

*Legal Supplement Part A to the "Trinidad and Tobago Gazette", Vol. 62,
No. 107, 13th July, 2023*

Third Session Twelfth Parliament Republic of
Trinidad and Tobago



REPUBLIC OF TRINIDAD AND TOBAGO

Act No. 11 of 2023

[L.S.]

AN ACT to repeal and replace the Arbitration Act,
Chap. 5:01, to provide a modern legal framework to
facilitate domestic and international trade and
commerce by encouraging the use of arbitration as
a means of resolving disputes and for related
matters

[Assented to 11th July, 2023]

ENACTED by the Parliament of Trinidad and Tobago as Enactment
follows:

PART I

PRELIMINARY

Short title and commencement

1. This Act may be cited as the Arbitration Act, 2023 and shall come into operation on such day as is fixed by the President by Proclamation.

Interpretation

2. (1) In this Act—

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

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

“arbitration agreement” means 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;

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

“Court” means the Supreme Court of Judicature;

“confidential information” in relation to arbitral proceedings means—

(a) information that relates to the arbitral proceedings or to an award made in those proceedings; and

(b) includes—

- (i) the statement of claim, statement of defence, and all other pleadings, submissions, statements, or other information supplied to the arbitral tribunal by a party;
- (ii) any evidence (whether documentary or otherwise) supplied to the arbitral tribunal;
- (iii) any notes made by the arbitral tribunal of oral evidence or submissions given before the arbitral tribunal;
- (iv) any transcript of oral evidence or submissions given before the arbitral tribunal;
- (v) any rulings of the arbitral tribunal; and
- (vi) any award of the arbitral tribunal;

“data message” means information generated, sent, received or stored by electronic, magnetic, optical or similar means, including electronic data interchange (EDI), electronic mail, telegram, telex or telecopy;

“domestic arbitration” means any arbitration which is not an international arbitration;

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

“foreign representative” means any person who is not a resident or citizen of Trinidad and Tobago and who has been appointed by a party to represent that party in any arbitration;

“hearing” includes both physical and virtual hearings;

“interim measure” means a temporary measure referred to in section 20(2);

“international arbitration” means an arbitration where—

(a) the parties to the arbitration agreement have, at the time of the conclusion to the agreement, their places of business in different states;

(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; or

(ii) any place where a substantial part of the obligations of the 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, and for the purposes of paragraphs (a) to (c);
- (d) where a party has more than one place of business, the place of business is that which has the closest relationship to the arbitration agreement; or
- (e) where a party does not have a place of business, reference is to be made to his habitual residence;

“party” means a party to an arbitration agreement;

“UNCITRAL Model Law” means the UNCITRAL Model Law on International Commercial Arbitration which was adopted by the United Nations Commission on International Trade Law (UNCITRAL) on 21st June, 1985 and amended on 7th July, 2006, at the thirty-ninth session of the Commission.

(2) Where a provision of this Act, except section 44, leaves the parties free to determine a certain issue, such freedom includes the right of the parties to authorise a third party, including an institution, to make that determination.

(3) Where a provision of this Act 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.

(4) Where a provision of this Act, other than in sections 40(a) and 51(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 a counter-claim.

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

(6) This Act shall be interpreted and administered in accordance with the following principles:

- (a) subject to the observance of the safeguards that are necessary in the public interest, the parties to a dispute should be free to agree on how the dispute should be resolved;
- (b) the Court shall not interfere in the arbitration of a dispute, except as expressly provided in this Act; and
- (c) where the Court interferes in the arbitration pursuant to the express provisions of this Act it shall, as far as possible, give due regard to the wishes of the parties and the provisions of the arbitration agreement.

(7) 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.

Act binds the State

3. This Act binds the State.

Application of Act

4. (1) This Act applies to domestic arbitration and international arbitration, subject to any agreement in force between Trinidad and Tobago and any other State or States.

(2) The provisions of this Act, except sections 11, 12, 28, 29, 30, 54 and 55, apply only if the place of arbitration is in Trinidad and Tobago.

