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THE OFFICIAL GAZETTE 24TH MAY, 2024
LEGAL SUPPLEMENT — A

GUYANA
ACT No. 6 of 2024
ARBITRATION ACT 2024

I assent.

Mohamed Irfaan Ali,
President.
24th May 2024

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SCHEDULE- UNCITRAL Arbitration Rules

AN ACT to facilitate domestic and international arbitrations by encouraging the use of arbitration as a method of resolving disputes; and for connected purposes.

A.D. 2024 Enacted by the Parliament of Guyana:-

PART I

PRELIMINARY

Short title and commencement.

1. This Act may be cited as the Arbitration Act 2024 and shall come into operation on the day the Minster may, by order, appoint.

Interpretation.

2. (1) In this Act-

"appointing authority" means-

(a) any person or authority chosen by the parties to appoint an arbitrator, including a Court, international organisation or an arbitration centre; or

(b) any person or authority designated by the Court to appoint an arbitrator in circumstances where the parties fail to agree on the appointment of an arbitrator;

"arbitration" means any arbitration whether or not administered by a permanent arbitral institution;

"arbitrator" means a member of an arbitral tribunal and includes an umpire;

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

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

"confidential information" in relation to arbitral proceedings, means information that relates to the arbitral proceedings or to an award made in those proceedings and includes the following-

(a) the statement of claim, statement of defence and all other pleadings, submissions, statements or other information supplied to the arbitral tribunal by a party;

(b) any information supplied by a party to another party in compliance with a direction of the arbitral tribunal;

(c) any evidence, whether documentary or otherwise supplied to the arbitral tribunal;

(d) any notes made by the arbitral tribunal of oral evidence or submissions given before the arbitral tribunal;

(e) any transcript of oral evidence or submissions given before the arbitral tribunal;

(f) any rulings or communications of the arbitral tribunal;

(g) any award of the arbitral tribunal;

"Court" means the High Court of Guyana;

"data message" means information generated, sent, received or stored by electronic, magnetic, optical or similar means, including electronic data interchange, 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 an attorney-at-law or other person who is not a resident or citizen of the place of arbitration and who has been appointed by a party to represent him or her in an international

arbitration, or with the permission of the Court, in a domestic arbitration;

"international arbitration" means an arbitration where-

(a) the parties to the arbitration agreement have, at the time of the conclusion of 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;

(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)-

(i) if a party has more than one place of business, the place of business is that which has the closest relationship to the arbitration agreement; and

(ii) if a party does not have a place of business, reference is to be made to the party's habitual residence;

"Minister" means the Minister responsible for legal affairs;

"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 21 June 1985 and amended on 7 July 2006, at the thirty-ninth session of the Commission;

"party" means a party to an arbitration agreement;

"State" includes a territory or dependency of a State;

"UNCITRAL Arbitration Rules" mean the UNCITRAL Arbitration Rules which were adopted by the United Nations Commission on International Trade Law (UNCITRAL) on 15 December 1976 and which rules were revised in 2010 and 2013 the contents of which is set out in the Schedule.

Schedule

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

(3) Where a provision of this Act refers to the fact that the parties have agreed or that they may agree or in any other way refers to an agreement of the parties, such agreement includes any arbitration rules referred to in that agreement.

(4) Where a provision of this Act, other than in sections 40(a) and 54(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 such 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 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.

Objects and scope of application of the Act.

3. (1) The objects of this Act are to-

(a) encourage 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 exposure;

(c) facilitate the use of arbitration agreements in domestic and international matters; and

(d) facilitate the recognition and enforcement of arbitral awards.

(2) This Act applies to domestic arbitration and international arbitration where the seat of arbitration is Guyana, without prejudice to the provisions of treaties to which Guyana is a party.

(3) The provisions of this Act, except sections 9, 10, 28, 29, 30, 57 and 58, apply only if the place of arbitration is in Guyana.

(4) Where a respondent or claimant has his or her place of business or habitual residence in Guyana and the place of arbitration has not yet been determined, the Court shall be the competent authority to perform the functions specified in the sections dealing with-

(a) the constitution of the arbitral tribunal;

(b) the appointment of arbitrators;

(c) the challenge procedure; and

(d) failure or impossibly to act.

(5) This Act shall not affect any other law of Guyana by virtue of which certain disputes may not be submitted to arbitration or may be submitted to arbitration only according to provisions other than those of this Act.

Receipt of written communications.

4. (1) Unless otherwise agreed by the parties-

(a) any written communication is deemed to have been received if it is delivered to the addressee personally or if it is delivered at the addressee's 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 inquiry, a written communication is deemed to have been received if 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

(c) a communication is deemed to have been received on the day it is so delivered.

(2) The provisions of this section do not apply to communications in Court proceedings.

(3) For the purposes of this section, "written communications" and "mailing address" include electronic written communications and an electronic mailing address, respectively.

Waiver of right to object.

5. 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 or her 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 or her right to object.

Extent of Court intervention.

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

Authority for certain functions of arbitration assistance and supervision.

7. The functions referred to in sections 12(3), (4), (5) and (6), 14(4), 15(2) and 17(9) shall be performed by the appointing authority.

PART II
ARBITRATION AGREEMENT

Definition and form of arbitration agreement.

8. (1) An arbitration agreement is 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.

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

(3) An arbitration agreement shall be in writing.

(4) 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 contract or by other means.

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

(6) 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.

(7) 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.

Arbitration agreement and substantive claim before Court.

9. (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 or her 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.

(2) Notwithstanding subsection (1), a Court may, by order, refer a matter arising in proceedings before it, other than criminal proceedings, for arbitration if the Court considers the circumstances appropriate and whether or not parties to the proceedings consent to the referral.

(3) Where an action referred to in subsection (1) or (2) 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.

Arbitration agreement and interim measures by Court.

10. 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.

PART III
COMPOSITION OF ARBITRAL TRIBUNAL

Number of arbitrators.

11. The parties to an arbitration agreement 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.

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

(2) Subject to subsections (6) and (7), the parties may agree on a procedure of appointing an arbitrator or arbitrators.

(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 a third arbitrator within thirty days of their appointment, the appointment shall be made, upon request of a party, by the appointing authority.

(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 appointing authority.

(4) In an arbitration with more than two parties, if the parties are unable to agree on an arbitrator, the arbitrator shall be appointed, upon request of a party, by the appointing authority.

(5) 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 appointing authority to take the necessary measure, unless the agreement on the appointment procedure provides other means for securing the appointment.

(6) A decision on a matter entrusted by subsections (3), (4) or (5) to the appointing authority is final and not subject to appeal.

(7) The appointing authority, in appointing an arbitrator shall-

(a) have due regard to any qualifications required by 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

(b) notwithstanding subsection (1), 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.

Grounds for challenge.

13. (1) When a person is approached in connection with that person's possible appointment as an arbitrator, the person shall disclose any circumstances as an arbitrator likely to give rise to justifiable doubts as to his or her impartiality or independence.

(2) An arbitrator shall, from the time of his or her appointment and throughout the arbitration proceedings, 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 or her impartiality or independence; or

(b) the arbitrator does not possess the qualifications agreed to by the parties.

(4) A party who has appointed or participated in the appointment of an arbitrator may challenge the arbitrator only if he or she becomes aware of any of the grounds of challenge set out in subsection (3) as may be applicable to the arbitrator after the arbitrator has been appointed.

Challenge procedure.

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

(2) Where the parties have not agreed on a procedure for challenge, a party who intends to challenge an arbitrator shall-

(a) within fifteen days after the arbitral tribunal has been constituted; or

(b) after becoming aware of any circumstances referred to in section 13 (3),

send a written statement of the grounds for the challenge to the arbitrator.

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

(4) Where a challenge before the arbitral tribunal is unsuccessful, the challenging party may, within thirty days after receiving notice of the decision rejecting the challenge, apply to the appointing authority to decide on the challenge and the appointing authority may make such order as it thinks fit.

(5) The decision of the appointing authority under subsection (4) shall not be subject to appeal.

(6) While an application to the appointing authority under subsection (4) is pending, the arbitral tribunal, including the challenged arbitrator, may continue the arbitration proceedings and make an award.

Failure or impossibility to act.

15. (1) If an arbitrator becomes *de jure or de facto* unable to perform his or her functions or for other reasons fails to act without undue delay, his or her mandate terminates if he or she withdraws from the office of arbitrator or if the parties agree on the termination.

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

(3) If, under this section or section 14(3), an arbitrator withdraws from his or her 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).

Appointment of substitute arbitrator.

16. A substitute arbitrator shall be appointed according to the rules that were applicable to the appointment of the arbitrator being replaced where–

(a) the mandate of an arbitrator terminates under section 14 or 15;

(b) an arbitrator withdraws from office for any other reason;

(c) an arbitrator's mandate is revoked by agreement of the parties; or

(d) an arbitrator's mandate is terminated in any other case.

