

**INTERNATIONAL ARBITRATION ACT**

Act 37 of 2008 – 1 January 2009

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**INTERNATIONAL ARBITRATION ACT**

**PART I – PRELIMINARY**

**1. Short title**

This Act may be cited as the International Arbitration Act.

**2. Interpretation**

(1) In this Act—

“Amended Model Law” means the Model Law on International Commercial Arbitration adopted by UNCITRAL on 21 June 1985, as amended on 7 July 2006;

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

“arbitration” means any arbitration, whether or not 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 may arise between them in respect of a defined legal relationship, whether contractual or not;

“CLOUT database” means the database of case law on UNCITRAL texts (CLOUT), maintained by UNCITRAL and accessible, inter alia, on the website of UNCITRAL;

“costs of the arbitration” means the costs of the PCA in discharging its functions under this Act, the fees and expenses of the arbitral tribunal, the legal and other expenses of the parties, and any other expenses related to the arbitration;

“Court”—

- (a) means a Court in Mauritius; and
- (b) includes, where appropriate, a body or organ of the judicial system of a foreign State; but
- (c) does not include the PCA;

“data message”—

- (a) means information generated, sent, received or stored by electronic, magnetic, optical or similar means; and
- (b) includes electronic data interchange (EDI), electronic mail, telegram, telex or telecopy;

“Designated Judge” means a Judge nominated by the Chief Justice under section 43;

“domestic arbitration” means any arbitration with its juridical seat in Mauritius, other than an international arbitration;

“electronic communication” means any communication between parties by means of a data message;

“GBL Company” means a company holding a Global Business Licence under the Financial Services Act;

“international arbitration” means any arbitration where—

- (a) the parties to the arbitration agreement have, at the time of the conclusion of that agreement, their place of business in different States;
- (b) one of the following places is situated outside the State in which the parties have their place of business—
  - (i) the juridical seat of the arbitration, if determined in, or pursuant to, the arbitration agreement; or
  - (ii) any place where a substantial part of the obligations of the commercial relationship is to be performed or the place with which the subject matter of the dispute is most closely connected;
- (c) the parties have expressly agreed that the subject matter of the arbitration agreement relates to more than one State or that this Act is to apply to their arbitration; or
- (d) the arbitration arises under an arbitration clause included in the constitution of a GBL company pursuant to section 3D;

“International Arbitration Rules” means Rules made under section 198 of the Courts Act for the purpose of this Act and the Convention on the Recognition and Enforcement of Foreign Arbitral Awards Act;

“juridical seat” means the juridical seat of an arbitration referred to in section 10;

“Model Law jurisdictions” means jurisdictions which have, or have substantially, adopted the Model Law;

“New York Convention” means the Convention on the Recognition and Enforcement of Foreign Arbitral Awards signed at New York on 10 June 1958;

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

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

(1A) For the purpose of determining whether an arbitration is an international arbitration—

- (a) where a party has more than one place of business, its place of business shall be that which has the closest relationship with the arbitration agreement;
- (b) where a party does not have a place of business, reference shall be made to its habitual residence.

(2) Unless otherwise agreed by the parties, any request or other communication, in writing, in an arbitration governed by this Act shall be deemed to have been received on the day on which it is delivered where—

- (a) it is delivered to the addressee personally or at its place of business, habitual residence or mailing address or, if none of these can be found after making a reasonable inquiry, it is sent to the addressee's last known place of business, habitual residence or mailing address by registered letter or any other means which provides a record of the attempt to deliver it; and
- (b) the means of communication used is any means of communication, electronic or otherwise, that provides a record of despatch and receipt of the communication, including delivery against receipt, registered post, courier, facsimile transmission, telex or telegram.

(3) Where a provision of this Act, save for section 28, 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.

(4) 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 shall include any arbitration rules referred to in that agreement.

(5) Where a provision of this Act, other than sections 27 (a) and 37 (2) (a), refers to a claim, it shall also apply to a counterclaim, and where it refers to a defence, it shall also apply to a defence to such counterclaim.

[S. 2 amended by s. 4 (a) of Act 8 of 2013 w.e.f. 1 June 2013.]

## **2A. Extent of Court intervention**

In matters governed by this Act, no Court shall intervene except where so provided in this Act.

[S. 2A inserted by s. 4 (b) of Act 8 of 2013 w.e.f. 1 June 2013.]

## **2B. International origin and general principles**

In applying and interpreting this Act and in developing the law applicable to international arbitration in Mauritius—

- (a) regard shall be had to the origin of the Amended Model Law, the corresponding provisions of which are set out in the Third Schedule, and to the need to promote uniformity in the application of the Model Law and the observance of good faith;

- (b) any question concerning matters governed by the Amended Model Law which is not expressly settled in that Law shall be settled in conformity with the general principles on which that Law is based; and
- (c) recourse may be had to international materials relating to the Amended Model Law and to its interpretation, including—
  - (i) relevant reports of UNCITRAL;
  - (ii) relevant reports and analytical commentaries of the UNCITRAL Secretariat;
  - (iii) relevant case law from other Model Law jurisdictions, including the case law reported by UNCITRAL in its CLOUT database; and
  - (iv) textbooks, articles and doctrinal commentaries on the Amended Model Law.

[S. 2B inserted by s. 4 (b) of Act 8 of 2013 w.e.f. 1 June 2013.]

## **2C. Disconnection of international arbitration from domestic arbitration and regime**

(1) In applying and interpreting this Act and the Convention on the Recognition and Enforcement of Foreign Arbitral Awards Act, and in developing the law applicable to international arbitration in Mauritius, no recourse shall be had to, and no account shall be taken of, the law or procedure relating to domestic arbitration.

(2) In particular, and for the avoidance of doubt—

- (a) any existing rules concerning the reliance on evidence, the service of proceedings out of the jurisdiction of Mauritius, or any other matter shall not apply to applications made to a Court, or matters arising, under this Act or the Convention on the Recognition and Enforcement of Foreign Arbitral Awards Act;
- (b) specific rules of Court may be made pursuant to section 198 of the Courts Act, setting out a comprehensive and stand-alone procedural code for the applications and matters referred to in paragraph (a); and
- (c) rules made pursuant to paragraph (b) may make provision, inter alia, for—
  - (i) the hearing of the applications and matters by Designated Judges so that all applications and matters are heard and determined by Judges with specialist knowledge in the field of international arbitration;
  - (ii) the service of proceedings out of the jurisdiction by electronic means or courier;
  - (iii) the payment of security for costs; and

- (iv) the assessment and payment of costs by the parties and their legal representatives, arising out of the applications and matters.

[S. 2C inserted by s. 4 (b) of Act 8 of 2013 w.e.f. 1 June 2013.]

## **2D. Waiver of right to object**

A party which knows, or could with reasonable diligence have known, that any provision of this Act from which the parties may agree to derogate or any requirement under the arbitration agreement has not been complied with, but proceeds with the arbitration proceedings without stating an objection to the non-compliance within a reasonable time or such time as may have been agreed upon by the parties shall be deemed to have waived its right to object.

[S. 2D inserted by s. 4 (b) of Act 8 of 2013 w.e.f. 1 June 2013.]

## **PART IA – SCOPE OF APPLICATION**

[Heading inserted by s. 4 (c) of Act 8 of 2013 w.e.f. 1 June 2013.]

### **3. Temporal application**

(1) This Act shall not apply to arbitration proceedings initiated before 1 January 2009.

(2) This Act shall apply to arbitration proceedings initiated on or after 1 January 2009 under an arbitration agreement, irrespective of the date on which the arbitration agreement was entered into.

