

CHAPTER 110B

INTERNATIONAL COMMERCIAL ARBITRATION 2007-45

This Act came into operation on 19th January, 2009 by Proclamation (S.I. 2009 No. 2).

Amended by:

This Act has not been amended

Law Revision Orders

The following Law Revision Order or Orders authorized the insertion and removal of pages as the case may be under the Law Revision Act Cap.2 now repealed:

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CHAPTER 110B

INTERNATIONAL COMMERCIAL ARBITRATION 2007-45

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**BARBADOS****INTERNATIONAL COMMERCIAL ARBITRATION
2007-45**

An Act to make provision for international commercial arbitration.

[Commencement: 19th January, 2009]

**PART I
PRELIMINARY****Short title**

1. This Act may be cited as the *International Commercial Arbitration Act*.

Interpretation

2.(1) In this Act,
“arbitral tribunal” or “tribunal” means a sole arbitrator or a panel of arbitrators;
“arbitration” means any arbitration, whether or not administered by a permanent arbitral institution;

“arbitration agreement” means an agreement by parties to submit to arbitration all or certain disputes which have arisen or may arise between them in respect of a defined legal relationship, whether contractual or not;

“court” means a body or organ of the judicial system of a State;

“party” means a party to an arbitration agreement;

“telecommunications” has the meaning assigned to it in section 2 of the *Telecommunications Act*, Cap. 282B;

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

(2) Where a provision of this Act, except section 41, leaves parties free to determine a certain issue, such freedom includes the right of the parties to authorize a third party, including an institution, to make that determination.

(3) Where a provision of this Act refers to the fact that 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, except sections 38(a) and 45(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 the counter-claim.

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

(6) Questions concerning matters governed by this Act that are not expressly settled in it are to be settled in conformity with the general principles on which this Act is based.

(7) For the avoidance of doubt, the general principles referred to in subsection (6) include:

(a) the preservation of party autonomy;

- (b) the definition of the relations between courts and arbitral tribunals in respect of arbitral proceedings;
- (c) the determination of the jurisdiction of arbitral tribunals;
- (d) the preservation of due process in the conduct of arbitral proceedings;
- (e) the separability principle;
- (f) the setting aside of an arbitral award as the exclusive recourse against an award; and
- (g) the determination of the conditions for recognition and enforcement of awards and the grounds for the refusal of recognition and enforcement of awards in a manner consistent with the Convention on the Recognition and Enforcement of Foreign Arbitral Awards adopted by the United Nations Conference on International Commercial Arbitration on 10th June, 1958.

Application of Act

3.(1) This Act applies to international commercial arbitration, subject to any agreement in force between Barbados and any other State or States.

(2) For the purposes of this Act,

- (a) the term “commercial” shall be given a wide interpretation so as to cover matters arising from all relationships of a commercial nature, whether contractual or not; and relationships of a commercial nature include the following transactions:
 - (i) any trade transaction for the supply or exchange of goods or services;
 - (ii) distribution agreement;
 - (iii) commercial representation or agency;
 - (iv) factoring;
 - (v) leasing;

- (vi) construction of works;
 - (vii) consulting;
 - (viii) engineering;
 - (ix) licensing;
 - (x) investment;
 - (xi) financing;
 - (xii) banking;
 - (xiii) insurance;
 - (xiv) exploitation agreement or concession;
 - (xv) joint venture and other forms of industrial or business cooperation; and
 - (xvi) carriage of goods or passengers by air, sea, rail or road; and
- (b) an arbitration is international where
- (i) parties to an arbitration agreement have, at the time of the conclusion of the agreement, their places of business in different States;
 - (ii) one of the following places is situated outside the State in which the parties have their places of business:
 - (A) the place of arbitration if determined in, or pursuant to, the arbitration agreement;
 - (B) any place where a substantial part of the obligations of the commercial relationship is to be performed or the place with which the subject matter of the dispute is most closely connected; or
 - (iii) the parties have expressly agreed that the subject matter of the arbitration agreement relates to more than one country.