PART IV

JURISDICTION OF ARBITRAL TRIBUNAL

Competence of arbitral tribunal to rule on its jurisdiction.

17. (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) 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 or she 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 subsections (4) and (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, apply to the appointing authority to decide the matter and the decision of the appointing authority shall not be subject to appeal.

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

PART V
MEDIATION

Appointment of mediator.

18. (1) The Court may, on the application of any party, appoint a mediator where-

(a) an arbitration agreement provides for the appointment of a mediator by a person who is not one of the parties; and

(b) that person-

(i) refuses to make the appointment; or

(ii) does not make the appointment within the time specified in the arbitration agreement or, if no time is so specified, within a reasonable time after being requested by any party to make the appointment.

(2) An appointment made by the Court under subsection (1) is not subject to appeal.

(3) Where an arbitration agreement provides for the appointment of a mediator and further provides that the person so appointed is to act as an arbitrator in the event that no settlement acceptable to the parties can be reached in the mediation proceedings-

(a) no objection may be made against the person's acting as an arbitrator, or against the person's conduct of the arbitral proceedings, solely on the ground that the person had acted previously as a mediator in connection with some or all of the matters relating to the dispute submitted to arbitration; or

(b) if the person declines to act as an arbitrator, any other person appointed as an arbitrator is not required first to act as a mediator unless it is otherwise expressed in the arbitration agreement.

(4) The Court, in appointing a mediator under subsection (1) shall-

(a) have due regard to any qualifications required by the mediator by the agreement of the parties and to such considerations as are likely to secure the appointment of an independent and impartial mediator; and

(b) take into account the advisability of appointing a mediator of a nationality other than those of the parties.

Power of arbitrator to act as mediator.

19. (1) Where all parties consent in writing, and for so long as no party withdraws the party's consent in writing, an arbitrator may act as a mediator after the arbitral proceedings have commenced.

(2) Where an arbitrator acts as a mediator, the arbitral proceedings shall be stayed to facilitate the conduct of the mediation proceedings.

(3) An arbitrator who is acting as a mediator-

(a) may communicate with the parties collectively or separately; and

(b) shall treat the information obtained by the arbitrator from a party as confidential, unless otherwise agreed by that party or unless subsection (5) applies.

(4) Where an arbitrator acted as a mediator, the consent of the parties shall be required for that arbitrator to continue acting as an arbitrator in the arbitral proceedings.

(5)The arbitrator shall, before resuming the arbitral proceedings, disclose to all other parties as much of that information as the arbitrator considers is material to the arbitral proceedings if-

(a) confidential information is obtained by an arbitrator from a party during the mediation proceedings conducted by the arbitrator as a mediator; and

(b) those mediation proceedings terminate without reaching a settlement acceptable to the parties.

(6) Where consent is not given by the parties for an arbitrator who acted as a mediator to continue acting as an arbitrator in the arbitral proceedings, a substitute arbitrator shall be appointed in accordance with section 16.

(7) Mediation proceedings shall be terminated by-

(a) the parties' agreement to its termination; or

(b) a party's withdrawal of consent to the mediation proceedings; or

(c) the termination of the proceedings by the mediator.

(8) No objection may be made against the conduct of the arbitral proceedings by an arbitrator solely on the ground that the arbitrator had acted previously as a mediator in accordance with this section.

PART VI
INTERIM MEASURES AND PRELIMINARY ORDERS

Power of arbitral tribunal to order interim measures.

20. (1) Unless otherwise agreed by the parties, an arbitral tribunal may, at the request of a party, grant 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 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.

Conditions for granting interim measures.

21. (1) The party requesting an interim measure under section 20(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 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.

(2) The determination on the possibility under subsection (1) (b) shall not affect the discretion of the arbitral tribunal in making any subsequent determination.

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

Application for preliminary orders and conditions for granting preliminary orders.

22. (1) Unless otherwise agreed by the parties, a party may, without notice to any other party, make a request for an interim measure together with an application for a preliminary order directing a party not to frustrate the purpose of the interim measure requested.

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

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

Specific regime for preliminary orders.

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

(a) give 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) The arbitral tribunal shall decide promptly on any objection to the preliminary order.

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

(4) The arbitral tribunal may issue an interim measure adopting or modifying the 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.

24. The 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.

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

(2) The 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.

26. (1) The arbitral tribunal may require any party to promptly disclose any material change in the circumstances on the basis of which the interim measure was requested or granted and such disclosure shall be made within such time period as the arbitral tribunal directs.

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

Costs and damages.

27. (1) The party requesting an interim measure or applying for a preliminary order shall be liable for any costs and damages caused by the measure or the order to any party if the arbitral tribunal later determines that, in the circumstances, the measure or the order should not have been granted.

(2) The arbitral tribunal may award costs and damages at any time during the proceedings.

Recognition and enforcement.

28. (1) Subject to section 29, an interim measure issued by an arbitral tribunal shall be recognised as binding and, unless otherwise provided by the arbitral tribunal, enforced upon application to the competent 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 inform the Court of any termination, suspension or modification of that interim measure as soon as reasonably practicable after 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 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.

Grounds for refusing recognition or enforcement.

29. (1) The recognition or enforcement of an interim measure may be refused only at the request of the party against whom it is invoked if-

(a) the Court is satisfied that-

(i) a refusal is warranted on any of the grounds specified in section 58(1)(a)(i), (ii), (iii) or (iv);

(ii) the arbitral tribunal's 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) 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 58(1)(b)(i) or (ii), apply to the

recognition and enforcement of the interim measure.

(2) Any determination made by the Court on any ground in subsection (1) shall be effective only for the purposes of the application to recognise and enforce the interim measure.

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

Court-ordered interim measures.

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

(2) The Court shall not issue an interim measure under subsection (1) unless-

(a) the arbitral tribunal has not yet been appointed and the matter is urgent;

(b) the arbitral tribunal is not competent to issue the measure; or

(c) the urgency of the matter makes it impractical to seek such order from the arbitral tribunal,

and the Court shall not grant any such measure where the arbitral tribunal, being competent to grant the order, has already determined the matter.

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

PART VII
CONDUCT OF ARBITRAL PROCEEDINGS

Equal treatment of parties.

31. The parties shall be treated with equality and each shall be given a full opportunity of presenting his or her case.

Determination of rules of procedure.

Schedule

32. (1) Subject to the provisions of this Act, parties are free to agree on the procedure to be followed by the arbitral tribunal in conducting the proceedings and if the parties agree, may adopt the procedure of the UNCITRAL Arbitration Rules set out in the Schedule.

(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.

(4) Attorneys-at-law may act as representatives of parties in arbitral proceedings.

Place of arbitration.

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

(2) Notwithstanding the provisions of subsection (1), the arbitral tribunal may, unless otherwise agreed by the parties, meet at any place the arbitral tribunal considers appropriate for consultation among its

members, for hearing witnesses, experts or the parties, or for inspection of goods, other property or documents.

Commencement of arbitral proceedings.

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

Application of Limitation Act.

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35. (1) The Limitation 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 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 paragraphs (a) and (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 Act when a cause of action accrued, any provision that an award is a condition precedent to the bringing of legal proceedings in respect of a matter to which an arbitration agreement applies shall be disregarded.

Consolidation of arbitrations.

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

(a) that a common question of law or fact arises in both or all of them;

(b) that 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) that 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-

(d) order those arbitral proceedings –

(i) to be consolidated on such terms as it thinks just; or

(ii) to be heard at the same time or one immediately after another; or

(e) order any of those arbitral proceedings to be stayed until after the determination of any other of them.

(2) Where the Court orders arbitral proceedings to be consolidated under subsection (1)(d)(i) or to be heard at the same time or one immediately after another under subsection (1)(d)(ii), the Court has the power-

(a) to 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, to appoint that arbitrator; or

(ii) the parties cannot agree as to the choice of arbitrator for those arbitral

proceedings, to appoint an arbitrator for those arbitral proceedings and, in the case of arbitral proceedings to be heard at the same time or one immediately after another, to appoint the same arbitrator for those arbitral proceedings.

(3) Where the Court makes an appointment of an arbitrator under subsection (2) for the arbitral proceedings to be consolidated or to be heard at the same time or one immediately after another, any appointment of any other arbitrator that has been made for any of those arbitral proceedings ceases to have effect for all purposes on and from the appointment under subsection (2).

(4) The arbitral tribunal hearing the arbitral proceedings that are consolidated under subsection (1) (d) (i) has the power under sections 48 and 51 in relation to the costs of those arbitral proceedings.

