitration agreement enforceable in bankruptcy

6. A contract in which a bankrupt party has agreed to refer to arbitration any dispute arising from that contract shall be enforceable against the trustee in bankruptcy if he adopts the contract.

Arbitration agreement enforceable in insolvency

7. A contract in which the director of an insolvent body corporate has agreed to refer to arbitration any dispute arising from that contract shall be enforceable against the liquidator, receiver or administrator if either of them adopts the contract.

Consumer arbitration agreement

8. (1) Where a contract contains an arbitration agreement and a person enters into that contract as a consumer, the arbitration agreement is enforceable against the consumer only if after a dispute has arisen, the consumer by a separate written agreement certifies that he has read and understood the arbitration agreement and agrees to be bound by its terms.
- (2) Subsection (1) applies to every contract containing an arbitration agreement entered into in the Islands notwithstanding a provision in the contract to the effect that the contract is governed by a law other than the law of the Islands.
- (3) Where a party to a consumer arbitration agreement knows that any provision of this Law from which he may derogate or any requirement under the arbitration agreement has not been complied with and that party proceeds with the arbitration without making an objection to that non-compliance without undue delay or, if a time limit is provided, within that period of time, that party shall be deemed to have waived the right to object and an arbitration agreement that would otherwise be unenforceable by reason of non-compliance shall be treated as operative.
- (4) In this section —

“**consumer**” in relation to —

- (a) any goods, means —
 - (i) a person who acquires or wishes to acquire goods for his own private use or consumption; and
 - (ii) a commercial undertaking that purchases consumer goods;
- (b) any services or facilities, means any person who employs or wishes to be provided with the services or facilities; and
- (c) any accommodation, means any person who wishes to occupy the accommodation.

PART III - STAY OF LEGAL PROCEEDINGS

Stay of legal proceedings

9. (1) Where a party to an arbitration agreement institutes proceedings in a court against another party to that agreement in respect of any matter which is the subject of the agreement, either party to the agreement may, at any time after the acknowledgement of service and before delivering any pleading or taking any step in the proceedings to answer the substantive claim, apply to a court to stay the proceedings so far as the proceedings relate to that matter.
- (2) The court to which an application has been made in accordance with subsection (1) shall grant a stay unless it is satisfied that the arbitration agreement is null and void, inoperative, or incapable of being performed.
- (3) Where a court stays proceedings in accordance with subsection (2), the court may, for the purpose of preserving the rights of parties, make an interim order as the court thinks fit in relation to any property that is or forms part of the subject of the dispute to which the order under that subsection relates.

Court’s powers on stay of proceedings

10. (1) Where a court stays proceedings under section 9, the court may, if in those proceedings property has been seized or security has been given to prevent or obtain release from arrest, order that —
- (a) the property seized be retained as security for the satisfaction of any award made on the arbitration; or
 - (b) the stay be conditional on the provision of equivalent security for the satisfaction of any such award.
- (2) Subject to the Rules of Court and to any necessary modification, 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 was held for the purposes of proceedings in the court that made the order.



Reference of interpleader issue to arbitration

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

PART IV - COMMENCEMENT OF ARBITRATION**Commencement of arbitration proceedings**

12. (1) An arbitration shall, unless otherwise agreed by the parties, commence when —
- (a) a party to an arbitration agreement gives the other party notice of an intention to submit a dispute to arbitration in accordance with the agreement;
 - (b) a party to the arbitration agreement serves on the other party a notice requiring him to appoint or concur in appointing an arbitrator; or
 - (c) the arbitrator is named in the arbitration agreement and one party serves on the other party a notice requiring him to submit the matter to the arbitrator named.
- (2) A notice mentioned in subsection (1) may be served by —
- (a) delivering it to the person on whom it is to be served;
 - (b) leaving it at the person's usual or last known place of residence, or in the case of a body corporate, at its registered office, in the Islands;
 - (c) sending it by post in a registered letter addressed to that person at his usual or last known place of residence, or in the case of a body corporate, at its registered office, in the Islands; or
 - (d) in any other manner provided in the arbitration agreement,
- and where a notice is sent by post in the manner prescribed in paragraph (c), service shall, unless the contrary intention is proved, be deemed to have been effected at the time at which the letter would have been delivered in the ordinary course of the post.
- (3) Where an arbitration agreement contains provisions in relation to the commencement of arbitration proceedings, those provisions shall be followed.

Powers of court to extend time for beginning of arbitration proceedings

13. (1) Where the terms of an arbitration agreement to refer future disputes to arbitration provide that a claim to which the arbitration agreement applies shall be barred unless —

- (a) some step has been taken to begin other dispute resolution procedures that must be exhausted before arbitration proceedings can be begun;
 - (b) notice to appoint an arbitrator is given;
 - (c) an arbitrator is appointed; or
 - (d) some other step is taken to commence arbitration proceedings, within a time fixed by the agreement, and a dispute to which the agreement applies has arisen, the court may, if it is of the opinion that in the circumstances of the case undue hardship would otherwise be caused, extend the time stipulated in the agreement on such terms as the court thinks fit.
- (2) An order of extension of time made by the court under subsection (1) —
- (a) may be made only after any available arbitral process for obtaining an extension of time has been exhausted;
 - (b) may be made notwithstanding that the time so fixed has expired; and
 - (c) shall not affect the operation of —
 - (i) section 12;
 - (ii) section 14; or
 - (iii) any other law relating to the limitation of actions.

Application of Limitation Law (1996 Revision)

14. (1) The *Limitation Law (1996 Revision)* shall apply to arbitration proceedings as it applies to proceedings before any court and a reference in that Law to the commencement of an action shall be construed as a reference to the commencement of arbitration proceedings.
- (2) The court may order that in computing the time prescribed by the *Limitation Law (1996 Revision)* for the commencement of proceedings, including arbitration proceedings, in respect of a dispute that was the subject-matter of —
- (a) an award that the court orders to be set aside or declares to be of no effect; or
 - (b) the affected part of an award that the 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 paragraph (a) or (b) shall be excluded.
- (3) In determining for the purposes of the *Limitation Law (1996 Revision)* when a cause of action accrued, any provision that an award is a condition precedent to the bringing of legal proceedings in respect of a matter to which an arbitration agreement applies shall be disregarded.



PART V - ARBITRAL TRIBUNAL

Number of arbitrators

- 15.** (1) The parties to an arbitration agreement may choose any number of arbitrators.
- (2) Where the parties fail to determine the number of arbitrators there shall be a single arbitrator.

Appointment of arbitrators

- 16.** (1) The parties may agree to a procedure for appointment of an arbitrator in accordance with the rules they have chosen.
- (2) Where the parties fail to agree on rules for appointing the arbitral tribunal —
- (a) in an arbitration with a sole arbitrator, the arbitrator shall be appointed, upon the request of a party to the agreement, by the appointing authority; and
- (b) in an arbitration with two or more arbitrators, the parties shall appoint an odd number of arbitrators either by —
- (i) each party appointing an arbitrator and agreeing to the appointment of a subsequent arbitrator; or
- (ii) two or more parties agreeing to the appointment of the required number of arbitrators.
- (3) Where subsection (2)(b) applies —
- (a) if a party fails to appoint an arbitrator within thirty days of receipt of a first request to do so from the other party; or
- (b) if the parties fail to agree on the appointment of the additional arbitrator within thirty days of the receipt of the first request by any party to do so, the appointment shall be made, upon the request of a party, by the appointing authority.
- (4) If, under an appointment procedure agreed to by the parties —
- (a) one party fails to act as required under such procedure;
- (b) the parties are unable to reach an agreement under such procedure; or
- (c) a third party to the agreement, including an arbitral tribunal, fails to perform any function assigned to it under such procedure,
- any party may apply to the appointing authority to take the necessary measures unless the agreement on the appointment procedure provides other means for securing the appointment.
- (5) Where a party makes a request or makes an application to the appointing authority under subsection (2), (3) or (4), the appointing authority shall, in appointing an arbitrator, have regard to the following —

- (a) the nature of the subject-matter of the arbitration;
 - (b) the availability of any arbitrator;
 - (c) the identities of the parties to the arbitration;
 - (d) any suggestion made by any of the parties regarding the appointment of any arbitrator;
 - (e) any qualifications required of the arbitrator by the arbitration agreement or otherwise by the parties; and
 - (f) such considerations as are likely to secure the appointment of an independent and impartial arbitrator.
- (6) An appointment made by the appointing authority may not be challenged except in accordance with this Law.
- (7) Notwithstanding the provisions of this Law, the parties may agree on the powers to be exercised by the appointing authority for the purpose of arbitral proceedings.