(3) This Act shall not affect any other written law of Trinidad and Tobago by virtue of which certain disputes may not be submitted to arbitration or may be submitted to arbitration only in accordance with provisions other than those of this Act.

5. The objects of this Act are to—

Objects of Act

- (a) facilitate domestic and international trade and commerce by encouraging the use of arbitration as a method of resolving disputes;
- (b) facilitate and obtain the fair and speedy resolution of disputes by arbitration without unnecessary delay or expense;
- (c) facilitate the use of arbitration agreements in domestic and international matters;
- (d) facilitate the recognition and enforcement of arbitral awards; and
- (e) adopt the UNCITRAL Model Law.

6. (1) Unless otherwise agreed by the parties—

Receipt of written communications

- (a) any written communication is deemed to have been received if it is delivered to the addressee personally or if it is delivered at his place of business, habitual residence or mailing address;
- (b) if none of the addresses specified in paragraph (a) can be found after making a reasonable enquiry, a written communication is deemed to have been received if it is sent to the last known place of business, habitual residence or mailing address of the addressee by registered letter or any other means which provides a record of the attempt to deliver it; and
- (c) a communication is deemed to have been received on the day it is so delivered.

(2) Unless otherwise agreed by the parties, an electronic communication is taken to be received—

(a) in the case of an addressee who has designated an information system for the purpose of receiving electronic communications, at the time the electronic communication enters that information system; or

(b) in any other case, at the time the electronic communication comes to the attention of the addressee.

(3) For the purposes of this section, “information system” means a system for producing, sending, receiving, storing, displaying or otherwise processing electronic communications.

(4) This section does not apply to communications in Court proceedings.

Waiver of right to object

7. 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 therefor, within such period of time, shall be deemed to have waived his right to object.

Extent of Court intervention

8. In matters governed by this Act, a Court shall not intervene except as provided in this Act.

Court for certain functions of arbitration assistance and supervision

9. The functions referred to in sections 14, 16, 17, 19, 36, 42, 53, 58, 59 and 60 shall be performed by the Court.

PART II

ARBITRATION AGREEMENT

Definition and form of arbitration agreement

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

(2) An arbitration agreement shall be in writing.

(3) An arbitration agreement is in writing if its content is recorded in any form, whether or not the arbitration agreement or contract has been concluded orally, by conduct or by other means.

(4) The requirement that an arbitration agreement be in writing is met by an electronic communication, which contains the terms of the arbitration agreement, if the information contained therein is accessible so as to be useable for subsequent reference.

(5) An arbitration agreement is also deemed to be in writing if it is contained in an exchange of statements of claim and defence in which the existence of an agreement is alleged by one party and not denied by the other.

(6) The reference in a contract to any document containing an arbitration clause constitutes an arbitration agreement in writing, provided that the reference is such as to make that clause part of the contract.

11. (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.

Arbitration
agreement and
substantive claim
before Court

(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.

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

Arbitration
agreement and
interim measures by
Court

PART III

COMPOSITION OF ARBITRAL TRIBUNAL

Number of
arbitrators

13. The parties are free to determine the number of arbitrators, but where there is no such determination, the number of arbitrators shall be three.

Appointment of
arbitrators

14. (1) A person shall not be precluded by reason of his nationality from acting as an arbitrator, unless otherwise agreed by the parties.

(2) Subject to subsections (4), (5) and (6), parties may agree on a procedure for appointing an arbitral tribunal.

(3) Failing an agreement under subsection (2)—

(a) in an arbitration with three arbitrators—

(i) each party shall appoint one arbitrator, and the two arbitrators so appointed shall appoint the third arbitrator who shall also be the presiding arbitrator of the arbitral tribunal unless otherwise agreed by the parties; 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 Court; or

(b) in an arbitration with a sole arbitrator, if the parties are unable to agree on the arbitrator, the arbitrator shall be appointed, upon request of a party, by the Court.

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

- (a) a party fails to act as required under such procedure;
- (b) the parties, or two arbitrators, are unable to reach an agreement expected of them under such procedure; or
- (c) a third party, including an institution, fails to perform any function entrusted to it under such procedure,

any party may request the Court 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 subsections (3) or (4) to the Court is final and not subject to appeal.

