



**SUPPLEMENT PART I**

**OFFICIAL GAZETTE**

**THE BAHAMAS**

**PUBLISHED BY AUTHORITY**

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NASSAU

31<sup>st</sup> December, 2009

No. 52

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# ARBITRATION ACT, 2009

## Arrangement of Sections

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No. 42 of 2009

## **ARBITRATION ACT, 2009**

**AN ACT TO RESTATE AND IMPROVE THE LAW RELATING TO  
ARBITRATION PURSUANT TO AN ARBITRATION AGREEMENT; TO  
MAKE OTHER PROVISION RELATING TO ARBITRATION AND  
ARBITRATION AWARDS; AND FOR OTHER MATTERS RELATED  
THERE TO.**

[Date of Assent - 31<sup>st</sup> December, 2009]

**Enacted by the Parliament of The Bahamas.**

### **PART I—PRELIMINARY**

#### **1. Short title and commencement.**

- (1) This Act may be cited as the Arbitration Act, 2009.
- (2) This Act shall come into operation on such day as the Minister may, by notice publish in the Gazette, appoint.

#### **2. Interpretation.**

- (1) In this Act —

**“arbitration agreement”** means an agreement by the 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 contractual or not; and may be in the form of an arbitration clause in a contract or in the form of a separate agreement;

**“arbitrator”**, unless the context otherwise requires, includes an umpire;

**"available arbitral process"**, in relation to any matter, includes any process of appeal to or review by an arbitral or other institution or person vested by the parties with powers in relation to that matter;

**"claimant"**, unless the context otherwise requires, includes a counter-claimant, and related expressions shall be construed accordingly;

**"court"** means the Supreme Court;

**"dispute"** includes any difference;

**"legal proceedings"** means civil proceedings in the Supreme Court;

**"Minister"** means the Attorney-General and Minister of Legal Affairs;

**"peremptory order"** means an order made under section 52(5) or made in exercise of any corresponding power conferred by the parties;

**"premises"** includes land, buildings, moveable structures, vehicles, vessels and aircraft;

**"question of law"** means a question of the law of The Bahamas;

**"seat of the arbitration"** means the juridical seat of the arbitration designated —

- (a) by the parties to the arbitration agreement; or
- (b) by an arbitral or other institution or person vested by the parties with powers in that regard; or
- (c) by the arbitral tribunal if so authorised by the parties,

or determined, in the absence of any such designation, having regard to the parties' agreement and all the relevant circumstances;

**"substantive jurisdiction"**, in relation to an arbitral tribunal, refers to the matters specified in section 41(1) (a) to (c), and references to the tribunal exceeding its substantive jurisdiction shall be construed accordingly.

- (2) The reference in an agreement to a written form of arbitration clause or to a document containing an arbitration clause constitutes an arbitration agreement if the reference is such as to make that clause part of the agreement.
- (3) References in this Act to a party to an arbitration agreement include any person claiming under or through a party to the agreement.

### 3. General principles.

The provisions in this Act 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 tribunal without unnecessary delay or 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;
- (c) in matters governed by this Act the court should not intervene except as provided in this Act.

#### **4. Application.**

- (1) The provisions of this Act apply where the seat of the arbitration is in The Bahamas.
- (2) The following sections apply even if the seat of the arbitration is outside The Bahamas or no seat has been designated or determined —
  - (a) sections 9 to 11;
  - (b) sections 65, 66;
  - (c) section 67; and
  - (d) section 88.
- (3) The powers conferred by the following sections apply even if the seat of the arbitration is outside The Bahamas or no seat has been designated or determined —
  - (a) section 54; and
  - (b) section 55;but the court may refuse to exercise any such power if, in the opinion of the court, the fact that the seat of the arbitration is outside The Bahamas, or that when designated or determined the seat is likely to be outside The Bahamas, makes it inappropriate to do so.
- (4) The court may exercise a power conferred by any provision of this Act not mentioned in subsection (2) or (3) for the purpose of supporting the arbitral process where —
  - (a) no seat of the arbitration has been designated or determined; and
  - (b) by reason of a connection with The Bahamas the court is satisfied that it is appropriate to do so.
- (5) Sections 7 and 8 apply where the law applicable to the arbitration agreement is the law of The Bahamas even if the seat of the arbitration is outside The Bahamas or has not been designated or determined.

#### **5. Mandatory and non-mandatory provisions.**

- (1) The following mandatory provisions of this Act shall have effect notwithstanding any agreement to the contrary —



Sections 9, 10, 11, 12, 13, 35, 37(1), 39, 40, 42, 43, 44, 48(2), 51, 54, 78, 82, 88, (89, 90, 92 and 93 in so far as they relate to the aforementioned sections), 94, 95 and 96.

- (2) The other provisions of this Act ("the non-mandatory provisions") allow the parties to make their own arrangements by agreement but provide rules which apply in the absence of such agreement.

## **PART II – ARBITRATION AGREEMENT**

### **6. Agreements to be in writing.**

- (1) An arbitration agreement shall be in writing.
- (2) An arbitration agreement is in writing if its content is recorded in any form, whether or not the arbitration agreement or contract has been concluded orally, by conduct or by other means.
- (3) The requirement that an arbitration agreement be in writing is met by an electronic communication if the information contained therein is accessible so as to be usable for subsequent reference.
- (4) An arbitration agreement is in writing if it is contained in an exchange of statements of claim and defence in which the existence of an agreement is alleged by one party and not denied by the other.
- (5) The reference in a contract to any document containing an arbitration clause constitutes an arbitration agreement in writing, provided that the reference is such as to make that clause part of the contract.
- (6) In this section —  
    **"electronic communication"** means any communication that the parties make by means of data messages;  
    **"data message"** means information generated, sent, received or stored by electronic, magnetic, optical or similar means, including, but not limited to, electronic data interchange (EDI), electronic mail, telegram, telex or telecopy.

### **7. Separability of arbitration agreement.**

Unless otherwise agreed by the parties, an arbitration agreement which forms or was intended to form part of another agreement (whether or not in writing) shall not be regarded as invalid, non-existent or ineffective because that other agreement is invalid, or did not come into existence or has become ineffective, and it shall for that purpose be treated as a distinct agreement.

**8. Whether agreement discharged by death of a party.**

- (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) Subsection (1) does not affect the operation of any written law or rule of law by virtue of which a substantive right or obligation is extinguished by death.

**PART III –STAY OF LEGAL PROCEEDINGS**

**9. Stay of legal proceedings.**

- (1) A party to an arbitration agreement against whom legal proceedings are brought (whether by way of claim or counterclaim) in respect of a matter which under the agreement is to be referred to arbitration may (upon notice to the other parties to the proceedings) apply to the court in which the proceedings have been brought to stay the proceedings so far as they concern that matter.
- (2) An application may be made notwithstanding that the matter is to be referred to arbitration only after the exhaustion of other dispute resolution procedures.
- (3) An application may not be made by a person before taking the appropriate procedural step (if any) to acknowledge the legal proceedings against him or after he has taken any step in those proceedings to answer the substantive claim.
- (4) On application under this section the court shall grant a stay unless satisfied that the arbitration agreement is null and void, inoperative, or incapable of being performed.
- (5) If the court refuses to stay the legal proceedings, any provision that an award is a condition precedent to the bringing of legal proceedings in respect of any matter is of no effect in relation to those proceedings.

**10. Reference of Interpleader issue to arbitration.**

- (1) Where in legal proceedings relief by way of interpleader is granted and any issue between the claimants is one in respect of which there is an arbitration agreement between them, the court granting the relief shall direct that the issue be determined in accordance with the agreement unless the circumstances are such that proceedings brought by a claimant in respect of the matter would not be stayed.

- (2) Where subsection (1) applies but the court does not direct that the issue be determined in accordance with the arbitration agreement, any provision that an award is a condition precedent to the bringing of legal proceedings in respect of any matter shall not affect the determination of that issue by the court.

**11. Retention of security where Admiralty proceedings stayed.**

- (1) Where Admiralty proceedings are stayed on the ground that the dispute in question should be submitted to arbitration, the court granting the stay may, if in those proceedings property has been arrested or bail or other security has been given to prevent or obtain release from arrest —
  - (a) order that the property arrested be retained as security for the satisfaction of any award given in the arbitration in respect of that dispute, or
  - (b) order that the stay of those proceedings be conditional on the provision of equivalent security for the satisfaction of any such award.
- (2) Subject to any provision made by rules of court and to any necessary modifications, the same law and practice shall apply in relation to property retained in pursuance of an order as would apply if it were held for the purposes of proceedings in the court making the order.

**PART IV—COMMENCEMENT OF ARBITRAL PROCEEDINGS**

**12. Power of court to extend time for beginning arbitral proceedings &c**

- (1) Where an arbitration agreement to refer future disputes to arbitration provides that a claim shall be barred, or the claimant's right extinguished, unless the claimant takes within a time fixed by the agreement some step —
  - (a) to begin arbitral proceedings, or
  - (b) to begin other dispute resolution procedures which must be exhausted before arbitral proceedings can be begun,the court may by order extend the time for taking that step.
- (2) Any party to the arbitration agreement may apply for such an order (upon notice to the other parties), but only after a claim has arisen and after exhausting any available arbitral process for obtaining an extension of time.

- (3) The court shall make an order only if satisfied —
  - (a) that the circumstances are such as were outside the reasonable contemplation of the parties when they agreed the provision in question, and that it would be just to extend the time, or
  - (b) that the conduct of one party makes it unjust to hold the other party to the strict terms of the provision in question.
- (4) 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 agreement or by a previous order) has expired.
- (5) An order under this section does not affect the operation of the Limitation Act (Ch. 83).
- (6) The leave of the court is required for any appeal from a decision of the court under this section.

**13. Application of Limitation Act.**

- (1) The Limitation Act (Ch. 83) apply to arbitral proceedings as they apply to legal proceedings.
- (2) The court may order that in computing the time prescribed by the Limitation Act for the commencement of proceedings (including arbitral proceedings) in respect of a dispute which was the subject matter —
  - (a) of an award which the court orders to be set aside or declares to be of no effect, or
  - (b) of the affected part of an award which 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 Act 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.

**14. Commencement of arbitral proceedings.**

- (1) The parties are free to agree when arbitral proceedings are to be regarded as commenced for the purposes of this Act and for the purposes of the Limitation Act.
- (2) If there is no such agreement the following provisions apply.
- (3) Where the arbitrator is named or designated in the arbitration agreement, arbitral proceedings are commenced in respect of a matter when one party serves on the other party or parties a notice in writing requiring him or them to submit that matter to the person so named or designated.

- (4) Where the arbitrator or arbitrators are to be appointed by the parties, arbitral proceedings are commenced in respect of a matter when one party serves on the other party or parties notice in writing requiring him or them to appoint an arbitrator or to agree to the appointment of an arbitrator in respect of that matter.
- (5) Where the arbitrator or arbitrators are to be appointed by a person other than a party to the proceedings, arbitral proceedings are commenced in respect of a matter when one party gives notice in writing to that person requesting him to make the appointment in respect of that matter.

## **PART V—CONFIDENTIAL INFORMATION**

### **15. Definitions.**

In this Part —

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

- (a) means information that relates to the arbitral proceedings or to an award made in those proceedings; and
- (b) includes —
  - (i) the statement of claim, statement of defence, and all other pleadings, submissions, statements, or other information supplied to the arbitral tribunal by a party;
  - (ii) any evidence (whether documentary or otherwise) supplied to the arbitral tribunal;
  - (iii) any notes made by the arbitral tribunal of oral evidence or submissions given before the arbitral tribunal;
  - (iv) any transcript of oral evidence or submissions given before the arbitral tribunal;
  - (v) any rulings of the arbitral tribunal;
  - (vi) any award of the arbitral tribunal;

**“Court”** means the Supreme Court and the Court of Appeal; but does not include an arbitral tribunal;

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

**“proceedings”** includes all matters brought before the Court under this Act (for example, an application to enforce an arbitral award).

**16. Application of sections 17 to 25.**

Except as the parties may otherwise agree in writing (whether in the arbitration agreement or otherwise), sections 17 to 25 apply to every arbitration for which the place of arbitration is, or would be, The Bahamas.

**17. Arbitral proceedings must be private.**

An arbitral tribunal must conduct the arbitral proceedings in private.

**18. Arbitration agreements deemed to prohibit disclosure.**

Subject to section 19 every arbitration agreement to which this section applies is deemed to provide that the parties and the arbitral tribunal must not disclose confidential information.

**19. Limits on prohibition on disclosure.**

A party or an arbitral tribunal may disclose confidential information —

- (a) to a professional or other adviser of any of the parties;
- (b) if both of the following matters apply —
  - (i) the disclosure is necessary —
    - (A) to ensure that a party has a full opportunity to present the party's case;
    - (B) for the establishment or protection of a party's legal rights in relation to a third party; or
    - (C) for the making and prosecution of an application to the Court under this Act; and
  - (ii) the disclosure is no more than what is reasonably required to serve any of the purposes referred to in subparagraph (i) (A) to (C);
- (c) if the disclosure is in accordance with an order made, or a subpoena issued, by the Court;
- (d) if both of the following matters apply —
  - (i) the disclosure is authorised or required by law (except this Act) or required by a competent regulatory body; and
  - (ii) the party who, or the arbitral tribunal that, makes the disclosure provides to the other party and the arbitral tribunal or, as the case may be, the parties, written details of the disclosure (including an explanation of the reasons for the disclosure); or

- (e) if the disclosure is in accordance with an order made by —
  - (i) an arbitral tribunal under section 20; or
  - (ii) the Supreme Court under section 21.