(5) If two or more arbitral proceedings are heard at the same time or one immediately after another under subsection (1)(d)(ii), the arbitral tribunal-

(a) has the power under sections 48 and 53 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 that are heard at the same time or one immediately after another 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.

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

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

(3) An agreement or determination as to language, unless otherwise specified in the agreement or determination, shall apply to any written statement by a party, any hearing and any award, decision or other communication by the arbitral tribunal.

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

Statements of claim and defence.

38. (1) Within the period of time agreed by the parties or, failing such agreement, as determined by the arbitral tribunal-

(a) a claimant shall state-

(i) the facts supporting his or her claim;

(ii) the points in issue; and

(iii)the relief or remedy sought; and

(b) the respondent shall state his or her defence in respect of the particulars set out in this subsection,

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

(2) The parties may submit to the arbitral tribunal their statements and all documents they consider to be relevant or may add a reference to all documents or other evidence they will submit.

(3) Except as otherwise agreed by the parties, any party may amend or supplement his or her claim or defence during the course of the arbitral proceedings, unless the arbitral tribunal considers it inappropriate to allow such amendment or such supplement, having regard to the delay in making the amendment or providing the supplement.

Hearings and written proceedings.

39. (1) Subject to any contrary agreement 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 the parties have agreed that no hearings shall be held, the arbitral tribunal shall, upon the request of a party, hold such hearings at an appropriate stage of the proceedings.

(3) The arbitral tribunal shall give the 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 the arbitral tribunal by one party shall be communicated to the other party.

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

Default of a party.

40. (1) Unless otherwise agreed by the parties, if, without showing sufficient cause-

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

(b) the respondent fails to communicate his or her statement of defence in accordance with section 38(2), the arbitral tribunal shall continue the proceedings without treating such failure in itself as an admission of the claimant's allegations; and

(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.

(2) Unless otherwise agreed by the parties, if a party fails to do any other thing necessary for the proper and expeditious conduct of the arbitration the arbitral tribunal may-

(a) if satisfied that there has been inordinate and inexcusable delay on the part of the claimant in pursuing the claim, make an award dismissing the claim or may give directions, with or without conditions, for the speedy determination of the claim; or

(b) if without sufficient cause a party fails to comply with any order or direction of the arbitral tribunal, make a peremptory order requiring the party to comply with the terms of the earlier order or direction within the period specified by the arbitral tribunal.

(3) If a party fails to comply with the peremptory order made pursuant to subsection (2) (b), the arbitral tribunal may do any of the following-

(a) direct that the party in default is not to be entitled to rely on any allegation or material which was the subject matter of the peremptory order;

(b) draw such adverse inferences from the failure to comply as the circumstances justify; or

(c) proceed to an award on the basis of any materials that have been properly provided to the arbitral tribunal.

Expert appointed by arbitral tribunal.

41. (1) Unless otherwise agreed by the parties, the arbitral tribunal may-

(a) appoint one or more experts to report to it on specific issues to be determined by the arbitral tribunal; or

(b) require a party to give the expert any relevant information or 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, if a party so requests or if the arbitral tribunal considers it necessary, the expert shall, after delivery of the written or oral report, participate in a hearing where the parties have the opportunity to put questions to him or her and to present expert witnesses in order to testify on the points at issue.

Court assistance in taking evidence.

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

summoning a witness or the performance of other judicial acts which the arbitral tribunal is not empowered to carry out.

(2) Unless it regards the application as inadmissible, the Court shall execute the request according to its rules on taking evidence or other judicial acts.

(3) The arbitrators are entitled to participate in any judicial taking of evidence and to ask questions.

General duties of parties.

43. (1) The parties shall do all things necessary for the proper and expeditious conduct of the arbitral proceedings.

(2) Without limitation, the parties shall without undue delay-

(a) comply with any order or direction of the arbitral tribunal with respect to any procedural, evidentiary or other matter; and

(b) take any necessary steps to obtain a decision, if required, of the Court with respect to any function conferred on the Court under this Act.

(3) A party shall not wilfully do, or cause to be done, any act to delay or prevent an award being made.

PART VIII

MAKING OF AWARD AND TERMINATION OF PROCEEDINGS

Rules applicable to substance of dispute.

44. (1) An arbitral tribunal shall decide a dispute in accordance with such rules of law as are chosen by the parties as applicable to the substance of the dispute and any designation of the law or legal system of a given State shall be construed, unless otherwise expressed, as directly

referring to the substantive law of that State and not to its conflict of laws rules.

(2) Failing any designation by the parties, an arbitral tribunal shall apply the law of the State with which the subject-matter of the proceedings is most closely connected.

(3) An arbitral tribunal shall decide *ex aequo et bono* or as *amiable compositeur* 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 panel of arbitrators.

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

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

Settlement.

46. (1) If, 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 award on agreed terms.

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

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

Form and contents of award.

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

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

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

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

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

Costs of arbitration.

48. (1) The parties are free to agree as to what costs of the arbitration proceedings are recoverable.

(2) Where there is no agreement on cost, the provisions of Article 40(1) and (2) of the UNCITRAL Arbitration Rules set out in the Schedule shall apply.

Schedule

(3) In relation to interpretation, correction or completion of any award under section 55, the arbitral tribunal may charge the costs referred to in Article 40 (2) (b) to (f) of the UNCITRAL Arbitration Rules set out in the Schedule, but no additional fees.

Fees and expenses of arbitrators.

49. Unless the fees and expenses of the arbitrators of an arbitral tribunal have been fixed by written agreement, or such agreement has provided for a determination of the fees by a person or institution agreed to by the parties, any party to the arbitration may require that such fees be assessed in accordance with Article 41 of the UNCITRAL Arbitration Rules set out in the Schedule.

Schedule

Allocation of costs.

50. Article 42 of the UNCITRAL Arbitration Rules set out in the Schedule shall apply for the purpose of the allocation of costs arising in arbitral proceedings.

Schedule

Deposit of costs.

51. An arbitral tribunal may request that deposits be made in advance for costs arising in arbitral proceedings and Article 43 of the UNCITRAL Arbitration Rules set out in the Schedule shall apply for the purposes of this section.

Schedule

Interest on award.

52. (1) The parties to an arbitration agreement may agree on the arbitral tribunal's powers 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-

(a) on all or part of any amount awarded by the arbitral tribunal, in respect of any period up to the date of the award; or

(b) on all or part of any amount claimed in the arbitration and outstanding at the commencement of the arbitration but paid before the award was made, in respect of any period up to the date of payment.

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

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

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

Costs of aborted arbitration.

53. (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.

(3) An application under subsection (1) shall be made to the Court within six months after the failure of the arbitration.

Termination of proceedings.

54. (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 when-

(a) the claimant withdraws his or her claim, unless the respondent objects thereto and the arbitral tribunal recognises a legitimate interest on his or her 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) The mandate of the arbitral tribunal terminates with the termination of the arbitral proceedings, subject to the provisions of sections 55 and 56(5).

Correction and interpretation of award; additional award.

55. (1) Within thirty days of receipt of the award, unless another period of time has been agreed upon by the parties-

(a) a party, with notice to the other party, may request the arbitral tribunal to correct in the award any errors in computation, any clerical or typographical errors or any errors of similar nature; and

(b) if so agreed by the parties, a party, with notice to the other party, may request the arbitral tribunal to give an interpretation of a specific point or part of the award.

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

(4) Unless otherwise agreed by the parties, a party, with notice to the other party, may request, within thirty days of receipt of the award, 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, 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 an additional award under subsection (1) or (3).

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

PART IX
RECOURSE AGAINST AWARD

Application for setting aside an exclusive recourse against award.

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

(2) An award may be set aside by the Court only where-

(a) the party making the application furnishes proof that-

(i) a party to the arbitration agreement referred to in section 8 was under some incapacity;

(ii) the agreement is not valid under the law to which the parties have subjected

it or, failing any indication thereon, under the laws of Guyana;

(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 or her 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 Guyana; or

(ii) the award is in conflict with the public policy of Guyana.

(3) Further to 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 55, 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 arbitral tribunal's opinion will eliminate the grounds for setting aside.

PART X
RECOGNITION AND ENFORCEMENT OF AWARDS

Recognition and enforcement.

57. (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 58.

(2) The party relying on an award or applying for its enforcement shall supply the original award or a copy thereof.

(3) Where the award is not made in English, the Court may request the party to supply a translation of the award into English.

Grounds for refusing recognition or enforcement.

58. (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 was under some incapacity;

(ii) the agreement 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 or her case;

(iv) 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 Guyana; or

(ii) the recognition or enforcement of the award would be contrary to the public policy of Guyana.

