



VIRGIN ISLANDS

# **ARBITRATION ACT**

## **Revised Edition**

showing the law as at 1 January 2020

This is a revised edition of the law, prepared by the Law Revision Commissioner under the authority of the Law Revision Act 2014.

This edition contains a consolidation of the following laws—

### **ARBITRATION ACT**

Act 13 of 2013 .. in force 1 October 2014

Amended by Act: 6 of 2015 .. in force 1 November 2016

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Published in 2021  
On the authority and on behalf of the Government of The Virgin Islands  
by  
The Regional Law Revision Centre Inc.

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Printed on the authority and on behalf of the Government of The Virgin Islands  
by  
The Regional Law Revision Centre Inc.  
P.O. Box 1626, 5 Mar Building,  
The Valley, AI-2640, Anguilla  
Authorised Printers for this Revised Edition

## ARBITRATION ACT

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## **ARBITRATION ACT**

*(Acts 13 of 2013 and 6 of 2015)*

AN ACT TO AMEND AND REVISE THE ARBITRATION ACT (CAP. 6).

### **Commencement**

*[1 October 2014]*

#### PART I

#### PRELIMINARY

### **Short title**

1. This Act may be cited as the Arbitration Act.

### **Interpretation, and substitution of article 2 of the UNCITRAL Model Law**

2. (1) This section has effect in substitution of article 2 of the UNCITRAL Model Law.

(2) In this Act, unless the context otherwise requires—

“arbitral tribunal” means a sole arbitrator or a panel of arbitrators, and includes an umpire;

“arbitration” means a process of settling a dispute between parties before an arbitral tribunal, and includes any arbitration, whether or not administered by a permanent arbitral institution;

“arbitration agreement” has the meaning provided in section 17;

“arbitrator” includes, except in sections 21, 22, 28, 29, 30 and 63 and paragraph 1 of Schedule 2, an umpire;

“Board” means the Board of the BVI IAC established under section 95(1);

“BVI IAC” means the BVI International Arbitration Centre established under section 93(1);

“Chief Executive” means the person appointed as the Chief Executive of the BVI IAC under section 97;

“claimant” means a person who makes a claim or a counter-claim in an arbitration;

“Commission” means the Financial Services Commission established under section 3(1) of the Financial Services Commission Act, 2001;

“Convention award” means an arbitral award made in a State or territory which is a party to the New York Convention;

“Court” means the High Court established under the Supreme Court Order, 1967;

“dispute” includes a difference between parties;

“function” includes the exercise of a power and performance of a duty;

“interim measure”—

- (a) if it is granted by an arbitral tribunal, has the meaning provided in section 33(1) and (2); or
- (b) if it is granted by the Court, has the meaning provided in section 43(9),

and the term “interim measure of protection” shall be construed accordingly;

“mediation” includes conciliation;

“New York Convention” means the Convention on the Recognition and Enforcement of Foreign Arbitral Awards done at New York on 10th June, 1958;

“party” means a party—

- (a) to an arbitration agreement; or
- (b) to any arbitral or court proceedings,

and, when used in relation to a mediation, means the party to the mediation proceedings;

“repealed Act” means the Arbitration Act repealed by section 110(1);

“respondent” means a person against whom a claim or a counter-claim is made in an arbitration;

“UN Commission” means the United Nations Commission on International Trade law;

“UNCITRAL Model Law” means the UNCITRAL Model Law on International Commercial Arbitration as adopted by the UN Commission on 21st June, 1985 and as amended by the UN Commission on 7th July 2006, the full text of which is outlined in Schedule 1.

(3) A reference in this section to “this Act” shall be construed to include the UNCITRAL Model Law.

(4) In the provisions of the UNCITRAL Model Law—

- (a) a reference to “this State” is to be construed as the Virgin Islands;
- (b) a reference to “a State” is to be construed as including the Virgin Islands;
- (c) a reference to “different States” is to be construed as including the Virgin Islands and any other place;
- (d) a reference to an article is to be construed as an article of the UNCITRAL Model Law; and
- (e) other than in article 2A of the UNCITRAL Model Law, given effect to by section 7, a reference to “this Law” is to be construed as this Act.

(5) If at any time the UNCITRAL Model Law is amended, the Cabinet may, acting on the advice of the Board, make an Order published in the *Gazette*—

- (a) adopting the amendment and amending Schedule 1 accordingly;

- (b) modifying the application of the amendment in order to ensure consistency with the provisions of this Act; or
  - (c) disapplying or amending any provision of this Act.  
*(Amended by Act 6 of 2015)*
- (6) If a provision of this Act—
  - (a) refers to the fact that the parties have agreed, or in any other way refers to an agreement of the parties, the agreement includes any arbitration rules referred to in that agreement; or
  - (b) provides that the parties may agree, the agreement, if any, may include any arbitration rules by referring to those rules in that agreement.
- (7) If a provision of this Act—
  - (a) other than sections 51 and 66, refers to a claim, that provision also applies to a counter-claim; or
  - (b) other than section 51, refers to a defence, that provision also applies to a defence to a counter-claim.
- (8) Where in this Act power is vested in the BVI IAC to appoint an arbitrator or a mediator, that power may be exercised by the Chief Executive of the BVI IAC acting in his own discretion.

### **Object and principles**

3. (1) The object of this Act is to facilitate and obtain the fair and speedy resolution of disputes by arbitration without unnecessary delay or expense.
- (2) This Act is founded on the following principles—
  - (a) subject to the observance of the safeguards that are necessary in the public interest, the parties to a dispute should be free to agree on how the dispute should be resolved;
  - (b) the Court shall not interfere in the arbitration of a dispute, save as expressly provided in this Act; and
  - (c) where the Court interferes in the arbitration pursuant to the expressed provisions of this Act it shall, as far as possible, give due regard to the wishes of the parties and the provisions of the arbitration agreement.

### **UNCITRAL Model Law to have effect in the Virgin Islands**

4. The provisions of the UNCITRAL Model Law have the force of law in the Virgin Islands, subject to the modifications and supplements expressly provided in this Act.

### **Application to the Crown**

5. This Act applies to the Crown in any dispute with another party in respect of an arbitration agreement which allows for the resolution of the dispute by arbitration.

**Substitution of article 1 of the UNCITRAL Model Law**

6. (1) This section has effect in substitution of article 1 of the UNCITRAL Model Law.

(2) Subject to subsection (3), this Act applies to an arbitration under an arbitration agreement, whether or not the arbitration agreement is entered into in the Virgin Islands, if the place of arbitration is in the Virgin Islands.

(3) Where the place of arbitration is outside the Virgin Islands, only sections 18, 19, 43, 58 and 59 and Part X apply to the arbitration.

(4) Where any other enactment provides that this Act applies to an arbitration under that other enactment, this Act (other than sections 18(2) and (3), 56 and 72(8) and (9)) applies to arbitration under that other enactment, subject to the following—

- (a) a reference to article 16(1) of the UNCITRAL Model Law (given effect to by section 32) to any objections with respect to the existence or validity of the arbitration agreement is to be construed as any objections with respect to the application of that other enactment to the dispute in question;
- (b) that other enactment is deemed to have expressly provided that, subject to paragraph (c), all the provisions in Schedule 2 apply; and
- (c) paragraph 2 of Schedule 2, if applicable, only applies so as to authorise two or more arbitral proceedings under the same enactment to be consolidated or to be heard at the same time or one immediately after another.

(5) Subsection (3) has effect, in relation to an arbitration under any other enactment, only in so far as this Act is consistent with—

- (a) that other enactment; and
- (b) any rules or procedures authorised or recognised by that other enactment.

**PART II****GENERAL PROVISIONS****International Origin and General Principles**

7. Article 2A of the UNCITRAL Model Law, the text of which is reproduced below has effect:

*“Article 2A. International origin and general principles*

(1) In the interpretation of this Law, regard is to be had to its international origin and to the need to promote uniformity in its application and the observance of good faith.

(2) Questions concerning matters governed by this Law which are not expressly stated in it are to be settled in conformity with the general principles on which this Law is based.”

### **Receipt of Written Communications**

8. (1) Article 3 of the UNCITRAL Model Law, the text of which is reproduced below:

*“Article 3. Receipt of written communications*

(1) Unless otherwise agreed by the parties:

(a) any written communication is deemed to have been received if it is delivered to the addressee personally or if it is delivered at his place of business, habitual residence or mailing address; if none of these can be found after making a reasonable inquiry, a written communication is deemed to have been received if it is sent to the addressee’s last known place of business, habitual residence or mailing address by registered letter or any other means which provides a record of the attempt to deliver it;

(b) the communication is deemed to have been received on the day it is so delivered.

(2) The provisions of this article do not apply to communication in court proceedings.”

(2) Without prejudice to subsection (1), if a written communication, other than communication in court proceedings, is sent by any means by which information can be recorded and transmitted to the addressee, the communication is deemed to have been received on the day it is so sent.

(3) Subsection (2) applies only if there is a record of receipt of the communication by the addressee.

### **Waiver of Right to Object**

9. Article 4 of the UNCITRAL Model Law, the text of which is reproduced below, has effect:

*“Article 4. Waiver of right to object*

A party who knows that any provision of this Law from which the parties may derogate or any requirement under the arbitration agreement has not been complied with and yet proceeds with the arbitration without stating his objection to such non-compliance without undue delay or, if a time-limit is provided therefor, within such period of time, shall be deemed to have waived his right to object.”.

### **Extent of Court Intervention**

10. Article 5 of the UNCITRAL Model law, the text of which is reproduced below, has effect:

*“Article 5. Extent of court intervention*

In matters governed by this Law, no court shall intervene except where so provided in this Law.”.

**Substitution of article 6 of the UNCITRAL Model Law**

11. (1) Subsections (2) to (5) have effect in substitution for article 6 of the article 6 of the UNCITRAL Model Law.

(2) The functions of the Court or other authority referred to in article 11 (3) or (4) of the UNCITRAL Model Law, given effect to by section 22, are to be performed by the BVI IAC.

(3) The functions of the Court or other authority referred to in—

(a) article 13(3) of the UNCITRAL Model Law, given effect to by section 24;

(b) article 14(1) of the UNCITRAL Model Law, given effect to by section 25,

are to be performed by the Court.

(4) The functions of the Court referred to in—

(a) article 16(3) of the UNCITRAL Model Law, given effect to by section 32;

(b) article 34(2) of the UNCITRAL Model Law, given effect to by section 79,

are to be performed by the Court.

(5) The functions of the competent court referred to in article 27 of the UNCITRAL Model Law, given effect to by section 53, are to be performed by the Court.

**Application of Cap. 43 and other limitation enactments to arbitrations**

12. (1) The Limitation Act and any other enactment relating to the limitation of actions (referred to collectively as “limitation enactments”) apply to arbitrations as they apply to actions in the Court.

(2) For the purposes of subsection (1), a reference in a limitation enactment to bringing an action is to be construed as, in relation to an arbitration, commencing the arbitral proceedings.

(3) Notwithstanding any term in an arbitration agreement to the effect that no cause of action may accrue in respect of any matter required by the arbitration agreement to be submitted to arbitration until an award is made under the arbitration agreement, the cause of action is, for the purposes of the limitation enactment (whether in their application to arbitrations or to other proceedings), deemed to accrue in respect of that matter at the time when it would have accrued but for that term.

(4) Where the Court orders that an award is to be set aside, the period between—

(a) the commencement of the arbitral proceedings; and

(b) the date of the order of the Court setting aside the award,

shall be excluded in computing the time prescribed by a limitation enactment for the commencement of proceedings, including arbitral proceedings, with respect to the matter submitted to arbitration.



### **Reference of interpleader issue to arbitration by Court**

13. (1) Where—

- (a) relief by way of interpleader is granted by the Court; and
- (b) there is an arbitration agreement between the claimants in the interpleader proceedings in respect of any issue between those claimants,

the Court shall, subject to subsection (2), direct that the issue is to be determined in accordance with the arbitration agreement.

(2) The Court may refuse to make a direction under subsection (1) if the circumstances are such that legal proceedings brought by a claimant in respect of the issue would not be stayed.

(3) Where the Court refuses to make a direction under subsection (1), any provision of the arbitration agreement that an award is a condition precedent to the bringing of legal proceedings in respect of the issue does not affect the determination of the issue by the Court.

(4) A direction made by the Court under subsection (1) is not subject to appeal.

(5) The leave of the Court with respect to a decision made under subsection (2) is required for any appeal from that decision.

### **Proceedings to be heard in chambers**

14. (1) Subject to subsection (2), proceedings under this Act in the Court are to be heard otherwise than in open Court.

(2) The Court may order proceedings under this Act to be heard in open Court—

- (a) on the application of any party; or
- (b) if, in any particular case, the Court is satisfied that those proceedings ought to be heard in open Court.

(3) An order made by the Court under subsection (2) is not subject to appeal.

### **Restrictions on reporting of proceedings heard otherwise than in open Court**

15. (1) This section applies to proceedings under this Act in the Court heard otherwise than in open Court (referred to in this section as “closed Court proceedings”).

(2) Where closed Court proceedings are being heard by the Court, the Court shall, on the application of any party, make a direction as to what information, if any, relating to the proceedings may be published.

(3) The Court shall not make a direction permitting information to be published unless—

- (a) all parties agree that the information may be published; or

(b) the Court is satisfied that the information, if published, would not reveal any matter, including the identity of any party, that any party reasonably wishes to remain confidential.

(4) Notwithstanding subsection (3), where the Court—

(a) gives a judgment in respect of closed Court proceedings; and

(b) considers that judgment to be of major legal interest; or

(c) considers it in the public interest to do so,

the Court may direct that reports of the judgment may be published in law reports and other professional publications.

(5) Where the Court directs under subsection (4) that reports of a judgment may be published, but any party reasonably wishes to conceal any matter in those reports, including the fact that the party was such a party, the Court shall, on the application of the party—

(a) make a direction as to the action to be taken to conceal that matter in those reports; and

(b) if the Court considers that a report published in accordance with the direction made under paragraph (a) would still be likely to reveal that matter, direct that the report may not be published until after the end of such period, not exceeding ten years, as the Court may direct.

(6) A direction made by the Court under this section is not subject to appeal.

### **Prohibition against disclosure of information relating to arbitral proceedings and awards**

**16.** (1) Unless otherwise agreed by the parties, no party may publish, disclose or against communicate any information relating to—

(a) the arbitral proceedings under the arbitration agreement;

(b) an award made in the arbitral proceedings.

(2) Nothing in subsection (1) prevents the publication, disclosure or communication of information referred to in that subsection by a party if the publication, disclosure or communication is made—

(a) to protect or pursue a legal right or interest of the party, or to enforce or challenge the award referred to in that subsection, in legal proceedings before the Court or other judicial authority in or outside the Virgin Islands;

(b) to any government body, regulatory body, court or tribunal and the party is obliged by law to make the publication, disclosure or communication; or

(c) to a professional or any other adviser of any of the parties.

PART III

ARBITRATION AGREEMENT

**Definition and Form of Arbitration Agreement**

17. (1) Article 7 of the UNCITRAL Model law, the text of which is reproduced below, has effect:

*“Option 1*

*Article 7. Definition and form of arbitration agreement*

- (1) “Arbitration agreement” is an agreement by the parties to submit to arbitration all or certain disputes which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not. An arbitration agreement may be in the form of an arbitration clause in a contract or in the form of a separate agreement.
  - (2) The arbitration agreement shall be in writing.
  - (3) An arbitration agreement is in writing if its content is recorded in any form, whether or not the arbitration agreement or contract has been concluded orally, by conduct, or by other means.
  - (4) The requirement that an arbitration agreement be in writing is met by an electronic communication if the information contained therein is accessible so as to be useable for subsequent reference; “electronic communication” means any communication that the parties make by means of data messages; “data message” means information generated, sent, received or stored by electronic, magnetic, optical or similar means, including, but not limited to, electronic data interchange (EDI), electronic mail, telegram, telex or telecopy.
  - (5) Furthermore, an arbitration agreement is in writing if it is contained in an exchange of statements of claim and defence in which the existence of an agreement is alleged by one party and not denied by the other.
  - (6) The reference in a contract to any document containing an arbitration clause constitutes an arbitration agreement in writing, provided that the reference is such as to make that clause part of the contract.”.
- (2) Without prejudice to subsection (1), an arbitration agreement is in writing if—
- (a) the agreement is in a document, whether or not the document is signed by the parties to the agreement; or
  - (b) the agreement, although made otherwise than in writing, is recorded by one of the parties to the agreement, or by a third party, with the authority of each of the parties to the agreement.
- (3) A reference in an agreement to a written form of arbitration clause constitutes an arbitration agreement if the reference is such as to make that clause part of the agreement.

**Arbitration Agreement and Substantive Claim Before Court**

18. (1) Article 8 of the UNCITRAL Model Law, the text of which is reproduced below, has effect:

*“Article 8. Arbitration agreement and substantive claim before court*

(1) A court before which an action is brought in a matter which is the subject of an arbitration agreement shall, if a party so requests not later than when submitting his first statement on the substance of the dispute, refer the parties to arbitration unless it finds that the agreement is null and void, inoperative or incapable of being performed.

(2) Where an action referred to in paragraph (1) of this article has been brought, arbitral proceedings may nevertheless be commenced or continued, and an award may be made, while the issue is pending before the court.”.

(2) If a dispute in the matter which is the subject of an arbitration agreement involves a claim or other dispute that is within the jurisdiction of the Arbitration Tribunal established by section 29(1) of the Labour Code, 2010, the Court may, if a party so requests and notwithstanding any provision of the Labour Code, 2010, refer the parties to arbitration under this Act if it is satisfied that—

- (a) there is no sufficient reason why the parties should not be referred to arbitration under this Act in accordance with the arbitration agreement; and
- (b) the party requesting arbitration was ready and willing at the time the action was brought to do all things necessary for the proper conduct of the arbitration, and remains so.

(3) Where the Court refuses to refer the parties to arbitration under this Act, any provision of the arbitration agreement that an award is a condition precedent to the bringing of legal proceedings in respect of any matter shall be of no effect in relation to those proceedings.

(4) Where the Court refers the parties in an action to arbitration, it shall make an order staying the legal proceedings in that action.

(5) Where in the case of Admiralty proceedings those proceedings are stayed on the ground that the dispute in question should be submitted to arbitration, the Court may, if in those proceedings property has been arrested or bail or other security has been given to prevent or obtain release from arrest, order that—

- (a) the property arrested be retained as security for the satisfaction of any award given in the arbitration in respect of that dispute; or
- (b) the stay of those proceedings be conditional on the provision of equivalent security for the satisfaction of any such award.