Authority of arbitrator to be irrevocable

- 17.** The authority of an arbitrator appointed by or by virtue of an arbitration agreement shall, unless a contrary intention is expressed in the agreement, be irrevocable except by leave of the court.

Grounds for challenge

- 18.** (1) Where a person is approached in connection with his possible appointment as an arbitrator, he shall disclose to the parties or appointing authority any circumstances which might reasonably compromise his impartiality or independence.
- (2) An arbitrator shall, from the time of his appointment and throughout the arbitration proceedings, without delay disclose any such circumstance as is referred to in subsection (1) to the parties unless they have already been informed by him.
- (3) Subject to subsection (4), an arbitrator may be challenged only if —
- (a) circumstances exist that give rise to justifiable doubts as to his impartiality or independence; or
 - (b) he does not possess the qualifications agreed to by the parties.
- (4) A party who has appointed or participated in the appointment of an arbitrator may challenge such arbitrator only if he becomes aware of any of the grounds of challenge set out in subsection (3) as may be applicable to the arbitrator after the arbitrator has been appointed.



Challenge procedure

- 19.** (1) Subject to subsection (3), the parties may agree on a procedure for challenging an arbitrator.
- (2) If the parties have not agreed on a procedure for challenge, a party who intends to challenge an arbitrator shall —
- (a) within fifteen days after the arbitral tribunal has been constituted; or
 - (b) after becoming aware of any circumstance referred to in section 18(3),
- send a written statement of the grounds for the challenge to the arbitral tribunal.
- (3) The arbitral tribunal shall, unless the challenged arbitrator withdraws from his office or the other party agrees to the challenge, decide on the challenge.
- (4) If a challenge before the arbitral tribunal is unsuccessful, the aggrieved party may, within thirty days after receiving notice of the decision rejecting the challenge, apply to the court to decide on the challenge and the court may make such order as it thinks fit.
- (5) An appeal shall not lie against the decision of the court under subsection (4).
- (6) While an application to the court under subsection (4) is pending, the arbitral tribunal, including the challenged arbitrator, may continue the arbitration proceedings and make an award.

Removal of arbitrator

- 20.** (1) A party may request the court to remove an arbitrator —
- (a) who is physically or mentally incapable of conducting the proceedings or where there are justifiable doubts as to his capacity to do so; or
 - (b) who has refused or failed —
 - (i) to properly conduct the proceedings; or
 - (ii) to use all reasonable despatch in conducting the proceedings or making an award;
- and where substantial injustice has been or will be caused to that party.
- (2) If there is a person vested by the parties with power to —
- (a) remove an arbitrator;
 - (b) decide on a challenge to an appointed arbitrator; and
 - (c) replace an arbitrator,
- the court shall not exercise its power of removal unless it is satisfied that the applicant has first exhausted every available recourse to that person.

- (3) While an application to the court under this section is pending, the arbitral tribunal, including the arbitrator concerned may continue the arbitration proceedings and make an award.
- (4) Where the court removes an arbitrator, it may make such order as it thinks fit with respect to his entitlement, if any, to fees or expenses, or the repayment of any fees or expenses already paid.
- (5) The arbitrator concerned is entitled to appear and be heard by the court before the court makes any order under this section.
- (6) An appeal shall not lie against the decision of the court made under subsection (4).

Power of court where arbitrator is removed or authority of arbitrator is revoked

- 21.** (1) Where an arbitrator, not being a sole arbitrator, or two or more arbitrators, not being all of the arbitrators constituting an arbitral tribunal, is or are removed by the court, the appointing authority may, on the application of any party to the arbitration agreement, appoint a person to act as arbitrator in place of any arbitrator removed.
- (2) Where the authority of an arbitral tribunal is revoked by the court or a member thereof is removed by the court, the court may, on the application of any party to the arbitration agreement, either appoint a person to act as arbitrator in place of the person removed or order that the arbitration agreement shall cease to have effect with respect to the dispute referred.
- (3) A person appointed under this section by the appointing authority as an arbitrator shall have like power to act in the reference and to make an award as if he had been appointed in accordance with the terms of the arbitration agreement.
- (4) Where it is provided, whether by means of a provision in the arbitration agreement or otherwise, that an award under an arbitration agreement shall be a condition precedent to the bringing of an action with respect to any matter to which the agreement applies, the court, if it orders, whether under this section or under any other enactment, that the agreement shall cease to have effect as regards any particular dispute, may further order that the provision making an award a condition precedent to the bringing of an action shall also cease to have effect as regard to that dispute.

Arbitrator ceasing to hold office

- 22.** (1) An arbitrator shall cease to hold office if —
- (a) he withdraws from office under section 19(3);
 - (b) an order is made under section 19(4) for the termination of his mandate or his removal;



- (c) he is removed by a person referred to in section 20(2); or
 - (d) the parties agree to his termination.
- (2) The withdrawal of an arbitrator or his termination by the parties shall not imply an admission of any ground referred to in section 18(3) or 20(1).

Appointment of substitute arbitrator

- 23.** (1) Where an arbitrator ceases to hold office pursuant to section 22, the parties may agree —
- (a) whether and, if so, how the vacancy will be filled;
 - (b) whether and, if so, to what extent the previous proceedings should stand; and
 - (c) what effect, if any, the arbitrator ceasing to hold office has on any appointment made by him alone or jointly.
- (2) Where the parties do not agree pursuant to subsection (1) —
- (a) section 16 applies in relation to the filling of the vacancy as in relation to an original appointment;
 - (b) subject to subsection (3), the arbitral tribunal, when reconstituted, shall determine whether and, if so, to what extent the previous proceedings should stand; and
 - (c) the ceasing to hold office by the arbitrator shall not affect any appointment by him alone or jointly, of another arbitrator and in particular any appointment of a presiding arbitrator.
- (3) The reconstitution of the arbitral tribunal shall not affect any right of a party to challenge the previous proceedings on any ground that had arisen before the arbitrator ceased to hold office.

Decision by panel of arbitrators

- 24.** (1) In arbitration proceedings with more than one arbitrator, a decision of the arbitral tribunal shall be made by all or a majority of its members, unless otherwise agreed by the parties.
- (2) In the event that no majority decision can be agreed, the parties may agree on the process to be followed in order to arrive at a final binding decision.
- (3) The process to be followed pursuant to subsection (2) may include appointing an arbitrator to act as chairman in order to reach a final decision.
- (4) A presiding arbitrator, if so authorised by the parties or all members of the arbitral tribunal, may decide any question of procedure.

Liability of arbitrator, appointing authority, experts, witnesses and legal representatives

- 25.** (1) An arbitrator is not liable for any consequences or costs resulting from —
- (a) negligence in respect of anything done or omitted to be done by him in his capacity as arbitrator; or
 - (b) any mistake of law, fact or procedure made by him in the course of arbitration proceedings or in the making of an arbitral award.
- (2) An appointing authority which is requested by the parties to appoint an arbitrator, is not liable —
- (a) for anything done or omitted in the performance, or purported performance of that function; or
 - (b) for the acts or omissions of —
 - (i) any arbitrator whom it appoints;
 - (ii) the arbitral tribunal of which such an arbitrator forms part; or
 - (iii) any clerk, agent or employee of the arbitral tribunal.
- (3) A person who participates in an arbitration as an expert, witness or legal representative has the same immunity in respect of acts or omissions as the person would have if the arbitration were civil proceedings.
- (4) Notwithstanding subsections (1), (2) and (3), an arbitrator, appointing authority or any other person involved in the arbitral proceedings is liable for any act or omission done where such an act or omission is shown to be done in bad faith.