**20. Arbitral tribunal may allow disclosure.**

- (1) This section applies if —
  - (a) a question arises in any arbitral proceedings as to whether confidential information should be disclosed other than as authorised under section 19(a) to (d); and
  - (b) at least one of the parties agrees to refer that question to the arbitral tribunal concerned.
- (2) The arbitral tribunal, after giving each of the parties an opportunity to be heard, may make or refuse to make an order allowing all or any of the parties to disclose confidential information.

**21. When Supreme Court may allow or prohibit disclosure.**

- (1) The Supreme Court may make an order allowing a party to disclose any confidential information —
  - (a) on the application of that party, which application may be made only if the mandate of the arbitral tribunal has been terminated; or
  - (b) on an appeal by that party, after an order under section 20(2) allowing that party to disclose the confidential information has been refused by an arbitral tribunal.
- (2) The Supreme Court may make an order under subsection (1) only if —
  - (a) it is satisfied, in the circumstances of the particular case, that the public interest in preserving the confidentiality of arbitral proceedings is outweighed by other considerations that render it desirable in the public interest for the confidential information to be disclosed; and
  - (b) the disclosure is no more than what is reasonably required to serve the other considerations referred to in paragraph (a).
- (3) The Supreme Court may make an order prohibiting a party (party A) from disclosing confidential information on an appeal by another party (party B) who unsuccessfully opposed an application by party A for an order under section 20(2) allowing party A to disclose confidential information.
- (4) The Supreme Court may make an order under this section only if it has given each of the parties an opportunity to be heard.

- (5) The Supreme Court may make an order under this section —
  - (a) unconditionally; or
  - (b) subject to any conditions it thinks fit.
- (6) To avoid doubt, the Supreme Court may, in imposing any conditions under subsection (5)(b), include a condition that the order ceases to have effect at a specified stage of the appeal proceedings.
- (7) The decision of the Supreme Court under this section is final.

**22. Court proceedings under Act must be conducted in public except in a certain circumstances.**

- (1) The Court must conduct proceedings under this Act in public unless the Court makes an order that the whole or any part of the proceedings must be conducted in private.
- (2) The Court may make an order under subsection (1) —
  - (a) on the application of any party to the proceedings; and
  - (b) only if the Court is satisfied that the public interest in having the proceedings conducted in public is outweighed by the interests of any party to the proceedings in having the whole or any part of the proceedings conducted in private.
- (3) If an application is made for an order under subsection (1), the fact that the application had been made, and the contents of the application, must not be made public until the application is determined.

**23. Applicant must state reasons for seeking order.**

An applicant for an order under section 22 must state in the application —

- (a) whether the applicant is seeking an order for the whole or part of the proceedings to be conducted in private; and
- (b) the applicant's reasons for seeking the order.

**24. Matters that Court must consider in determining application.**

In determining an application for an order under section 22, the Court must consider all of the following matters —

- (a) the open justice principle;
- (b) the privacy and confidentiality of arbitral proceedings;
- (c) any other public interest considerations;
- (d) the terms of any arbitration agreement between the parties to the proceedings; and
- (e) the reasons stated by the applicant under section 23(b).



**25. Effect of order**

- (1) If an order is made under section 22 —
  - (a) no person may search, inspect or copy any file or any documents on a file in any office of the Court relating to the proceedings for which the order was made; and
  - (b) the Court must not include in the Court's decision on the proceedings any particulars that could identify the parties to those proceedings.
- (2) An order remains in force for the period specified in the order or until it is sooner revoked by the Court on the further application of any party to the proceedings.

**PART VI– THE ARBITRAL TRIBUNAL**

**26. The arbitral tribunal.**

- (1) The parties are free to agree on the number of arbitrators to form the tribunal and whether there is to be a chairman or umpire.
- (2) Unless otherwise agreed by the parties, an agreement that the number of arbitrators shall be two or any other even number shall be understood as requiring the appointment by the parties of an additional arbitrator as chairman of the tribunal.
- (3) If there is no agreement as to the number of arbitrators, the tribunal shall consist of a sole arbitrator.

**27. Procedure for appointment of arbitrators.**

- (1) The parties are free to agree on the procedure for appointing the arbitrator or arbitrators, including the procedure for appointing any chairman or umpire.
- (2) If or to the extent that there is no such agreement, the following provisions apply.
- (3) If the tribunal is to consist of a sole arbitrator, the parties shall jointly appoint the arbitrator not later than 28 days after service of a request in writing by either party to do so.
- (4) If the tribunal is to consist of two arbitrators, each party shall appoint one arbitrator not later than 14 days after service of a request in writing by either party to do so.
- (5) If the tribunal is to consist of three arbitrators —

- (a) each party shall appoint one arbitrator not later than 14 days after service of a request in writing by either party to do so, and
  - (b) the two so appointed shall forthwith appoint a third arbitrator as the chairman of the tribunal.
- (6) If the tribunal is to consist of two arbitrators and an umpire —
- (a) each party shall appoint one arbitrator not later than 14 days after service of a request in writing by either party to do so, and
  - (b) the two so appointed may appoint an umpire at any time after they themselves are appointed and shall do so before any substantive hearing or forthwith if they cannot agree on a matter relating to the arbitration.
- (7) In any other case (in particular, if there are more than two parties) section 29 applies as in the case of a failure of the agreed appointment procedure.

**28. Power in case of default to appoint sole arbitrator.**

- (1) Unless the parties otherwise agree, where each of two parties to an arbitration agreement is to appoint an arbitrator and one party (“the party in default”) refuses to do so, or fails to do so within the time specified, the other party, having duly appointed his arbitrator, may give notice in writing to the party in default that he proposes to appoint his arbitrator to act as sole arbitrator.
- (2) If the party in default does not within 7 clear days of that notice being given —
- (a) make the required appointment, and
  - (b) notify the other party that he has done so,
- the other party may appoint his arbitrator as sole arbitrator whose award shall be binding on both parties as if he had been so appointed by agreement.
- (3) Where a sole arbitrator has been appointed under subsection (2), the party in default may (upon notice to the appointing party) apply to the court which may set aside the appointment.
- (4) The leave of the court is required for any appeal from a decision of the court under this section.

**29. Failure of appointment procedure.**

- (1) The parties are free to agree what is to happen in the event of a failure of the procedure for the appointment of the arbitral tribunal and there is no failure if an appointment is duly made under section 28 unless that appointment is set aside.

- (2) If or to the extent that there is no such agreement any party to the arbitration agreement may (upon notice to the other parties) apply to the court to exercise its powers under this section.
- (3) Those powers are —
  - (a) to give directions as to the making of any necessary appointments;
  - (b) to direct that the tribunal shall be constituted by such appointments (or any one or more of them) as have been made;
  - (c) to revoke any appointments already made;
  - (d) to make any necessary appointments itself.
- (4) An appointment made by the court under this section has effect as if made with the agreement of the parties.
- (5) The leave of the court is required for any appeal from a decision of the court under this section.

**30. Court to have regard to agreed qualifications.**

In deciding whether to exercise, and in considering how to exercise, any of its powers under section 27 or 29, the court shall have due regard to any agreement of the parties as to the qualifications required of the arbitrators.

**31. Chairman.**

- (1) Where the parties have agreed that there is to be a chairman, they are free to agree what the functions of the chairman are to be in relation to the making of decisions, orders and awards.
- (2) If or to the extent that there is no such agreement, the following provisions apply.
- (3) Decisions, orders and awards shall be made by all or a majority of the arbitrators (including the chairman).
- (4) The view of the chairman shall prevail in relation to a decision, order or award in respect of which there is neither unanimity nor a majority under subsection (3).

**32. Umpire.**

- (1) Where the parties have agreed that there is to be an umpire, they are free to agree what the functions of the umpire are to be, and in particular —
  - (a) whether he is to attend the proceedings, and
  - (b) when he is to replace the other arbitrators as the tribunal with power to make decisions, orders and awards.
- (2) If or to the extent that there is no such agreement, the following provisions apply.

- (3) The umpire shall attend the proceedings and be supplied with the same documents and other materials as are supplied to the other arbitrators.
- (4) Decisions, orders and awards shall be made by the other arbitrators unless and until they cannot agree on a matter relating to the arbitration and in that event they shall forthwith give notice in writing to the parties and the umpire, whereupon the umpire shall replace them as the tribunal with power to make decisions, orders and awards as if he were sole arbitrator.
- (5) If the arbitrators cannot agree but fail to give notice of that fact, or if any of them fails to join in the giving of notice, any party to the arbitral proceedings may (upon notice to the other parties and to the tribunal) apply to the court which may order that the umpire shall replace the other arbitrators as the tribunal with power to make decisions, orders and awards as if he were sole arbitrator.
- (6) The leave of the court is required for any appeal from a decision of the court under this section.

**33. Decision-making where no chairman or umpire.**

- (1) Where the parties agree that there shall be two or more arbitrators with no chairman or umpire, the parties are free to agree how the tribunal is to make decisions, orders and awards.
- (2) If there is no such agreement, decisions, orders and awards shall be made by all or a majority of the arbitrators.

**34. Revocation of arbitrator's authority.**

- (1) The parties are free to agree in what circumstances the authority of an arbitrator may be revoked.
- (2) If or to the extent that there is no such agreement the following provisions apply.
- (3) The authority of an arbitrator may not be revoked except —
  - (a) by the parties acting jointly; or
  - (b) by an arbitral or other institution or person vested by the parties with powers in that regard.
- (4) Revocation of the authority of an arbitrator by the parties acting jointly must be agreed in writing unless the parties also agree (whether or not in writing) to terminate the arbitration agreement.
- (5) Nothing in this section affects the power of the court —
  - (a) to revoke an appointment under section 29; or
  - (b) to remove an arbitrator on the grounds specified in section 35.

**35. Power of court to remove arbitrator.**

- (1) A party to arbitral proceedings may (upon notice to the other parties, to the arbitrator concerned and to any other arbitrator) apply to the court to remove an arbitrator on any of the following grounds —
  - (a) that circumstances exist that give rise to justifiable doubts as to his impartiality;
  - (b) that he does not possess the qualifications required by the arbitration agreement;
  - (c) that he is physically or mentally incapable of conducting proceedings or there are justifiable doubts as to his capacity to do so;
  - (d) that he has refused or failed —
    - (i) properly to conduct the proceedings, or
    - (ii) to use all reasonable despatch in conducting the proceedings or making an award,and that substantial injustice has been or will be caused to the applicant.
- (2) If there is an arbitral or other institution or person vested by the parties with power to remove an arbitrator, the court shall not exercise its power of removal unless satisfied that the applicant has first exhausted any available recourse to that institution or person.
- (3) The arbitral tribunal may continue the arbitral proceedings and make an award while an application to the court under this section is pending.
- (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 it makes any order under this section.
- (6) The leave of the court is required for any appeal from a decision of the court under this section.

**36. Resignation of arbitrator.**

- (1) The parties are free to agree with an arbitrator as to the consequences of his resignation as regards —
  - (a) his entitlement (if any) to fees or expenses, and
  - (b) any liability thereby incurred by him.
- (2) If or to the extent that there is no such agreement the following provisions apply.

- (3) An arbitrator who resigns his appointment may (upon notice to the parties) apply to the court —
  - (a) to grant him relief from any liability thereby incurred by him, and
  - (b) to 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.
- (4) If the court is satisfied that in all the circumstances it was reasonable for the arbitrator to resign, it may grant such relief as is mentioned in subsection (3)(a) on such terms as it thinks fit.
- (5) The leave of the court is required for any appeal from a decision of the court under this section.

**37. Death of arbitrator or person appointing him.**

- (1) The authority of an arbitrator is personal and ceases on his death.
- (2) Unless otherwise agreed by the parties, the death of the person by whom an arbitrator was appointed does not revoke the arbitrator's authority.

**38. Filling of vacancy, &c**

- (1) Where an arbitrator ceases to hold office the parties are free to agree —
  - (a) whether and if so how the vacancy is to be filled;
  - (b) whether and if so to what extent the previous proceedings should stand, and
  - (c) what effect (if any) his ceasing to hold office has on any appointment made by him (alone or jointly).
- (2) If or to the extent that there is no such agreement, the following provisions apply.
- (3) The provisions of sections 27 and 29 apply in relation to the filling of the vacancy as in relation to an original appointment.
- (4) The tribunal (when reconstituted) shall determine whether and if so to what extent the previous proceedings should stand but this does not affect any right of a party to challenge those proceedings on any ground which had arisen before the arbitrator ceased to hold office.
- (5) His ceasing to hold office does not affect any appointment by him (alone or jointly) of another arbitrator, in particular any appointment of a chairman or umpire.