(6) Subject to any provision made by rules of court and to any necessary modifications, the same law and practice apply in relation to property retained in pursuance of an order made under subsection (5) as would apply if the property were held for the purposes of proceedings in the Court.

(7) A decision of the Court to refer the parties to arbitration under article 8 of the UNCITRAL Model Law pursuant to subsection (1) or under subsection (2) is not subject to appeal.

(8) The leave of the Court with respect to a decision to refuse to refer the parties to arbitration under article 8 of the UNCITRAL Model Law pursuant to subsection (1) or under subsection (2) is required for any appeal from that decision.

(9) A decision or order made by the Court under subsection (5) is not subject to appeal.

### **Arbitration Agreement and Interim Measures by Court**

19. Article 9 of the UNCITRAL Model Law, the text of which is reproduced below, has effect:

*“Article 9. Arbitration agreement and interim measures by court*

*It is not incompatible with an arbitration agreement for a party to request, before or during arbitral proceedings, from a court an interim measure of protection and for a court to grant such measure.”.*

### **Arbitration agreement not discharged by death of a party**

20. (1) Unless otherwise agreed by the parties, an arbitration agreement is not discharged by the death of a party and may be enforced by or against the personal representatives of the deceased party.

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

## PART IV

### COMPOSITION OF ARBITRAL TRIBUNAL

#### *Division I*

#### *Arbitrators*

### **Number of Arbitrators**

21. (1) Article 10 (1) of the UNCITRAL Model Law, the text of which is reproduced below, has effect:

*“Article 10. Number of arbitrators*

*(1) The parties are free to determine the number of arbitrators.”.*

(2) Article 10(2) of the UNCITRAL Model Law is substituted by subsections (3) and (4).

(3) For the purposes of subsection (1), the freedom of the parties to determine the number of arbitrators includes the right of the parties to authorise a third party, including an institution, to make that determination.

(4) Except where section 89(a) and paragraph 1 of Schedule 2 apply, where the parties fail to agree on the number of arbitrators, the number of arbitrators shall be either one or three as decided by the BVI IAC in the particular case.

### **Appointment of Arbitrators**

22. (1) Article 11 of the UNCITRAL Model Law, the text of which is reproduced article 11 of the below, has effect subject to subsection 11 (2) and (3):

*“Article 11. Appointment of arbitrators*

(1) No person shall be precluded by reason of his nationality from acting as an arbitrator, unless otherwise agreed by the parties.

(2) The parties are free to agree on a procedure of appointing the arbitrator or arbitrators, subject to the provisions of paragraphs (4) and (5) of this article.

(3) Failing such agreement—

(a) in an arbitration with three arbitrators, each party shall appoint one arbitrator, and the two arbitrators thus appointed shall appoint the third arbitrator; if a party fails to appoint the arbitrator within thirty days of receipt of a request to do so from the other party, or if the two arbitrators fail to agree on the third arbitrator within thirty days of their appointment, the appointment shall be made, upon request of a party, by the court or other authority specified in article 6;

(b) in arbitration with a sole arbitrator, if the parties are unable to agree on the arbitrator, he shall be appointed, upon request of a party, by the court or other authority specified in article 6.

(4) Where, under an appointment procedure agreed upon by the parties—

(a) a party fails to act as required under such procedure, or

(b) the parties, or two arbitrators, are unable to reach an agreement expected of them under such procedure, or

(c) a third party, including an institution, fails to perform any function entrusted to it under such procedure, any party may request the court or other authority specified in article 6 to take the necessary measure, unless the agreement on the appointment procedure provides other means for securing the appointment.

(5) A decision on a matter entrusted by paragraph (3) or (4) of this article to the court or other authority specified in article 6 shall be subject to no appeal. The court or other authority, in appointing an arbitrator, shall have due regard to any qualifications required of the arbitrator by the agreement of the parties and to such considerations as are likely to secure the appointment of an independent and impartial arbitrator and, in the case of a sole or third arbitrator, shall take into account as well the advisability of appointing an arbitrator of a nationality other than those of the parties.”

(2) In an arbitration with an even number of arbitrators—

- (a) if the parties have not agreed on a procedure for appointing the arbitrators under article 11(2) of the UNCITRAL Model Law, as provided in subsection (1), each party is to appoint the same number of arbitrators; or
- (b) if—
- (i) a party fails to act as required under an appointment procedure agreed upon by the parties, or
  - (ii) in the case of paragraph (a), a party fails to appoint the appropriate number of arbitrators under that paragraph within thirty days of receipt of a request to do so from the other party, the BVI IAC shall make the necessary appointment upon a request to do so from the other party.
- (3) In an arbitration with an uneven number of arbitrators greater than three—
- (a) if the parties have not agreed on a procedure for appointing the arbitrators under article 11(2) of the UNCITRAL Model Law, as provided in subsection (1)—
- (i) each party is to appoint the same number of arbitrators; and
  - (ii) unless otherwise agreed by the parties, the BVI IAC shall appoint the remaining arbitrator or arbitrators; or
- (b) if—
- (i) a party fails to act as required under an appointment procedure agreed upon by the parties, or
  - (ii) in the case of paragraph (a), a party fails to appoint the appropriate number of arbitrators under that paragraph within thirty days of receipt of a request to do so from the other party,
- the BVI IAC shall make the necessary appointment upon a request to do so from any party.
- (4) In any other case, in particular if there are more than two parties, article 11(4) of the UNCITRAL Model Law as provided in subsection (1), applies as in the case of a failure to agree on an appointment procedure.
- (5) If any appointment of an arbitrator is made by the BVI IAC by virtue of this Act, the appointment—
- (a) has effect as if it were made with the agreement of all the parties; and
  - (b) is subject to article 11(5) of the UNCITRAL Model Law, as provided in subsection (1).

### **Grounds for Challenge**

**23.** Article 12 of the UNCITRAL Model Law, the text of which is reproduced below, article 12 of the has effect:

*“Article 12. Grounds for challenge*

(1) When a person is approached in connection with his possible appointment as an arbitrator, he shall disclose any circumstances likely to give rise to justifiable doubts as to his impartiality or independence. An arbitrator, from the time of his appointment and throughout the arbitral proceedings, shall without delay disclose any such circumstances to the parties unless they have already been informed of them by him.

(2) An arbitrator may be challenged only if circumstances exist that give rise to justifiable doubts as to his impartiality or independence, or if he does not possess qualification agreed to by the parties. A party may challenge an arbitrator appointed by him, or in whose appointment he has participated, only for reasons of which he becomes aware after the appointment has been made.”.

### **Challenge Procedure**

**24.** (1) Article 13 of the UNCITRAL Model Law, the text of which is article 13 of the reproduced below, has effect subject to section 11(4):

*“Article 13. Challenge procedure*

(1) The parties are free to agree on a procedure for challenging an arbitrator, subject to the provisions of paragraph (3) of this article.

(2) Failing such agreement, a party who intends to challenge an arbitrator shall, within fifteen days after becoming aware of the constitution of the arbitral tribunal or after becoming aware of any circumstance referred to in article 12(2), send a written statement of the reasons for the challenge to the arbitral tribunal. Unless the challenged arbitrator withdraws from his office or the other party agrees to the challenge, the arbitral tribunal shall decide on the challenge.

(3) If a challenge under any procedure agreed upon by the parties or under the procedure of paragraph (2) of this article is not successful, the challenging party may request, within thirty days after having received notice of the decision rejecting the challenge, the court or other authority specified in article 6 to decide on the challenge, which decision shall be subject to no appeal; while such a request is pending, the arbitral tribunal, including the challenged arbitrator, may continue the arbitral proceedings and make an award.”.

(2) During the period that a request for the Court to decide on a challenge is pending, the Court may refuse to grant leave under section 81 for the enforcement of any award made during that period by the arbitral tribunal that includes the arbitrator who has been challenged.

(3) An arbitrator who is challenged under article 13(2) of the UNCITRAL Model Law, as provided under subsection (1), is entitled, if he considers it appropriate in the circumstances of the challenge, to withdraw from office as an arbitrator.

(4) The mandate of an arbitrator who is challenged terminates under article 13 of the UNCITRAL Model Law, as provided in subsection (1), if—

(a) the arbitrator withdraws from office;



- (b) the parties agree to the challenge;
- (c) the arbitral tribunal upholds the challenge and no request is made for the Court to decide on the challenge; or
- (d) the Court, upon request to decide on the challenge, upholds the challenge.

(5) If the Court upholds the challenge, the Court may set aside the award referred to in subsection (2).

### **Failure or Impossibility to Act**

25. Article 14 of the UNCITRAL Model Law, the text of which is reproduced below, article 14 of the has effect, subject to section 11 (4):

*“Article 14. Failure or impossibility to act*

(1) If an arbitrator becomes de jure or de facto unable to perform his functions or for other reasons fails to act without undue delay, his mandate terminates if he withdraws from his office or if the parties agree on the termination. Otherwise, if a controversy remains concerning any of these grounds, any party may request the court or other authority specified in article 6 to decide on the termination of the mandate, which decision shall be subject to no appeal.

(2) If, under this article or article 13(2), an arbitrator withdraws from his office or a party agrees to the termination of the mandate of an arbitrator, this does not imply acceptance of the validity of any ground referred to in this article or article 12(2).”.

### **Appointment of Substitute Arbitrator**

26. Article 15 of the UNCITRAL Model Law, the text of which is reproduced below, has effect:

*“Article 15. Appointment of substitute arbitrator*

When the mandate of an arbitrator terminates under article 13 or 14 or because of his withdrawal from office for any other reason or because of the revocation of his mandate by agreement of the parties or in any other case of termination of his mandate, a substitute arbitrator shall be appointed according to the rules that were applicable to the appointment of the arbitrator being replaced.”.

### **Death of arbitrator or person appointing arbitrator**

27. (1) The authority of an arbitrator is personal and his mandate terminates on his death.

(2) Unless otherwise agreed by the parties, the death of the person by whom an arbitrator was appointed does not revoke the arbitrator’s authority.

### **Appointment of umpire**

**28.** In an arbitration with an even number of arbitrators, the arbitrators may, unless otherwise agreed by the parties, appoint an umpire at any time after their own appointment.

### **Functions of umpire in arbitral proceedings**

**29.** (1) The parties are free to agree what the functions of an umpire are to be and, in particular—

- (a) whether the umpire is to attend the arbitral proceedings; and
- (b) when, and the extent to which, the umpire is to replace the arbitrators as the arbitral tribunal with the power to make orders, directions and awards.

(2) If and to the extent that there is no agreement of the parties as provided in subsection (1), the arbitrators are free to agree on the functions of the umpire.

(3) Subsections (4) to (12) apply subject to any agreement of the parties or the arbitrators.

(4) After an umpire is appointed pursuant to section 28, he shall attend the arbitral proceedings.

(5) The arbitrators shall supply the umpire with the same documents and other materials as are supplied to the arbitrators.

(6) The arbitrators shall make orders, directions and awards unless, subject to subsection (10), the arbitrators cannot agree on a matter relating to the dispute submitted to arbitration.

(7) Where the arbitrators cannot agree on a matter relating to the dispute submitted to arbitration, they shall forthwith give notice of that fact in writing to the parties and the umpire.

(8) Where the umpire receives a notice under subsection (7), he shall replace the arbitrators as the arbitral tribunal with the power to make orders, directions and awards, in respect of the matter contained in the notice only, subject to subsection (10)(b), as if the umpire were the sole arbitrator.

(9) Where the arbitrators cannot agree on a matter relating to the dispute submitted to arbitration but—

- (a) they fail to give notice of that fact, or
- (b) any of them fails to join in the giving of notice,

any party may apply to the Court which may decide that the umpire is to replace the arbitrators as the arbitral tribunal with the power to make orders, directions and awards, in respect of that matter only, as if the umpire were the sole arbitrator.

(10) Notwithstanding the replacement by the umpire as the arbitral tribunal in respect of a matter, on which the arbitrators cannot agree, relating to the dispute submitted to arbitration, the arbitrators may—

- (a) still make orders, directions and awards in respect of the other matters relating to the dispute if they consider that—

- (i) it would save costs by doing so; and
  - (ii) it would be just and fair to do so; or
- (b) refer the entirety of the dispute to the umpire for arbitration.

(11) For the purposes of this section, the arbitrators shall be treated as not agreed on a matter relating to the dispute submitted to arbitration if any one of the arbitrators, in that arbitrator's view, disagrees with the other arbitrator or any of the other arbitrators over that matter.

(12) A decision made by the Court under subsection (9) is not subject to appeal.

## *Division 2*

### *Mediators*

#### **Appointment of mediator**

**30.** (1) The BVI IAC may, on the application of any party, appoint a mediator where—

- (a) an arbitration agreement provides for the appointment of a mediator by a person who is not one of the parties; and
- (b) that person—
  - (i) refuses to make the appointment; or
  - (ii) does not make the appointment within the time specified in the arbitration agreement or, if no time is so specified, within a reasonable time after being requested by any party to make the appointment.

(2) An appointment made by the BVI IAC under subsection (1) is not subject to appeal.

(3) Where an arbitration agreement provides for the appointment of a mediator and further provides that the person so appointed is to act as an arbitrator in the event that no settlement acceptable to the parties can be reached in the mediation proceedings—

- (a) no objection may be made against the person's acting as an arbitrator, or against the person's conduct of the arbitral proceedings, solely on the ground that the person had acted previously as a mediator in connection with some or all of the matters relating to the dispute submitted to arbitration; or
- (b) if the person declines to act as an arbitrator, any person appointed as an arbitrator is not required first to act as a mediator unless it is otherwise expressed in the arbitration agreement.

#### **Power of arbitrator to act as mediator**

**31.** (1) Where all parties consent in writing, and for so long as no party withdraws his consent in writing, an arbitrator may act as a mediator after the arbitral proceedings have commenced.

(2) Where an arbitrator acts as a mediator, the arbitral proceedings shall be stayed to facilitate the conduct of the mediation proceedings.

(3) An arbitrator who acts as a mediator—

- (a) may communicate with the parties collectively or separately; and
- (b) shall treat the information obtained by the arbitrator from a party as confidential, unless otherwise agreed by that party or unless subsection (4) applies.

(4) Where—

- (a) confidential information is obtained by an arbitrator from a party during the mediation proceedings conducted by the arbitrator as a mediator, and
- (b) those mediation proceedings terminate without reaching a settlement acceptable to the parties,

the arbitrator shall, before resuming the arbitral proceedings, disclose to all other parties as much of that information as the arbitrator considers is material to the arbitral proceedings.

(5) No objection may be made against the conduct of the arbitral proceedings by an arbitrator solely on the ground that the arbitrator had acted previously as a mediator in accordance with this section.

## PART V

### JURISDICTION OF ARBITRAL TRIBUNAL

#### **Competence of Arbitral Tribunal to Rule on its Jurisdiction**

**32.** (1) Article 16 of the UNCITRAL Model Law, the text of which is reproduced below, has effect subject to section 11(5):

*“Article 16. Competence of arbitral tribunal to rule on its jurisdiction*

(1) The arbitral tribunal may rule on its own jurisdiction, including any objections with respect to the existence or validity of the arbitration agreement. For that purpose, an arbitration clause which forms part of a contract shall be treated as an agreement independent of the other terms of the contract. A decision by the arbitral tribunal that the contract is null and void shall not entail *ipso jure* the invalidity of the arbitration clause.

(2) A plea that the arbitral tribunal does not have jurisdiction shall be raised no later than the submission of the statement of defence. A party is not precluded from raising a plea by the fact that he has appointed, or participated in the appointment of, an arbitrator. 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 arbitral proceedings. The arbitral tribunal may, in either case, admit a later plea if it considers the delay justified.

(3) The arbitral tribunal may rule on a plea referred to in paragraph (2) of this article either as a preliminary question or in an award on the merits. If

the arbitral tribunal rules as a preliminary question that it has jurisdiction, any party may request, within thirty days after having received notice of that ruling, the court specified in article 6 to decide the matter, which decision shall be subject to no appeal; while such a request is pending, the arbitral tribunal may continue the arbitral proceedings and make an award.”.

(2) The power of the arbitral tribunal to rule on its own jurisdiction under article 16 of the UNCITRAL Model Law, as provided in subsection (1), includes the power to decide as to—

- (a) whether the tribunal is properly constituted; and
- (b) what matters have been submitted to arbitration in accordance with the arbitration agreement.

(3) Where a dispute is submitted to arbitration in accordance with an arbitration agreement and a party—

- (a) makes a counter-claim arising out of the same dispute, or
- (b) relies on a claim arising out of that dispute for the purposes of a set-off,

the arbitral tribunal has jurisdiction to decide on the counter-claim or the claim so relied on only to the extent that the subject matter of that counter-claim or that claim falls within the scope of the same arbitration agreement.

(4) A ruling made by the arbitral tribunal that it does not have jurisdiction to decide a dispute is not subject to appeal.

(5) Notwithstanding section 18, where the arbitral tribunal rules that it does not have jurisdiction to decide a dispute, the Court shall, if it has jurisdiction, decide that dispute.

## PART VI

### INTERIM MEASURES AND PRELIMINARY ORDERS

#### *Division 1*

#### *Interim Measures*

### **Power of Arbitral Tribunal to Order Interim Measures**

**33.** (1) Article 17 of the UNCITRAL Model Law, the text of which is reproduced below, has effect:

*“Article 17. Power of arbitral tribunal to order interim measures*

- (1) Unless otherwise agreed by the parties, the arbitral tribunal may, at the request of a party, grant interim measures.
- (2) An interim measure is any temporary measure, whether in the form of an award or in another form, by which, at any time prior to the issuance of

the award by which the dispute is finally decided, the arbitral tribunal orders a party to—

- (a) Maintain or restore the status quo pending determination of the dispute;
- (b) Take action that would prevent, or refrain from taking action that is likely to cause, current or imminent harm or prejudice to the arbitral process itself;
- (c) Provide a means of preserving assets out of which a subsequent award may be satisfied; or
- (d) Preserve evidence that may be relevant and material to the resolution of the dispute.”.

(2) An interim measure referred to in article 17 of the UNCITRAL Model Law, as provided in subsection (1), is to be construed as including an injunction but not including an order under section 54.

(3) Where an arbitral tribunal has granted an interim measure, the tribunal may, on the application of any party, make an award to the same effect as the interim measure.