PART VI - JURISDICTION OF ARBITRAL TRIBUNAL**Arbitration of disputes**

- 26.** (1) Any dispute that parties have agreed to submit to arbitration under an arbitration agreement may be determined by arbitration unless the arbitration agreement is contrary to public policy or, under any other law of the Islands, such a dispute is not capable of determination by arbitration.
- (2) The fact that any other law confers jurisdiction in respect of any matter on the court but does not refer to the determination of that matter by arbitration, does not mean that a dispute about that matter is incapable of determination by arbitration.



Separability of arbitration clause and competence of arbitral tribunal to rule on its own jurisdiction

- 27.** (1) The arbitral tribunal may rule on its own jurisdiction, including any objections to the existence or validity of the arbitration agreement.
- (2) For the purpose of subsection (1), an arbitration clause that forms part of a contract shall be treated as an agreement independent of the other terms of the contract.
- (3) A decision by the arbitral tribunal that the contract is null and void shall not entail as a matter of law the invalidity of the arbitration clause.
- (4) A plea that the arbitral tribunal does not have jurisdiction shall be raised not later than the submission of the statement of defence.
- (5) A party shall not be precluded from raising the plea that the arbitral tribunal does not have jurisdiction by virtue of the fact that he has appointed or participated in the appointment of an arbitrator.
- (6) A plea that the arbitral tribunal is exceeding the scope of its authority shall be raised as soon as the matter alleged to be beyond the scope of its authority is raised during the arbitration proceedings.
- (7) Notwithstanding any delay in raising a plea referred to in subsection (4) or (6), the arbitral tribunal may admit such plea if it considers the delay to be justified in the circumstances.
- (8) The arbitral tribunal may rule on a plea referred to in this section either as a preliminary question or in an award on the merits.
- (9) If the arbitral tribunal rules on a plea as a preliminary question that it has jurisdiction, any party may, within thirty days after having received notice of that ruling, apply to the court to decide the matter.
- (10) While an application under subsection (9) is pending, the arbitral tribunal may continue the arbitration proceedings and make an award.

PART VII - ARBITRAL PROCEEDINGS**General duties of arbitral tribunal**

- 28.** The arbitral tribunal shall —
- (a) act fairly and impartially;
 - (b) allow each party a reasonable opportunity to present his case;
 - (c) conduct the arbitration without unnecessary delay; and
 - (d) conduct the arbitration without incurring unnecessary expense.

Determination of rules

- 29.** (1) Subject to the provisions of this Law, parties may agree on the rules to be followed by the arbitral tribunal in conducting the proceedings.
- (2) If the parties fail to agree on the rules to be followed by the arbitral tribunal, the tribunal may, subject to the provisions of this Law, conduct the arbitration in such manner as it considers appropriate.
- (3) The power conferred on the arbitral tribunal under subsection (2) includes the power to determine the admissibility, relevance, materiality and weight of any evidence.

Seat of arbitration

- 30.** (1) The parties to an arbitration agreement may agree on the seat of arbitration.
- (2) Where there is no agreement as to a seat of arbitration, the seat of arbitration shall be determined by the arbitral tribunal having regard to the circumstances of the case, including the convenience of the parties.
- (3) The arbitral tribunal may, unless otherwise agreed by the parties, meet at any place it considers appropriate for consultation among its members, for hearing witnesses, experts or the parties, or for inspection of goods, other property or documents.

Language

- 31.** (1) The parties to an arbitration agreement may agree on the language or languages to be used in the arbitral proceedings.
- (2) Where there is no agreement as to the language to be used in the arbitral proceedings, the arbitral tribunal shall determine the language or languages to be used in the proceedings.
- (3) An agreement as to language, unless otherwise specified, shall apply to any written statement by a party, any hearing and any award, decision or other communication by the arbitral tribunal.
- (4) The arbitral tribunal may order that documentary evidence shall be accompanied by a translation into the language or languages agreed upon by the parties or determined by the arbitral tribunal.

Statements of claim and defence

- 32.** (1) Within the period of time agreed by the parties or, failing such agreement, as determined by the arbitral tribunal, a claimant shall state —
- (a) the facts supporting his claim;
- (b) the points in issue; and
- (c) the relief or remedy sought,



and the respondent shall state his defence in respect of the particulars set out in this subsection, unless the parties have otherwise agreed to the required elements of such statements.

- (2) The parties may submit to the arbitral tribunal their statements, all documents they consider to be relevant or any other document that refer to such documents, or other evidence.
- (3) Except as otherwise agreed by the parties, any party may amend or supplement his claim or defence during the course of the arbitration proceedings unless the arbitral tribunal considers it inappropriate to make such amendment or supplement such claim or defence, having regard to the delay in making the amendment or the views of the parties.

Hearing and written proceedings

- 33.** (1) Subject to any contrary agreement by the parties, the arbitral tribunal shall determine if proceedings are to be conducted by —
- (a) oral hearing for the presentation of evidence;
 - (b) the production of documents and other written materials;
 - (c) the use of telecommunications technology; or
 - (d) a combination of the above.
- (2) Unless the parties have agreed that no hearings shall be held, the arbitral tribunal shall, upon the request of a party, hold such hearings at an appropriate stage of the proceedings.
- (3) The parties shall be given sufficient notice in advance of any hearing and of any meeting of the arbitral tribunal for the purposes of inspection of documents, goods or any other property.
- (4) All statements, documents or other information supplied to the arbitral tribunal by one party shall be communicated to the other party.
- (5) Any expert report or evidentiary document on which the arbitral tribunal may rely in making its decision shall be communicated to the parties.
- (6) Unless otherwise agreed in writing by the parties to the arbitration agreement, an arbitral tribunal in conducting proceedings under an arbitration agreement is not bound by rules of evidence but may inform itself in relation to any matter as the arbitral tribunal thinks fit.
- (7) In this section —
- “**telecommunications technology**” means the transmission, emission or reception of data, text, signs, signals, writing, images, sounds or communication of any nature by wire, radio, optical, telephone, computer or other electronic system whether or not such data, text, signs, signals, writing, images, sounds or communications have been subjected to rearrangement,

computation or other processes by any means in the course of their transmission, emission or reception.

Representation

- 34.** Unless otherwise agreed, a party to an arbitration agreement may be represented in proceedings before the arbitral tribunal by a legal practitioner or by any other person chosen by him.

Extension of ambit of arbitration proceedings

- 35.** (1) Where —
- (a) pursuant to an arbitration agreement a dispute between the parties to that agreement is referred to arbitration; and
 - (b) there is some other dispute between those same parties, when the dispute arose, being a dispute to which the same agreement applies,
- then unless the arbitration agreement otherwise provides, the arbitral tribunal may, upon application being made to the arbitral tribunal by the parties to the arbitration agreement at any time before a final award is made in relation to the first mentioned dispute, make an order directing that the arbitration be extended to include that other dispute.
- (2) An arbitral tribunal may make an order under subsection (1) on such terms and conditions, if any, as it thinks fit.

Consolidation of proceedings

- 36.** (1) The parties to an arbitration agreement may agree —
- (a) to the consolidation of arbitral proceedings with other arbitral proceedings; or
 - (b) to the holding of concurrent hearings,
- on such terms as may be agreed.
- (2) Unless the parties agree to confer such power on the arbitral tribunal, the arbitral tribunal has no power to order consolidation of proceedings or concurrent hearings.

