



**Arbitration Act of
Bermuda - United Kingdom
(Bermudes - Royaume-Uni)**

**BERMUDA
1993 : 29**

**BERMUDA INTERNATIONAL
CONCILIATION AND ARBITRATION
ACT 1993**

[29 June 1993]

WHEREAS it is expedient to provide for the conduct of international commercial conciliations and arbitrations and the recognition and enforcement of foreign arbitral awards in Bermuda and for matters connected therewith;

[Words of enactment omitted]

SHORT TITLE

1

This Act may be cited as the Bermuda International Conciliation and Arbitration Act 1993.

PART I PRELIMINARY

Interpretation; Schedules 1, 2 and 3

2

In this Act, unless the context otherwise requires —

"arbitral award" has the same meaning as in the New York Convention;

"arbitral tribunal" means a sole arbitrator or a panel of arbitrators;

"arbitration agreement" has the same meaning as in article 7(1) of the Model Law; "conciliation" includes mediation;

"Conciliation Rules" means the UNCITRAL Conciliation Rules adopted by the United Nations Commission on International Trade Law on 23 July 1980, the English text of which is set out in Schedule 1;

"Convention award" means an award to which Part IV applies, namely, an award made in pursuance of an arbitration agreement in a State or territory other than Bermuda, which is a party to the New York Convention;

"Court" means the Supreme Court or the Court of Appeal of Bermuda;

"dispute" includes a difference;

"international arbitration agreement" means an arbitration agreement pursuant to which an arbitration is, or would if commenced be, international within the meaning of article 1(3) of the Model Law;

"Model Law" means the UNCITRAL Model Law on International Commercial Arbitration adopted by the United Nations Commission on International Trade Law on 21 June 1985, the English text of which is set out in Schedule 2;

"the New York Convention" means the Convention on the Recognition and Enforcement of Foreign Arbitral Awards adopted by the United Nations Conference on International Commercial Arbitration on 10 June 1958 the English text of which is set out in Schedule 3.

PART II CONCILIATION

Conciliation

3

Parties to an international arbitration agreement are hereby encouraged to resolve any disputes between them through conciliation.

Application of this Part

4

The provisions of this Part shall apply to the extent that the parties have not otherwise agreed in writing.

Appointment of conciliator

5

(1) The parties to an international arbitration agreement may appoint or permit an arbitral tribunal or other third party to appoint one or more persons to serve as the conciliator or conciliators (hereafter referred to as "the conciliator") who shall assist the parties in an independent and impartial manner in their attempt to reach an amicable settlement of their dispute.

(2) Where the parties have agreed in writing for the appointment of a conciliator by an institution or a person who is not one of the parties and that institution or person refuses to make the appointment or does not make the appointment within the time specified in the agreement, or if no time is specified, within a reasonable time not exceeding twenty-eight days of being notified of the existence of the dispute, any party to the agreement may by notice in writing require the institution or person in default to appoint a conciliator and shall forthwith give a copy of the notice to the other parties to the agreement; if the appointment is not made within seven clear days after giving the notice to the institution or person, the Court may on the application of any party to the agreement appoint a conciliator (in respect of which decision there is no right of appeal) who shall have the like powers to act in the conciliation proceedings as if he had been appointed in accordance with the terms of the agreement.

Guide for conciliator

6

The conciliator shall be guided by principles of objectivity, fairness and justice giving consideration to, among other things, the rights and obligations of the parties, the usages of the trade concerned and the circumstances surrounding the dispute including any previous business practices between the parties.

Conduct of conciliation proceedings

7

(1) The conciliator may conduct the conciliation proceedings in such manner

as the conciliator considers appropriate, taking into account the circumstances of the case, the wishes of the parties and the desirability of a speedy settlement of the dispute.

(2) The conciliator may, unless otherwise agreed in writing by the parties to the agreement, meet at any place designated by the conciliator for discussions with one or more parties, for the hearing of witnesses, experts or parties, for inspection of documents, goods or other property or for consultation with the conciliator and need not be in Bermuda when signing any recommendation or other communication to the parties or any settlement agreement.

(3) Except as otherwise provided in this Act, other provisions of this Act, the Evidence Act 1905 [title 8 item 10] and the Supreme Court Act 1905 [title 8 item 1] and the rules made thereunder shall not apply to conciliation proceedings under this Act.