(6) The Court, in appointing an arbitrator, shall—

- (a) have due regard to any qualifications required of an 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
- (b) in the case of a sole or third arbitrator, also take into account the advisability of appointing an arbitrator of a nationality other than those of the parties.

15. (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. Grounds for challenge

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

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

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

(4) A party may challenge an arbitrator appointed by him, or in whose appointment he has participated, only for the reasons of which he becomes aware after the appointment was made.

Challenge procedure **16.** (1) Subject to subsection (4), parties may agree on a procedure for challenging an arbitrator.

(2) Where there is no agreement under subsection (1), a party who intends to challenge an arbitrator shall—

- (a) within fifteen days after becoming aware of the constitution of the arbitral tribunal; or
- (b) after becoming aware of any circumstance referred to in section 15 (3),

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

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

(4) Where a challenge, under any procedure agreed upon by the parties or under the procedure referred to in subsections (2) and (3) is not successful, the challenging party may, within thirty days after

having received notice of the decision rejecting the challenge, request the Court to decide the challenge, which decision shall not be subject to appeal, and while such request is pending, the arbitral tribunal, including the challenged arbitrator, may continue the arbitral proceedings and make an award.

17. (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.

Failure or
impossibility to act

(2) Where a controversy remains concerning any of the grounds specified in subsection (1), any party may request the Court to decide on the termination of the mandate of the arbitrator and such decision shall not be subject to appeal.

(3) Where, under this section or sections 16 (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 15 (3).

18. Where—

Appointment of
substitute arbitrator

- (a) the mandate of an arbitrator terminates under section 16 or 17;
- (b) an arbitrator withdraws from office for any reason;
- (c) the mandate of an arbitrator is revoked by agreement of the parties; or
- (d) the mandate of an arbitrator is terminated in any other case,

a substitute arbitrator shall be appointed according to the rules that were applicable to the appointment of the arbitrator being replaced.

PART IV

JURISDICTION OF ARBITRAL TRIBUNAL

Competence of
arbitral tribunal to
rule on its
jurisdiction

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

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

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

(4) Subject to subsection (7), a plea that the arbitral tribunal does not have jurisdiction shall not be raised later than the submission of the statement of defence.

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

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

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

(8) The arbitral tribunal may rule on a plea referred to in subsection (4) or (6) either as a preliminary question or in an award on the merits.

(9) Where the arbitral tribunal rules on a plea as a preliminary question that it has jurisdiction, any party may, within thirty days after having received notice of that ruling, request the Court to decide the matter and the decision of the Court shall not be subject to appeal.

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

PART V

INTERIM MEASURES AND PRELIMINARY ORDERS

20. (1) Unless otherwise agreed by the parties, an arbitral tribunal may, at the request of a party, grant interim measures. Power of arbitral tribunal to order 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 an award by which a dispute is finally decided, an 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.

21. (1) A party requesting an interim measure under section 20(2)(a), (b) and (c) shall satisfy the arbitral tribunal that— Conditions for granting interim measures

- (a) harm not adequately reparable by an award of damages is likely to result if the measure is not granted, 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, and the determination on this possibility shall not affect the discretion of the arbitral tribunal in making any subsequent determination.

(2) With regard to a request for an interim measure under section 20(2)(d), the requirements in subsection (1) (a) and (b) shall apply only to the extent that the arbitral tribunal considers appropriate.

Applications for preliminary orders and conditions for granting preliminary orders

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

(3) The conditions defined under section 21 apply to any preliminary order, if the harm to be assessed under section 21(1)(a), is the harm likely to result from the order being granted or not.

Specific regime for preliminary orders

23. (1) Immediately after an arbitral tribunal has made a determination in respect of an application for a preliminary order, the arbitral tribunal shall give—

(a) notice to all parties of—

- (i) the request for the interim measure;
- (ii) the application for the preliminary order;
- (iii) the preliminary order, if any; and
- (iv) all other communications, including the content of any oral communication, between any party and the arbitral tribunal in relation to the matters specified in subparagraphs (i) to (iii); and

(b) an opportunity to any party against whom a preliminary order is directed to present its case at the earliest practicable time.