Powers to appoint experts

- 37.** (1) Unless otherwise agreed by the parties, the arbitral tribunal may —
- (a) appoint one or more experts to report to it on specific issues to be determined by the tribunal; and
 - (b) require a party to give the expert any relevant information or to produce, or to provide access to, any relevant documents, goods or other property for his inspection.



- (2) Unless otherwise agreed by the parties, if a party so requests or if the arbitral tribunal considers it necessary —
 - (a) the expert shall, after delivery of his written or oral report, participate in a hearing where the parties have the opportunity to put questions to him and to present other expert witnesses in order to testify on the points at issue; and
 - (b) the parties must be given a reasonable opportunity to make representations about any written expert opinion, and to hear any oral expert opinion and to ask questions of the expert giving it.

General powers exercisable by arbitral tribunal

- 38.** (1) Parties may agree on the powers that may be exercised by the arbitral tribunal for the purposes of and in relation to the arbitration proceedings.
- (2) Unless otherwise agreed by the parties under subsection (1), the arbitral tribunal may 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) a party or witness to be examined on oath or affirmation;
 - (e) the preservation and interim custody of any evidence for the purposes of the proceedings;
 - (f) samples to be taken from, or any observation to be made of or experiment conducted upon, any property that is or forms part of the subject-matter of the dispute; and
 - (g) the preservation, interim custody or sale of any property that is or forms part of the subject-matter of the dispute.
 - (3) An arbitral tribunal may for the purposes of subsection (2)(d) administer any necessary oath or take any necessary affirmation.
 - (4) The power of the arbitral tribunal to order a claimant to provide security for costs as referred to in subsection (2)(a) shall not be exercised by reason only that the claimant is —
 - (a) an individual ordinarily resident outside the Islands; or
 - (b) a corporation or an association incorporated or formed under the law of a country outside the Islands, or whose central management and control is exercised outside the Islands.
 - (5) All orders or directions made or given by an arbitral tribunal in the course of an arbitration shall, with leave of the court, be enforceable in the same manner as if they were orders made by the court and where leave is so given, judgment may be entered in terms of the order or direction.

Powers of arbitral tribunal in case of party's default

- 39.** (1) Parties may agree on the powers that may be exercised by the arbitral tribunal in the case of one party's failure to take any necessary action for the proper and expeditious conduct of the proceedings.
- (2) Unless otherwise agreed by the parties, if, without showing sufficient cause —
- (a) the claimant fails to provide his statement of claim in accordance with section 32, the arbitral tribunal may terminate the proceedings;
 - (b) the respondent fails to provide his statement of defence in accordance with section 32, the arbitral tribunal may continue the proceedings without treating such failure in itself as an admission of the claimant's allegations; and
 - (c) any party fails to appear at a hearing or to produce documentary evidence, the arbitral tribunal may continue the proceedings and make the award on the evidence before it.
- (3) If the arbitral tribunal is satisfied that there has been inordinate and inexcusable delay on the part of the claimant in pursuing his claim, and the delay —
- (a) gives rise, or is likely to give rise, to a substantial risk that it is not possible to have a fair resolution of the issues in that claim; or
 - (b) has caused, or is likely to cause, serious prejudice to the respondent, the tribunal may make an award dismissing the claim.

Witnesses may be summoned by subpoena

- 40.** (1) Any party to an arbitration agreement may take out a writ to compel a witness to attend and give evidence or a writ to compel a witness to attend and give evidence and produce specified documents.
- (2) The court may order that a writ compelling a witness to attend and give evidence or a writ compelling a witness to attend and give evidence and produce specified documents shall be issued to compel the attendance before an arbitral tribunal of a witness wherever he may be within the Islands.
- (3) A person shall not be compelled under any such writ to produce any document that he could not be compelled to produce on the trial of an action.

Refusal or failure to attend before arbitrator etc.

- 41.** (1) Unless a contrary intention is expressed in the arbitration agreement, where any person (whether or not a party to the agreement) —
- (a) refuses or fails to attend before the arbitrator for examination when required under a subpoena or by the arbitrator to do so;
 - (b) appearing as a witness before the arbitrator —



- (i) refuses or fails to take an oath or to make an affirmation or affidavit when required by the arbitrator to do so;
 - (ii) refuses or fails to answer a question that he is required by the arbitrator to answer;
 - (iii) refuses or fails to produce a document that he is required under a subpoena or by the arbitrator to produce; or
- (c) refuses or fails to do any other thing which the arbitrator may require, a party to the arbitration agreement or the arbitrator may apply to the court for an order requesting the person in default to attend before the court for examination or to produce the relevant document or to do the relevant thing.
- (2) An order made by the court under subsection (1) may include a request for the transmission to the arbitrator of —
 - (a) a record of any evidence given pursuant to the order;
 - (b) any document produced pursuant to the order or a copy of any such document; or
 - (c) particulars of any thing done pursuant to the order,and any such evidence, document or thing shall be deemed to have been given, produced or done, as the case requires, in the course of the arbitration proceedings.
- (3) If a party to an arbitration agreement —
 - (a) refuses or fails to attend before the arbitrator for examination when required under a subpoena or by the arbitrator to do so; or
 - (b) fails within the time specified by the arbitrator or, if no time is so specified, within a reasonable time to comply with a requirement of the arbitrator,the arbitrator may continue with the arbitration proceedings in default of appearance and make its award, on the basis of the evidence before it.

Perjury

- 42.** A person who wilfully or corruptly gives false evidence before an arbitral tribunal is guilty of perjury, as if the evidence had been given in court, and may be prosecuted and punished in accordance with the laws of the Islands.

Court's powers exercisable in support of arbitration proceedings

- 43.** (1) In relation to an arbitration a court —
- (a) may make such orders in respect of any of the matters set out in sections 38 and 40 as it would in relation to an action or matter in the court;
 - (b) may secure the amount in dispute;



- (c) shall ensure that any award that may be made in the arbitral proceedings is not rendered ineffectual by the dissipation of assets by a party; and
 - (d) may grant an interim injunction or any other interim measure.
- (2) An order of the court under this section shall cease to have effect in whole or in part if the arbitral tribunal or any such arbitral tribunal or person having power to act in relation to the subject matter of the order makes an order to which the order of the court relates.
- (3) If the case is one of urgency, the court may, on the application of a party or proposed party to the arbitral proceedings, make such orders as it thinks necessary for the purpose of preserving evidence or assets.
- (4) If the case is not one of urgency, the court shall act only on the application of a party to the arbitral proceedings (upon notice to the other parties and to the tribunal) made with the permission of the tribunal or the agreement in writing of the other parties.
- (5) In any case, the court shall act only if or to the extent that the arbitral tribunal vested by the parties with power in that regard has no power or is unable for the time being to act effectively.

PART VIII - INTERIM MEASURES AND PRELIMINARY ORDERS

Power of arbitral tribunal to order interim measures

- 44.** Unless otherwise agreed by the parties, the arbitral tribunal may, at anytime prior to the issue of an award by which a dispute is finally decided and at the request of a party, grant an interim measure ordering a party to —
- (a) maintain or restore the original position of the other party 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 process;
 - (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

- 45.** (1) A party who requests an interim measure under section 44(a), (b) or (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 that the 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.
- (2) A determination by the arbitral tribunal that a party will succeed under subsection (1)(b) shall not affect the discretion of the arbitral tribunal in making any subsequent determination.
 - (3) Where a request for an interim measure under section 44(d) is made, the requirements in subsection (1)(a) and (b) shall apply only to the extent that the arbitral tribunal considers appropriate.

Applications for preliminary orders and conditions for granting preliminary orders

- 46.** (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 may frustrate the purpose of the measure.
 - (3) The conditions defined under section 45 apply to any preliminary order, provided that the harm assessed under section 45(1)(a), is the harm likely to result whether or not an order is granted.