(4) For the purposes of subsection (2)—

(a) discussions with one or more parties;

(b) the hearing of witnesses, experts or parties;

(c) the inspection of documents, goods or other property; and

(d) consultation with the conciliator,

may, as far as is practicable, be conducted by electronic means and the conciliator and one or more of the parties are not required to be physically present in the same place at any time.

[Section 7(4) added by 1999:26 s.33 & Sch effective 4 October 1999]

Draft conciliation settlement

8

At any time during the proceedings, the conciliator may prepare a draft conciliation settlement which may include the assessment and apportionment of costs

between the parties, and send copies to the parties, specifying the time within which they must signify their approval.

Acceptance of settlement not required
9

No party may be required to accept any settlement proposed by the conciliator.

Admissibility of evidence and nondisclosure in other proceedings
10

(1) Unless otherwise agreed in writing by the parties, it shall be an implied term of the written agreement to conciliate that the parties undertake not to rely on or introduce as evidence in any arbitral or judicial proceedings in any jurisdiction, whether or not such proceedings relate to the dispute that is the subject of the conciliation proceedings—

(a) views expressed or suggestions made by any party in respect of possible settlement of the dispute;

(b) admissions made by any party in the course of the conciliation proceedings;

(c) proposals made by the conciliator;

(d) the fact that the other party had indicated willingness to accept all, or part, of a proposal for settlement made by the other party, or by the conciliator.

(2) Without limiting the obligations created by subsection (1), evidence of anything said or of any admission made in relation to any or all of the matters referred to in subsection (1)(a) to (d) (inclusive) is not admissible in evidence in any arbitration conducted pursuant to Part III or judicial proceeding in Bermuda, and disclosure of any such evidence shall not be compelled in any civil action in Bermuda in which, pursuant to the law, testimony may be compelled to be given.

(3) Where evidence is offered in contravention of this section, the arbitration tribunal or the Court shall make any order which it considers to be appropriate to deal with the matter,

including, without limitation, orders restricting the introduction of evidence, or dismissing the case without prejudice.

Agreement to stay judicial or arbitral proceedings

11

Unless the parties otherwise agree in writing, the written agreement of the parties to submit a dispute to conciliation shall be an agreement between or among those parties to stay all judicial or arbitral proceedings from the commencement of conciliation until the termination of conciliation proceedings.

Termination of conciliation proceedings
12

The conciliation proceedings may be terminated as to all parties in any of the following cases:

(a) in the case where the parties have agreed in writing that the conciliation shall be conducted in accordance with the Conciliation Rules, the conciliation proceedings shall be terminated in accordance with Article 15 of those Rules;

(b) in the case where the parties have not agreed in writing that the Conciliation Rules shall apply, unless a contrary intention appears in their written agreement or in any rules which they agree in writing shall apply, it shall be an implied term of an agreement to participate in conciliation that in the event of the conciliation proceedings failing to produce a settlement acceptable to the parties within three months or such longer period as the parties may agree to, of the date of the appointment of the conciliator, or where he is appointed by name in the agreement, of the receipt by him of written notification of the existence of a dispute, the conciliation proceedings shall thereupon terminate;

(c) in the case where there is a written declaration of the conciliator, after consultation with the parties, to the effect that further efforts at conciliation are no longer justified, conciliation proceedings shall terminate on the date of the declaration;

(d) in the case where there is a written declaration of the parties addressed to the conciliator to the effect that the conciliation proceedings are terminated, the conciliation proceedings shall terminate on the date of the declaration;

(e) in the case where there is the signing of a settlement agreement by all of the parties, conciliation proceedings shall terminate on the date of the agreement.

Termination of conciliation proceedings as to particular parties

13

The conciliation proceedings may be terminated as to particular parties by either of the following:

(a) a written declaration of a party to the other party and the conciliator, if appointed, to the effect that the conciliation proceedings shall be terminated as to that particular party, on the date of the declaration;

(b) the signing of a settlement agreement by some of the parties, on the date of the agreement.

Conciliator as arbitrator, ineligibility for appointment etc.

14

(1) No person who has served as conciliator may be appointed as an arbitrator for, or take part in, any arbitral or judicial proceedings in the same dispute unless all parties agree in writing to such participation or the rules agreed for conciliation or arbitration so provide.

