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CAYMAN ISLANDS



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**A BILL FOR A LAW TO MODERNISE THE CONDUCT OF
ARBITRATION PROCEEDINGS IN THE CAYMAN ISLANDS; AND
FOR INCIDENTAL AND CONNECTED PURPOSES**

THE ARBITRATION BILL, 2011

MEMORANDUM OF OBJECTS AND REASONS

The main object of this Bill is to establish a modern legal framework within which arbitration proceedings in the Cayman Islands may be conducted in accordance with the terms of an arbitration agreement.

PART I - PRELIMINARY

Part I contains the preliminary provisions which comprise clauses 1 to 3.

Clause 1 provides the short title and commencement.

Clause 2 is the interpretation clause which sets out the definitions of various words and terms used throughout the Bill. Of particular note are the definitions of “appointing authority”, “arbitral tribunal”, “arbitration agreement”, “commercial transactions”, “domestic arbitration agreement”, “international arbitration agreement” and “place of the arbitration”.

Clause 3 provides that the law applies to domestic and international arbitration agreements.

PART II - ARBITRATION AGREEMENT

Part II deals with the formulation of an arbitration agreement and contains clauses 4 to 8.

Clause 5 provides for the enforcement of an arbitration agreement by or against the personal representative of the deceased party after the death of a party to the agreement.

Clause 6 provides for the enforceability of the terms of an arbitration agreement against the trustee in bankruptcy where a party to an arbitration agreement is bankrupt.

Clause 7 permits a liquidator, administrator or receiver to enforce an arbitration agreement against an insolvent body corporate.

Clause 8 provides for the enforcement of an arbitration agreement against a consumer in circumstances where the consumer, by separate written agreement, certifies that he has agreed to be bound by an arbitration agreement.

PART III - STAY OF LEGAL PROCEEDINGS

Part III deals with the making of applications for a stay of legal proceedings and it contains clauses 9 to 11.

Clause 9 permits any party to an arbitration agreement to apply for a stay of proceedings provided that application is made after the acknowledgement of service and before delivering any pleading or taking any step in the proceedings to answer the substantive claim.

Clause 10 permits the court, in cases of an application for a stay of proceedings, to order that any property seized be retained as security for the satisfaction of any award made on the arbitration or that the stay be conditional on the provision of equivalent security for the satisfaction of any such award.

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

PART IV - COMMENCEMENT OF ARBITRATION

Part IV deals with the manner in which arbitration proceedings are to commence. It contains clauses 12 and 16.

Clause 12 provides that an arbitration shall, unless otherwise agreed by the parties, commence when one party to the arbitration agreement serves on the other party a notice requiring him to appoint or concur in appointing an arbitrator or to submit the dispute to a designated person.

Clause 13 provides that in circumstances where an arbitration agreement stipulates that arbitration proceedings will be barred unless commenced with a fixed time, the court may extend that time if it is of the opinion that in the circumstances of the case undue hardship would be caused.

Clause 14 permits the court, on an application of any party to an arbitration agreement, to issue a subpoena requiring a person to attend for examination before the arbitrator or to provide at the examination before the arbitrator the document or documents specified in the subpoena.

Clause 15 permits a party to an arbitration agreement or the arbitrator to apply to the court for a remedy where one party refuses to attend before an arbitrator.

Clause 16 stipulates that the Limitation Law (1996 Revision) shall apply to arbitration proceedings in the same manner in which it applies to proceedings before a court.

PART V - ARBITRAL TRIBUNAL

Part V deals with matters relating to the number, appointment and removal of arbitrators and consists of clauses 17 to 27.

Clause 17 permits the parties to an arbitration agreement to choose the number of arbitrators they wish to preside over arbitration proceedings.

Clause 18 permits the parties to agree on the procedure for appointing the arbitral tribunal. It further provides for the intervention of the appointing authority.

Clause 19 stipulates that the authority of an arbitrator appointed in accordance with an arbitration agreement shall, unless a contrary intention is expressed in the agreement, be irrevocable except with leave of the court.

Clause 20 sets out the circumstances under which the appointment of an arbitrator may be challenged on the basis that the appointment of the arbitrator is likely to compromise his impartiality or independence.

Clause 21 permits the parties to formulate a procedure to be followed when challenging the appointment of an arbitrator and in circumstances where there is no agreement it stipulates a procedure to be adopted.

Clause 22 provides for the circumstances under which an application may be made to the court to remove an arbitrator.

Clause 23 permits a party to an arbitration agreement to appoint a person to act as arbitrator in place of any person removed as arbitrator.

Clause 24 provides for the circumstances under which an arbitrator shall cease to hold office.

Clause 25 provides for the appointment of a substitute arbitrator where an arbitrator ceases to hold office.

Clause 26 provides that in arbitration proceedings with more than one arbitrator, a decision of the arbitral tribunal shall be made by all or a majority of its members, unless otherwise agreed by the parties and in the event that no majority decision

can be agreed, the parties may agree on the process to be followed in order to arrive at a final binding decision.

Clause 27 provides that an arbitrator shall not be liable for negligence in respect of anything done or omitted to be done by him in his capacity as arbitrator or for any mistake of law, fact or procedure made by him in the course of arbitration proceedings or in the making of an arbitral award.

PART VI - JURISDICTION OF ARBITRAL TRIBUNAL

Part VI deals with the jurisdiction of an arbitral tribunal and consists of clauses 28 and 29.

Clause 28 provides that any dispute that parties have agreed to submit to arbitration under an arbitration agreement may be determined by arbitration unless the arbitration agreement is contrary to public policy or to any law.

Clause 29 permits an arbitral tribunal to rule on its own jurisdiction, including any objections to the existence or validity of the arbitration agreement.

PART VII - ARBITRAL PROCEEDINGS

Part VII deals with the manner in which arbitral proceedings may be conducted and it contains clauses 30 to 43.

Clause 30 sets out the general duties of the arbitral tribunal including the requirement that the arbitral tribunal act fairly and impartially.

Clause 31 permits the parties to agree on the procedure to be followed by the arbitral tribunal in conducting the proceedings. It states that if the parties fail to agree on the procedure to be followed by the arbitral tribunal, the tribunal may, conduct the arbitration in a manner it considers appropriate.

Clause 32 provides that the parties to an arbitration agreement are free to agree on the place of arbitration and in circumstances where there is no agreement as to a place of arbitration, the place of arbitration shall be determined by the arbitral tribunal having regard to all the circumstances of the case.

Clause 33 provides that the parties to an arbitration agreement may agree on the language or languages to be used in the arbitral proceedings and where there is no agreement as to the language to be used, the arbitral tribunal shall determine the language or languages to be used in the proceedings.

Clause 34 provides that the parties may agree as to the manner in which a statement of claim and defence shall be presented and failing such agreement, the process is to be determined by the arbitral tribunal.

Clause 35 provides that subject to any contrary agreement by the parties, the arbitral tribunal shall determine if proceedings are to be conducted by oral hearing for the presentation of evidence; oral argument; the production of documents and other written materials; or a combination of all.

Clause 36 permits a party to an arbitration agreement to be represented in proceedings before the arbitral tribunal by a legal practitioner or by a representative who is not a legal practitioner.

Clause 37 provides that an application may be made to the arbitral tribunal to extend the proceedings of an arbitration to current proceedings where pursuant to an arbitration agreement a dispute between the parties to that agreement is referred to arbitration and there is some other dispute between those same parties, whenever the dispute arose, being a dispute to which the same agreement applies.

Clause 38 provides for the consolidation of arbitration proceedings where a common question of law or fact arises in all the arbitration proceedings to which this section relates.

Clause 39 permits the parties to an arbitration agreement to appoint one or more experts to report to it on specific issues to be determined by the tribunal and it requires a party to give the expert any relevant information, document, goods or other property for his inspection.

Clause 40 provides for the general powers of the arbitral tribunal including matters relating to security for costs; discovery of documents and interrogatories; giving of evidence by affidavit; and the preservation and interim custody of any evidence for the purposes of the proceedings.

Clause 41 permits the parties to agree on the powers that may be exercised by the arbitral tribunal in the case of a party's failure to take any necessary action for the proper and expeditious conduct of the proceedings.

Clause 42 permits any party to an arbitration agreement to take out a writ of subpoena compelling a witness to attend and give evidence or a writ of subpoena compelling a witness to attend and give evidence and produce specified documents.

Clause 43 provides that a person who wilfully or corruptly gives false evidence before an arbitral tribunal is guilty of perjury, as if the evidence had been given in open court, and may be dealt with, prosecuted, and punished accordingly.

Clause 44 sets out the powers exercisable by the court in support of arbitration proceedings.

PART VIII - INTERIM MEASURES AND PRELIMINARY ORDERS

Part VIII provides for the imposition of interim measures and the making of preliminary orders and consists of clauses 45 to 55.

Clause 45 permits an arbitral tribunal, subject to the agreement between the parties, to at anytime prior to the issue of an award and at the request of a party, grant interim measures including maintaining or restoring the original position of the other party, take action that would prevent prejudice to the arbitral process or reserve evidence that may be relevant and material to the resolution of the dispute.

Clause 46 sets out the conditions to be satisfied where a party requests an interim measure.

Clause 47 provides for the making of applications to grant preliminary orders in arbitral proceedings and it sets out the conditions for granting preliminary orders.

Clause 48 sets out the regime applicable to the grant of a preliminary order and in particular it provides that the arbitral tribunal shall give notice to all parties by indicating the content of any oral communication, between any party and the arbitral tribunal in relation to-

- (a) the request for the interim measure;
- (b) the application for the preliminary order;
- (c) the specifics of the preliminary order, if any; and
- (d) all other communications.

Clause 49 provides for the circumstances under which a preliminary order may be modified, suspended or terminated.

Clause 50 permits the arbitral tribunal to require that a party requesting an interim measure provide appropriate security in connection with the measure.

Clause 51 permits the arbitral tribunal to require any party to disclose a material change in the circumstances surrounding the grant of an interim measure.

Clause 52 provides that a party requesting an interim measure or applying for a preliminary order shall be liable for any costs and damages caused by that interim measure or preliminary measure..

Clause 53 provides for the recognition and enforcement of an interim measure issued by an arbitral tribunal.