[S. 3 repealed and replaced by s. 4 (d) of Act 8 of 2013 w.e.f. 1 June 2013.]

### **3A. Material application**

(1) Subject to subsection (2) and section 3B, this Act shall apply to an international arbitration only where its juridical seat is in Mauritius.

(2) Sections 5, 6, 22 and 23 shall apply to every international arbitration, whether or not its juridical seat is in Mauritius.

[S. 3A inserted by s. 4 (e) of Act 8 of 2013 w.e.f. 1 June 2013.]

### **3B. Application of First Schedule**

Subject to section 3D, the First Schedule or any of its provisions shall apply to an international arbitration only where the parties so agree by making express reference to that Schedule or to that specific provision.

[S. 3B inserted by s. 4 (e) of Act 8 of 2013 w.e.f. 1 June 2013.]

### **3C. Determination of threshold issues**

(1) Subject to section 10 (1), any issue as to—

- (a) whether an arbitration is an international arbitration;
- (b) whether the juridical seat of an international arbitration is in Mauritius; or
- (c) whether the First Schedule or any of its provisions applies to an international arbitration,

shall be determined by the arbitral tribunal.

(2) Where an issue referred to in subsection (1) arises before a Court or the PCA—

- (a) where the arbitral tribunal has been constituted, that Court or the PCA shall decline to decide that issue and refer it for determination by the arbitral tribunal;
- (b) where the arbitral tribunal has not yet been constituted, the Court or the PCA may make a provisional determination on the issue pending the determination by the arbitral tribunal.

[S. 3C inserted by s. 4 (e) of Act 8 of 2013 w.e.f. 1 June 2013.]

### 3D. Arbitration clause in constitution of GBL company

(1) The shareholders of a GBL company may include an arbitration clause, in the constitution of the company, which provides that any dispute arising out of the constitution of the company shall be referred to arbitration under this Act.

(2) Notwithstanding any agreement to the contrary, the juridical seat of any arbitration under this section shall be Mauritius and the First Schedule shall apply to that arbitration.

(3) The shareholders of a GBL company may incorporate an arbitration agreement in the constitution of the company, whether by reference to the model arbitration clause specified in the Second Schedule or otherwise—

- (a) at the time of the incorporation of the company; or
- (b) at any time after the incorporation of the company, by a unanimous resolution of all the current shareholders.

(4) Nothing in this section shall limit—

- (a) the right of the shareholders of a GBL company to agree to the arbitration of a dispute concerning or arising out of an agreement other than the constitution of the company, such as a shareholders' agreement; or
- (b) the right of a GBL company to agree to the arbitration of a dispute between itself and a third party,

and subsection (2) shall not apply to any such arbitration.

[S. 3D inserted by s. 4 (e) of Act 8 of 2013 w.e.f. 1 June 2013.]

### 3E. Miscellaneous provisions on scope of application

(1) This Act shall bind the State.

(2) The fact that an enactment confers jurisdiction on a Court but does not provide for the determination of the matter by arbitration shall not *per se* mean that a dispute about the matter is not capable of determination by arbitration.

(3) Where any other enactment provides for the arbitration of a dispute, this Act shall not apply to an arbitration arising under that other enactment.

[S. 3E inserted by s. 4 (e) of Act 8 of 2013 w.e.f. 1 June 2013.]

## **PART II – INITIATION OF PROCEEDINGS**

### **4. Arbitration agreement**

(1) An arbitration agreement—

- (a) may be in the form of an arbitration clause in a contract or other legal instrument or in the form of a separate agreement; and
- (b) shall be in writing.

(2) An arbitration agreement shall be in writing where—

- (a) its contents are recorded in any form, whether or not the arbitration agreement or the contract has been concluded orally, by conduct, or by other means;
- (b) it is concluded by an electronic communication and the information contained in it is accessible so as to be usable for subsequent reference; or
- (c) 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.

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

### **5. Substantive claim before Court**

(1) Where an action is brought before any Court, and a party contends that the action is the subject of an arbitration agreement, that Court shall automatically transfer the action to the Supreme Court, provided that that party so requests not later than when submitting his first statement on the substance of the dispute.

(2) The Supreme Court shall, on a transfer under subsection (1), refer the parties to arbitration unless a party shows, on a prima facie basis, that there is a very strong probability that the arbitration agreement may be null and void, inoperative or incapable of being performed, in which case it shall itself proceed finally to determine whether the arbitration agreement is null and void, inoperative or incapable of being performed.

(3) Where the Supreme Court finds that the agreement is null and void, inoperative or incapable of being performed, it shall transfer the matter back to the Court which made the transfer.

(4) Where an action referred to in subsection (1) has been brought, arbitral proceedings may nevertheless be commenced or continued, and one or more awards may be made, while the issue is pending before any Court.



## 6. Compatibility of interim measures

(1) It shall not be incompatible with an arbitration agreement for a party to request, before or during arbitral proceedings, from the Supreme Court or a Court in a foreign State an interim measure of protection in support of arbitration and for the Court to grant such a measure.

(2) An application to the Supreme Court under subsection (1) shall be made and determined in accordance with section 23.

## 7. Death or bankruptcy or winding up of party

(1) Unless otherwise agreed by the parties, an arbitration agreement is not discharged by the death, bankruptcy or winding up of a party and may be enforced by or against the representatives of that party.

(2) Subsection (1) shall not affect the operation of any enactment by virtue of which a substantive right or obligation is extinguished by death, bankruptcy or winding up.

## 8. Consumer arbitration agreement

(1) Where—

- (a) a contract contains an arbitration agreement; and
- (b) a person enters into that contract as a consumer,

the arbitration agreement shall be enforceable against the consumer only if the consumer, by separate agreement in writing entered into after the dispute has arisen, certifies that, having read and understood the arbitration agreement, he agrees to be bound by it.

(2) For the purpose of subsection (1), a person shall enter into a contract as a consumer where—

- (a) he is a natural person; and
- (b) he enters into the contract otherwise than as a trader; and
- (c) the other party to the contract enters into that contract as a trader.

(3) Subsection (1) shall apply to every contract containing an arbitration agreement entered into in Mauritius even where the contract provides that it shall be governed by a law other than Mauritius law.

## 9. Commencement of proceedings

Unless otherwise agreed by the parties, the arbitral proceedings in respect of a particular dispute commence on the date on which a request by one party for that dispute to be referred to arbitration is received by the other party.

**10. Juridical seat**

(1) Subject to section 3C (2) (b) unless otherwise agreed by the parties, the juridical seat of the arbitration shall be determined by the arbitral tribunal, having regard to the circumstances of the case.

(2) Unless otherwise agreed by the parties, and notwithstanding subsection (1), the arbitral tribunal may meet at such geographical location as it may consider appropriate for consultation among its members, for hearing witnesses, experts or the parties, or for inspection of goods or other property or documents.

[S. 10 amended by s. 4 (f) of Act 8 of 2013 w.e.f. 1 June 2013.]

**PART III – THE ARBITRAL TRIBUNAL**

**11. Number of arbitrators**

Unless otherwise agreed by the parties—

- (a) the number of arbitrators shall be 3; and
- (b) an agreement that the number of arbitrators shall be an even number shall be understood as requiring the appointment of an additional arbitrator as presiding arbitrator.

**12. Appointment of arbitrators**

(1) Unless otherwise agreed by the parties, no person shall be precluded by reason of his nationality from acting as an arbitrator.

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(2) Subject to subsections (4) and (5), the parties shall be free to agree on a procedure for appointing the arbitral tribunal.