(2) An arbitral tribunal shall decide promptly on any objection to a preliminary order.

(3) A preliminary order shall expire after twenty days from the date on which it was issued by an arbitral tribunal.

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

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

(6) A preliminary order does not constitute an award.

24. An arbitral tribunal may modify, suspend or terminate an interim measure or a preliminary order it has granted—
Modification, suspension and termination

(a) upon application of any party; or

(b) in exceptional circumstances and upon prior notice to the parties, on the initiative of the arbitral tribunal.

25. (1) An arbitral tribunal may require the party requesting an interim measure to provide appropriate security in connection with the measure.
Provision of security

(2) An 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.

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

(2) A party applying for a preliminary order shall disclose to the arbitral tribunal all circumstances that are likely to be relevant to the arbitral tribunal's determination whether to grant or maintain the order, and such obligation shall continue until the party against whom the order has been requested has had an opportunity to present its case and thereafter, subsection (1) shall apply.

Costs and damages

27. (1) A 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) An arbitral tribunal may award costs and damages at any time during the proceedings.

Recognition and enforcement

28. (1) Subject to section 29, an interim measure issued by an arbitral tribunal shall, irrespective of the country in which it was issued, be—

- (a) recognised as binding; and
- (b) unless otherwise provided by the arbitral tribunal, enforced,

upon application to the competent Court.

(2) A 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 and in any event no later than twenty-one days after receiving notice of such termination, suspension or modification.

(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—

- (a) if the arbitral tribunal has not already made a determination with respect to security; or

(b) where such a decision is necessary to protect the rights of third parties.

29. (1) The recognition or enforcement of an interim measure may be refused only—

Grounds for refusing recognition or enforcement

(a) at the request of the party against whom it is invoked if the Court is satisfied that—

- (i) a refusal is warranted on any of the grounds specified in section 55 (1)(a)(i), (ii), (iii), (iv) or (v);
- (ii) the decision with respect to the provision of security in connection with the interim measure issued by the arbitral tribunal has not been complied with; or
- (iii) the interim measure has been terminated or suspended by the arbitral tribunal or, where so empowered, by the Court of the State in which the arbitration takes place or under the law of which that interim measure was granted; or

(b) if the Court finds that—

- (i) the interim measure is incompatible with the powers conferred upon the Court, unless the Court decides to reformulate the interim measure to the extent necessary to adapt it to its own powers and procedures for the purposes of enforcing that interim measure and without modifying its substance; or
- (ii) any of the grounds specified in section 55(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 recognise and enforce the interim measure.

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

Court ordered
interim measures

30. (1) A Court shall have the same power to issue an interim measure in relation to arbitration proceedings, irrespective of whether the place of arbitration is in Trinidad and Tobago, as it has in relation to proceedings in Court.

(2) The Court shall exercise the powers specified in subsection (1) in accordance with its own procedures and in consideration of the specific features of international arbitration.

PART VI

CONDUCT OF ARBITRAL PROCEEDINGS

Equal treatment of
parties

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

Determination of
rules of procedure

32. (1) Subject to the provisions of this Act, parties may agree on the procedure to be followed by the arbitral tribunal in conducting the proceedings.

(2) Where there is no agreement under 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 on the arbitral tribunal under subsection (2) includes the power to determine the admissibility, relevance, materiality and weight of any evidence.

Place of arbitration

33. (1) Parties may agree on the place of arbitration but, where there is no agreement as to a place of arbitration, the place of arbitration shall be determined by the arbitral tribunal having regard to the circumstances of the case, including the convenience of the parties.

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

Commencement of
arbitral proceedings

34. 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.

Application of
Limitation of Certain
Actions Act
Chap. 7:09

35. (1) The Limitation of Certain Actions Act shall apply to arbitration proceedings as it applies to proceedings before any Court and a reference in that Act to the commencement of an action shall be construed as a reference to the commencement of arbitration proceedings.