Clause 54 sets out the circumstances under which the recognition or enforcement of an interim measure may be refused by an arbitral tribunal.

Clause 55 provides the court with the power to issue an interim measure in relation to arbitration proceedings.

PART IX – AWARD

Part IX deals with the issuance of awards in arbitral proceedings and comprises clauses 56 to 71.

Clause 56 provides that the arbitral tribunal shall decide a dispute in accordance with the law chosen by the parties.

Clause 57 permits the arbitral tribunal to make more than one award at different points in time during the proceedings.

Clause 58 provides that the parties may agree on the powers exercisable by the arbitral tribunal in relation to remedies.

Clause 59 provides for award of interest by the arbitral tribunal.

Clause 60 empowers an arbitral tribunal to make an award at any time during the arbitral proceedings.

Clause 61 deals with the courts power to extend the time within which an arbitral award may be granted.

Clause 62 provides that an arbitral tribunal may, if it thinks fit, make an interim award.

Clause 63 provides that if, during arbitration proceedings, the parties settle the dispute, the arbitral tribunal shall terminate the proceedings and if requested by the parties, and not objected to by the arbitral tribunal, record the settlement in the form of an arbitral award on agreed terms.

Clause 64 provides for the form and content of the award.

Clause 65 provides for the award of costs in arbitration proceedings.

Clause 66 provides that the parties are jointly and severally liable to pay to the arbitral tribunal such reasonable fees and expenses as are appropriate in the circumstances.

Clause 67 provides for the award of costs in circumstances where arbitral proceedings are aborted.

Clause 68 provides that the arbitral tribunal may refuse to deliver an award to the parties if the parties have not made full payment of the fees and expenses of the arbitrators.

Clause 69 provides that the court may, where a legal practitioner or expert witness has rendered services during arbitration proceedings, order that property be charged for payment of the costs of that legal practitioner or expert witness.

Clause 70 permits a party to, within thirty days of the receipt of an award, request an arbitral tribunal to correct or interpret an award.

Clause 71 provides that an award made by the arbitral tribunal pursuant to an arbitration agreement shall be final and binding on the parties and on any person claiming through or under them.

PART X - POWER OF COURT IN RELATION TO AWARD

Part X deals with power of the court in relation to an award subject to the agreement of the parties and consists of clauses 72 to 80.

Clause 72 permits the court on the application of a party to the arbitration proceedings who has given notice to the other parties, to determine any question of law arising in the course of the proceedings.

Clause 73 provides for the enforcement of an arbitration award in the same manner as a judgment or order of the court.

Clause 74 provides that the court shall not have jurisdiction to review, confirm, vary, set aside or remit an award on an arbitration agreement except where the law so provides.

Clause 75 permits the court to make an order extending the powers of the arbitral tribunal if a party to an arbitration agreement fails to comply with an order within a reasonable time.

Clause 76 deals with the power of the court to give relief where an arbitrator is not impartial or the dispute involves a question of fraud.

Clause 77 deals with the circumstances under which the court may set aside an arbitral award.

Clause 78 provides that a party to arbitration proceedings may appeal to the court on a question of law arising out of an award made in the proceedings.

Clause 79 requires that a party exhaust any available arbitral process of appeal or review before making an appeal to the court.

Clause 80 deals with the effect of an order of the court where an appeal is made against an award.

PART XII – MISCELLANEOUS

Part XII sets out miscellaneous provisions and comprises clauses 81 to 92.

Clause 81 provides that references to an application, appeal or other step in relation to legal proceedings being taken upon notice to the other parties to the arbitration proceedings, or to the arbitral tribunal, are references to such notice of the originating process as is required by Rules of Court.

Clause 82 provides for Rules of Court to be made for conferring on the Clerk of the Court or other officer of the court, all or any of the jurisdiction conferred by this Law on the court.

Clause 83 provides for the conduct of arbitral proceedings in private.

Clause 84 provides for the making of Rules of Court.

Clause 85 provides that for proceedings under this Law in any court on the application of any party to the proceedings to be heard otherwise than in open court.

Clause 86 provides for the imposition of restrictions on reporting of arbitral proceedings heard otherwise than in open court.

Clause 87 provides for the immunity of the appointing authority, an arbitral tribunal or person designated or requested by the parties to appoint or nominate an arbitrator in the discharge of their functions.

Clause 88 permits the parties 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 proceedings.

Clause 89 provides for the parties to agree on the method of reckoning periods of time.

Clause 90 provides that the Law binds the Crown.

Clause 91 deals with the making of regulations to give effect to this Law.

Clause 92 contains transitional and repeal provisions.

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CAYMAN ISLANDS

**A BILL FOR A LAW TO MODERNISE THE CONDUCT OF
ARBITRATION PROCEEDINGS IN THE CAYMAN ISLANDS; AND
FOR INCIDENTAL AND CONNECTED PURPOSES**

ENACTED by the Legislature of the Cayman Islands.

PART I - PRELIMINARY

1. This Law may be cited as the Arbitration Law, 2011 and shall come into force on such date as may be appointed by order made by the Governor in Cabinet.

Short title and
commencement

2. (1) In this Law-

Interpretation

“appointing authority” means the court or any other competent authority agreed by the parties in an arbitration agreement;

“arbitral tribunal” means a sole arbitrator, a panel of arbitrators or an arbitral institution;

“arbitration agreement” means an agreement between parties to submit to arbitration all or certain disputes that have arisen or that may arise between them

whether or not contractual and includes agreements that involve commercial transactions;

“award” means a decision of the arbitral tribunal on the substance of the dispute and includes any interim, interlocutory or partial award but excludes any order or direction made under section 40(2);

(2008 Revision)

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

“commercial transactions” includes the following-

- (a) trade transactions for the supply or exchange of goods or services;
- (b) distribution agreements;
- (c) commercial representation or agency;
- (d) factoring;
- (e) leasing;
- (f) construction of works;
- (g) consulting;
- (h) engineering;
- (i) licensing;
- (j) investment;
- (k) financing;
- (l) banking;
- (m) insurance;
- (n) joint venture and other forms of industrial or business co-operation; and
- (o) carriage of goods or passengers by air, sea, rail or road;

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

“domestic arbitration agreement” means an arbitration agreement in which the place of arbitration has been designated as the Islands and to which none of the parties is-

- (a) an individual who is a national of, or habitually resident in a jurisdiction other than the Islands; or
- (b) a body corporate which is incorporated in, or whose central control and management is exercised in a jurisdiction other than the Islands.

“international arbitration agreement” means an arbitration agreement where-

- (a) the parties expressly state, at the time of the conclusion of the agreement, that it is an international arbitration agreement;
- (b) at least one of the parties to an arbitration agreement has, at the time of the conclusion of that agreement, his nationality or habitual residence in a jurisdiction other than the Islands;
- (c) in the case of a body corporate, at least one of the parties to an arbitration agreement has, at the time of the conclusion of that agreement, its place of incorporation or business, in a jurisdiction other than the Islands;
- (d) the subject matter of the dispute is closely connected with a jurisdiction other than the Islands;
- (e) a substantial part of the contractual obligations are to be performed in a jurisdiction other than the Islands; or
- (f) the parties have expressly agreed that the subject matter of the arbitration agreement relates to more than one jurisdiction;

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

“party” means a party to an arbitration agreement or, in any case where an arbitration does not involve all of the parties to the arbitration agreement, means a party to the arbitration;

“place of the arbitration” means the juridical seat of the arbitration designated by-

- (a) the parties to the arbitration agreement; or
- (b) any arbitral tribunal or person authorised by the parties for that purpose,

or, in the absence of such designation, determined by the court, having regard to the arbitration agreement and all relevant circumstances;

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

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

“Rules of Court” mean the Rules of the Grand Court.

(2) If a party has more than one place of business, the place of business is that which has the closest relationship to the arbitration agreement;

(3) If a party does not have a place of business, reference is to be made to his habitual residence.

(4) Where any provision in this Law allows the parties to determine any issue, the parties may authorise a third party, including an arbitral tribunal, to make the determination.

(5) Where any provision in this Law refers to the fact that the parties have agreed or that they may agree, or in any other way refers to an agreement of the parties, such agreement includes any arbitration rules incorporated in that agreement.

(6) Where any provision in this Law refers to a claim, it also applies to a cross-claim or counter-claim, and where such provision refers to a defence, it also applies to a defence to a cross-claim or counter-claim.

Application of this Law

3. (1) This Law applies to a domestic arbitration agreement or an international arbitration agreement where the place of arbitration is in the Islands.

(2) The provisions of this Law apply to every arbitration under any other enactment whether enacted before or after the commencement of this Law, except in so far as-

- (a) this Law is inconsistent with that other enactment or with any rules or procedures authorised thereunder; or
- (b) that other enactment otherwise provides.

PART II - ARBITRATION AGREEMENT

Arbitration agreement

4. (1) An arbitration agreement may be in the form of an arbitration clause in a contract or in the form of a separate agreement.

(2) An arbitration agreement, except as provided for in subsection (3), shall be in writing and contained in-

- (a) a document signed by the parties; or
- (b) an exchange of letters, facsimile, telegrams, electronic communications or other means of communication that provide a record of the agreement.

(3) Where, in any arbitral or legal proceedings, a party asserts the existence of an arbitration agreement in a pleading, statement of case or any other document in circumstances in which the assertion calls for a reply and the assertion is not denied, there shall be deemed to be an effective arbitration agreement as between the parties to the proceedings.

(4) A reference in-

- (a) a bill of lading to a charter party or other document; or
- (b) an agreement to any other document,

containing an arbitration clause shall constitute an arbitration agreement if the reference is such as to make that clause a part of the bill of lading or the original agreement.

(5) In this section-

“electronic communications” includes data, texts, images, sounds, codes, computer programs, software and databases which are transmitted through an information system designed for generating, sending, receiving, storing or otherwise processing any form of electronic information which comprises of electrical, digital, magnetic, wireless, optical, electromagnetic or similar capabilities

5. (1) Unless otherwise agreed by the parties, an arbitration agreement shall be enforceable by or against the personal representative of the deceased party after the death of a party to the agreement.

Arbitration agreement
enforceable after death
of a party to the
agreement

(2) The authority of an arbitrator shall not be revoked by the death of a party by whom he was appointed.

