

# ACERIS LAW LLC

## International Arbitration Laws in British Columbia, Canada

1. International Commercial Arbitration Act, [RSBC 1996] CHAPTER 233 p.2
2. Arbitration Act, [SBC 2020] CHAPTER 2 p. 26

This Act is current to June 24, 2025

See the [Tables of Legislative Changes](#) for this Act's legislative history, including any changes not in force.

## **INTERNATIONAL COMMERCIAL ARBITRATION ACT**

**[RSBC 1996] CHAPTER 233**

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# **Part 1 — Application and Interpretation**

## **Scope of application**

- 1 (1) This Act applies to international commercial arbitration, subject to any agreement which is in force between Canada and any other state or states and which applies in British Columbia.
- (2) This Act, except sections 8, 9, 17.08, 17.09, 17.10, 35 and 36, applies only if the place of arbitration is in British Columbia.
- (3) An arbitration is international if
  - (a) the parties to an arbitration agreement have, at the time of the conclusion of that agreement, their places of business in different

states,

(b) one of the following places is located 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 commercial relationship is to be performed;

(iii) 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 state.

(4) For the purposes of subsection (3),

(a) 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

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

(5) For the purposes of subsection (3), the provinces and territories of Canada must be considered one state.

(6) An arbitration is commercial if it arises out of a relationship of a commercial nature including, but not limited to, the following:

(a) a trade transaction for the supply or exchange of goods or services;

(b) a distribution agreement;

(c) a commercial representation or agency;

(d) an exploitation agreement or concession;

(e) a joint venture or other related form of industrial or business cooperation;

(f) the carriage of goods or passengers by air, sea, rail or road;

(g) the construction of works;

(h) insurance;

(i) licensing;

(j) factoring;

(k) leasing;

(l) consulting;

(m) engineering;

(n) financing;

(o) banking;

(p) investing.

- (7) If an arbitration agreement respecting an international commercial arbitration contains a reference to the *Arbitration Act*, that reference is deemed to be a reference to this Act.
- (8) This Act does not affect any other law in force in British Columbia by virtue of which certain disputes may not be submitted to arbitration or may be submitted to arbitration only in accordance with provisions other than those of this Act.

## **Definitions and interpretation**

**2** (1) For the purposes of this Act:

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

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

**"Chief Justice"** means the Chief Justice of the Supreme Court or the Chief Justice's designate;

**"court"** means a body or an organ of the judicial system of a state;

**"party"** means a party to an arbitration agreement and includes a person claiming through or under a party;

**"Supreme Court"** means the Supreme Court of British Columbia.

(2) Where this Act, except section 28, leaves the parties free to determine a certain issue, that freedom includes the right of the parties to authorize a third party, including an institution, to make that determination.

(3) Where this Act

(a) refers to the fact that the parties have agreed or that they may agree, or

(b) in any other way refers to an agreement of the parties,

that agreement includes any arbitration rules referred to in that agreement.

(4) Where this Act, other than section 25 (1) or 32 (2) (a), refers to a claim, it also applies to a counterclaim, and where it refers to a defence, it also applies to a defence to that counterclaim.

## **Receipt of written communications**

**3** (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, and

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

(2) If none of the places referred to in subsection (1) (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 mail or by any other means which provides a record of the attempt to deliver it.

- (3) This section does not apply to written communications in respect of court proceedings.

### **Waiver of right to object**

**4** (1) A party who knows that

- (a) any provision of this Act, or
- (b) any requirement under the arbitration agreement,

has not been complied with and yet proceeds with the arbitration without stating an objection to noncompliance without undue delay or, if a time limit is provided for stating that objection, within that period of time, is deemed to have waived the right to object.

- (2) In subsection (1) (a), "**any provision of this Act**" means any provision of this Act in respect of which the parties may otherwise agree.

### **Extent of judicial intervention**

**5** In matters governed by this Act,

- (a) a court must not intervene unless so provided in this Act, and
- (b) an arbitral proceeding of an arbitral tribunal or an order, ruling or arbitral award made by an arbitral tribunal must not be questioned, reviewed or restrained by a proceeding under the [Judicial Review Procedure Act](#) or otherwise except to the extent provided in this Act.