(3) Insofar as there is no agreement pursuant to subsection (2)—

- (a) in an arbitration with 3 arbitrators—
  - (i) each party shall appoint one arbitrator, and the 2 arbitrators thus appointed shall appoint the third arbitrator who shall act as presiding arbitrator; and
  - (ii) where a party fails to appoint an arbitrator within 30 days of receipt of a request to do so from the other party, or where the 2 arbitrators fail to agree on the third arbitrator within 30 days of their appointment, the appointment shall be made, on the request of a party, by the PCA;
- (b) in an arbitration with a sole arbitrator, where the parties have failed to agree on the arbitrator within 30 days of receipt of a request from a party, he shall be appointed, on the request of a party, by the PCA;
- (c) where the arbitral tribunal is to be composed of a number of arbitrators other than one or 3, the arbitrators shall be appointed according to the method agreed upon by the parties, or, if those methods fail, in accordance with subsections (4) and (5); and
- (d) where there are multiple claimants or respondents, the multiple claimants, jointly, and the multiple respondents, jointly, shall each appoint an arbitrator, and the 2 arbitrators thus appointed shall appoint the third arbitrator who shall act as presiding arbitrator or, if this method of appointment fails, the appointment shall be made in accordance with subsections (4) and (5).

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

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

any party may request the PCA to take any necessary measures, unless the agreement on the appointment procedure provides other means for securing the appointment.

(5) In the event of any other failure to constitute the arbitral tribunal, any party may request the PCA to take any necessary measures, unless the agreement on the appointment procedure provides other means for resolving the failure.

(6) The measures which the PCA may take under subsections (4) and (5) shall include—

- (a) giving directions as to the making of any necessary appointments;

- (b) directing that the arbitral tribunal shall be constituted by such appointments (or any one or more of them) as have been made;
- (c) revoking any appointment already made;
- (d) appointing or reappointing any or all of the arbitrators; and
- (e) designating any arbitrator as the presiding arbitrator.

(7) The PCA, in appointing an arbitrator, shall have due regard to any qualifications required of the arbitrator by the agreement of the parties and to such considerations as are likely to secure the appointment of an independent and impartial arbitrator and, in the case of a sole or third or presiding arbitrator, shall also take into account the advisability of appointing an arbitrator of a nationality other than those of the parties.

### **13. Grounds for challenge of arbitrator**

(1) Where a person is approached in connection with his possible appointment as an arbitrator, he shall disclose any circumstance likely to give rise to justifiable doubts as to his impartiality or independence.

(2) An arbitrator, from the time of his appointment and throughout the arbitral proceedings, shall without delay disclose any circumstance referred to in subsection (1) to the parties unless they have already been informed of it by him.

(3) Subject to subsection (4), an arbitrator may be challenged only if circumstances exist that give rise to justifiable doubts as to his impartiality or independence, or if he does not possess qualifications agreed to by the parties.

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

### **14. Procedure for challenge of arbitrator**

(1) Subject to subsections (3) and (4), the parties shall be free to agree on a procedure for challenging an arbitrator.

(2) Failing an agreement pursuant to subsection (1)—

- (a) a party who intends to challenge an arbitrator shall, within 15 days after becoming aware of the constitution of the arbitral tribunal or after becoming aware of any circumstance referred to in section 13 (3), send a written statement of the reasons for the challenge to the arbitral tribunal; and
- (b) unless the challenged arbitrator withdraws from his office or the other party agrees to the challenge, the arbitral tribunal shall decide on the challenge.

(3) Where a challenge under any procedure agreed by the parties or under the procedure set out in subsection (2) is not successful, the challenging party may, within 30 days after having received notice of the decision rejecting the challenge, request the PCA to decide on the challenge.

(4) While a request under subsection (3) is pending, the arbitral tribunal, including the challenged arbitrator, may continue the arbitral proceedings and make one or more awards.

#### **15. Failure or inability to act**

(1) Where an arbitrator becomes *de jure* or *de facto* unable to perform his functions or for any other reason 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 ground referred to in subsection (1), any party may request the PCA to decide on the termination of the mandate.

(3) Where, under this section or section 14, 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 13 (3).

#### **16. Replacement of arbitrator**

(1) Where the mandate of an arbitrator terminates under section 14 or 15 or because of his withdrawal from office for any other reason or because of the revocation of his mandate by agreement of the parties or in any other case of termination of his mandate save under section 12 (6), a substitute arbitrator shall, subject to this section, be appointed according to the procedure that was applicable to the appointment of the arbitrator being replaced.

(2) Unless otherwise agreed by the parties, where a party or the other members of the arbitral tribunal consider that an arbitrator has resigned for unacceptable reasons or refuses or fails to act without undue delay, that party or the other members of the arbitral tribunal may apply to the PCA to request the replacement of the arbitrator or the authorisation for the other members of the arbitral tribunal to continue the arbitration without the participation of that arbitrator.

(3) In determining how and whether to act under subsection (2), the PCA shall take into account the stage of the arbitration, any explanation made by the arbitrator for his conduct and such other matters as it considers appropriate in the circumstances of the case.

(4) Where, following an application under subsection (2), the PCA decides that the arbitrator is to be replaced, the PCA shall decide whether the replacement should be made applying the procedure that was applicable to the appointment of the arbitrator being replaced or whether the PCA should itself appoint the substitute arbitrator, having regard to section 12 (7).

## **17. Hearing following replacement of arbitrator**

Unless otherwise agreed by the parties, where under section 14, 15 or 16 an arbitrator is replaced, the proceedings shall resume at the stage where the arbitrator who was replaced ceased to perform his functions, unless the arbitral tribunal decides that the proceedings should resume at an earlier stage.

## **18. Fees and expenses of arbitrators**

(1) The parties shall be jointly and severally liable to pay to the arbitrators such reasonable fees and expenses as are appropriate in the circumstances.

(2) Where the arbitrators' remuneration would otherwise be the subject of no other scrutiny by an arbitral institution chosen by the parties or otherwise, any party may apply to the PCA, on notice to the other parties and to the arbitrators, which may order that the amount of the arbitrators' fees and expenses shall be adjusted and fixed in such manner and upon such terms as it may direct.

## **19. Protection from liability and finality of decisions**

(1) An arbitrator shall not be liable for anything done or omitted to be done, in the discharge or purported discharge of his functions as arbitrator unless the act or omission is shown to have been in bad faith.

(2) An arbitral or other institution or person designated or requested by the parties to appoint or nominate an arbitrator shall not be liable—

- (a) for anything done or omitted in the discharge or purported discharge of that function unless the act is shown to have been in bad faith;
- (b) by reason of having appointed or nominated the said arbitrator, for anything done by the arbitrator or his employees or agents in the discharge or purported discharge of his functions as arbitrator.

(3) The PCA shall not be liable for anything done or omitted in the discharge or purported discharge of its functions under this Act.

(4) Subsections (1), (2) and (3) shall apply to an employee or agent of an arbitrator, of an arbitral institution, or of the PCA as they apply to the arbitrator, to the arbitral institution or to the PCA.

(5) Subject only to the right of recourse under section 39 against awards rendered in the arbitral proceedings, all decisions of the PCA under this Act shall be final and subject to no appeal or review.

## **20. Competence as to jurisdiction**

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

(2) An arbitration clause which forms part of a contract shall be treated for the purposes of subsection (1) as an agreement independent of the other terms of the contract, and a decision by the arbitral tribunal that the contract is null and void shall not entail *ipso jure* the invalidity of the arbitration clause.

