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Third Session Twelfth Parliament Republic of
Trinidad and Tobago

SENATE

BILL

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

THE ARBITRATION BILL, 2023

Explanatory Note

(These notes form no part of the Bill but are intended only to indicate its general purport)

This Bill seeks to repeal and replace the Arbitration Act, Chap. 5:01 and to provide a modern legal framework for the use of arbitration as a means of resolving disputes.

The Bill contains ten Parts and sixty-eight clauses.

Clause 1 would provide for the short title of the Act for which this is the Bill and that the Act shall come into operation on such date as is fixed by the President by Proclamation.

Clause 2 would provide for the interpretation of certain terms used in the Bill.

Clause 3 would provide for the Act to bind the State.

Clause 4 would provide for the Act to apply to domestic and international arbitration where the place of arbitration is in Trinidad and Tobago.

Clause 5 would provide for the objects of the Act, namely to facilitate domestic and international trade, to obtain fair and speedy resolution of disputes and to recognize and enforce arbitral awards.

Clause 6 would provide for the receipt of written communications.

Clause 7 would provide for a party who proceeds with an arbitration without objecting to non-compliance under the Act or arbitration agreement to have waived his right to object.

Clause 8 would provide for the Court not to intervene except as provided for in the Act.

Clause 9 would provide for certain functions to be performed by the Court, where parties are unable to agree on the appointment of an arbitrator, an arbitrator is challenged, an arbitrator fails to act, questions of jurisdiction and setting aside of awards.

Clause 10 would provide for the definition and form of the arbitration agreement to be in writing or by electronic communication or contained in an exchange of statements of claim and defence.

Clause 11 would provide for the Court to refer the parties to arbitration, upon request of one of the parties, where the matter before the court is the subject of an arbitration agreement.

Clause 12 would provide that 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.

Clause 13 would provide for the parties to choose the number of arbitrators and where there is no agreement, the number of arbitrators shall be three.

Clause 14 would provide for the appointment of arbitrators, the procedure for doing so and for the Court's intervention where there is no agreement on the arbitrators.

Clause 15 would provide for the grounds of challenge of an arbitrator on the basis of justifiable doubts as to his impartiality or independence or qualifications.

Clause 16 would provide for the procedure for challenging an arbitrator and provide for such a challenge to be decided by an arbitral tribunal.

Clause 17 would provide for the termination or withdrawal of an arbitrator if he becomes unable to perform his duties or for other reasons fails to act.

Clause 18 would provide for the appointment of a substitute arbitrator where the arbitrator is terminated, withdraws from office or his mandate is revoked by agreement of the parties.

Clause 19 would provide for the parties to agree to use an umpire and to also agree on the functions of the umpire.

Clause 20 would provide for the use of umpires when the parties are not in agreement.

Clause 21 would provide for the jurisdiction of the arbitral tribunal to rule on its own jurisdiction, including any objections with respect to the existence or validity of the arbitration agreement.

Clause 22 would provide for the power of the arbitral tribunal to grant interim measures such as maintaining the status quo pending determination of the dispute, taking or preventing action that might cause imminent harm or prejudice to the arbitral process and preserving assets or evidence.

Clause 23 would provide for arbitral tribunal to be satisfied of certain conditions before granting interim measures, such as the reasonable possibility that the party requesting the interim measures may succeed on the merits of the claim.

Clause 24 would provide for the applications for preliminary orders and the conditions for the granting of such orders.

Clause 25 would provide for the specific regime for preliminary orders. It would provide that the arbitral tribunal, after it has determined the application for a preliminary order, shall give notice to all parties of the request for the interim measure, application for preliminary order, the order and all other communications. It would also provide for the prompt decision of any objections and for the expiration of preliminary orders after twenty days from the date on which it was issued.

Clause 26 would provide for the arbitral tribunal to modify, suspend or terminate an interim measure or preliminary award.

Clause 27 would provide for the arbitral tribunal to require the party requesting an interim measure to provide appropriate security.

Clause 28 would provide for the arbitral tribunal to require a party to disclose any material change in the circumstances on the basis of which the measure was requested or granted within a specified time.

