

INTERNATIONAL COMMERCIAL ARBITRATION BILL, 2021

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INTERNATIONAL COMMERCIAL ARBITRATION BILL, 2021

A BILL FOR AN ACT TO PROVIDE FOR INTERNATIONAL COMMERCIAL ARBITRATION

Enacted by the Parliament of The Bahamas

PART I – GENERAL PROVISIONS

1. Short title and commencement.

- (1) This Act may be cited as the International Commercial Arbitration Act, 2021.
- (2) This Act shall come into force on a day to be appointed by the Minister by notice published in the *Gazette* and different dates may be appointed by such a notice for the coming into force of particular sections or parts of this Act.

2. Interpretation.

- (1) For the purposes of this Act —
 - “**arbitral tribunal**” means a sole arbitrator, a panel of arbitrators, a permanent arbitral institution or an emergency arbitrator appointed pursuant to the rules of arbitration agreed to or adopted by the parties including the rules of arbitration of an institution or organisation;
 - “**arbitration**” means any arbitration whether or not administered by a permanent arbitral institution;
 - “**arbitration agreement**” means an agreement as defined under section 9;
 - “**arbitrator**” includes, unless the context otherwise requires, an umpire;

“award” means a decision of the arbitral tribunal on the substance of the dispute and includes any interim, interlocutory or partial award;

“commercial” includes matters arising from all relationships of a commercial nature, whether contractual or not including the following relationships —

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

“court” means—

- (a) the Supreme Court of The Bahamas; and
 - (b) includes, where appropriate, and in limited circumstances, a body or organ of the judicial system of a foreign state,
- but does not mean the Permanent Court of Arbitration;

“data message” means information generated, sent or received or stored by electronic, magnetic, optical or similar means, including, but not limited to, electronic data interchange, electronic mail, telegram, telex or telecopy;

“electronic communication” means any communication that the parties may make by means of data message;

“Minister” means the minister responsible for international commercial arbitration;

“party” means —

- (a) a party to an arbitration agreement; or

- (b) in any case where an arbitration does not involve all of the parties to the arbitration agreement, means a party to the arbitration;

“PCA” means the Permanent Court of Arbitration, having its seat at the Hague, acting through its Secretary-General;

“UNCITRAL” means the United Nations Commission on International Trade Law;

“UNCITRAL Model Law on International Commercial Arbitration” means the UNCITRAL Model Law on International Commercial Arbitration adopted by UNCITRAL done at Vienna, Austria on the 21st day of June 1985, and the amendments adopted by the Commission, at New York, United States of America on the 7th day of July, 2006.

- (2) Where a provision of this Act —
 - (a) save and except for section 42, 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;
 - (3) 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; or
 - (c) other than in sections 37(a) and 46(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.

3. Scope of Application.

- (1) Subject to any agreement in force between The Bahamas and any other State, this Act shall apply to international commercial arbitration.
- (2) The provisions of this Act, except sections 10, 11, 27, 28, 29, 49 and 50, apply only if the place of arbitration is in the territory of The Bahamas.
- (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; and

- (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 subsection (3) if a party —
 - (a) has more than one place of business, the place of business is that which has the closest relationship to the arbitration agreement; and
 - (b) does not have a place of business, reference is to be made to his habitual residence.
- (5) This Act shall not affect any other law of The Bahamas 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 Act.

4. International origin and general principles.

- (1) In the interpretation of this Act, regard is to be had to its international origin as the UNCITRAL Model Law on International Commercial Arbitration and to the need to promote uniformity in its application and the observance of good faith.
- (2) Questions concerning matters governed by this Act which are not expressly settled in it are to be settled in conformity with the general principles on which this Act is based.
- (3) The correspondent provisions of this Act to the UNCITRAL Model Law on International Commercial Arbitration are listed in the *Schedule*.

5. Receipt of written communication.

- (1) Unless otherwise agreed by the parties—
 - (a) any written communication is deemed to have been received if—
 - (i) it is delivered to the addressee personally or if it is delivered at his place of business, habitual residence or mailing address;
 - (ii) the addressee's place of business, habitual residence or mailing address cannot 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;

- (iii) it is delivered by electronic communication to an address or by a means which the addressee has confirmed;
 - (b) the communication is deemed to have been received on the day it is so delivered.
- (2) The provisions of this section do not apply to communications in court proceedings.