(3) (a) Subject to subsection (5), a plea that the arbitral tribunal does not have jurisdiction shall be raised not later than the submission of the statement of defence.

(b) A party shall not be precluded from raising such a plea by the fact that it has appointed, or participated in the appointment of, an arbitrator.

(4) Subject to subsection (5), a plea that the arbitral tribunal is exceeding the scope of its authority shall be raised as soon as the matter alleged to be beyond the scope of its authority is raised during the arbitral proceedings.

(5) The arbitral tribunal may admit a later plea under subsection (3) or (4) if it considers the delay justified.

(6) The arbitral tribunal may rule on a plea referred to in subsection (3) or (4) as a preliminary question or in an award on the merits.

(7) Where the arbitral tribunal rules on the plea as a preliminary question, any party may, within 30 days after having received notice of that ruling, request the Supreme Court to decide the matter, and, while such a request is pending, the arbitral tribunal may continue the arbitral proceedings and make one or more awards.

#### **PART IV – INTERIM MEASURES**

##### **21. Interim measures by Tribunal**

(1) Unless otherwise agreed by the parties, the arbitral tribunal may, at the request of a party, grant interim measures, in the form of an award or in another form, by which, at any time before making the award by which the dispute is finally decided, the arbitral tribunal orders a party to—

- (a) maintain or restore the *status quo* pending determination of the dispute;
- (b) take action that would prevent, or refrain from taking action that is likely to cause current or imminent harm or prejudice to the arbitral process itself;
- (c) provide a means of preserving assets out of which a subsequent award may be satisfied;
- (d) preserve evidence that may be relevant and material to the resolution of the dispute; or
- (e) provide security for costs.

(2) The party requesting an interim measure under subsection (1) (a), (b) or (c) shall satisfy the arbitral tribunal that—

- (a) harm not adequately reparable by an award of damages is likely to result if the measure is not ordered, and such harm substantially outweighs the harm that is likely to result to the party against whom the measure is directed if the measure is granted; and
- (b) there is a reasonable possibility that the requesting party will succeed on the merits of the claim.

(3) With regard to a request for an interim measure under subsection (1) (d) or (e), the requirements in subsection (2) shall apply only to the extent the arbitral tribunal considers appropriate.

(4) The arbitral tribunal's determination of the existence of a reasonable possibility of success on the merits under subsection (2) (b) shall not affect the arbitral tribunal's independence and impartiality, or its power to make any subsequent determination of the merits.

(5) The arbitral tribunal may modify, suspend or terminate an interim measure it has granted on application of any party or, in exceptional circumstances and on prior notice to the parties, on the arbitral tribunal's own initiative.

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

(7) The arbitral tribunal may require any party promptly to disclose any material change in the circumstances on the basis of which the measure was requested or granted.

(8) The arbitral tribunal may, at any time in the arbitral proceedings, order the party who requested the interim measure to pay damages and costs to another party where the arbitral tribunal determines that, in the circumstances, the measure requested should not have been granted.

## **22. Recognition and enforcement of interim measures**

(1) An interim measure granted by an arbitral tribunal shall, subject to this section, be recognised as binding and, unless otherwise provided by the arbitral tribunal, enforced on application to the Supreme Court, irrespective of the country in which it was issued.

(2) The party who is seeking or has obtained recognition or enforcement of an interim measure shall promptly inform the Supreme Court of any termination, suspension or modification of that measure.

(3) The Supreme Court may, on an application for recognition or enforcement of an interim measure and if it considers it proper, order the requesting party to provide appropriate security if the arbitral tribunal has not already made a determination with respect to security or where such a decision is necessary to protect the rights of third parties.



(4) Recognition or enforcement of an interim measure may be refused only—

- (a) at the request of the party against whom it is invoked where the Court is satisfied that—
  - (i) the refusal is warranted on a ground set out in section 39 (2) (a);
  - (ii) the arbitral tribunal's decision with respect to the provision of security in connection with the 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) where the Court finds that—
  - (i) the measure is incompatible with the powers conferred on the Court unless the Court decides to reformulate the measure to the extent necessary to adapt it to its own power and procedures for the purposes of enforcing that measure and without modifying its substance; or
  - (ii) any of the grounds set out in section 39 (2) (b) apply to the recognition and enforcement of the measure.

(5) Any determination made by the Court on any ground in subsection (4) shall be effective only for the purposes of the application to recognise and enforce the interim measure. The Court where recognition or enforcement is sought shall not, in making that determination, undertake a review of the substance of the interim measure.

### **23. Powers of Supreme Court to issue interim measures**

(1) (a) The Supreme Court shall have the same power to issue an interim measure in relation to arbitration proceedings as it has in relation to proceedings in Court, whether the juridical seat of the arbitration is in Mauritius or not, and whether that power is usually exercised by a Judge in Chambers or otherwise.

(b) In exercising a power referred to in paragraph (a), the Court shall have regard to the specific features of international arbitration.

(2) Unless the parties otherwise agree, the power referred to in subsection (1) (a) shall be exercised in accordance with subsections (2A) to (6).

(2A) The Court shall exercise the power referred to in subsection (1) (a) in such a manner as to support, and not to disrupt, the existing or contemplated arbitration proceedings.

(3) Where the case is one of urgency, the Court may, on the *ex parte* application of a party or proposed party to the arbitral proceedings, make such order as it thinks necessary.

(4) Where the case is not one of urgency, the Court shall act only on the application of a party to the arbitral proceedings made—

- (a) on notice to the other parties and to the arbitral tribunal; and

- (b) with the permission of the arbitral tribunal or the agreement in writing of the other parties.

(5) The Court shall act only if or to the extent that the arbitral tribunal, and any arbitral or other institution or person vested by the parties with power in that regard, has no power or is unable for the time being to act effectively.

(6) Where the Court so orders, an order made by it under this section shall cease to have effect on the order of the arbitral tribunal or of any such arbitral or other institution or person having power to act in relation to the subject matter of the order.

[S. 23 amended by s. 4 (g) of Act 8 of 2013 w.e.f. 1 June 2013.]

## **PART V – CONDUCT OF ARBITRAL PROCEEDINGS**

### **24. Duties and powers of Tribunal**

(1) Every arbitral tribunal shall—

- (a) treat the parties with equality and give them a reasonable opportunity of presenting their case; and
- (b) adopt procedures suitable to the circumstances of the case, avoiding unnecessary delay and expenses, so as to provide a fair and efficient means for the resolution of the dispute between the parties.

(2) Subject to this Act, the parties are free to agree on the procedure to be followed by the arbitral tribunal in conducting the proceedings.

(3) Failing such agreement, the arbitral tribunal may, subject to this Act, conduct the arbitration in such manner as it considers appropriate, and determine all procedural and evidential matters including—

- (a) where and when the proceedings are to be held;
- (b) the language to be used in the proceedings;
- (c) whether any written statement of claim and defence are to be used, when these should be supplied and the extent to which such statements can be later amended;
- (d) whether any document should be disclosed between, and produced by, the parties and at what stage;
- (e) whether any question should be put to and answered by the parties;
- (f) whether to apply rules of evidence, or any other rules, as to the admissibility, relevance or weight of any material sought to be tendered on any matters of fact or opinion, and the time, manner and form in which such material should be exchanged and presented;
- (g) whether and to what extent the arbitral tribunal should itself take the initiative in ascertaining the facts and the law; and

- (h) whether and to what extent the arbitral tribunal should administer oaths or take affirmations from any witness for the purposes of his examination before the arbitral tribunal.