Specific regime for preliminary orders

- 47.** (1) Immediately after the arbitral tribunal has made a determination in respect of an application for a preliminary order, the arbitral tribunal shall give notice to all parties by indicating the content of any oral communication, between any party and the arbitral tribunal in relation to —
- (a) the request for the interim measure;
 - (b) the application for the preliminary order;
 - (c) the specifics of the preliminary order, if any; and
 - (d) all other communications.
- (2) 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 expires after twenty days from the date on which it was issued by the arbitral tribunal.

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

Modification, suspension, termination

- 48.** The arbitral tribunal may modify, suspend or terminate an interim measure or a preliminary order it has granted —
- (a) upon application of any party;
 - (b) in exceptional circumstances; or
 - (c) on the arbitral tribunal's own initiative, upon giving prior notice to the parties.

Provision of security

- 49.** (1) The arbitral tribunal may require the party requesting an interim measure to provide appropriate security in connection with the measure.
- (2) The arbitral tribunal shall require the party applying for a preliminary order to provide security in connection with the order unless the arbitral tribunal considers it inappropriate or unnecessary to do so.

Disclosure

- 50.** (1) The arbitral tribunal may require any party promptly to disclose any material change in the circumstances on the basis of which an interim measure was requested or granted.
- (2) A 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 the order.
- (3) An obligation to disclose all the circumstances relevant to the arbitral tribunal's determination shall continue until the party against whom the order has been requested has an opportunity to present his case.

Costs and damages

- 51.** (1) The party requesting an interim measure or applying for a preliminary order shall be liable for any costs and damages caused by the measure or the order to any party if the arbitral tribunal later determines that, in the circumstances, the measure or the order should not have been granted.
- (2) The arbitral tribunal may award costs and damages at any time during the proceedings.



Recognition and enforcement

- 52.** (1) An interim measure issued by an arbitral tribunal shall be recognised as binding and unless otherwise provided by the arbitral tribunal, enforceable upon application to the court, irrespective of the jurisdiction in which it was issued, subject to section 53.
- (2) The party who is seeking or has obtained recognition or enforcement of an interim measure shall promptly inform the court of any termination, suspension or modification of that interim measure.
- (3) The court may order the requesting party to provide appropriate security if the arbitral tribunal has not already made a determination with respect to security or where such a decision is necessary to protect the rights of third parties.

Grounds for refusing recognition or enforcement

- 53.** (1) The recognition or enforcement of an interim measure may be refused only at the request of the party against whom it is invoked if the court is satisfied that —
- (a) a refusal is warranted on any ground specified in section 75 (1)(a)(i) to (vii);
- (b) the arbitral tribunal’s decision with respect to the provision of security in connection with the interim measure issued by the arbitral tribunal has not been complied with;
- (c) the interim measure has been terminated or suspended by the arbitral tribunal or, where so empowered, by the court or under the law of which that interim measure was granted; or
- (d) the court finds that —
- (i) the interim measure is incompatible with the powers conferred upon the court unless the court decides to reformulate the interim measure to the extent necessary to adapt it to its own powers and procedures for the purposes of enforcing that interim measure and without modifying its substance; or
- (ii) the subject-matter of the dispute is not capable of settlement by arbitration under the law of the Islands or the recognition or enforcement of the award would be contrary to the public policy of the Islands.
- (2) Any determination made by the court on any ground in subsection (1) shall be effective only for the purposes of the application to recognise and enforce the interim measure.
- (3) The court where recognition or enforcement is sought shall not, in making that determination, undertake a review of the substance of the interim measure.

Court-ordered interim measures

- 54.** (1) A court shall have the same power of issuing an interim measure in relation to arbitration proceedings, irrespective of whether their seat of arbitration is in the Islands, as it has in relation to the proceedings in court.
- (2) The court shall exercise those powers in accordance with its own procedures and in consideration of the specific principles of international arbitration.

PART IX - AWARD**Law applicable to substance of dispute**

- 55.** (1) The arbitral tribunal shall decide a dispute in accordance with the law chosen by the parties as applicable to the substance of the dispute.
- (2) If or to the extent that the parties have not chosen the law applicable to the substance of their dispute or where the law chosen cannot apply to the substance of the dispute, the arbitral tribunal shall apply the law determined by the conflict of laws rules which it considers applicable.
- (3) The arbitral tribunal may decide the dispute, if the parties agree, in accordance with such other considerations as are agreed by them or determined by the tribunal.
- (4) When making a decision in relation to a dispute, the arbitral tribunal shall have regard to —
- (a) the provisions of any contract relating to the substance of the dispute;
 - (b) the normal commercial or trade usage of any undefined terms in the provisions of any contract;
 - (c) any established commercial or trade customs or practices relevant to the substance of the dispute; and
 - (d) any other matter which the parties agree is relevant in the circumstances.

Awards made on different issues

- 56.** (1) Unless otherwise agreed by the parties, the arbitral tribunal may make more than one award at different points in time during the 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;
 - (b) a part only of the claim, counter-claim or cross-claim, that is submitted to the tribunal for decision;
 - (c) the determination as to a particular fact or set of facts;



- (d) the existence or non-existence of a particular condition or set of conditions; or
 - (e) compliance or non-compliance with a particular rule, standard or quality.
- (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, that is the subject matter of the award.

Remedies

- 57.** (1) The parties may agree on the powers exercisable by the arbitral tribunal in relation to remedies.
- (2) Unless otherwise agreed by the parties, the arbitral tribunal may award any remedy or relief that could have been ordered by the court if the dispute had been the subject of civil proceedings in that court.

Interest

- 58.** (1) The arbitral tribunal may award interest to be paid on —
- (a) the whole or part of any amount which the award orders to be paid in respect of any period up to the date of the award;
 - (b) the whole or part of any amount which is —
 - (i) claimed in the arbitration and outstanding when the arbitration began; or
 - (ii) paid before the tribunal made its award, in respect of any period up to the date of payment; or
 - (c) the outstanding amount of any amounts awarded, including any award of arbitration expenses or pre-award interest under paragraph (a) or (b) in respect of any period from the date of the award up to the date of payment.
- (2) An award ordering payment of interest may specify —
- (a) the interest rate; and
 - (b) the period for which interest is payable.
- (3) Unless the award otherwise directs, the award shall carry interest from the date of the award and at the same rate as a judgment debt in accordance with the relevant rules of court.
- (4) An award may make different interest provision in respect of different amounts.
- (5) Interest is to be calculated —
- (a) in the manner agreed by the parties; or

- (b) where there is no agreement, in a manner determined by the arbitral tribunal.
- (6) This section does not affect any other power of the tribunal to award interest.

Time for making award

- 59.** (1) Subject to section 76(9) and anything to the contrary provided in an arbitration agreement, an arbitral tribunal shall have power to make an award at any time.
- (2) The time, if any, limited for making an award, whether under this Law or otherwise, may from time to time be extended by order of the court whether that time has expired or not.

Extension of time for making award

- 60.** (1) Where the time for making an award is limited by the arbitration agreement, the court may by order extend that time, unless otherwise agreed by the parties.
- (2) An application for an order under this section may be made —
- (a) upon notice to the parties, by the arbitral tribunal; or
 - (b) upon notice to the arbitral tribunal and the other parties, by any party to the proceedings.
- (3) An application under this section shall not be made unless all available tribunal processes for application of extension of time have been exhausted.
- (4) The court shall not make an order under this section unless it is satisfied that substantial injustice would not otherwise be done.
- (5) The court may extend the time for such period and on such terms as it thinks fit, and may do so whether or not the time previously fixed by or under the arbitration agreement or by a previous order has expired.
- (6) The leave of the court shall be required for any appeal from a decision of the court under this section.

Interim awards

- 61.** Unless a contrary intention is expressed therein, every arbitration agreement shall, where such a provision is applicable to the reference, be deemed to contain a provision that an arbitral tribunal may, if it thinks fit, make an interim award.