(2) Where the parties have agreed in writing that a person appointed as a conciliator shall act as an arbitrator, in the event of the conciliation proceedings failing to produce a settlement acceptable to the parties no objection shall be taken to the appointment of such person as an arbitrator, or to his conduct of the arbitration proceedings or to any award, solely on the ground that he had acted previously as a conciliator in connection with some or all of the matters referred to arbitration; but if such person declines

to act as an arbitrator, any other person appointed as an arbitrator shall not be required first to act as a conciliator unless the parties have otherwise agreed in writing.

Non-waiver of rights or remedies by submission to conciliation

15

By submitting to conciliation, no party has waived any rights or remedies which that party would have had if conciliation had not been initiated, other than those set forth in any settlement agreement which results from the conciliation.

Costs

16

(1) Upon termination of the conciliation proceedings, the conciliator shall fix the costs of the conciliation and give written notice thereof to the parties.

(2) Costs shall be borne equally by the parties unless the settlement agreement provides for a different apportionment and all other expenses incurred by a party shall be borne by that party.

(3) In this section "costs" means—

(a) a reasonable fee to be paid to the conciliator;

(b) the travel and other reasonable expenses of the conciliator;

(c) the travel and other reasonable expenses of witnesses requested by the conciliator with the consent of the parties;

(d) the cost of any expert advice requested by the conciliator with the consent of the parties;

(e) the cost of any court;

(f) the administration fees and expenses of an arbitral institution.

No consent to court jurisdiction upon failure of conciliation

17

Neither the request for conciliation, the consent to participate in the conciliation

proceedings, the participation in such proceedings, nor the entering into a conciliation agreement or settlement shall constitute consent to the jurisdiction of any court in Bermuda in the event conciliation fails except that this section does not affect the jurisdiction of any court in Bermuda with respect to any settlement agreement resulting from a conciliation.

Immunity of participants in conciliation

18

Neither the conciliator, the parties, nor their representatives nor any assistant nor any witness or expert shall be subject to service of process on any civil matter relating to the dispute in respect of the conciliation under this Act while present in Bermuda for the purpose of arranging for or participating in conciliation pursuant to this Act.

Non-liability of conciliator

19

No person who serves as a conciliator shall be held liable in an action for damages resulting from any act or omission in his capacity as a conciliator in connection with any conciliation proceeding conducted under this Act except that such person may be liable for the consequences of conscious and deliberate wrongdoing.

Settlement agreements

20

If the parties to an arbitration agreement reach agreement by means of conciliation or otherwise in settlement of their dispute and enter into an agreement in writing containing the terms of settlement (the "settlement agreement") the settlement agreement shall, for the purposes of its enforcement in Bermuda, be treated as an award on an arbitration agreement and may, by leave of the Court, be enforced in the same manner as a judgment or order to the same effect and, where leave is so given, judgment may be entered in terms of the agreement, pursuant to section 48.

Representation in conciliation proceedings

21

(1) Where, in accordance with this Act and with the written agreement of the parties or at the request in writing of a party, as the case may be, conciliation proceedings are conducted by way of oral hearings for the presentation of evidence or for oral argument, or conciliation proceedings are conducted on the basis of documents or other materials, the following provisions shall apply.

(2) A party may appear in person before conciliation proceedings and may be represented:

(a) by himself;

(b) by a duly qualified legal practitioner from any legal jurisdiction of that party's choice; or

(c) by any other person of that party's choice.

(3) A legal practitioner or a person, referred to in subsection (2)(b) or (c) respectively, while acting on behalf of a party to conciliation proceedings to which this Part applies shall not thereby be taken to have breached any law regulating admission to, or the practice of, the profession of the law within Bermuda in which the proceedings are conducted.

(4) Where, subject to the agreement of the parties, conciliation proceedings are conducted on the basis of documents and other materials, such documents and materials may be prepared and submitted by any legal practitioner or person who would, under subsection (2), be entitled to appear before the conciliation proceedings, and, in such a case, subsection (3) shall apply with the same force and effect to such legal practitioner or person.

(5) Conciliation proceedings need not be conducted by way of oral hearing or oral argument, or conducted on the basis of documents or other materials, and may, at the option of the parties, be conducted by electronic means, including electronic exchange of documents or by video conference.