### **Conditions for Granting Interim Measures**

34. Article 17A of the UNCITRAL Model Law, the text of which is reproduced below, has effect:

*“Article 17A. Conditions for granting interim measures*

(1) The party requesting an interim measure under article 17(2)(a), (b) and (c) shall satisfy the arbitral tribunal that—

- (a) Harm not adequately reparable by an award of damages is likely to result if the measure is not ordered, and such harm substantially outweighs the harm that is likely to result to the party against whom the measure is directed if the measure is granted; and
- (b) There is a reasonable possibility that the requesting party will succeed on the merits of the claim. The determination on this possibility shall not affect the discretion of the arbitral tribunal in making any subsequent determination.

(2) With regard to a request for an interim measure under article 17(2)(d), the requirements in paragraphs (1)(a) and (b) of this article shall apply only to the extent the tribunal considers appropriate.”.

### *Division 2*

### *Preliminary Orders*

### **Applications for Preliminary Orders and Conditions for Granting Preliminary Orders**

35. Article 17B of the UNCITRAL Model Law, the text of which is reproduced below, has effect:

*“Article 17B. Applications for preliminary orders and conditions for granting preliminary orders*

- (1) Unless otherwise agreed by the parties, a party may, without notice to any other party, make a request for an interim measure together with an application for a preliminary order directing a party not to frustrate the purpose of the interim measure requested.
- (2) The arbitral tribunal may grant a preliminary order provided it considers that prior disclosure of the request for the interim measure to the party against whom it is directed risks frustrating the purpose of the measure.
- (3) The conditions defined under article 17A apply to any preliminary order, provided that the harm to be assessed under article 17A(1)(a), is the harm likely to result from the order being granted or not.”.

**Specific Regime for Preliminary Orders**

36. Article 17C of the UNCITRAL Model Law, the text of which is reproduced below, has effect:

*“Article 17C. Specific regime for preliminary orders*

- (1) Immediately after the arbitral tribunal has made a determination in respect of an application for a preliminary order, the arbitral tribunal shall give notice to all parties of the request for the interim measure, the application for the preliminary order, the preliminary order, if any, and all other communications, including by indicating the content of any oral communication, between any party and the arbitral tribunal in relation thereto.
- (2) At the same time, the arbitral tribunal shall give an opportunity to any party against whom a preliminary order is directed to present its case at the earliest practicable time.
- (3) The arbitral tribunal shall decide promptly on any objection to the preliminary order.
- (4) A preliminary order shall expire after twenty days from the date on which it was issued by the arbitral tribunal. However, the arbitral tribunal may issue an interim measure adopting or modifying the preliminary order, after the party against whom the preliminary order is directed has been given notice and an opportunity to present its case.
- (5) A preliminary order shall be binding on the parties but shall not be subject to enforcement by a court. Such a preliminary order does not constitute an award.”.

*Division 3*

*Provisions Applicable to Interim Measures and Preliminary Orders*

**Modification, Suspension, Termination**

37. (1) Article 17D of the UNCITRAL Model Law, the text of which is reproduced below, has effect:

*“Article 17D. Modification, suspension, termination*

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

**Provision of Security**

**38.** Article 17E of the UNCITRAL Model Law, the text of which is reproduced below, has effect:

*“Article 17E. Provision of security*

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

**Disclosure**

**39.** Article 17F of the UNCITRAL Model Law, the text of which is reproduced below, has effect:

*“Article 17F. Disclosure*

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

**Costs and Damages**

**40.** Article 17G of the UNCITRAL Model Law, the text of which is reproduced below, has effect:

*“Article 17G. Costs and damages*

The party requesting an interim measure or applying for a preliminary order shall be liable for any costs and damages caused by the measure or the order to any party if the arbitral tribunal later determines that, in the circumstances, the measure or the order should not have been granted. The arbitral tribunal may award such costs and damages at any point during the proceedings.”.



*Division 4*

*Recognition and Enforcement of Interim Measures*

**Substitution of article 17H of the UNCITRAL Model Law**

41. Section 59 has effect in substitution for article 17H of the UNCITRAL Model Law in relation to the recognition and enforcement of interim measures.

**Article 17I of the UNCITRAL Model Law does not have effect**

42. Article 17I of the UNCITRAL Model Law does not have effect.

*Division 5*

*Court-ordered Interim Measures*

**Court-ordered interim measures**

43. (1) Article 17J of the UNCITRAL Model Law is substituted by this section.

(2) On the application of a party, the Court may, in relation to any arbitral proceedings which have been or are to be commenced in or outside the Virgin Islands, grant an interim measure.

(3) The powers conferred by this section may be exercised by the Court irrespective of whether or not similar powers may be exercised by an arbitral tribunal under section 33 in relation to the same dispute.

(4) The Court may decline to grant an interim measure under subsection (2) on the ground that—

- (a) the interim measure being sought is currently the subject of arbitral proceedings; and
- (b) the Court considers it more appropriate for the interim measure sought to be dealt with by the arbitral tribunal.

(5) In relation to arbitral proceedings which have been or are to be commenced outside the Virgin Islands, the Court may grant an interim measure under subsection (2) only if—

- (a) the arbitral proceedings are capable of giving rise to an arbitral award, whether interim or final, that may be enforced in the Virgin Islands under this Act or any other enactment; and
- (b) the interim measure sought belongs to a type or description of interim measure that may be granted in the Virgin Islands by the Court in relation to arbitral proceedings.

(6) Subsection (5) applies even if—

- (a) the subject matter of the arbitral proceedings would not, apart from that subsection, give rise to a cause of action over which the Court would have jurisdiction; or

(b) the order sought is not ancillary or incidental to any arbitral proceedings in the Virgin Islands.

(7) In exercising the power conferred under subsection (2) in relation to arbitral proceedings outside the Virgin Islands, the Court shall have regard to the fact that the power is—

- (a) ancillary to the arbitral proceedings outside the Virgin Islands; and
- (b) for the purposes of facilitating the process of a court or arbitral tribunal outside the Virgin Islands that has primary jurisdiction over the arbitral proceedings.

(8) The Court has the same power to make any incidental order or direction for the purposes of ensuring the effectiveness of an interim measure granted in relation to arbitral proceedings outside the Virgin Islands as if the interim measure were granted in relation to arbitral proceedings in the Virgin Islands.

(9) An interim measure referred to in subsection (2) means an interim measure referred to in article 17(2) of the UNCITRAL Model Law, as provided in section 33(1), as if the reference—

- (a) to arbitral tribunal in that article were a reference to the Court, and
- (b) to arbitral proceedings in that article were a reference to court proceedings,

and is to be construed as including an injunction but not including an order under section 58.

(10) A decision, order or direction made or issued by the Court under this section is not subject to appeal.

## PART VII

### CONDUCT OF ARBITRAL PROCEEDINGS

#### **Substitution of article 18 of the UNCITRAL Model Law**

**44.** (1) Article 18 of the UNCITRAL Model Law is substituted by this section.

(2) The parties to an arbitration shall be treated with equality.

(3) When conducting arbitral proceedings or exercising any of the powers conferred on an arbitral tribunal by this Act or by the parties to any of those arbitral proceedings, the arbitral tribunal is required—

- (a) to be independent;
- (b) to act fairly and impartially as between the parties, giving them a reasonable opportunity to present their cases and to deal with the cases of their opponents; and

- (c) to use procedures that are appropriate to the particular case, avoiding unnecessary delay or expense, so as to provide a fair means for resolving the dispute to which the arbitral proceedings relate.

### **Determination of Rules of Procedure**

45. (1) Article 19 of the UNCITRAL Model Law, the text of which is reproduced:

*“Article 19. Determination of rules of procedure*

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

(2) [Not applicable].”

(2) If or to the extent that there is no agreement between the parties pursuant to article 19(1) of the UNCITRAL Model Law, as provided in subsection (1), the arbitral tribunal may, subject to the provisions of this Act, conduct the arbitration in the manner that it considers appropriate.

(3) When conducting arbitral proceedings, an arbitral tribunal is not bound by the rules of evidence and may receive any evidence that it considers relevant to the arbitral proceedings, but it shall give the weight that it considers appropriate to the evidence adduced in the arbitral proceedings.

### **Place of Arbitration**

46. (1) Article 20 of the UNCITRAL Model Law, the text of which is reproduced below, has effect:

*“Article 20. Place of arbitration*

(1) The parties are free to agree on the place of arbitration. Failing such agreement, 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.

(2) Notwithstanding the provisions of paragraph (1) of this article, 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.”

### **Commencement of Arbitral Proceedings**

47. (1) Article 21 of the UNCITRAL Model Law, the text of which is reproduced below, has effect:

*“Article 21. Commencement of arbitral proceedings*

Unless otherwise agreed by the parties, the arbitral proceedings in respect of a particular dispute commence on the date on which a request for that dispute to be referred to arbitration is received by the respondent.”

## Language

48. (1) Article 22 of the UNCITRAL Model Law, the text of which is reproduced article 22 of below, has effect:

*“Article 22. Language*

(1) The parties are free to agree on the language or languages to be used in the arbitral proceedings. Failing such agreement, the arbitral tribunal shall determine the language or languages to be used in the proceedings. This agreement or determination, unless otherwise specified therein, shall apply to any written statement by a party, any hearing and any award, decision or other communication by the arbitral tribunal.

(2) 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.”.

## Statements of Claim and Defence

49. (1) Article 23 of the UNCITRAL Model Law, the text of which is reproduced below, has effect:

*“Article 23. Statements of claim and defence*

(1) Within the period of time agreed by the parties or determined by the arbitral tribunal, the claimant shall state the facts supporting his claim, the points at issue and the relief or remedy sought, and the respondent shall state his defence in respect of these particulars, unless the parties have otherwise agreed as to the required elements of such statements. The parties may submit with their statements all documents they consider to be relevant or may add a reference to the documents or other evidence they will submit.

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

## Hearings and Written Proceedings

50. Article 24 of the UNCITRAL Model Law, the text of which is reproduced article 24 of below, has effect:

*“Article 24. Hearings and written proceedings*

(1) Subject to any contrary agreement by the parties, the arbitral tribunal shall decide whether to hold oral hearings for the presentation of evidence or for oral argument, or whether the proceedings shall be conducted on the basis of documents and other materials. However, unless the parties have agreed that no hearings shall be held, the arbitral tribunal shall hold such hearings at an appropriate stage of the proceedings, if so requested by a party.

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

(3) All statements, documents or other information supplied to the arbitral tribunal by one party shall be communicated to the other party. Also any expert report or evidentiary document on which the arbitral tribunal may rely in making its decision shall be communicated to the parties.”.

### **Default of a Party**

51. (1) Article 25 of the UNCITRAL Model Law, the text of which is reproduced below, has effect:

*“Article 25. Default of a party*

Unless otherwise agreed by the parties, if, without showing sufficient cause—

- (a) the claimant fails to communicate his statement of claim in accordance with article 23(1), the arbitral tribunal shall terminate the proceedings;
- (b) the respondent fails to communicate his statement of defence in accordance with article 23(1), the arbitral tribunal shall continue the proceedings without treating such failure in itself as an admission of the claimant’s allegations;
- (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.”.

(2) Unless otherwise agreed by the parties, subsections (3) and (4) apply except in relation to an application for security of costs.

(3) Where, without showing sufficient cause, a party fails to comply with any order or direction of the arbitral tribunal, the tribunal may make a peremptory order to the same effect, prescribing the time for compliance with it that the arbitral tribunal considers appropriate.

(4) Where a party fails to comply with a peremptory order under subsection (3), then without prejudice to section 59, the arbitral tribunal may—

- (a) direct that the party is not entitled to rely on any allegation or material which was the subject matter of the peremptory order;
- (b) draw any adverse inferences that the circumstances may justify from the non-compliance;
- (c) make an award on the basis of any materials which have been properly provided to the arbitral tribunal; or
- (d) make any order that the arbitral tribunal thinks fit as to the payment of the costs of the arbitration incurred in consequence of the non-compliance.

### **Expert Appointed by Arbitral Tribunal**

52. (1) Article 26 of the UNCITRAL Model Law, the text of which is reproduced below, has effect:

*“Article 26. Expert appointed by arbitral tribunal*

(1) Unless otherwise agreed by the parties, the arbitral tribunal—

- (a) may appoint one or more experts to report to it on specific issues to be determined by the arbitral tribunal;
- (b) may 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 expert witnesses in order to testify on the points at issue.”.

(2) Without prejudice to article 26 of the UNCITRAL Model Law, as provided in subsection (1), in assessing the amount of the costs of arbitral proceedings under section 72, other than the fees and expenses of the tribunal—

- (a) the arbitral tribunal may appoint assessors to assist it on technical matters, and may allow any of those assessors to attend the arbitral proceedings; and
- (b) the parties shall be given a reasonable opportunity to comment on any information, opinion or advice offered by any of those assessors.

### **Court Assistance in Taking Evidence**

**53.** (1) Article 27 of the UNCITRAL Model Law, the text of which is reproduced below, has effect:

*“Article 27. Court assistance in taking evidence*

The arbitral tribunal or a party with the approval of the arbitral tribunal may request from a competent court of this State assistance in taking evidence. The court may execute the request within its competence and according to its rules on taking evidence.”.

(2) The Court may order a person to attend proceedings before an arbitral tribunal to give evidence or to produce documents or other evidence.

(3) The powers conferred by this section may be exercised by the Court irrespective of whether or not similar powers may be exercised by an arbitral tribunal under section 54 in relation to the same dispute.

(4) A decision or order made by the Court in the exercise of its power under this section is not subject to appeal.

(5) For the purposes of subsection (2), section 161 of the Evidence Act, 2006 applies as if the power conferred on the Court under that section relates to proceedings before an arbitral tribunal.

### **General powers exercisable by arbitral tribunal**

**54.** (1) Unless otherwise agreed by the parties, when conducting arbitral proceedings, an arbitral tribunal may make an order—

- (a) requiring a claimant to give security for the costs of the arbitration;

- (b) directing the discovery of documents or the delivery of interrogatories;
      - (c) directing evidence to be given by affidavit; or
      - (d) in relation to any relevant property—
        - (i) directing the inspection, photographing, preservation, custody, detention or sale of the relevant property by the arbitral tribunal, a party to the arbitral proceedings or an expert; or
        - (ii) directing samples to be taken from, observations to be made of, or experiments to be conducted on, the relevant property.
- (2) An arbitral tribunal shall not make an order under subsection (1)(a) only on the ground that the claimant is—
  - (a) a natural person who is ordinarily resident outside the Virgin Islands;
  - (b) a body corporate—
    - (i) incorporated under the law of a place outside the Virgin Islands; or
    - (ii) the central management and control of which is exercised outside the Virgin Islands; or
  - (c) an association—
    - (i) formed under the law of a place outside the Virgin Islands; or
    - (ii) the central management and control of which is exercised outside the Virgin Islands.
- (3) An arbitral tribunal—
  - (a) shall, when making an order under subsection (1)(a), specify the period within which the order has to be complied with; and
  - (b) may extend that period as it considers fit.
- (4) An arbitral tribunal may make an award dismissing a claim or stay a claim if it has made an order under subsection (1)(a) but the order has not been complied with within the period specified under subsection (3)(a) or extended under subsection (3)(b).
- (5) Notwithstanding section 33(2), sections 37 to 40 apply, if appropriate, to an order under subsection (1)(d) as if a reference to an interim measure in those sections were an order under that subsection.
- (6) Property is a relevant property for the purposes of subsection (1)(d) if—
  - (a) the property is owned by or is in the possession of a party to the arbitral proceedings; and
  - (b) the property is the subject of the arbitral proceedings, or any question relating to the property has arisen in the arbitral proceedings.

(7) Unless otherwise agreed by the parties, an arbitral tribunal may, when conducting arbitral proceedings, decide whether and to what extent it should itself take the initiative in ascertaining the facts and the law relevant to those arbitral proceedings.

(8) Unless otherwise agreed by the parties, an arbitral tribunal may—

- (a) administer oaths to, or take the affirmations of, witnesses and parties;
- (b) examine witnesses and parties on oath or affirmation; or
- (c) without prejudice to section 53(5), direct the attendance before the arbitral tribunal of witnesses in order to give evidence or to produce documents or other evidence.

(9) A person is not required to produce in arbitral proceedings any document or other evidence that the person could not be required to produce in civil proceedings before a court.

### **Power to limit amount of recoverable costs**

**55.** (1) Unless otherwise agreed by the parties, an arbitral tribunal may direct that the recoverable costs of arbitral proceedings before it are limited to a specified amount.

(2) Subject to subsection (3), the arbitral tribunal may make or vary a direction either—

- (a) on its own initiative; or
- (b) on the application of any party.

(3) A direction may be made or varied at any stage of the arbitral proceedings but, for the limit of the recoverable costs to be taken into account, this must be done sufficiently in advance of—

- (a) the incurring of the costs to which the direction or the variation relates; or
- (b) the taking of the steps in the arbitral proceedings which may be affected by the direction or the variation.

(4) In this section, a reference—

- (a) to costs is to be construed as the parties' own costs; and
- (b) to arbitral proceedings includes any part of those arbitral proceedings.

### **Power to extend time for arbitral proceedings**

**56.** (1) This section applies to an arbitration agreement that provides for a claim to be barred or for a claimant's right to be extinguished unless the claimant, before the time or within the period specified in the agreement, takes a step—

- (a) to commence arbitral proceedings; or
- (b) to commence any other dispute resolution procedure that must be exhausted before arbitral proceedings may be commenced.



(2) On the application of any party to such an arbitration agreement, an arbitral tribunal may make an order extending the time or period referred to in subsection (1).

(3) An application may be made only after a claim has arisen and after exhausting any available arbitral procedures for obtaining an extension of time.

(4) An arbitral tribunal may make an order under this section extending the time or period referred to in subsection (1) only if it is satisfied—

(a) that—

(i) the circumstances were such as to be outside the reasonable contemplation of the parties when they entered into the arbitration agreement; and

(ii) it would be just to extend the time or period; or

(b) that the conduct of any party makes it unjust to hold the other party to the strict terms of the agreement.

(5) An arbitral tribunal may extend the time or period referred to in subsection (1), or the time or period extended under subsection (4), for a further period and on the terms that it thinks fit, and the tribunal may do so even though that time or period or the extended time or period has expired.

(6) This section does not affect the operation of section 12 or any other enactment that limits the period for commencing arbitral proceedings.