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- (3) For the purposes of subsection (2)(b), where a party
- (a) has more than one place of business, the place of business is that which has the closest relationship to the arbitration agreement;
 - (b) does not have a place of business, reference is to be made to the habitual residence of the party.
- (4) The provisions of this Act, except sections 11, 12, 28, 29, 30, 48 and 49, apply only where the place of arbitration is in Barbados.
- (5) This Act shall not affect any other law of Barbados 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.
- (6) For the avoidance of doubt
- (a) where this Act applies, the *Arbitration Act*, Cap. 110 shall not apply; and
 - (b) nothing in this Act shall affect the right of any person to seek recognition and enforcement of an award under the *Arbitration (Foreign Arbitral Awards) Act*, Cap. 110A.

Objectives of Act

4. The objectives of this Act are to
- (a) establish in Barbados a comprehensive, modern and internationally recognized framework for international commercial arbitration by adopting the UNCITRAL Model Law on International Commercial Arbitration; and
 - (b) provide the foundation for the establishment in Barbados of an internationally recognized centre for international commercial arbitration.

Administration of Act

5. The Minister with responsibility for legal affairs shall be responsible for the general administration of this Act.

Receipt of written communications

6.(1) Unless the parties otherwise agree,

(a) a written communication is deemed to have been received

(i) where it is delivered to an addressee personally;

(ii) where it is delivered at the place of business, habitual residence or mailing address of the addressee; or

(iii) if none of these can be found after making a reasonable inquiry, where it is sent to the last-known place of business, habitual residence or mailing address of the addressee by registered letter or any other means which provides a record of the attempt to deliver it; and

(b) a written 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.

Waiver of right to object

7. A party who knows that

(a) any provision of this Act from which parties may derogate; or

(b) any requirement under the arbitration agreement

has not been complied with and proceeds with the arbitration without stating an objection to such non-compliance without undue delay or, where a time-limit is

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

Extent of court intervention

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

Court of Appeal and High Court to perform certain functions of arbitration assistance and supervision

9.(1) The functions referred to in sections 16(4), 17, 19(8) and 47(2) shall be performed by the Court of Appeal.

(2) The functions referred to in section 14 shall be performed by the High Court.

PART II

ARBITRATION AGREEMENT

Form of arbitration agreement

10.(1) An arbitration agreement

(a) may be in the form of

(i) an arbitration clause in a contract; or

(ii) a separate agreement; and

(b) shall be in writing.

(2) An agreement is in writing where it is contained in

(a) a document signed by the parties;

(b) an exchange of letters, telex, telegrams or other means of telecommunications which provide a record of the agreement; or

- (c) an exchange of statements of claim and defence in which the existence of an agreement is alleged by one party and not denied by another.
- (3) A reference in a contract to a document containing an arbitration clause constitutes an arbitration agreement where the contract is in writing and the reference is such as to make that clause part of the contract.

Substantive claim before court

- 11.(1) A court before which an action is brought in a matter which is the subject of an arbitration agreement shall, where a party so requests, not later than when submitting the first statement of the party 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) Where an action referred to in subsection (1) has been brought, arbitral proceedings may nevertheless be commenced or continued, and an award may be made, while the issue is pending before the court.

Interim measures by court not incompatible with arbitration agreement

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

PART III**COMPOSITION OF ARBITRAL TRIBUNAL****Number of arbitrators**

- 13.(1) Parties are free to determine the number of arbitrators.
- (2) Where the parties fail to make a determination pursuant to subsection (1), the number of arbitrators shall be three.

Appointment of arbitrators

14.(1) No person shall be precluded by reason of the nationality of the person from acting as an arbitrator, unless the parties otherwise agree.

(2) Subject to subsections (4) and (5), the parties are free to agree on a procedure for appointing the arbitrator or arbitrators.