Clause 29 would provide for the party requesting an interim measure or applying for a preliminary order to be liable for any costs and damages caused by the measure or order, if it is later determined that the order or measure should not have been granted.

Clause 30 would provide that interim measures issued by an arbitral tribunal are recognized as binding and enforced upon application to the Court.

Clause 31 would provide the grounds for refusing the recognition or enforcement of an interim measure.

Clause 32 would provide for the power of the Court to issue an interim measure in relation to arbitration proceedings.

Clause 33 would provide for parties to be treated with equality and be given a full opportunity to present their case.

Clause 34 would provide for the parties to agree on the procedure to be followed by the arbitral tribunal in conducting the proceedings or failing agreement for the tribunal to conduct the proceedings in an appropriate manner.

Clause 35 would provide for the place of arbitration to be determined by the parties or arbitral tribunal.

Clause 36 would provide for the commencement of arbitral proceedings to be on the date the request for the referral to arbitration is received by the respondent.

Clause 37 would provide for the Limitation of Certain Actions Act, Chap. 7:09 to apply to arbitration proceedings.

Clause 38 would provide for two or more arbitral proceedings to be consolidated where there is a common question of law or fact or the rights or relief claimed arise out of the same transactions. It would also provide for such consolidations to be done on application by either party and provide for the Court to have the power to make directions as to costs and choice of arbitrator.

Clause 39 would provide for the parties or arbitral tribunal to agree on the language or languages to be used in the arbitral proceedings and that any documentary evidence be accompanied by a translation into the agreed language or languages.

Clause 40 would provide for the statements of claim and defence to state the facts supporting their claim, the points in issue and the relief or remedy sought.

Clause 41 would provide for the arbitral tribunal to decide whether to hold oral or written hearings and that sufficient notice must be given of any hearings.

Clause 42 would provide for the default of a party if the statement of claim or defence is not communicated in accordance with the Act or fails to appear at a hearing or fails to produce documentary evidence.

Clause 43 would provide for the appointment of experts by the arbitral tribunal in respect of specific issues to be determined by it and would require a party to provide documents for inspection by the experts.

Clause 44 would provide for the arbitral tribunal to request assistance from the Court in taking evidence.

Clause 45 would provide for a party to secure the attendance of a witness before the tribunal on order to give oral testimony or to produce documents or other material evidence.

Clause 46 would provide for the arbitral tribunal to decide a dispute in accordance with such rules chosen by the parties as applicable to the substance of the dispute or the law of the State with which the subject matter of the proceedings is most closely connected.

Clause 47 would provide for any decision of the arbitral tribunal to be made by a majority of all its members.

Clause 48 would provide for the arbitral tribunal to terminate the proceedings if there is settlement of the dispute during the arbitral proceedings and to record the settlement in the form of an award.

Clause 49 would provide for the form and contents of the award to be in writing and signed by the arbitrator or majority of arbitrators.

Clause 50 would provide for every arbitration agreement to be deemed to include a provision that the costs of the arbitration shall be in the discretion of the arbitral tribunal.

Clause 51 would provide for the power of the arbitral tribunal to award interest.

Clause 52 would provide for the costs of an aborted arbitration to be decided by the Court upon application by a party or the arbitral tribunal.

Clause 53 would provide for arbitral proceedings to be terminated by the final award or an order for the termination of the arbitral proceedings issued by the arbitral tribunal.

Clause 54 would provide for an award to be corrected or interpreted within thirty days of its receipt and such correction or interpretation shall form part of the award.

Clause 55 would provide for an application to be made to the Court for the setting aside of an award where a party was under some incapacity, the agreement is not valid under the subject law, proper notice was not given of the appointment of an arbitrator or the proceedings, the award deals with a dispute outside the scope of the arbitration or there was disagreement over the composition of the arbitral tribunal. It would also provide for the Court to set aside the award if the subject matter of the dispute is not capable of settlement by arbitration under the laws of the State or the award is in conflict with the public policy of the State.

Clause 56 would provide for the award to be recognised and binding and capable of enforcement upon application in writing to the Court.