(3) Nothing in this section shall be taken to affect the operation of any law by virtue of which any right of action is extinguished by the death of a person.

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

Arbitration agreement
enforceable in
bankruptcy

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

Arbitration agreement
enforceable in
insolvency

8. (1) Where a contract contains an arbitration agreement and a person enters into that contract as a consumer, the arbitration agreement is enforceable against the consumer only if the consumer, by separate written agreement certifies that, having read and understood the arbitration agreement, he agrees to be bound by that agreement.

Consumer arbitration
agreement

(2) Subsection (1) applies to every contract containing an arbitration agreement entered into in the Islands notwithstanding a provision in the contract to the effect that the contract is governed by a law other than the law of the Islands.

(3) Where a party to a consumer arbitration agreement knows that any provision of this Law from which he may derogate or any requirement under the arbitration agreement has not been complied with and that party proceeds with the arbitration without making an objection to that non-compliance without undue delay or, if a time limit is provided, within that period of time, that party shall be deemed to have waived the right to object and an arbitration agreement that would otherwise be unenforceable by reason of non-compliance shall be treated as operative.

(4) In this section-

“consumer” in relation to-

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

PART III - STAY OF LEGAL PROCEEDINGS

Stay of legal
proceedings

9. (1) Where a party to an arbitration agreement institutes proceedings in a court against another party to that agreement in respect of any matter which is the subject of the agreement, any party to the agreement may, at any time after the acknowledgement of service and before delivering any pleading or taking any step in the proceedings to answer the substantive claim, apply to a court to stay the proceedings so far as the proceedings relate to that matter.

(2) Where a court stays proceedings in accordance with subsection (1), the court may, for the purpose of preserving the rights of parties, make an interim order as the court thinks fit in relation to any property that is or forms part of the subject of the dispute to which the order under that subsection relates.

(3) For the purposes of this section and section 11, a reference to a party includes a reference to any person claiming through or under that party.

10. (1) Where a court stays proceedings under section 9, the court may, if in those proceedings property has been seized or security has been given to prevent or obtain release from arrest, order that-

Court's powers on any stay of proceedings

- (a) the property seized be retained as security for the satisfaction of any award made on the arbitration; or
- (b) the stay be conditional on the provision of equivalent security for the satisfaction of any such award.

(2) Subject to the Rules of Court and to any necessary modification, the same law and practice shall apply in relation to property retained in pursuance of an order under this section as would apply if it were held for the purposes of proceedings in the court that made the order.

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

Reference of interpleader issue to arbitration

PART IV - COMMENCEMENT OF ARBITRATION

12. (1) An arbitration shall, unless otherwise agreed by the parties, commence when one party to the arbitration agreement serves on the other party a notice requiring him to appoint or concur in appointing an arbitrator, or where an arbitration agreement provides that the reference shall be to a person named or designated in the agreement, requiring him to submit the dispute to the person so named or designated.

Commencement of arbitration proceedings

- (2) A notice mentioned in subsection (1) may be served by-
 - (a) delivering it to the person on whom it is to be served;
 - (b) leaving it at the person's usual or last known place of residence, or in the case of a body corporate, at its registered office, in the Islands;
 - (c) sending it by post in a registered letter addressed to that person at his usual or last known place of residence, or in the case of a body corporate, at its registered office, in the Islands; or
 - (d) in any other manner provided in the arbitration agreement,

and where a notice is sent by post in the manner prescribed in paragraph (c), service shall, unless the contrary intention is proved, be deemed to have been effected at the time at which the letter would have been delivered in the ordinary course of the post.

Powers of court to extend time for beginning of arbitration proceedings

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

- (a) some step has been taken to begin other dispute resolution procedures that must be exhausted before arbitration proceedings can be begun;
- (b) notice to appoint an arbitrator is given;
- (c) an arbitrator is appointed; or
- (d) some other step is taken to commence arbitration proceedings,

within a time fixed by the agreement, and a dispute to which the agreement applies has arisen, the court may, if it is of the opinion that in the circumstances of the case undue hardship would otherwise be caused, extend the time stipulated in the agreement on such terms as the court thinks fit.

(2) An order of extension of time made by the court under subsection (1)-

- (a) may be made only after any available arbitral process for obtaining an extension of time has been exhausted;
- (b) may be made notwithstanding that the time so fixed has expired; and
- (c) shall not affect the operation of section 12 or 16 or any other law relating to the limitation of actions.

Parties may obtain subpoena

14. (1) The court may, on the application of any party to an arbitration agreement, and in accordance with Rules of Court, issue a subpoena requiring a person to attend for examination before the arbitrator or to provide at the examination before the arbitrator the document or documents specified in the subpoena.

(2) A person shall not be compelled under any subpoena issued in accordance with subsection (1) to answer any question or produce any document which that person could not be compelled to answer or produce on the trial of an action.

Refusal or failure to attend before arbitrator etc.

15. (1) Unless a contrary intention is expressed in the arbitration agreement, where any person (whether or not a party to the agreement)-

- (a) refuses or fails to attend before the arbitrator for examination when required under a subpoena or by the arbitrator to do so;
- (b) appearing as a witness before the arbitrator-
 - (i) refuses or fails to take an oath or to make an affirmation or affidavit when required by the arbitrator to do so;

- (ii) refuses or fails to answer a question that he is required by the arbitrator to answer;
- (iii) refuses or fails to produce a document that he is required under a subpoena or by the arbitrator to produce; or
- (c) refuses or fails to do any other thing which the arbitrator may require,

a party to the arbitration agreement or the arbitrator may apply to the court for a remedy and the court may order the person in default to attend before the court for examination or to produce the relevant document or to do the relevant thing.

(2) An order made by the court under subsection (1), may include a request for the transmission to the arbitrator of-

- (a) a record of any evidence given pursuant to the order;
- (b) any document produced pursuant to the order or a copy of any such document; or
- (c) particulars of any thing done pursuant to the order,

and any such evidence, document or thing shall be deemed to have been given, produced or done, as the case requires, in the course of the arbitration proceedings.

(3) If a party to an arbitration agreement-

- (a) refuses or fails to attend before the arbitrator for examination when required under a subpoena or by the arbitrator to do so; or
- (b) fails within the time specified by the arbitrator or, if no time is so specified, within a reasonable time to comply with a requirement of the arbitrator,

the arbitrator may continue with the arbitration proceedings in default of appearance.

16. (1) The Limitation Law (1996 Revision) shall apply to arbitration proceedings as it applies to proceedings before any court and a reference in that Law to the commencement of any action shall be construed as a reference to the commencement of arbitration proceedings.

Application of
Limitation Law (1996
Revision)

(2) The court may order that in computing the time prescribed by the Limitation Law (1996 Revision) for the commencement of proceedings, including arbitration proceedings, in respect of a dispute that was the subject-matter of-

- (a) an award that the court orders to be set aside or declares to be of no effect; or

- (b) the affected part of an award that the court orders to be set aside in part or declares to be in part of no effect,

the period between the commencement of the arbitration and the date of the order referred to in paragraph (a) or (b) shall be excluded.

(3) In determining for the purposes of the Limitation Law (1996 Revision) when a cause of action accrued, any provision that an award is a condition precedent to the bringing of legal proceedings in respect of a matter to which an arbitration agreement applies shall be disregarded.

PART V - ARBITRAL TRIBUNAL

Number of arbitrators

17. (1) The parties to an arbitration agreement may choose any number of arbitrators.

(2) Where the parties fail to determine the number of arbitrators, there shall be a single arbitrator.

Appointment of arbitrators

18. (1) The parties shall agree to a procedure for appointing the arbitral tribunal.

(2) Where the parties fail to agree on a procedure for appointing the arbitral tribunal-

- (a) in an arbitration with a sole arbitrator, the arbitrator shall be appointed, upon the request of a party to the agreement, by the appointing authority; and
- (b) in an arbitration with more than two arbitrators, the parties shall appoint an odd number of arbitrators either by-
 - (i) each party appointing an arbitrator and agreeing to the appointment of a subsequent arbitrator; or
 - (ii) two or more parties agreeing to the appointment of the required number of arbitrators.

(3) Where subsection (2)(b) applies-

- (a) if a party fails to appoint an arbitrator within thirty days of receipt of a first request to do so from the other party; or
- (b) if the parties fail to agree on the appointment of the additional arbitrator within thirty days of the receipt of the first request by any party to do so,

the appointment shall be made, upon the request of a party, by the appointing authority.

- (4) If, under an appointment procedure agreed to by the parties-
- (a) one party fails to act as required under such procedure;
 - (b) the parties are unable to reach an agreement under such procedure; or
 - (c) a third party to the agreement, including an arbitral tribunal, fails to perform any function assigned to it under such procedure,

any party may apply to the appointing authority to take the necessary measures unless the agreement on the appointment procedure provides other means for securing the appointment.

(5) Where a party makes a request or makes an application to the appointing authority under subsection (2), (3) or (4), the appointing authority shall, in appointing an arbitrator, have regard to the following-

- (a) the nature of the subject-matter of the arbitration;
- (b) the availability of any arbitrator;
- (c) the identities of the parties to the arbitration;
- (d) any suggestion made by any of the parties regarding the appointment of any arbitrator;
- (e) any qualifications required of the arbitrator by the arbitration agreement; and
- (f) such considerations as are likely to secure the appointment of an independent and impartial arbitrator.

(6) An appointment made by the appointing authority shall not be challenged except in accordance with this Law.

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

Authority of arbitrator to be irrevocable

20. (1) Where a person is approached in connection with his possible appointment as an arbitrator, he shall disclose any circumstance likely to compromise his impartiality or independence.

Grounds for challenge

(2) An arbitrator shall, from the time of his appointment and throughout the arbitration proceedings, without delay disclose any such circumstance as is referred to in subsection (1) to the parties unless they have already been so informed by him.

(3) Subject to subsection (4), an arbitrator may be challenged only if-

- (a) circumstances exist that give rise to justifiable doubts as to his impartiality or independence; or
- (b) he does not possess the qualifications agreed to by the parties.

(4) A party who has appointed or participated in the appointment of an arbitrator may challenge such arbitrator only if he becomes aware of any of the grounds of challenge set out in subsection (3) as may be applicable to the arbitrator after the arbitrator has been appointed.