(3) Where the parties fail to agree on the procedure referred to in subsection (2),

(a) in an arbitration with three arbitrators,

(i) each party shall appoint one arbitrator and the two arbitrators thus appointed shall appoint the third arbitrator; and

(ii) where a party fails to appoint the arbitrator within 30 days of receipt of a request to do so from the other party, or the two arbitrators fail to agree on the third arbitrator within 30 days of their appointment, the appointment shall be made, upon request of a party, by the High Court;

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

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

(a) a party fails to act as required under the procedure;

(b) the parties, or two arbitrators, are unable to reach an agreement expected of them under the procedure; or

(c) a third party, including an institution, fails to perform any function entrusted to it under the procedure,

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

- (5) A decision on a matter entrusted by subsection (3) or (4) to the High Court is not subject to an appeal.
- (6) The High Court, in appointing an arbitrator, shall
- (a) have due regard to any qualifications required of the arbitrator by the agreement of the parties and to such considerations as are likely to secure the appointment of an independent and impartial arbitrator; and
 - (b) in the case of a sole or third arbitrator, take into account the advisability of appointing an arbitrator of a nationality other than those of the parties.

Grounds for challenge

- 15.(1)** Where a person is approached in connection with the possible appointment of the person as an arbitrator, the person shall disclose any circumstances likely to give rise to justifiable doubts as to the impartiality or independence of the person.
- (2) An arbitrator shall, from the time of appointment and throughout the arbitral proceedings, without delay disclose to the parties any circumstances referred to in subsection (1) unless the parties have already been informed of them by the arbitrator.
- (3) An arbitrator may be challenged only where
- (a) circumstances exist that give rise to justifiable doubts as to the impartiality or independence of the arbitrator; or
 - (b) the arbitrator does not possess the qualifications agreed to by the parties.
- (4) A party may challenge an arbitrator appointed by the party or in whose appointment the party has participated, only for reasons of which the party becomes aware after the appointment has been made.

Challenge procedure

16.(1) Subject to subsection (4), parties are free to agree on a procedure for challenging an arbitrator.

(2) Where the parties fail to agree on the procedure referred to in subsection (1), a party who intends to challenge an arbitrator shall, within 15 days after becoming aware of

- (a) the constitution of the arbitral tribunal; or
- (b) any circumstance referred to in section 15(3),

send a written statement of the reasons for the challenge to the tribunal.

(3) Unless the arbitrator who has been challenged withdraws from office or the other party agrees to the challenge of the arbitrator, the tribunal shall decide on the challenge.

(4) Where a challenge under any procedure agreed upon by the parties or under the procedure of subsections (2) and (3) is not successful, the challenging party may, within 30 days after having received notice of the decision rejecting the challenge, request the Court of Appeal to decide on the challenge; and that decision is not subject to an appeal.

(5) While a request made pursuant to subsection (4) is pending, the tribunal, including the challenged arbitrator, may continue the arbitral proceedings and make an award.

Failure or impossibility to act

17.(1) Where an arbitrator

- (a) becomes *de jure* or *de facto* unable to perform the functions of the arbitrator; or
- (b) for other reasons fails to act without undue delay,

the mandate of the arbitrator terminates if the arbitrator withdraws from office or if the parties agree on the termination.

(2) Where a controversy concerning any of the grounds referred to in subsection (1) exists, any party may request the Court of Appeal to decide on the termination of the mandate; and that decision is not subject to an appeal.

(3) Where, under this section or section 16(3),

(a) an arbitrator withdraws from office; or

(b) a party agrees to the termination of the mandate of an arbitrator,

the withdrawal from office by the arbitrator or the agreement by the party to terminate the mandate of the arbitrator shall not be deemed to imply acceptance of the validity of any ground referred to in this section or section 15(3).

Appointment of substitute arbitrator

18. Where the mandate of an arbitrator terminates

(a) under section 16 or 17;

(b) because of the withdrawal of the arbitrator from office for any other reason; or

(c) because of the revocation of the mandate of the arbitrator by the agreement of the parties or in any other case of termination of the mandate of the arbitrator,

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

PART IV
JURISDICTION OF ARBITRAL TRIBUNAL

Competence of arbitral tribunal to rule on its jurisdiction

19.(1) An arbitral tribunal may rule on its own jurisdiction, including any objections with respect to the existence or validity of the arbitration agreement and, for that purpose, an arbitration clause which forms part of a contract shall be treated as an agreement independent of the other terms of the contract.

(2) A decision by the tribunal that the contract is null and void shall not entail *ipso jure* the invalidity of the arbitration clause.

(3) A plea that the tribunal does not have jurisdiction shall be raised not later than the submission of the statement of defence.