(2) The Court may order that, in computing the time prescribed by the Limitation of Certain Actions Act for the commencement of proceedings, including arbitration proceedings, the period between the commencement of the arbitration and the date of the order referred to in paragraph (a) or (b) shall be excluded in respect of a dispute that was the subject matter of—

- (a) an award that the Court orders to be set aside or declares to be of no effect; or
- (b) the affected part of an award that the Court orders to be set aside in part or declares to be in part of no effect.

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

Consolidation of arbitrations

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

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

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

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

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

- (a) make consequential directions as to the payment of costs in those arbitral proceedings; and
- (b) if—
 - (i) all parties to those arbitral proceedings are in agreement as to the choice of arbitrator for those arbitral proceedings, appoint that arbitrator; or

(ii) the parties cannot agree on the choice of arbitrator for the arbitral proceedings, appoint an arbitrator for arbitral proceedings and, in the case of arbitral proceedings to be heard at the same time or one immediately after another, appoint the same arbitrator for those arbitral proceedings.

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

(4) An arbitral tribunal that hears arbitral proceedings that are consolidated under subsection (1) has the power under sections 48 and 50 in relation to the costs of those arbitral proceedings.

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

(a) has the power under sections 48 and 50 only in relation to the costs of those arbitral proceedings that are heard by it; and

(b) accordingly, does not have the power to order a party to any of those arbitral proceedings to pay the costs of a party to any other of those proceedings unless the arbitral tribunal is the same tribunal hearing all of those arbitral proceedings.

(6) An order, direction or decision of the Court under this section is final and not subject to appeal.

37. (1) Parties may agree on the language or Language languages to be used in the arbitral proceedings.

(2) Where there is no agreement under subsection (1), the arbitral tribunal shall determine the language or languages to be used in the proceedings.

(3) An agreement under subsection (1) or a determination under subsection (2), unless otherwise specified in the agreement or determination, shall apply to any—

- (a) written statement by a party;
- (b) hearing; or
- (c) award, decision or other communication by the arbitral tribunal.

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

Statements of claim
and defence

38. (1) Within the period of time agreed by the parties or as determined by the arbitral tribunal—

- (a) a claimant shall state—
 - (i) the facts supporting his claim;
 - (ii) the points in issue; and
 - (iii) the relief or remedy sought, and
- (b) the respondent shall state his defence in respect of the particulars set out in this subsection,

unless the parties have otherwise agreed to the required elements of those statements.

(2) Parties may submit with their statements under subsection (1), all documents they consider to be relevant or may add a reference to all documents or other evidence they will submit.

(3) Unless otherwise agreed by the parties, any 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 the amendment or the supplement, having regard to the delay in making the amendment or providing the supplement.

39. (1) Subject to any contrary agreement by the parties, an 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. Hearings and written proceedings

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

(3) An arbitral tribunal shall give parties 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 an arbitral tribunal by one party shall be communicated to the other party at the time of submission of such information to the arbitral tribunal.

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

40. Unless otherwise agreed by the parties, where, Default of a party without showing sufficient cause—

(a) the claimant fails to communicate his statement of claim in accordance with section 38(1), the arbitral tribunal shall terminate the proceedings;

(b) the respondent fails to communicate his statement of defence in accordance with section 38(1), the arbitral tribunal shall continue the proceedings without treating the failure in itself as an admission of the claimant's allegations; or

(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.

Expert appointed by arbitral tribunal

41. (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; or
- (b) require a party—
 - (i) to give the expert any relevant information; or
 - (ii) to produce, or to provide access to, any relevant documents, goods or other property for inspection by the expert.

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

Court assistance in taking evidence

42. An arbitral tribunal, or a party with the approval of the arbitral tribunal, may request from the Court assistance in taking evidence and the Court may execute the request within its competence and according to its rules on taking evidence.

Attendance at tribunal hearings

43. (1) A party to arbitral proceedings may use the same Court procedures as are available in relation to legal proceedings to secure the attendance before the tribunal of a witness in order to give oral testimony or to produce documents or other material evidence.

(2) The Court procedures under subsection (1) may only be done with the permission of the tribunal or the agreement of the other parties.