Challenge procedure

21. (1) Subject to subsection (3), the parties may agree on a procedure for challenging an arbitrator.

(2) If the parties have not agreed on a procedure for challenge, a party who intends to challenge an arbitrator shall-

- (a) within fifteen days after becoming aware of the constitution of the arbitral tribunal; or
- (b) after becoming aware of any circumstance referred to in section 20(3),

send a written statement of the grounds for the challenge to the arbitral tribunal.

(3) The arbitral tribunal shall, unless the challenged arbitrator withdraws from his office or the other party agrees to the challenge, decide on the challenge.

(4) If a challenge before the arbitral tribunal is unsuccessful, the aggrieved party may, within thirty days after receiving notice of the decision rejecting the challenge, apply to the court to decide on the challenge and the court may make such order as it thinks fit.

(5) An appeal shall not lie against the decision of the court under subsection (4).

(6) While an application to the court under subsection (4) is pending, the arbitral tribunal, including the challenged arbitrator, may continue the arbitration proceedings and make an award.

Removal of arbitrator

22. (1) A party may request the court to remove an arbitrator-

- (a) who is physically or mentally incapable of conducting the proceedings or where there are justifiable doubts as to his capacity to do so; or
- (b) who has refused or failed-
 - (i) to properly conduct the proceedings; or

- (ii) to use all reasonable despatch in conducting the proceedings or making an award,

and where substantial injustice has been or will be caused to that party.

(2) If there is a person vested by the parties with power to remove an arbitrator, the court shall not exercise its power of removal unless it is satisfied that the applicant has first exhausted any available recourse to that person.

(3) While an application to the court under this section is pending, the arbitral tribunal, including the arbitrator concerned may continue the arbitration proceedings and make an award.

(4) Where the court removes an arbitrator, it may make such order as it thinks fit with respect to his entitlement, if any, to fees or expenses, or the repayment of any fees or expenses already paid.

(5) The arbitrator concerned is entitled to appear and be heard by the court before the court makes any order under this section.

(6) An appeal shall not lie against the decision of the court made under subsection (4).

23. (1) Where an arbitrator, not being a sole arbitrator, or two or more arbitrators, not being all of the arbitrators constituting an arbitral tribunal, is or are removed by the court, the court may, on the application of any party to the arbitration agreement, appoint a person to act as arbitrator in place of any person so removed.

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

(2) Where the authority of an arbitral tribunal is revoked by the court or a member thereof is removed by the court, the court may, on the application of any party to the arbitration agreement, either appoint a person to act as arbitrator in place of the person removed or order that the arbitration agreement shall cease to have effect with respect to the dispute referred.

(3) A person appointed under this section by the court as an arbitrator shall have like power to act in the reference and to make an award as if he had been appointed in accordance with the terms of the arbitration agreement.

(4) Where it is provided, whether by means of a provision in the arbitration agreement or otherwise, that an award under an arbitration agreement shall be a condition precedent to the bringing of an action with respect to any matter to which the agreement applies, the court, if it orders, whether under this

section or under any other enactment, that the agreement shall cease to have effect as regards any particular dispute, may further order that the provision making an award a condition precedent to the bringing of an action shall also cease to have effect as regard to that dispute.

Arbitrator ceasing to hold office

24. (1) An arbitrator shall cease to hold office if-
- (a) he withdraws from office under section 21(3);
 - (b) an order is made under section 21(4) for the termination of his mandate or his removal;
 - (c) he is removed by a person referred to in section 22(2); or
 - (d) the parties agree to his termination.
- (2) The withdrawal of an arbitrator or his termination by the parties shall not imply an admission of any ground referred to in section 20(3) or 22(1).

Appointment of substitute arbitrator

25. (1) Where an arbitrator ceases to hold office pursuant to section 24, the parties may 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) Section 18 applies in relation to the filling of the vacancy as in relation to an original appointment.
- (3) The arbitral tribunal, when reconstituted, shall determine whether and, if so, to what extent the previous proceedings should stand.
- (4) The reconstitution of the arbitral tribunal shall not affect any right of a party to challenge the previous proceedings on any ground that had arisen before the arbitrator ceased to hold office.
- (5) The ceasing to hold office by the arbitrator shall not affect any appointment by him alone or jointly, of another arbitrator, in particular any appointment of a presiding arbitrator.

Decision by panel of arbitrators

26. (1) In arbitration proceedings with more than one arbitrator, a decision of the arbitral tribunal shall be made by all or a majority of its members, unless otherwise agreed by the parties.
- (2) In the event that no majority decision can be agreed, the parties may agree on the process to be followed in order to arrive at a final binding decision.

(3) A presiding arbitrator, if so authorised by the parties or all members of the arbitral tribunal may decide any question of procedure.

27. (1) An arbitrator is not liable for-

Liability of arbitrator

- (a) negligence in respect of anything done or omitted to be done by him in his capacity as arbitrator; or
- (b) any mistake of law, fact or procedure made by him in the course of arbitration proceedings or in the making of an arbitral award.

(2) Notwithstanding subsection (1), an arbitrator is liable for any act or omission done by him in his capacity as arbitrator, where such an act or omission is shown to be done in bad faith.

PART VI - JURISDICTION OF ARBITRAL TRIBUNAL

28. (1) Any dispute that the parties have agreed to submit to arbitration under an arbitration agreement may be determined by arbitration unless the arbitration agreement is contrary to public policy or, under any other law, such a dispute is not capable of determination by arbitration.

Arbitration of disputes

(2) The fact that any other law confers jurisdiction in respect of any matter on the court but does not refer to the determination of that matter by arbitration, does not indicate that a dispute about that matter is incapable of determination by arbitration.

29. (1) The arbitral tribunal may rule on its own jurisdiction, including any objections to the existence or validity of the arbitration agreement.

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

(2) For the purpose of subsection (1), an arbitration clause that forms part of a contract shall be treated as an agreement independent of the other terms of the contract.

(3) A decision by the arbitral tribunal that the contract is null and void shall not entail as a matter of law the invalidity of the arbitration clause.

(4) A plea that the arbitral tribunal does not have jurisdiction shall be raised not later than the submission of the statement of defence.

(5) A party shall not be precluded from raising the plea that the arbitral tribunal does not have jurisdiction by the fact that he has appointed, or participated in the appointment of an arbitrator.

(6) A plea that the arbitral tribunal is exceeding the scope of its authority shall be raised as soon as the matter alleged to be beyond the scope of its authority is raised during the arbitration proceedings.

(7) Notwithstanding any delay in raising a plea referred to in subsection (4) or (6), the arbitral tribunal may admit such plea if it considers the delay to be justified in the circumstances.

(8) The arbitral tribunal may rule on a plea referred to in this section either as a preliminary question or in an award on the merits.

(9) If the arbitral tribunal rules on a plea as a preliminary question that it has jurisdiction, any party may, within thirty days after having received notice of that ruling, apply to the court to decide the matter.

(10) While an application under subsection (9) is pending, the arbitral tribunal may continue the arbitration proceedings and make an award.

PART VII - ARBITRAL PROCEEDINGS

General duties of
arbitral tribunal

30. The arbitral tribunal shall act fairly and impartially and shall allow each party a reasonable opportunity to present his case.

Determination of rules
of procedure

31. (1) Subject to the provisions of this Law, parties are free to agree on the procedure to be followed by the arbitral tribunal in conducting the proceedings.

(2) If the parties fail to agree on the procedure to be followed by the arbitral tribunal, the tribunal may, subject to the provisions of this Law, conduct the arbitration in such manner as it considers appropriate.

(3) The power conferred on the arbitral tribunal under subsection (2) includes the power to determine the admissibility, relevance, materiality and weight of any evidence.

Place of arbitration

32. (1) The parties to an arbitration agreement are free to agree on the place of arbitration.

(2) Where there is no agreement as to a place of arbitration, the place of arbitration shall be determined by the arbitral tribunal having regard to the circumstances of the case, including the convenience of the parties.

(3) Notwithstanding the provisions of sub-section (1) the arbitral tribunal may, unless otherwise agreed by the parties, meet at any place it considers

appropriate for consultation among its members, for hearing witnesses, experts or the parties, or for inspection of goods, other property or documents.

33. (1) The parties to an arbitration agreement may agree on the language or languages to be used in the arbitral proceedings. Language

(2) Where there is no agreement as to the language to be used in the arbitral proceedings, the arbitral tribunal shall determine the language or languages to be used in the proceedings.

(3) An agreement as to language, unless otherwise specified, shall apply to any written statement by a party, any hearing and any award, decision or other communication by the arbitral tribunal.

(4) The arbitral tribunal may order that any documentary evidence shall be accompanied by a translation into the language or languages agreed upon by the parties or determined by the arbitral tribunal.

34. (1) Within the period of time agreed by the parties or, failing such agreement, as determined by the arbitral tribunal, a claimant shall state- Statements of claim and defence

- (a) the facts supporting his claim;
- (b) the points in issue; and
- (c) the relief or remedy sought,

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

(2) The parties may submit to the arbitral tribunal their statements, all documents they consider to be relevant or any other document that refer to such documents, or other evidence.

(3) Except as otherwise agreed by the parties, any party may amend or supplement his claim or defence during the course of the arbitration proceedings, unless the arbitral tribunal considers it inappropriate to allow such amendment, having regard to the delay in making the amendment.

35. (1) Subject to any contrary agreement by the parties, the arbitral tribunal shall determine if proceedings are to be conducted by- Hearing and written proceedings

- (a) oral hearing for the presentation of evidence;
- (b) oral argument;
- (c) the production of documents and other written materials;

- (d) the use telecommunications technology; or
- (e) a combination of the above.

(2) Unless the parties have agreed that no hearings shall be held, the arbitral tribunal shall, upon the request of a party, hold such hearings at an appropriate stage of the proceedings.

(3) The parties shall be given sufficient notice in advance of any hearing and of any meeting of the arbitral tribunal for the purposes of inspection of documents, goods or any other property.

(4) All statements, documents or other information supplied to the arbitral tribunal by one party shall be communicated to the other party.

(5) Any expert report or evidentiary document on which the arbitral tribunal may rely in making its decision shall be communicated to the parties.