6. Waiver of right to object.

A party who knows that any provision of this Act 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 therefore, within such period of time, shall be deemed to have waived his right to object.

7. Extent of court intervention.

No court shall intervene in matters governed by this Act, except where so provided in this Act.

8. Authority for certain functions of arbitration assistance and supervision.

The functions referred to in sections 13(3), 13(4), 15(3), 16, 18(9) and 40(1) shall be performed by the PCA.

PART II - ARBITRATION AGREEMENT

9. Definition and form of arbitration agreement.

- (1) An “**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.
- (2) An arbitration agreement —
 - (a) shall be in writing; and
 - (b) may be in the form of an arbitration clause in a contract or in the form of a separate agreement.
- (3) An arbitration agreement is in writing —
 - (a) 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;

- (b) in an electronic communication, where the information contained therein is accessible so as to be useable for subsequent reference; or
 - (c) 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.
- (4) 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.

10. 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 subsection (1) 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.

11. 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.

PART III – COMPOSITION AND JURISDICTION OF ARBITRAL TRIBUNAL

12. Number of arbitrators.

- (1) The parties are free to determine the number of arbitrators.
- (2) Where the parties fail to make a determination pursuant to subsection (1) the number of arbitrators shall be three.

13. 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 shall agree on a procedure of appointing the arbitrator or arbitrators, subject to the provisions of subsections (4) and (5).
- (3) Where the parties fail to agree on a procedure as referred to in subsection (2) —

- (a) in an arbitration with three arbitrators —
 - (i) each party shall appoint one arbitrator, and the two arbitrators thus appointed shall appoint the third arbitrator; and
 - (ii) 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 authority specified in section 8;
- (b) in an arbitration with a sole arbitrator, if the parties are unable to agree on the arbitrator within thirty days of receipt of a request from a party, the arbitrator shall be appointed, upon request of a party, by the authority specified in section 8;
- (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 not being the PCA, fails to perform any function entrusted to it under such procedure, any party may request the authority specified in section 8 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 subsection (3) or (4) to the authority specified in section 8 shall not be subject to appeal.
- (6) The authority specified in section 8, in appointing an arbitrator, shall have due regard to any qualification 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.

14. 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.
- (2) 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.
- (3) An arbitrator may be challenged only if —

- (a) circumstances exist that give rise to justifiable doubts as to his impartiality or independence; or
 - (b) if he does not possess qualifications agreed to by the parties.
- (4) 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.

15. Challenge procedure.

- (1) The parties shall agree on a procedure for challenging an arbitrator, subject to the provisions of subsection (3).
- (2) Where the parties fail to agree on the procedure referred to in subsection (1), 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 section 14(3) and (4), send a written statement of the reasons for the challenge to the arbitral tribunal.
- (3) Where —
 - (a) a challenged arbitrator does not withdraw from his office; or
 - (b) the other party agrees to the challenge,the arbitral tribunal shall decide on the challenge.
- (4) If a challenge under any procedure agreed upon by the parties or under the procedure of subsection (2) is not successful, the challenging party may request, within thirty days after having received notice of the decision rejecting the challenge, the authority specified in section 8 to decide on the challenge, which decision shall be subject to no appeal.
- (5) While request of a challenging party made in accordance with subsection (4) is pending, the arbitral tribunal, including the challenged arbitrator, may continue the arbitral proceedings and make an award.

16. Failure or impossibility to act.

- (1) Where 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.
- (2) If a controversy remains concerning any of these grounds, any party may request the authority specified in section 8 to decide on the termination of the mandate, which decision shall be subject to no appeal.
- (3) Where under this section or section 15(2) and (3), 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 section or section 14(3) and (4).

17. Appointment of substitute arbitrator.

- (1) Where the mandate of an arbitrator terminates under section 15 or 16 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.
- (2) If, at the request of a party and after giving the parties and the remaining arbitrators an opportunity to express their views, the authority specified in section 8 determines that it would be justified for a party to be deprived of its right to appoint a substitute arbitrator, the authority specified in section 8 may appoint the substitute arbitrator or authorise the other arbitrators to proceed with the arbitration and make any decision or award.