### **International origin and general principles**

**6** (1) In interpreting this Act, a court or arbitral tribunal

- (a) must have regard to the international origins of the Act, the need to promote uniformity in its application and the observance of good faith, and
- (b) may have regard to the following:
  - (i) the Reports of the United Nations Commission on International Trade Law on the work of its eighteenth (1985) and thirty-ninth (2006) sessions (UN Docs A/40/17 and A/61/17);
  - (ii) the International Commercial Arbitration Analytical Commentary on Draft Text of a Model Law on International Commercial Arbitration (UN Doc A/CN.9/264);
  - (iii) the Commentary of the United Nations Commission on International Trade Law concerning the UNCITRAL Model Law on International Commercial Arbitration 1985 with amendments as adopted in 2006 (UN Sales No. E.08.V.4).

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

## **Part 2 — Arbitration Agreement**

### **Definition of arbitration agreement**

**7** (1) In this Act:

**"arbitration agreement"** means an agreement by the parties to submit to arbitration all or certain disputes that have arisen or that may arise between the parties in respect of a defined legal relationship, whether contractual or not;

**"data message"** means information generated, sent, received or stored by electronic, magnetic, optical or similar means, including, but not limited to, electronic data interchange (EDI), electronic mail, telegram, telex or telecopy;

**"electronic communication"** means any communication that the parties make by means of data messages.

- (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 must 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 conduct or by other means.
- (5) The requirement that an arbitration agreement be in writing is met by an electronic communication if the information contained in the electronic communication is accessible so as to be usable for subsequent reference.
- (6) An arbitration agreement is 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 a document containing an arbitration clause constitutes an arbitration agreement in writing if the reference is such as to make that arbitration clause part of the contract.

### **Stay of legal proceedings**

- 8** (1) If a party to an arbitration agreement commences legal proceedings in a court against another party to the agreement in respect of a matter agreed to be submitted to arbitration, a party to the legal proceedings may, before submitting the party's first statement on the substance of the dispute, apply to that court to stay the proceedings.
- (2) In an application under subsection (1), the court must make an order staying the legal proceedings unless it determines that the arbitration agreement is null and void, inoperative or incapable of being performed.

- (3) Even if an application has been brought under subsection (1) and even if the issue is pending before the court, an arbitration may be commenced or continued and an arbitral award made.

### **Arbitration agreement and interim measures by court**

- 9 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 a court to grant that measure.

## **Part 3 — Composition of Arbitral Tribunal**

### **Number of arbitrators**

- 10 (1) The parties are free to determine the number of arbitrators.
- (2) Failing the determination referred to in subsection (1), the number of arbitrators is 3.

### **Appointment of arbitrators**

- 11 (1) A person of any nationality may be an arbitrator.
- (2) Subject to subsections (6) and (7), the parties are free to agree on a procedure for appointing an arbitral tribunal.
- (3) Failing any agreement referred to in subsection (2), in an arbitration with 3 arbitrators, each party must appoint one arbitrator, and the 2 appointed arbitrators must appoint the third arbitrator.
- (4) If the appointment procedure in subsection (3) applies and
- (a) a party fails to appoint an arbitrator within 30 days after receipt of a request to do so from the other party, or
  - (b) the 2 appointed arbitrators fail to agree on the third arbitrator within 30 days after their appointment,
- the appointment must be made, on request of a party, by the Chief Justice.
- (5) Failing any agreement referred to in subsection (2), in an arbitration with a sole arbitrator, if the parties fail to agree on the arbitrator, the appointment must be made, on request of a party, by the Chief Justice.
- (6) If, under an appointment procedure agreed on by the parties,
- (a) a party fails to act as required under that procedure,
  - (b) the parties, or 2 appointed arbitrators, fail to reach an agreement expected of them under that procedure, or
  - (c) a third party fails to perform any function entrusted to the third party under that procedure,
- a party may request the Chief Justice to take the necessary measure, unless the agreement on the appointment procedure provides other means for securing the appointment.



- (7) A decision on a matter entrusted by subsection (4), (5) or (6) to the Chief Justice is final and is not subject to appeal.
- (8) The Chief Justice, in appointing an arbitrator, must have due regard to
  - (a) any qualifications required of the arbitrator by the agreement of the parties, and
  - (b) other considerations as are likely to secure the appointment of an independent and impartial arbitrator.
- (9) Unless the parties have previously agreed to the appointment of a sole or third arbitrator who is of the same nationality as any of the parties, the Chief Justice must not appoint a sole or third arbitrator who is of the same nationality as that of any of the parties.