Award on agreed terms

- 62.** (1) If, during arbitration proceedings, the parties settle the dispute, the arbitral tribunal shall terminate the proceedings and, if requested by the parties, and not objected to by the arbitral tribunal, record the settlement in the form of an arbitral award on agreed terms.
- (2) An arbitral award on agreed terms —



- (a) shall be made in accordance with section 63;
 - (b) shall state that it is an award; and
 - (c) shall have the same status and effect as any other award on the merits of the case.
- (3) An award on agreed terms may, with the leave of the 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.

Form and content of award

- 63.** (1) The award shall be made in writing and shall be signed —
- (a) in the case of a sole arbitrator, by the arbitrator himself; or
 - (b) in the case of two or more arbitrators, by all the arbitrators or the majority of the arbitrators if the reason for any omitted signature of any arbitrator is stated.
- (2) The award shall state the reasons upon which it is based, unless the parties have agreed that reasons are not to be stated or the award is an award on agreed terms under section 62.
- (3) The date of the award and the seat of the arbitration shall be stated in the award.
- (4) The award shall be deemed to have been made at the place of the arbitration.
- (5) After the award is made, a copy of the award signed by the arbitrators in accordance with subsection (1) shall be delivered to each party.
- (6) At the request of any party to an arbitration agreement, the appointing authority may certify an original award registered with it, certify a copy of any relevant original arbitration agreement or arrange for the translation and sworn certification of any award or agreement not stated in the English language.

Costs of arbitration

- 64.** (1) Unless a contrary intention is expressed, every arbitration agreement shall be deemed to include a provision that the costs of the arbitration shall be in the discretion of the arbitral tribunal.
- (2) If no provision is made by an award with respect to the costs of the arbitration, any party to the arbitration may, within fourteen days of the delivery of the award or such further time as the arbitral tribunal may allow, apply to the arbitral tribunal for a direction as to whom such costs shall be paid.
- (3) The arbitral tribunal shall, after giving the parties a reasonable opportunity to be heard, amend its award by including therein such directions as it thinks fit with respect to the payment of the costs of the arbitration.

Fees of arbitral tribunal

- 65.** (1) The parties are jointly and severally liable to pay to the arbitral tribunal such reasonable fees and expenses as are appropriate in the circumstances.
- (2) Unless the fees of the arbitral tribunal have been fixed by written agreement or such agreement has provided for a determination of the fees by a person or institution agreed to by the parties, any party to the arbitration may require that such fees be assessed by the court.

Costs of aborted arbitration

- 66.** (1) Unless otherwise agreed in writing by the parties to the arbitration agreement, where an arbitration is commenced but for any reason the arbitration fails, the court may, on the application of a party to the arbitration agreement or the arbitral tribunal, make such orders in relation to the costs of the arbitration as it thinks fit.
- (2) For the purposes of this section, an arbitration shall be deemed to have failed where —
- (a) no final award is made by the arbitral tribunal before the arbitration terminates; or
 - (b) an award made is wholly set aside by the court.

Power to withhold award in case of non-payment

- 67.** (1) Unless otherwise agreed by the parties, the arbitral tribunal may refuse to deliver an award to the parties if the parties have not made full payment of the fees and expenses of the arbitrators.
- (2) Where subsection (1) applies, a party to the arbitration proceedings may, upon notice to the other parties and the arbitral tribunal, apply to the court, which may order that —
- (a) the arbitral tribunal shall deliver the award upon payment into court by the applicant of the fees and expenses demanded, or such lesser amount as the court may specify;
 - (b) the amount of the fees and expenses demanded shall be assessable by the court; and
 - (c) out of the money paid into court, the arbitral tribunal shall be paid such fees and expenses as may be found to be properly payable and the balance of such money, if any, shall be paid out to the applicant.
- (3) An assessment of fees under this section shall be reviewed in the same manner as an assessment of costs.
- (4) The arbitral tribunal or any member thereof shall be entitled to appear and be heard on any assessment or review of an assessment under this section.



- (5) For the purpose of this section, the amount of fees and expenses properly payable is the amount the applicant is liable to pay under section 66 or under any agreement relating to the payment of fees and expenses of the arbitrators.
- (6) No application to the court may be made unless the court is satisfied that the applicant has first exhausted any available arbitral process for appeal or review of the amount of the fees or expenses demanded by the arbitrators.
- (7) This section shall apply to any arbitral tribunal or person vested with powers by the parties in relation to the delivery of the award by the tribunal and any reference to the fees and expenses of the arbitrators shall be construed as including the fees and expenses of that institution or person.
- (8) The leave of the court shall be required for an appeal from a decision of the court under this section.

Court may charge property for payment of legal practitioner's costs in arbitration

68. Unless otherwise agreed by the parties, the court may, where a legal practitioner has rendered services during arbitration proceedings, order that property recovered or preserved in the proceedings be charged as if the arbitration proceedings were a proceeding in the court, and the court may make declarations and orders accordingly.

Correction or interpretation of award and additional award

- 69.** (1) A party may, within thirty days of the receipt of an award, unless another period of time has been agreed upon by the parties —
- (a) upon notice to the other parties, request the arbitral tribunal to correct in the award any error in computation, any clerical or typographical error, or other error of similar nature; and
 - (b) upon notice to the other parties, request the arbitral tribunal to give an interpretation of a specific point or part of the award, if such request is also agreed to by the other parties.
- (2) If the arbitral tribunal considers the request in subsection (1) to be justified, the arbitral tribunal shall make such correction or give such interpretation within thirty days of the receipt of the request and such correction or interpretation shall form part of the award.
 - (3) The arbitral tribunal may correct any error of the type referred to in subsection (1)(a) or give an interpretation referred to in subsection (1)(b), on its own initiative, within thirty days of the date of the award.
 - (4) Unless otherwise agreed by the parties, a party may, within thirty days of receipt of the award and upon notice to the other party, request the arbitral tribunal to make an additional award as to claims presented during the arbitration proceedings but omitted from the award.

- (5) If the arbitral tribunal considers the request in subsection (4) to be justified, the tribunal shall make the additional award within sixty days of the receipt of such request.
- (6) The arbitral tribunal may, if necessary, extend, by thirty days, the period of time within which it shall —
 - (a) make a correction to an award;
 - (b) interpret an award; or
 - (c) make an additional award.
- (7) Section 63 shall apply to an award in respect of which a correction or interpretation has been made under this section and to an additional award.
- (8) Where a correction affects —
 - (a) another part of the corrected award; or
 - (b) any other award made by the arbitral tribunal relating to the substance of the dispute, expenses, interest or any other matter,the arbitral tribunal may make such consequential correction of that other part or award as it considers appropriate.

Effect of award

- 70.** (1) An award made by the arbitral tribunal pursuant to an arbitration agreement shall be final and binding on the parties and on any person 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.
- (2) Except as provided in section 69, upon an award being made, other than an interim award, 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 section 63.
- (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 Law.

PART X - POWER OF COURT IN RELATION TO AWARD

Determination of preliminary point of law

- 71.** (1) Unless otherwise agreed by the parties, the court may, on the application of a party to the arbitration proceedings who has given notice to the other parties, determine any question of law arising in the course of the proceedings that the court is satisfied substantially affects the rights of one or more of the parties.



- (2) The court shall not consider an application under this section unless —
 - (a) it is made with the agreement of all parties to the proceedings; or
 - (b) it is made with the permission of the arbitral tribunal and the court is satisfied that —
 - (i) the determination of the question is likely to produce substantial savings in costs; and
 - (ii) the application is made without delay.
- (3) The application shall identify the question of law to be determined and, except where it is made with the agreement of all parties to the proceedings, state the grounds on which the court should decide the question.
- (4) Unless otherwise agreed by the parties, the arbitral tribunal may continue the arbitral proceedings and make an award while an application to the court under this section is pending.
- (5) Except with the leave of the court, no appeal shall lie from a decision of the court on whether the conditions in subsection (2) are met.
- (6) The decision of the court on a question of law shall be a judgment of the court for the purposes of an appeal to the Court of Appeal.
- (7) The court may give leave to appeal against its decision in subsection (6) only if the question of law before it is one of general importance, or is one that for some other special reason should be considered by the Court of Appeal.
- (8) The parties may agree to exclude the provisions of this section.