(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) If an application for setting aside or suspension of an award has been made to a Court referred to in subsection (1) (a) (v), 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 XI
MISCELLANEOUS

Conflict with public policy.

59. For the purposes of sections 56(2)(b) (ii) and 58(1)(b) (ii), an award is in conflict with the public policy of Guyana if-

(a) the award was induced or affected by fraud or corruption; or

(b) a breach of the rules of natural justice occurred in connection with the making of the award.

Foreign representation and international arbitration.

60. (1) Where an application in support of an international arbitration is required to be made in any Court or before any other such tribunal, a foreign representative, who is an attorney-at-law, of any party appearing before the Court or other such tribunal, shall be permitted to have

a right of audience where that foreign representative appears together with an attorney-at-law who is admitted to practice in Guyana.

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

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Foreign representatives in domestic arbitrations.

61. (1) A foreign representative shall not appear in a domestic arbitration unless the need for such foreign representative has been justified by a party before the Court and the leave of the Court has been granted.

(2) Where an application to permit the appearance of a foreign representative has been refused an appeal from such refusal shall lie to the Court of Appeal and such appeal shall be final.

Regulatory body to oversee arbitrations.

62. The Minister may establish a regulatory body to oversee the practice of domestic and international arbitrations, and such body may make such regulations as it considers necessary to regulate such practice.

Immunity of arbitrator; competency to testify; attorney fees and costs.

63. (1) An arbitrator or an arbitration tribunal acting in that capacity is immune from civil liability to the same extent as a judge of a Court of Guyana acting in a judicial capacity.

(2) The immunity afforded under this section supplements any immunity under other law.

(3) The failure of an arbitrator to make a disclosure required by section 13 does not cause any loss of immunity under this section.

(4) Subject to subsection (5), in a judicial, administrative, or similar proceeding, an arbitrator is not competent to testify, and may not be required to produce records as to any statement, conduct, decision, or ruling

occurring during the arbitration proceedings, to the same extent as a judge of a Court of Guyana acting in a judicial capacity.

(5) Subsection (4) does not apply-

(a) to the extent necessary to determine the claim of an arbitrator or an arbitral tribunal against a party to the arbitration proceeding; or

(b) to a hearing on a motion to vacate an award if the applicant establishes *prima facie* that a ground for vacating the award exists.

(6) If a person commences a civil action against an arbitrator or an arbitral tribunal arising from the services of the arbitrator or the tribunal, or if a person seeks to compel an arbitrator to testify or produce records in violation of subsection (4), and the Court decides that-

(a) the arbitrator or arbitral tribunal is immune from civil liability; or

(b) the arbitrator is not competent to testify,

the Court shall award to the arbitrator or arbitral tribunal reasonable attorney's fees and other reasonable expenses of litigation.

Arbitral proceedings shall be private and confidential.

64. (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 discloser's public functions; or

(iii)in order to enable any public body or office-holder to perform public functions properly;

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

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

Court proceedings not to be heard in open court.

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

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

(a) on the application of a party; or

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

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

Restrictions on reporting of proceedings heard otherwise than in open Court.

66. (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 or she was such a party, the Court shall-

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

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

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

Arbitration agreement not to be discharged by death of party thereto.

67. (1) An arbitration agreement shall not be discharged by the death of any party thereto either as respects the deceased or as respects any other party, but shall, in such event, be enforceable by or against the legal representative of the deceased.

(2) The mandate of an arbitrator shall not be terminated by the death of a party by whom he or she was appointed.

(3) 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.

Provisions in case of insolvency.

68. (1) Where it is provided by a term in a contract to which an insolvent is a party that a dispute arising out of the contract or in connection with the contract shall be submitted to arbitration, the term shall, if the receiver adopts the contract, be enforceable by or against the receiver so far as it relates to any such dispute.

(2) Where a person who has been adjudged an insolvent had, before the commencement of the insolvency proceedings, become a party to an arbitration agreement, and any matter to which the agreement applies is required to be determined in connection with, or for the purposes of, the insolvency proceedings, then, if the case is one to which subsection (1) does not apply, any other party or the receiver may apply to the Court having jurisdiction in the insolvency proceedings for an order directing that the matter in question shall be submitted to arbitration in accordance with the arbitration agreement.

(3) Upon consideration of an application under subsection (2), the Court may, if it is of the opinion that, having regard to all the circumstances of the case, the matter ought to be determined by arbitration, make an order accordingly.

Arbitration centres.

69. (1) Any person, including the Government, may establish in Guyana an arbitration centre for the purpose of administering and facilitating arbitrations in Guyana and that centre may function as an appointing authority under this Act.

(2) Any arbitration centre established pursuant to this section shall be a body corporate with perpetual succession and a common seal, capable of entering into contracts, acquiring, holding and disposing of any kind of property for the purposes of its functions, suing and being sued, and doing all such things and entering into all such transactions as are incidental or conducive to the exercise of its functions under this Act.

(3) The functions and powers of any arbitration centre established pursuant to this section shall be to-

(a) promote Guyana as a seat for international commercial arbitration;

(b) provide the necessary facilities, including administrative and office services, for the conduct of domestic and international arbitration;

(c) provide for cost effective and timely services for the conduct of domestic and international arbitration;

(d) encourage domestic arbitration as a means of settling disputes;

(e) advise the Government on any of the matters mentioned in the foregoing sub-paragraphs of this subsection;

(f) appoint arbitrators to an arbitration tribunal in accordance with the provisions of this Act;

(g) collect arbitration fees and pay remuneration to arbitrators;

(h) archive files and provide copies of awards at the request of parties or of competent State bodies;

(i) perform any other function supplementary or ancillary to the above-mentioned functions; and

(j) perform such other functions assigned to it by this or any other law.

Amendment of Schedule.

70. Where any amendment is made to the UNCITRAL Rules, the Minister, may, by order, amend the Schedule in accordance with the amendment to the Rules.

Schedule

Regulations.

71. (1) The Minister may make regulations for the purpose of giving effect to the provisions of this Act.

(2) Without limiting the generality of subsection (1), the Minister may make regulations for the establishment, procedures and management of arbitral tribunals and arbitration centres.

Review of the Act.

72. If any time the Model Law is amended, the Minister shall review this Act in order to determine whether any amendments should be made to this Act.

Transitional.

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

Repeal.

74. (1) The Arbitration Act (hereinafter in this section referred to as "the former Act") is repealed.

Cap. 7:03

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

Act binds the State.

75. This Act binds the State.

SCHEDULE **Sections 2, 32, 48, 49, 50 and 51**

UNCITRAL Arbitration Rules
(with article 1, paragraph 4, as adopted in 2013)

Section I. Introductory rules

Scope of application*

Article 1

1. Where parties have agreed that disputes between them in respect of a defined legal relationship, whether contractual or not, shall be referred to arbitration under the UNCITRAL Arbitration Rules, then such disputes shall be settled in accordance with these Rules subject to such modification as the parties may agree.

2. The parties to an arbitration agreement concluded after 15 August 2010 shall be presumed to have referred to the Rules in effect on the date of commencement of the arbitration, unless the parties have agreed to apply a particular version of the Rules. That presumption does not apply where the arbitration agreement has been concluded by accepting after 15 August 2010 an offer made before that date.

3. These Rules shall govern the arbitration except that where any of these Rules is in conflict with a provision of the law applicable to the arbitration from which the parties cannot derogate, that provision shall prevail.

4. For investor-State arbitration initiated pursuant to a treaty providing for the protection of investments or investors, these Rules include the UNCITRAL Rules on Transparency in Treaty based Investor-State Arbitration ("Rules on Transparency"), subject to article 1 of the Rules on

* A model arbitration clause for contracts can be found in the annex to the Rules.

Transparency.

Notice and calculation of periods of time

Article 2

1. A notice, including a notification, communication or proposal, may be transmitted by any means of communication that provides or allows for a record of its transmission.

2. If an address has been designated by a party specifically for this purpose or authorized by the arbitral tribunal, any notice shall be delivered to that party at that address, and if so delivered shall be deemed to have been received. Delivery by electronic means such as facsimile or e-mail may only be made to an address so designated or authorized.

3. In the absence of such designation or authorisation, a notice is:

(a) Received if it is physically delivered to the addressee; or
(b) Deemed to have been received if it is delivered at the place of business, habitual residence or mailing address of the addressee.

4. If, after reasonable efforts, delivery cannot be effected in accordance with paragraphs 2 or 3, a notice is deemed to have been received if it is sent to the addressee's last-known place of business, habitual residence or mailing address by registered letter or any other means that provides a record of delivery or of attempted delivery.

5. A notice shall be deemed to have been received on the day it is delivered in accordance with paragraphs 2, 3 or 4, or attempted to be delivered in accordance with paragraph 4. A notice transmitted by electronic means is deemed to have been received on the day it is sent, except that a notice of arbitration so transmitted is only deemed to have been received on the day when it reaches the addressee's electronic address.