(7) The power conferred on an arbitral tribunal by this section is exercisable by the Court if at the relevant time there is not in existence an arbitral tribunal that is capable of exercising that power.

(8) An order made by the Court in exercise of its power conferred by subsection (7) is not subject to appeal.

### **Power to make order in case of delay in pursuing claims in arbitral proceedings**

**57.** (1) Unless otherwise expressed in an arbitration agreement, a party who has a claim under the agreement shall, after the commencement of the arbitral proceedings, pursue that claim without unreasonable delay.

(2) Without affecting article 25 of the UNCITRAL Model Law, as provided by section 51(1), the arbitral tribunal may make—

(a) an award dismissing a party's claim; and

(b) an order prohibiting the party from commencing further arbitral proceedings in respect of the claim,

if it is satisfied that the party has unreasonably delayed in pursuing the claim in the arbitral proceedings.

(3) The arbitral tribunal may make an award or order either—

(a) on its own initiative; or

(b) on the application of any other party.

(4) For the purposes of subsection (2), delay is unreasonable if—

- (a) it gives rise, or is likely to give rise, to a substantial risk that the issues in the claim will not be resolved fairly; or
- (b) it has caused, or is likely to cause, serious prejudice to any other party.

(5) The power conferred on an arbitral tribunal by this section is exercisable by the Court if there is not in existence an arbitral tribunal that is capable of exercising that power.

(6) An award or order made by the Court in exercise of its power conferred by subsection (5) is not subject to appeal.

### **Special powers of Court in relation to arbitral proceedings**

**58.** (1) On the application of any party, the Court may, in relation to any arbitral proceedings which have been or are to be commenced in or outside the Virgin Islands, make an order—

- (a) directing the inspection, photographing, preservation, custody, detention or sale of any relevant property by the arbitral tribunal, a party to the arbitral proceedings or an expert; or
- (b) directing samples to be taken from, observation to be made of, or experiments to be conducted on, any relevant property.

(2) Property is a relevant property for the purposes of subsection (1) if the property is the subject of the arbitral proceedings, or any question relating to the property has arisen in the arbitral proceedings.

(3) The powers conferred by this section may be exercised by the Court irrespective of whether or not similar powers may be exercised by an arbitral tribunal under section 54 in relation to the same dispute.

(4) The Court may decline to make an order under this section in relation to a matter referred to in subsection (1) on the ground that—

- (a) the matter is currently the subject of arbitral proceedings; and
- (b) the Court considers it more appropriate for the matter to be dealt with by the arbitral tribunal.

(5) An order made by the Court under this section may provide for the cessation of that order, in whole or in part, when the arbitral tribunal makes an order for the cessation.

(6) In relation to arbitral proceedings which have been or are to be commenced outside the Virgin Islands, the Court may make an order under subsection (1) only if the arbitral proceedings are capable of giving rise to an arbitral award, whether interim or final, that may be enforced in the Virgin Islands under this Act or any other enactment.

(7) Subsection (6) applies even if—

- (a) the subject matter of the arbitral proceedings would not, apart from that subsection, give rise to a cause of action over which the Court would have jurisdiction; or
- (b) the order sought is not ancillary or incidental to any arbitral proceedings in the Virgin Islands.

(8) In exercising the power under subsection (1) in relation to arbitral proceedings outside the Virgin Islands, the Court shall have regard to the fact that the power is—

- (a) ancillary to the arbitral proceedings outside the Virgin Islands; and
- (b) for the purposes of facilitating the process of a court or arbitral tribunal outside the Virgin Islands that has primary jurisdiction over the arbitral proceedings.

(9) Subject to subsection (10), an order or decision made by the Court under this section is not subject to appeal.

(10) The leave of the Court is required for any appeal from an order of the Court under subsection (1) for the sale of any relevant property.

### **Enforcement of orders and directions of arbitral tribunal**

**59.** (1) An order or direction made, whether in or outside the Virgin Islands, in relation to arbitral proceedings by an arbitral tribunal is enforceable in the same manner as an order or direction of the Court that has the same effect, but only with the leave of the Court.

(2) Leave to enforce an order or direction made outside the Virgin Islands is not to be granted, unless the party seeking to enforce the order or direction can demonstrate that it belongs to a type or description of order or direction that may be made in the Virgin Islands in relation to arbitral proceedings by an arbitral tribunal.

(3) If leave is granted under subsection (1), the Court may enter judgment in terms of the order or direction.

(4) A decision made by the Court to grant or refuse to grant leave under subsection (1) is not subject to appeal.

(5) An order or direction referred to in this section includes an interim measure.

### **Power of Court to order recovery of arbitrator's fees**

**60.** (1) An arbitrator is entitled to his reasonable fees and expenses.

(2) Where an arbitrator's mandate terminates under article 13 of the UNCITRAL Model Law, as provided in section 24, or under article 14 of the UNCITRAL Model Law, as provided in section 25, then on the application of any party, the Court, in its discretion and having regard to the conduct of the arbitrator and any other relevant circumstances, may order—

- (a) that the arbitrator is not entitled to receive the whole or part of the arbitrator's fees or expenses; and
- (b) the arbitrator to repay the whole or part of the fees or expenses already paid to the arbitrator.

(3) For the purposes of subsection (1), if any question arises as to what fees and expenses of the arbitrator are reasonable in the circumstances and—

- (a) the parties and the arbitrator are unable to reach an agreement in that regard, and

(b) the matter is not already before the Court for settlement, the Court may, on the application of the arbitrator or any party, upon notice to the other parties concerned in the arbitration, determine the matter, or order that the matter be determined by such means and upon such terms as the Court may direct.

(4) An order or a determination made by the Court under subsection (2) or (3) is not subject to appeal.

### Legal representation

61. (1) Every party is, unless otherwise provided in the arbitration agreement, entitled to be represented in arbitral proceedings by a legal practitioner of his choice.

(2) Part IV of the Eastern Caribbean Supreme Court (Virgin Islands) Act and the Commissioners for Oaths and Notaries Public Act, 2007 do not apply in relation to—

- (a) arbitral proceedings pursuant to this Act;
- (b) the giving of advice and the preparation of documents for the purposes of arbitral proceedings; and
- (c) any other thing done with respect to arbitral proceedings, except where the thing is done in connection with court proceedings arising—
  - (i) out of an arbitration agreement; or
  - (ii) in the course of, or resulting from, arbitral proceedings.

## PART VIII

### MAKING OF AWARD AND TERMINATION OF PROCEEDINGS

#### Rules Applicable to Substance of Dispute

62. Article 28 of the UNCITRAL Model Law, the text of which is reproduced below, has effect:

*“Article 28. Rules applicable to substance of dispute*

- (1) The arbitral tribunal shall decide the dispute in accordance with such rules of law as are chosen by the parties as applicable to the substance of the dispute. Any designation of the law or legal system of a given State shall be construed, unless otherwise expressed, as directly referring to the substantive law of that State and not to its conflict of laws rules.
- (2) Failing any designation by the parties, the arbitral tribunal shall apply the law determined by the conflict of laws rules which it considers applicable.
- (3) The arbitral tribunal shall decide *ex aequo et bono* or *as amiable compositeur* only if the parties have expressly authorized it to do so.

(4) In all cases, the arbitral tribunal shall decide in accordance with the terms of the contract and shall take into account the usages of the trade applicable to the transaction.”

### **Decision-making by Panel of Arbitrators**

63. Article 29 of the UNCITRAL Model Law, the text of which is reproduced below, has effect:—

*“Article 29. Decision-making by panel of arbitrators*

In arbitral proceedings with more than one arbitrator, any decision of the arbitral tribunal shall be made, unless otherwise agreed by the parties, by a majority of all its members. However, questions of procedure may be decided by a presiding arbitrator, if so authorized by the parties or all members of the arbitral tribunal.”.

### **Settlement**

64. (1) Article 30 of the UNCITRAL Model Law, the text of which is reproduced below, has effect:

*“Article 30. Settlement*

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

(2) An award on agreed terms shall be made in accordance with the provisions of article 31 and shall state that it is an award. Such an award has the same status and effect as any other award on the merits of the case.”.

(2) Where, in a case other than that referred to in article 30 of the UNCITRAL Model Law, as provided in subsection (1), the parties to an arbitration agreement settle their dispute and enter into an agreement in writing containing the terms of settlement (“the settlement agreement”), the settlement agreement is, for the purposes of its enforcement, to be treated as an arbitral award.

### **Form and Contents of Award**

65. Article 31 of the UNCITRAL Model Law, the text of which is reproduced below, has effect:

*“Article 31. Form and contents of award*

(1) The award shall be made in writing and shall be signed by the arbitrator or arbitrators. In arbitral proceedings with more than one arbitrator, the signatures of the majority of all members of the arbitral tribunal shall suffice, provided that the reason for any omitted signature is stated.

(2) The award shall state the reasons upon which it is based, unless the parties have agreed that no reasons are to be given or the award is an award on agreed terms under article 30.

(3) The award shall state its date and the place of arbitration as determined in accordance with article 20(1). The award shall be deemed to have been made at that place.

(4) After the award is made, a copy signed by the arbitrators in accordance with paragraph (1) of this article shall be delivered to each party.”

### Termination of Proceedings

66. Article 32 of the UNCITRAL Model Law, the text of which is reproduced below, has effect:

*“Article 32. Termination of proceedings*

(1) The arbitral proceedings are terminated by the final award or by an order of the arbitral tribunal in accordance with paragraph (2) of this article.

(2) The arbitral tribunal shall issue an order for the termination of the arbitral proceedings when—

- (a) the claimant withdraws his claim, unless the respondent objects thereto and the arbitral tribunal recognizes a legitimate interest on his part in obtaining a final settlement of the dispute;
- (b) the parties agree on the termination of the proceedings;
- (c) the arbitral tribunal finds that the continuation of the proceedings has for any other reason become unnecessary or impossible.

(3) The mandate of the arbitral tribunal terminates with the termination of the arbitral proceedings, subject to the provisions of articles 33 and 34(4).”.

### Correction and Interpretation of Award; Additional Award

67. (1) Article 33 of the UNCITRAL Model Law, the text of which is reproduced below, has effect:

*“Article 33. Correction and interpretation of award; additional award*

(1) Within thirty days of receipt of the award, unless another period of time has been agreed upon by the parties—

- (a) a party, with notice to the other party, may request the arbitral tribunal to correct in the award any errors in computation, any clerical or typographical errors or any errors of similar nature;
- (b) if so agreed by the parties, a party, with notice to the other party, may request the arbitral tribunal to give an interpretation of a specific point of the award.

If the arbitral tribunal considers the request to be justified, it shall make the correction or give the interpretation within thirty days of receipt of the request. The interpretation shall form part of the award.

(2) The arbitral tribunal may correct any error of the type referred to in paragraph (1)(a) of this article on its own initiative within thirty days of the date of the award.

(3) Unless otherwise agreed by the parties, a party, with notice to the other party, may request, within thirty days of receipt of the award, the arbitral tribunal to make an additional award as to claims presented in the arbitral proceedings but omitted from the award. If the arbitral tribunal considers the request to be justified, it shall make the additional award within sixty days.

(4) The arbitral tribunal may extend, if necessary, the period of time within which it shall make a correction, interpretation or an additional award under paragraph (1) or (3) of this article.

(5) The provisions of article 31 shall apply to a correction or interpretation of the award or to an additional award.”.

(2) The arbitral tribunal may make other changes to an arbitral award which are necessitated by or consequential on—

(a) the correction of any error in the award, or

(b) the interpretation of any point or part of the award,

under article 33 of the UNCITRAL Model Law, as provided in subsection (1).

(3) The arbitral tribunal may review an award of costs within thirty days of the date of the award if, when making the award, the tribunal was not aware of any information relating to costs, including any offer of settlement, which it should have taken into account.

(4) The arbitral tribunal may, on a review under subsection (3), confirm, vary or correct the award of costs.

### **Award of remedy or relief**

68. (1) Subject to subsection (2), an arbitral tribunal may, in deciding a dispute, award any remedy or relief that could have been ordered by the Court if the dispute had been the subject of civil proceedings in the Court.

(2) Unless otherwise agreed by the parties, an arbitral tribunal has the same power as the Court to order specific performance of any contract, other than a contract relating to land or any interests in land.

### **Award on different aspects of matters**

69. Unless otherwise agreed by the parties, an arbitral tribunal may make more than one award at different times on different aspects of the matters to be determined.

### **Power to make award at any time**

70. (1) Unless otherwise agreed by the parties, an arbitral tribunal has the power to make an award at any time.

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

(3) An order made by the Court under subsection (2) is not subject to appeal.

### Effect of an award

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

(2) Subsection (1) does not affect the right of a person to challenge the award—

(a) as provided for in section 24 or 79, paragraph 4 or 5 of Schedule 2, or any other provision of this Act; or

(a) otherwise by any available arbitral process of appeal or review.

### Awarding costs of arbitral proceedings

72. (1) An arbitral tribunal may include in an award directions with respect to the costs of arbitral proceedings, including the fees and expenses of the tribunal.

(2) The arbitral tribunal may, having regard to all relevant circumstances, including the fact, if appropriate, that a written offer of settlement of the dispute concerned has been made, direct in the award under subsection (1) to whom and by whom and in what matter the costs are to be paid.

(3) The arbitral tribunal may also, in its discretion, order costs, including the fees and expenses of the tribunal, to be paid by a party in respect of a request made by any of the parties for an order or direction, including an interim measure.

(4) The arbitral tribunal may direct that the costs ordered under subsection (3) are to be paid forthwith or at the time that the tribunal may otherwise specify.

(5) Subject to section 73, the arbitral tribunal shall—

(a) assess the amount of costs to be awarded or ordered to be paid under this section; and

(b) award or order those costs, including the fees and expenses of the tribunal.

(6) Subject to subsection (7), the arbitral tribunal is not obliged to follow the scales and practices adopted by the Court on taxation when assessing under subsection (5) the amount of costs, other than the fees and expenses of the tribunal.

(7) The arbitral tribunal—

(a) shall only allow costs that are reasonable having regard to all the circumstances; and

(b) may, unless otherwise agreed by the parties, allow costs incurred in the preparation of the arbitral proceedings prior to the commencement of the arbitration.

(8) Subject to subsection (9), a provision of an arbitration agreement to the effect that the parties, or any of the parties, must pay their own costs in respect of arbitral proceedings arising under the agreement is void.



(9) A provision referred to in subsection (8) is not void if it is part of an agreement to submit to arbitration a dispute that had arisen before the agreement was made.

### **Assessment of costs of arbitral proceedings**

73. (1) Without prejudice to section 72(1) and (2), where the parties have agreed costs of that the costs of arbitral proceedings are to be assessed by the Court, then unless the arbitral tribunal otherwise directs in an award, the award is deemed to have included the tribunal's directions that the costs, other than the fees and expenses of the tribunal, are—

- (a) to be assessed by the Court; and
- (b) to be paid on any basis on which the Court can award costs in civil proceedings before the Court.

(2) On assessment by the Court, the arbitral tribunal shall make an additional award of costs reflecting the result of such assessment.

(3) A decision made by the Court on assessment of costs is not subject to appeal.

(4) This section does not apply to costs ordered to be paid under section 72(3).

### **Costs in relation to unqualified person**

74. Section 74 of the Eastern Caribbean Supreme Court (Virgin Islands) Act does not apply to the recovery of costs in an arbitration.

### **Payment of arbitral tribunal's fees**

75. (1) An arbitral tribunal may refuse to deliver an award to the parties unless full payment of the fees and expenses of the tribunal is made.

(2) Where the arbitral tribunal refuses to deliver an award to the parties under subsection (1), a party may apply to the Court for an order under subsection (3).

(3) Where a party makes an application to the Court under subsection (2), the Court may order—

- (a) the tribunal to deliver the award on the payment into the Court by the applicant of—
  - (i) the fees and expenses demanded; or
  - (ii) a lesser amount that the Court may specify;
- (b) that the amount of the fees and expenses payable to the tribunal is to be determined by the means and on the terms that the Court may direct; and
- (c) that—
  - (i) the fees and expenses as determined under paragraph (b) to be payable are to be paid to the tribunal out of the money paid into the Court; and

- (ii) the balance of the money paid into the Court, if any, is to be paid out to the applicant.
- (4) For the purposes of subsection (3)—
  - (a) the amount of the fees and expenses payable is the amount which the applicant is liable to pay—
    - (i) under section 76; or
    - (ii) under any agreement relating to the payment of the arbitrators; and
  - (b) the fees and expenses of—
    - (i) an expert appointed under article 26 of the UNCITRAL Model Law, as provided in section 52(1); or
    - (ii) an assessor appointed under section 52(2)(a),are to be treated as the fees and expenses of the arbitral tribunal.
- (5) No application under subsection (2) may be made if—
  - (a) there is any available arbitral process for appeal or review of the amount of the fees or expenses demanded; or
  - (b) the total amount of the fees and expenses demanded has been fixed by a written agreement between a party and the arbitrators.
- (6) Subsections (1) to (5) also apply to any arbitral or other institution or person vested by the parties with powers in relation to the delivery of the arbitral tribunal's award.
- (7) Where subsections (1) to (5) so apply under subsection (6), the references to the fees and the expenses of the arbitral tribunal are to be construed as including the fees and expenses of that institution or person.
- (8) Where an application is made to the Court under subsection (2), enforcement of the award (when delivered to the parties), only in so far as it relates to the fees or expenses of the arbitral tribunal, shall be stayed until the application has been disposed of under this section.
- (9) An arbitrator is entitled to appear and be heard on any determination under this section.
- (10) If the amount of the fees and expenses determined under subsection (3)(b) is different from the amount previously awarded by the arbitral tribunal, the tribunal shall amend the previous award to reflect the result of the determination.
- (11) An order made by the Court under this section is not subject to appeal.

### **Liability to pay fees and expenses of arbitral tribunal**

**76.** (1) The parties to proceedings before an arbitral tribunal are jointly and severally liable to pay to the tribunal reasonable fees and expenses, if any, of the tribunal that are appropriate in the circumstances.

(2) Subsection (1) has effect subject to any order of the Court made under section 60 or any other relevant provision of this Act.

- (3) This section does not affect—
- (a) the liability of the parties as among themselves to pay the costs of the arbitral proceedings; or
  - (b) any contractual right or obligation relating to payment of the fees and expenses of the arbitral tribunal.
- (4) In this section, a reference to an arbitral tribunal includes—
- (a) a member of the tribunal who has ceased to act; and
  - (b) an umpire who has not yet replaced members of the tribunal.