[Section 21(5) added by 1999:26 s.33 & Sch effective 4 October 1999]

PART III INTERNATIONAL ARBITRATION

Interpretation

22

Except so far as the contrary intention appears, a word or expression that is used both in this Part and in the Model Law (whether or not a particular meaning is given to it by the Model Law) has, in this Part, the same meaning as it has in the Model Law.

Model Law to have force of law

23

(1) Subject to this Part, the Model Law has the force of law in Bermuda.

(2) In the Model Law—

(a) "State" means Bermuda and any foreign country;

(b) "this State" means Bermuda;

(c) "different States" shall be treated as including a reference to Bermuda and any other place;

(d) "any agreement in force between this State and any other State or States" shall be treated as being a reference to any Convention or Treaty that binds Bermuda and any other place that has the force of law in Bermuda.

Interpretation of Model Law—use of extrinsic material

24

For the purposes of interpreting the Model Law, reference may be made to the documents of—

(a) the United Nations Commission on International Trade Law, including but not limited to, documents of its Secretariat submitted to the Commission and the Summary Records of sessions of the Commission; and

(b) the Commission's working group for the preparation of the Model Law relating to the Model Law.

Court specified for purposes of Article 6 of Model Law

25

(1) The courts that are competent to perform the functions referred to in Article 6 of the Model Law are as follows:

(a) for the purposes of Articles 11(3), 11(4), 13(3), 14 and 16(3) of the Model Law, the Supreme Court and there is no right of appeal from a decision of that court;

(b) for the purposes of Article 34(2) of the Model Law, the Court of Appeal and there is no right of appeal from a decision of that court.

(2) Notwithstanding section 12 of the Court of Appeal Act 1964 (jurisdiction of the Court of Appeal) the Court of Appeal shall have jurisdiction to hear and determine an application made to it pursuant to Article 34(2) of the Model Law.

[Section 25 amended by 1994:49 effective 28 December 1994]

Orders under Article 17 of the Model Law

26

Chapter VIII of the Model Law applies to an order by an arbitral tribunal under Article 17 of the Model Law requiring a party—

(a) to take an interim measure of protection; or

(b) to provide security in connection with a measure referred to in paragraph (a),

as if any reference in that Chapter to an arbitral award or an award were a reference to such an order.

Articles 34 and 36 of Model Law—public policy

27

Without limiting the generality of Articles 34(2)(b)(ii) and 36(1)(b)(ii) of the Model Law, it is declared, for removing doubts, that, for the purposes of Articles 34(2)(b)(ii) and 36(1)(b)(ii), an

award is in conflict with the public policy of Bermuda if the making of the award was induced or affected by fraud or corruption.

Chapter VIII of Model Law not to apply in certain cases

28

Where, but for this section, both Chapter VIII of the Model Law and Part IV of this Act would apply in relation to an award, Chapter VIII of the Model Law does not apply in relation to the award.

Settlement of dispute otherwise than in accordance with Model Law

29

Where the parties to an arbitration agreement have, whether in the agreement or in any other document in writing, agreed that any dispute that has arisen or may arise between them is not to be settled in accordance with the Model Law, the Model Law does not apply in relation to the settlement of that dispute and in such a case unless otherwise agreed in writing by the parties the Arbitration Act 1986 [Title 8 Item 75] shall apply.

Failure of an arbitrator to participate in proceedings

30

(1) Any resignation by an arbitrator shall be addressed to the arbitral tribunal and shall not be effective unless the arbitral tribunal determines that there are sufficient reasons to accept the resignation, and if the arbitral tribunal so determines the resignation becomes effective on the date designated by the arbitral tribunal.

(2) If an arbitrator on a three-person or five-person arbitral tribunal fails to participate in the arbitration, the other arbitrators have, unless the parties otherwise agree, the power in their sole discretion to continue the arbitration and to make any decision, ruling or award, notwithstanding the non-participation of that arbitrator.

(3) In determining whether to continue the arbitration or to render any decision, ruling, or award without the participation of

an arbitrator, the other arbitrators shall take into account the stage of the arbitration, the reason, if any, expressed by the arbitrator for his non-participation and such other matters as they consider appropriate in the circumstances of the case.

(4) In the event of the other arbitrators determining not to continue the arbitration without the non-participating arbitrator, the arbitral tribunal shall declare the office vacant and a substitute arbitrator shall be appointed pursuant to Article 15 of the Model Law, unless the parties agree on a different method of appointment.