### **Grounds for challenge**

- 12** (1) When a person is approached in connection with the person's possible appointment as an arbitrator, the person must disclose any circumstances likely to give rise to justifiable doubts as to the person's independence or impartiality.
- (2) An arbitrator, from the time of the arbitrator's appointment and throughout the arbitral proceedings, must, without delay, disclose to the parties any circumstances referred to in subsection (1) unless they have already been informed of them by the arbitrator.
- (3) An arbitrator may be challenged only if
  - (a) circumstances exist that give rise to justifiable doubts as to the arbitrator's independence or impartiality, or
  - (b) the arbitrator does not possess the qualifications agreed to by the parties.
- (3.1) For the purposes of subsection (3) (a), there are justifiable doubts as to the arbitrator's independence or impartiality only if there is a real danger of bias on the part of the arbitrator in conducting the arbitration.
- (4) A party may challenge an arbitrator appointed by that 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**

- 13** (1) Subject to subsection (4), the parties are free to agree on a procedure for challenging an arbitrator.
- (2) Failing any agreement referred to in subsection (1), a party who intends to challenge an arbitrator must, within 15 days after becoming aware of the constitution of the arbitral tribunal or after becoming aware of any circumstances referred to in section 12 (3), send a written statement of the reasons for the challenge to the arbitral tribunal.
- (3) Unless the arbitrator challenged under subsection (2) withdraws from office or the other party agrees to the challenge, the arbitral tribunal must decide

on the challenge.

- (4) If a challenge under any procedure agreed on by the parties or under the procedure under subsection (2) is not successful, the challenging party may request the Supreme Court, within 30 days after having received notice of the decision rejecting the challenge, to decide on the challenge.
- (5) If a request is made under subsection (4), the Supreme Court may refuse to decide on the challenge, if it is satisfied that, under the procedure agreed on by the parties, the party making the request had an opportunity to have the challenge decided on by a party or entity other than the arbitral tribunal.
- (6) The decision of the Supreme Court under subsection (4) is final and is not subject to appeal.
- (7) While a request under subsection (4) is pending, the arbitral tribunal, including the challenged arbitrator, may continue the arbitral proceedings and make an arbitral award.

### **Failure or impossibility to act**

- 14** (1) The mandate of an arbitrator terminates if
- (a) the arbitrator becomes in law or in fact unable to perform the arbitrator's functions or for other reasons fails to act without undue delay, and
  - (b) the arbitrator withdraws from office or the parties agree to the termination of the arbitrator's mandate.
- (2) If a controversy remains concerning any of the grounds referred to in subsection (1) (a), a party may request the Supreme Court to decide on the termination of the mandate.
- (3) A decision of the Supreme Court under subsection (2) is final and is not subject to appeal.
- (4) If, under this section or section 13 (3), an arbitrator withdraws from 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 12 (3).

### **Termination of mandate and substitution of arbitrator**

- 15** (1) In addition to the circumstances referred to in section 13 or 14, the mandate of an arbitrator terminates
- (a) if the arbitrator withdraws from office for any reason, or
  - (b) by or pursuant to agreement of the parties.
- (2) If the mandate of an arbitrator terminates, a substitute arbitrator must be appointed according to the rules that were applicable to the appointment of the arbitrator being replaced.
- (3) Unless otherwise agreed by the parties,
- (a) if the sole or presiding arbitrator is replaced, any hearings previously held must be repeated, and

- (b) if an arbitrator, other than the sole or presiding arbitrator, is replaced, any hearings previously held may be repeated at the discretion of the arbitral tribunal.
- (4) Unless otherwise agreed by the parties, an order or ruling of the arbitral tribunal made before the replacement of an arbitrator under this section is not invalid solely because there has been a change in the composition of the tribunal.