## **25. Statements of claim and defence**

(1) Subject to section 24, within the time agreed by the parties or determined by the arbitral tribunal, the claimant shall state the facts supporting its claim, the points at issue and the relief or remedy sought, and the respondent shall state its defence in respect of these particulars, unless the parties have otherwise agreed as to the required elements of such statements.

(2) Subject to section 24, unless otherwise agreed by the parties, any party may amend or supplement its claim or defence during the course of the arbitral proceedings, unless the arbitral tribunal considers it inappropriate to allow such amendment having regard to the delay in making it.

## **26. Hearing**

(1) Subject to subsection (2), unless otherwise agreed by the parties, the arbitral tribunal shall decide whether to hold oral hearings for the presentation of evidence or for oral argument, or whether the proceedings shall be conducted on the basis of documents and other materials.

(2) Unless otherwise agreed by the parties, the arbitral tribunal shall hold a hearing at an appropriate stage of the proceedings, if so requested by a party.

(3) The parties shall be given sufficient advance notice of any hearing and of any meeting of the arbitral tribunal for the purpose of inspection of goods, other property or documents.

(4) Every statement, document or other information supplied to the arbitral tribunal by a party shall be communicated to all other parties.

(5) Any further statement, document or information received by the arbitral tribunal (whether from an expert appointed by the arbitral tribunal under section 28 or otherwise) on which the arbitral tribunal might rely in making its decision shall also be communicated by the arbitral tribunal to all parties.

## **27. Default of party**

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

- (a) a claimant fails to communicate its statement of claim in accordance with section 25, the arbitral tribunal shall terminate the proceedings either completely or in relation to that claimant where there are multiple claimants unless a counterclaim is pending against that claimant;

- (b) a respondent fails to communicate its statement of defence in accordance with section 25, the arbitral tribunal shall continue the proceedings without treating such failure in itself as an admission of any 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 one or more awards on the evidence before it.

## **28. Appointment of expert**

(1) Unless otherwise agreed by the parties, the arbitral tribunal may—

- (a) appoint one or more experts to report to it on any specific issue to be determined by the arbitral tribunal; and
- (b) require a party to give the expert any relevant information or to produce, or to provide access to, any relevant documents, goods or other property for his inspection.

(2) Unless otherwise agreed by the parties, 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 where the parties have the opportunity to put questions to him and to present expert witnesses in order to testify on the points at issue.

## **29. Court assistance in taking evidence**

(1) (a) The arbitral tribunal, or a party with the approval of the arbitral tribunal, may request from the Supreme Court assistance in taking evidence.

(b) The Court may execute the request within its competence and according to its rules on the taking of evidence.

(2) For the purposes of subsection (1), the Supreme Court may—

- (a) issue a witness summons to compel the attendance of any person before an arbitral tribunal to give evidence or produce documents or other material; or
- (b) order any witness to submit to examination on oath before the arbitral tribunal, or before an officer of the Court, or any person for the use of the arbitral tribunal.

## **30. Power of PCA to extend time limits**

(1) Unless the parties otherwise agree, the PCA may extend any time limit agreed by the parties in relation to any matter relating to the arbitral proceedings or specified in this Act as having effect in default of such agreement, including any time limit for commencing arbitral proceedings or for making an award.

(2) An application for an order under subsection (1) may be made—

- (a) by any party to the arbitral proceedings on notice to all other parties and to the arbitral tribunal (if already constituted); or

(b) by the arbitral tribunal on notice to the parties.

(3) The PCA shall not exercise its power to extend a time limit unless it is satisfied that—

(a) any available recourse to the tribunal, or to any arbitral or other institution or person vested by the parties with power in that regard, has first been exhausted;

(b) a substantial injustice would otherwise occur.

(4) An order under this section—

(a) may be made whether or not the time limit has already expired;

(b) may be made on such terms as the PCA thinks fit; and

(c) shall not affect the operation of any applicable rule of limitation or prescription.

### 31. Representation

Unless otherwise agreed by the parties, a party to arbitral proceedings may be represented in the arbitral proceedings by a law practitioner or other person chosen by him, who need not be qualified to practise law in Mauritius or in any other jurisdiction.

## PART VI – THE AWARD

### 32. Rules applicable to substance of dispute

(1) The arbitral tribunal shall decide the dispute in accordance with such rules of law as are chosen by the parties as applicable to the substance of the dispute.

(2) Any designation of the law or legal system of a State shall be construed, unless otherwise expressly provided, as directly referring to the substantive law of that State and not to its conflict of laws rules.

(3) Failing any designation by the parties, the arbitral tribunal shall apply the law determined by the conflict of laws rules which it considers applicable.

(4) The arbitral tribunal shall decide *ex aequo et bono* or as *amiable compositeur* only if the parties have expressly authorised it to do so.

(5) In all cases, the arbitral tribunal shall decide in accordance with the terms of the contract and shall take into account the usages of the trade applicable to the transaction.

### 33. Remedies and costs

(1) Unless otherwise agreed by the parties, the arbitral tribunal—

(a) may make a declaration as to any matter to be determined in the proceedings; and

(b) may order the payment of a sum of money, in any currency; and

- (c) has the same powers as a Court in Mauritius—
    - (i) to order a party to do or refrain from doing anything; and
    - (ii) to order specific performance of a contract; and
    - (iii) to order the rectification, setting aside or cancellation of a deed or other document; and
  - (d) may award simple or compound interest for such period and at such rate as it considers meets the justice of the case.
- (2) Unless otherwise agreed by the parties—
- (a) the costs of the arbitration shall be fixed and allocated by the arbitral tribunal in an award, applying the general principles that—
    - (i) costs should follow the event except where it appears to the arbitral tribunal that this rule should not apply or not apply fully in the circumstances of the case; and
    - (ii) the successful party should recover a reasonable amount reflecting the actual costs of the arbitration, and not only a nominal amount; and
  - (b) in the absence of an award fixing and allocating the costs of the arbitration, each party shall be responsible for its own costs, and shall bear in equal share the costs of the PCA, the fees and expenses of the arbitral tribunal, and any other expenses related to the arbitration.

#### **34. Decision making by panel of arbitrators**

(1) Subject to subsections (2) and (3), 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) Any question relating to procedure may be decided by a presiding arbitrator, if so authorised by the parties or by all members of the arbitral tribunal.

(3) Unless otherwise agreed by the parties, where there is no majority, any decision shall be made by the presiding arbitrator alone.

#### **35. Settlement**

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

- (2) An award on agreed terms shall—
- (a) be made in accordance with section 36; and
  - (b) state that it is an award; and

- (c) have the same status and effect as any other award on the merits of the case.

### **36. Form and contents of award**

(1) Unless otherwise agreed by the parties, the arbitral tribunal may make more than one award at different points in time during the arbitration proceedings on different aspects of the matters to be determined.

(2) The arbitral tribunal may, in particular, make an award relating to—

- (a) any specific issue in the arbitration; or
- (b) a part only of the claims or counterclaims submitted to it for decision.

(3) An award shall be made in writing and shall be signed by the arbitrator or, in arbitral proceedings with more than one arbitrator, by the majority of all members of the arbitral tribunal or by the presiding arbitrator alone where he is acting pursuant to section 34 (3), provided that the reason for any omitted signature is stated.

(4) An award shall state the reasons on 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 35.

(5) An award shall state the date on which the award was made and shall always be deemed to have been made at the juridical seat of the arbitration.

(6) After an award is made, a copy signed by the arbitrators in accordance with subsection (3) shall be delivered to each party.