6. For the purpose of calculating a period of time under these Rules, such period shall begin to

run on the day following the day when a notice is received. If the last day of such period is an official holiday or a non-business day at the residence or place of business of the addressee, the period is extended until the first business day which follows. Official holidays or non-business days occurring during the running of the period of time are included in calculating the period.

Notice of arbitration

Article 3

1. The party or parties initiating recourse to arbitration (hereinafter called the "claimant") shall communicate to the other party or parties (hereinafter called the "respondent") a notice of arbitration.

2. Arbitral proceedings shall be deemed to commence on the date on which the notice of arbitration is received by the respondent.

3. The notice of arbitration shall include the following:

(a) A demand that the dispute be referred to arbitration;

(b) The names and contact details of the parties;

(c) Identification of the arbitration agreement that is invoked;

(d) Identification of any contract or other legal instrument out of or in relation to which the dispute arises or, in the absence of such contract or instrument, a brief description of the relevant relationship;

(e) A brief description of the claim and an indication of the amount involved, if any;

(f) The relief or remedy sought;

(g) A proposal as to the number of arbitrators, language and place of arbitration, if the parties have not previously agreed thereon.

4. The notice of arbitration may also include:

(a) A proposal for the designation of an appointing authority referred to in article 6, paragraph 1;

(b) A proposal for the appointment of a sole arbitrator referred to in article 8, paragraph 1;

(c) Notification of the appointment of an arbitrator referred to in article 9 or 10.

5. The constitution of the arbitral tribunal shall not be hindered by any controversy with respect to the sufficiency of the notice of arbitration, which shall be finally resolved by the arbitral tribunal.

Response to the notice of arbitration

Article 4

1. Within 30 days of the receipt of the notice of arbitration, the respondent shall communicate to the claimant a response to the notice of arbitration, which shall include:

(a) The name and contact details of each respondent;

(b) A response to the information set forth in the notice of arbitration, pursuant to article 3, paragraphs 3 (c) to (g).

2. The response to the notice of arbitration may also include:

(a) Any plea that an arbitral tribunal to be constituted under these Rules lacks jurisdiction;

(b) A proposal for the designation of an appointing authority referred to in article 6, paragraph 1;

(c) A proposal for the appointment of a sole arbitrator referred to in article 8, paragraph1;

(d) Notification of the appointment of an arbitrator referred to in article 9 or 10;

(e) A brief description of counterclaims or claims for the purpose of a set-off, if any, including where relevant, an indication of the amounts involved, and the relief or remedy sought;

(f) A notice of arbitration in accordance with article 3 in case the respondent formulates a claim against a party to the arbitration agreement other than the claimant.

3. The constitution of the arbitral tribunal shall not be hindered by any controversy with respect to the respondent's failure to communicate a response to the notice of arbitration, or an incomplete or late response to the notice of arbitration, which shall be finally resolved by the arbitral tribunal.

Representation and assistance

Article 5

Each party may be represented or assisted by persons chosen by it. The names and addresses of such persons must be communicated to all parties and to the arbitral tribunal. Such communication must specify whether the appointment is being made for purposes of representation or assistance. Where a person is to act as a representative of a party, the arbitral tribunal, on its own initiative or at the request of any party, may at any time require proof of authority granted to the representative in such a form as the arbitral tribunal may determine.

Designating and appointing authorities

Article 6

1. Unless the parties have already agreed on the choice of an appointing authority, a party may at any time propose the name or names of one or more institutions or persons, including the Secretary-General of the Permanent Court of Arbitration at The Hague (hereinafter called the "PCA"), one of whom would serve as appointing authority.

2. If all parties have not agreed on the choice of an appointing authority within 30 days after a proposal made in accordance with paragraph 1 has been received by all other parties, any party may request the Secretary-General of the PCA to designate the appointing authority.

3. Where these Rules provide for a period of time within which a party must refer a matter to an appointing authority and no appointing authority has been agreed on or designated, the period is suspended from the date on which a party initiates the procedure for agreeing on or designating an appointing authority until the date of such agreement or designation.

4. Except as referred to in article 41, paragraph 4, if the appointing authority refuses to act, or if it fails to appoint an arbitrator within 30 days after it receives a party's request to do so, fails to act within any other period provided by these Rules, or fails to decide on a challenge to an arbitrator within a reasonable time after receiving a party's request to do so, any party may request the Secretary-General of the PCA to designate a substitute appointing authority.

5. In exercising their functions under these Rules, the appointing authority and the Secretary-General of the PCA may require from any party and the arbitrators the information they deem necessary and they shall give the parties and, where appropriate, the arbitrators, an opportunity to present their views in any manner they consider appropriate. All such communications to and from the appointing authority and the Secretary-General of the PCA shall also be provided by the sender to all other parties.

6. When the appointing authority is requested to appoint an arbitrator pursuant to articles 8, 9, 10 or 14, the party making the request shall send to the appointing authority copies of the notice of arbitration and, if it exists, any response to the notice of arbitration.

7. The appointing authority shall have regard to such considerations as are likely to secure the appointment of an independent and impartial arbitrator and shall take into account the advisability of appointing an arbitrator of a nationality other than the nationalities of the parties.

Section II. Composition of the arbitral tribunal

Number of arbitrators

Article 7

1. If the parties have not previously agreed on the number of arbitrators, and if within 30 days

after the receipt by the respondent of the notice of arbitration the parties have not agreed that there shall be only one arbitrator, three arbitrators shall be appointed.

2. Notwithstanding paragraph 1, if no other parties have responded to a party's proposal to appoint a sole arbitrator within the time limit provided for in paragraph 1 and the party or parties concerned have failed to appoint a second arbitrator in accordance with article 9 or 10, the appointing authority may, at the request of a party, appoint a sole arbitrator pursuant to the procedure provided for in article 8, paragraph 2, if it determines that, in view of the circumstances of the case, this is more appropriate.

Appointment of arbitrators (articles 8 to 10)

Article 8

1. If the parties have agreed that a sole arbitrator is to be appointed and if within 30 days after receipt by all other parties of a proposal for the appointment of a sole arbitrator the parties have not reached agreement thereon, a sole arbitrator shall, at the request of a party, be appointed by the appointing authority.

2. The appointing authority shall appoint the sole arbitrator as promptly as possible. In making the appointment, the appointing authority shall use the following list-procedure, unless the parties agree that the list-procedure should not be used or unless the appointing authority determines in its discretion that the use of the list-procedure is not appropriate for the case:

(a) The appointing authority shall communicate to each of the parties an identical list containing at least three names;

(b) Within 15 days after the receipt of this list, each party may return the list to the appointing authority after having deleted the name or names to which it objects and numbered the remaining names on the list in the order of its preference;

(c) After the expiration of the above period of time the appointing authority shall appoint the sole arbitrator from among the names approved on the lists returned to it and in accordance with the order of preference indicated by the parties;

(d) If for any reason the appointment cannot be made according to this procedure, the

appointing authority may exercise its discretion in appointing the sole arbitrator.

Article 9

1. If three arbitrators are to be appointed, each party shall appoint one arbitrator. The two arbitrators thus appointed shall choose the third arbitrator who will act as the presiding arbitrator of the arbitral tribunal.

2. If within 30 days after the receipt of a party's notification of the appointment of an arbitrator the other party has not notified the first party of the arbitrator it has appointed, the first party may request the appointing authority to appoint the second arbitrator.

3. If within 30 days after the appointment of the second arbitrator the two arbitrators have not agreed on the choice of the presiding arbitrator, the presiding arbitrator shall be appointed by the appointing authority in the same way as a sole arbitrator would be appointed under article 8.

Article 10

1. For the purposes of article 9, paragraph 1, where three arbitrators are to be appointed and there are multiple parties as claimant or as respondent, unless the parties have agreed to another method of appointment of arbitrators, the multiple parties jointly, whether as claimant or as respondent, shall appoint an arbitrator.

2. If the parties have agreed that the arbitral tribunal is to be composed of a number of arbitrators other than one or three, the arbitrators shall be appointed according to the method agreed upon by the parties.

3. In the event of any failure to constitute the arbitral tribunal under these Rules, the appointing authority shall, at the request of any party, constitute the arbitral tribunal and, in doing so, may revoke any appointment already made and appoint or reappoint each of the arbitrators and designate one of them as the presiding arbitrator.

Disclosures by and challenge of arbitrators **(articles 11 to 13)

Article 11

When a person is approached in connection with his or her possible appointment as an arbitrator, he or she shall disclose any circumstances likely to give rise to justifiable doubts as to his or her impartiality or independence. An arbitrator, from the time of his or her appointment and throughout the arbitral proceedings, shall without delay disclose any such circumstances to the parties and the other arbitrators unless they have been informed by him or her of these circumstances.