### **Award of interest**

77. (1) Unless otherwise agreed by the parties, an arbitral tribunal may, in the arbitral proceedings before it, award simple or compound interest from the dates, at the rates, and with such rests that the tribunal considers appropriate, subject to section 78, for any period ending not later than the date of payment on money—

- (a) awarded by the tribunal in the arbitral proceedings;
- (b) claimed in, and outstanding at the commencement of, the arbitral proceedings but paid before the award is made; or
- (c) on costs awarded or ordered by the tribunal in the arbitral proceedings.

(2) A reference in subsection (1)(a) to money awarded by the tribunal includes an amount payable in consequence of a declaratory award by the tribunal.

(3) Subsection (1) does not affect any other power of an arbitral tribunal to award interest.

### **Interest on money or costs awarded or ordered**

78. (1) Unless the award made by an arbitral tribunal provides otherwise, interest money or costs is payable on money awarded by the tribunal from the date of the award

(2) Unless the award or order on costs made by an arbitral tribunal provides otherwise, interest is payable on costs awarded or ordered by the tribunal from the date—

- (a) of the award or order on costs; or
- (b) on which costs ordered are directed to be paid forthwith.

(3) The interest payable under subsections (1) and (2) shall be at the rate specified in section 7 of the Judgments Act.

## PART IX

## RECOURSE AGAINST AWARD

**Application for Setting Aside as Exclusive Recourse Against Arbitral Award**

79. (1) Article 34 of the UNCITRAL Model Law, the text of which is reproduced below, has effect subject to section 11(5):

*“Article 34. Application for setting aside as exclusive recourse against arbitral award*

(1) Recourse to a court against an arbitral award may be made only by an application for setting aside in accordance with paragraphs (2) and (3) of this article.

(2) An arbitral award may be set aside by the court specified in article 6 only if—

(a) the party making the application furnishes proof that—

(i) a party to the arbitration agreement referred to in article 7 was under some incapacity; or the said agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law of this State; or

(ii) the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or

(iii) 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, provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, only that part of the award which contains decisions on matters not submitted to arbitration may be set aside; or

(iv) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless such agreement was in conflict with a provision of this Law from which the parties cannot derogate, or, failing such agreement, was not in accordance with this Law; or

(b) the court finds that—

(i) the subject-matter of the dispute is not capable of settlement by arbitration under the law of this State; or

(ii) the award is in conflict with the public policy of this State.

(3) An application for setting aside may not be made after three months have elapsed from the date on which the party making that application had received the award or, if a request had been made under article 33,

from the date on which that request had been disposed of by the arbitral tribunal.

(4) The court, when asked to set aside an award, may, where appropriate and so requested by a party, suspend the setting aside proceedings for a period of time determined by it in order to give the arbitral tribunal an opportunity to resume the arbitral proceedings or to take such other action as in the arbitral tribunal's opinion will eliminate the grounds for setting aside.”.

(2) Subsection (1) does not affect—

- (a) the power of the Court to set aside an arbitral award under section 24(5);
- (b) the right to challenge an arbitral award under paragraph 4 of Schedule 2 (if applicable); or
- (c) the right to appeal against an arbitral award on a question of law under paragraph 5 of Schedule 2 (if applicable).

(3) Subject to subsection (2)(c), the Court does not have jurisdiction to set aside or remit an arbitral award on the ground of errors of fact or law on the face of the award.

(4) The leave of the Court is required for any appeal from a decision of the Court under article 34 of the UNCITRAL Model Law, as provided in subsection (1).

## PART X

### RECOGNITION AND ENFORCEMENT OF AWARDS

#### *Division I*

#### *Enforcement of Arbitral Awards*

#### **Substitution of articles 35 and 36 of the UNCITRAL Model Law**

**80.** Articles 35 and 36 of the UNCITRAL Model Law are substituted by sections 81 to 86.

#### **Enforcement of arbitral awards**

**81.** (1) Subject to section 24(2), an award, whether made in or outside the Virgin Islands, in arbitral proceedings by an arbitral tribunal is, by leave of the Court, enforceable in the same manner as a judgment or order of the Court that has the same effect.

(2) Where the Court grants leave under subsection (1), it may enter judgment in terms of the award.

(3) The leave of the Court is required for any appeal from a decision of the Court to grant or refuse leave to enforce an award under subsection (1).

**Required evidence for enforcement of arbitral award**

**82.** (1) A party seeking to enforce an arbitral award, whether made in or outside the Virgin Islands, which is not a Convention award, shall produce the following—

- (a) the duly authenticated original award or a duly certified copy of the original award;
- (b) the original arbitration agreement or a duly certified copy of the arbitration agreement; and
- (c) if the award or agreement is in a language other than the English language, a translation of the award or agreement, as the case may be, certified by an official or sworn translator or by a diplomatic or consular agent.

(2) For the purposes of subsection (1)(a) and (b), a copy of the original award or the arbitration agreement is considered duly certified if it is notarised by a notary public or any other person having authority under the laws of the country in which the award was made to notarise or certify documents.

**Refusal to enforce an arbitral award**

**83.** (1) Enforcement of an award referred to in section 82 may be refused if the person against whom it is invoked proves—

- (a) that a party to the arbitration agreement was, under the law applicable to that party, under some incapacity;
- (b) that the arbitration agreement was not valid—
  - (i) under the law to which the parties subjected it; or
  - (ii) if there was no indication of the law to which the arbitration agreement was subjected, under the law of the country where the award was made;
- (c) that the person—
  - (i) was not given proper notice of the appointment of the arbitrator or of the arbitral proceedings; or
  - (ii) was otherwise unable to present his case;
- (d) subject to subsection (3), that the award—
  - (i) deals with a difference not contemplated by, or not falling within, the terms of the submission to arbitration; or
  - (ii) contains decisions on matters beyond the scope of the submission to arbitration;
- (e) that the composition of the arbitral authority or the arbitral procedure was not in accordance with—
  - (i) the agreement of the parties; or
  - (ii) if there was no agreement, the law of the country where the arbitration took place; or
- (f) that the award—

- (i) has not yet become binding on the parties; or
  - (ii) has been set aside or suspended by a competent authority of the country in which, or under the law of which, it was made.
- (2) Enforcement of an award referred to in section 82 may also be refused if—
- (a) the award is in respect of a matter which is not capable of settlement by arbitration under the laws of the Virgin Islands;
  - (b) it would be contrary to public policy to enforce the award; or
  - (c) for any other reason the Court considers it just to do so.
- (3) An award referred to in section 82 which contains decisions on matters not submitted to arbitration may be enforced to the extent that the award contains decisions on matters submitted to arbitration which can be separated from those on matters not so submitted.
- (4) Where an application for the setting aside or suspension of an award referred to in section 82 has been made to a competent authority as mentioned in subsection (1)(f), the Court may—
- (a) if it thinks fit, adjourn the proceedings for the enforcement of the award; and
  - (b) on the application of the party seeking to enforce the award, order the person against whom the enforcement is invoked to give security.
- (5) A decision or order of the Court under subsection (4) is not subject to appeal.

## *Division 2*

### *Enforcement of Convention Awards*

#### **Enforcement of Convention award**

**84.** (1) A Convention award is, subject to this Division, enforceable in the Virgin Islands either—

- (a) by instituting action in the Court; or
- (b) in the manner provided in section 85.

(2) Any Convention award which is enforceable as mentioned in subsection (1) is to be treated as binding for all purposes on the persons between whom it was made, and may accordingly be relied on by any of those persons by way of defence, set-off or otherwise in legal proceedings in the Virgin Islands.

(3) A reference in this Division to “enforcement of a Convention award” is to be construed as including reliance on a Convention award.

#### **Required evidence for enforcement of Convention award**

**85.** (1) A party seeking to enforce a Convention award, whether made in or outside the Virgin Islands, shall produce the following—

- (a) the duly authenticated original award or a duly certified copy of the original award;
- (b) the original arbitration agreement or a duly certified copy of the arbitration agreement; and
- (c) if the award or agreement is in a language other than the English language, a translation of the award or agreement, as the case may be, certified by an official or sworn translator or by a diplomatic or consular agent.

(2) For the purposes of subsection (1)(a) and (b), a copy of the original award or the arbitration agreement is considered duly certified if it is notarised by a notary public or any other person having authority under the laws of the country in which the award was made to notarise or certify documents.

### **Refusal to enforce a Convention award**

**86.** (1) Enforcement of a Convention award may not be refused except in the cases mentioned in this section.

(2) Enforcement of a Convention award may be refused if the person against whom it is invoked proves—

- (a) that a party to the arbitration agreement was, under the law applicable to that party, under some incapacity;
- (b) that the arbitration agreement was not valid—
  - (i) under the law to which the parties subjected it; or
  - (ii) if there was no indication of the law to which the arbitration agreement was subjected, under the law of the country where the award was made;
- (c) that the person—
  - (i) was not given proper notice of the appointment of the arbitrator or of the arbitral proceedings; or
  - (ii) was otherwise unable to present his case;
- (d) subject to subsection (4), that the award—
  - (i) deals with a difference not contemplated by or not falling within the terms of the submission to arbitration; or
  - (ii) contains decisions on matters beyond the scope of the submission to arbitration;
- (e) that the composition of the arbitral authority or the arbitral procedure was not in accordance with—
  - (i) the agreement of the parties; or
  - (ii) if there was no agreement, the law of the country where the arbitration took place; or
- (f) that the award
  - (i) has not yet become binding on the parties; or



- (ii) has been set aside or suspended by a competent authority of the country in which, or under the law of which, it was made.
- (3) Enforcement of a Convention award may also be refused if—
  - (a) the award is in respect of a matter which is not capable of settlement by arbitration under the laws of the Virgin Islands; or
  - (b) it would be contrary to public policy to enforce the award.
- (4) A Convention award which contains decisions on matters not submitted to arbitration may be enforced to the extent that the award contains decisions on matters submitted to arbitration which can be separated from those on matters not so submitted.
- (5) If an application for the setting aside or suspension of a Convention award has been made to a competent authority as mentioned in subsection (2)(f), the Court before which enforcement of the award is sought may—
  - (a) if it thinks fit, adjourn the proceedings for the enforcement of the award; and
  - (b) on the application of the party seeking to enforce the award, order the person against whom the enforcement is invoked to give security.
- (6) A decision or order made by the Court under subsection (5) is not subject to appeal.

### **Parties to the New York Convention**

**87.** (1) The States and territories listed in Schedule 3 are declared to be parties to the New York Convention.

(2) Where a State or territory—

- (a) listed in Schedule 3 makes a denunciation or declaration under article XIII of the New York Convention and the denunciation or declaration takes effect; or
- (b) not listed in Schedule 3 accedes to or ratifies the New York Convention under article XII of that Convention and the Convention becomes effective in respect of that State or territory,

the BVI IAC may, by Order published in the *Gazette*, amend Schedule 3 to remove from, or add to, the Schedule the State or territory concerned. (*Amended by Act 6 of 2015*)

### **Saving of rights to enforce Convention awards**

**88.** This Division does not affect any right to enforce or rely on a Convention award otherwise than under this Division.

## PART XI

## MANDATORY AND NON-MANDATORY PROVISIONS

**Arbitration agreements may provide expressly for opt-in provisions**

**89.** Subject to section 90(b), an arbitration agreement may provide expressly that any or all of the following provisions contained in Schedule 2 are to apply—

- (a) paragraph 1;
- (b) paragraph 2;
- (c) paragraph 3;
- (d) paragraphs 4 and 7; and
- (e) paragraphs 5, 6 and 7.

**Automatic application of opt-in provisions in certain cases**

**90.** (1) All the provisions in Schedule 2 apply, subject to section 91, to an arbitration agreement entered into—

- (a) prior to the coming into force of this Act which—
  - (i) provides that arbitration under the agreement is a domestic arbitration;
  - (ii) provides in the agreement that arbitration under the Agreement is to be dealt with under or in accordance with the provisions of the repealed Act; or
  - (iii) having regard to the provisions of the agreement, was contemplated to be a domestic arbitration; or
- (b) at any time within a period of six years after the coming into force of this Act which provides that arbitration under the agreement is a domestic arbitration.

(2) For the purpose of subsection (1), the term “domestic arbitration” means arbitration in relation to an arbitration agreement which does not provide, expressly or by implication, for arbitration in a jurisdiction other than the Virgin Islands.

**Non-application of opt-in provisions**

**91.** Section 90 does not apply if—

- (a) the parties to the arbitration agreement concerned so agree in writing; or
- (b) the arbitration agreement concerned provides expressly that—
  - (i) section 90 does not apply; or
  - (ii) any of the provisions in Schedule 2 applies or does not apply.

### **Application of provisions under this Part**

92. In the event of any conflict or inconsistency between any provision applicable under this Part and any other provision of this Act, the provisions applicable under this Part prevail, to the extent of the conflict or inconsistency, over that other provision of this Act.

## PART XII

### ADMINISTRATIVE PROVISIONS

#### **Establishment of BVI IAC**

93. (1) There is hereby established a body to be known as the BVI International Arbitration Centre.

(2) The BVI IAC shall be a body corporate with perpetual succession and a common seal, capable of suing and being sued in its corporate name and may hold or dispose of property, enter into contracts and perform such acts as a body corporate may legally perform.

(3) Schedule 4 has effect with respect to the administration of the BVI IAC.

#### **Functions of the BVI IAC**

94. (1) The functions of the BVI IAC are—

- (a) to provide necessary facilities for the conduct of arbitral proceedings, and mediation as outlined in Division 2 of Part IV, in the Virgin Islands;
- (b) to provide such dispute resolution services as are essential to the conduct of arbitral proceedings;
- (c) to receive and process documents on behalf of parties that choose to settle their disputes through arbitration in the Virgin Islands;
- (d) to provide necessary support to arbitral tribunals established pursuant to the provisions of this Act as the tribunals may require to facilitate the conduct of arbitral proceedings;
- (e) to perform the duties imposed upon it by this Act; and
- (f) to perform such other function as may be related or incidental to the efficient and effective functioning of the BVI IAC.

(2) In performing its functions under this Act, the BVI IAC shall take into account such matters as it considers appropriate to achieve the object and principles outlined in section 3.

#### **Establishment of BVI IAC Board**

95. (1) Subject to section 96, the Cabinet may, at such time as it considers appropriate and acting on the advice of the Commission, appoint a board to the BVI IAC to be known as the BVI IAC Board.

(2) Where the Cabinet appoints the Board referred to in subsection (1), the Cabinet shall, acting on the advice of the Commission and by an Order published in the *Gazette*, determine the Board's functions and procedures. (Amended by Act 6 of 2015)

### Qualifications and disqualification of members of the Board

96. (1) In appointing persons to the Board under section 97(1), the Cabinet shall ensure that the persons—

- (a) are fit and proper; and
- (a) have the relevant knowledge, experience and expertise which could aid the BVI IAC in the performance of its functions.

(2) A person is not qualified to be appointed a member of the Board if he—

- (a) is a member of the House of Assembly;
- (b) is an undischarged bankrupt or has compounded with his creditors;
- (c) has been—
  - (i) convicted of an indictable offence or any offence involving dishonesty; or
  - (ii) the subject of discipline by a regulatory body or a professional body of which he is a member and has been found guilty or wanting in any way;
- (d) is a public officer;
- (e) has been certified by a medical practitioner to be of unsound mind; or
- (f) does not satisfy the requirements outlined in subsection (1).

### Chief Executive of the BVI IAC

97. (1) The BVI IAC shall be headed by a Chief Executive who shall be appointed in accordance with subsection (2) and shall be an *ex officio* member of the Board.

(2) The Board shall, with the approval of the Minister of Finance, appoint the Chief Executive of the BVI IAC who must—

- (a) be a fit and proper person;
- (b) have the relevant knowledge, experience and expertise to administer the BVI IAC in an efficient and effective manner; and
- (c) not suffer from any of the disqualifications outlined in section 96(2) and, for this purpose, the reference to “a member of the Board” in that section shall be construed as if it were a reference to the Chief Executive to be appointed under this section.

(3) Where it becomes necessary to appoint the Chief Executive before the Board is established, the Chief Executive shall be appointed by the Minister of Finance after consultation with the Commission.

(4) For the purpose of subsection (2)(c), paragraph (d) of section 96(2) shall not apply.

(5) The Chief Executive, when appointed, shall be an employee of the BVI IAC and—

- (a) be responsible for the administration and operation of the BVI IAC and supervision of the staff of the BVI IAC;
- (b) subject to any general or special direction of the Board, execute the functions of the BVI IAC outlined in section 94;
- (c) be responsible for identifying and classifying staff positions in the BVI IAC for the consideration and approval of the Board;
- (d) be responsible for directing and supervising the attainment of the objectives set out in section 3 and ensuring the efficient and effective performance by the BVI IAC of its functions;
- (e) develop policies geared towards strengthening and promoting the BVI IAC which he shall submit to the Board for its consideration and approval; and
- (f) perform such other duties as are related or incidental to the functions outlined in paragraphs (a) to (e), the functions of the BVI IAC outlined in section 94 and the object and principles set out in section 3.

### **Tenure of office and independence**

98. (1) The tenure of office of the Chief Executive and members of the Board shall, subject to subsection (2), be in accordance with the terms of their appointment.

(2) The Chief Executive and members of the Board are not subject to the direction or control of any person or authority and shall perform their duties independently and professionally in accordance with, and with a view to attaining, the objectives of this Act.

### **Levying fees**

99. (1) The BVI IAC may, by Order published in the *Gazette*, levy such fees and in such manner as it considers appropriate with respect to the performance of its functions and the services it provides. (*Amended by Act 6 of 2015*)

(2) Any fees levied under subsection (1) shall be subject to a negative resolution of the House of Assembly.

### **Register of arbitrators**

100. (1) The BVI IAC shall keep and maintain a register of arbitrators in which it shall enter the names of persons who are fit and proper and who—

- (a) have applied to be so registered; and
- (b) have been approved in accordance with rules made under section 107;

(2) Any person who qualifies to be appointed as an arbitrator for the purposes of conducting an arbitration under this Act, may apply to be registered as an arbitrator of the BVI IAC in accordance with rules made under section 107.

(3) Where, pursuant to section 22(2) or (3), the BVI IAC is required to appoint an arbitrator, the BVI IAC shall appoint the arbitrator from the list of arbitrators registered in the register.