18. 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.
- (2) An arbitration clause which forms part of a contract shall be treated as an agreement independent of the other terms of the contract.
- (3) A decision by the arbitral tribunal that the contract is null and void shall not entail *ipso jure* the invalidity of the arbitration clause.
- (4) A plea that the arbitral tribunal does not have jurisdiction shall be raised not later than the submission of the statement of defence.
- (5) A party is not precluded from raising such a plea by the fact that he has appointed, or participated in the appointment of, an arbitrator.
- (6) A plea that the arbitral tribunal is exceeding the scope of its authority shall be raised as soon as the matter alleged to be beyond the scope of its authority is raised during the arbitral proceedings.
- (7) The arbitral tribunal may, in either case, admit a later plea if it considers the delay justified.
- (8) The arbitral tribunal may rule on a plea referred to in subsection (4) and (6) either as a preliminary question or in an award on the merits.
- (9) 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 authority specified in section 8 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.

PART IV - INTERIM MEASURES AND PRELIMINARY ORDERS

INTERIM MEASURES

19. 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.

20. Conditions for granting interim measures.

- (1) The party requesting an interim measure under section 19(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 notwithstanding any determination on this possibility shall not affect the discretion of the arbitral tribunal in making any subsequent determination.
- (2) With regard to a request for an interim measure under section 19(2)(d), the requirements in subsections (1)(a) and (b) shall apply only to the extent the arbitral tribunal considers appropriate.

PRELIMINARY ORDERS

21. Applications for preliminary orders and conditions for granting preliminary orders.

- (1) Unless otherwise agreed by the parties, a party may, without notice to any other party, make a request for an interim measure together with an application for a preliminary order directing a party not to frustrate the purpose of the interim measure requested.
- (2) The arbitral tribunal may grant a preliminary order provided it considers that prior disclosure of the request for the interim measure to the party against whom it is directed risks frustrating the purpose of the measure.
- (3) The conditions defined under section 20 apply to any preliminary order, provided that the harm to be assessed under section 20(1)(a), is the harm likely to result from the order being granted or not.

22. 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) The arbitral tribunal shall, at the same time, 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.
- (5) Notwithstanding subsection (4), the arbitral tribunal may issue an interim measure adopting or modifying the preliminary order, after the party against whom the preliminary order is directed has been given notice and an opportunity to present its case.
- (6) A preliminary order shall be binding on the parties but shall not be subject to enforcement by a court and such a preliminary order does not constitute an award.

PROVISIONS APPLICABLE TO INTERIM MEASURES AND PRELIMINARY ORDERS

23. 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.

24. 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.

25. 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 and subsection (1) shall thereafter apply.

26. Costs and damages.

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

RECOGNITION AND ENFORCEMENT OF INTERIM MEASURES

27. Recognition and enforcement.

- (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 section 28.
- (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.

28. Grounds for refusing recognition or enforcement.

- (1) Recognition or enforcement of an interim measure may be refused only —
 - (a) at the request of the party against whom it is invoked if the court is satisfied that—
 - (i) such refusal is warranted on the grounds set forth in section 50 (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) 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 section 50(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 subsection (1), shall be effective only for the purposes of the application to recognize and enforce the interim measure.
- (3) The court where recognition or enforcement is sought shall not, in making that determination, undertake a review of the substance of the interim measure.

COURT-ORDERED INTERIM MEASURES

29. Court-ordered interim measures.

- (1) 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 The Bahamas, as it has in relation to proceedings in courts.
- (2) The court shall exercise such power in accordance with its own procedures in consideration of the specific features of international arbitration.

PART V - CONDUCT OF ARBITRAL PROCEEDINGS

30. Equal treatment of parties.

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

31. Determination of rules of procedure.

- (1) Unless otherwise provided by this Act, the parties shall agree on the procedure to be followed by the arbitral tribunal in conducting the proceedings.
- (2) Where the parties fail to make such agreement as referred to in subsection (1), the arbitral tribunal may, subject to the provisions of this Act, conduct the arbitration in such manner as it considers appropriate.
- (3) The power conferred upon the arbitral tribunal includes the power to determine the admissibility, relevance, materiality and weight of any evidence.

32. Place of arbitration.

- (1) The parties shall agree on the place of arbitration.
- (2) 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.

- (3) Notwithstanding the provisions of subsection (1) and (2), the arbitral tribunal may, unless otherwise agreed by the parties, meet at any place it considers appropriate for consultation among its members, for hearing witnesses, experts or the parties, or for inspection of goods, other property or documents.