Article 12

1. Any arbitrator may be challenged if circumstances exist that give rise to justifiable doubts as to the arbitrator's impartiality or independence.

2. A party may challenge the arbitrator appointed by it only for reasons of which it becomes aware after the appointment has been made.

3. In the event that an arbitrator fails to act or in the event of the de jure or de facto impossibility of his or her performing his or her functions, the procedure in respect of the challenge of an arbitrator as provided in article 13 shall apply.

Article 13

1. A party that intends to challenge an arbitrator shall send notice of its challenge within 15 days after it has been notified of the appointment of the challenged arbitrator, or within 15 days after the circumstances mentioned in articles 11 and 12 became known to that party.

2. The notice of challenge shall be communicated to all other parties, to the arbitrator who is challenged and to the other arbitrators. The notice of challenge shall state the reasons for the challenge.

** Model statements of independence pursuant to article 11 can be found in the annex to the Rules.

3. When an arbitrator has been challenged by a party, all parties may agree to the challenge. The arbitrator may also, after the challenge, withdraw from his or her office. In neither case does this imply acceptance of the validity of the grounds for the challenge.

4. If, within 15 days from the date of the notice of challenge, all parties do not agree to the challenge or the challenged arbitrator does not withdraw, the party making the challenge may elect to pursue it. In that case, within 30 days from the date of the notice of challenge, it shall seek a decision on the challenge by the appointing authority.

Replacement of an arbitrator

Article 14

1. Subject to paragraph 2, in any event where an arbitrator has to be replaced during the course of the arbitral proceedings, a substitute arbitrator shall be appointed or chosen pursuant to the procedure provided for in articles 8 to 11 that was applicable to the appointment or choice of the arbitrator being replaced. This procedure shall apply even if during the process of appointing the arbitrator to be replaced, a party had failed to exercise its right to appoint or to participate in the appointment.

2. If, at the request of a party, the appointing authority determines that, in view of the exceptional circumstances of the case, it would be justified for a party to be deprived of its right to appoint a substitute arbitrator, the appointing authority may, after giving an opportunity to the parties and the remaining arbitrators to express their views: (a) appoint the substitute arbitrator; or (b) after the closure of the hearings, authorise the other arbitrators to proceed with the arbitration and may any decision or award.

Repetition of hearings in the event of the replacement of an arbitrator

Article 15

If an arbitrator is replaced, the proceedings shall resume at the stage where the arbitrator who was replaced ceased to perform his or her functions, unless the arbitral tribunal decides otherwise.

Exclusion of liability

Article 16

Save for intentional wrongdoing, the parties waive, to the fullest extent permitted under the applicable law, any claim against the arbitrators, the appointing authority and any person appointed by the arbitral tribunal based on any act or omission in connection with the arbitration.

Section III. Arbitral proceedings

General provisions

Article 17

1. Subject to these Rules, the arbitral tribunal may conduct the arbitration in such manner as it considers appropriate, provided that the parties are treated with equality and that at an appropriate stage of the proceedings each party is given a reasonable opportunity of presenting its case. The arbitral tribunal, in exercising its discretion, shall conduct the proceedings so as to avoid unnecessary delay and expense and to provide a fair and efficient process for resolving the parties' dispute.

2. As soon as practicable after its constitution and after inviting the parties to express their views, the arbitral tribunal shall establish the provisional timetable of the arbitration. The arbitral tribunal may, at any time, after inviting the parties to express their views, extend or abridge any period of time prescribed under these Rules or agreed by the parties.

3. If at an appropriate stage of the proceedings any party so requests, the arbitral tribunal shall hold hearings for the presentation of evidence by witnesses, including expert witnesses, or for oral argument. In the absence of such a request, the arbitral tribunal shall decide whether to hold such hearings or whether the proceedings shall be conducted on the basis of documents and other materials.

4. All communications to the arbitral tribunal by one party shall be communicated by that party to all other parties. Such communications shall be made at the same time, except as otherwise permitted by the arbitral tribunal if it may do so under applicable law.

5. The arbitral tribunal may, at the request of any party, allow one or more third persons to be joined in the arbitration as a party provided such person is a party to the arbitration agreement, unless the arbitral tribunal finds, after giving all parties, including the person or persons to be joined, the opportunity to be heard, that joinder should not be permitted because of prejudice to any of those parties. The arbitral tribunal may make a single award or several awards in respect of all parties so involved in the arbitration.

Place of arbitration

Article 18

1. If the parties have not previously agreed on the place of arbitration, the place of arbitration shall be determined by the arbitral tribunal having regard to the circumstances of the case. The award shall be deemed to have been made at the place of arbitration.

2. The arbitral tribunal may meet at any location it considers appropriate for deliberations. Unless otherwise agreed by the parties, the arbitral tribunal may also meet at any location it considers appropriate for any other purpose, including hearings.

Language

Article 19

1.Subject to an agreement by the parties, the arbitral tribunal shall, promptly after its appointment, determine the language or languages to be used in the proceedings. This determination shall apply to the statement of claim, the statement of defence, and any further written statements and, if oral hearings take place, to the language or languages to be used in such hearings.

2.The arbitral tribunal may order that any documents annexed to the statement of claim or statement of defence, and any supplementary documents or exhibits submitted in the course of the proceedings, delivered in their original language, shall be accompanied by a translation into the language or languages agreed upon by the parties or determined by the arbitral tribunal.

Statement of claim

Article 20

1. The claimant shall communicate its statement of claim in writing to the respondent and to each of the arbitrators within a period of time to be determined by the arbitral tribunal. The claimant may elect to treat its notice of arbitration referred to in article 3 as a statement of claim, provided that the notice of arbitration also co, [lies with the requirements of paragraphs 2 to 4 of this article.

2. The statement of claim shall include the following particulars:

(a) The names and contact details of the parties;

(b) A statement of the facts supporting the claim;

(c) The points at issue;

(d) The relief or remedy sought;

(e) The legal grounds or arguments supporting the claim.

3. A copy of any contract or other legal instrument out of or in relation to which the dispute arises and of the arbitration agreement shall be annexed to the statement of claim.

4. The statement of claim should, as far as possible, be accompanied by all documents and other evidence relied upon by the claimant, or contain references to them.

Statement of defence

Article 21

1. The respondent shall communicate its statement of defence in writing to the claimant and to each of the arbitrators within a period of time to be determined by the arbitral tribunal. The respondent may elect to treat its response to the notice of arbitration referred to in article 4 as a statement of defence, provided that the response to the notice of arbitration also complies with the requirements of paragraph 2 of this article.

2. The statement of defence shall reply to the particulars (b) to (e) of the statement of claim (art. 20, para. 2). The statement of defence should, as far as possible, be accompanied by all documents and other evidence relied upon by the respondent, or contain references to them.

3. In its statement of defence, or at a later stage in the arbitral proceedings if the arbitral tribunal decides that the delay was justified under the circumstances, the respondent may make a counterclaim or rely on a claim for the purpose of a set-off provided that the arbitral tribunal has jurisdiction over it.

4. The provisions of article 20, paragraphs 2 to 4, shall apply to a counterclaim, a claim under article 4, paragraph 2 (f), and a claim relied on for the purpose of a set- off.

Amendments to the claim or defence

Article 22

During the course of the arbitral proceedings, a party may amend or supplement its claim or defence, including a counterclaim or a claim for the purpose of a set-off, unless the arbitral tribunal considers it inappropriate to allow such amendment or supplement having regard to the delay in making it or prejudice to other parties or any other circumstances. However, a claim or defence, including a counterclaim or a claim for the purpose of a set-off, may not be amended or supplemented in such a manner that the amended or supplemented claim or defence falls outside the jurisdiction of the arbitral tribunal.

Pleas as to the jurisdiction of the arbitral tribunal

Article 23

1. The arbitral tribunal shall have the power to rule on its own jurisdiction, including any objections with respect to the existence or validity of the arbitration agreement. For that purpose, an arbitration clause that forms part of a contract shall be treated as an agreement independent of the other terms of the contract. A decision by the arbitral tribunal that the contract is null shall not entail automatically the invalidity of the arbitration clause.

2. A plea that the arbitral tribunal does not have jurisdiction shall be raised no later than in the statement of defence or, with respect to a counterclaim or a claim for the purpose of a set-off, in the reply to the counterclaim or to the claim for the purpose of a set-off. A party is not precluded from raising such a plea by the fact that it has appointed, or participated in the appointment of, an arbitrator. 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. The arbitral tribunal may, in either case, admit a later plea if it considers the delay justified.