(4) The registration of an arbitrator in the register of arbitrators is subject to the payment of such fee as may be required pursuant to section 99.

## PART XIII

### MISCELLANEOUS PROVISIONS

#### **Immunity of arbitral tribunal or mediator**

**101.** (1) An arbitral tribunal or a mediator is not liable for an act done or omitted by—

- (a) the tribunal or mediator;
- (b) an employee or agent of the tribunal or mediator,

in relation to the exercise or performance, or the purported exercise or performance, of the tribunal's arbitral functions or the mediator's functions, unless it is proved that the act was done or omitted by the tribunal or the mediator acting in bad faith.

(2) An employee or agent of an arbitral tribunal or a mediator is not liable for an act or omission in relation to the exercise or performance, or the purported exercise or performance, by the employee or agent of the tribunal's functions or mediator's functions, unless it is proved that the act was done or omitted by the employee or the agent acting in bad faith.

(3) For the purposes of subsections (1) and (2), in determining liability, account shall be taken of whether the act or omission—

- (a) is of a material nature; and
- (b) has caused disadvantage to any of the parties to the arbitral or mediation proceedings.

(4) The reference in subsections (1) and (2) and sections 102 and 106 to "mediator" means a mediator that is appointed under section 30 or a mediator referred to in section 31, and "mediation proceedings" shall be construed accordingly.

#### **Immunity of administrators and appointers**

**102.** (1) A person, including the BVI IAC and any of its Board members, employees or agents, who—

- (a) appoints an arbitral tribunal or a mediator; or
- (a) exercises or performs any function pursuant or incidental to the provisions of this Act,

is not liable for an act done or in relation to the exercise or performance, or the purported exercise or performance, of his functions, unless it is proved that the act was done acting in bad faith.

(2) Subsection (1) does not apply to an act done or omitted by—

- (a) a party to the arbitral or mediation proceedings; or
- (b) a legal representative or adviser of the party to the arbitral or mediation proceedings,

in the exercise or performance, or the purported exercise or performance, of a function under this Act.

### **Rules of court**

**103.** (1) The power to make rules of court under section 17 of the Supreme Court Order 1967 and section 6(3) of the Virgin Islands (Courts) Order 1967 includes power to make rules of court for—

- (a) the purposes of making an application for an interim measure under section 43(2) or an order under section 58(1); and
- (b) the service out of the jurisdiction of an application for the interim measure.

(2) Any rules of court made pursuant to subsection (1) may include incidental, supplementary and consequential provisions that the Supreme Court considers necessary or expedient.

### **Application, request and appeal**

**104.** Any application, request or appeal to the Court under this Act shall, unless otherwise specified, be made in accordance with the Civil Procedure Rules, 2000 as applied to the Virgin Islands by the Eastern Caribbean Supreme Court Civil Procedure Rules (Application to the Virgin Islands) Order, 2001.

### **Decision, etc. of Court**

**105.** A decision, determination, direction or award of the Court under this Act shall be treated as a judgment of the Court acting in accordance with the powers vested in it by the Eastern Caribbean Supreme Court (Virgin Islands) Act.

### **Exemption from income tax, payroll tax and stamp duty**

**106.** (1) Subject to subsections (3) and (5), the provisions of the Income Tax Act and the Payroll Tax Act, 2004 do not apply—

- (a) to an award made under this Act; and
- (b) to any fees received by, or other payment made to, an arbitral tribunal or a mediator for the discharge of any functions under this Act.

(2) Subject to subsections (3) and (5), section 9(1) of the Stamp Act and section 4 of the Statutory Rates, Fees and Charges Act, 2005 shall not apply to an award made under this Act.

(3) Subsections(1) and(2) do not apply where—

- (a) the recipient of the award, at the commencement of the arbitral proceedings to which the award relates—
  - (i) was ordinarily resident in the Virgin Islands; or
  - (ii) had his principal place of business in the Virgin Islands;
- (b) the recipient of the award, at the date of the award, is ordinarily resident or has his principal place of business in the Virgin Islands; or
- (c) the person entitled to the payment of fees or other payments was, at the commencement of the arbitral or mediation proceedings, ordinarily resident in the Virgin Islands or has, during the arbitral or mediation proceedings or within three months of the termination of those proceedings, acquired residence status in the Virgin Islands pursuant to the Immigration and Passport Act.

(4) For the purposes of subsection (3), a person shall be treated as being ordinarily resident in the Virgin Islands if, on the date of accepting appointment as an arbitral tribunal or a mediator, he had been living in the Virgin Islands for a period of three months or more.

(5) Nothing in subsections (3) and (4) affects the operation of section 242 of the BVI Business Companies Act, 2004 in relation to a company or foreign company as defined in that Act.

## Rules

**107.** (1) Subject to subsection (3), the Board may make rules for the purposes of giving effect to the provisions of this Act. *(Substituted by Act 6 of 2015)*

- (2) Rules made under subsection (1) may—
  - (a) make provision to facilitate the performance by the BVI IAC of its functions under sections 21(3), 22 and 30(1);
  - (b) provide for the form of any request or notice to be issued under this Act including, in the case of a notice, the serving of that notice;
  - (c) ascertain the arbitral tribunal's expenses for which payment may be made, ensuring that such expenses are reasonable;
  - (d) provide for the collection of arbitrators' fees and payment of deposits;
  - (e) establish the criteria for determining fitness and propriety for purposes of sections 96(10)(a), 97(2)(a) and 100(1) and for such other purposes in relation to any appointment under this Act as may be considered fit;
  - (f) provide a framework for the issuing of guidelines by the BVI IAC in accordance with section 108 in relation to conflict of interest matters;
  - (g) make supplementary provisions relating to the conduct of arbitral proceedings, including the calling of witnesses;



- (h) define what parameters constitute a fit and proper criteria with respect to appointments under the Act; and
- (i) provide for such other matters as are considered necessary in the effective implementation of the provisions of this Act giving due regard to the object and principles outlined in section 3.

*(Amended by Act 6 of 2015)*

(3) If at the time that rules are to be made under this Act, the Board has not been appointed, the BVI IAC may make rules under this section. *(Substituted by Act 6 of 2015)*

(4) Rules made under this section shall be published in the *Gazette*, and different Rules may be made for different persons, circumstances and cases.

### **Guidelines**

**108.** (1) The BVI IAC may issue guidelines with respect to the procedure to be followed by and the conduct expected of persons connected with the operation of this Act.

(2) The guidelines issued under subsection (1)—

- (a) may make different provision in relation to different persons, circumstances and cases; and
- (b) shall not have effect as law, but shall serve as best practice which may, in appropriate cases, be taken into account by an arbitral tribunal in conducting its proceedings.

(3) Guidelines made under this section shall be published in the *Gazette*.

### **Code of conduct**

**109.** (1) The BVI IAC may issue a code of conduct for arbitrators and mediators which shall be in such form as the BVI IAC may determine.

(2) A code of conduct issued under subsection (1) shall be published in the *Gazette*.

### **Repeal and savings**

**110.** (1) The Arbitration Act is repealed.

(2) Notwithstanding subsection (1), where, prior to the coming into force of this Act, an arbitration had commenced under the repealed Act, the arbitration and all related proceedings shall continue under the repealed Act as if this Act had not been passed.

(3) Where an arbitrator was appointed under the repealed Act before the coming into force of this Act, the arbitrator shall continue to function and perform his duties under the repealed Act as if this Act had not been passed.

(4) The enactment of this Act does not revive the appointment of any arbitrator whose mandate has terminated prior to the coming into force of this Act.

**SCHEDULE 1***(Section 2(2))***UNCITRAL MODEL LAW ON INTERNATIONAL COMMERCIAL ARBITRATION**

(As adopted by the United Nations Commission on International Trade Law on 21 June 1985, and as amended by the United Nations Commission on International Trade Law on 7 July 2006)

## CHAPTER 1

## GENERAL PROVISIONS

*Article 1**Scope of application\***(Substituted by section 6)*

- (1) This Law applies to international commercial\*\* arbitration, subject to any agreement in force between this State and any other State or States.
- (2) The provisions of this Law, except articles 8, 9, 17H, 17I, 17J, 35 and 36, apply only if the place of arbitration is in the territory of this State.  
*(Article 1(2) has been amended by the Commission at its thirty-ninth session, in 2006)*
- (3) An arbitration is international if—
  - (a) the parties to an arbitration agreement have, at the time of the conclusion of that agreement, their places of business in different States; or
  - (b) one of the following places is situated outside the State in which the parties have their places of business—
    - (i) the place of arbitration if determined in, or pursuant to, the arbitration agreement;
    - (ii) any place where a substantial part of the obligations of the commercial relationship is to be performed or the place with which the subject-matter of the dispute is most closely connected; or
  - (c) the parties have expressly agreed that the subject-matter of the arbitration agreement relates to more than one country.
- (4) For the purposes of paragraph (3) of this article—
  - (a) 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;
  - (b) if a party does not have a place of business, reference is to be made to his habitual residence.

- (5) This Law shall not affect any other law of this State by virtue of which certain disputes may not be submitted to arbitration or may be submitted to arbitration only according to provisions other than those of this Law.

*Article 2*

*Definitions and rules of interpretation*

*(Substituted by section 2)*

For the purposes of this Law—

- (a) “arbitration” means any arbitration whether or not administered by a permanent arbitral institution;
- (b) “arbitral tribunal” means a sole arbitrator or a panel of arbitrators;
- (c) “court” means a body or organ of the judicial system of a State;
- (d) where a provision of this Law, except article 28, leaves the parties free to determine a certain issue, such freedom includes the right of the parties to authorize a third party, including an institution, to make that determination;
- (e) where a provision of 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 referred to in that agreement;
- (f) where a provision of this Law, other than in articles 25(a) and 32(2)(a), refers to a claim, it also applies to a counter-claim, and where it refers to a defence, it also applies to a defence to such counter-claim.

*Article 2A*

*International origin and general principles*

*(Applied by section 7)*

- (1) In the interpretation of this Law, regard is to be had to its international origin and to the need to promote uniformity in its application and the observance of good faith.
- (2) Questions concerning matters governed by this Law which are not expressly settled in it are to be settled in conformity with the general principles on which this Law is based.

*Article 3*

*Receipt of written communications*

*(Applied by section 8)*

- (1) Unless otherwise agreed by the parties—
  - (a) any written communication is deemed to have been received if it is delivered to the addressee personally or if it is delivered at his place of business, habitual residence or mailing address; if none

of these can be found after making a reasonable inquiry, a written communication is deemed to have been received if it is sent to the addressee's last-known place of business, habitual residence or mailing address by registered letter or any other means which provides a record of the attempt to deliver it;

(b) the communication is deemed to have been received on the day it is so delivered.

(2) The provisions of this article do not apply to communications in court proceedings.

#### *Article 4*

##### *Waiver of right to object*

*(Applied by section 9)*

A party who knows that any provision of this Law from which the parties may derogate or any requirement under the arbitration agreement has not been complied with and yet proceeds with the arbitration without stating his objection to such non-compliance without undue delay or, if a time-limit is provided therefor, within such period of time, shall be deemed to have waived his right to object.

#### *Article 5*

##### *Extent of court intervention*

*(Applied by section 10)*

In matters governed by this Law, no court shall intervene except where so provided in this Law.

#### *Article 6*

##### *Court or other authority for certain functions of arbitration assistance and supervision*

*(Substituted by section 11)*

The functions referred to in articles 11(3), 11(4), 13(3), 14, 16(3) and 34(2) shall be performed by ... [Each State enacting this model law specifies the court, courts or, where referred to therein, other authority competent to perform these functions.]

CHAPTER II  
ARBITRATION AGREEMENT

*Option I*

*Article 7*

*Definition and form of arbitration agreement*

*(As adopted by the Commission at its thirty-ninth session, in 2006)*

*(Applied by section 17)*

- (1) “Arbitration agreement” is an agreement by the parties to submit to arbitration all or certain disputes which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not. An arbitration agreement may be in the form of an arbitration clause in a contract or in the form of a separate agreement.
- (2) The arbitration agreement shall be in writing.
- (3) An arbitration agreement is in writing if its content is recorded in any form, whether or not the arbitration agreement or contract has been concluded orally, by conduct, or by other means.
- (4) The requirement that an arbitration agreement be in writing is met by an electronic communication if the information contained therein is accessible so as to be useable for subsequent reference; “electronic communication” means any communication that the parties make by means of data messages; “data message” means information generated, sent, received or stored by electronic, magnetic, optical or similar means, including, but not limited to, electronic data interchange (EDI), electronic mail, telegram, telex or telecopy.
- (5) Furthermore, an arbitration agreement is in writing if it is contained in an exchange of statements of claim and defence in which the existence of an agreement is alleged by one party and not denied by the other.
- (6) The reference in a contract to any document containing an arbitration clause constitutes an arbitration agreement in writing, provided that the reference is such as to make that clause part of the contract.

*Option II*

*Article 7*

*Definition of arbitration agreement*

*(As adopted by the Commission at its thirty-ninth session, in 2006)*

*(Not applied)*

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

*Article 8*

*Arbitration agreement and substantive claim before court*

*(Applied by section 18)*

(1) A court before which an action is brought in a matter which is the subject of an arbitration agreement shall, if a party so requests not later than when submitting his first statement on the substance of the dispute, refer the parties to arbitration unless it finds that the agreement is null and void, inoperative or incapable of being performed.

(2) Where an action referred to in paragraph (1) of this article has been brought, arbitral proceedings may nevertheless be commenced or continued, and an award may be made, while the issue is pending before the court.

*Article 9*

*Arbitration agreement and interim measures by court*

*(Applied by section 19)*

It is not incompatible with an arbitration agreement for a party to request, before or during arbitral proceedings, from a court an interim measure of protection and for a court to grant such measure.

CHAPTER III

COMPOSITION OF ARBITRAL TRIBUNAL

*Article 10*

*Number of arbitrators*

*(Applied by section 21)*

- (1) The parties are free to determine the number of arbitrators.
- (2) Failing such determination, the number of arbitrators shall be three.

*Article 11*

*Appointment of arbitrators*

*(Applied by section 22)*

- (1) No person shall be precluded by reason of his nationality from acting as an arbitrator, unless otherwise agreed by the parties.
- (2) The parties are free to agree on a procedure of appointing the arbitrator or arbitrators, subject to the provisions of paragraphs (4) and (5) of this article.

- (3) Failing such agreement—
- (a) in an arbitration with three arbitrators, each party shall appoint one arbitrator, and the two arbitrators thus appointed shall appoint the third arbitrator; if a party fails to appoint the arbitrator within thirty days of receipt of a request to do so from the other party, or if the two arbitrators fail to agree on the third arbitrator within thirty days of their appointment, the appointment shall be made, upon request of a party, by the court or other authority specified in article 6;
  - (b) in arbitration with a sole arbitrator, if the parties are unable to agree on the arbitrator, he shall be appointed, upon request of a party, by the court or other authority specified in article 6.
- (4) Where, under an appointment procedure agreed upon by the parties—
- (a) a party fails to act as required under such procedure, or
  - (b) the parties, or two arbitrators, are unable to reach an agreement expected of them under such procedure, or
  - (c) a third party, including an institution, fails to perform any function entrusted to it under such procedure, any party may request the court or other authority specified in article 6 to take the necessary measure, unless the agreement on the appointment procedure provides other means for securing the appointment.
- (5) A decision on a matter entrusted by paragraph (3) or(4) of this article to the court or other authority specified in article 6 shall be subject to no appeal. The court or other authority, in appointing an arbitrator, shall have due regard to any qualifications required of the arbitrator by the agreement of the parties and to such considerations as are likely to secure the appointment of an independent and impartial arbitrator and, in the case of a sole or third arbitrator, shall take into account as well the advisability of appointing an arbitrator of a nationality other than those of the parties.

#### *Article 12*

##### *Grounds for challenge*

*(Applied by section 23)*

- (1) When a person is approached in connection with his possible appointment as an arbitrator, he shall disclose any circumstances likely to give rise to justifiable doubts as to his impartiality or independence. An arbitrator, from the time of his appointment and throughout the arbitral proceedings, shall without delay disclose any such circumstances to the parties unless they have already been informed of them by him.
- (2) An arbitrator may be challenged only if circumstances exist that give rise to justifiable doubts as to his impartiality or independence, or if he does not possess qualifications agreed to by the parties. A party may challenge an arbitrator appointed by him, or in whose appointment he has participated, only for reasons of which he becomes aware after the appointment has been made.

*Article 13**Challenge procedure**(Applied by section 24)*

- (1) The parties are free to agree on a procedure for challenging an arbitrator, subject to the provisions of paragraph (3) of this article.
- (2) Failing such agreement, a party who intends to challenge an arbitrator shall, within fifteen days after becoming aware of the constitution of the arbitral tribunal or after becoming aware of any circumstance referred to in article 12(2), send a written statement of the reasons for the challenge to the arbitral tribunal. Unless the challenged arbitrator withdraws from his office or the other party agrees to the challenge, the arbitral tribunal shall decide on the challenge.
- (3) If a challenge under any procedure agreed upon by the parties or under the procedure of paragraph (2) of this article is not successful, the challenging party may request, within thirty days after having received notice of the decision rejecting the challenge, the court or other authority specified in article 6 to decide on the challenge, which decision shall be subject to no appeal; while such a request is pending, the arbitral tribunal, including the challenged arbitrator, may continue the arbitral proceedings and make an award.

*Article 14**Failure or impossibility to act**(Applied by section 25)*

- (1) If an arbitrator becomes *de jure* or *de facto* unable to perform his functions or for other reasons fails to act without undue delay, his mandate terminates if he withdraws from his office or if the parties agree on the termination. Otherwise, if a controversy remains concerning any of these grounds, any party may request the court or other authority specified in article 6 to decide on the termination of the mandate, which decision shall be subject to no appeal.
- (2) If, under this article or article 13(2), an arbitrator withdraws from his office or a party agrees to the termination of the mandate of an arbitrator, this does not imply acceptance of the validity of any ground referred to in this article or article 12(2).

*Article 15**Appointment of substitute arbitrator**(Applied by section 26)*

When the mandate of an arbitrator terminates under article 13 or 14 or because of his withdrawal from office for any other reason or because of the revocation of his mandate by agreement of the parties or in any other case of termination of his mandate, a substitute arbitrator shall be appointed according to the rules that were applicable to the appointment of the arbitrator being replaced.