- (3) The Court procedures may only be used if—
- (a) the witness is in Trinidad and Tobago; and
 - (b) the arbitral proceedings are being conducted in Trinidad and Tobago.

(4) A person shall not be compelled by virtue of this section to produce any document or other material evidence which he could not be compelled to produce in legal proceedings.

PART VII

MAKING OF AWARD AND TERMINATION OF PROCEEDINGS

44. (1) An arbitral tribunal shall decide a dispute in accordance with such rules of law as are chosen by the parties as applicable to the substance of the dispute, and 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. Rules applicable to substance of dispute

(2) Where the parties fail to make a designation, an arbitral tribunal shall apply the law determined by the conflict of laws rules which it considers applicable.

(3) An arbitral tribunal shall decide equitably or as according to the principles set out in section 2 (6) and (7) of this Act, only if the parties have expressly authorised it to do so.

(4) In all cases, an 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.

45. (1) Subject to subsection (2), in arbitral proceedings with more than one arbitrator, any decision of the arbitral tribunal shall be made, unless otherwise agreed by the parties, by a majority of all its members. Decision making by arbitral tribunal

(2) Questions of procedure may be decided by a presiding arbitrator, if so authorised by the parties or all members of the arbitral tribunal.

Settlement

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

(2) An award on agreed terms shall be made in accordance with section 47 and shall state that it is an award.

(3) An award on agreed terms has the same status and effect as any other award on the merits of the case.

Form and contents of award

47. (1) An award shall be in writing and shall be signed by the arbitrator or arbitrators and, in arbitral proceedings with more than one arbitrator, the signatures of the majority of all members of the arbitral tribunal shall be sufficient, if the reason for any omitted signature is stated.

(2) The award shall state the reasons upon which it is based, unless the parties have agreed that no reasons are to be given or the award is an award on agreed terms under section 46.

(3) The award shall state its date and the place of arbitration as determined in accordance with section 33(1) and the award shall be deemed to have been made at that place.

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

(5) An award has the same effect between the parties as a final and binding Court judgment.

(6) Unless otherwise agreed by the parties, a signature referred to under this section may be done electronically.

48. (1) Unless a contrary intention is expressed, ^{Costs of arbitration} every arbitration agreement shall be deemed to include a provision that the costs of the arbitration shall be in the discretion of the arbitral tribunal.

(2) Where no provision is made in an award with respect to the costs of the arbitration, any party to the arbitration may, within fourteen days of the delivery of the award, or such further time as the arbitral tribunal may allow, apply to the arbitral tribunal for a direction as to whom or by whom such costs shall be paid.

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

49. (1) The parties to an arbitration agreement may ^{Interest on award} agree on the powers of the arbitral tribunal regarding the award of interest.

(2) Unless otherwise agreed by the parties, the arbitral tribunal may award simple or compound interest from the dates and at the rates that it considers fair and reasonable on all or part of any amount—

- (a) awarded by the arbitral tribunal, in respect of any period up to the date of the award; or
- (b) claimed in the arbitration and outstanding at the commencement of the arbitration but paid before the award was made, in respect of any period up to the date of payment.

(3) Unless otherwise agreed by the parties, the arbitral tribunal may award simple or compound interest from the date of the award, or any later date, until payment and at the rates that it considers fair and reasonable, on the outstanding amount of any award, including any award of interest under subsection (2) and any award of costs.

(4) References in this section to an amount awarded by the arbitral tribunal include an amount payable in consequence of a declaratory award by the arbitral tribunal.

(5) This section is without prejudice to any other power of the arbitral tribunal to award interest.

Costs of aborted arbitration

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

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

- (a) no final award is made by the arbitral tribunal before the arbitration terminates; or
- (b) an award made is wholly set aside by the Court.

Termination of proceedings

51. (1) Arbitral proceedings are terminated by the final award or by an order of the arbitral tribunal made in accordance with subsection (2).

(2) An arbitral tribunal shall issue an order for the termination of the arbitral proceedings where—

- (a) the claimant withdraws his claim, unless the respondent objects and the arbitral tribunal recognises a legitimate interest on the part of the respondent 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) Subject to sections 52 and 53(5), the mandate of the arbitral tribunal terminates with the termination of the arbitral proceedings.