(6) Unless otherwise agreed in writing by the parties to the arbitration agreement, an arbitral tribunal in conducting proceedings under an arbitration agreement is not bound by rules of evidence but may inform itself in relation to any matter as the arbitral tribunal thinks fit.

(7) In this section-

“telecommunications technology” means the transmission, emission or reception of data, text, signs, signals, writing, images, sounds or communication of any nature by wire, radio, optical, telephone, computer or other electronic system whether or not such data, text, signs, signals, writing, images, sounds or communications have been subjected to rearrangement, computation or other processes by any means in the course of their transmission, emission or reception.

Representation

36. A party to an arbitration agreement may be represented in proceedings before the arbitral tribunal by a legal practitioner or by a person who, though not a legal practitioner, has such qualifications or experience in law, whether acquired in the Islands or in any place other than the Islands, as, in the opinion of the arbitral tribunal, would be likely to assist in the conduct of the proceedings.

Extension of ambit of arbitration proceedings

37. (1) Where-

- (a) pursuant to an arbitration agreement a dispute between the parties to that agreement is referred to arbitration; and
- (b) there is some other dispute between those same parties, whenever the dispute arose, being a dispute to which the same agreement applies,

then unless the arbitration agreement otherwise provides, the arbitral tribunal may, upon application being made to the arbitral tribunal by the parties to the arbitration agreement at any time before a final award is made in relation to the first mentioned dispute, make an order directing that the arbitration be extended so as to include that other dispute.

(2) An arbitral tribunal may make an order under subsection (1) on such terms and conditions, if any, as it thinks fit.

38. (1) Where arbitration proceedings involve the same arbitral tribunal-

Consolidation of
proceedings

- (a) the arbitral tribunal may, on the application of a party in each of the arbitration proceedings, order-
 - (i) those proceedings to be consolidated on such terms as the arbitral tribunal thinks just;
 - (ii) those proceedings to be heard at the same time, or one immediately after the other; or
 - (iii) any of those proceedings to be stayed until after the determination of any of them;
- (b) if the arbitral tribunal refuses or fails to make an order under paragraph (a), the court may, on application by a party in any of the proceedings, make such an order as could have been made by the arbitral tribunal.

(2) Where arbitration proceedings do not all have the same arbitral tribunal-

- (a) the arbitral tribunal for any one of the arbitration proceedings may, on the application of a party in the proceedings, provisionally order-
 - (i) the proceedings to be consolidated with other proceedings on such terms as the arbitral tribunal thinks just;
 - (ii) the proceeding to be heard at the same time as other arbitration proceedings, or one immediately after the other; or
 - (iii) any of those proceedings to be stayed until after the determination of any of them;
- (b) an order ceases to be provisional when consistent provisional orders have been made for all of the arbitration proceedings concerned;
- (c) the arbitral tribunal for arbitration proceedings may communicate with each other for the purpose of conferring on the desirability of making orders under this subsection and of deciding on the terms of any such order;

- (d) if a provisional order is made for at least one of the arbitration proceedings concerned, but the arbitral tribunal for another of the proceedings refuses or fails to make such an order, having received an application from a party to make such an order, the court may, on application by a party in any of the proceedings, make an order that could have been made under this section; or
 - (e) if inconsistent provisional orders are made for the arbitration proceedings, the court may, on application by a party in any proceedings, alter the orders to make them consistent.
- (3) An order or provisional order may not be made under this section unless it appears-
- (a) that some common question of law or fact arises in all the arbitration proceedings to which this section relates;
 - (b) that the rights to relief claimed in all of the proceedings are in respect of or arise out of the same transaction or series of transactions; or
 - (c) that for some other reason it is desirable to make the order or provisional order.
- (4) When arbitration proceedings are to be consolidated under this section, the arbitral tribunal for the consolidated proceedings shall be the tribunal agreed on for the purpose by all the parties to the individual proceedings, but failing any such agreement, the court may appoint an arbitral tribunal for the consolidated proceedings.
- (5) Any proceedings before an arbitral tribunal for the purposes of this section shall be taken to be part of the arbitration proceedings concerned.
- (6) Arbitration proceedings may be commenced or continued, notwithstanding that an application to consolidate them is pending under subsection (2) or (3) and notwithstanding that a provisional order has been made in relation to them under subsection (3).
- (7) Subsections (1) and (2) apply in relation to arbitration proceedings whether or not all or any of the parties are common to some or all of the proceedings.
- (8) Nothing in subsection (1) or (2) prevents the parties to two or more arbitration proceedings from agreeing to consolidate those proceedings and taking such steps as are necessary to effect that consolidation.

Powers to appoint
experts

39. (1) Unless otherwise agreed by the parties, the arbitral tribunal may-

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

(2) Unless otherwise agreed by the parties, if a party so requests or if the arbitral tribunal considers it necessary, the expert shall, after delivery of his written or oral report, participate in a hearing where the parties have the opportunity to put questions to him and to present other expert witnesses in order to testify on the points at issue.

40. (1) The parties may agree on the powers that may be exercised by the arbitral tribunal for the purposes of and in relation to the arbitration proceedings.

General powers
exercisable by arbitral
tribunal

(2) Without prejudice to the powers conferred on the arbitral tribunal by the parties under subsection (1), the tribunal may make orders or give directions to any party for-

- (a) security for costs;
- (b) discovery of documents and interrogatories;
- (c) giving of evidence by affidavit;
- (d) a party or witness to be examined on oath or affirmation, (e) the preservation and interim custody of any evidence for the purposes of the proceedings;
- (e) samples to be taken from, or any observation to be made of or experiment conducted upon, any property that is or forms part of the subject-matter of the dispute; and
- (f) the preservation, interim custody or sale of any property that is or forms part of the subject-matter of the dispute.

(3) An arbitral tribunal may for the purposes of subsection (2)(d) administer any necessary oath or take any necessary affirmation.

(4) The power of the arbitral tribunal to order a claimant to provide security for costs as referred to in subsection (2)(a) shall not be exercised by reason only that the claimant is-

- (a) an individual ordinarily resident outside the Islands; or
- (b) a corporation or an association incorporated or formed under the law of a country outside the Islands, or whose central management and control is exercised outside the Islands.

(5) All orders or directions made or given by an arbitral tribunal in the course of an arbitration shall, with leave of the court, be enforceable in the same

manner as if they were orders made by the court and where leave is so given, judgment may be entered in terms of the order or direction.

Powers of arbitral tribunal in case of party's default

41. (1) The parties may agree on the powers that may be exercised by the arbitral tribunal in the case of a party's failure to take any necessary action for the proper and expeditious conduct of the proceedings.

(2) Unless otherwise agreed by the parties, if, without showing sufficient cause-

- (a) the claimant fails to communicate his statement of claim in accordance with section 34, the arbitral tribunal may terminate the proceedings;
- (b) the respondent fails to communicate his statement of defence in accordance with section 34, the arbitral tribunal may continue the proceedings without treating such failure in itself as an admission of the claimant's allegations; and
- (c) any party fails to appear at a hearing or to produce documentary evidence, the arbitral tribunal may continue the proceedings and make the award on the evidence before it.

(3) If the arbitral tribunal is satisfied that there has been inordinate and inexcusable delay on the part of the claimant in pursuing his claim, and the delay-

- (a) gives rise, or is likely to give rise, to a substantial risk that it is not possible to have a fair resolution of the issues in that claim; or
- (b) has caused, or is likely to cause, serious prejudice to the respondent,

the tribunal may make an award dismissing the claim.

Witnesses may be summoned by subpoena

42. (1) Any party to an arbitration agreement may take out a writ to compel a witness to attend and give evidence or a writ to compel a witness to attend and give evidence and produce specified documents.

(2) The court may order that a writ compelling a witness to attend and give evidence or a writ compelling a witness to attend and give evidence and produce specified documents shall be issued to compel the attendance before an arbitral tribunal of a witness wherever he may be within the Islands.

(3) A person shall not be compelled under any such writ to produce any document that he could not be compelled to produce on the trial of an action.

Perjury

43. A person who wilfully or corruptly gives false evidence before an arbitral tribunal is guilty of perjury, as if the evidence had been given in open court, and may be dealt with, prosecuted, and punished accordingly.

44. (1) In relation to an arbitration a court-

Court's powers
exercisable in support of
arbitration proceedings

- (a) may make such orders in respect of any of the matters set out in section 40 as it would in relation to an action or matter in the court;
- (b) may secure the amount in dispute;
- (c) shall ensure that any award that may be made in the arbitral proceedings is not rendered ineffectual by the dissipation of assets by a party; and
- (d) may grant an interim injunction or any other interim measure.

(2) An order of the court under this section shall cease to have effect in whole or in part if the arbitral tribunal or any such arbitral tribunal or person having power to act in relation to the subject matter of the order makes an order to which the order of the court relates.

(3) If the case is one of urgency, the court may, on the application of a party or proposed party to the arbitral proceedings, make such orders as it thinks necessary for the purpose of preserving evidence or assets.

(4) If the case is not one of urgency, the court shall act only on the application of a party to the arbitral proceedings (upon notice to the other parties and to the tribunal) made with the permission of the tribunal or the agreement in writing of the other parties.

(5) In any case the court shall act only if or to the extent that the arbitral tribunal vested by the parties with power in that regard has no power or is unable for the time being to act effectively.

PART VIII - INTERIM MEASURES AND PRELIMINARY ORDERS

45. Unless otherwise agreed by the parties, the arbitral tribunal may, at anytime prior to the issue of an award by which a dispute is finally decided and at the request of a party, grant an interim measure ordering a party to-

Power of arbitral
tribunal to order interim
measures

- (a) maintain or restore the original position of the other party pending determination of the dispute;
- (b) take action that would prevent, or refrain from taking action that is likely to cause, current or imminent harm or prejudice to the arbitral process;

- (c) provide a means of preserving assets out of which a subsequent award may be satisfied; or
- (d) preserve evidence that may be relevant and material to the resolution of the dispute.

Conditions for granting interim measures

46. (1) A party who requests an interim measure under section 45(a), (b) or (c) shall satisfy the arbitral tribunal that-

- (a) harm not adequately reparable by an award of damages is likely to result if the measure is not ordered and that the harm substantially outweighs the harm that is likely to result to the party against whom the measure is directed if the measure is granted; and
- (b) there is a reasonable possibility that the requesting party will succeed on the merits of the claim.