(4) A party is not precluded from raising a plea referred to in subsection (3) by the fact that the party has appointed or participated in the appointment of an arbitrator.

(5) A plea that the 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.

(6) The tribunal may, in either case, admit a later plea if it considers the delay justified.

(7) The tribunal may rule on a plea referred to in subsection (3), (4), (5) or (6) either as a preliminary question or in an award on the merits of the case.

(8) If the tribunal rules as a preliminary question that it has jurisdiction, any party may, within 30 days after having received notice of that ruling, request the Court of Appeal to decide the matter, which decision is not subject to an appeal.

(9) While a request made pursuant to subsection (8) is pending, the tribunal may continue the arbitral proceedings and make an award.

PART V

INTERIM MEASURES AND PRELIMINARY ORDERS

Power of arbitral tribunal to grant interim measures

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

(2) For the purposes of this Act, “interim measure” means, in relation to arbitral proceedings, 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, a tribunal orders a party to

- (a) maintain or restore the *status quo* pending the 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 process;
- (c) provide a means of preserving assets out of which a subsequent award may be satisfied; or
- (d) preserve evidence that may be relevant and material to the resolution of the dispute.

Conditions for granting interim measures

21.(1) A party who requests an interim measure referred to in subsection (2) (a), (b) or (c) of section 20 shall satisfy the tribunal that

- (a) harm not adequately reparable by an award of damages is likely to result if the measure is not granted, and that 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) A determination, pursuant to subsection (1)(b), as to whether there is a reasonable possibility that the requesting party will succeed on the merits of the claim shall not affect the discretion of the tribunal in making any subsequent determination.
- (3) The requirements of subsection (1)(a) and (b) shall apply, in respect of a request for an interim measure under paragraph (d) of section 20(2), only to the extent the tribunal considers appropriate.

Applications for preliminary orders and conditions for granting preliminary orders

- 22.**(1) Unless the parties otherwise agree, 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 tribunal may grant a preliminary order provided it considers that prior disclosure of the request for the interim measure to the party against whom it is directed risks frustrating the purpose of the measure.
- (3) The conditions specified in section 21 apply to any preliminary order, provided that the harm to be assessed under paragraph (a) of section 21(1), is the harm likely to result from the order being granted or not granted.

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 tribunal shall give notice to all parties of
- (a) the request for the interim measure;
 - (b) the application for the preliminary order;
 - (c) the preliminary order, if any; and

- (d) all other communications, including an indication of the content of any oral communication, between any party and the tribunal in relation thereto.
- (2) The tribunal shall, at the time it gives notice pursuant to subsection (1), give to any party against whom a preliminary order is directed an opportunity to present the case of the party at the earliest practicable time.
- (3) The tribunal shall decide promptly on any objection to the preliminary order.
- (4) A preliminary order shall expire after 20 days from the date on which it was issued by the tribunal.
- (5) Notwithstanding subsection (4), the 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 the case of the party.
- (6) A preliminary order shall be binding on the parties but shall not be subject to enforcement by a court.
- (7) A preliminary order does not constitute an award.

Modification, suspension, termination

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

- (a) upon application of any party; or
(b) on the initiative of the tribunal,

in exceptional circumstances and upon prior notice to the parties.

Provision of security

25.(1) An arbitral tribunal may require a party who requests an interim measure to provide appropriate security in connection with the measure.

(2) The tribunal shall require a party who applies for a preliminary order to provide security in connection with the order unless the tribunal considers it inappropriate or unnecessary to do so.

Disclosure

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

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

Costs and damages

27.(1) A party who requests an interim measure or applies for a preliminary order shall be liable for any costs and damages caused by the measure or the order to any party where the arbitral tribunal subsequently determines that, in the circumstances, the measure or the order should not have been granted.

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

Recognition and enforcement of interim measures

28.(1) Subject to section 29, an interim measure issued by an arbitral tribunal shall, irrespective of the country in which it was issued, be recognized as binding and, unless otherwise provided by the tribunal, be enforced upon application to the court.

(2) A party who seeks or has obtained recognition or enforcement of an interim measure shall promptly inform the court of any termination, suspension or modification of that interim measure.