33. 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.

34. Language.

- (1) The parties shall agree on the language or languages to be used in the arbitral proceedings and failing such agreement, the arbitral tribunal shall determine the language or languages to be used in the proceedings.
- (2) An agreement or determination referred to in subsection (1), 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.
- (3) 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.

35. 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.
- (2) 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.
- (3) 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.

36. 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.

- (2) Notwithstanding subsection (1), 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.
- (3) 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.
- (4) All statements, documents or other information supplied to the arbitral tribunal by one party shall be communicated to the other party.
- (5) Any expert report or evidentiary document on which the arbitral tribunal may rely in making its decision shall be communicated to the parties.

37. 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 section 35(1), the arbitral tribunal shall terminate the proceedings;
- (b) the respondent fails to communicate his statement of defence in accordance with section 35(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.

38. Expert appointed by arbitral tribunal.

- (1) Unless otherwise agreed by the parties, the arbitral tribunal may —
 - (a) appoint one or more experts to report to it on specific issues to be determined by the arbitral tribunal;
 - (b) require a party to give the expert any relevant information or to produce, or to provide access to, any relevant documents, goods or other property for his inspection.
- (2) Unless otherwise agreed by the parties, if a party so requests or if the arbitral tribunal considers it necessary, the expert shall, after delivery of his written or oral report, participate in a hearing where the parties have the opportunity to put questions to him and to present expert witnesses in order to testify on the points at issue.

39. Court assistance in taking evidence.

- (1) The arbitral tribunal or a party with the approval of the arbitral tribunal may request from a competent court of The Bahamas assistance in taking evidence.
- (2) The court may execute the request within its competence and according to its rules on taking evidence.

40. Power to extend time limits.

- (1) Unless the parties otherwise agree, the authority specified in section 8 may extend any time limit agreed by the parties in relation to any matter relating to the arbitral proceedings or specified in this Act as having effect in default of such agreement, including any time limit for commencing arbitral proceedings or for making an award.
- (2) An application for an order under subsection (1) may be made —
 - (a) by any party to the arbitral proceedings on notice to all other parties and to the arbitral tribunal (if already constituted); or
 - (b) by the arbitral tribunal on notice to the parties.
- (3) The authority specified in section 8 shall not exercise its power to extend a time limit unless it is satisfied that —
 - (a) any available recourse to the tribunal, or to any arbitral or other institution or person vested by the parties with power in that regard, has first been exhausted; and
 - (b) a substantial injustice would otherwise occur.
- (4) An order under this section —
 - (a) may be made whether or not the time limit has already expired;
 - (b) may be made on such terms as the authority specified in section 8 thinks fit; and
 - (c) shall not affect the operation of any applicable rule of limitation or prescription.

41. Confidentiality.

- (1) Unless otherwise agreed by the parties, no party may publish, disclose or communicate any information relating to —
 - (a) the arbitral proceedings under the arbitration agreement; or
 - (b) an award made in those arbitral proceedings.
- (2) Nothing in subsection (1) prevents the publication, disclosure or communication of information referred to in that subsection by a party —
 - (a) if the publication, disclosure or communication is made —

- (i) to protect or pursue a legal right or interest of the party; or
- (ii) to enforce or challenge the award referred to in that subsection,
in legal proceedings before a court or other judicial authority in or outside The Bahamas;
- (b) if the publication, disclosure or communication is made 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) if the publication, disclosure or communication is made to a professional or any other adviser of any of the parties.

PART VI - MAKING OF AWARD AND TERMINATION OF PROCEEDINGS

42. 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.
- (2) 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.
- (3) Failing any designation by the parties, the arbitral tribunal shall apply the law determined by the conflict of laws rules which it considers applicable.
- (4) The arbitral tribunal shall decide *ex aequo et bono* or as *amiable compositeur* only if the parties have expressly authorized it to do so.
- (5) 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.

43. Decision-making by panel of arbitrators.

In arbitral proceedings with more than one arbitrator any —

- (a) decision of the arbitral tribunal shall be made, unless otherwise agreed by the parties, by a majority of all its members; and
- (b) questions of procedure may be decided by a presiding arbitrator, if so authorized by the parties or all members of the arbitral tribunal.