(7) An award shall be final and binding on the parties and on any person claiming through or under them with respect to the matters determined therein, and may be relied upon by any of the parties in any proceedings before any arbitral tribunal or in any Court of competent jurisdiction.

(8) Except in relation to interim measures granted by the arbitral tribunal in the form of an award pursuant to section 21, an award shall be final and binding on the arbitral tribunal with respect to the matters determined therein.

(9) Where an award has been made, the arbitral tribunal shall not, except as provided in section 21 (5), 38 or 39 (5), vary, review, add to or revoke the award.

### **37. Termination of proceedings**

(1) The arbitral proceedings shall be terminated by the final award or by an order of the arbitral tribunal in accordance with subsection (2).

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

- (a) all claimants withdraw their claim, unless a respondent objects and the arbitral tribunal recognises a legitimate interest on its part in obtaining a final settlement of the dispute;
- (b) the parties agree on the termination of the proceedings; or
- (c) the arbitral tribunal finds that the continuation of the proceedings has for any other reason become unnecessary or impossible.

(3) Subject to sections 38 and 39 (5), the mandate of the arbitral tribunal shall terminate with the termination of the arbitral proceedings.

### **38. Correction, interpretation and additional award**

(1) Within 30 days of the receipt of an award, or such other period as may be agreed by the parties—

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

(2) Where the arbitral tribunal considers a request under subsection (1) to be justified, it shall make the correction or give the interpretation within 30 days of receipt of the request and any interpretation shall form part of the award.

(3) The arbitral tribunal may correct any error of the type referred to in subsection (1) (a) on its own initiative within 30 days of the date of the award.

(4) Unless otherwise agreed by the parties, within 30 days of receipt of an award, any party, with notice to all other parties, may request the arbitral tribunal to make an additional award as to claims presented in the arbitral proceedings but omitted from the award, and where the arbitral tribunal considers the request to be justified—

- (a) it may issue further procedural directions or hold further hearings in relation to the claim omitted from the award if necessary; and
- (b) it shall make the additional award within 60 days.

(5) The arbitral tribunal may extend, if necessary, the period of time within which it shall make a correction, interpretation or an additional award under subsection (2) or (4).

(6) Section 36 shall apply to a correction or interpretation of the award or to an additional award.



### 39. Exclusive recourse against award

(1) Any recourse against an arbitral award under this Act may be made only by an application to the Supreme Court for setting aside in accordance with this section.

(2) An arbitral award may be set aside by the Supreme Court only where—

- (a) the party making the application furnishes proof that—
  - (i) a party to the arbitration agreement was under some incapacity or the agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under Mauritius law; or
  - (ii) it was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present its case; or
  - (iii) the award deals with a dispute not contemplated by, or not falling within the terms of, the submission to arbitration, or contains a decision on a matter beyond the scope of the submission to arbitration; or
  - (iv) 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 this Act; or
- (b) the Court finds that—
  - (i) the subject matter of the dispute is not capable of settlement by arbitration under Mauritius law;
  - (ii) the award is in conflict with the public policy of Mauritius;
  - (iii) the making of the award was induced or affected by fraud or corruption; or
  - (iv) a breach of the rules of natural justice occurred during the arbitral proceedings or in connection with the making of the award by which the rights of any party have been or will be substantially prejudiced.

(3) Notwithstanding subsection (2) (a) (iii) and (iv)—

- (a) where decisions on matters submitted to arbitration can be separated from decisions on matters which were not so submitted, only those parts of the award which contain decisions on matters not submitted may be set aside;
- (b) the Court shall not set aside an award on a ground specified in subsection (2) (a) (iv) where the agreement of the parties was in conflict with a provision of this Act from which the parties cannot agree to derogate.

(4) An application for setting aside may not be made after 3 months have elapsed from the date on which the party making that application has received the award or, if a request has been made under section 38, from the date on which that request has 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 arbitral tribunal's opinion will eliminate the grounds for setting aside.

(6) Where an application is made to set aside an award, the Court may order that any money made payable by the award shall be brought into Court or otherwise secured pending the determination of the application.

#### **39A. Order setting aside arbitral award**

The Supreme Court may, where it makes an order setting aside an arbitral award or any part thereof under section 39, and taking into account the grounds on which the award or the relevant part thereof has been set aside, give such other directives as it considers appropriate, including directives relating to—

- (a) the remittance of the matter to the arbitral tribunal;
- (b) the commencement of a new arbitration, including the time within which such arbitration shall be commenced;
- (c) the future conduct of any proceedings the parties to which were referred to arbitration under section 5 (2); or
- (d) the bringing of any action, including the time within which such action shall be brought, by any party to the arbitral award concerning any matter which was the subject of the arbitral award which was set aside by the Supreme Court.

[S. 39A inserted by s. 4 (h) of Act 8 of 2013 w.e.f. 1 June 2013.]

#### **40. Recognition and enforcement**

The Convention on the Recognition and Enforcement of Foreign Arbitral Awards Act shall apply to the recognition and enforcement of awards rendered under this Act.

### **PART VII – MISCELLANEOUS**

#### **41. Limitation and prescription**

(1) No enactment relating to limitation or prescription in Mauritius shall apply to arbitration proceedings merely by reason of the fact that the juridical seat of the arbitration is Mauritius.

(2) Unless otherwise agreed by the parties, the law or rules of law determined under section 32 shall apply to any issue of limitation or prescription arising in arbitral proceedings under this Act.

(3) The Supreme Court may order that, in computing the time prescribed for the commencement of proceedings in respect of a dispute which was the subject of—

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

the period between the commencement of the arbitration proceedings and the date of an order under paragraph (a) or (b) shall be excluded.

#### **42. Constitution of Supreme Court and appeal**

(1) Subject to subsection (1) (A), for the purposes of any application or transfer to the Supreme Court under this Act or of any other matter arising out of an arbitration subject to this Act before the Supreme Court, the Court shall be constituted by a panel of 3 Designated Judges, composed of such Designated Judges as the Chief Justice may determine.

(1A) Applications to the Supreme Court for interim measures under sections 6 (2) and 23 shall in the first instance be made to, heard by and determined by a Judge in Chambers who shall be a Designated Judge, but shall be returnable before a panel of 3 Designated Judges, composed of the Designated Judge who initially heard the matter and of such 2 other Designated Judges as the Chief Justice may determine.

(1B) (a) Any hearing before the Supreme Court under this Act or the Convention on the Recognition and Enforcement of Foreign Arbitral Awards Act shall be held in public, save that the Court may, upon the application of a party, exclude from the proceedings persons other than the parties and their legal representatives where—

- (i) all the parties so agree; or
- (ii) the Court considers it to be necessary or expedient in circumstances where publicity would prejudice the interests of justice, taking into account the specific features of international arbitration, including any expectation of confidentiality which the parties may have had when concluding their arbitration agreement or any need to protect confidential information.

(b) Notwithstanding paragraph (a), the announcement of the decision of the Court shall be in public.

(1C) The Court may, on the application of one or all of the parties and where the interests of justice so require, prohibit the publication of all information relating to Court proceedings under this Act.

(2) An appeal shall lie as of right to the Judicial Committee of the Privy Council against any final decision of the Supreme Court under this Act.

[S. 42 amended by s. 4 (i) of Act 8 of 2013 w.e.f. 1 June 2013.]

#### **43. Designated Judge**

(1) The Chief Justice shall nominate 6 Judges to serve as Designated Judges under this Act and the Convention on the Recognition and Enforcement of Foreign Arbitral Awards Act.