52. (1) Within thirty days of receipt of the award, unless another period of time has been agreed upon by the parties, a party, with notice to the other party, may—

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

(2) Where the arbitral tribunal considers a request under subsection (1) to be justified, it shall, within thirty days of receipt of the request—

- (a) make the correction; or
- (b) give the interpretation and the interpretation shall form part of the award.

(3) Within thirty days of the date of the award, the arbitral tribunal may, on its own initiative, correct any error of the type referred to in subsection (1)(a).

(4) Unless otherwise agreed by the parties, a party, with notice to the other party, may, within thirty days of receipt of the award, request 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—

- (a) it shall permit the other party to object to the grant of an additional award by submitting a written response; and
- (b) where the arbitral tribunal, after considering the claims and submissions see it fit to make an additional award, 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 additional award under subsection (2), (3) or (4).

(6) The provisions of section 47 shall apply to a correction or interpretation of an award or to an additional award.

PART VIII

RECOURSE AGAINST AWARD

Application for setting aside as exclusive recourse against award

53. (1) Recourse to a Court against an award may be made only by an application for setting aside in accordance with subsections (2) and (3).

(2) An award may be set aside by the Court specified in section 9 only if—

- (a) the party making the application furnishes proof that—
 - (i) a party to the arbitration agreement referred to in section 10 was under some incapacity;
 - (ii) the agreement referred to in section 10 is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the laws of Trinidad and Tobago;
 - (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) subject to subsection (3), 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; 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 Trinidad and Tobago; or
- (ii) the award is in conflict with the public policy of Trinidad and Tobago.

(3) For the purposes of subsection (2) (a) (iv), 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.

(4) 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 52, from the date on which that request had been disposed of by the arbitral tribunal.

(5) 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 opinion of the arbitral tribunal, will eliminate the grounds for setting aside.

PART IX

RECOGNITION AND ENFORCEMENT OF AWARDS

Recognition and
enforcement

54. (1) An award, irrespective of the country in which it was made, shall be recognised as binding and, upon application in writing to the competent Court, shall be enforced subject to the provisions of this section and section 55.

(2) The party relying on an award or applying for its enforcement shall supply to the Court—

- (a) the original award or a copy thereof; and
- (b) where the award or agreement is not made in English, a duly certified translation thereof, in English.

(3) Copies of the award under this section may be accepted electronically once verified and accompanied by an affidavit.

Grounds for refusing
recognition or
enforcement

55. (1) Recognition or enforcement of an 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 10 was under some incapacity;
 - (ii) the agreement referred to in section 10 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;
 - (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;

- (iv) subject to subsection (2), 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;
- (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 Trinidad and Tobago; or
- (ii) the recognition or enforcement of the award would be contrary to the public policy of Trinidad and Tobago.

(2) For the purposes of subsection (1) (a) (iv), where 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 recognised and enforced.

(3) Where 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.

PART X

GENERAL PROVISIONS

Foreign
representation

56. (1) Where an application in support of any arbitration is required to be made in any Court or before an arbitral tribunal, a foreign representative of any party appearing before the Court or arbitral tribunal, shall be permitted to have a right of audience.

Chap. 90:03

(2) For the purposes of this Act, appearing on behalf of or for any party in any arbitration shall not constitute legal practice as defined by the Legal Profession Act.

(3) Fees charged and expenses incurred by any arbitrator or foreign representative in an international arbitration which lasts for a continuous period of thirty days or less in a period of three hundred and sixty-five days shall be exempt from income tax and any other tax of Trinidad and Tobago.

(4) The exemption under subsection (3) shall apply to an arbitrator or foreign representative only once in any period of three hundred and sixty-five days.

Immunity of
arbitrator,
competency to
testify, attorney's
fees and costs

57. (1) An arbitral tribunal is not liable for an act done or omitted by—

(a) the tribunal; or

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

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

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

(a) is of a material nature; and

(b) has caused disadvantage to any of the parties to the arbitral proceedings.