**39. Joint and several liability of parties to arbitrators for fees and expenses.**

- (1) The parties are jointly and severally liable to pay to the arbitrators such reasonable fees and expenses (if any) as are appropriate in the circumstances.
- (2) Any party may apply to the court (upon notice to the other party and to the arbitrators) which may order that the amount of the arbitrators' fees and expenses shall be considered and adjusted by such means and upon such terms as it may direct.
- (3) If the application is made after any amount has been paid to the arbitrators by way of fees or expenses, the court may order the repayment of such amount (if any) as is shown to be excessive, but shall not do so unless it is shown that it is reasonable in the circumstances to order repayment.
- (4) The above provisions have effect subject to any order of the court under section 35(4) or 36(3)(b).
- (5) Nothing in this section affects any liability of a party to any other party to pay all or any of the costs of the arbitration or any contractual right of an arbitrator to payment of his fees and expenses.
- (6) In this section references to arbitrators include an arbitrator who has ceased to act and an umpire who has not replaced the other arbitrators.

**40. Immunity of arbitrator.**

- (1) An arbitrator is not liable for anything done or omitted in the discharge or purported discharge of his functions as arbitrator unless the act or omission is shown to have been in bad faith.
- (2) Subsection (1) applies to an employee or agent of an arbitrator as it applies to the arbitrator himself.
- (3) This section does not affect any liability incurred by an arbitrator by reason of his resigning.

**PART VII– JURISDICTION OF THE ARBITRAL TRIBUNAL****41. Competence of tribunal to rule on its own jurisdiction.**

- (1) Unless otherwise agreed by the parties, the arbitral tribunal may rule on its own substantive jurisdiction, that is, as to —
  - (a) whether there is a valid arbitration agreement,
  - (b) whether the tribunal is properly constituted, and

- (c) what matters have been submitted to arbitration in accordance with the arbitration agreement.
- (2) Any such ruling may be challenged by any available arbitral process of appeal or review or in accordance with the provisions of this Act.

**42. Objection to substantive jurisdiction of tribunal.**

- (1) An objection that the arbitral tribunal lacks substantive jurisdiction at the outset of the proceedings must be raised by a party not later than the time he takes the first step in the proceedings to contest the merits of any matter in relation to which he challenges the tribunal's jurisdiction and a party is not precluded from raising such an objection by the fact that he has appointed or participated in the appointment of an arbitrator.
- (2) Any objection during the course of the arbitral proceedings that the arbitral tribunal is exceeding its substantive jurisdiction must be made as soon as possible after the matter alleged to be beyond its jurisdiction is raised.
- (3) The arbitral tribunal may admit an objection later than the time specified in subsection (1) or (2) if it considers the delay justified.
- (4) Where an objection is duly taken to the tribunal's substantive jurisdiction and the tribunal has power to rule on its own jurisdiction, it may —
  - (a) rule on the matter in an award as to jurisdiction; or
  - (b) deal with the objection in its award on the merits,and if the parties agree which of these courses the tribunal should take, the tribunal shall proceed accordingly.
- (5) The tribunal may in any case, and shall if the parties so agree, stay proceedings whilst an application is made to the court under section 43.

**43. Determination of preliminary point of jurisdiction.**

- (1) The court may, on the application of a party to arbitral proceedings (upon notice to the other parties), determine any question as to the substantive jurisdiction of the tribunal.
- (2) An application under this section shall not be considered unless —
  - (a) It is made with the agreement in writing of all the other parties to the proceedings, or
  - (b) it is made with the permission of the tribunal and the court is satisfied —
    - (i) that the determination of the question is likely to produce substantial savings in costs,
    - (ii) that the application was made without delay, and



- (iii) that there is good reason why the matter should be decided by the court.
- (3) An application under this section, unless made with the agreement of all the other parties to the proceedings, shall state the grounds on which it is said that the matter should be decided by the court
- (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) Unless the court gives leave, no appeal lies from a decision of the court whether the conditions specified in subsection (2) are met.
- (6) The decision of the court on the question of jurisdiction shall be treated as a judgment of the court for the purposes of an appeal.
- (7) No appeal lies without the leave of the court which shall not be given unless the court considers that the question involves a point of law which is one of general public importance or is one which for some other special reason should be considered by the Court of Appeal.

## **PART VIII – THE ARBITRAL PROCEEDINGS**

### **44. General duty of the tribunal.**

- (1) The tribunal shall —
  - (a) act fairly and impartially as between the parties, giving each party a reasonable opportunity of putting his case and dealing with that of his opponent, and
  - (b) adopt procedures suitable to the circumstances of the particular case, avoiding unnecessary delay or expense, so as to provide a fair means for the resolution of the matters falling to be determined.
- (2) The tribunal shall comply with that general duty in conducting the arbitral proceedings, in its decisions on matters of procedure and evidence and in the exercise of all other powers conferred on it.

### **45. Procedural and evidential matters.**

- (1) It shall be for the tribunal to decide all procedural and evidential matters, subject to the right of the parties to agree any matter.
- (2) Procedural and evidential matters include —
  - (a) when and where any part of the proceedings is to be held;
  - (b) the language or languages to be used in the proceedings and whether translations of any relevant documents are to be supplied;

- (c) whether any and if so what form of written statements of claim and defence are to be used, when these should be supplied and the extent to which such statements can be later amended;
  - (d) whether any and if so which documents or classes of documents should be disclosed between and produced by the parties and at what stage;
  - (e) whether any and if so what questions should be put to and answered by the respective parties and when and in what form this should be done;
  - (f) whether to apply strict rules of evidence (or any other rules) as to the admissibility, relevance or weight of any material (oral, written or other) sought to be tendered on any matters of fact or opinion, and the time, manner and form in which such material should be exchanged and presented;
  - (g) whether and to what extent the tribunal should itself take the initiative in ascertaining the facts and the law;
  - (h) whether and to what extent there should be oral or written evidence or submissions.
- (3). The tribunal may fix the time within which any directions given by it are to be complied with, and may if it thinks fit extend the time so fixed (whether or not it has expired).

**46. Consolidation of proceedings and concurrent hearings.**

- (1) The parties are free to agree —
  - (a) that the arbitral proceedings shall be consolidated with other arbitral proceedings; or
  - (b) that concurrent hearings shall be held, on such terms as may be agreed.
- (2) Unless the parties agree to confer such power on the tribunal, the tribunal has no power to order consolidation of proceedings or concurrent hearings.

**47. Legal or other representation.**

Unless otherwise agreed by the parties, a party to arbitral proceedings may be represented in the proceedings by a counsel and attorney or other person chosen by him.

**48. Power to appoint experts, legal advisers or assessors.**

- (1) Unless otherwise agreed by the parties —
  - (a) the tribunal may —

- (i) appoint experts or legal advisers to report to it and the parties, or
  - (ii) appoint assessors to assist it on technical matters, and may allow any such expert, legal adviser or assessor to attend the proceedings; and
- (b) the parties shall be given a reasonable opportunity to comment on any information, opinion or advice offered by any such person.
- (2) The fees and expenses of an expert, legal adviser or assessor appointed by the tribunal for which the arbitrators are liable are expenses of the arbitrators for the purposes of this Act.

**49. General powers exercisable by the tribunal.**

- (1) The parties are free to agree on the powers exercisable by the arbitral tribunal for the purposes of and in relation to the proceedings.
- (2) Unless otherwise agreed by the parties the tribunal has the following powers.
- (3) The tribunal may order a claimant to provide security for the costs of the arbitration and this power shall not be exercised on the ground only that the claimant is —
  - (a) an individual ordinarily resident outside The Bahamas; or
  - (b) a corporation or association incorporated or formed under the law of a country outside The Bahamas or whose central management and control is exercised outside The Bahamas.
- (4) The tribunal may give directions in relation to any property which is the subject of the proceedings or as to which any question arises in the proceedings, and which is owned by or is in the possession of a party to the proceedings —
  - (a) for the inspection, photographing, preservation, custody or detention of the property by the tribunal, an expert or a party, or
  - (b) ordering that samples be taken from, or any observation be made of or experiment conducted upon, the property.
- (5) The tribunal may direct that a party or witness shall be examined on oath or affirmation, and may for that purpose administer any necessary oath or take any necessary affirmation.
- (6) The tribunal may give directions to a party for the preservation for the purposes of the proceedings of any evidence in his custody or control.

**50. Power to make provisional awards.**

- (1) The parties are free to agree that the tribunal shall have power to order on a provisional basis any relief which it would have power to grant in a final award.
- (2) This includes, for instance, making —
  - (a) a provisional order for the payment of money or the disposition of property as between the parties, or
  - (b) an order to make an interim payment on account of the costs of the arbitration.
- (3) Any such order shall be subject to the tribunal's final adjudication; and the tribunal's final award, on the merits or as to costs, shall take account of any such order.
- (4) Unless the parties agree to confer such power on the tribunal, the tribunal has no such power.

**51. General duty of parties.**

- (1) The parties shall do all things necessary for the proper and expeditious conduct of the arbitral proceedings.
- (2) This includes —
  - (a) complying without delay with any determination of the tribunal as to procedural or evidential matters, or with any order or directions of the tribunal, and
  - (b) where appropriate, taking without delay any necessary steps to obtain a decision of the court on a preliminary question of jurisdiction or law.

**52. Powers of tribunal in case of party's default.**

- (1) The parties are free to agree on the powers of the tribunal in case of a party's failure to do something necessary for the proper and expeditious conduct of the arbitration.
- (2) Unless otherwise agreed by the parties, the following provisions apply.
- (3) If the tribunal is satisfied that there has been inordinate and inexcusable delay on the part of the claimant in pursuing his claim and that the delay—
  - (a) gives rise, or is likely to give rise, to a substantial risk that it 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.
- (4) If without showing sufficient cause a party —

- (a) fails to attend or be represented at an oral hearing of which due notice was given, or
- (b) where matters are to be dealt with in writing, fails after due notice to submit written evidence or make written submissions,

the tribunal may continue the proceedings in the absence of that party or, as the case may be, without any written evidence or submissions on his behalf, and may make an award on the basis of the evidence before it.

- (5) If without showing sufficient cause a party fails to comply with any order or directions of the tribunal, the tribunal may make a peremptory order to the same effect, prescribing such time for compliance with it as the tribunal considers appropriate.
- (6) If a claimant fails to comply with a peremptory order of the tribunal to provide security for costs, the tribunal may make an award dismissing his claim.
- (7) If a party fails to comply with any other kind of peremptory order, then, without prejudice to section 53, the tribunal may do any of the following —
  - (a) direct that the party in default shall not be entitled to rely upon any allegation or material which was the subject matter of the order;
  - (b) draw such adverse inferences from the act of non-compliance as the circumstances justify;
  - (c) proceed to an award on the basis of such materials as have been properly provided to it;
  - (d) make such order as it thinks fit as to the payment of costs of the arbitration incurred in consequence of the non-compliance.

## **PART IX –POWERS OF COURT IN RELATION TO ARBITRAL PROCEEDINGS**

### **53. Enforcement of peremptory orders of tribunal.**

- (1) Unless otherwise agreed by the parties, the court may make an order requiring a party to comply with a peremptory order made by the tribunal.
- (2) An application for an order under this section may be made —
  - (a) by the tribunal (upon notice to the parties),
  - (b) by a party to the arbitral proceedings with the permission of the tribunal (and upon notice to the other parties), or
  - (c) where the parties have agreed that the powers of the court under this section shall be available.

- (3) The court shall not act unless it is satisfied that the applicant has exhausted any available arbitral process in respect of failure to comply with the tribunal's order.
- (4) No order shall be made under this section unless the court is satisfied that the person to whom the tribunal's order was directed has failed to comply with it within the time prescribed in the order or, if no time was prescribed, within a reasonable time.
- (5) The leave of the court is required for any appeal from a decision of the court under this section.

**54. Securing the attendance of witnesses.**

- (1) A party to arbitral proceedings may use the same court procedures as are available in relation to legal proceedings to secure the attendance before the tribunal of a witness in order to give oral testimony or to produce documents or other material evidence.
- (2) This may only be done with the permission of the tribunal or the agreement of the other parties.
- (3) The court procedures may only be used if —
  - (a) the witness is in The Bahamas, and
  - (b) the arbitral proceedings are being conducted in The Bahamas.
- (4) A person shall not be compelled by virtue of this section to produce any document or other material evidence which he could not be compelled to produce in legal proceedings.

**55. Court powers exercisable in support of arbitral proceedings.**

- (1) Unless otherwise agreed by the parties, the court has for the purposes of and in relation to arbitral proceedings the same power of making orders about the matters listed below as it has for the purposes of and in relation to legal proceedings.
- (2) Those matters are —
  - (a) the taking of the evidence of witnesses;
  - (b) the preservation of evidence;
  - (c) making orders relating to property which is the subject of the proceedings or as to which any question arises in the proceedings —
    - (i) for the inspection, photographing, preservation, custody or detention of the property, or
    - (ii) ordering that samples be taken from, or any observation be made of or experiment conducted upon, the property,

and for that purpose authorising any person to enter any premises in the possession or control of a party to the arbitration;

- (d) the sale of any goods the subject of the proceedings;
  - (e) the granting of an interim injunction or the appointment of a receiver.
- (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, and any arbitral or other institution or person vested by the parties with power in that regard, has no power or is unable for the time being to act effectively.
  - (6) If the court so orders, an order made by it under this section shall cease to have effect in whole or in part on the order of the tribunal or of any such arbitral or other institution or person having power to act in relation to the subject-matter of the order.
  - (7) The leave of the court is required for any appeal from a decision of the court under this section.