## **Part 4 — Jurisdiction of Arbitral Tribunal**

### **Competence of arbitral tribunal to rule on its jurisdiction**

- 16** (1) The arbitral tribunal may rule on its own jurisdiction, including ruling on any objections with respect to the existence or validity of the arbitration agreement, and for that purpose,
- (a) an arbitration clause which forms part of a contract must be treated as an agreement independent of the other terms of the contract, and
  - (b) a decision by the arbitral tribunal that the contract is null and void must not entail, as a matter of law, the invalidity of the arbitration clause.
- (2) A plea that the arbitral tribunal does not have jurisdiction must be raised not later than the submission of the statement of defence; however, a party is not precluded from raising such a plea by the fact that the party has appointed, or participated in the appointment of, an arbitrator.
- (3) A plea that the arbitral tribunal is exceeding the scope of its authority must be raised as soon as the matter alleged to be beyond the scope of its authority is raised during the arbitral proceedings.
- (4) The arbitral tribunal may, in either of the cases referred to in subsection (2) or (3), admit a later plea if it considers the delay justified.
- (5) The arbitral tribunal may rule on a plea referred to in subsection (2) or (3) either as a preliminary question or in an award on the merits.
- (6) If the arbitral tribunal rules as a preliminary question on a plea referred to in subsection (2) or (3), any party may request the Supreme Court, within 30 days after having received notice of that ruling, to decide the matter.
- (7) The decision of the Supreme Court under subsection (6) is final and is not subject to appeal.
- (8) While a request under subsection (6) is pending, the arbitral tribunal may continue the arbitral proceedings and make an arbitral award.

## **Part 4.1 — Interim Measures and Preliminary Orders**

### **Division 1 — Interim Measures**

## **Power of arbitral tribunal to order interim measures**

- 17** (1) Unless otherwise agreed by the parties and subject to section 17.01, the arbitral tribunal may, at the request of a party, grant an interim measure.
- (2) In this Act, "**interim measure**" means any temporary measure, whether in the form of an arbitral award or in another form, by which, at any time before the issuance of the arbitral 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 arbitral award may be satisfied,
  - (d) preserve evidence that may be relevant and material to the resolution of the dispute, or
  - (e) provide appropriate security for costs in connection with arbitral proceedings.

## **Conditions for granting interim measures**

- 17.01** (1) The party requesting an interim measure referred to in section 17 (2) (a), (c) or (e) must satisfy the arbitral tribunal that
- (a) harm not adequately reparable by an award of damages or other monetary award is likely to result if the measure is not ordered,
  - (b) the harm referred to in paragraph (a) substantially outweighs the harm that is likely to result to the party against whom the measure is directed if the measure is granted, and
  - (c) there is a reasonable possibility that the requesting party will succeed on the merits of the claim.
- (2) A determination of an arbitral tribunal under subsection (1) (c) does not affect the discretion of the arbitral tribunal in making any subsequent determination.
- (3) The requirements in subsection (1) apply, only to the extent the arbitral tribunal considers appropriate, to a request for an interim measure referred to in section 17 (2) (b) or (d).

## **Division 2 — Preliminary Orders**

### **Applications for preliminary orders and conditions for granting preliminary orders**

- 17.02** (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) Subject to subsection (3), the arbitral tribunal may grant a preliminary order if the arbitral tribunal 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 interim measure.
- (3) Section 17.01 applies to an application for a preliminary order and, for that purpose, the harm to be assessed under section 17.01 (1) (a) and (b) is the harm likely to result from the order being granted or not.

### **Specific regime for preliminary orders**

**17.03** (1) Immediately after the arbitral tribunal makes a determination in respect of an application for a preliminary order, the arbitral tribunal must give notice to all the parties of the following:

- (a) the request for the interim measure;
  - (b) the application for the preliminary order;
  - (c) the preliminary order, if any;
  - (d) all other communications, including by indicating the content of any oral communication, between any party and the arbitral tribunal in relation to a matter referred to in paragraph (a), (b) or (c).
- (2) At the same time, the arbitral tribunal must give an opportunity to any party against whom a preliminary order is directed to present the party's case at the earliest practicable time.
  - (3) The arbitral tribunal must decide promptly on any objection to a preliminary order.
  - (4) A preliminary order expires 20 days after the date on which it was issued by the arbitral tribunal.
  - (5) After the party against whom a preliminary order is directed has been given notice and an opportunity to present its case, the arbitral tribunal may issue an interim measure adopting or modifying the preliminary order.
  - (6) A preliminary order
    - (a) is binding on the parties but is not subject to enforcement by a court, and
    - (b) is not an arbitral award.

## **Division 3 — Provisions Applicable to Interim Measures and Preliminary Orders**

### **Modification, suspension or termination of interim measures and preliminary orders**

**17.04** On application of any party or, in exceptional circumstances and with prior notice to the parties, on the arbitral tribunal's own initiative, an arbitral tribunal may modify, suspend or terminate an interim measure or a preliminary order it has granted.