3. The arbitral tribunal may rule on a plea referred to in paragraph 2 either as a preliminary question or in an award on the merits. The arbitral tribunal may continue the arbitral proceedings and make an award, notwithstanding any pending challenge to its jurisdiction before a court.

Further written statements

Article 24

The arbitral tribunal shall decide which further written statements, in addition to the statement of claim and the statement of defence, shall be required from the parties or may be presented by them and shall fix the periods of time for communicating such statements.

Period of time

Article 25

The periods of time fixed by the arbitral tribunal for the communication of written statements (including the statement of claim and statement of defence) should not exceed 45 days. However, the arbitral tribunal may extend the time limits if it concludes that an extension is justified.

Interim measures

Article 26

1. The arbitral tribunal may, at the request of a party, grant interim measures.

2. An interim measure is any temporary measure by which, at any time prior to the issuance of the award by which the dispute is finally decided, the arbitral tribunal orders a party, for example and without limitation, 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, (i) current or imminent harm or (ii) 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.

3. The party requesting an interim measure under paragraphs 2 (a) to (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. The determination on this possibility shall not affect the discretion of the arbitral tribunal in making any subsequent determination.

4. With regard to a request for an interim measure under paragraph 2 (d), the requirements in paragraphs 3 (a) and (b) shall apply only to the extent the arbitral tribunal considers appropriate.

5. The arbitral tribunal may modify, suspend or terminate an interim measure it has granted, upon application of any party or, in exceptional circumstances and upon 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 interim measure was requested or granted.

8. The party requesting an interim measure may be liable for any costs and damages caused by the measure to any party if the arbitral tribunal later determines that, in the circumstances then prevailing, the measure should not have been granted. The arbitral tribunal may award such costs and damages at any point during the proceedings.

9. A request for interim measures addressed by any party to a judicial authority shall not be deemed incompatible with the agreement to arbitrate, or as a waiver of that agreement.

Evidence

Article27

1. Each party shall have the burden of proving the facts relied on to support its claim or defence.

2. Witnesses, including expert witnesses, who are presented by the parties to testify to the arbitral tribunal on any issue of fact or expertise may be any individual, notwithstanding that the individual is a party to the arbitration or in any way related to a party. Unless otherwise directed by the arbitral tribunal, statements by witnesses, including expert witnesses, may be presented in writing and signed by them.

3. At any time during the arbitral proceedings the arbitral tribunal may require the parties to produce documents, exhibits or other evidence within such a period of time as the arbitral tribunal shall determine.

4. The arbitral tribunal shall determine the admissibility, relevance, materiality and weight of the evidence offered.

Hearings

Article28

1. In the event of an oral hearing, the arbitral tribunal shall give the parties adequate advance notice of the date, time and place thereof.

2. Witnesses, including expert witnesses, may be heard under the conditions and examined in the manner set by the arbitral tribunal.

3. Hearings shall be held in camera unless the parties agree otherwise. The arbitral tribunal may require the retirement of any witness or witnesses, including expert witnesses, during the testimony of such other witnesses, except that a witness, including an expert witness, who is a party to the arbitration shall not, in principle, be asked to retire.

4. The arbitral tribunal may direct that witnesses, including expert witnesses, be examined through means of telecommunication that do not require their physical presence at the hearing (such as videoconference).

Experts appointed by the arbitral tribunal

Article 29

1. After consultation with the parties, the arbitral tribunal may appoint one or more independent experts to report to it, in writing, on specific issues to be determined by the arbitral tribunal. A copy of the expert's terms of reference, established by the arbitral tribunal, shall be communicated to the parties.

2. The expert shall, in principle before accepting appointment, submit to the arbitral tribunal and to the parties a description of his or her qualifications and a statement of his or her impartiality and independence. Within the time ordered by the arbitral tribunal, the parties shall inform the arbitral tribunal whether they have any objections as to the expert's qualifications, impartiality or independence. The arbitral tribunal shall decide promptly whether to accept any such objections. After an expert's appointment, a party may object to the expert's qualifications, impartiality or independence only if the objection is for reasons of which the party becomes aware after the appointment has been made. The arbitral tribunal shall decide promptly what, if any, action to take.

3. The parties shall give the expert any relevant information or produce for his or her inspection any relevant documents or goods that he or she may require of them. Any dispute between a party and such expert as to the relevance of the required information or production shall be referred to the arbitral tribunal for decision.

4. Upon receipt of the expert's report, the arbitral tribunal shall communicate a copy of the report to the parties, which shall be given the opportunity to express, in writing, their opinion on the report. A party shall be entitled to examine any document on which the expert has relied in his or her report.

5. At the request of any party, the expert, after delivery of the report, may be heard at a hearing where the parties shall have the opportunity to be present and to interrogate the expert. At this hearing, any party may present expert witnesses in order to testify on the points at issue. The provisions of article 28 shall be applicable to such proceedings.

Default

Article 30

1. If, within the period of time fixed by these Rules or the arbitral tribunal, without showing sufficient cause:

(a) The claimant has failed to communicate its statement of claim, the arbitral tribunal shall issue an order for the termination of the arbitral proceedings, unless there are remaining matters that may need to be decided and the arbitral tribunal considers it appropriate to do so;

(b) The respondent has failed to communicate tits response to the notice of arbitration or its statement of defence, the arbitral tribunal shall order that proceedings continue, without treating such failure in itself as an admission of the claimant's allegations; the provisions of this subparagraph also apply to a claimant's failure to submit a defence to a counterclaim or to a claim for the purpose of a set-off.

2. If a party, duly notified under these Rules, fails to appear at a hearing, without showing sufficient cause for such failure, the arbitral tribunal may proceed with the arbitration.

3. If a party, duly invited by the arbitral tribunal to produce documents, exhibits or other evidence, fails to do so within the established period of time, without showing sufficient cause for such failure, the arbitral tribunal may make the award on the evidence before it.

Closure of hearings

Article 31

1. The arbitral tribunal may inquire of the parties if they have any further proof to offer or witnesses to be heard or submissions to make and, if there are none, it may declare the hearings closed.

2. The arbitral tribunal may, if it considers it necessary owing to exceptional circumstances, decide, on its own initiative or upon application of a party, to reopen the hearings at any time before the award is made.

Waiver of right to object

Article 32

A failure by any party to object promptly to any non-compliance with these Rules or with any requirement of the arbitration agreement shall be deemed to be a waiver of the right of such party to make such an objection, unless such party can show that, under the circumstances, its failure to object was justified.

Section IV. The Award

Decisions

Article 33

1. When there is more than one arbitrator, any award or other decision of the arbitral tribunal shall be made by a majority of the arbitrators.

2. In the case of questions of procedure, when there is no majority or when the arbitral tribunal so authorizes, the presiding arbitrator may decide alone, subject to revision, if any, by the arbitral tribunal.

Form and effect of the award

Article 34

1. The arbitral tribunal may make separate awards on different issues at different times.

2. All awards shall be made in writing and shall be final and binding on the parties. The parties shall carry out all awards without delay.

3. The arbitral tribunal shall state the reasons upon which the award is based, unless the parties have agreed that no reasons are to be given.

4. An award shall be signed by the arbitrators and it shall contain the date on which the award was made and indicate the place of arbitration. Where there is more than one arbitrator and any of them fails to sign, the award shall state the reason for the absence of the signature.

5. An award may be made public with the consent of all parties or where and to the extent disclosure is required of a party by legal duty, to protect or pursue a legal right or in relation to legal proceedings before a court or other competent authority.

6. Copies of the award signed by the arbitrators shall be communicated to the parties by the arbitral tribunal.

Applicable law, amiable compositeur

Article 35

1. The arbitral tribunal shall apply the rules of law designated by the parties as applicable to the substance of the dispute. Failing such designation by the parties, the arbitral tribunal shall apply the law which it determines to be appropriate.

2. The arbitral tribunal shall decide as amiable compositeur or ex aequo et bono only if the parties have expressly authorized the arbitral tribunal to do so.

3. In all cases, the arbitral tribunal shall decide in accordance with the terms of the contract, if any, and shall take into account any usage of trade applicable to the transaction.

Statement or other grounds for termination

Article 36

1. If, before the award is made, the parties agree on a settlement of the dispute, the arbitral tribunal shall either issue an order for the termination of the arbitral proceedings or, if requested by the parties and accepted by the arbitral tribunal, record the settlement in the form of an

arbitral award on agreed terms. The arbitral tribunal is not obliged to give reasons for such an award.

2. If, before the award is made, the continuation of the arbitral proceedings becomes unnecessary or impossible for any reason not mentioned in paragraph 1, the arbitral tribunal shall inform the parties of its intention to issue an order for the termination of the proceedings. The arbitral tribunal shall have the power to issue such an order unless there are remaining matters that may need to be decided and the arbitral tribunal considers it appropriate to do so.