#### **56. Determination of preliminary point of law.**

- (1) Unless otherwise agreed by the parties, the court may on the application of a party to arbitral proceedings (upon notice to the other parties) determine any question of law arising in the course of the proceedings which the court is satisfied substantially affects the rights of one or more of the parties and an agreement to dispense with reasons for the tribunal's award shall be considered an agreement to exclude the court's jurisdiction under this section.
- (2) An application under this section shall not be considered unless —
  - (a) it is made with the agreement of all the other parties to the proceedings, or
  - (b) it is made with the permission of the tribunal and the court is satisfied —
    - (i) that the determination of the question is likely to produce substantial savings in costs, and
    - (ii) that the application was made without delay.

- (3) The application shall identify the question of law to be determined and, unless made with the agreement of all the other parties to the proceedings, shall state the grounds on which it is said that the question should be decided by the court.
- (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) Unless the court gives leave, no appeal lies from a decision of the court whether the conditions specified in subsection (2) are met.
- (6) The decision of the court on the question of law shall be treated as a judgment of the court for the purposes of an appeal but no appeal lies without the leave of the court which shall not be given unless the court considers that the question is one of general public importance, or is one which for some other special reason should be considered by the Court of Appeal.

## **PART X—INTERIM MEASURES AND PRELIMINARY ORDERS**

### **57. Power of arbitral tribunal to order interim measures.**

- (1) Unless otherwise agreed by the parties, the arbitral tribunal may, at the request of a party, grant interim measures.
- (2) An interim measure is any temporary measure, whether in the form of an award or in another form, by which, at any time prior to the issuance of the award by which the dispute is finally decided, the arbitral tribunal orders a party to —
  - (a) maintain or restore the status quo pending determination of the dispute;
  - (b) take action that would prevent, or refrain from taking action that is likely to cause, current or imminent harm or prejudice to the arbitral process itself;
  - (c) provide a means of preserving assets out of which a subsequent award may be satisfied; or
  - (d) preserve evidence that may be relevant and material to the resolution of the dispute.

### **58. Conditions for granting interim measures.**

- (1) The party requesting an interim measure under section 57 (2)(a), (b) and (c) shall satisfy the arbitral tribunal that —



- (a) harm not adequately reparable by an award of damages is likely to result if the measure is not ordered, and such harm substantially outweighs the harm that is likely to result to the party against whom the measure is directed if the measure is granted; and
  - (b) there is a reasonable possibility that the requesting party will succeed on the merits of the claim. The determination on this possibility shall not affect the discretion of the arbitral tribunal in making any subsequent determination.
- (2) With regard to a request for an interim measure under section 57(2)(d), the requirements in subsection (1)(a) and (b) of this section shall apply only to the extent the arbitral tribunal considers appropriate.

**59. Applications for preliminary orders and conditions for granting preliminary orders.**

- (1) Unless otherwise agreed by the parties, a party may, without notice to any other party, make a request for an interim measure together with an application for a preliminary order directing a party not to frustrate the purpose of the interim measure requested.
- (2) The arbitral tribunal may grant a preliminary order provided it considers that prior disclosure of the request for the interim measure to the party against whom it is directed risks frustrating the purpose of the measure.
- (3) The conditions defined under section 58 apply to any preliminary order, provided that the harm to be assessed under section 58(1)(a), is the harm likely to result from the order being granted or not.

**60. Specific regime for preliminary orders.**

- (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 of the request for the interim measure, the application for the preliminary order, the preliminary order, if any, and all other communications, including by indicating the content of any oral communication, between any party and the arbitral tribunal in relation thereto.
- (2) At the same time, the arbitral tribunal shall give an opportunity to any party against whom a preliminary order is directed to present its case at the earliest practicable time.
- (3) The arbitral tribunal shall decide promptly on any objection to the preliminary order.
- (4) A preliminary order shall expire after twenty days from the date on which it was issued by the arbitral tribunal. However, the arbitral tribunal may issue an interim measure adopting or modifying the preliminary order,

after the party against whom the preliminary order is directed has been given notice and an opportunity to present its case.

- (5) A preliminary order shall be binding on the parties but shall not be subject to enforcement by a court as such a preliminary order does not constitute an award.
- (6) Unless the parties agree to confer the powers given the the arbitral tribunal in this section and section 61, the tribunal has no such powers.

**61. Modification, suspension, termination.**

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

**62. Provision of security.**

- (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.

**63. Disclosure.**

- (1) The arbitral tribunal may require any party promptly to disclose any material change in the circumstances on the basis of which the measure was requested or granted.
- (2) The party applying for a preliminary order shall disclose to the arbitral tribunal all circumstances that are likely to be relevant to the arbitral tribunal's determination whether to grant or maintain the order, and such obligation shall continue until the party against whom the order has been requested has had an opportunity to present its case; thereafter, subsection (1) shall apply.

**64. Costs and damages.**

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. The arbitral tribunal may award such costs and damages at any point during the proceedings.

**65. Recognition and enforcement.**

- (1) Subject to section 66, an interim measure issued by an arbitral tribunal shall be recognized as binding and, unless otherwise provided by the arbitral tribunal, enforced upon application to the court, irrespective of the country in which it was issued.
- (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, if it considers it proper, 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.

**66. Grounds for refusing recognition or enforcement.**

- (1) Recognition or enforcement of an interim measure may be refused only —
  - (a) at the request of the party against whom it is invoked if the court is satisfied that —
    - (i) such refusal is warranted on the grounds set forth in subsection (3)(a);
    - (ii) 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; or
    - (iii) the interim measure has been terminated or suspended by the arbitral tribunal or, where so empowered, by the court of the country in which the arbitration takes place or under the law of which that interim measure was granted; or
  - (b) if 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) any of the grounds set forth in subsection (3)(b) apply to the recognition and enforcement of the interim measure.
- (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. The court where recognition or enforcement is sought shall not, in making that determination, undertake a review of the substance of the interim measure.

- (3) The grounds referred to in subsection (1)(a)(i) and (1)(b)(ii) are —
- (a) where the court finds that —
    - (i) a party to the arbitration agreement was under some incapacity; or the agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law of the country where the interim measure was made;
    - (ii) the party against whom the interim measure is invoked was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case;
    - (iii) the interim measure deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration, provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, that part of the interim measure which contains decisions on matters submitted to arbitration may be recognised and enforced; or
    - (iv) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties or, failing such agreement, was not in accordance with the law of the country where the arbitration took place;
  - (b) where the court finds that —
    - (i) the subject-matter of the dispute is not capable of settlement by arbitration under the law of The Bahamas; or
    - (ii) the recognition or enforcement of the interim measure would be contrary to the public policy of The Bahamas.

#### **67. Court-ordered interim measures.**

The court shall have the same power of issuing an interim measure in relation to arbitration proceedings, irrespective of whether the place is in The Bahamas, as it has in relation to proceedings in the court. The court

shall exercise such power in accordance with its own procedures in consideration of the specific features of international arbitration.

## **PART XI—THE AWARD**

### **68. Rules applicable to substance of dispute.**

- (1) The arbitral tribunal shall decide the dispute —
  - (a) in accordance with the law chosen by the parties as applicable to the substance of the dispute; or
  - (b) if the parties so agree, in accordance with such other considerations as are agreed by them or determined by the tribunal.
- (2) For this purpose the choice of the laws of a country shall be understood to refer to the substantive laws of that country and not its conflict of laws rules.
- (3) If or to the extent that there is no such choice or agreement, the tribunal shall apply the law determined by the conflict of laws rules which it considers applicable.

### **69. Awards on different issues, &c**

- (1) Unless otherwise agreed by the parties, the tribunal may make more than one award at different times on different aspects of the matters to be determined.
- (2) The tribunal may, in particular, make an award relating —
  - (a) to an issue affecting the whole claim, or
  - (b) to a part only of the claims or counterclaims submitted to it for decision.
- (3) If the tribunal does so, it shall specify in its award the issue, or the claim or part of a claim, which is the subject matter of the award.

### **70. Remedies.**

- (1) The parties are free to agree on the powers exercisable by the arbitral tribunal as regards remedies.
- (2) Unless otherwise agreed by the parties, the tribunal has the following powers.
- (3) The tribunal may make a declaration as to any matter to be determined in the proceedings.
- (4) The tribunal may order the payment of a sum of money, in any currency.

- (5) The tribunal has the same powers as the court —
  - (a) to order a party to do or refrain from doing anything;
  - (b) to order specific performance of a contract (other than a contract relating to land);
  - (c) to order the rectification, setting aside or cancellation of a deed or other document.

#### **71. Interest.**

- (1) The parties are free to agree on the powers of the tribunal as regards the award of interest.
- (2) Unless otherwise agreed by the parties the following provisions apply.
- (3) The tribunal may award simple or compound interest from such dates, at such rates and with such rests as it considers meet the justice of the case —
  - (a) on the whole or part of any amount awarded by the tribunal, in respect of any period up to the date of the award;
  - (b) on the whole or part of any amount claimed in the arbitration and outstanding at the commencement of the arbitral proceedings but paid before the award was made, in respect of any period up to the date of payment.
- (4) The tribunal may award simple or compound interest from the date of the award (or any later date) until payment, at such rates and with such rests as it considers meets the justice of the case, on the outstanding amount of any award (including any award of interest under subsection (3) and any award as to costs).
- (5) References in this section to an amount awarded by the tribunal include an amount payable in consequence of a declaratory award by the tribunal.
- (6) The above provisions do not affect any other power of the tribunal to award interest.

#### **72. Extension of time for making award.**

- (1) Where the time for making an award is limited by or in pursuance of the arbitration agreement, then, unless otherwise agreed by the parties, the court may in accordance with the following provisions by order extend that time.
- (2) An application for an order under this section may be made —
  - (a) by the tribunal (upon notice of the parties); or
  - (b) by any party to the proceedings (upon notice to the tribunal and the other parties),

but only after exhausting any available arbitral process for obtaining an extension of time.

- (3) The court shall only make an order if satisfied that a substantial injustice would otherwise be done.
- (4) 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 agreement or by a previous order) has expired.
- (5) The leave of the court is required for any appeal from a decision of the court under this section.

### **73. Settlement.**

- (1) If during arbitral proceedings the parties settle the dispute, the following provisions apply unless otherwise agreed by the parties.
- (2) The tribunal shall terminate the substantive proceedings and, if so requested by the parties and not objected to by the tribunal shall record the settlement in the form of an agreed award.
- (3) An agreed award shall state that it is an award of the tribunal and shall have the same status and effect as any other award on the merits of the case.
- (4) The following provisions of sections 74 to 80 apply to an agreed award.
- (5) Unless the parties have also settled the matter of the payment of the costs of the arbitration, the provisions of sections 81 to 87 shall apply.

### **74. Form of award.**

- (1) The parties are free to agree on the form of an award.
- (2) If or to the extent that there is no such agreement, the following provisions apply.
- (3) The award shall be in writing signed by all the arbitrators or all those assenting to the award.
- (4) The award shall contain the reasons for the award unless it is an agreed award or the parties have agreed to dispense with reasons.
- (5) The award shall state the seat of the arbitration and the date when the award is made.

### **75. Place where award treated as made.**

Unless otherwise agreed by the parties, where the seat of the arbitration is in The Bahamas, any award in the proceedings shall be treated as made there, regardless of where it was signed, despatched or delivered to any of the parties.

**76. Date of award.**

- (1) Unless otherwise agreed by the parties, the arbitral tribunal may decide what is to be taken to be the date on which the award was made.
- (2) In the absence of any such decision, the date of the award shall be taken to be the date on which it is signed by the arbitrator or, where more than one arbitrator signs the award, by the last of them.

**77. Notification of award.**

- (1) The parties are free to agree on the requirements as to notification of the award to the parties.
- (2) If there is no such agreement, the award shall be notified to the parties by service on them of copies of the award, which shall be done without delay after the award is made.
- (3) Nothing in this section affects section 78.

**78. Power to withhold award in case of non-payment.**

- (1) The tribunal may refuse to deliver an award to the parties except upon full payment of the fees and expenses of the arbitrators.
- (2) If the tribunal refuses on that ground to deliver an award, a party to the arbitral proceedings may (upon notice to the other parties and the tribunal) apply to the court, which may order that —
  - (a) the tribunal shall deliver the award on the 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 properly payable shall be determined by such means and upon such terms as the court may direct; and
  - (c) out of the money paid into court there shall be paid out such fees and expenses as may be found to be properly payable and the balance of the money (if any) shall be paid out to the applicant.
- (3) For this purpose the amount of fees and expenses properly payable is the amount the applicant is liable to pay under section 39 or any agreement relating to the payment of the arbitrators.
- (4) No application to the court may be made where there is any available arbitral process for appeal or review of the amount of the fees or expenses demanded.
- (5) References in this section to arbitrators include an arbitrator who has ceased to act and an umpire who has not replaced the other arbitrators.



- (6) The above provisions of this section also apply in relation to any arbitral or other institution or person vested by the parties with powers in relation to the delivery of the tribunal's award. As they so apply, the references to the fees and expenses of the arbitrators shall be construed as including the fees and expenses of that institution or person.
- (7) The leave of the court is required for any appeal from a decision of the court under this section.
- (8) Nothing in this section shall be construed as excluding an application under section 39 where payment has been made to the arbitrators in order to obtain the award.