Interest

31

(1) Unless the parties to an arbitration agreement have (whether in the agreement or in any other document in writing) otherwise agreed, where an arbitral tribunal determines to make an award for the payment of money (whether on a claim for a liquidated or an unliquidated amount), the tribunal may, subject to subsections (2) and (4), include in the sum for which the award is made interest, at such reasonable rate as the tribunal determines on the whole or any part of the money, for the whole or any part of the period between the date on which the cause of action arose and the date on which the award is made.

(2) Subsection (1) does not apply in relation to any amount upon which interest is payable as of right whether by virtue of an agreement or otherwise.

(3) Unless the parties to an arbitration agreement have (whether in the agreement or in any other document in writing) otherwise agreed, where an arbitral tribunal makes an award for the payment of money, the tribunal may, subject to subsection (4) direct that interest, at such reasonable rate as the tribunal determines, is payable, from the day of the making of the award or such later day as the tribunal specifies, on so much of the money as is from time to time unpaid and any interest that so accrues shall form part of the award.

(4) Where interest is included in the sum referred to in subsection (1) or payable pursuant to subsection (3) the following applies:

(a) if the award is made in a currency other than the currency of Bermuda, the Interest Credit Charges (Regulations) Act 1975 [title 17 item 22] does not apply;

(b) if the award is made in the currency of Bermuda, the Interest Credit Charges (Regulations) Act 1975 [title 17 item 22] applies.

Costs

32

(1) Unless the parties to an arbitration agreement have (whether in the agreement or in any other document in writing) otherwise agreed, the costs of an arbitration, including—

(a) fees and expenses of the arbitrator and the costs of expert advice and of other assistance required by the arbitral tribunal;

(b) legal fees and expenses of the parties, their representatives, witnesses and expert witnesses;

(c) administration fees and expenses of an arbitral institution; and

(d) any other expenses incurred in connection with the arbitral proceedings,

shall be in the discretion of the arbitral tribunal.

(2) Unless the parties to an arbitration agreement have (whether in the agreement or in any other document in writing) otherwise agreed, an arbitral tribunal may in making an award—

(a) direct to whom, by whom, and in what manner, the whole or any part of the costs that it awards shall be paid; and

(b) fix the amount of costs to be so paid or any part of those costs.

Immunity of participants in arbitration

33

No arbitrator, party, party representative or assistant, witness or expert shall be subject to service of process on any civil matter relating to the dispute in respect of the arbitration under this Act while present in Bermuda for the purpose of arranging for or participating in arbitration pursuant to this Act.

Non-liability of arbitrator

34

An arbitrator is not liable for any act or omission in the capacity of arbitrator in connection with any arbitration conducted under this Act except that he may be liable for the consequences of conscious and deliberate wrongdoing.

Conduct of proceedings, witnesses, etc.

35

(1) Unless a contrary intention is expressed therein, every arbitration agreement shall, where such a provision is applicable to the arbitration, be treated as containing a provision that the arbitral tribunal has power to examine witnesses on oath or affirmation and also power to administer oaths to, or take the affirmations of, witnesses in the arbitration.

(2) Subject to section 10, an arbitral tribunal may receive any evidence that the tribunal considers relevant and, unless the parties have otherwise agreed, shall not be bound by rules of evidence applicable in Bermuda.

(3) Any party to an arbitration under an arbitration agreement may sue out a writ of subpoena ad testificandum or a writ of subpoena duces tecum but no person shall be compelled under any such writ to produce any document which he could not be compelled to produce on the trial of an action, and the Court may order that a writ of subpoena ad testificandum or of subpoena duces tecum shall issue to compel the attendance before an arbitral tribunal of a witness wherever he may be within Bermuda.

(4) The Court may also order that a writ of habeas corpus shall issue to bring up a prisoner for examination before an arbitral tribunal.

