

Subsequent
21/11/18

ARBITRATION (AMENDMENT) BILL, 2018

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ARBITRATION (AMENDMENT) BILL, 2018

A BILL FOR AN ACT TO AMEND THE ARBITRATION ACT, 2010

Enacted by the Parliament of The Bahamas

1. Short title.

This Act which amends the Arbitration Act (*No. 52 of 2009*) may be cited as the Arbitration (Amendment) Act, 2018.

2. Amendment of section 1 of the principal Act.

Section 1 of the principal Act is amended by the deletion of the words “Arbitration Act” and the substitution of the words “The Bahamas Domestic Arbitration Act”.

3. Amendment of section 4 of the principal Act.

Section 4 of the principal Act is repealed and replaced as follows—

“4. Application.

This Act shall apply to any arbitration where the place of arbitration is The Bahamas and where the International Commercial Arbitration Act does not apply to that arbitration.”

4. Amendment of section 18 of the principal Act.

Section 18 of the principal Act is amended by the insertion, immediately after the words “section 19”, of the words “and in the absence of any clause on confidentiality of information and the prohibition on the disclosure of such information,”.

5. Insertion of new section 19A into the principal Act.

The principal Act is amended by the insertion immediately after section 19 of the following new section —

“19A. Improper disclosure of confidential information.

- (1) Where a party knowingly and unlawfully discloses confidential information, that party is liable to a penalty in damages to be determined by the arbitral tribunal and payable to the other party or parties.
- (2) Where an arbitrator knowingly and unlawfully discloses confidential information—
 - (a) he shall not have the benefit of immunity under section 40 and is deemed to have acted in bad faith; and
 - (b) the parties may—
 - (i) seek to revoke the authority of the offending arbitrator in accordance with section 34 or 35 as the circumstances may require; and
 - (ii) retain and withhold any arbitral fees due to him in whole or in part.”.

6. Repeal and replacement of sections 89 – 90 of the principal Act.

Sections 89 – 90 of the principal Act are repealed and replaced as follows —

“89. Restriction on appeal of award.

The court shall not have jurisdiction to confirm, vary, set aside or remit an award on an arbitration agreement except where so provided in this Act.

90. 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 section.
- (2) An arbitral award may be set aside by the court, in whole or in part, only if—
 - (a) the party making the application furnishes proof that—
 - (i) a party to the arbitration agreement referred to in section 6 was under some incapacity;
 - (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;
 - (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;

- (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 79, 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.”

7. Repeal of sections 91 and 92 of the principal Act.

The principal Act is amended by the repeal of sections 91 and 92 and the renumbering of the subsequent sections in the appropriate order.

8. Amendment of section 93 of the principal Act.

Section 93 of the principal Act is amended in subsection (1) by the deletion of the words “89,” and “or 91”.

9. Amendment of section 94 of the principal Act.

Subsection 2 of section 94 of the principal Act is repealed and replaced as follow

“(2) He also has the same right as a party to the arbitral proceedings to challenge an award by an application under 90 to set aside the award.”

OBJECTS AND REASONS

Clause 2 of the Bill seeks to rename the Arbitration Act as “The Bahamas Domestic Arbitration Act, 2018”.

Clause 3 of the Bill seeks to establish the scope of application of the Act as domestic.

Clause 4 of the Bill seeks to provide that in the absence of anything to the contrary in the arbitration agreement, that the arbitration proceedings are confidential and that neither party nor the arbitral tribunal are permitted to disclose any confidential information.

Clause 5 of the Bill seeks to provide offences for the improper disclosure of information by a party to the proceedings or by an arbitrator.

Clause 6 of the Bill seeks to provide for a series of provisions on recourse against an award.

Clause 7 of the Bill seeks to repeal certain provisions on the challenge of awards.

Clause 8 of the Bill seeks to amend section 93 to reflect the amendment made in clause 6.

Clause 9 of the Bill seeks to amend section 94 of the Act to make provisions for parties to an arbitration agreement who are not to the arbitral proceedings, the right to apply for the setting aside of an arbitral award.