44. 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 section 45 and shall —
 - (a) state that it is an award; and
 - (b) have the same status and effect as any other award on the merits of the case.

45. Form and contents of award.

- (1) An award shall —
 - (a) be made in writing;
 - (b) be signed by the arbitrator or arbitrators;
 - (c) 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 section 44;
 - (d) state its date and the place of arbitration as determined in accordance with section 32(1) and (2); and
 - (e) shall be deemed to have been made at that place.
- (2) 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.
- (3) After the award is made, a copy signed by the arbitrators in accordance with subsection (1), shall be delivered to each party.

46. Termination of proceedings.

- (1) The arbitral proceedings are terminated by the final award or by an order of the arbitral tribunal in accordance with subsection (2).
- (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; or
 - (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 sections 46 and 47(4).

47. Correction and interpretation of award and 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 or part of the award.
- (2) 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 and such interpretation shall form part of the award.
- (3) The arbitral tribunal may correct any error of the type referred to in subsection (1)(a) on its own initiative within thirty days of the date of the award.
- (4) 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 and if the arbitral tribunal considers the request to be justified, it shall make the additional award within sixty days.
- (5) The arbitral tribunal may extend, if necessary, the period of time within which it shall make a correction, interpretation or an additional award under subsection (1) or (4).
- (6) The provisions of section 45 shall apply to a correction or interpretation of the award or to an additional award.

PART VII - RECOURSE AGAINST AWARD

48. Application for setting aside as exclusive recourse against arbitral award.

- (1) Recourse against an arbitral award may be made only by an application for setting aside in accordance with subsections (2) and (3).
- (2) An arbitral award may be set aside only if —
 - (a) the party making the application furnishes proof that —

- (i) a party to the arbitration agreement referred to in section 9 was under some incapacity; or
 - (ii) 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 Bahamas; or
 - (iii) 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
 - (iv) the award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or contains decisions on matters beyond the scope of the submission to arbitration, 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
 - (v) 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 Act from which the parties cannot derogate, or, failing such agreement, was not in accordance with this Act; or
- (b) the court finds that —
- (i) the subject-matter of the dispute is not capable of settlement by arbitration under the law of The Bahamas; or
 - (ii) the award is in conflict with the public policy of The Bahamas.
- (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 section 47, 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.

PART VIII - RECOGNITION AND ENFORCEMENT OF AWARDS

49. Recognition and enforcement.

- (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 section and of section 50.
- (2) The party relying on an award or applying for its enforcement shall supply the original award or a copy thereof.
- (3) If the award is not made in an official language of The Bahamas, the court may request the party to supply a translation thereof into such language.

50. Grounds for refusing recognition or enforcement.

- (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 section 9 was under some incapacity; or
 - (ii) 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
 - (iii) 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
 - (iv) 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
 - (v) 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

- (vi) 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 The Bahamas; or
 - (ii) the recognition or enforcement of the award would be contrary to the public policy of The Bahamas.
- (2) If an application for setting aside or suspension of an award has been made to a court referred to in subsection (1)(a)(vi), 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.

51. Rules.

- (1) The Minister may make rules in respect of all or any of the jurisdiction conferred by this Act on the authority specified in section 8.
- (2) The Rules Committee constituted under section 75 of the Supreme Court Act (*Ch. 53*) may make rules in respect of all or any of the jurisdiction conferred by this Act on the court.

SCHEDULE

(section 4)

**TABLE OF CORRESPONDING PROVISIONS OF THE ACT AND THE
UNCITRAL MODEL LAW ON INTERNATIONAL COMMERCIAL
ARBITRATION**

Article of the Model Law	Section of the Act
Chapter I – General Provisions	Part I – General Provisions
	1. Short title and commencement.
1. Scope of Application	3. Scope of application.
2. Definition and rules of interpretation	2. Interpretation.
2a. International origin and general principles.	4. International origin and general principles.
3. Receipt of written communications.	5. Receipt of written communication.
4. Waiver of right to object.	6. Waiver of right to object.
5. Extent of court intervention.	7. Extent of court intervention.
6. Court or other authority for certain functions of arbitration assistance and supervision.	8. Authority for certain functions of arbitration assistance and supervision.
Chapter II – Arbitration Agreement	Part II – Arbitration Agreement
7. Definition and form of arbitration agreement. (<i>Option I</i>)	9. Definition and form of arbitration.
8. Arbitration and substantive claim before court.	10. Arbitration agreement and substantive claim before court.
9. Arbitration agreement and interim measures by court.	11. Arbitration agreement and interim measures by court.
Chapter III – Composition of Arbitral Tribunal	Part III – Composition and Jurisdiction of Arbitral Tribunal
10. Number of arbitrators.	12. Number of arbitrators.
11. Appointment of arbitrators.	13. Appointment of arbitrators.
12. Grounds for challenge.	14. Grounds for challenge.
13. Challenge procedure.	15. Challenge procedure.
14. Failure or impossibility to act.	16. Failure or impossibility to act.
15. Appointment of substitute arbitrator.	17. Appointment of substitute arbitrator.