#### **79. Correction of award or additional award.**

- (1) The parties are free to agree on the powers of the tribunal to correct an award or make an additional award.
- (2) If or to the extent there is no such agreement, the following provisions apply.
- (3) The tribunal may on its own initiative or on the application of a party —
  - (a) correct an award so as to remove any clerical mistake or error arising from an incidental slip or omission or clarify or remove any ambiguity in the award; or
  - (b) make an additional award in respect of any claim (including a claim for interest or costs) which was presented to the tribunal but was not dealt with in the award,but these powers shall not be exercised without first affording the other parties a reasonable opportunity to make representations to the tribunal.
- (4) Any application for the exercise of those powers must be made within 28 days of the date of the award or such longer period as the parties may agree.
- (5) Any correction of an award shall be made within 28 days of the date the application was received by the tribunal or, where the correction is made by the tribunal on its own initiative, within 28 days of the date of the award or, in either case, such longer period as the parties may agree.
- (6) Any additional award shall be made within 28 days of the date of the original award or such longer period as the parties may agree.
- (7) Any correction of an award shall form part of the award.

#### **80. Effect of award.**

- (1) Unless otherwise agreed by the parties, an award made by the tribunal pursuant to an arbitration agreement is final and binding both on the parties and on any persons claiming through or under them.

- (2) This does 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 Act.

## **PART XII—COSTS OF THE ARBITRATION**

### **81. Costs of the arbitration.**

- (1) References in this Act to the costs of the arbitration are to —
  - (a) the arbitrators' fees and expenses;
  - (b) the fees and expenses of any arbitral institution concerned; and
  - (c) the legal or other costs of the parties.
- (2) Any such reference includes the costs of or incidental to any proceedings to determine the amount of the recoverable costs of the arbitration.

### **82. Agreement to pay costs in any event.**

An agreement which has the effect that a party is to pay the whole or part of the costs of the arbitration in any event is only valid if made after the dispute in question has arisen.

### **83. Award of costs.**

- (1) The tribunal may make an award allocating the costs of the arbitration as between the parties, subject to any agreement of the parties.
- (2) Unless the parties otherwise agree, the tribunal shall award costs on the general principle that costs should follow the event except where it appears to the tribunal that in the circumstances this is not appropriate in relation to the whole or part of the costs.

### **84. Effect of agreement or award about costs.**

Unless the parties otherwise agree, any obligation under an agreement between them as to how the costs of the arbitration are to be borne, or under an award allocating the costs of the arbitration, extends only to such costs as are recoverable.

### **85. The recoverable costs of the arbitration.**

- (1) The parties are free to agree what costs of the arbitration are recoverable.
- (2) If or to the extent there is no such agreement, the following provisions apply.

- (3) The tribunal may determine by award the recoverable costs of the arbitration on such basis as it thinks fit and if it does so, it shall specify —
  - (a) the basis on which it has acted, and
  - (b) the items of recoverable costs and the amount referable to each.
- (4) If the tribunal does not determine the recoverable costs of the arbitration, any party to the arbitral proceedings may apply to the court (upon notice to the other parties) which may —
  - (a) determine the recoverable costs of the arbitration on such basis as it thinks fit, or
  - (b) order that they shall be determined by such means and upon such terms as it may specify.
- (5) Unless the tribunal or the court determines otherwise —
  - (a) the recoverable costs of the arbitration shall be determined on the basis that there shall be allowed a reasonable amount in respect of all costs reasonably incurred, and
  - (b) any doubt as to whether costs were reasonably incurred or were reasonable in amount shall be resolved in favour of the paying party.
- (6) The above provisions have effect subject to section 86.
- (7) Nothing in this section affects any right of the arbitrators, any expert, legal adviser or assessor appointed by the tribunal, or any arbitral institution, to payment of their fees and expenses.

#### **86. Recoverable fees and expenses of arbitrators.**

- (1) Unless otherwise agreed by the parties, the recoverable costs of the arbitration shall include in respect of the fees and expenses of the arbitrators only such reasonable fees and expenses as are appropriate in the circumstances.
- (2) If there is any question as to what reasonable fees and expenses are appropriate in the circumstances, and the matter is not already before the court on an application under section 85(4), the court may on the application of any party (upon notice to the other parties) —
  - (a) determine the matter; or
  - (b) order that it be determined by such means and upon such terms as the court may specify.
- (3) Subsection (1) has effect subject to any order of the court under section 35(4) or 36(3)(b).
- (4) Nothing in this section affects any right of the arbitrator to payment of his fees and expenses.

**87. Power to limit recoverable costs.**

- (1) Unless otherwise agreed by the parties, the tribunal may direct that the recoverable costs of the arbitration, or of any part of the arbitral proceedings, shall be limited to a specified amount.
- (2) Any direction may be made or varied at any stage, but this must be done sufficiently in advance of the incurring of costs to which it relates, or the taking of any steps in the proceedings which may be affected by it, for the limit to be taken into account.

## **PART XIII—POWERS OF THE COURT IN RELATION TO AWARD**

**88. Enforcement of the award.**

- (1) An award made by the tribunal pursuant to an arbitration agreement may, by 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 so 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 tribunal lacked substantive 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 in particular the provisions of the Arbitration (Foreign Arbitral Awards) Act, 2009 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 5 and 6 of the Arbitration (Foreign Arbitral Awards) Act, 2009.

**89. Challenging the award: substantive jurisdiction.**

- (1) A party to arbitral proceedings may (upon notice to the other parties and the tribunal) apply to the court —
  - (a) challenging any award of the arbitral tribunal as to its substantive jurisdiction; or
  - (b) for an order declaring an award made by the tribunal on the merits to be of no effect, in whole or in part, because the tribunal did not have substantive jurisdiction.

- (2) The arbitral tribunal may continue the arbitral proceedings and make a further award while an application to the court under this section is pending in relation to an award as to jurisdiction.
- (3) On an application under this section challenging an award of the arbitral tribunal as to its substantive jurisdiction, the court may by order —
  - (a) confirm the award;
  - (b) vary the award; or
  - (c) set aside the award in whole or in part.
- (4) The leave of the court is required for any appeal from a decision of the court under this section.

**90. Challenging the award: serious irregularity.**

- (1) A party to arbitral proceedings may (upon notice to the other parties and to the tribunal) apply to the court challenging an award in the proceedings on the ground of serious irregularity affecting the tribunal, the proceedings or the award.
- (2) Serious irregularity means an irregularity of one or more of the following kinds which the court considers has caused or will cause substantial injustice to the applicant—
  - (a) failure by the tribunal to comply with section 44;
  - (b) the tribunal exceeding its powers (otherwise than by exceeding its substantive jurisdiction);
  - (c) failure by the tribunal to conduct the proceedings in accordance with the procedure agreed by the parties;
  - (d) failure by the tribunal to deal with all the issues that were put to it;
  - (e) any arbitral or other institution or person vested by the parties with powers in relation to the proceedings or the award exceeding its powers;
  - (f) uncertainty or ambiguity as to the effect of the award;
  - (g) the award being obtained by fraud or the award or the way in which it was procured being contrary to public policy;
  - (h) failure to comply with the requirements as to the form of the award; or
  - (i) any irregularity in the conduct of the proceedings or in the award which is admitted by the tribunal or by any arbitral or other institution or person vested by the parties with powers in relation to the proceedings or the award.
- (3) If there is shown to be serious irregularity affecting the tribunal, the proceedings or the award, the court may —

- (a) remit the award to the tribunal, in whole or in part, for reconsideration;
  - (b) set the award aside in whole or in part; or
  - (c) declare the award to be of no effect, in whole or in part.
- (4) The court shall not exercise its power to set aside or to declare an award to be of no effect, in whole or in part, unless it is satisfied that it would be inappropriate to remit the matters in question to the tribunal for reconsideration.
- (5) The leave of the court is required for any appeal from a decision of the court under this section.

**91. Appeal on point of law.**

- (1) Unless otherwise agreed by the parties, a party to arbitral proceedings may (upon notice to the other parties and to the tribunal) appeal to the court on a question of law arising out of an award made in the proceedings. And an agreement to dispense with reasons for the tribunal's award shall be considered an agreement to exclude the court's jurisdiction under this section.
- (2) An appeal shall not be brought under this section except with the agreement of all the other parties to the proceedings.
- (3) 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 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.
- (4) 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 tribunal for reconsideration.
- (5) The decision of the court on an appeal under this section shall be treated as a judgment of the court for the purposes of a further appeal. But no such appeal lies without the leave of the court which shall not be given unless the court considers that the question is one of general public importance or is one which for some other special reason should be considered by the Court of Appeal.

**92. Challenge or appeal: supplementary provisions**

- (1) The following provisions apply to an application or appeal under section 89, 90 or 91.

- (2) An application or appeal may not be brought if the applicant or appellant has not first exhausted —
  - (a) any available arbitral process of appeal or review; and
  - (b) any available recourse under section 79.
- (3) Any application or appeal must be brought within 28 days 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 tribunal's reasons; or
  - (b) does not set out the tribunal's reasons in sufficient detail to enable the court properly to consider the application or appeal,the court may order the 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; the power to order security for costs shall not be exercised on the ground only that the applicant or appellant is —
  - (a) an individual ordinarily resident outside The Bahamas; or
  - (b) a corporation or association incorporated or formed under the law of a country outside The Bahamas or whose central management and control is exercised outside the Bahamas.
- (7) 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.
- (8) The court may grant leave to appeal subject to conditions to the same or similar effect as an order under subsection (6) or (7) but this does not affect the general discretion of the court to grant leave subject to conditions.

### **93. Challenge or appeal: effect of order of court.**

- (1) The following provisions have effect where the court makes an order under section 89, 90 or 91 with respect to an award.
- (2) Where the award is varied, the variation has effect as part of the tribunal's award.

- (3) Where the award is remitted to the 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, is of no effect as regards the subject matter of the award or, as the case may be, the relevant part of the award.

## **PART XIV—MISCELLANEOUS**

### **94. Saving for rights of person who takes no part in proceedings.**

- (1) A person alleged to be a party to arbitral proceedings but who takes no part in the proceedings may question —
  - (a) whether there is a valid arbitration agreement;
  - (b) whether the tribunal is properly constituted; or
  - (c) what matters have been submitted to arbitration in accordance with the arbitration agreement,by proceedings in the court for a declaration or injunction or other appropriate relief.
- (2) He also has the same right as a party to the arbitral proceedings to challenge an award —
  - (a) by an application under section 89 on the ground of lack of substantive jurisdiction in relation to him;; or
  - (b) by an application under section 90 on the ground of serious irregularity (within the meaning of that section) affecting him,and section 92 (2) does not apply in his case.

### **95. Loss of right to object.**

- (1) If a party to arbitral proceedings takes part, or continues to take part, in the proceedings without making, either forthwith or within such time as is allowed by the arbitration agreement or the tribunal or by any provision of this Act any objection—
  - (a) that the tribunal lacks substantive jurisdiction;
  - (b) that the proceedings have been improperly conducted;
  - (c) that there has been a failure to comply with the arbitration agreement or with any provision of this Act; or



- (d) that there has been any other irregularity affecting the tribunal or the proceedings,

he may not raise that objection later, before the tribunal or the court, unless he shows that, at the time he took part or continued to take part in the proceedings, he did not know and could not with reasonable diligence have discovered the grounds for the objection.

- (2) Where the arbitral tribunal rules that it has substantive jurisdiction and a party to arbitral proceedings who could have questioned that ruling —
- (a) by any available arbitral process of appeal or review; or
- (b) by challenging the award,

does not do so, or does not do so within the time allowed by the arbitration agreement or any provision of this Act, he may not object later to the tribunal's substantive jurisdiction on any ground which was the subject of that ruling.

#### **96. Immunity of arbitral institutions, &c.**

- (1) An arbitral or other institution or person designated or requested by the parties to appoint or nominate an arbitrator is not liable for anything done or omitted in the discharge or purported discharge of that function unless the act or omission is shown to have been in bad faith.
- (2) An arbitral or other institution or person by whom an arbitrator is appointed or nominated is not liable, by reason of having appointed or nominated him, for anything done or omitted by the arbitrator (or his employees or agents) in the discharge or purported discharge of his functions as arbitrator.
- (3) The above provisions apply to an employee or agent of an arbitral or other institution or person as they apply to the institution or person himself.

### **PART XV—SUPPLEMENTARY**

#### **97. Service of notices, &c.**

- (1) The parties are free to 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 arbitral proceedings.
- (2) If or to the extent that there is no such agreement the following provisions apply.
- (3) A notice or other document may be served on a person by any effective means.

- (4) If a notice or other document is addressed, pre-paid and delivered by post —
  - (a) to the addressee's last known principal residence or post office box or, if he is or has been carrying on a trade, profession or business, his last known principal business address or post office box; or
  - (b) where the addressee is a body corporate, to the body's registered or principal office,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 Act 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.

**98. Powers of court in relation to service of documents.**

- (1) This section applies where service of a document on a person in the manner agreed by the parties, or in accordance with provisions of section 97 having effect in default of agreement, is not reasonably practicable.
- (2) Unless otherwise agreed by the parties, the court may make such order as it thinks fit —
  - (a) for service in such manner as the court may direct; or
  - (b) dispensing with service of the document.
- (3) Any party to the arbitration agreement may apply for an order, but only after exhausting any available arbitral process for resolving the matter.
- (4) The leave of the court is required for any appeal from a decision of the court under this section.