Award may be enforced like judgment or order of court

- 72.** (1) An award made by the arbitral tribunal pursuant to an arbitration agreement may, with leave of the court, be enforced in the same manner as a judgment or order of the court to the same effect.
- (2) Where leave is given, judgment may be entered in terms of the award.
 - (3) Leave to enforce an award shall not be given where, or to the extent that, the person against whom it is sought to be enforced shows that the arbitral tribunal lacked jurisdiction to make the award.
 - (4) Nothing in this section affects the recognition or enforcement of an award under any other written law or rule of law and in particular the provisions of the *Foreign Arbitral Awards Enforcement Law, 1997* relating to the recognition and enforcement of awards under the New York Convention or by an action on the award.
 - (5) An arbitral award, irrespective of the country in which it was made, shall be recognised as binding and, upon application to the court, shall be enforced subject (whether or not it is a convention award) to the provisions of sections 6 and 7 of the *Foreign Arbitral Awards Enforcement Law, (1997 Revision)*.

No jurisdiction to review, confirm, vary, set aside or remit award

73. Unless provided in this Law the court shall not have jurisdiction to review, confirm, vary, set aside or remit an award based on an arbitration agreement.

Power of court to give relief where arbitrator is not impartial or the dispute involves a question of fraud, etc.

74. (1) Where —

- (a) an agreement between the parties provides that disputes that may arise in the future between them shall be referred to an arbitrator named or designated in the agreement; and
- (b) after a dispute has arisen any party applies, on the ground that the arbitrator so named or designated is not or may not be impartial, for leave to revoke the authority of the arbitrator or for an injunction to restrain the other party or the arbitrator from proceeding with the arbitration,

it shall not be a ground for refusing the application that the party at the time when he made the agreement knew, or ought to have known, that the arbitrator, by reason of his relation towards any other party to the agreement or of his connection with the subject referred, might not be capable of impartiality.

- (2) Where an agreement between the parties provides that disputes that may arise in the future between them shall be referred to arbitration, and a dispute that arises involves the question whether any party has been guilty of fraud or of any other offence which affects the legality of the agreement, the court shall, so far as may be necessary to enable that question to be determined by the court, have power to order that the agreement shall cease to have effect and power to give leave to revoke the authority of the arbitrator appointed by virtue of the agreement.
- (3) Where by virtue of this section the court has power to order that an arbitration agreement shall cease to have effect or to give leave to revoke the authority of an arbitrator, the court may refuse to stay any action brought in breach of the agreement.

Court may set aside award

75. (1) An award may be set aside by the court —

- (a) if the party who applies to the court to set aside the award proves to the satisfaction of the court that —
 - (i) a party to the arbitration agreement was under an incapacity or placed under duress to enter into an arbitration agreement;



- (ii) the arbitration agreement is not valid under the law to which the parties have subjected it, or failing any indication thereof, under the laws of the Islands;
 - (iii) the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitration proceedings or was otherwise unable to present his case;
 - (iv) the award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or contains decisions on matters beyond the scope of the submission to arbitration;
 - (v) the composition of the arbitral tribunal or the arbitral procedure is not in accordance with the agreement of the parties, unless such agreement is contrary to any provisions of this Law from which the parties cannot derogate, or, in the absence of such agreement, is contrary to the provisions of this Law;
 - (vi) the making of the award was induced or affected by fraud, corruption or misconduct on the part of an arbitrator; or
 - (vii) 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; or
- (b) if the court finds that —
- (i) the subject-matter of the dispute is not capable of settlement by arbitration under this Law; or
 - (ii) the award is contrary to public policy.
- (2) An application to set aside an award may not be made after the expiry of thirty days from the date on which the party making the application had received the award, or if a request has been made under section 69, from the date on which that request had been disposed of by the arbitral tribunal.
- (3) When a party applies to the court to set aside an award under this section, the court may, where appropriate and so requested by a party, suspend the proceedings for setting aside an award, for such period of time as it may determine, to allow the arbitral tribunal to resume the arbitration proceedings or take such other action as may eliminate the grounds for setting aside an award.

Appeal against award

- 76.** (1) A party to arbitration proceedings may, with the leave of the court, and upon notice to the other party and to the arbitral tribunal, appeal to the court on a question of law arising out of an award made in the proceedings.

- (2) Notwithstanding subsection (1), the parties may agree to exclude the provisions of this section.
- (3) The right to appeal under this section shall be subject to the restrictions in section 78.
- (4) Leave to appeal shall be given only if the court is satisfied that —
 - (a) the determination of the question will substantially affect the rights of one or more of the parties;
 - (b) the question is one that the arbitral tribunal was asked to determine;
 - (c) on the basis of the findings of fact in the award —
 - (i) the decision of the arbitral tribunal on the question is obviously wrong; or
 - (ii) the question is one of general public importance and the decision of the arbitral tribunal is at least open to serious doubt; and
 - (d) despite the agreement of the parties to resolve the matter by arbitration, it is just and proper in all the circumstances for the court to determine the question.
- (5) An application for leave to appeal under this section shall identify the question of law to be determined and state the grounds on which it is alleged that leave to appeal should be granted.
- (6) The leave of the court shall be required for any appeal from a decision of the court under this section to grant or refuse leave to appeal.
- (7) On an appeal under this section, the court may by order —
 - (a) confirm the award;
 - (b) vary the award;
 - (c) remit the award to the arbitral tribunal, in whole or in part, for reconsideration in the light of the court's determination; or
 - (d) set aside the award in whole or in part.
- (8) Where an award is remitted under subsection (7)(c), the arbitral tribunal shall, unless the order otherwise directs, make its award within three months after the date of the order.
- (9) The court shall not exercise its power to set aside an award, in whole or in part, unless it is satisfied that it would be inappropriate to remit the matters in question to the arbitral tribunal for reconsideration.
- (10) The decision of the court on an appeal under this section shall be treated as a judgment of the court for the purposes of an appeal to the Court of Appeal.
- (11) An application for leave to appeal against the decision of the court in subsection (10) shall be made to the Court of Appeal and the Court of Appeal may give leave to appeal only if the question of law before it is one of general



importance, or one that for some other special reason should be considered by the Court of Appeal.

Supplementary provisions to appeal under sections 75 and 76

- 77.** (1) This section shall apply to an application or appeal under section 75 and 76.
- (2) An application or appeal may not be brought if the applicant or appellant has not first exhausted —
- (a) every available arbitral process of appeal or review; and
 - (b) every available recourse under section 69.
- (3) An application or appeal shall be brought within one month of the date of the award or, if there has been any arbitral process of appeal or review, of the date when the applicant or appellant was notified of the result of that process.
- (4) If on an application or appeal it appears to the court that the award —
- (a) does not contain the arbitral tribunal's reasons; or
 - (b) does not set out the arbitral tribunal's reasons in sufficient detail to enable the court to properly consider the application or appeal,
- the court may order the arbitral tribunal to state the reasons for its award in sufficient detail for that purpose.
- (5) Where the court makes an order under subsection (4), it may make such further order as it thinks fit with respect to any additional costs of the arbitration resulting from its order.
- (6) The court may order the applicant or appellant to provide security for the costs of the application or appeal, and may direct that the application or appeal be dismissed if the order is not complied with.
- (7) The power to order security for costs shall not be exercised by reason only that the applicant or appellant is —
- (a) an individual ordinarily resident outside the Islands; or
 - (b) a corporation or association incorporated or formed under the law of a country outside the Islands or whose central management and control is exercised outside the Islands.
- (8) The court may order that any money payable under the award shall be brought into court or otherwise secured pending the determination of the application or appeal, and may direct that the application or appeal be dismissed if the order is not complied with.
- (9) The court may grant leave to appeal subject to conditions to the same or similar effect as an order under subsection (6) or (8) and this shall not affect the general discretion of the court to grant leave subject to conditions.