CHAPTER IV  
JURISDICTION OF ARBITRAL TRIBUNAL

*Article 16*

*Competence of arbitral tribunal to rule on its jurisdiction*

*(Applied by section 32)*

(1) The arbitral tribunal may rule on its own jurisdiction, including any objections with respect to the existence or validity of the arbitration agreement. For that purpose, an arbitration clause which forms part of a contract shall be treated as an agreement independent of the other terms of the contract. A decision by the arbitral tribunal that the contract is null and void shall not entail *ipso jure* the invalidity of the arbitration clause.

(2) A plea that the arbitral tribunal does not have jurisdiction shall be raised not later than the submission of the statement of defence. A party is not precluded from raising such a plea by the fact that he has appointed, or participated in the appointment of, an arbitrator. 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 arbitral proceedings. The arbitral tribunal may, in either case, admit a later plea if it considers the delay justified.

(3) The arbitral tribunal may rule on a plea referred to in paragraph (2) of this article either as a preliminary question or in an award on the merits. If the arbitral tribunal rules as a preliminary question that it has jurisdiction, any party may request, within thirty days after having received notice of that ruling, the court specified in article 6 to decide the matter, which decision shall be subject to no appeal; while such a request is pending, the arbitral tribunal may continue the arbitral proceedings and make an award.

CHAPTER IVA

INTERIM MEASURES AND PRELIMINARY ORDERS

*(As adopted by the Commission at its thirty-ninth session, in 2006)*

*Section 1*

*Interim measures*

*Article 17*

*Power of arbitral tribunal to order interim measures*

*(Applied by section 33)*

(1) Unless otherwise agreed by the parties, the arbitral tribunal may, at the request of a party, grant interim measures.

(2) An interim measure is any temporary measure, whether in the form of an award or in another form, by which, at any time prior to the issuance of the award by which the dispute is finally decided, the arbitral tribunal orders a party to—

- (a) Maintain or restore the status quo pending determination of the dispute;
- (b) Take action that would prevent, or refrain from taking action that is likely to cause, current or imminent harm or prejudice to the arbitral process itself;
- (c) Provide a means of preserving assets out of which a subsequent award may be satisfied; or
- (d) Preserve evidence that may be relevant and material to the resolution of the dispute.

#### *Article 17A*

##### *Conditions for granting interim measures*

*(Applied by section 34)*

(1) The party requesting an interim measure under article 17(2)(a), (b) and (c) shall satisfy the arbitral tribunal that—

- (a) Harm not adequately reparable by an award of damages is likely to result if the measure is not ordered, and such harm substantially outweighs the harm that is likely to result to the party against whom the measure is directed if the measure is granted; and
- (b) There is a reasonable possibility that the requesting party will succeed on the merits of the claim. The determination on this possibility shall not affect the discretion of the arbitral tribunal in making any subsequent determination.

(2) With regard to a request for an interim measure under article 17(2)(d), the requirements in paragraphs (1)(a) and (b) of this article shall apply only to the extent the tribunal considers appropriate.

#### *Section 2*

##### *Preliminary orders*

#### *Article 17B*

##### *Applications for preliminary orders and conditions for granting preliminary orders*

*(Applied by section 35)*

(1) Unless otherwise agreed by the parties, a party may, without notice to any other party, make a request for an interim measure together with an application

for a preliminary order directing a party not to frustrate the purpose of the interim measure requested.

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

(3) The conditions defined under article 17A apply to any preliminary order, provided that the harm to be assessed under article 17A(1)(a), is the harm likely to result from the order being granted or not.

#### *Article 17C*

##### *Specific regime for preliminary orders*

*(Applied by section 36)*

(1) Immediately after the arbitral tribunal has made a determination in respect of an application for a preliminary order, the arbitral tribunal shall give notice to all parties of the request for the interim measure, the application for the preliminary order, the preliminary order, if any, and all other communications, including by indicating the content of any oral communication, between any party and the arbitral tribunal in relation thereto.

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

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

(4) A preliminary order shall expire after twenty days from the date on which it was issued by the arbitral tribunal. However, the arbitral tribunal may issue an interim measure adopting or modifying the preliminary order, after the party against whom the preliminary order is directed has been given notice and an opportunity to present its case.

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

#### *Section 3*

##### *Provisions applicable to interim measures and preliminary orders*

#### *Article 17D*

##### *Modification, suspension, termination*

*(Applied by section 37)*

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

*Article 17E**Provision of security**(Applied by section 38)*

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

*Article 17F**Disclosure**(Applied by section 39)*

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

*Article 17G**Costs and damages**(Applied by section 40)*

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

*Section 4**Recognition and enforcement of interim measures**Article 17H**Recognition and enforcement**(Substituted by section 59)*

- (1) An interim measure issued by an arbitral tribunal shall be recognized as binding and, unless otherwise provided by the arbitral tribunal, enforced upon

application to the competent court, irrespective of the country in which it was issued, subject to the provisions of article 17I.

(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 of the State where recognition or enforcement is sought 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.

#### *Article 17I*

#### *Grounds for refusing recognition or enforcement\*\*\**

#### *(Not applied)*

- (1) Recognition or enforcement of an interim measure may be refused only—
- (a) At the request of the party against whom it is invoked if the court is satisfied that—
    - (i) Such refusal is warranted on the grounds set forth in article 36(1)(a)(i), (ii), (iii) or (iv); or
    - (ii) The arbitral tribunal's decision with respect to the provision of security in connection with the interim measure issued by the arbitral tribunal has not been complied with; or
    - (iii) The interim measure has been terminated or suspended by the arbitral tribunal or, where so empowered, by the court of the State in which the arbitration takes place or under the law of which that interim measure was granted; or
  - (b) If the court finds that—
    - (i) The interim measure is incompatible with the powers conferred upon the court unless the court decides to reformulate the interim measure to the extent necessary to adapt it to its own powers and procedures for the purposes of enforcing that interim measure and without modifying its substance; or
    - (ii) Any of the grounds set forth in article 36(1)(b)(i) or (ii), apply to the recognition and enforcement of the interim measure.
- (2) Any determination made by the court on any ground in paragraph (1) of this article shall be effective only for the purposes of the application to recognize and enforce the interim measure. The court where recognition or enforcement is sought shall not, in making that determination, undertake a review of the substance of the interim measure.

*Section 5**Court-ordered interim measures**Article 17J**Court-ordered interim measures**(Substituted by section 43)*

A court shall have the same power of issuing an interim measure in relation to arbitration proceedings, irrespective of whether their place is in the territory of this State, as it has in relation to proceedings in courts. The court shall exercise such power in accordance with its own procedures in consideration of the specific features of international arbitration.

## CHAPTER V

## CONDUCT OF ARBITRAL PROCEEDINGS

*Article 18**Equal treatment of parties**(Substituted by section 44(2) and (3))*

The parties shall be treated with equality and each party shall be given a full opportunity of presenting his case.

*Article 19**Determination of rules of procedure**(Applied by section 45)*

- (1) Subject to the provisions of this Law, the parties are free to agree on the procedure to be followed by the arbitral tribunal in conducting the proceedings.
- (2) Failing such agreement, the arbitral tribunal may, subject to the provisions of this Law, conduct the arbitration in such manner as it considers appropriate. The power conferred upon the arbitral tribunal includes the power to determine the admissibility, relevance, materiality and weight of any evidence.

*Article 20**Place of arbitration**(Applied by section 46)*

- (1) The parties are free to agree on the place of arbitration. Failing such agreement, 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.

(2) Notwithstanding the provisions of paragraph (1) of this article, 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.

*Article 21*

*Commencement of arbitral proceedings*

*(Applied by section 47)*

Unless otherwise agreed by the parties, the arbitral proceedings in respect of a particular dispute commence on the date on which a request for that dispute to be referred to arbitration is received by the respondent.

*Article 22*

*Language*

*(Applied by section 48)*

(1) The parties are free to agree on the language or languages to be used in the arbitral proceedings. Failing such agreement, the arbitral tribunal shall determine the language or languages to be used in the proceedings. This agreement or determination, unless otherwise specified therein, shall apply to any written statement by a party, any hearing and any award, decision or other communication by the arbitral tribunal.

(2) 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.

*Article 23*

*Statements of claim and defence*

*(Applied by section 49)*

(1) Within the period of time agreed by the parties or determined by the arbitral tribunal, the claimant shall state the facts supporting his claim, the points at issue and the relief or remedy sought, and the respondent shall state his defence in respect of these particulars, unless the parties have otherwise agreed as to the required elements of such statements. The parties may submit with their statements all documents they consider to be relevant or may add a reference to the documents or other evidence they will submit.

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

*Article 24**Hearings and written proceedings**(Applied by section 50)*

- (1) Subject to any contrary agreement by the parties, the arbitral tribunal shall decide whether to hold oral hearings for the presentation of evidence or for oral argument, or whether the proceedings shall be conducted on the basis of documents and other materials. However, unless the parties have agreed that no hearings shall be held, the arbitral tribunal shall hold such hearings at an appropriate stage of the proceedings, if so requested by a party.
- (2) The parties shall be given sufficient advance notice of any hearing and of any meeting of the arbitral tribunal for the purposes of inspection of goods, other property or documents.
- (3) All statements, documents or other information supplied to the arbitral tribunal by one party shall be communicated to the other party. Also any expert report or evidentiary document on which the arbitral tribunal may rely in making its decision shall be communicated to the parties.

*Article 25**Default of a party**(Applied by section 51)*

Unless otherwise agreed by the parties, if, without showing sufficient cause—

- (a) the claimant fails to communicate his statement of claim in accordance with article 23(1), the arbitral tribunal shall terminate the proceedings;
- (b) the respondent fails to communicate his statement of defence in accordance with article 23(1), the arbitral tribunal shall continue the proceedings without treating such failure in itself as an admission of the claimant's allegations;
- (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.

*Article 26**Expert appointed by arbitral tribunal**(Applied by section 52)*

- (1) Unless otherwise agreed by the parties, the arbitral tribunal—
  - (a) may appoint one or more experts to report to it on specific issues to be determined by the arbitral tribunal;
  - (b) may 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 oral report, participate in a hearing where the parties have the opportunity to put questions to him and to present expert witnesses in order to testify on the points at issue.

*Article 27*

*Court assistance in taking evidence*

*(Applied by section 53)*

The arbitral tribunal or a party with the approval of the arbitral tribunal may request from a competent court of this State assistance in taking evidence. The court may execute the request within its competence and according to its rules on taking evidence.

CHAPTER VI

MAKING OF AWARD AND TERMINATION OF PROCEEDINGS

*Article 28*

*Rules applicable to substance of dispute*

*(Applied by section 62)*

- (1) The arbitral tribunal shall decide the dispute in accordance with such rules of law as are chosen by the parties as applicable to the substance of the dispute. Any designation of the law or legal system of a given State shall be construed, unless otherwise expressed, as directly referring to the substantive law of that State and not to its conflict of law rules.
- (2) Failing any designation by the parties, the arbitral tribunal shall apply the law determined by the conflict of laws rules which it considers applicable.
- (3) The arbitral tribunal shall decide *ex aequo et bono* or as *amiable compositeur* only if the parties have expressly authorized it to do so.
- (4) In all cases, the arbitral tribunal shall decide in accordance with the terms of the contract and shall take into account the usages of the trade applicable to the transaction.

*Article 29*

*Decision-making by panel of arbitrators*

*(Applied by section 63)*

In arbitral proceedings with more than one arbitrator, any decision of the arbitral tribunal shall be made, unless otherwise agreed by the parties, by a majority of

all its members. However, questions of procedure may be decided by a presiding arbitrator, if so authorized by the parties or all members of the arbitral tribunal.

*Article 30*

*Settlement*

*(Applied by section 64)*

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

(2) An award on agreed terms shall be made in accordance with the provisions of article 31 and shall state that it is an award. Such an award has the same status and effect as any other award on the merits of the case.

*Article 31*

*Form and contents of award*

*(Applied by section 65)*

(1) The award shall be made in writing and shall be signed by the arbitrator or arbitrators. In arbitral proceedings with more than one arbitrator, the signatures of the majority of all members of the arbitral tribunal shall suffice, provided that the reason for any omitted signature is stated.

(2) The award shall state the reasons upon which it is based, unless the parties have agreed that no reasons are to be given or the award is an award on agreed terms under article 30.

(3) The award shall state its date and the place of arbitration as determined in accordance with article 20(1). The award shall be deemed to have been made at that place.

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

*Article 32*

*Termination of proceedings*

*(Applied by section 66)*

(1) The arbitral proceedings are terminated by the final award or by an order of the arbitral tribunal in accordance with paragraph (2) of this article.

(2) The arbitral tribunal shall issue an order for the termination of the arbitral proceedings when—

- (a) the claimant withdraws his claim, unless the respondent objects thereto and the arbitral tribunal recognizes a legitimate interest on his part in obtaining a final settlement of the dispute;

- (b) the parties agree on the termination of the proceedings;
  - (c) the arbitral tribunal finds that the continuation of the proceedings has for any other reason become unnecessary or impossible.
- (3) The mandate of the arbitral tribunal terminates with the termination of the arbitral proceedings, subject to the provisions of articles 33 and 34(4).

### Article 33

#### *Correction and interpretation of award; additional award*

##### *(Applied by section 67)*

- (1) Within thirty days of receipt of the award, unless another period of time has been agreed upon by the parties—
- (a) a party, with notice to the other party, may request the arbitral tribunal to correct in the award any errors in computation, any clerical or typographical errors or any errors of similar nature;
  - (b) if so agreed by the parties, a party, with notice to the other party, may request the arbitral tribunal to give an interpretation of a specific point of the award. If the arbitral tribunal considers the request to be justified, it shall make the correction or give the interpretation within thirty days of receipt of the request. The interpretation shall form part of the award.
- (2) The arbitral tribunal may correct any error of the type referred to in paragraph (1)(a) of this article on its own initiative within thirty days of the date of the award.
- (3) Unless otherwise agreed by the parties, a party, with notice to the other party, may request, within thirty days of receipt of the award, the arbitral tribunal to make an additional award as to claims presented in the arbitral proceedings but omitted from the award. If the arbitral tribunal considers the request to be justified, it shall make the additional award within sixty days.
- (4) The arbitral tribunal may extend, if necessary, the period of time within which it shall make a correction, interpretation or an additional award under paragraph (1) or (3) of this article.
- (5) The provisions of article 31 shall apply to a correction or interpretation of the award or to an additional award.

CHAPTER VII  
RECOURSE AGAINST AWARD*Article 34**Application for setting aside as exclusive recourse against arbitral award**(Applied by section 79)*

- (1) Recourse to a court against an arbitral award may be made only by an application for setting aside in accordance with paragraphs (2) and (3) of this article.
- (2) An arbitral award may be set aside by the court specified in article 6 only if—
- (a) the party making the application furnishes proof that—
    - (i) a party to the arbitration agreement referred to in article 7 was under some incapacity; or the said agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law of this State; or
    - (ii) the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or
    - (iii) 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, provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, only that part of the award which contains decisions on matters not submitted to arbitration may be set aside; or
    - (iv) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless such agreement was in conflict with a provision of this Law from which the parties cannot derogate, or, failing such agreement, was not in accordance with this Law; or
  - (b) the court finds that—
    - (i) the subject-matter of the dispute is not capable of settlement by arbitration under the law of this State; or
    - (ii) the award is in conflict with the public policy of this State.
- (3) An application for setting aside may not be made after three months have elapsed from the date on which the party making that application had received the award or, if a request had been made under article 33, from the date on which that request had been disposed of by the arbitral tribunal.
- (4) The court, when asked to set aside an award, may, where appropriate and so requested by a party, suspend the setting aside proceedings for a period of time determined by it in order to give the arbitral tribunal an opportunity to resume the arbitral proceedings or to take such other action as in the arbitral tribunal's opinion will eliminate the grounds for setting aside.

CHAPTER VIII  
RECOGNITION AND ENFORCEMENT OF AWARDS

*Article 35*

*Recognition and enforcement*

*(Substituted by sections 81-86)*

(1) An arbitral award, irrespective of the country in which it was made, shall be recognized as binding and, upon application in writing to the competent court, shall be enforced subject to the provisions of this article and of article 36.

(2) The party relying on an award or applying for its enforcement shall supply the original award or a copy thereof. If the award is not made in an official language of this State, the court may request the party to supply a translation thereof into such language.\*\*\*\*

*(Article 35(2) has been amended by the Commission at its thirty-ninth session, 2006)*

*Article 36*

*Grounds for refusing recognition*

*(Substituted by sections 81-86)*

(1) Recognition or enforcement of an arbitral award, irrespective of the country in which it was made, may be refused only—

(a) at the request of the party against whom it is invoked, if that party furnishes to the competent court where recognition or enforcement is sought proof that—

- (i) a party to the arbitration agreement referred to in article 7 was under some incapacity; or the said agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law of the country where the award was made; or
- (ii) the party against whom the award is invoked was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or
- (iii) the award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration, provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, that part of the award which contains decisions on matters submitted to arbitration may be recognized and enforced; or
- (iv) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the

parties or, failing such agreement, was not in accordance with the law of the country where the arbitration took place; or

- (v) the award has not yet become binding on the parties or has been set aside or suspended by a court of the country in which, or under the law of which, that award was made; or

(b) if the court finds that—

- (i) the subject-matter of the dispute is not capable of settlement by arbitration under the law of this State; or
- (ii) the recognition or enforcement of the award would be contrary to the public policy of this State.

(2) If an application for setting aside or suspension of an award has been made to a court referred to in paragraph (1)(a)(v) of this article, the court where recognition or enforcement is sought may, if it considers it proper, adjourn its decision and may also, on the application of the party claiming recognition or enforcement of the award, order the other party to provide appropriate security.

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\* Article headings are for reference purposes only and are not to be used for purposes of interpretation.

\*\* The term “commercial” should be given a wide interpretation so as to cover matters arising from all relationships of a commercial nature, whether contractual or not. Relationships of a commercial nature include, but are not limited to, the following transactions: any trade transaction for the supply or exchange of goods or services; distribution agreement; commercial representation or agency; factoring; leasing; construction of works; consulting; engineering; licensing; investment; financing; banking; insurance; exploitation agreement or concession; joint venture and other forms of industrial or business cooperation; carriage of goods or passengers by air, sea, rail or road.

\*\*\* The conditions set forth in article 17I are intended to limit the number of circumstances in which the court may refuse to enforce an interim measure. It would not be contrary to the level of harmonization sought to be achieved by these model provisions if a State were to adopt fewer circumstances in which enforcement may be refused.