(3) Where recognition or enforcement is sought, the court may, where it considers it appropriate, order the requesting party to provide appropriate security if the 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 of interim measures

29.(1) Recognition or enforcement of an interim measure under section 28 may be refused only

- (a) at the request of the party against whom it is invoked where the court is satisfied that
 - (i) the refusal is warranted on the grounds set forth in paragraph (a) (i), (ii), (iii), (iv) or (v) of section 49(1);
 - (ii) the decision of the arbitral tribunal with respect to the provision of security in connection with the interim measure issued by the tribunal has not been complied with; or
 - (iii) the interim measure has been terminated or suspended by
 - (A) the tribunal; or
 - (B) where so empowered, the court of the State in which the arbitration takes place or under the law of which the interim measure was granted; or
- (b) where 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 the measure to its own powers and procedures for the purpose of enforcing the interim measure and without modifying the substance of the measure; or
 - (ii) any of the grounds set forth in paragraph (b)(i) or (ii) of section 49(1) apply to the recognition and enforcement of the interim measure.

(2) Any determination made by the court on any ground referred to in subsection (1) shall be effective only for the purpose of the application to recognize and enforce the interim measure.

(3) The court in which recognition or enforcement is sought shall not, in making a determination pursuant to subsection (1), undertake a review of the substance of the interim measure.

Court-ordered interim measures

30.(1) A court shall have the same power of issuing an interim measure in relation to arbitral proceedings, irrespective of whether the place of the arbitral proceedings is in Barbados, as it has in relation to proceedings in courts.

(2) The court shall exercise the power referred to in subsection (1) in accordance with its own procedures and in consideration of the specific features of international commercial arbitration.

PART VI

CONDUCT OF ARBITRAL PROCEEDINGS

Equal treatment of parties

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

Determination of rules of procedure

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 the conduct of the proceedings.

(2) Where the parties fail to agree on the procedure referred to in subsection (1), the tribunal may, subject to the provisions of this Act, conduct the arbitration in the manner it considers appropriate.

(3) The power conferred upon the tribunal in subsection (2) includes the power to determine the admissibility, relevance, materiality and weight of any evidence.

Place of arbitration

33.(1) Parties are free to agree on the place of arbitration.

(2) Where the parties fail to agree on the place of arbitration, the place shall be determined by the arbitral tribunal having regard to the circumstances of the case, including the convenience of the parties.

(3) Notwithstanding subsections (1) and (2), the tribunal may, unless the parties otherwise agree, meet at any place it considers appropriate for

- (a) consultation among its members;
- (b) the hearing of witnesses, experts or the parties; or
- (c) the inspection of goods, other property or documents.

Commencement of arbitral proceedings

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

Language

35.(1) Parties are free to agree on the language or languages to be used in arbitral proceedings.

(2) Where the parties fail to agree on the language or languages to be used in the proceedings, the arbitral tribunal shall determine the language or languages.

(3) The agreement or determination with respect to the language or languages to be used, unless otherwise specified therein, shall apply to any

- (a) written statement by a party;

- (b) hearing; and
 - (c) award, decision or other communication by the tribunal.
- (4) The 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 tribunal.

Statements of claim and defence

36.(1) Within the period of time agreed by parties or determined by an arbitral tribunal, a claimant shall state

- (a) the facts supporting the claim of the claimant;
- (b) the points at issue; and
- (c) the relief or remedy sought,

and a respondent shall state the defence of the respondent in respect of these particulars, unless the parties have otherwise agreed as to the required elements of the statements.

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

(3) Unless the parties otherwise agree, either party may amend or supplement the claim or defence of the party during the course of the arbitral proceedings, unless the tribunal considers it inappropriate to allow the amendment having regard to the delay in making it.

Hearings and written proceedings

37.(1) Subject to any contrary agreement by the parties, an arbitral tribunal shall decide whether to hold oral hearings for the presentation of evidence or for oral argument, or whether the proceedings shall be conducted on the basis of documents and other materials.

- (2) Unless the parties have agreed that no hearings shall be held, the tribunal shall hold hearings at an appropriate stage of the proceedings, if so requested by a party.
- (3) The parties shall be given sufficient advance notice of any hearing, and of any meeting of the tribunal for the purpose of inspection of goods, other property or documents.
- (4) All statements, documents or other information supplied to the tribunal by one party shall be communicated to the other party.
- (5) Any expert report or evidentiary document on which the tribunal may rely in making its decision shall be communicated to the parties.