(5) The Court shall have, for the purpose of and in relation to an arbitration, the same power of making orders in respect of—

(a) examination on oath of any witness before an officer of the Court or any other person, and the issue of a commission or request for the examination of a witness out of the jurisdiction;

(b) the preservation, interim custody or sale of any goods which are the subject matter of the arbitration;

(c) securing the amount in dispute in the arbitration;

(d) the detention, preservation or inspection of any property or thing which is the subject of the arbitration or as to which any question may arise therein, and authorizing for any of the purposes aforesaid any person to enter upon or into any land or building in the possession of any party to the arbitration, or authorizing any samples to be taken or any observation to be made or experiment to be tried which may be necessary or expedient for the purpose of obtaining full information or evidence; and

(e) interim injunctions or the appointment of a receiver,

as it has for the purpose of and in relation to an action or matter in the Court except that nothing in this subsection shall be taken to prejudice any power which may be vested in an arbitrator of making orders with respect to any of the matters aforesaid.

Interim, interlocutory or partial awards

36

Unless a contrary intention is expressed therein, it shall be an implied term in every arbitration agreement that the arbitral tribunal may, if the tribunal thinks fit, make an interim, interlocutory or partial award,

and any reference in this Part to an award includes a reference to an interim, interlocutory or partial award.

Representation in proceedings

37

(1) Where, in accordance with the Model Law, with the agreement of the parties or at the request of a party, as the case may be, the arbitral tribunal holds oral hearings for the presentation of evidence or for oral argument, or conducts proceedings on the basis of documents or other materials, the following provisions shall, without prejudice to the Model Law, apply.

(2) A party may appear in person before an arbitral tribunal and may be represented—

(a) by himself;

(b) by a duly qualified legal practitioner from any legal jurisdiction of that party's choice; or

(c) by any other person of that party's choice.

(3) A legal practitioner or a person, referred to in paragraphs (2)(b) or (c) respectively, while acting on behalf of a party to an arbitral proceeding to which this Part applies, including appearing before an arbitral tribunal, shall not thereby be taken to have breached any law regulating admission to, or the practice of, the profession of the law within Bermuda.

(4) Where, subject to the agreement of the parties, an arbitral tribunal conducts proceedings on the basis of documents and other materials, such documents and materials may be prepared and submitted by any legal practitioner or person who would, under subsection (2), be entitled to appear before the tribunal, and, in such a case, subsection (3) shall apply with the same force and effect to such a legal practitioner or person.

(5) For the purposes of subsections (1) and (2), proceedings conducted by way of

oral hearings for the presentation of evidence or for oral argument, or conducted on the basis of documents or other materials, may be conducted by appropriate electronic means.

[Section 37(5) added by 1999:26 s.33 & Sch effective 4 October 1999]

Transitional

38

This Part does not affect any arbitration commenced, within the meaning of Article 21 of the Model Law, before the operative date of this Act, but applies to an arbitration so commenced on or after the operative date of this Act under an agreement made before the operative date of this Act.

PART IV ENFORCEMENT OF CONVENTION AWARDS

Effect this Part

39

This Part shall have effect with respect to the enforcement of Convention awards.

Effect of Convention awards

40

(1) A Convention award shall, subject to this Part, be enforceable in Bermuda either by action or may by leave of the Court, be enforced in the same manner as a judgment or order to the same effect and, where leave is so given, judgment may be entered in terms of the award.

(2) Any Convention award which would be enforceable under this Part shall be treated as binding for all purposes on the persons as 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 any legal proceedings in Bermuda and any reference in this Part to enforcing a Convention award shall be construed as including references to relying on such an award.

Evidence

41

The party seeking to enforce a Convention award must produce—

(a) the duly authenticated original award or a duly certified copy of it;

(b) the original arbitration agreement or a duly certified copy of it; and

(c) where the award or agreement is in a foreign language, a translation of it certified by an official or sworn translator or by a diplomatic or consular agent.

Refusal of enforcement

42

(1) Enforcement of a Convention award shall 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 him) under some incapacity; or

(b) that the arbitration agreement was not valid under the law to which the parties subjected it or, failing any indication thereon, under the law of the country where the award was made; or

(c) that he was not given proper notice of the appointment of the arbitrator or of the arbitration proceedings or was otherwise unable to present his case; or

(d) subject to subsection (4), that the award deals with a difference 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; or

(e) that the composition of the arbitral authority or the arbitral procedure was not in accordance with the agreement of the parties or, failing such agreement, with the law of the country where the arbitration took place; or

(f) that the award has not yet become binding on the parties, or 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 the award is in respect of a matter which is not capable of settlement by arbitration, or if 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 it contains decisions on matters submitted to arbitration which can be separated from those on matters not so submitted.