Chapter IV –Jurisdiction of Arbitral Tribunal	Part IV- Interim Measures and Preliminary Orders
16. Competence of arbitral tribunal to rule on its jurisdiction.	18. Competence of arbitral tribunal to rule on its own jurisdiction.
17. Power of arbitral tribunal to order interim measures.	19. Power of arbitral tribunal to order interim measures.
17A. Conditions for granting interim measures.	20. Conditions for granting interim measures.
17B. Applications for preliminary orders and conditions for granting preliminary orders.	21. Applications for preliminary orders and conditions for granting preliminary orders.
17C. Specific regime for preliminary orders.	22. Specific regimes for preliminary orders.
17D. Modification, suspension and termination.	23. Modification, suspension, termination.
17E. Provision of security.	24. Provision of security.
17F. Disclosure.	25. Disclosure.
17G. Costs and damages.	26. Costs and damages.
17H. Recognition and enforcement of interim measures.	27. Recognition and enforcement.
17I. Grounds for refusing recognition or enforcement.	28. Grounds for refusing recognition or enforcement.
17J. Court ordered interim measures	29. Court ordered interim measures.
Chapter V – Conduct of Arbitral Proceedings	Part V – Conduct of Arbitral Proceedings
18. Equal treatment of parties.	30. Equal treatment of parties.
19. Determination of rules of procedure.	31. Determination of rules of procedure.
20. Place of arbitration.	32. Place of arbitration.
21. Commencement of arbitral proceedings.	33. Commencement of arbitral proceedings.
22. Language	34. Language
23. Statements of claim and defence.	35. Statements of claim and defence.
24. Hearings and written proceedings	36. Hearings and written proceedings.
25. Default of a party	37. Default of party.

26. Expert appointed by arbitral tribunal	38. Expert appointed by arbitral tribunal.
27. Court assistance in taking evidence	39. Court assistance in taking evidence.
Chapter VI – Making of Award and Termination of Proceedings	Part VI – Making of Award and Termination of Proceedings.
	40. Power to extend time limits.
	41. Confidentiality
28. Rules applicable to substance dispute	42. Rules applicable to substance of dispute
29. Decision making by panel arbitrators	43. Decision making by panel of arbitrators
30. Settlement	44. Settlement
31. Form and contents of award	45. Form and contents of award
32. Termination of proceedings	46. Termination of proceedings
33. Correction and interpretation of award; additional award	47. Correction and interpretation of award.
Chapter VII – Recourse Against Award	Part VII – Recourse Against Award
34. Application for setting aside as exclusive recourse against arbitral award	48. Application for setting aside as exclusive recourse against arbitral award
Chapter VIII – Recognition and Enforcement of Awards	Part VIII – Recognition and Enforcement of Awards
35. Recognition and enforcement	49. Recognition and enforcement
36. Grounds for refusing recognition or enforcement	50. Grounds for refusing recognition or enforcement
	51. Rules

OBJECTS AND REASONS

Part I of the Bill addresses the General Provisions of the Bill which include the limiting of the scope of application of the Bill to international commercial arbitration agreements between The Bahamas and any other state as provided by Clause 3.

Clause 4 of the Bill sets forth the international origin of the Bill and stipulates that the general principles of the Model Law are to guide any

questions regarding matters governed by the Act.

Clause 5 of the Bill provides the time at which written communication is deemed to have been received.

Clause 6 of the Bill provides for the waiver of right to object by any party who fails to make use of a right to object before the expiration of the time period to make any such objection.

Clause 7 of the Bill seeks to limit the intervention of any court to the circumstances as set out within the Bill.