Default of a party

- 38.** Unless the parties otherwise agree, where, without showing sufficient cause,
- (a) a claimant fails to communicate a statement of claim in accordance with section 36(1), the arbitral tribunal shall terminate the proceedings;
 - (b) a respondent fails to communicate a statement of defence in accordance with section 36(1), the tribunal shall continue the proceedings without treating the failure in itself as an admission of the allegations of the claimant;
 - (c) any party fails to appear at a hearing or to produce documentary evidence, the tribunal may continue the proceedings and make the award on the evidence before it.

Expert appointed by arbitral tribunal

- 39.(1)** Unless the parties otherwise agree, an arbitral tribunal may
- (a) appoint one or more experts to report to it on specific issues to be determined by the tribunal;

- (b) require a party to give the expert any relevant information or to produce, or provide access to, any relevant documents, goods or other property for the inspection of the expert.
- (2) Unless the parties otherwise agree, where a party so requests or the arbitral tribunal considers it necessary, the expert shall, after delivery of the written or oral report of the expert, participate in a hearing in which the parties have the opportunity to put questions to the expert and to present expert witnesses in order to testify on the points at issue.

Court assistance in taking evidence

- 40.(1)** An arbitral tribunal or a party with the approval of the tribunal may request from a competent court of Barbados assistance in taking evidence.
- (2) The court may execute the request within its competence and according to its rules on taking evidence.

PART VII

MAKING OF AWARD AND TERMINATION OF PROCEEDINGS

Rules applicable to substance of dispute

- 41.(1)** An arbitral tribunal shall decide the dispute in accordance with such rules of law as are chosen by the parties as applicable to the substance of the dispute.
- (2) Any designation of the law or legal system of a 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.
- (3) Where the parties fail to make a designation, the tribunal shall apply the law determined by the conflict of laws rules which it considers applicable.
- (4) The tribunal shall decide *ex aequo et bono* or as *amiable compositeur* only if the parties have expressly authorized it to do so.

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

Decision-making by panel of arbitrators

42.(1) In arbitral proceedings with more than one arbitrator, any decision of the arbitral tribunal shall be made, unless the parties otherwise agree, by a majority of all its members.

(2) Notwithstanding subsection (1), questions of procedure may be decided by a presiding arbitrator, if so authorized by the parties or all members of the tribunal.

Settlement

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

(2) An award on agreed terms shall

- (a) be made in accordance with section 44;
- (b) state that it is an award; and
- (c) have the same status and effect as any other award on the merits of the case.

Form and contents of award

44.(1) An award shall be

- (a) made in writing; and
- (b) signed by the arbitrator or arbitrators.

- (2) In arbitral proceedings with more than one arbitrator, the signatures of the majority of all members of the arbitral tribunal shall suffice, where the reason for any omitted signature is stated.
- (3) 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 43.
- (4) The award shall
- (a) state its date and the place of arbitration as determined in accordance with section 33(1) or (2); and
 - (b) be deemed to have been made at that place.
- (5) After the award is made, a copy of the award signed by the arbitrators in accordance with subsection (1) shall be delivered to each party.

Termination of proceedings

- 45.(1)** Arbitral proceedings are terminated by the final award or by an order of an arbitral tribunal in accordance with subsection (2).
- (2) The tribunal shall issue an order for the termination of the arbitral proceedings where
- (a) the claimant withdraws the claim, unless the respondent objects thereto and the tribunal recognizes a legitimate interest on the part of the respondent in obtaining a final settlement of the dispute;
 - (b) the parties agree on the termination of the proceedings; or
 - (c) the tribunal finds that the continuation of the proceedings has for any other reason become unnecessary or impossible.
- (3) Subject to sections 46 and 47(5), the mandate of the tribunal terminates with the termination of the arbitral proceedings.