(5) Where an application for the setting aside or suspension of a Convention award has been made to such a competent authority as is mentioned in subsection (2)(f), the Court before which enforcement of the award is sought may, if it thinks fit, adjourn the proceedings and may, on the application of the party seeking to enforce the award, order the other party to give security.

Saving

43

Nothing in this Part shall prejudice any right to enforce or rely on an award under this Part or otherwise.

Order to be conclusive evidence

44

A certificate purporting to be issued under the hand of the Deputy Governor to the effect that Her Majesty has by Order in Council declared that any State specified in the certificate is a party to the New York Convention shall be conclusive evidence in the proceedings that that State is a party to that Convention on the date of the certificate.

PART V GENERAL

Hearing of proceedings

45

Subject to the Constitution, proceedings in any court under this Act shall on the application of any party to the proceedings be heard otherwise than in open court.

Restrictions on reporting of proceedings

46

(1) This section applies to proceedings in any court under this Act heard otherwise than in open court.

(2) A court in which proceedings to which this section applies are being heard shall, on the application of any party to the proceedings, give directions as to what information, if any, relating to the proceedings may be published.

(3) A court shall not give a direction under subsection (2) permitting information to be published unless—

(a) all parties to the proceedings agree that such information may be published; or

(b) the court is satisfied that the information, if published in accordance with such directions as it may give, would not reveal any matter, including the identity of any party to the proceedings, that any party to the proceedings reasonably wishes to remain confidential.

(4) Notwithstanding subsection (3), where a court gives a judgment in respect of proceedings to which this section applies and considers that judgment to be of major legal interest, it may direct that reports of the judgment may be published in law reports and professional publications but, if any party to the proceedings reasonably wishes to conceal any matter, including the fact that he was such a party, the court shall—

(a) give directions as to the action that shall be taken to conceal that matter in the law reports and the professional publications; and

(b) if it considers that a report published in accordance with directions given under paragraph (a) would be likely to reveal

that matter, direct that no law report or professional publication shall be published until after the end of such period, not exceeding ten years, as it considers appropriate.

Costs in respect of unqualified person

47

Section 31 of the Bermuda Bar Act 1974 [title 30 item 3], (which provides that no costs in respect of anything done by an unqualified person acting as a barrister and attorney shall be recoverable in any action, suit or matter) shall not apply to the recovery of costs directed by an award under this Act.

Enforcement of award

48

An award on an arbitration agreement may, by leave of the Court, be enforced in the same manner as a judgment or order to the same effect and, where leave is so given, judgment may be entered in terms of the award.

Crown to be bound

49

This Act except Part IV binds the Crown.

Amends Arbitration Act 1986

50

The Arbitration Act 1986 [title 8 item 75] is amended as follows:

- (a) in section 2, repeal the definition of the expressions "Convention award" and "the New York Convention";
- (b) repeal Part IV;
- (c) repeal the First Schedule;
- (d) delete the heading "SECOND SCHEDULE" and substitute therefor the heading "SCHEDULE".

Amends Limitation Act 1984

51

The Limitation Act 1984 [title 8 item 42] is amended as follows:

- (a) in the preamble, insert immediately after the word "arbitrations" the words ", to provide for any law relating to the limitation of actions to be treated, for the purposes of cases in which effect is given to foreign law or to determination by

foreign courts, as a matter of substance rather than as a matter of procedure";

- (b) insert immediately above the heading "PART III" the following Part:

PART IIA

FOREIGN LIMITATION PERIODS

Application of foreign limitation law

34A

(1) Subject to the following provisions of this Part, where in any action or proceedings in a court in Bermuda the law of any other country falls (in accordance with rules of private international law applicable by any such court) to be taken into account in the determination of any matter—

(a) the law of that other country relating to limitation shall apply in respect of that matter for the purposes of the action or proceedings; and

(b) except where that matter falls within subsection (2), the law of Bermuda relating to limitation shall not so apply.

(2) A matter falls within this subsection of it is a matter in the determination of which both the law of Bermuda and the law of some other country fall to be taken into account.

(3) The law of Bermuda shall determine for the purposes of any law applicable by virtue of subsection (1)(a) whether, and the time at which, proceedings have been commenced in respect of any matter; and, accordingly, section 36 applies in relation to time limits applicable by virtue of subsection (1)(a) as it applies in relation to time limits under this Act.