Clause 8 of the Bill provides that the Permanent Court of Arbitration shall be the authority for certain functions of arbitration assistance and supervision.

Part II of the Bill makes provisions regarding arbitration agreements and specifically for the definition and form of “arbitration agreement” in clause 9. Clause 10 of the Bill provides that all agreements subject to arbitration brought before a court shall be referred to arbitration and that arbitral proceedings may be commenced or continue while the matter is pending before the court. Clause 11 of the Bill makes provision for the application to the court for interim measure protection.

Part III of the Bill makes provisions for the composition of the arbitral tribunal. Clause 12 of the Bill provides for the parties’ freedom to determine the number of arbitrators and where they fail to make such determination, the default determination of three arbitrators shall be applicable.

Clause 13 of the Bill provides for the requirements and procedure of appointment of arbitrators.

Clause 14 of the Bill provides for the grounds of challenge of arbitrators and Clause 15 provides for the procedure to challenge the appointment of arbitrators.

Clause 16 of the Bill makes provisions for the circumstances where there is a failure or impossibility to act on the part of the arbitrator and Clause 17 provides for the selection and appointment of a substitute arbitrator.

Clause 18 of the Bill makes provisions regarding the competence of an

arbitral tribunal to rule on its own jurisdiction.

Part IV of the Bill provides for interim measures and preliminary orders. Clause 19 of the Bill empowers the arbitral tribunal to grant interim measures, while Clause 20 stipulates the conditions on which the arbitral tribunal shall grant such measures.

Clause 21 of the Bill provides for the application, conditions and granting of preliminary orders. Clause 22 of the Bill seeks to provide for the specific regime for preliminary orders.

Clause 23 of the Bill provides for the modification, suspension or termination of any interim measure or preliminary order.

Clause 24 of the Bill seeks to make provision for the request of security of costs in relation to an application for an interim measure or preliminary order.

Clause 25 of the Bill seeks to make provisions regarding disclosure of information in relation to the interim measure or preliminary order.

Clause 26 of the Bill seeks to provide for the costs and damages associated with court ordered interim measures.

Clause 27 of the Bill seeks to make provisions for the recognition and enforcement of interim measures while clause 28 provides for grounds under which recognition or enforcement of an interim measure may be refused.

Clause 29 of the Bill seeks to make provision for court ordered interim measures.

Part V of the Bill addresses the conduct of arbitral proceedings.

Clause 30 seeks to make provision for the equal treatment of all parties. Clause 31 provides for the determination of the rules of procedure. Clause 32 provides for the place of arbitration and Clause 33 provides for the commencement of arbitral proceedings.

Clause 34 of the Bill seeks to make provisions regarding the determination of the language or languages to be used in arbitral proceedings.

Clause 35 of the Bill makes provisions for the statement of claim and defence while Clause 36 seeks to make provision regarding hearings and written arbitral proceedings.

Clause 37 of the Bill seeks to make provisions regarding the default of a party to act in relation to clause 35 and otherwise.

Clause 38 of the Bill makes provisions for the appointment of an expert by the arbitral tribunal.

Clause 39 of the Bill seeks to provide for the assistance of the Court in taking evidence.

Clause 40 of the Bills seeks to provide for the empowerment of the PCA to extend certain time limits in arbitral proceedings.

Clause 41 of the Bill seeks to make provisions for the confidentiality of arbitral proceedings.

Part VI of the Bill addresses the making of awards and the termination of proceedings.

Clause 42 of the Bill provides for rules applicable to substance of disputes.

Clause 43 of the Bill seeks to make provision for decision making by a panel of arbitrators.

Clause 44 of the Bill makes provisions relating to the settlement of a dispute and clause 45 makes provisions for the form and contents of awards.

Clause 46 of the Bill makes provisions relating to the termination of proceedings and Clause 47 provides for the correction and interpretation of an award or additional award.

Part VII of the Bill makes provisions for recourse against awards.

Clause 48 of the Bill seeks to make provision for the application for the setting aside of an award as the exclusive recourse against arbitral awards.

Part VII of the Bill makes provisions for the recognition and enforcement

of awards specifically under Clause 49.

Clause 50 provides for the grounds under which recognition or enforcement may be refused.

Clause 51 of the Bill seeks to make provisions for the application of Rules for the procedure relative to the conduct of arbitral proceedings.