**99. Reckoning periods of time.**

- (1) The parties are free to agree on the method of reckoning periods of time for the purposes of any provision agreed by them or any provision of this Act having effect in default of such agreement.
- (2) If or to the extent there is no such agreement, periods of time shall be reckoned in accordance with the following provisions.
- (3) Where the act is required to be done within a specified period after or from a specified date, the period begins immediately after that date.
- (4) Where the act is required to be done a specified number of clear days after a specified date, at least that number of days must intervene between the day on which the act is done and that date.

- (5) Where the period is a period of seven days or less which would include a Saturday, Sunday or a public holiday in the place where anything which has to be done within the period falls to be done, that day shall be excluded.

**100. Power of court to extend time limits relating to arbitral proceedings.**

- (1) Unless the parties otherwise agree, the court may by order extend any time limit agreed by them in relation to any matter relating to the arbitral proceedings or specified in any provision of this Act having effect in default of such agreement but this section does not apply to a time limit to which section 12 applies.
- (2) An application for an order may be made —
  - (a) by any party to the arbitral proceedings (upon notice to the other parties and to the tribunal); or
  - (b) by the arbitral tribunal (upon notice to the parties).
- (3) The court shall not exercise its power to extend a time limit unless it is satisfied —
  - (a) that any available recourse to the tribunal, or to any arbitral or other institution or person vested by the parties with power in that regard, has first been exhausted; and
  - (b) that a substantial injustice would otherwise be done.
- (4) The court's power under this section may be exercised whether or not the time has already expired.
- (5) An order under this section may be made on such terms as the court thinks fit.
- (6) The leave of the court is required for any appeal from a decision of the court under this section.

**101. Notice and other requirements in connection with legal proceedings.**

- (1) References in this Act to an application, appeal or other step in relation to legal proceedings being taken "upon notice" to the other parties to the arbitral proceedings, or to the tribunal, are to such notice of the originating process as is required by rules of court and do not impose any separate requirement.
- (2) Rules of court shall be made —
  - (a) requiring such notice to be given as indicated by any provision of this Act; and
  - (b) as to the manner, form and content of any such notice.

- (3) Subject to any provision made by rules of court, a requirement to give notice to the 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 tribunal is not fully constituted, as a requirement to give notice to any arbitrator who has been appointed.
- (4) References in this Act to making an application or appeal to the court within a specified period are to the issue within that period of the appropriate originating process in accordance with rules of court.
- (5) Where any provision of this Act 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, apply in relation to that requirement.
- (6) Provision may be made by rules of court amending the provisions of this Act —
  - (a) with respect to the time within which any application or appeal to the court must be made;
  - (b) so as to keep any provision made by this Act in relation to arbitral proceedings in step with the corresponding provision of rules of court applying in relation to proceedings in the court; or
  - (c) so as to keep any provision made by this Act in relation to legal proceedings in step with the corresponding provision of rules of court applying generally in relation to proceedings in the court.

#### **102. Saving for certain matters governed by common law.**

- (1) Nothing in this Act shall be construed as excluding the operation of any rule of law consistent with the provisions of this Act in particular, any rule of law as to —
  - (a) matters which are not capable of settlement by arbitration;
  - (b) the effect of an oral arbitration agreement; or
  - (c) the refusal of recognition or enforcement of an arbitral award on grounds of public policy.
- (2) Nothing in this Act shall be construed as reviving any jurisdiction of the court to set aside or remit an award on the ground of errors of fact or law on the face of the award.

#### **103. Transitional provisions.**

- (1) The provisions of this Act do not apply to arbitral proceedings commenced before the date on which this Act comes into operation.

- (2) They apply to arbitral proceedings commenced on or after that date under an arbitration agreement whenever made.

**104. Act binds the Crown.**

This Act applies to any arbitration agreement to which the Crown is a party.

**105. Rules.**

The Rules Committee constituted under section 75 of the Supreme Court Act (Ch. 53) may make rules in respect of all or any of the jurisdiction conferred by this Act on the court.

**106. Repeal.**

The Arbitration Act (Ch. 180) and section 42 of the Limitation Act (Ch. 83) are hereby repealed.

**50. Power to make provisional awards.**

- (1) The parties are free to agree that the tribunal shall have power to order on a provisional basis any relief which it would have power to grant in a final award.
- (2) This includes, for instance, making —
  - (a) a provisional order for the payment of money or the disposition of property as between the parties, or
  - (b) an order to make an interim payment on account of the costs of the arbitration.
- (3) Any such order shall be subject to the tribunal's final adjudication; and the tribunal's final award, on the merits or as to costs, shall take account of any such order.
- (4) Unless the parties agree to confer such power on the tribunal, the tribunal has no such power.

**51. General duty of parties.**

- (1) The parties shall do all things necessary for the proper and expeditious conduct of the arbitral proceedings.
- (2) This includes —
  - (a) complying without delay with any determination of the tribunal as to procedural or evidential matters, or with any order or directions of the tribunal, and
  - (b) where appropriate, taking without delay any necessary steps to obtain a decision of the court on a preliminary question of jurisdiction or law.

**52. Powers of tribunal in case of party's default.**

- (1) The parties are free to agree on the powers of the tribunal in case of a party's failure to do something necessary for the proper and expeditious conduct of the arbitration.
- (2) Unless otherwise agreed by the parties, the following provisions apply.
- (3) If the tribunal is satisfied that there has been inordinate and inexcusable delay on the part of the claimant in pursuing his claim and that the delay—
  - (a) gives rise, or is likely to give rise, to a substantial risk that it 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.
- (4) If without showing sufficient cause a party —

- (a) fails to attend or be represented at an oral hearing of which due notice was given, or
- (b) where matters are to be dealt with in writing, fails after due notice to submit written evidence or make written submissions,

the tribunal may continue the proceedings in the absence of that party or, as the case may be, without any written evidence or submissions on his behalf, and may make an award on the basis of the evidence before it.

- (5) If without showing sufficient cause a party fails to comply with any order or directions of the tribunal, the tribunal may make a peremptory order to the same effect, prescribing such time for compliance with it as the tribunal considers appropriate.
- (6) If a claimant fails to comply with a peremptory order of the tribunal to provide security for costs, the tribunal may make an award dismissing his claim.
- (7) If a party fails to comply with any other kind of peremptory order, then, without prejudice to section 53, the tribunal may do any of the following —
  - (a) direct that the party in default shall not be entitled to rely upon any allegation or material which was the subject matter of the order;
  - (b) draw such adverse inferences from the act of non-compliance as the circumstances justify;
  - (c) proceed to an award on the basis of such materials as have been properly provided to it;
  - (d) make such order as it thinks fit as to the payment of costs of the arbitration incurred in consequence of the non-compliance.

## **PART IX –POWERS OF COURT IN RELATION TO ARBITRAL PROCEEDINGS**

### **53. Enforcement of peremptory orders of tribunal.**

- (1) Unless otherwise agreed by the parties, the court may make an order requiring a party to comply with a peremptory order made by the tribunal.
- (2) An application for an order under this section may be made —
  - (a) by the tribunal (upon notice to the parties),
  - (b) by a party to the arbitral proceedings with the permission of the tribunal (and upon notice to the other parties), or
  - (c) where the parties have agreed that the powers of the court under this section shall be available.

- (3) The court shall not act unless it is satisfied that the applicant has exhausted any available arbitral process in respect of failure to comply with the tribunal's order.
- (4) No order shall be made under this section unless the court is satisfied that the person to whom the tribunal's order was directed has failed to comply with it within the time prescribed in the order or, if no time was prescribed, within a reasonable time.
- (5) The leave of the court is required for any appeal from a decision of the court under this section.

**54. Securing the attendance of witnesses.**

- (1) A party to arbitral proceedings may use the same court procedures as are available in relation to legal proceedings to secure the attendance before the tribunal of a witness in order to give oral testimony or to produce documents or other material evidence.
- (2) This may only be done with the permission of the tribunal or the agreement of the other parties.
- (3) The court procedures may only be used if —
  - (a) the witness is in The Bahamas, and
  - (b) the arbitral proceedings are being conducted in The Bahamas.
- (4) A person shall not be compelled by virtue of this section to produce any document or other material evidence which he could not be compelled to produce in legal proceedings.

**55. Court powers exercisable in support of arbitral proceedings.**

- (1) Unless otherwise agreed by the parties, the court has for the purposes of and in relation to arbitral proceedings the same power of making orders about the matters listed below as it has for the purposes of and in relation to legal proceedings.
- (2) Those matters are —
  - (a) the taking of the evidence of witnesses;
  - (b) the preservation of evidence;
  - (c) making orders relating to property which is the subject of the proceedings or as to which any question arises in the proceedings —
    - (i) for the inspection, photographing, preservation, custody or detention of the property, or
    - (ii) ordering that samples be taken from, or any observation be made of or experiment conducted upon, the property,



and for that purpose authorising any person to enter any premises in the possession or control of a party to the arbitration;

- (d) the sale of any goods the subject of the proceedings;
  - (e) the granting of an interim injunction or the appointment of a receiver.
- (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, and any arbitral or other institution or person vested by the parties with power in that regard, has no power or is unable for the time being to act effectively.
  - (6) If the court so orders, an order made by it under this section shall cease to have effect in whole or in part on the order of the tribunal or of any such arbitral or other institution or person having power to act in relation to the subject-matter of the order.
  - (7) The leave of the court is required for any appeal from a decision of the court under this section.

#### **56. Determination of preliminary point of law.**

- (1) Unless otherwise agreed by the parties, the court may on the application of a party to arbitral proceedings (upon notice to the other parties) determine any question of law arising in the course of the proceedings which the court is satisfied substantially affects the rights of one or more of the parties and an agreement to dispense with reasons for the tribunal's award shall be considered an agreement to exclude the court's jurisdiction under this section.
- (2) An application under this section shall not be considered unless —
  - (a) it is made with the agreement of all the other parties to the proceedings, or
  - (b) it is made with the permission of the tribunal and the court is satisfied —
    - (i) that the determination of the question is likely to produce substantial savings in costs, and
    - (ii) that the application was made without delay.

- (3) The application shall identify the question of law to be determined and, unless made with the agreement of all the other parties to the proceedings, shall state the grounds on which it is said that the question should be decided by the court.
- (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) Unless the court gives leave, no appeal lies from a decision of the court whether the conditions specified in subsection (2) are met.
- (6) The decision of the court on the question of law shall be treated as a judgment of the court for the purposes of an appeal but no appeal lies without the leave of the court which shall not be given unless the court considers that the question is one of general public importance, or is one which for some other special reason should be considered by the Court of Appeal.

## **PART X—INTERIM MEASURES AND PRELIMINARY ORDERS**

### **57. Power of arbitral tribunal to order interim measures.**

- (1) Unless otherwise agreed by the parties, the arbitral tribunal may, at the request of a party, grant interim measures.
- (2) An interim measure is any temporary measure, whether in the form of an award or in another form, by which, at any time prior to the issuance of the award by which the dispute is finally decided, the arbitral tribunal orders a party to —
  - (a) maintain or restore the status quo pending determination of the dispute;
  - (b) take action that would prevent, or refrain from taking action that is likely to cause, current or imminent harm or prejudice to the arbitral process itself;
  - (c) provide a means of preserving assets out of which a subsequent award may be satisfied; or
  - (d) preserve evidence that may be relevant and material to the resolution of the dispute.

### **58. Conditions for granting interim measures.**

- (1) The party requesting an interim measure under section 57 (2)(a), (b) and (c) shall satisfy the arbitral tribunal that —

- (a) harm not adequately reparable by an award of damages is likely to result if the measure is not ordered, and such harm substantially outweighs the harm that is likely to result to the party against whom the measure is directed if the measure is granted; and
  - (b) there is a reasonable possibility that the requesting party will succeed on the merits of the claim. The determination on this possibility shall not affect the discretion of the arbitral tribunal in making any subsequent determination.
- (2) With regard to a request for an interim measure under section 57(2)(d), the requirements in subsection (1)(a) and (b) of this section shall apply only to the extent the arbitral tribunal considers appropriate.

**59. Applications for preliminary orders and conditions for granting preliminary orders.**

- (1) Unless otherwise agreed by the parties, a party may, without notice to any other party, make a request for an interim measure together with an application for a preliminary order directing a party not to frustrate the purpose of the interim measure requested.
- (2) The arbitral tribunal may grant a preliminary order provided it considers that prior disclosure of the request for the interim measure to the party against whom it is directed risks frustrating the purpose of the measure.
- (3) The conditions defined under section 58 apply to any preliminary order, provided that the harm to be assessed under section 58(1)(a), is the harm likely to result from the order being granted or not.

**60. Specific regime for preliminary orders.**

- (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 of the request for the interim measure, the application for the preliminary order, the preliminary order, if any, and all other communications, including by indicating the content of any oral communication, between any party and the arbitral tribunal in relation thereto.
- (2) At the same time, the arbitral tribunal shall give an opportunity to any party against whom a preliminary order is directed to present its case at the earliest practicable time.
- (3) The arbitral tribunal shall decide promptly on any objection to the preliminary order.
- (4) A preliminary order shall expire after twenty days from the date on which it was issued by the arbitral tribunal. However, the arbitral tribunal may issue an interim measure adopting or modifying the preliminary order,

after the party against whom the preliminary order is directed has been given notice and an opportunity to present its case.

- (5) A preliminary order shall be binding on the parties but shall not be subject to enforcement by a court as such a preliminary order does not constitute an award.
- (6) Unless the parties agree to confer the powers given the the arbitral tribunal in this section and section 61, the tribunal has no such powers.