(2) A determination by the arbitral tribunal that a party will succeed under section 46(1)(b) shall not affect the discretion of the arbitral tribunal in making any subsequent determination.

(3) Where a request for an interim measure under section 45(d) is made, the requirements in subsection (1)(a) and (b) shall apply only to the extent that the arbitral tribunal considers appropriate.

Applications for preliminary orders and conditions for granting preliminary orders

47. (1) Unless otherwise agreed by the parties, a party may, without notice to any other party, make a request for an interim measure together with an application for a preliminary order directing a party not to frustrate the purpose of the interim measure requested.

(2) The arbitral tribunal may grant a preliminary order provided it considers that prior disclosure of the request for the interim measure to the party against whom it is directed may frustrate the purpose of the measure.

(3) The conditions defined under section 46 apply to any preliminary order, provided that the harm assessed under section 46(1)(a), is the harm likely to result whether or not an order is granted.

Specific regime for preliminary orders

48. (1) Immediately after the arbitral tribunal has made a determination in respect of an application for a preliminary order, the arbitral tribunal shall give notice to all parties by indicating the content of any oral communication, between any party and the arbitral tribunal in relation to-

- (a) the request for the interim measure;
- (b) the application for the preliminary order;
- (c) the specifics of the preliminary order, if any; and

(d) all other communications.

(2) The arbitral tribunal shall give an opportunity to any party against whom a preliminary order is directed to present his case at the earliest practicable time.

(3) The arbitral tribunal shall decide promptly on any objection to the preliminary order.

(4) A preliminary order expires after twenty days from the date on which it was issued by the arbitral tribunal.

(5) The arbitral tribunal may issue an interim measure adopting or modifying the preliminary order, after the party against whom the preliminary order is directed has been given notice and an opportunity to present its case.

(6) A preliminary order shall be binding on the parties but shall not be subject to enforcement by a court.

(7) A preliminary order shall not constitute an award.

49. The arbitral tribunal may modify, suspend or terminate an interim measure or a preliminary order it has granted-

Modification,
suspension, termination

- (a) upon application of any party;
- (b) in exceptional circumstances; or
- (c) on the arbitral tribunal's own initiative, upon giving prior notice to the parties.

50. (1) The arbitral tribunal may require the party requesting an interim measure to provide appropriate security in connection with the measure.

Provision of security

(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.

51. (1) The arbitral tribunal may require any party promptly to disclose any material change in the circumstances on the basis of which the interim measure was requested or granted.

Disclosure

(2) A party applying for a preliminary order shall disclose to the arbitral tribunal all circumstances that are likely to be relevant to the arbitral tribunal's determination whether to grant or maintain the order.

(3) An obligation to disclose all the circumstances relevant to the arbitral tribunal's determination shall continue until the party against whom the order has been requested has an opportunity to present his case.

Costs and damages

52. (1) The party requesting an interim measure or applying for a preliminary order shall be liable for any costs and damages caused by the measure or the order to any party if the arbitral tribunal later determines that, in the circumstances, the measure or the order should not have been granted.

(2) The arbitral tribunal may award costs and damages at any time during the proceedings.

Recognition and enforcement

53. (1) An interim measure issued by an arbitral tribunal shall be recognised as binding and unless otherwise provided by the arbitral tribunal, enforceable upon application to the court, irrespective of the jurisdiction in which it was issued, subject to section 54.

(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.

Grounds for refusing recognition or enforcement

54. (1) The recognition or enforcement of an interim measure may be refused only at the request of the party against whom it is invoked if the court is satisfied that-

- (a) a refusal is warranted on any ground specified in section 77(1)(a)(i) to (vii);
- (b) the arbitral tribunal's decision with respect to the provision of security in connection with the interim measure issued by the arbitral tribunal has not been complied with;
- (c) the interim measure has been terminated or suspended by the arbitral tribunal or, where so empowered, by the court or under the law of which that interim measure was granted; or
- (d) the court finds that-
 - (i) the interim measure is incompatible with the powers conferred upon the court unless the court decides to reformulate the interim measure to the extent necessary to adapt it to its own powers and procedures for the purposes

- of enforcing that interim measure and without modifying its substance; or
- (ii) the subject-matter of the dispute is not capable of settlement by arbitration under the law of the Islands or the recognition or enforcement of the award would be contrary to the public policy of the Islands.

(2) Any determination made by the court on any ground in subsection (1) shall be effective only for the purposes of the application to recognise and enforce the interim measure.

(3) The court where recognition or enforcement is sought shall not, in making that determination, undertake a review of the substance of the interim measure.

55. (1) A court shall have the same power of issuing an interim measure in relation to arbitration proceedings as it has in relation to the proceedings in court.

Court-ordered interim measures

(2) The court shall exercise those powers in accordance with its own procedures and in consideration of the specific features of international arbitration.

PART IX - AWARD

56. (1) The arbitral tribunal shall decide a dispute in accordance with the law chosen by the parties as applicable to the substance of the dispute.

Law applicable to substance of dispute

(2) If or to the extent that the parties have not chosen the law applicable to the substance of their dispute, the arbitral tribunal shall apply the law determined by the conflict of laws rules which it considers applicable.

(3) The arbitral tribunal may decide the dispute, if the parties agree, in accordance with such other considerations as are agreed by them or determined by the tribunal.

(4) Unless a contrary intention is expressed in an arbitration agreement, where an arbitration is held in the Islands, the arbitration proceedings shall be governed by the procedural law stipulated by the arbitral tribunal.

57. (1) Unless otherwise agreed by the parties, the arbitral tribunal may make more than one award at different points in time during the proceedings on different aspects of the matters to be determined.

Awards made on different issues

- (2) The arbitral tribunal may, in particular, make an award relating to-
- (a) an issue affecting the whole claim;
 - (b) a part only of the claim, counter-claim or cross-claim, that is submitted to the tribunal for decision;
 - (c) the determination as to a particular fact or set of facts;
 - (d) the existence or non-existence of a particular condition or set of conditions; or
 - (e) compliance or non-compliance with a particular rule, standard or quality.

(3) If the arbitral tribunal makes an award under this section, it shall specify in its award, the issue, or claim or part of a claim, that is the subject matter of the award.

(4) In making an award, the arbitral tribunal may rely on the advice of an expert appointed under section 39.

Remedies

58. (1) The parties may agree on the powers exercisable by the arbitral tribunal in relation to remedies.

(2) Unless otherwise agreed by the parties, the arbitral tribunal may award any remedy or relief that could have been ordered by the court if the dispute had been the subject of civil proceedings in that court.

Interest

59. (1) The arbitral tribunal may award interest, including interest on a compound basis, on the whole or any part of any sum that-

- (a) is awarded to any party; or
- (b) is in issue in the arbitral proceedings but is paid before the date of the award,

for the whole or any part of the period up to the date of the award or payment, whichever is applicable.

(2) An award made by the arbitral tribunal shall, unless the award otherwise directs, carry interest as from the date of the award and at the same rate as a judgment debt in accordance with the Rules of Court.

Time for making award

60. (1) Subject to section 78(9) and anything to the contrary in an arbitration agreement, an arbitral tribunal shall have power to make an award at any time.

(2) The time, if any, limited for making an award, whether under this Law or otherwise, may from time to time be extended by order of the court whether that time has expired or not.

(3) The court may, on the application of any party to a reference remove an arbitral tribunal or any member of the tribunal that fails to use all reasonable dispatch in entering on and proceeding with the reference and making an award, and an arbitral tribunal or member of the tribunal that is removed by the court under this subsection shall not be entitled to receive any remuneration in respect of its services if the court makes such an order.

(4) For the purposes of subsection (3), “proceeding with the reference” includes, in a case where two arbitrators are unable to agree, giving notice of that fact to the parties.

61. (1) Where the time for making an award is limited by the arbitration agreement, the court may by order extend that time, unless otherwise agreed by the parties.

Extension of time for making award

(2) An application for an order under this section may be made-

- (a) upon notice to the parties, by the arbitral tribunal; or
- (b) upon notice to the arbitral tribunal and the other parties, by any party to the proceedings.

(3) An application under this section shall not be made unless all available tribunal processes for application of extension of time have been exhausted.

(4) The court shall not make an order under this section unless it is satisfied that substantial injustice would otherwise be done.

(5) The court may extend the time for such period and on such terms as it thinks fit, and may do so whether or not the time previously fixed by or under the arbitration agreement or by a previous order has expired.

(6) The leave of the court shall be required for any appeal from a decision of the court under this section.

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

Interim awards

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

Award on agreed terms

(2) An arbitral award on agreed terms-

- (a) shall be made in accordance with section 64;
- (b) shall state that it is an award; and
- (c) shall have the same status and effect as any other award on the merits of the case.

(3) An award on agreed terms may, with the leave of the court, be enforced in the same manner as a judgment or order to the same effect, and where leave is so given, judgment may be entered in terms of the award.

Form and content of
award

64. (1) The award shall be made in writing and shall be signed-

- (a) in the case of a sole arbitrator, by the arbitrator himself; or
- (b) in the case of two or more arbitrators, by all the arbitrators or the majority of the arbitrators if the reason for any omitted signature of any arbitrator is stated.

(2) The award shall state the reasons upon which it is based, unless the parties have agreed that reasons are not to be stated or the award is an award on agreed terms under section 63.

(3) The date of the award and the place of the arbitration shall be stated in the award.

(4) The award shall be deemed to have been made at the place of the arbitration.

(5) After the award is made, a copy of the award signed by the arbitrators in accordance with subsection (1) shall be delivered to each party.

(6) At the request of any party to an arbitration agreement, the appointing authority may certify an original award registered with it, certify a copy of any relevant original arbitration agreement or arrange for the translation and sworn certification of any award or agreement not stated in the English language.

Costs of arbitration

65. (1) Unless a contrary intention is expressed, every arbitration agreement shall be deemed to include a provision that the costs of a reference and award shall be in the discretion of the arbitral tribunal who may-

- (a) direct to and by whom and in what manner those costs or any part thereof shall be paid;
- (b) assess or settle the amount of costs to be so paid; or
- (c) award costs to be paid as between legal practitioner and client.