3. Copies of the order for termination of the arbitral proceedings or of the arbitral award on agreed terms, signed by the arbitrators, shall be communicated by the arbitral tribunal to the parties. Where an arbitral award on agreed terms is made, the provisions of article 34, paragraphs 2, 4 and 5, shall apply.

Interpretation of the award

Article 37

1. Within 30 days after the receipt of the award, a party, with notice to the other parties, may request that the arbitral tribunal give an interpretation of the award.

2. The interpretation shall be given in writing within 45 days after the receipt of the request. The interpretation shall form part of the award and the provisions of article 34, paragraphs 2 to 6, shall apply.

Correction of the award

Article 38

1. Within 30 days after the receipt of the award, a party, with notice to the other parties, may request the arbitral tribunal to correct in the award any error in computation, any clerical or typographical error, or any error or omission of a similar nature. If the arbitral tribunal considers that the request is justified, it shall make the correction within 45 days of receipt of

the request.

2. The arbitral tribunal may within 30 days after the communication of the award make such corrections on its own initiative.

3. Such corrections shall be in writing and shall form part of the award. The provisions of article 34, paragraphs 2 to 6, shall apply.

Additional award

Article 39

1. Within 30 days after the receipt of the termination order or the award, a party, with notice to the other parties, may request the arbitral tribunal to make an award or an additional award as to claims presented in the arbitral proceedings but not decided by the arbitral tribunal.

2. If the arbitral tribunal considers the request for an award or additional award to be justified, it shall render or complete its award within 60 days after the receipt of the request. The arbitral tribunal may extend, if necessary, the period of time within which it shall make the award.

3. When such an award or additional award is made, the provisions of article 34, paragraphs 2 to 6, shall apply.

Definition of costs

Article 40

1. The arbitral tribunal shall fix the costs of arbitration in the final award and, if it deems appropriate, in another decision.

2. The term "costs" includes only:

(a) The fees of the arbitral tribunal to be stated separately as to each arbitrator and to be fixed by the tribunal itself in accordance with article 41;

(b) The reasonable travel and other expenses incurred by the arbitrators;

(c) The reasonable costs of expert advice and of other assistance required by the arbitral tribunal;

(d) The reasonable travel and other expenses of witnesses to the extent such expenses are approved by the arbitral tribunal;

(e) The legal and other costs incurred by the parties in relation to the arbitration to the extent that the arbitral tribunal determines that the amount of such costs is reasonable;

(f) Any fees and expenses of the appointing authority as well as the fees and expenses of the Secretary-General of the PCA.

3.In relation to interpretation, correction or completion of any award under articles 37 to 39, the arbitral tribunal may charge the costs referred to in paragraphs 2 (b) to (f), but no additional fees.

Fees and expenses of arbitrators

Article 41

1. The fees and expenses of the arbitrators shall be reasonable in amount, taking into account the amount in dispute, the complexity of the subject matter, the time spent by the arbitrators and any other relevant circumstances of the case.

2. If there is an appointing authority and it applies or has stated that it will apply a schedule or particular method for determining the fees for arbitrators in international cases, the arbitral tribunal in fixing its fees shall take that schedule or method into account to the extent that it considers appropriate in the circumstances of the case.

3. Promptly after its constitution, the arbitral tribunal shall inform the parties as to how it proposes to determine its fees and expenses, including any rates it intends to apply. Within 15 days of receiving that proposal, any party may refer the proposal to the appointing authority for review. If, within 45 days of receipt of such a referral, the appointing authority finds that the proposal of the arbitral tribunal is inconsistent with paragraph 1, it shall make any necessary

adjustments thereto, which shall be binding upon the arbitral tribunal.

4. (a) When informing the parties of the arbitrators' fees and expenses that have been fixed pursuant to article 40, paragraphs 2 (a) and (b), the arbitral tribunal shall also explain the manner in which the corresponding amounts have been calculated;

(b) Within 15 days of receiving the arbitral tribunal's determination of fees and expenses, any party may refer for review such determination to the appointing authority. If no appointing authority has been agreed upon or designated, or if the appointing authority fails to act within the time specified in these Rules, then the review shall be made by the Secretary-General of the PCA;

(c) If the appointing authority or the Secretary-General of the PCA finds that the arbitral tribunal's determination is inconsistent with the arbitral tribunal's proposal (and any adjustment thereto) under paragraph 3 or is otherwise manifestly excessive, it shall, within 45 days of receiving such a referral, make any adjustments to the arbitral tribunal's determination that are necessary to satisfy the criteria in paragraph 1. Any such adjustments shall be binding upon the arbitral tribunal;

(d) Any such adjustments shall either be included by the arbitral tribunal in its award or, if the award has already been issued, be implemented in a correction to the award, to which the procedure of article 38, paragraph 3, shall apply.

5. Throughout the procedure under paragraphs 3 and 4, the arbitral tribunal shall proceed with the arbitration, in accordance with article 17, paragraph 1.

6. A referral under paragraph 4 shall not affect any determination in the award other than the arbitral tribunal's fees and expenses; nor shall it delay the recognition and enforcement of all parts of the award other than those relating to the determination of the arbitral tribunal's fees and expenses.

Allocation of costs

Article 42

1. The costs of the arbitration shall in principle be borne by the unsuccessful party or parties. However, the arbitral tribunal may apportion each of such costs between the parties if it determines that apportionment is reasonable, taking into account the circumstances of the case.

2. The arbitral tribunal shall in the final award or, if it deems appropriate, in any other award, determine any amount that a party may have to pay to another party as a result of the decision on allocation of costs.

Deposit of costs

Article 43

1. The arbitral tribunal, on its establishment, may request the parties to deposit an equal amount as an advance for the costs referred to in article 40, paragraphs 2 (a) to (c).

2. During the course of the arbitral proceedings the arbitral tribunal may request supplementary deposits from the parties.

3. If an appointing authority has been agreed upon or designated, and when a party so requests and the appointing authority consents to perform the function, the arbitral tribunal shall fix the amounts of any deposits or supplementary deposits only after consultation with the appointing authority, which may make any comments to the arbitral tribunal that it deems appropriate concerning the amount of such deposits and supplementary deposits.

4. If the required deposits are not paid in full within 30 days after the receipt of the request, the arbitral tribunal shall so inform the parties in order that one or more of them may make the required payment. If such payment is not made, the arbitral tribunal may order the suspension or termination of the arbitral proceedings.

5. After a termination order or final award has been made, the arbitral tribunal shall render an accounting to the parties of the deposits received and return any unexpended balance to the parties.

Annex

Model arbitration clause for contracts

Any dispute, controversy or claim arising out of or relating to his contract, or the breach, termination or invalidity thereof, shall be settled by arbitration in accordance with the UNCITRAL Arbitration Rules.

Note. Parties should consider adding:

(a) The appointing authority shall be . . . [name of institution or person];

(b) The number of arbitrators shall be [one or three];

(c) The place of arbitration shall be [town and country];

(d) The language to be used in the arbitral proceedings shall be…

Possible waiver statement

Note. If the parties wish to exclude recourse against the arbitral award that may be available under the applicable law, they may consider adding a provision to that effect as suggested below, considering, however, that the effectiveness and conditions of such an exclusion depend on the applicable law.

Waiver

The parties hereby waive their right to any form of recourse against an award to any court or other competent authority, insofar as such waiver can validly be made under the applicable law.

Model statements of independence pursuant to article 11 of the Rules

No circumstances to disclose

I am impartial and independent of each of the parties and intend to remain so. To the best of my knowledge, there are no circumstances, past or present, likely to give rise to justifiable

doubts as to my impartiality or independence. I shall promptly notify the parties and the other arbitrators of any such circumstances that may subsequently come to my attention during this arbitration.

Circumstances to disclose

I am impartial and independent of each of the parties and intend to remain so. Attached is a statement made pursuant to article 11 of the UNCITRAL Arbitration Rules of (a) my past and present professional, business and other relationships with the parties and (b) any other relevant circumstances. [Include statement.] I confirm that those circumstances do not affect my independence and impartiality. I shall promptly notify the parties and the other arbitrators of any such further relationships or circumstances that may subsequently come to my attention during this arbitration.

Note: Any party may consider requesting from the arbitrator the following addition to the statement of independence:

I confirm, on the basis of the information presently available to me, that I can devote the time necessary to conduct this arbitration diligently, efficiently and in accordance with the time limits in the Rules.

Passed by the National Assembly on the 17th May, 2024.

S.E. Isaacs,A.A.,
Clerk of the National Assembly.

(BILL No. 18/2023)