**61. Modification, suspension, termination.**

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

**62. Provision of security.**

- (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.

**63. Disclosure.**

- (1) The arbitral tribunal may require any party promptly to disclose any material change in the circumstances on the basis of which the measure was requested or granted.
- (2) The party applying for a preliminary order shall disclose to the arbitral tribunal all circumstances that are likely to be relevant to the arbitral tribunal's determination whether to grant or maintain the order, and such obligation shall continue until the party against whom the order has been requested has had an opportunity to present its case; thereafter, subsection (1) shall apply.

**64. Costs and damages.**

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. The arbitral tribunal may award such costs and damages at any point during the proceedings.

**65. Recognition and enforcement.**

- (1) Subject to section 66, an interim measure issued by an arbitral tribunal shall be recognized as binding and, unless otherwise provided by the arbitral tribunal, enforced upon application to the court, irrespective of the country in which it was issued.
- (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, if it considers it proper, 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.

**66. Grounds for refusing recognition or enforcement.**

- (1) Recognition or enforcement of an interim measure may be refused only —
  - (a) at the request of the party against whom it is invoked if the court is satisfied that —
    - (i) such refusal is warranted on the grounds set forth in subsection (3)(a);
    - (ii) 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; or
    - (iii) the interim measure has been terminated or suspended by the arbitral tribunal or, where so empowered, by the court of the country in which the arbitration takes place or under the law of which that interim measure was granted; or
  - (b) if 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) any of the grounds set forth in subsection (3)(b) apply to the recognition and enforcement of the interim measure.
- (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. The court where recognition or enforcement is sought shall not, in making that determination, undertake a review of the substance of the interim measure.

- (3) The grounds referred to in subsection (1)(a)(i) and (1)(b)(ii) are —
- (a) where the court finds that —
    - (i) a party to the arbitration agreement was under some incapacity; or the agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law of the country where the interim measure was made;
    - (ii) the party against whom the interim measure is invoked was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case;
    - (iii) the interim measure deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration, provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, that part of the interim measure which contains decisions on matters submitted to arbitration may be recognised and enforced; or
    - (iv) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties or, failing such agreement, was not in accordance with the law of the country where the arbitration took place;
  - (b) where the court finds that —
    - (i) the subject-matter of the dispute is not capable of settlement by arbitration under the law of The Bahamas; or
    - (ii) the recognition or enforcement of the interim measure would be contrary to the public policy of The Bahamas.

#### **67. Court-ordered interim measures.**

The court shall have the same power of issuing an interim measure in relation to arbitration proceedings, irrespective of whether the place is in The Bahamas, as it has in relation to proceedings in the court. The court

shall exercise such power in accordance with its own procedures in consideration of the specific features of international arbitration.

## **PART XI—THE AWARD**

### **68. Rules applicable to substance of dispute.**

- (1) The arbitral tribunal shall decide the dispute —
  - (a) in accordance with the law chosen by the parties as applicable to the substance of the dispute; or
  - (b) if the parties so agree, in accordance with such other considerations as are agreed by them or determined by the tribunal.
- (2) For this purpose the choice of the laws of a country shall be understood to refer to the substantive laws of that country and not its conflict of laws rules.
- (3) If or to the extent that there is no such choice or agreement, the tribunal shall apply the law determined by the conflict of laws rules which it considers applicable.

### **69. Awards on different issues, &c**

- (1) Unless otherwise agreed by the parties, the tribunal may make more than one award at different times on different aspects of the matters to be determined.
- (2) The tribunal may, in particular, make an award relating —
  - (a) to an issue affecting the whole claim, or
  - (b) to a part only of the claims or counterclaims submitted to it for decision.
- (3) If the tribunal does so, it shall specify in its award the issue, or the claim or part of a claim, which is the subject matter of the award.

### **70. Remedies.**

- (1) The parties are free to agree on the powers exercisable by the arbitral tribunal as regards remedies.
- (2) Unless otherwise agreed by the parties, the tribunal has the following powers.
- (3) The tribunal may make a declaration as to any matter to be determined in the proceedings.
- (4) The tribunal may order the payment of a sum of money, in any currency.

- (5) The tribunal has the same powers as the court —
  - (a) to order a party to do or refrain from doing anything;
  - (b) to order specific performance of a contract (other than a contract relating to land);
  - (c) to order the rectification, setting aside or cancellation of a deed or other document.

#### **71. Interest.**

- (1) The parties are free to agree on the powers of the tribunal as regards the award of interest.
- (2) Unless otherwise agreed by the parties the following provisions apply.
- (3) The tribunal may award simple or compound interest from such dates, at such rates and with such rests as it considers meet the justice of the case —
  - (a) on the whole or part of any amount awarded by the tribunal, in respect of any period up to the date of the award;
  - (b) on the whole or part of any amount claimed in the arbitration and outstanding at the commencement of the arbitral proceedings but paid before the award was made, in respect of any period up to the date of payment.
- (4) The tribunal may award simple or compound interest from the date of the award (or any later date) until payment, at such rates and with such rests as it considers meets the justice of the case, on the outstanding amount of any award (including any award of interest under subsection (3) and any award as to costs).
- (5) References in this section to an amount awarded by the tribunal include an amount payable in consequence of a declaratory award by the tribunal.
- (6) The above provisions do not affect any other power of the tribunal to award interest.

#### **72. Extension of time for making award.**

- (1) Where the time for making an award is limited by or in pursuance of the arbitration agreement, then, unless otherwise agreed by the parties, the court may in accordance with the following provisions by order extend that time.
- (2) An application for an order under this section may be made —
  - (a) by the tribunal (upon notice of the parties); or
  - (b) by any party to the proceedings (upon notice to the tribunal and the other parties),



but only after exhausting any available arbitral process for obtaining an extension of time.

- (3) The court shall only make an order if satisfied that a substantial injustice would otherwise be done.
- (4) 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 agreement or by a previous order) has expired.
- (5) The leave of the court is required for any appeal from a decision of the court under this section.

### **73. Settlement.**

- (1) If during arbitral proceedings the parties settle the dispute, the following provisions apply unless otherwise agreed by the parties.
- (2) The tribunal shall terminate the substantive proceedings and, if so requested by the parties and not objected to by the tribunal shall record the settlement in the form of an agreed award.
- (3) An agreed award shall state that it is an award of the tribunal and shall have the same status and effect as any other award on the merits of the case.
- (4) The following provisions of sections 74 to 80 apply to an agreed award.
- (5) Unless the parties have also settled the matter of the payment of the costs of the arbitration, the provisions of sections 81 to 87 shall apply.

### **74. Form of award.**

- (1) The parties are free to agree on the form of an award.
- (2) If or to the extent that there is no such agreement, the following provisions apply.
- (3) The award shall be in writing signed by all the arbitrators or all those assenting to the award.
- (4) The award shall contain the reasons for the award unless it is an agreed award or the parties have agreed to dispense with reasons.
- (5) The award shall state the seat of the arbitration and the date when the award is made.

### **75. Place where award treated as made.**

Unless otherwise agreed by the parties, where the seat of the arbitration is in The Bahamas, any award in the proceedings shall be treated as made there, regardless of where it was signed, despatched or delivered to any of the parties.

**76. Date of award.**

- (1) Unless otherwise agreed by the parties, the arbitral tribunal may decide what is to be taken to be the date on which the award was made.
- (2) In the absence of any such decision, the date of the award shall be taken to be the date on which it is signed by the arbitrator or, where more than one arbitrator signs the award, by the last of them.

**77. Notification of award.**

- (1) The parties are free to agree on the requirements as to notification of the award to the parties.
- (2) If there is no such agreement, the award shall be notified to the parties by service on them of copies of the award, which shall be done without delay after the award is made.
- (3) Nothing in this section affects section 78.

**78. Power to withhold award in case of non-payment.**

- (1) The tribunal may refuse to deliver an award to the parties except upon full payment of the fees and expenses of the arbitrators.
- (2) If the tribunal refuses on that ground to deliver an award, a party to the arbitral proceedings may (upon notice to the other parties and the tribunal) apply to the court, which may order that —
  - (a) the tribunal shall deliver the award on the 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 properly payable shall be determined by such means and upon such terms as the court may direct; and
  - (c) out of the money paid into court there shall be paid out such fees and expenses as may be found to be properly payable and the balance of the money (if any) shall be paid out to the applicant.
- (3) For this purpose the amount of fees and expenses properly payable is the amount the applicant is liable to pay under section 39 or any agreement relating to the payment of the arbitrators.
- (4) No application to the court may be made where there is any available arbitral process for appeal or review of the amount of the fees or expenses demanded.
- (5) References in this section to arbitrators include an arbitrator who has ceased to act and an umpire who has not replaced the other arbitrators.

- (6) The above provisions of this section also apply in relation to any arbitral or other institution or person vested by the parties with powers in relation to the delivery of the tribunal's award. As they so apply, the references to the fees and expenses of the arbitrators shall be construed as including the fees and expenses of that institution or person.
- (7) The leave of the court is required for any appeal from a decision of the court under this section.
- (8) Nothing in this section shall be construed as excluding an application under section 39 where payment has been made to the arbitrators in order to obtain the award.

#### **79. Correction of award or additional award.**

- (1) The parties are free to agree on the powers of the tribunal to correct an award or make an additional award.
- (2) If or to the extent there is no such agreement, the following provisions apply.
- (3) The tribunal may on its own initiative or on the application of a party —
  - (a) correct an award so as to remove any clerical mistake or error arising from an incidental slip or omission or clarify or remove any ambiguity in the award; or
  - (b) make an additional award in respect of any claim (including a claim for interest or costs) which was presented to the tribunal but was not dealt with in the award,but these powers shall not be exercised without first affording the other parties a reasonable opportunity to make representations to the tribunal.
- (4) Any application for the exercise of those powers must be made within 28 days of the date of the award or such longer period as the parties may agree.
- (5) Any correction of an award shall be made within 28 days of the date the application was received by the tribunal or, where the correction is made by the tribunal on its own initiative, within 28 days of the date of the award or, in either case, such longer period as the parties may agree.
- (6) Any additional award shall be made within 28 days of the date of the original award or such longer period as the parties may agree.
- (7) Any correction of an award shall form part of the award.

#### **80. Effect of award.**

- (1) Unless otherwise agreed by the parties, an award made by the tribunal pursuant to an arbitration agreement is final and binding both on the parties and on any persons claiming through or under them.

- (2) This does 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 Act.

## **PART XII—COSTS OF THE ARBITRATION**

### **81. Costs of the arbitration.**

- (1) References in this Act to the costs of the arbitration are to —
  - (a) the arbitrators' fees and expenses;
  - (b) the fees and expenses of any arbitral institution concerned; and
  - (c) the legal or other costs of the parties.
- (2) Any such reference includes the costs of or incidental to any proceedings to determine the amount of the recoverable costs of the arbitration.

### **82. Agreement to pay costs in any event.**

An agreement which has the effect that a party is to pay the whole or part of the costs of the arbitration in any event is only valid if made after the dispute in question has arisen.

### **83. Award of costs.**

- (1) The tribunal may make an award allocating the costs of the arbitration as between the parties, subject to any agreement of the parties.
- (2) Unless the parties otherwise agree, the tribunal shall award costs on the general principle that costs should follow the event except where it appears to the tribunal that in the circumstances this is not appropriate in relation to the whole or part of the costs.

### **84. Effect of agreement or award about costs.**

Unless the parties otherwise agree, any obligation under an agreement between them as to how the costs of the arbitration are to be borne, or under an award allocating the costs of the arbitration, extends only to such costs as are recoverable.

### **85. The recoverable costs of the arbitration.**

- (1) The parties are free to agree what costs of the arbitration are recoverable.
- (2) If or to the extent there is no such agreement, the following provisions apply.

- (3) The tribunal may determine by award the recoverable costs of the arbitration on such basis as it thinks fit and if it does so, it shall specify —
  - (a) the basis on which it has acted, and
  - (b) the items of recoverable costs and the amount referable to each.
- (4) If the tribunal does not determine the recoverable costs of the arbitration, any party to the arbitral proceedings may apply to the court (upon notice to the other parties) which may —
  - (a) determine the recoverable costs of the arbitration on such basis as it thinks fit, or
  - (b) order that they shall be determined by such means and upon such terms as it may specify.
- (5) Unless the tribunal or the court determines otherwise —
  - (a) the recoverable costs of the arbitration shall be determined on the basis that there shall be allowed a reasonable amount in respect of all costs reasonably incurred, and
  - (b) any doubt as to whether costs were reasonably incurred or were reasonable in amount shall be resolved in favour of the paying party.
- (6) The above provisions have effect subject to section 86.
- (7) Nothing in this section affects any right of the arbitrators, any expert, legal adviser or assessor appointed by the tribunal, or any arbitral institution, to payment of their fees and expenses.

#### **86. Recoverable fees and expenses of arbitrators.**

- (1) Unless otherwise agreed by the parties, the recoverable costs of the arbitration shall include in respect of the fees and expenses of the arbitrators only such reasonable fees and expenses as are appropriate in the circumstances.
- (2) If there is any question as to what reasonable fees and expenses are appropriate in the circumstances, and the matter is not already before the court on an application under section 85(4), the court may on the application of any party (upon notice to the other parties) —
  - (a) determine the matter; or
  - (b) order that it be determined by such means and upon such terms as the court may specify.
- (3) Subsection (1) has effect subject to any order of the court under section 35(4) or 36(3)(b).
- (4) Nothing in this section affects any right of the arbitrator to payment of his fees and expenses.