(2) If no provision is made by an award with respect to the costs of a reference, any party to the reference may, within fourteen days of the delivery of

the award or such further time as the arbitral tribunal may allow, apply to the arbitral tribunal for an order directing by and to whom such costs shall be paid.

(3) The arbitral tribunal shall, after giving the parties a reasonable opportunity to be heard, amend its award by adding thereto such directions as it thinks fit with respect to the payment of the costs of the reference.

66. (1) The parties are jointly and severally liable to pay to the arbitral tribunal such reasonable fees and expenses as are appropriate in the circumstances. Fees of arbitral tribunal

(2) Unless the fees of the arbitral tribunal have been fixed by written agreement or such agreement has provided for a determination of the fees by a person or institution agreed to by the parties, any party to the arbitration may require that such fees be assessed by the court.

67. (1) Unless otherwise agreed in writing by the parties to the arbitration agreement, where an arbitration is commenced but for any reason the arbitration fails, the court may, on the application of a party to the arbitration agreement or the arbitral tribunal, make such orders in relation to the costs of the arbitration as it thinks fit. Costs of aborted arbitration

(2) For the purposes of this section, an arbitration shall be deemed to have failed where-

- (a) a final award is not made by the arbitral tribunal before the arbitration terminates; or
- (b) an award made is wholly set aside by the court.

68. (1) Unless otherwise agreed by the parties, the arbitral tribunal may refuse to deliver an award to the parties if the parties have not made full payment of the fees and expenses of the arbitrators. Power to withhold award in case of non-payment

(2) Where subsection (1) applies, a party to the arbitration proceedings may, upon notice to the other parties and the arbitral tribunal, apply to the court, which may order that-

- (a) the arbitral tribunal shall deliver the award upon payment into court by the applicant of the fees and expenses demanded, or such lesser amount as the court may specify;
- (b) the amount of the fees and expenses demanded shall be assessable by the court; and
- (c) out of the money paid into court, the arbitral tribunal shall be paid such fees and expenses as may be found to be properly payable

and the balance of such money, if any, shall be paid out to the applicant.

(3) An assessment of fees under this section shall be reviewed in the same manner as an assessment of costs.

(4) The arbitral tribunal or any member thereof shall be entitled to appear and be heard on any assessment or review of an assessment under this section.

(5) For the purpose of this section, the amount of fees and expenses properly payable is the amount the applicant is liable to pay under section 66 or under any agreement relating to the payment of fees and expenses of the arbitrators.

(6) No application to the court may be made unless the court is satisfied that the applicant has first exhausted any available arbitral process for appeal or review of the amount of the fees or expenses demanded by the arbitrators.

(7) This section shall apply to any arbitral tribunal or person vested with powers by the parties in relation to the delivery of the award by the tribunal and any reference to the fees and expenses of the arbitrators shall be construed as including the fees and expenses of that institution or person.

(8) The leave of the court shall be required for an appeal from a decision of the court under this section.

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

69. Unless otherwise agreed by the parties, the court may, where a legal practitioner or expert witness has rendered services during arbitration proceedings, order that property be charged for payment of the costs of that legal practitioner or expert witness which were awarded by the arbitral tribunal, as if those arbitration proceedings were a proceeding in the court, and the court may make declarations and orders accordingly.

Correction or
interpretation of award
and additional award

70. (1) A party may, within thirty days of the receipt of an award, unless another period of time has been agreed upon by the parties-

- (a) upon notice to the other parties, request the arbitral tribunal to correct in the award any error in computation, any clerical or typographical error, or other error of similar nature; and
- (b) upon notice to the other parties, request the arbitral tribunal to give an interpretation of a specific point or part of the award, if such request is also agreed to by the other parties.

(2) If the arbitral tribunal considers the request in subsection (1) to be justified, the arbitral tribunal shall make such correction or give such interpretation within thirty days of the receipt of the request and such correction or interpretation shall form part of the award.

(3) The arbitral tribunal may correct any error of the type referred to in subsection (1)(a) or give an interpretation referred to in subsection (1)(b), on its own initiative, within thirty days of the date of the award.

(4) Unless otherwise agreed by the parties, a party may, within thirty days of receipt of the award and upon notice to the other party, request the arbitral tribunal to make an additional award as to claims presented during the arbitration proceedings but omitted from the award.

(5) If the arbitral tribunal considers the request in subsection (4) to be justified, the tribunal shall make the additional award within sixty days of the receipt of such request.

(6) The arbitral tribunal may, if necessary, extend the period of time within which it shall make a correction, interpretation or an additional award under this section.

(7) Section 64 shall apply to an award in respect of which a correction or interpretation has been made under this section and to an additional award.

71. (1) An award made by the arbitral tribunal pursuant to an arbitration agreement shall be final and binding on the parties and on any person claiming through or under them and may be relied upon by any of the parties by way of defence, set-off or otherwise in any proceedings in any court.

Effect of award

(2) Except as provided in section 70, upon an award being made, other than an interim award, the arbitral tribunal shall not vary, amend, correct, review, add to or revoke the award.

(3) For the purposes of subsection (2), an award is made when it has been signed and delivered in accordance with section 64.

(4) This section shall not affect the right of a person to challenge the award by any available arbitral process of appeal or review or in accordance with the provisions of this Law.

PART X - POWER OF COURT IN RELATION TO AWARD

Determination of
preliminary point of law

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

(2) The court shall not consider an application under this section unless-

- (a) it is made with the agreement of all parties to the proceedings; or
- (b) it is made with the permission of the arbitral tribunal and the court is satisfied that-
 - (i) the determination of the question is likely to produce substantial savings in costs; and
 - (ii) the application is made without delay.

(3) The application shall identify the question of law to be determined and, except where it is made with the agreement of all parties to the proceedings, state the grounds on which the court should decide the question.

(4) Unless otherwise agreed by the parties, the arbitral tribunal may continue the arbitral proceedings and make an award while an application to the court under this section is pending.

(5) Except with the leave of the court, no appeal shall lie from a decision of the court on whether the conditions in subsection (2) are met.

(6) The decision of the court on a question of law shall be a judgment of the court for the purposes of an appeal to the Court of Appeal.

(7) The court may give leave to appeal against its decision in subsection (6) only if the question of law before it is one of general importance, or is one that for some other special reason should be considered by the Court of Appeal.

Enforcement of award

73. (1) An award made by the arbitral tribunal pursuant to an arbitration agreement may, with leave of the court, be enforced in the same manner as a judgment or order of the court to the same effect; and where leave of the court is granted, judgment may be entered in the terms of the award.

(2) Where leave of the court is given, judgment may be entered in terms of the award.

(3) Leave of the court to enforce an award shall not be given where, or to the extent that, the person against whom it is sought to be enforced shows that the arbitral tribunal lacked 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 and in particular the provisions of the Foreign Arbitral Awards Enforcement Law (1997 Revision) relating to the recognition and enforcement of awards under the New York Convention or by an action on the award.

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

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

75. (1) If a party to a reference under an arbitration agreement fails within the time specified in the order or, if no time is so specified, within a reasonable time to comply with an order made by the arbitral tribunal in the course of the reference, then, on the application of the arbitral tribunal or of any party to the reference, the court may make an order extending the powers of the arbitral tribunal as mentioned in subsection (2).

Interlocutory orders

(2) If an order is made by the court under this section, the arbitral tribunal may, to the extent and subject to any conditions specified in that order, continue with the reference in default of appearance or of any other act by one of the parties in like manner as a judge of the court might continue with proceedings in that court where a party fails to comply with an order of that court or a requirement of Rules of Court.

(3) Subsections (1) and (2) have effect notwithstanding anything in any agreement but do not derogate from any powers conferred on an arbitral tribunal, whether by an arbitration agreement or otherwise.

76. (1) Where-

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

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

it shall not be a ground for refusing the application that the party at the time when he made the agreement knew, or ought to have known, that the arbitrator, by

reason of his relation towards any other party to the agreement or of his connection with the subject referred, might not be capable of impartiality.

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

(3) Where by virtue of this section the court has power to order that an arbitration agreement shall cease to have effect or to give leave to revoke the authority of an arbitrator, the court may refuse to stay any action brought in breach of the agreement.

Court may set aside
award

77. (1) An award may be set aside by the court-

- (a) if the party who applies to the court to set aside the award proves to the satisfaction of the court that-
 - (i) a party to the arbitration agreement was under an incapacity or placed under duress to enter into an arbitration agreement;
 - (ii) the arbitration agreement is not valid under the law to which the parties have subjected it, or failing any indication thereon, under the laws of the Islands;
 - (iii) the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitration proceedings or was otherwise unable to present his case;
 - (iv) the award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or contains decisions on matters beyond the scope of the submission to arbitration;
 - (v) the composition of the arbitral tribunal or the arbitral procedure is not in accordance with the agreement of the parties, unless such agreement is contrary to any provisions of this Law from which the parties cannot derogate, or, in the absence of such agreement, is contrary to the provisions of this Law;
 - (vi) the making of the award was induced or affected by fraud, corruption or misconduct on the part of an arbitrator; or

- (vii) a breach of the rules of natural justice occurred in connection with the making of the award by which the rights of any party have been prejudiced; or
- (b) if the court finds that-
 - (i) the subject-matter of the dispute is not capable of settlement by arbitration under this Law; or
 - (ii) the award is contrary to public policy.

(2) An application to set aside an award may not be made after the expiry of one month from the date on which the party making the application had received the award, or if a request has been made under section 70, from the date on which that request had been disposed of by the arbitral tribunal.

(3) When a party applies to the court to set aside an award under this section, the court may, where appropriate and so requested by a party, suspend the proceedings for setting aside an award, for such period of time as it may determine, to allow the arbitral tribunal to resume the arbitration proceedings or take such other action as may eliminate the grounds for setting aside an award.

78. (1) A party to arbitration proceedings may, upon notice to the other parties and to the arbitral tribunal, appeal to the court on a question of law arising out of an award made in the proceedings. Appeal against award

(2) Notwithstanding subsection (1), the parties may agree to exclude the jurisdiction of the court under this section and an agreement to dispense with reasons for the arbitral tribunal's award shall be treated as an agreement to exclude the jurisdiction of the court under this section.