(2) A Judge nominated by the Chief Justice under subsection (1) shall remain a Designated Judge for a period of 5 years or until the end of his service as a Judge, whichever occurs earlier, and may be eligible for re-nomination as Designated Judge for further periods of 5 years.

(3) A Judge's nomination as Designated Judge shall not affect his ability to carry out other business in the Supreme Court.

[S. 43 added by s. 4 (j) of Act 8 of 2013 w.e.f. 1 June 2013.]

#### **44. Appeal to Judicial Committee**

Any appeal to the Judicial Committee under section 42 (2) against a final decision of the Supreme Court under this Act or under section 4 (3) of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards Act shall be made in accordance with the procedure applicable to appeals as of right under the Mauritius (Appeals to Privy Council) Order 1968.

[S. 44 added by s. 4 (j) of Act 8 of 2013 w.e.f. 1 June 2013.]

#### **45. Witness statements**

(1) Notwithstanding any other enactment, a witness statement which complies with the International Arbitration Rules shall be admissible in evidence in proceedings in Court under this Act or under the Convention on the Recognition and Enforcement of Foreign Arbitral Awards Act.

(2) Any person who, for the purposes of this Act or the International Arbitration Rules, knowingly makes a witness statement which is false in any material respect shall commit an offence and shall, on conviction, be liable to a fine not exceeding 10,000 rupees and to penal servitude for a term not exceeding 3 years.

[S. 45 added by s. 4 (j) of Act 8 of 2013 w.e.f. 1 June 2013.]

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### **FIRST SCHEDULE**

[Section 3B]

#### **OPTIONAL SUPPLEMENTARY PROVISIONS FOR INTERNATIONAL ARBITRATIONS**

##### **1. Determination of preliminary point of Mauritius law by Court**

(1) Notwithstanding section 2A of the Act, on an application to the Supreme Court by any party—

- (a) with the consent of the arbitral tribunal; or
- (b) with the consent of every other party,

the Court shall have jurisdiction to determine any question of Mauritius law arising in the course of the arbitration.

(1) Notwithstanding section 2A and 39 of the Act, any party may appeal to the Supreme Court on any question of Mauritius law arising out of an award with the leave of the Court—

- (a) might produce substantial savings in costs to the parties; and
- (b) might, having regard to all the circumstances, substantially affect the rights of one or more of the parties.

(2) The Court shall not entertain an application under subparagraph (1) (a) with respect to any question of Mauritius law unless it is satisfied that the determination of the question of law concerned—

- (a) might produce substantial savings in costs to the parties; and
- (b) might, having regard to all the circumstances, substantially affect the rights of one or more of the parties.

(3) For the purposes of this paragraph, “question of Mauritius law”—

- (a) includes an error of law that involves an incorrect interpretation of the applicable law (whether or not the error appears on the record of the decision); but
- (b) does not include any question as to whether—
  - (i) the award or any part of the award was supported by any evidence or any sufficient or substantial evidence; or
  - (ii) the arbitral tribunal drew the correct factual inferences from the relevant primary facts.

## **2. Appeals on questions of Mauritius law**

(1) Notwithstanding sections 2A and 39 of the Act, any party may appeal to the Supreme Court on any question of Mauritius law arising out of an award with the leave of the Court.

(2) The Court shall not grant leave under subparagraph (1) unless it considers that, having regard to all the circumstances, the determination of the question of Mauritius law concerned could substantially affect the rights of one or more of the parties.

(3) The Court may grant leave under subparagraph (1) on such conditions as it thinks fit.

(4) On the determination of an appeal under this paragraph, the Court may, by order—

- (a) confirm, vary, or set aside the award; or
- (b) remit the award, together with the Court’s opinion on the question of Mauritius law which was the subject of the appeal, to the arbitral tribunal for reconsideration or, where a new arbitral tribunal has been appointed, to that arbitral tribunal for consideration,

and, where the award is remitted under subparagraph (b), the arbitral tribunal shall, unless the order otherwise directs, make the award not later than 3 months after the date of the order.

(5) Where the award of an arbitral tribunal is varied on an appeal under this paragraph, the award as varied shall have effect (except for the purposes of this paragraph) as if it were the award of the arbitral tribunal; and the party relying

on the award or applying for its enforcement in Mauritius pursuant to section 40 of the Act shall supply the duly authenticated original order of the Court varying the award or a duly certified copy thereof.

(6) Section 39 (5) and (6) of the Act shall apply to an appeal under this paragraph as they apply to an application for the setting aside of an award under that section.

(7) For the purposes of the New York Convention as applicable in Mauritius—

- (a) an appeal under this paragraph shall be treated as an application for the setting aside of an award; and
- (b) an award which has been remitted by the Court under subparagraph (4) (b) to the original or a new arbitral tribunal shall be treated as an award which has been suspended.

(8) For the purposes of this paragraph, “question of Mauritius law”—

- (a) includes an error of law that involves an incorrect interpretation of the applicable law (whether or not the error appears on the record of the decision); but
- (b) does not include any question as to whether—
  - (i) the award or any part of the award was supported by any evidence or any sufficient or substantial evidence; or
  - (ii) the arbitral tribunal drew the correct factual inferences from the relevant primary facts.

### **3. Consolidation of arbitral proceedings**

(1) Where 2 or more arbitral proceedings have the same arbitral tribunal appointed in respect of each of the arbitral proceedings the arbitral tribunal may, on the application of at least one party in each of the arbitral proceedings, order—

- (a) those proceedings to be consolidated on such terms as the arbitral tribunal thinks just;
- (b) those proceedings to be heard at the same time, or one immediately after the other; or
- (c) any of those arbitral proceedings to be stayed on such terms as it considers appropriate.

(2) Where an application has been made to the arbitral tribunal under subparagraph (1) and the arbitral tribunal refuses or fails to make an order under that subparagraph, the Supreme Court may, on application by a party in any of the proceedings, make any such order as could have been made by the arbitral tribunal.

(3) Where 2 or more arbitral proceedings do not have the same arbitral tribunal appointed in respect of each of the arbitral proceedings but each arbitral proceeding is subject to this Act—

- (a) the arbitral tribunal of any one of the arbitral proceedings may, on the application of a party in the proceedings, provisionally order—
  - (i) the arbitral proceedings to be consolidated with other arbitral proceedings on such terms as the arbitral tribunal thinks just;
  - (ii) the arbitral proceedings to be heard at the same time as other arbitral proceedings, or one immediately after the other; or

(iii) any of those arbitral proceedings to be stayed until after the determination of any other of them;

- (b) an order shall cease to be provisional where consistent provisional orders have been made for all of the arbitral proceedings concerned;
- (c) the arbitral tribunals may communicate with each other for the purpose of conferring on the desirability of making orders under this subparagraph and of deciding on the terms of any such order;
- (d) if a provisional order is made for at least one of the arbitral proceedings concerned, but the arbitral tribunal for another of the proceedings refuses or fails to make such an order (having received an application from a party to make such an order), the Supreme Court may, on application by a party in any of the proceedings, make an order or orders that could have been made under this subparagraph;
- (e) if inconsistent provisional orders are made for the arbitral proceedings, the Supreme Court may, on application by a party in any of the proceedings, alter the orders to make them consistent.

(4) Where arbitral proceedings are to be consolidated under subparagraph (3), the arbitral tribunal for the consolidated proceedings shall be that agreed on for the purpose by all the parties to the individual proceedings, but, failing such an agreement, the PCA shall appoint an arbitral tribunal for the consolidated proceedings.