Clause 57 would provide the grounds for refusing the recognition or enforcement of an award, namely where proof is furnished that a party was under some incapacity, the agreement was not valid under the law, improper notice of appointment of arbitrator or proceedings, award deals with dispute beyond scope of arbitration or there was disagreement over the composition of the arbitral tribunal. It would also provide for the Court to set aside the award if the subject matter of the dispute is not capable of settlement by arbitration under the laws of the State or the award is in conflict with the public policy of the State.

Clause 58 would provide for a foreign representative of any party to have a right of audience.

Clause 59 would provide for an arbitrator or arbitral tribunal to be immune from civil liability to the same extent as a Judge of a Court of Trinidad and Tobago.

Clause 60 would provide that arbitral proceedings are private and confidential and disclosure by the tribunal or a party shall be actionable as breach of an obligation of confidence.

Clause 61 would provide that Court proceedings under this Act shall be heard in private.

Clause 62 would provide for the restrictions on the reporting of proceedings in private.

Clause 63 would provide that an arbitration agreement shall not be discharged by the death of any party and shall be enforceable by or against the legal representative of the deceased.

Clause 64 would provide for the authority of an arbitrator to cease upon his death.

Clause 65 would provide for the Attorney General to make Regulations as he considers necessary for giving effect to the purposes of the Act.

Clause 66 would provide for the Rules Committee to make Rules of Court for the carrying out of the provisions of the Act.

Clause 67 would provide that an arbitration commenced under the Arbitration Act may be continued and enforced as if that Act were still in force. It would also provide for awards that have been finalized prior to the commencement of this Act be enforced under the previous Act.

Clause 68 would repeal the Arbitration Act.

THE ARBITRATION BILL, 2023

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BILL

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

[, 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;

“arbitrator” includes an umpire;

“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 22(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 46, 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 42(a) and 53(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, 30, 31, 32, 56 and 57, 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, 21, 38, 44, 55, 60, 61 and 62 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; 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 ^{Failure or impossibility to act} *de facto* unable to perform his functions or for other reasons fails to act without undue delay, his mandate terminates if he withdraws from his office or if the parties agree on the termination.

(2) 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—

- (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,

Appointment of substitute arbitrator

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

19. Where the parties have agreed that there is to ^{Use of umpire when parties are in agreement} be an umpire, they are free to agree as to what the functions of the umpire are to be, and in particular—

- (a) whether he is to attend the proceedings; and
- (b) when he is to replace the other arbitrators as the tribunal with power to make decisions, orders and awards.

Use of umpire when parties are not in agreement

20. (1) Where or to the extent that no such agreement applies as referred to under section 19, the following shall apply—

- (a) the umpire shall attend the proceedings and be supplied with the same documents and other materials as are supplied to the other arbitrators; and
- (b) decisions, orders and awards shall be made by the other arbitrators unless they cannot agree on a matter relating to the arbitration and in that event they shall forthwith give notice in writing to the parties and the umpire, whereupon the umpire shall replace them as the tribunal with the power to make decisions, orders and awards.

(2) Where the arbitrators cannot agree under section 19 and if any of them fails—

- (a) to give notice of that fact; or
- (b) to join in the giving of notice of that fact,

any party to the arbitral proceedings may, upon notice to the other parties and to the tribunal, apply to the Court which may order that the umpire shall replace the other arbitrators as the tribunal with power to make decisions, orders and awards as if he were a sole arbitrator.

(3) A decision of the Court under this section shall not be subject to appeal.

PART IV

JURISDICTION OF ARBITRAL TRIBUNAL

Competence of arbitral tribunal to rule on its jurisdiction

21. (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

22. (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.

Conditions for
granting interim
measures

23. (1) A party requesting an interim measure under section 22(2)(a), (b) and (c) shall satisfy the arbitral tribunal that—

- (a) harm not adequately reparable by an award of damages is likely to result if the measure is not 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 22(2)(d), the requirements in subsection (1)(a) and (b) shall apply only to the extent that the arbitral tribunal considers appropriate.

24. (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.

Applications for preliminary orders and conditions for granting preliminary orders

(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 23 apply to any preliminary order, if the harm to be assessed under section 23(1)(a), is the harm likely to result from the order being granted or not.