Effect of order of court in relation to award

- 78.** (1) Where the court makes an order under section 71, 75 or 76 with respect to an award, subsections (2), (3) and (4) shall apply.
- (2) Where the award is varied by the court, the variation shall have effect as part of the arbitral tribunal's award.
- (3) Where the award is remitted to the arbitral tribunal, in whole or in part, for reconsideration, the tribunal shall make a fresh award in respect of the matters remitted within three months of the date of the order for remission or such longer or shorter period as the court may direct.
- (4) Where the award is set aside or declared to be of no effect, in whole or in part, the court may also order that any provision that an award is a condition precedent to the bringing of legal proceedings in respect of a matter to which the arbitration agreement applies, shall be of no effect as regards the subject matter of the award or the relevant part of the award.

PART XI - MISCELLANEOUS**Notice and other requirements in connection with legal proceedings**

- 79.** (1) References in this Law to an application, appeal or other step in relation to legal proceedings being taken upon notice to the other parties to the arbitration proceedings, or to the arbitral tribunal, are references to such notice of the originating process as is required by Rules of Court.
- (2) Subject to any provision under Rules of Court, a requirement to give notice to the arbitral tribunal of legal proceedings shall be construed —
- (a) if there is more than one arbitrator, as a requirement to give notice to each of them; and
- (b) if the arbitral tribunal is not fully constituted, as a requirement to give notice to any arbitrator who has been appointed.
- (3) References in this Law to making an application or appeal to the court within a specified period are references to the issue within that period of the appropriate originating process in accordance with Rules of Court.
- (4) Where any provision of this Law requires an application or appeal to be made to the court within a specified time, the Rules of Court relating to the reckoning of periods, the extending or abridging of periods, and the consequences of not taking a step within the period prescribed by the Rules, shall apply in relation to that requirement.
- (5) Rules of Court may be made amending the provisions of this Law —



- (a) with respect to the time within which any application or appeal to the court shall be made; or
- (b) in order to keep any provision made by this Law in relation to arbitral proceedings in step with the corresponding provision of the Rules of Court applying in relation to proceedings in the court.

Powers of court and Clerk of the Court

80. Rules of Court may be made for conferring on the Clerk of the Court or other officer of the court, all or any of the jurisdiction conferred by this Law on the court.

Arbitral proceedings shall be private and confidential

- 81.** (1) An arbitral tribunal shall conduct the arbitral proceedings in private and confidentially.
- (2) Disclosure by the arbitral tribunal or a party of confidential information relating to the arbitration shall be actionable as a breach of an obligation of confidence unless the disclosure —
- (a) is authorised, expressly or impliedly, by the parties or can reasonably be considered as having been so authorised;
 - (b) is required by the tribunal or is otherwise made to assist or enable the tribunal to conduct the arbitration;
 - (c) is required —
 - (i) in order to comply with any enactment or rule of law;
 - (ii) for the proper performance of the discloser's public functions; or
 - (iii) in order to enable any public body or office-holder to perform public functions properly;
 - (d) can reasonably be considered as being needed to protect a party's lawful interests;
 - (e) is in the public interest;
 - (f) is necessary in the interests of justice; or
 - (g) is made in circumstances in which the discloser would have absolute privilege had the disclosed information been defamatory.
- (3) The arbitral tribunal and the parties shall take reasonable steps to prevent unauthorised disclosure of confidential information by any third party involved in the conduct of the arbitration.
- (4) The arbitral tribunal shall, at the outset of the arbitration, inform the parties of the obligations which this rule imposes on them.

Rules of court

82. Rules of Court may be made regulating the practice and procedure of any court in respect of any matter under this Law.

Court proceedings to be heard in open court

83. Proceedings under this Law in any court shall be heard in open court unless a party makes an application for those proceedings to be heard otherwise.

Restrictions on reporting of proceedings heard otherwise than in open court

- 84.** (1) A court hearing any proceedings otherwise than in open court 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.
- (2) A court shall not give a direction under subsection (1) 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.
- (3) Notwithstanding subsection (2), 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 such period, not exceeding ten years, as it considers appropriate.

Service of notices

- 85.** (1) Parties may agree on the manner of service of any notice or other document required or authorised to be given or served in pursuance of the arbitration agreement or for the purposes of the arbitration proceedings.
- (2) If or to the extent that there is no such agreement as referred to in subsection (1), subsections (3) and (4) applies.



- (3) A notice or other document may be served on a person by any method which is likely to bring it to the attention of the recipient.
- (4) If a notice or other document is addressed, prepaid and delivered by post —
 - (a) to the addressee's usual or last known place of residence or, if he is or has been carrying on a trade, profession or business, his usual or last known place of business; or
 - (b) if the addressee is a body corporate, to the registered office of the body corporate,it shall be treated as effectively served.
- (5) This section does not apply to the service of documents for the purposes of legal proceedings, for which provision is made by Rules of Court.
- (6) References in this Part to a notice or other document include any form of communication in writing and references to giving or serving a notice or other document shall be construed accordingly.

Reckoning periods of time

- 86.** (1) Parties may agree on the method of reckoning periods of time for the purposes of —
- (a) any provision agreed by them; or
 - (b) any provision of this Law having effect in default of such agreement.
- (2) If or to the extent that the parties have not agreed on the method of reckoning time, periods of time shall be reckoned in accordance with this section.
 - (3) Where an act is required to be done within a specified period after or from a specified date, the period shall begin immediately after that date.
 - (4) Where an act is required to be done within or not less than a specified period before a specified date, the period shall end immediately before that date.
 - (5) Where an act is required to be done within a specified number of days after a specified date, at least that number of days shall intervene between the day on which that act is done and that date.
 - (6) Where the period in question being a period of seven days or less would include a Saturday, Sunday or a public general holiday, that day shall be excluded.

Law to bind Crown.

- 87.** This Law binds the Crown.

Regulations and rules

- 88.** (1) The Governor in Cabinet may make regulations and rules generally as he considers necessary for giving effect to the purposes of this Law.

- (2) Without derogating from the generality of subsection (1) the Governor in Cabinet may make regulations and rules respecting the establishment, procedures, powers and functions of an arbitral tribunal.

Repeal and transitional provisions

- 89.** (1) The *Arbitration Law (2001 Revision)* is repealed.
- (2) An arbitration commenced under the *Arbitration Law (2001 Revision)* and any court proceedings relating to any such arbitration may be continued and completed and enforced as if that Law was still in force.



SCHEDULE

(Section 4(2))

Model Arbitration Clause

1. Where an issue arises between the parties to a contract, the claimant party shall communicate in writing to the respondent party the particulars of the issue and the remedy sought.
2. The respondent party shall be given ten days within which to respond in writing to the particulars of the issue.
3. If the claimant party is dissatisfied with the response, then the issue shall be resolved by arbitration in accordance with the provisions of the *Cayman Islands Arbitration Law, 2012*.
4. In the conduct of the arbitral proceedings, the parties may stipulate that-
 - (a) the language of the arbitration shall be English;
 - (b) the seat of the arbitration shall be the Cayman Islands;
 - (c) there shall be one arbitrator;
 - (d) the appointing authority may, based on mutual agreement, be chosen by the parties or in the absence of such agreement, the court may designate an appointing authority.
5. In this arbitration clause-
“issue” in relation to a contract includes-
 - (a) a dispute;
 - (b) a controversy;
 - (c) a claim;
 - (d) a breach;
 - (e) termination; or
 - (f) invalidity.

Passed by the Legislative Assembly the 5th day of April, 2012.

Mary J. Lawrence, JP
Speaker.

Zena Merren-Chen
Clerk of the Legislative Assembly.