(5) An order or a provisional order may not be made under this paragraph unless it appears—

- (a) that some common question of law or fact arises in all of the arbitral proceedings;
- (b) that the rights to relief claimed in all of the proceedings are in respect of, or arise out of, the same transaction or series of transactions; or
- (c) that for some other reason it is desirable to make the order or provisional order.

(6) Any proceedings before an arbitral tribunal for the purposes of this paragraph shall be treated as part of the arbitral proceedings concerned.

(7) Arbitral proceedings may be commenced or continued, although an application to consolidate them is pending under subparagraphs (1) to (3) and although a provisional order has been made in relation to them under subparagraph (3).

(8) Subparagraphs (1) and (3) shall apply in relation to arbitral proceedings, whether or not all or any of the parties are common to some or all of the proceedings, provided that each of the parties to each of the arbitral proceedings in respect of which consolidation is sought have by way of arbitration agreement (as defined in this Act) consented to consolidation pursuant to subparagraphs (1) to (2).

(9) Nothing in this paragraph shall prevent the parties to 2 or more arbitral proceedings from agreeing to consolidate those proceedings and taking such steps as are necessary to effect that consolidation.

#### **4. Joinder**

On the application of any party to the arbitration, the Supreme Court may in the exercise of its discretion determine that one or more third persons should be

joined in the arbitration as a party, provided any such third person and the applicant party have consented thereto in writing.

[First Sch. amended by s. 4 (k) of Act 8 of 2013 w.e.f. 1 June 2013.]

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**SECOND SCHEDULE**

[Section 3D]

**MODEL ARBITRATION PROVISIONS FOR GBL COMPANIES**

1. Shareholders in a Mauritius GBL company (“the Company”) may incorporate an arbitration clause in the constitution of the Company, as provided in section 3D of the Act, by a unanimous resolution of shareholders in the following form—

The shareholders of the Company hereby agree that the constitution of the Company shall be amended by the inclusion of the arbitration clause set out in the Second Schedule to the International Arbitration Act (referred to as the Act). The chosen arbitral institution is [name of institution]. The number of arbitrators shall be [1 or 3].

2. The effect of the resolution referred to in paragraph 1 shall be the incorporation in the constitution of the Company of the following arbitration clause—

(1) Any dispute, controversy or claim arising out of this constitution or the breach, termination or invalidity thereof shall be settled by international arbitration under the International Arbitration Act (referred to as the Act).

(2) The provisions of the First Schedule to the Act shall apply to the arbitration.

(3) The arbitration shall be conducted pursuant to the Rules of [name of institution]. Where no institution is chosen, the arbitration shall be conducted pursuant to the rules set out in the Act.

(4) The number of arbitrators shall be [1 or 3]. Where no option is chosen, the default rules set out in the Act shall apply.

(5) The juridical seat of arbitration shall be Mauritius.

(6) The language to be used in the arbitral proceedings shall be the English language.

(7) Any dispute, controversy or claim shall be kept confidential and any proceedings before the Supreme Court in relation thereto shall, with the agreement of all parties, be heard in private.

[Second Sch. amended by s. 4 (l) of Act 8 of 2013 w.e.f. 1 June 2013.]

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**THIRD SCHEDULE**

[Section 2B]

**TABLE OF CORRESPONDING PROVISIONS BETWEEN THIS ACT AND THE AMENDED MODEL LAW**

**PART I – PRELIMINARY**

<b>Section of this Act</b>	<b>Article of the amended Model law</b>
Section 2 (1), (3), (4) and (5)	Articles 1 (3), 1 (4) and 2
Section 2 (2)	Article 3
Section 2A (Extent of Court intervention)	Article 5
Section 2B (International origin and general principles)	Article 2A
Section 2C (Disconnection of international arbitration from domestic arbitration and regime)	
Section 2D (Waiver of right to object)	Article 4

**PART IA – SCOPE OF APPLICATION**

<b>Section of this Act</b>	<b>Article of the amended Model law</b>
Section 3 (Temporal application)	
Section 3A (Material application)	Articles 1 (1) and 1 (2)
Section 3B (Application of First Schedule)	
Section 3C (Determination of threshold issues)	
Section 3D (Arbitration clause in constitution of a GBL company)	
Section 3E (Miscellaneous provisions on scope of application)	

**PART II – INITIATION OF PROCEEDINGS**

<b>Section of this Act</b>	<b>Article of the amended Model law</b>
Section 4 (Arbitration agreement)	Article 7
Section 5 (Substantive claim before Court)	Article 8
Section 6 (Compatibility of interim measures)	Article 9
Section 7 (Death or bankruptcy or winding up of party)	
Section 8 (Consumer arbitration agreement)	
Section 9 (Commencement of proceedings)	Article 21
Section 10 (Juridical seat)	Article 20

**THIRD SCHEDULE – continued**

**PART III – THE ARBITRAL TRIBUNAL**

<b>Section of this Act</b>	<b>Article of the amended Model law</b>
Section 11 (Number of arbitrators)	Article 10
Section 12 (Appointment of arbitrators)	Article 11
Section 13 (Grounds for challenge of arbitrator)	Article 12
Section 14 (Procedure for challenge of arbitrator)	Article 13
Section 15 (Failure or inability to act)	Article 14
Section 16 (Replacement of arbitrator)	Article 15
Section 17 (Hearing following replacement of arbitrator)	
Section 18 (Fees and expenses of arbitrators)	
Section 19 (Protection from liability and finality of decisions)	
Section 20 (Competence as to jurisdiction)	Article 16

**PART IV – INTERIM MEASURES BY TRIBUNAL**

<b>Section of this Act</b>	<b>Article of the amended Model law</b>
Section 21 (Interim measures by Tribunal)	Articles 17 – 17G
Section 22 (Recognition and enforcement of interim measures)	Articles 17H – 17I
Section 23 (Powers of Supreme Court to issue interim measures)	Article 17J

**PART V – CONDUCT OF ARBITRAL PROCEEDINGS**

<b>Section of this Act</b>	<b>Article of the amended Model law</b>
Section 24 (Duties and powers of Tribunal)	Articles 18, 19 and 22
Section 25 (Statements of claim and defence)	Article 23
Section 26 (Hearing)	Article 24
Section 27 (Default of party)	Article 25
Section 28 (Appointment of expert)	Article 26
Section 29 (Court assistance in taking evidence)	Article 27
Section 30 (Power of PCA to extend time limits)	
Section 31 (Representation)	

**THIRD SCHEDULE – continued**

**PART VI – THE AWARD**

<b>Section of this Act</b>	<b>Article of the amended Model law</b>
Section 32 (Rules applicable to substance of dispute)	Article 28
Section 33 (Remedies and costs)	
Section 34 (Decision making by panel of arbitrators)	Article 29
Section 35 (Settlement)	Article 30
Section 36 (Form and contents of award)	Article 31
Section 37 (Termination of proceedings)	Article 32
Section 38 (Correction, interpretation and additional award)	Article 33
Section 39 (Exclusive recourse against award)	Article 34
Section 39A (Order setting aside arbitral award)	
Section 40 (Recognition and enforcement)	Articles 35 and 36

**PART VII – MISCELLANEOUS**

<b>Section of this Act</b>	<b>Article of the amended Model law</b>
Section 41 (Limitation and prescription)	
Section 42 (Constitution of Supreme Court and appeal)	Article 6
Section 43 (Designated Judge)	
Section 44 (Appeal to Judicial Committee)	
Section 45 (Witness statements)	

[Second Sch. repealed and replaced by s. 4 (m) of Act 8 of 2013 w.e.f. 1 June 2013.]

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