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

Specific regime for preliminary orders

(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.

Modification,
suspension and
termination

26. An arbitral tribunal may modify, suspend or terminate an interim measure or a preliminary order it has granted—

(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.

Provision of security

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

(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.

Disclosure

28. (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.

(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.

29. (1) A party requesting an interim measure or Costs and damages 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.

30. (1) Subject to section 31, an interim measure Recognition and enforcement 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.

31. (1) The recognition or enforcement of an interim Grounds for refusing recognition or enforcement measure may be refused only—

- (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 57 (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 57(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.

32. (1) A Court shall have the same power to issue an ^{Court ordered} interim measure in relation to arbitration proceedings, ^{interim measures} 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

33. Parties shall be treated with equality and each ^{Equal treatment of} party shall be given a full opportunity of presenting his ^{parties} case.

34. (1) Subject to the provisions of this Act, parties ^{Determination of} may agree on the procedure to be followed by the ^{rules of procedure} 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.

35. (1) Parties may agree on the place of arbitration ^{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

36. 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

37. (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.

38. (1) Where, in relation to two or more ^{Consolidation of arbitrations}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 50 and 52 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 50 and 52 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.

Language

39. (1) Parties may agree on the language or 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.

40. (1) Within the period of time agreed by the parties or as determined by the arbitral tribunal—
Statements of claim and defence

- (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.

Hearings and
written proceedings

41. (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.

(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.

Default of a party

42. Unless otherwise agreed by the parties, where, without showing sufficient cause—

- (a) the claimant fails to communicate his statement of claim in accordance with section 40(1), the arbitral tribunal shall terminate the proceedings;
- (b) the respondent fails to communicate his statement of defence in accordance with section 40(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.

43. (1) Unless otherwise agreed by the parties, the ^{Expert appointed by} ~~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.

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

45. (1) A party to arbitral proceedings may use the ^{Attendance at} ~~same Court~~ procedures as are available in relation to ^{tribunal hearings} ~~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

Rules applicable to
substance of dispute

46. (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.

(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.

Decision making by
arbitral tribunal

47. (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.

(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

48. (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 49 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.

49. (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. Form and contents of award

(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 48.

(3) The award shall state its date and the place of arbitration as determined in accordance with section 35(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.

50. (1) Unless a contrary intention is expressed, 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. Costs of arbitration

(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.

Interest on award

51. (1) The parties to an arbitration agreement may 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.

52. (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.

53. (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 54 and 55(5), the mandate of the arbitral tribunal terminates with the termination of the arbitral proceedings.

Correction and
interpretation of
award; additional
award

54. (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 49 shall apply to a correction or interpretation of an award or to an additional award.

PART VIII

RECOURSE AGAINST AWARD

55. (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). Application for setting aside as exclusive recourse against award

(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 54, 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

56. (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 57.

(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.

57. (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

58. (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.

(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.

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(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

59. (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.

Arbitral proceedings
private and
confidential

60. (1) Arbitral proceedings shall be 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.

61. (1) Subject to subsection (2), proceedings under this Act in any Court shall be heard in private. Court proceedings not to be heard in open Court

(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.

Restrictions on reporting of proceedings heard otherwise than in open Court

62. (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.

(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.

63. (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. Arbitration agreement not to be discharged by death of party

(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.

64. (1) The authority of an arbitrator is personal and ceases on his death. Death of an arbitrator or person appointing him

(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.

65. The Attorney General may make regulations generally for giving effect to the purposes of this Act. Regulations

66. 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. Rules of Court Chap. 4:01

67. 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. Transitional Chap. 5:01

68. (1) The Arbitration Act (hereinafter in this section referred to as “the former Act”) is repealed. Repeal of Chap. 5:01

(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 day of ,
2023.

Clerk of the Senate

I confirm the above.

President of the Senate

Passed in the House of Representatives this day
of , 2023.

Clerk of the House

I confirm the above.

Speaker

No. 2 of 2023

THIRD SESSION
TWELFTH PARLIAMENT
REPUBLIC OF
TRINIDAD AND TOBAGO

BILL

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

Received and read the

First time

Second time

Third time