58. (1) Arbitral proceedings shall be private and confidential. Arbitral proceedings private and confidential

(2) Disclosure by the arbitral tribunal or a party, of confidential information relating to the arbitration shall be actionable as a breach of an obligation of confidence unless the disclosure—

(a) is authorised, expressly or impliedly, by the parties or can reasonably be considered as having been so authorised;

(b) is required by the arbitral tribunal or is otherwise made to assist or enable the arbitral tribunal to conduct the arbitration;

(c) is required—

(i) in order to comply with any enactment or rule of law;

(ii) for the proper performance of the public functions of the discloser; or

(iii) in order to enable any public body or officeholder to perform public functions properly;

(d) can reasonably be considered as being needed to protect lawful interests of a party;

(e) is in the public interest;

(f) is necessary in the interests of justice; or

(g) is made in circumstances in which the discloser would have absolute privilege had the disclosed information been defamatory.

(3) The arbitral tribunal and the parties shall take reasonable steps to prevent unauthorised disclosure of confidential information by any third party involved in the conduct of the arbitration.

(4) Where an unauthorised disclosure in breach of subsection (3) occurs, any party may apply to the High Court for breach of obligation of confidence.

(5) A decision made by the High Court under subsection (4) may be subject to appeal.

(6) The arbitral tribunal shall, at the outset of the arbitration, inform the parties of the obligations which this section imposes on them.

Court proceedings
not to be heard in
open Court

59. (1) Subject to subsection (2), proceedings under this Act in any Court shall be heard in private.

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

(a) on the application of a party; or

(b) if, in any particular case, the Court is satisfied that those proceedings ought to be heard in open Court.

(3) An order of the Court under subsection (2) is final and not subject to appeal.

60. (1) A Court hearing any proceedings in private shall, on the application of a party to the proceedings, give directions as to whether any and, if so, what information relating to the proceedings may be published. Restrictions on reporting of proceedings heard otherwise than in open Court

(2) A Court shall not give a direction under subsection (1) permitting information to be published unless—

- (a) all parties to the proceedings agree that the 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 a party to the proceedings, that any party to the proceedings reasonably wishes to remain confidential.

(3) Notwithstanding subsection (2), where a Court gives grounds of a decision for a judgment in respect of proceedings to which this section applies and considers that judgment to be of major legal interest, the Court shall direct that reports of the judgment may be published in law reports and professional publications but, if any party to the proceedings reasonably wishes to conceal any matter, including the fact that he was such a party, the Court shall—

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

(4) A direction of the Court under this section is final and not subject to appeal.

Arbitration agreement not to be discharged by death of party

61. (1) An arbitration agreement shall not be discharged by the death of a party, either with respect to the deceased or with respect to any other party, and may be enforced by or against the legal representative of the deceased.

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

Death of an arbitrator or person appointing him

62. (1) The authority of an arbitrator is personal and ceases on his death.

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

Regulations

63. The Attorney General may make regulations generally for giving effect to the purposes of this Act subject to negative resolution of Parliament.

Rules of Court
Chap. 4:01

64. The Rules Committee established under section 77 of the Supreme Court of Judicature Act may make Rules of Court for carrying out of the provisions of this Act.

Transitional
Chap. 5:01

65. This Act applies to an arbitration conducted under an arbitration agreement made before the day this Act comes into force, if the arbitration is commenced on or after the day this Act comes into force.

Repeal of
Chap. 5:01

66. (1) The Arbitration Act (hereinafter in this section referred to as “the former Act”) is repealed.

(2) Notwithstanding subsection (1), an arbitration commenced under the former Act and any Court proceedings relating to that arbitration may be continued, completed and enforced as if the former Act were still in force.

(3) Awards that have been finalised prior to the commencement of this Act shall be enforced under the former Act as if the former Act were still in force.

Passed in the Senate this 13th day of June, 2023.



Clerk of the Senate

Passed in the House of Representatives this 28th day
of June, 2023.



Clerk of the House

N.B. On the 13th July, 2023, the wrong version of Act No. 11 of 2023 was published.
The corrected version has now been uploaded. Sorry for any inconvenience caused.