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## **SCHEDULE 2**

*(Sections 2(2), 6(4), 21(4), 71(2), 79(2), 89 and 91)*

### **PROVISIONS THAT MAY BE EXPRESSLY OPTED FOR OR AUTOMATICALLY APPLY**

#### **Sole arbitrator**

1. Notwithstanding section 21, any dispute that arises between the parties to an arbitration agreement is to be submitted to a sole arbitrator for arbitration.

#### **Consolidation of arbitrations**

2. (1) Where, in relation to two or more arbitral proceedings, it appears to the Court that—

- (a) a common question of law or fact arises in both or all of the arbitral proceedings,
- (b) the rights to relief claimed in those arbitral proceedings are in respect, or arise out, of the same transaction or series of transactions, or
- (c) for any other reason it is desirable to make an order under this section,

the Court may, on the application of any party to the arbitral proceedings, order—

- (i) the arbitral proceedings to be consolidated on such terms as it thinks just, or to be heard at the same time or one immediately after another; or
- (ii) any of the arbitral proceedings to be stayed until after the determination of any of the issues relating to them.

(2) Where, pursuant to sub-paragraph (1), the Court orders arbitral proceedings to be consolidated or to be heard at the same time or one immediately after another, the Court may—

- (a) make consequential directions as to the payment of costs in the arbitral proceedings; and
- (b) if—
  - (i) all parties to the arbitral proceedings are in agreement as to the choice of arbitrator for the arbitral proceedings, appoint that arbitrator; or
  - (ii) the parties cannot agree on the choice of arbitrator for the arbitral proceedings, appoint an arbitrator for arbitral proceedings (and, in the case of arbitral proceedings to be heard at the same time or one immediately after another, appoint the same arbitrator for those arbitral proceedings).

(3) Where the Court appoints an arbitrator under sub-paragraph (2), any appointment of any other arbitrator that has been made for any of those arbitral proceedings shall cease to have effect for all purposes with effect from the date the appointment is made under sub-paragraph (2).

(4) The arbitral tribunal that hears the arbitral proceedings that are consolidated under sub-paragraph (1) has the power provided under sections 72 and 73 in relation to the costs of those arbitral proceedings.

(5) Where two or more arbitral proceedings are heard at the same time or one immediately after another under subsection (1), the arbitral tribunal—

- (a) has the power provided under sections 72 and 73 only in relation to the costs of the arbitral proceedings that are heard by it; and
- (b) accordingly, does not have the power to order a party to any of the arbitral proceedings to pay the costs of a party to any other of those proceedings, unless the arbitral tribunal is the same tribunal hearing all of those arbitral proceedings.

(6) An order, direction or decision made by the Court under this paragraph is not subject to appeal.

### **Deciding questions of law**

3. (1) Subject to sub-paragraphs (2) and (3), the Court may, on the application of questions of any party to arbitral proceedings, decide any question of law which arises in the course of law. the arbitral proceedings.

(2) An application under sub-paragraph (1) may be made only with—

- (a) the agreement in writing of all the other parties to the arbitral proceedings; or
- (b) the permission in writing of the arbitral tribunal.

(3) In making an application under sub-paragraph (1), the party making the application shall—

- (a) identify the question of law to be decided; and
- (b) state the grounds on which the application is based.

(4) The Court shall not entertain an application under sub-paragraph (1) unless it is satisfied that the decision of the question of law might produce substantial savings in costs to the parties.

(5) The leave of the Court or the Court of Appeal is required for any appeal from a decision of the Court under sub-paragraph (1).

### **Challenging an arbitral award on grounds of serious irregularity**

4. (1) A party to arbitral proceedings may apply to the Court challenging an award in the arbitral proceedings on the ground of serious irregularity affecting the tribunal, the arbitral proceedings or the award.

(2) Serious irregularity means an irregularity of one or more of the following kinds which the Court considers has caused or will cause substantial injustice to the applicant—

- (a) failure by the arbitral tribunal to comply with section 44;
- (b) the arbitral tribunal exceeding its powers (otherwise than by exceeding its jurisdiction);
- (c) failure by the arbitral tribunal to conduct the arbitral proceedings in accordance with the procedure agreed by the parties;
- (d) failure by the arbitral tribunal to deal with all the issues that were put to it;



- (e) any arbitral or other institution or person vested by the parties with powers in relation to the arbitral proceedings or the award exceeding its powers;
- (f) failure by the arbitral tribunal to give, under section 67, an interpretation of the award the effect of which is uncertain or ambiguous;
- (g) the award being obtained by fraud, or the award or the way in which the award was procured being contrary to public policy;
- (h) failure to comply with the requirements as to the form of the award; or
- (i) any irregularity in the conduct of the arbitral proceedings, or in the award which is admitted by the arbitral tribunal or by any arbitral or other institution or person vested by the parties with powers in relation to the arbitral proceedings or the award.

(3) If there is shown to be serious irregularity affecting the arbitral tribunal, the arbitral proceedings or the award, the Court may make an order—

- (a) remitting the award to the arbitral tribunal, in whole or in part, for reconsideration;
- (b) setting aside the award, in whole or in part; or
- (c) declaring the award to be of no effect, in whole or in part.

(4) 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—

- (a) three months of the date of the order for remission; or
- (b) such longer period as the Court considers reasonable in all the circumstances, having regard to the object outlined in section 3.

(5) The Court shall not set aside an award or to declare an award to be of no effect, in whole or in part, unless it is satisfied that it would be inappropriate to remit the matters in question to the arbitral tribunal for reconsideration.

(6) The leave of the Court or the Court of Appeal is required for any appeal from a decision, order or direction of the Court under this paragraph.

(7) Paragraph 7 also applies to an application or appeal under this paragraph.

## **Appeal**

5. (1) Subject to paragraph 6, a party to arbitral proceedings may appeal to the Court on a question of law arising out of an award made in the arbitral proceedings.

(2) An agreement to dispense with the reasons for an arbitral tribunal's award shall be treated as an agreement to exclude the Court's jurisdiction under this paragraph.

(3) The Court shall decide the question of law which is the subject of the appeal on the basis of the findings of fact in the award.

(4) The Court shall not consider any of the criteria set out in paragraph 6(4)(c)(i) or (ii) when it decides the question of law under sub-paragraph (3).

(5) On hearing an appeal under this paragraph, the Court may make an order—

- (a) confirming the award;

- (b) varying the award;
- (c) remitting the award to the arbitral tribunal, in whole or in part, for reconsideration in the light of the Court's decision; or
- (d) setting aside the award, in whole or in part.

(6) 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—

- (a) three months of the date of the order for remission; or
- (b) such longer period as the Court considers reasonable in all the circumstances, having regard to the object outlined in section 3.

(7) The Court shall not 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.

(8) The leave of the Court or the Court of Appeal is required for any further appeal from an order made by the Court under sub-paragraph (5).

(9) Leave to further appeal shall not be granted unless the question is—

- (a) one of general importance; or
- (b) one which, for some other special reason, should be considered by the Court of Appeal.

(10) Paragraphs 6 and 7 also apply to an appeal or further appeal under this paragraph.

#### **Application for leave to appeal against arbitral award on question of law**

**6.** (1) Subject to sub-paragraph (2), an appeal under paragraph 5 on a question of law may be brought by a party to arbitral proceedings only with—

- (a) the agreement of all the other parties to the arbitral proceedings;
- (a) the leave of the Court.

(2) In an application for leave to appeal, the party making the application shall—

- (a) identify the question of law to be decided; and
- (b) state the grounds on which the application is based.

(3) The Court shall determine an application for leave to appeal without a hearing, unless it appears to the Court that a hearing is required.

(4) Leave to appeal is to be granted only if the Court is satisfied that—

- (a) the decision of the question will substantially affect the rights of one or more of the parties;
- (b) the question is one which the arbitral tribunal was asked to decide; and
- (c) that, 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 importance and the decision of the arbitral tribunal is at least open to serious doubt.

(5) The leave of the Court or the Court of Appeal is required for any appeal from a decision of the Court to grant or refuse leave to appeal.

(6) Leave to appeal from a decision of the Court shall not be granted unless the question is—

- (a) one of general importance; or
- (b) one which, for some other special reason, should be considered by the Court of Appeal.

### Supplementary provisions

7. (1) An application or appeal under paragraph 4, 5 or 6 may not be brought, unless the applicant or appellant has first exhausted any available—

- (a) recourse under section 67; and
- (b) arbitral process of appeal or review.

(2) Where, on an application or appeal, it appears to the Court that the award does not—

- (a) contain the arbitral tribunal's reasons for the award, or
- (b) set out the arbitral tribunal's reasons for the award in sufficient detail to enable the Court properly to consider the application or appeal,

the Court may order the tribunal to state the reasons for the award in sufficient detail for that purpose.

(3) Where the Court makes an order under subsection (2), it may make a further order that it thinks fit with respect to any additional costs of the arbitration resulting from its order.

(4) The Court may—

- (a) order the applicant or appellant to give security for the costs of the application or appeal; and
- (b) if the order is not complied with, direct that the application or appeal is to be dismissed.

(5) The power to order security for costs must not be exercised only on the ground that the applicant or appellant is—

- (a) a natural person who is ordinarily resident outside the Virgin Islands;
- (b) a body corporate—
  - (i) incorporated under the law of a place outside the Virgin Islands; or
  - (ii) the central management and control of which is exercised outside the Virgin Islands; or
- (c) an association—
  - (i) formed under the law of a place outside the Virgin Islands; or
  - (ii) the central management and control of which is exercised outside the Virgin Islands.

(6) The Court may—

- (a) order that any money payable under the award is to be paid into the Court or otherwise secured pending the determination of the application or appeal; and
- (b) if the order is not complied with, direct that the application or appeal is to be dismissed.

(7) The Court or the Court of Appeal may impose conditions to the same or similar effect as an order under sub-paragraph (4) or (6) on granting leave to appeal under paragraph 4, 5 or 6.

(8) Sub-paragraph (7) does not affect the general discretion of the Court or the Court of Appeal to grant leave subject to conditions.

(9) An order, direction or decision made by the Court or the Court of Appeal under this section is not subject to appeal.

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**SCHEDULE 3**

*(Section 87(1))*

**STATES AND TERRITORIES THAT ARE PARTIES TO THE NEW YORK CONVENTION**

No.	Name	Date of Entry Into Force
1	Afghanistan	28 February 2005
2	Albania	25 September 2001
3	Algeria	8 May 1989
4	Antigua and Barbuda	3 May 1989
5	Argentina	12 June 1989
6	Armenia	29 March 1998
7	Australia	24 June 1975
8	Austria	31 July 1961
9	Azerbaijan	29 May 2000
10	Bahamas	20 March 2007
11	Bahrain	5 July 1988
12	Bangladesh	4 August 1992
13	Barbados	14 June 1993
14	Belarus	13 February 1961
15	Belgium	16 November 1975
16	Benin	14 August 1974
17	Bermuda	14 November 1979
18	Bolivia (Plurinational State of)	27 July 1995
19	Bosnia and Herzegovina	6 March 1992
20	Botswana	19 March 1972
21	Brazil	5 September 2002
22	Brunei Darussalam	23 October 1996
23	Bulgaria	8 January 1962
24	Burkina Faso	21 June 1987
25	Cambodia	4 April 1960
26	Cameroon	19 May 1988
27	Canada	10 August 1986
28	Cayman Islands	26 November 1980
29	Central African Republic	13 January 1963
30	Chile	3 December 1975
31	China	22 April 1987
32	Colombia	24 December 1979
33	Cook Islands	12 April 2009
34	Costa Rica	24 January 1988
35	Côte d'Ivoire	2 May 1991
36	Croatia	8 October 1991
37	Cuba	30 March 1975
38	Cyprus	29 March 1981
39	Czech Republic	1 January 1993
40	Denmark	22 March 1973
41	Djibouti	27 June 1977
42	Dominica	26 January 1989

43	Dominican Republic	10 July 2002
44	Ecuador	3 April 1962
45	Egypt	7 June 1959
46	El Salvador	27 May 1998
47	Estonia	28 November 1993
48	Faeroe Islands	10 February 1976
49	Fiji	26 December 2010
50	Finland	19 April 1962
51	France	24 September 1959
52	Gabon	15 March 2007
53	Georgia	31 August 1994
54	Germany	28 September 1961
55	Ghana	8 July 1968
56	Gibraltar	24 September 1975
57	Greece	14 October 1962
58	Greenland	10 February 1976
59	Guatemala	19 June 1984
60	Guernsey	19 April 1985
61	Guinea	23 April 1991
62	Haiti	4 March 1984
63	Holy See	12 August 1975
64	Honduras	1 January 2001
65	Hong Kong	1 July 1997
66	Hungary	3 June 1962
67	Iceland	24 April 2002
68	India	11 October 1960
69	Indonesia	5 January 1982
70	Iran (Islamic Rep. of)	13 January 2002
71	Ireland	10 August 1981
72	Isle of Man	22 February 1979
73	Israel	7 June 1959
74	Italy	1 May 1969
75	Jamaica	8 October 2002
76	Japan	18 September 1961
77	Jersey	28 May 2002
78	Jordan	13 February 1980
79	Kazakhstan	18 February 1996
80	Kenya	11 May 1989
81	Korea (Republic of)	9 May 1973
82	Kuwait	27 July 1978
83	Kyrgyzstan	18 March 1997
84	Lao People's Democratic Republic	15 September 1998
85	Latvia	13 July 1992
86	Lebanon	9 November 1998
87	Lesotho	11 September 1989
88	Liberia	15 December 2005
89	Liechtenstein	5 October 2011
90	Lithuania	12 June 1995
91	Luxembourg	8 December 1983
92	Macao	19 July 2005

93	Madagascar	14 October 1962
94	Malaysia	3 February 1986
95	Mali	7 December 1994
96	Malta	20 September 2000
97	Marshall Islands	21 March 2007
98	Mauritania	30 April 1997
99	Mauritius	17 September 1996
100	Mexico	13 July 1971
101	Moldova	17 December 1998
102	Monaco	31 August 1982
103	Mongolia	22 January 1995
104	Montenegro	3 June 2006
105	Morocco	7 June 1959
106	Mozambique	9 September 1998
107	Nepal	2 June 1998
108	Netherlands	23 July 1964
109	Netherlands Antilles	24 April 1964
110	New Zealand	6 April 1983
111	Nicaragua	23 December 2003
112	Niger	12 January 1965
113	Nigeria	15 June 1970
114	Norway	12 June 1961
115	Oman	26 May 1999
116	Pakistan	12 October 2005
117	Panama	8 January 1985
118	Paraguay	6 January 1998
119	Peru	5 October 1988
120	Philippines	4 October 1967
121	Poland	1 January 1962
122	Portugal	16 January 1995
123	Qatar	30 March 2003
124	Romania	12 December 1961
125	Russian Federation	22 November 1960
126	Rwanda	29 January 2009
127	Saint Vincent and the Grenadines	11 December 2000
128	San Marino	15 August 1979
129	Saudi Arabia	18 July 1994
130	Senegal	15 January 1995
131	Serbia	27 April 1992
132	Singapore	19 November 1986
133	Slovakia	1 January 1993
134	Slovenia	25 June 1991
135	South Africa	1 August 1976
136	Spain	10 August 1977
137	Sri Lanka	8 July 1962
138	Surinam	24 April 1964
139	Sweden	27 April 1972
140	Switzerland	30 August 1965
141	Syrian Arab Republic	7 June 1959
142	Tanzania (United Republic of)	12 January 1965

143	Thailand	20 March 1960
144	The former Yugoslav Republic of Macedonia	17 November 1991
145	Trinidad and Tobago	15 May 1966
146	Tunisia	15 October 1967
147	Turkey	30 September 1992
148	Uganda	12 May 1992
149	Ukraine	8 January 1961
150	United Arab Emirates	19 November 2006
151	United Kingdom of Great Britain and Northern Ireland	23 December 1975
152	United States of America	29 December 1970
153	Uruguay	28 June 1983
154	Uzbekistan	7 May 1996
155	Venezuela (Bolivarian Republic of)	9 May 1995
156	Vietnam	11 December 1995
157	Zambia	12 June 2002
158	Zimbabwe	28 December 1994

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## **SCHEDULE 4**

### *(Section 93(4))*

#### **ADMINISTRATION AND PROCEEDINGS OF THE BVI IAC**

1. The BVI IAC shall have an official seal for the authentication of documents issued by the BVI IAC and the application of the seal of the BVI IAC shall be authenticated by the signature of its Chief Executive or other person so authorised by the BVI IAC.
  2. Any guidelines or code of conduct issued by the BVI IAC under section 108 or 109 respectively, including any amendment to such guidelines or code of conduct, shall bear the seal of the BVI IAC and, notwithstanding paragraph 1, the application of the seal shall be authenticated by the signature of the Chairman of the Board or, where a Chairman has not been appointed, by the signature of the Chief Executive.
  3. A document purported to be executed under the seal of the BVI IAC, or signed on its behalf, shall be received in evidence and, unless the contrary is proved, shall be taken to be so executed or signed.
  4. Subject to any limitation or restriction provided in this Act or any rule or order made under this Act, anything permitted to be done by the BVI IAC may be done by any member of the Board, the Chief Executive or any employee of the BVI IAC who is authorised for that purpose by the BVI IAC either generally or specifically.
  5. For the avoidance of doubt, paragraph 4 does not apply to the issue of any guidelines or code of conduct under section 108 or 109 respectively, including any amendment to such guidelines or code of conduct.
  6. The Board or, in the absence of the establishment of the Board, the Chief Executive may establish committees to provide necessary advice to the BVI IAC in relation to any of the functions of the BVI IAC, including advising on—
    - (a) review and reform of this Act and any rule or order made under the Act; and
    - (b) the development of the BVI IAC through appropriate administrative structures, communication platforms and such other mechanisms as may be considered relevant in promoting the Virgin Islands as a centre for the conduct of international arbitration.
  7. The persons appointed to any committee established under paragraph 6 may include persons who are not members of the Board or BVI IAC and shall possess such qualifications and experiences as may be considered relevant by the Board or the Chief Executive, as the case may be.
  8. The appointment and revocation of appointment of the Chief Executive and members of the Board shall be published in the *Gazette* by the BVI IAC and, in the case of a revocation of appointment, the reason or reasons for the revocation shall be notified in the same publication. *(Amended by Act 6 of 2015)*
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