**87. Power to limit recoverable costs.**

- (1) Unless otherwise agreed by the parties, the tribunal may direct that the recoverable costs of the arbitration, or of any part of the arbitral proceedings, shall be limited to a specified amount.
- (2) Any direction may be made or varied at any stage, but this must be done sufficiently in advance of the incurring of costs to which it relates, or the taking of any steps in the proceedings which may be affected by it, for the limit to be taken into account.

## **PART XIII—POWERS OF THE COURT IN RELATION TO AWARD**

**88. Enforcement of the award.**

- (1) An award made by the tribunal pursuant to an arbitration agreement may, by 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 so 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 tribunal lacked substantive 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 in particular the provisions of the Arbitration (Foreign Arbitral Awards) Act, 2009 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 5 and 6 of the Arbitration (Foreign Arbitral Awards) Act, 2009.

**89. Challenging the award: substantive jurisdiction.**

- (1) A party to arbitral proceedings may (upon notice to the other parties and the tribunal) apply to the court —
  - (a) challenging any award of the arbitral tribunal as to its substantive jurisdiction; or
  - (b) for an order declaring an award made by the tribunal on the merits to be of no effect, in whole or in part, because the tribunal did not have substantive jurisdiction.

- (2) The arbitral tribunal may continue the arbitral proceedings and make a further award while an application to the court under this section is pending in relation to an award as to jurisdiction.
- (3) On an application under this section challenging an award of the arbitral tribunal as to its substantive jurisdiction, the court may by order —
  - (a) confirm the award;
  - (b) vary the award; or
  - (c) set aside the award in whole or in part.
- (4) The leave of the court is required for any appeal from a decision of the court under this section.

**90. Challenging the award: serious irregularity.**

- (1) A party to arbitral proceedings may (upon notice to the other parties and to the tribunal) apply to the court challenging an award in the proceedings on the ground of serious irregularity affecting the tribunal, the proceedings or the award.
- (2) Serious irregularity means an irregularity of one or more of the following kinds which the court considers has caused or will cause substantial injustice to the applicant—
  - (a) failure by the tribunal to comply with section 44;
  - (b) the tribunal exceeding its powers (otherwise than by exceeding its substantive jurisdiction);
  - (c) failure by the tribunal to conduct the proceedings in accordance with the procedure agreed by the parties;
  - (d) failure by the tribunal to deal with all the issues that were put to it;
  - (e) any arbitral or other institution or person vested by the parties with powers in relation to the proceedings or the award exceeding its powers;
  - (f) uncertainty or ambiguity as to the effect of the award;
  - (g) the award being obtained by fraud or the award or the way in which it was procured being contrary to public policy;
  - (h) failure to comply with the requirements as to the form of the award; or
  - (i) any irregularity in the conduct of the proceedings or in the award which is admitted by the tribunal or by any arbitral or other institution or person vested by the parties with powers in relation to the proceedings or the award.
- (3) If there is shown to be serious irregularity affecting the tribunal, the proceedings or the award, the court may —

- (a) remit the award to the tribunal, in whole or in part, for reconsideration;
  - (b) set the award aside in whole or in part; or
  - (c) declare the award to be of no effect, in whole or in part.
- (4) The court shall not exercise its power to set aside or to declare an award to be of no effect, in whole or in part, unless it is satisfied that it would be inappropriate to remit the matters in question to the tribunal for reconsideration.
- (5) The leave of the court is required for any appeal from a decision of the court under this section.

**91. Appeal on point of law.**

- (1) Unless otherwise agreed by the parties, a party to arbitral proceedings may (upon notice to the other parties and to the tribunal) appeal to the court on a question of law arising out of an award made in the proceedings. And an agreement to dispense with reasons for the tribunal's award shall be considered an agreement to exclude the court's jurisdiction under this section.
- (2) An appeal shall not be brought under this section except with the agreement of all the other parties to the proceedings.
- (3) 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 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.
- (4) 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 tribunal for reconsideration.
- (5) The decision of the court on an appeal under this section shall be treated as a judgment of the court for the purposes of a further appeal. But no such appeal lies without the leave of the court which shall not be given unless the court considers that the question is one of general public importance or is one which for some other special reason should be considered by the Court of Appeal.

**92. Challenge or appeal: supplementary provisions**

- (1) The following provisions apply to an application or appeal under section 89, 90 or 91.



- (2) An application or appeal may not be brought if the applicant or appellant has not first exhausted —
  - (a) any available arbitral process of appeal or review; and
  - (b) any available recourse under section 79.
- (3) Any application or appeal must be brought within 28 days 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 tribunal's reasons; or
  - (b) does not set out the tribunal's reasons in sufficient detail to enable the court properly to consider the application or appeal,the court may order the 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; the power to order security for costs shall not be exercised on the ground only that the applicant or appellant is —
  - (a) an individual ordinarily resident outside The Bahamas; or
  - (b) a corporation or association incorporated or formed under the law of a country outside The Bahamas or whose central management and control is exercised outside the Bahamas.
- (7) 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.
- (8) The court may grant leave to appeal subject to conditions to the same or similar effect as an order under subsection (6) or (7) but this does not affect the general discretion of the court to grant leave subject to conditions.

**93. Challenge or appeal: effect of order of court.**

- (1) The following provisions have effect where the court makes an order under section 89, 90 or 91 with respect to an award.
- (2) Where the award is varied, the variation has effect as part of the tribunal's award.

- (3) Where the award is remitted to the 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, is of no effect as regards the subject matter of the award or, as the case may be, the relevant part of the award.

## **PART XIV—MISCELLANEOUS**

### **94. Saving for rights of person who takes no part in proceedings.**

- (1) A person alleged to be a party to arbitral proceedings but who takes no part in the proceedings may question —
  - (a) whether there is a valid arbitration agreement;
  - (b) whether the tribunal is properly constituted; or
  - (c) what matters have been submitted to arbitration in accordance with the arbitration agreement,by proceedings in the court for a declaration or injunction or other appropriate relief.
- (2) He also has the same right as a party to the arbitral proceedings to challenge an award —
  - (a) by an application under section 89 on the ground of lack of substantive jurisdiction in relation to him;; or
  - (b) by an application under section 90 on the ground of serious irregularity (within the meaning of that section) affecting him,and section 92 (2) does not apply in his case.

### **95. Loss of right to object.**

- (1) If a party to arbitral proceedings takes part, or continues to take part, in the proceedings without making, either forthwith or within such time as is allowed by the arbitration agreement or the tribunal or by any provision of this Act any objection—
  - (a) that the tribunal lacks substantive jurisdiction;
  - (b) that the proceedings have been improperly conducted;
  - (c) that there has been a failure to comply with the arbitration agreement or with any provision of this Act; or

- (d) that there has been any other irregularity affecting the tribunal or the proceedings,

he may not raise that objection later, before the tribunal or the court, unless he shows that, at the time he took part or continued to take part in the proceedings, he did not know and could not with reasonable diligence have discovered the grounds for the objection.

- (2) Where the arbitral tribunal rules that it has substantive jurisdiction and a party to arbitral proceedings who could have questioned that ruling —
- (a) by any available arbitral process of appeal or review; or
- (b) by challenging the award,

does not do so, or does not do so within the time allowed by the arbitration agreement or any provision of this Act, he may not object later to the tribunal's substantive jurisdiction on any ground which was the subject of that ruling.

#### **96. Immunity of arbitral institutions, &c.**

- (1) An arbitral or other institution or person designated or requested by the parties to appoint or nominate an arbitrator is not liable for anything done or omitted in the discharge or purported discharge of that function unless the act or omission is shown to have been in bad faith.
- (2) An arbitral or other institution or person by whom an arbitrator is appointed or nominated is not liable, by reason of having appointed or nominated him, for anything done or omitted by the arbitrator (or his employees or agents) in the discharge or purported discharge of his functions as arbitrator.
- (3) The above provisions apply to an employee or agent of an arbitral or other institution or person as they apply to the institution or person himself.

### **PART XV—SUPPLEMENTARY**

#### **97. Service of notices, &c.**

- (1) The parties are free to 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 arbitral proceedings.
- (2) If or to the extent that there is no such agreement the following provisions apply.
- (3) A notice or other document may be served on a person by any effective means.

- (4) If a notice or other document is addressed, pre-paid and delivered by post —
  - (a) to the addressee's last known principal residence or post office box or, if he is or has been carrying on a trade, profession or business, his last known principal business address or post office box; or
  - (b) where the addressee is a body corporate, to the body's registered or principal office,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 Act 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.

**98. Powers of court in relation to service of documents.**

- (1) This section applies where service of a document on a person in the manner agreed by the parties, or in accordance with provisions of section 97 having effect in default of agreement, is not reasonably practicable.
- (2) Unless otherwise agreed by the parties, the court may make such order as it thinks fit —
  - (a) for service in such manner as the court may direct; or
  - (b) dispensing with service of the document.
- (3) Any party to the arbitration agreement may apply for an order, but only after exhausting any available arbitral process for resolving the matter.
- (4) The leave of the court is required for any appeal from a decision of the court under this section.

**99. Reckoning periods of time.**

- (1) The parties are free to agree on the method of reckoning periods of time for the purposes of any provision agreed by them or any provision of this Act having effect in default of such agreement.
- (2) If or to the extent there is no such agreement, periods of time shall be reckoned in accordance with the following provisions.
- (3) Where the act is required to be done within a specified period after or from a specified date, the period begins immediately after that date.
- (4) Where the act is required to be done a specified number of clear days after a specified date, at least that number of days must intervene between the day on which the act is done and that date.

- (5) Where the period is a period of seven days or less which would include a Saturday, Sunday or a public holiday in the place where anything which has to be done within the period falls to be done, that day shall be excluded.

**100. Power of court to extend time limits relating to arbitral proceedings.**

- (1) Unless the parties otherwise agree, the court may by order extend any time limit agreed by them in relation to any matter relating to the arbitral proceedings or specified in any provision of this Act having effect in default of such agreement but this section does not apply to a time limit to which section 12 applies.
- (2) An application for an order may be made —
  - (a) by any party to the arbitral proceedings (upon notice to the other parties and to the tribunal); or
  - (b) by the arbitral tribunal (upon notice to the parties).
- (3) The court shall not exercise its power to extend a time limit unless it is satisfied —
  - (a) that any available recourse to the tribunal, or to any arbitral or other institution or person vested by the parties with power in that regard, has first been exhausted; and
  - (b) that a substantial injustice would otherwise be done.
- (4) The court's power under this section may be exercised whether or not the time has already expired.
- (5) An order under this section may be made on such terms as the court thinks fit.
- (6) The leave of the court is required for any appeal from a decision of the court under this section.

**101. Notice and other requirements in connection with legal proceedings.**

- (1) References in this Act to an application, appeal or other step in relation to legal proceedings being taken "upon notice" to the other parties to the arbitral proceedings, or to the tribunal, are to such notice of the originating process as is required by rules of court and do not impose any separate requirement.
- (2) Rules of court shall be made —
  - (a) requiring such notice to be given as indicated by any provision of this Act; and
  - (b) as to the manner, form and content of any such notice.

- (3) Subject to any provision made by rules of court, a requirement to give notice to the 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 tribunal is not fully constituted, as a requirement to give notice to any arbitrator who has been appointed.
- (4) References in this Act to making an application or appeal to the court within a specified period are to the issue within that period of the appropriate originating process in accordance with rules of court.
- (5) Where any provision of this Act 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, apply in relation to that requirement.
- (6) Provision may be made by rules of court amending the provisions of this Act —
  - (a) with respect to the time within which any application or appeal to the court must be made;
  - (b) so as to keep any provision made by this Act in relation to arbitral proceedings in step with the corresponding provision of rules of court applying in relation to proceedings in the court; or
  - (c) so as to keep any provision made by this Act in relation to legal proceedings in step with the corresponding provision of rules of court applying generally in relation to proceedings in the court.

#### **102. Saving for certain matters governed by common law.**

- (1) Nothing in this Act shall be construed as excluding the operation of any rule of law consistent with the provisions of this Act in particular, any rule of law as to —
  - (a) matters which are not capable of settlement by arbitration;
  - (b) the effect of an oral arbitration agreement; or
  - (c) the refusal of recognition or enforcement of an arbitral award on grounds of public policy.
- (2) Nothing in this Act shall be construed as reviving any jurisdiction of the court to set aside or remit an award on the ground of errors of fact or law on the face of the award.

#### **103. Transitional provisions.**

- (1) The provisions of this Act do not apply to arbitral proceedings commenced before the date on which this Act comes into operation.

- (2) They apply to arbitral proceedings commenced on or after that date under an arbitration agreement whenever made.

**104. Act binds the Crown.**

This Act applies to any arbitration agreement to which the Crown is a party.

**105. Rules.**

The Rules Committee constituted under section 75 of the Supreme Court Act (Ch. 53) may make rules in respect of all or any of the jurisdiction conferred by this Act on the court.

**106. Repeal.**

The Arbitration Act (Ch. 180) and section 42 of the Limitation Act (Ch. 83) are hereby repealed.