(3) An appeal shall not be brought under this section except with the agreement of all the other parties to the proceedings or with the leave of the court.

(4) The right to appeal under this section shall be subject to the restrictions in section 79.

(5) Leave to appeal shall be given only if the court is satisfied that-

- (a) the determination of the question will substantially affect the rights of one or more of the parties;
- (b) the question is one that the arbitral tribunal was asked to determine;
- (c) on the basis of the findings of fact in the award-
 - (i) the decision of the arbitral tribunal on the question is obviously wrong; or

- (ii) the question is one of general public importance and the decision of the arbitral tribunal is at least open to serious doubt; and
- (d) despite the agreement of the parties to resolve the matter by arbitration, it is just and proper in all the circumstances for the court to determine the question.

(6) An application for leave to appeal under this section shall identify the question of law to be determined and state the grounds on which it is alleged that leave to appeal should be granted.

(7) The leave of the court shall be required for any appeal from a decision of the court under this section to grant or refuse leave to appeal.

(8) On an appeal under this section, the court may by order-

- (a) confirm the award;
- (b) vary the award;
- (c) remit the award to the arbitral tribunal, in whole or in part, for reconsideration in the light of the court's determination; or
- (d) set aside the award in whole or in part.

(9) Where an award is remitted under subsection (8)(c), the arbitral tribunal shall, unless the order otherwise directs, make its award within three months after the date of the order.

(10) The court shall not exercise its power to set aside an award, in whole or in part, unless it is satisfied that it would be inappropriate to remit the matters in question to the arbitral tribunal for reconsideration.

(11) The decision of the court on an appeal under this section shall be treated as a judgment of the court for the purposes of an appeal to the Court of Appeal.

(12) An application for leave to appeal against the decision of the court in subsection (11) shall be made to the Court of Appeal and the Court of Appeal may give leave to appeal only if the question of law before it is one of general importance, or one that for some other special reason should be considered by the Court of Appeal.

Supplementary
provisions to appeal
under section 72, 77 or
78

79. (1) This section shall apply to an application or appeal under section 72, 77 or 78

(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 70.

(3) An application or appeal shall be brought within one month of the date of the award or, if there has been any arbitral process of appeal or review, of the date when the applicant or appellant was notified of the result of that process.

(4) If on an application or appeal it appears to the court that the award-

- (a) does not contain the arbitral tribunal's reasons; or
- (b) does not set out the arbitral tribunal's reasons in sufficient detail to enable the court to properly consider the application or appeal,

the court may order the arbitral tribunal to state the reasons for its award in sufficient detail for that purpose.

(5) Where the court makes an order under subsection (4), it may make such further order as it thinks fit with respect to any additional costs of the arbitration resulting from its order.

(6) The court may order the applicant or appellant to provide security for the costs of the application or appeal, and may direct that the application or appeal be dismissed if the order is not complied with.

(7) The power to order security for costs shall not be exercised by reason only that the applicant or appellant is-

- (a) an individual ordinarily resident outside the Islands; or
- (b) a corporation or association incorporated or formed under the law of a country outside the Islands or whose central management and control is exercised outside the Islands.

(8) The court may order that any money payable under the award shall be brought into court or otherwise secured pending the determination of the application or appeal, and may direct that the application or appeal be dismissed if the order is not complied with.

(9) The court may grant leave to appeal subject to conditions to the same or similar effect as an order under subsection (6) or (8) and this shall not affect the general discretion of the court to grant leave subject to conditions.

80. (1) Where the court makes an order under section 72, 77 or 78 with respect to an award, subsections (2), (3) and (4) shall apply.

Effect of order of Court upon appeal against award

(2) Where the award is varied by the court, the variation shall have effect as part of the arbitral tribunal's award.

(3) Where the award is remitted to the arbitral tribunal, in whole or in part, for reconsideration, the tribunal shall make a fresh award in respect of the matters remitted within three months of the date of the order for remission or such longer or shorter period as the court may direct.

(4) Where the award is set aside or declared to be of no effect, in whole or in part, the court may also order that any provision that an award is a condition precedent to the bringing of legal proceedings in respect of a matter to which the arbitration agreement applies, shall be of no effect as regards the subject-matter of the award or, as the case may be, the relevant part of the award.

PART XII - MISCELLANEOUS

Notice and other requirements in connection with legal proceedings

81. (1) References in this Law to an application, appeal or other step in relation to legal proceedings being taken upon notice to the other parties to the arbitration proceedings, or to the arbitral tribunal, are references to such notice of the originating process as is required by Rules of Court.

(2) Subject to any provision under Rules of Court, a requirement to give notice to the arbitral tribunal of legal proceedings shall be construed-

- (a) if there is more than one arbitrator, as a requirement to give notice to each of them; and
- (b) if the arbitral tribunal is not fully constituted, as a requirement to give notice to any arbitrator who has been appointed.

(3) References in this Law to making an application or appeal to the court within a specified period are references to the issue within that period of the appropriate originating process in accordance with Rules of Court.

(4) Where any provision of this Law requires an application or appeal to be made to the court within a specified time, the Rules of Court relating to the reckoning of periods, the extending or abridging of periods, and the consequences of not taking a step within the period prescribed by the Rules, shall apply in relation to that requirement.

(5) Rules of Court may be made amending the provisions of this Law-

- (a) with respect to the time within which any application or appeal to the court shall be made; or

- (b) in order to keep any provision made by this Law in relation to arbitral proceedings in step with the corresponding provision of the Rules of Court applying in relation to proceedings in the court.
82. Rules of Court may be made for conferring on the Clerk of the Court or other officer of the court, all or any of the jurisdiction conferred by this Law on the court. Powers of court and Clerk of the Court
83. An arbitral tribunal shall conduct the arbitral proceedings in private. Arbitral proceedings shall be private
84. Rules of Court may be made regulating the practice and procedure of any court in respect of any matter under this Law. Rules of court
85. Proceedings under this Law in any court shall, on the application of any party to the proceedings, be heard otherwise than in open court. Proceedings to be heard otherwise than in open court
86. (1) This section shall apply to proceedings under this Law in any court heard otherwise than in open court. Restrictions on reporting of proceedings heard otherwise than in open court
- (2) A court hearing any proceedings to which this section applies shall, on the application of any party to the proceedings, give directions as to whether any and, if so, what information relating to the proceedings may be published.
- (3) A court shall not give a direction under subsection (2) permitting information to be published unless-
- (a) all parties to the proceedings agree that such information may be published; or
 - (b) the court is satisfied that the information, if published in accordance with such directions as it may give, would not reveal any matter, including the identity of any party to the proceedings, that any party to the proceedings reasonably wishes to remain confidential.
- (4) Notwithstanding subsection (3), where a court gives grounds of decision for a judgment in respect of proceedings to which this section applies and considers that judgment to be of major legal interest, the court shall direct that reports of the judgment may be published in law reports and professional publications but, if any party to the proceedings reasonably wishes to conceal any matter, including the fact that he was such a party, the court shall-
- (a) give directions as to the action that shall be taken to conceal that matter in those reports; and

- (b) if it considers that a report published in accordance with directions given under paragraph (a) would be likely to reveal that matter, direct that no report shall be published until after the end of such period, not exceeding ten years, as it considers appropriate.

Immunity of an
appointing authority or
arbitral tribunal

87. (1) The appointing authority, an arbitral tribunal 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) The appointing authority, an arbitral tribunal or person by whom an arbitrator is appointed or nominated, is not liable, by reason only of having appointed or nominated him, for anything done or omitted by the arbitrator, his employees or agents in the discharge or purported discharge of his functions as arbitrator.

(3) This section applies to an employee or agent of the appointing authority, an arbitral tribunal or a person as it applies to the appointing authority, arbitral tribunal or person himself.

Service of notices

88. (1) Parties may agree on the manner of service of any notice or other document required or authorised to be given or served in pursuance of the arbitration agreement or for the purposes of the arbitration proceedings.

(2) If or to the extent that there is no such agreement as is referred to in subsection (1), subsections (3) and (4) applies.

(3) A notice or other document may be served on a person by any method which is likely to bring it to the attention of the recipient.

(4) If a notice or other document is addressed, prepaid and delivered by post-

- (a) to the addressee's usual or last known place of residence or, if he is or has been carrying on a trade, profession or business, his usual or last known place of business; or
- (b) if the addressee is a body corporate, to the registered office of the body corporate,

it shall be treated as effectively served.

(5) This section does not apply to the service of documents for the purposes of legal proceedings, for which provision is made by Rules of Court.

(6) References in this Part to a notice or other document include any form of communication in writing and references to giving or serving a notice or other document shall be construed accordingly.

89. (1) Parties may agree on the method of reckoning periods of time for the purposes of-

Reckoning periods of time

- (a) any provision agreed by them; or
- (b) any provision of this Law having effect in default of such agreement.

(2) If or to the extent that the parties have not agreed on the method of reckoning time, periods of time shall be reckoned in accordance with this section.

(3) Where the act is required to be done within a specified period after or from a specified date, the period shall begin immediately after that date.

(4) Where an act is required to be done within or not less than a specified period before a specified date, the period shall end immediately before that date.

(5) Where an act is required to be done within a specified number of clear days after a specified date, at least that number of days shall intervene between the day on which that act is done and that date.

(6) Where the period in question being a period of seven days or less would include a Saturday, Sunday or a public general holiday, that day shall be excluded.

90. This Law binds the Crown.

Law to bind Crown.

91. The Governor in Cabinet may make regulations generally as he considers necessary for giving effect to the purposes of this Law and without derogating from the generality of the foregoing, may make regulations respecting the establishment, procedures, powers and functions of an arbitral tribunal.

Regulations

92. (1) The Arbitration Law (2001 Revision) is repealed.

Repeal and transitional provisions

(2) An arbitration commenced under the Arbitration Law (2001 Revision) may be continued and completed as if that Law was still in force.

(2001 Revision)

(3) Nothing in this Law shall apply to any arbitration agreement made or entered into before the commencement of this Law.

Passed by the Legislative Assembly the day of , 2011.

Speaker.

Clerk of the Legislative Assembly.

CONSULTATION DRAFT