Correction and interpretation of award and additional award

46.(1) Unless another period of time has been agreed upon by parties, within 30 days of receipt of an award, a party may

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

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

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

(4) Unless the parties otherwise agree, a party may, with notice to the other party, request the tribunal, within 30 days of receipt of the award, to make an additional award as to claims presented in the arbitral proceedings but omitted from the award.

(5) Where the tribunal considers the request to be justified, the tribunal shall make the additional award within 60 days of the receipt of the request.

(6) The tribunal may extend, if necessary, the period of time within which the tribunal shall make a correction, interpretation or an additional award under subsections (1), (2), (4) and (5).

(7) Section 44 shall apply to a correction or interpretation of the award or to an additional award.

PART VIII
RECOURSE AGAINST AWARD

Application for setting aside as exclusive recourse against arbitral award

47.(1) Recourse to a court against an arbitral award may be made only by an application for setting aside in accordance with subsections (2), (3) and (4).

- (2) An arbitral award may be set aside by the Court of Appeal only where
- (a) the party who makes the application to set aside the award furnishes proof that
 - (i) a party to the arbitration agreement referred to in section 10 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 Barbados;
 - (iii) the party who makes the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present the case of the party;
 - (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 that 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 Barbados; or
 - (ii) the award is in conflict with the public policy of Barbados.
- (3) Notwithstanding subsection (2)(a)(iv), where
 - (a) an award contains decisions on matters beyond the scope of the submission to arbitration; and
 - (b) 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 3 months have elapsed from the date on which the party who makes the application had received the award or, if a request had been made under section 46, from the date on which that request had been disposed of by the arbitral tribunal.

(5) Where an application is made to the court to set aside an award, the court may, where appropriate and so requested by a party, suspend the setting aside proceedings for a period of time determined by the court in order to give the tribunal an opportunity to resume the arbitral proceedings or to take such other action as in the opinion of the tribunal will eliminate the grounds for setting aside.

PART IX
RECOGNITION AND ENFORCEMENT OF AWARDS

Recognition and enforcement of awards

48.(1) An arbitral award, irrespective of the country in which it was made, shall be recognized as binding and, upon application in writing to the competent court, shall, subject to this section and section 49, be enforced.

(2) A party who relies on an award or applies for its enforcement shall supply

- (a) the duly authenticated original award or a duly certified copy thereof;
- (b) the original arbitration agreement referred to in section 10 or a duly certified copy thereof; and
- (c) where the award or agreement is not made in English, a duly certified translation thereof into English.
 - (i) a party to the arbitration agreement referred to in section 10 was under some incapacity;
 - (ii) the arbitration 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 the case of the party;
 - (iv) subject to subsection (2), the award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or 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 that 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 Barbados; or
 - (ii) the recognition or enforcement of the award would be contrary to the public policy of Barbados.
- (2) Notwithstanding subsection (1)(a)(iv), where
- (a) an award contains decisions on matters beyond the scope of the submission to arbitration; and
 - (b) the decisions on matters submitted to arbitration can be separated from those not so submitted,
- the part of the award which contains decisions on matters submitted to arbitration may be recognized and enforced.
- (3) Where an application for setting aside or suspension of an award has been made to a court of the country in which, or under the law of which, the award was made, the court before which recognition or enforcement is sought may, if it considers it appropriate, adjourn its decision and, on the application of the party who claims recognition or enforcement of the award, order the other party to provide appropriate security.

PART X
MISCELLANEOUS

Non-application of *Legal Profession Act, Cap. 370A*

50.(1) Notwithstanding anything to the contrary in the *Legal Profession Act*, a person who is entitled to practise law under the law of a State other than Barbados shall not, by reason of participation in international commercial arbitration and matters related thereto, be deemed to have contravened the *Legal Profession Act*.

(2) For the purposes of this section, international commercial arbitration does not include court proceedings.

Rules

51. The Minister may make rules for giving effect to this Act.

Saving for pending arbitration

52.(1) Unless the parties agree otherwise, this Act shall

- (a) not affect any arbitral proceedings that commenced before 19th January, 2009;
- (b) apply to any arbitral proceedings commenced after 19th January, 2009 under any agreement made before 19th January 2009.

(2) Section 34 shall apply for the purpose of determining the date on which arbitral proceedings commence.

Act binds Crown

53. This Act binds the Crown.