(4) A court in Bermuda, in exercising under subsection (1)(a) any discretion conferred by the law of any other country, shall so far as practicable exercise that discretion in the manner in which it is exercised in comparable cases by the courts of that other country.

(5) In this section "law", in relation to any country, shall not include rules of private

international law applicable by the courts of that country or, in the case of Bermuda, this Part.

Exceptions to 34A

34B

(1) In any case in which the application of section 34A would to any extent conflict (whether under subsection (2) or otherwise) with public policy, that section shall not apply to the extent that its application would so conflict.

(2) The application of section 34A in relation to any action or proceedings shall conflict with public policy to the extent that its application would cause undue hardship to a person who is, or might be made, a party to the action or proceedings.

(3) Where, under a law applicable by virtue of section 34A(1)(a) for the purposes of any action or proceedings, a limitation period is or may be extended or interrupted in respect of the absence of a party to the action or proceedings from any specified jurisdiction or country, so much of that law as provides for the extension or interruption shall be disregarded for those purposes.

Foreign judgments on limitation points

34C

Where a court in any country outside Bermuda has determined any matter wholly or partly by reference to the law of that or any other country (including Bermuda) relating to limitation, then, for the purposes of the law relating to the effect to be given in Bermuda to that determination, that court shall, to the extent that it has so determined the matter, be deemed to have determined it on its merits.

Meaning of law relating to limitation

34D

(1) Subject to subsection (3), references in this Part to the law of any country (including Bermuda) relating to limitation shall, in relation to any matter, be construed as references to so much of the relevant law of that country as (in any

manner) makes provision with respect to a limitation period applicable to the bringing of proceedings in respect of that matter in the courts of that country and shall include—

(a) references to so much of that law as relates to, and to the effect of, the application, extension, reduction or interruption of that period; and

(b) a reference, where under that law there is no limitation period which is so applicable, to the rule that such proceedings may be brought within an indefinite period.

(2) In subsection (1) "relevant law", in relation to any country, means the procedural and substantive law applicable, apart from any rules of private international law, by the courts of that country.

(3) References in this Part to the law of Bermuda relating to limitation shall not include the rules by virtue of which a court may, in the exercise of any discretion, refuse equitable relief on the grounds of acquiescence or otherwise; but, in applying those rules to a case in relation to which the law of any country outside Bermuda is applicable by virtue of section 34A(1)(a) (not being a law that provides for a limitation period that has expired), a court in Bermuda shall have regard, in particular, to the provisions of the law that is so applicable.

Application of this Part to arbitrations

34E

The references to any other limitation enactment in section 35 include references to sections 34A, 34B and 34D; and accordingly, in section 35(5), the reference to the time prescribed by a limitation enactment has effect for the purposes of any case to which section 34A applies as a reference to the limitation period, if any, applicable by virtue of section 34A.

Part applies to Crown

34F

(1) This Part applies in relation to any action or proceedings by or against the Crown as it applies in relation to actions and proceedings to which the Crown is not a party.

(2) For the purposes of this section references to an action or proceedings by or against the Crown include references to any action or proceedings by or against any Government department or any officer of the Crown as such or any person acting on behalf of the Crown.

Transitional provision

34G

Nothing in this Part—

(a) affects any action, proceedings or arbitration commenced in Bermuda before the date of the coming into operation of this Part; or

(b) applies in relation to any matter if the limitation period which, apart from this Part, would have been applied in respect of that matter in Bermuda expired before the date of the coming into operation of this Part."

**SCHEDULE 1
Section 2**

UNCITRAL CONCILIATION RULES

(as adopted by the United Nations Commission on International Trade Law on 23 July 1980)

[...]

**SCHEDULE 2
Section 2**

**UNCITRAL MODEL LAW ON
INTERNATIONAL COMMERCIAL
ARBITRATION**

(as adopted by the united nations commission on international trade law on 21 june 1985)

[...]

SCHEDULE 3 Section 2

United nations conference on international commercial arbitration

**CONVENTION ON THE RECOGNITION
AND ENFORCEMENT OF FOREIGN
ARBITRAL AWARDS, DONE AT NEW
YORK, ON 10 JUNE 1958**

[...]

[Amended by
1994 : 49
1999 : 26]