### **Provision of security**

- 17.05** (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 must 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**

- 17.06** (1) The arbitral tribunal may require any party promptly to disclose any material change in the circumstances on the basis of which an interim measure was requested or granted.
- (2) The party applying for a preliminary order must 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.
- (3) The disclosure obligation under subsection (2) continues until the party against whom the preliminary order has been requested has had an opportunity to present its case.
- (4) After the party against whom a preliminary order has been requested has had an opportunity to present its case, the arbitral tribunal may require any party promptly to disclose any material change in the circumstances on the basis of which the preliminary order was requested or granted.

## **Costs and damages**

- 17.07** (1) The party requesting an interim measure or applying for a preliminary order is liable for any costs and damages caused by the interim measure or the preliminary 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 the costs and damages referred to in subsection (1) at any time during the arbitral proceedings.

## **Division 4 — Recognition and Enforcement of Interim Measures**

### **Recognition and enforcement**

- 17.08** (1) Subject to section 17.09, an interim measure issued by an arbitral tribunal must be recognized as binding and, unless otherwise provided by the arbitral tribunal, enforced on application to the competent court irrespective of the state in which the interim measure was issued.
- (2) The party who is seeking or has obtained recognition or enforcement of an interim measure must promptly inform the court of any modification, suspension or termination of that interim measure.
- (3) The court of the state where recognition or enforcement is sought may, if that court 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**

**17.09** (1) Recognition or enforcement of an interim measure may be refused only

- (a) at the request of the party against whom the interim measure is directed if the court is satisfied that
  - (i) such refusal is warranted on the grounds referred to in section 36 (1) (a) (i), (ii), (iii) or (iv),
  - (ii) a decision of the arbitral tribunal with respect to the provision of security in connection with the interim measure has not been complied with, or
  - (iii) the interim measure has been suspended or terminated by the arbitral tribunal or, where so empowered, by a court of the state in which the arbitration takes place or under the law of which that interim measure was granted, or
- (b) if the court finds that
  - (i) the interim measure is incompatible with the powers conferred upon the court, unless the court decides to reformulate the interim measure to the extent necessary to adapt the interim measure 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 referred to in section 36 (1) (b) (i) or (ii) apply to the recognition or enforcement of the interim measure.

(2) A determination made by the court on a ground referred to in subsection (1) is effective only for the purposes of the application to recognize or enforce the interim measure.

(3) The court where recognition or enforcement is sought may not, in making a determination on a ground referred to in subsection (1), undertake a review of the substance of the interim measure.

## **Division 5 — Court-Ordered Interim Measures**

### **Court-ordered interim measures**

**17.10** (1) A court has the same powers to issue an interim measure in relation to arbitral proceedings, irrespective of whether the place of those proceedings is in British Columbia, as that court has in relation to court proceedings.

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

(3) When requested to grant an interim measure, the court may, if it considers it proper, refer the request to an arbitral tribunal.

## **Part 5 — Conduct of Arbitral Proceedings**

## **Equal treatment of parties**

- 18** The parties must be treated with equality and each party must be given a reasonable opportunity to present their case.

## **Determination of rules of procedure**

- 19** (1) Subject to this Act, the parties are free to agree on the procedure to be followed by the arbitral tribunal in conducting the proceedings.
- (2) Failing any agreement referred to in subsection (1), the arbitral tribunal may, subject to this Act, conduct the arbitration in the manner it considers appropriate.
- (3) The power of the arbitral tribunal under subsection (2) includes the power to determine the admissibility, relevance, materiality and weight of any evidence.

## **Place of arbitration**

- 20** (1) The parties are free to agree on the place of arbitration.
- (2) Failing any agreement referred to in subsection (1), the place of arbitration must be determined by the arbitral tribunal having regard to the circumstances of the case, including the convenience of the parties.
- (3) Despite subsection (1), the arbitral tribunal may, unless otherwise agreed by the parties, meet at any place it considers appropriate for consultation among its members, for hearing witnesses, experts or the parties, or for inspection of documents, goods or other property.

## **Commencement of arbitral proceedings**

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

## **Representation in arbitral proceedings**

- 21.01** (1) A party may be represented in arbitral proceedings by any person of that party's choice, including, but not limited to, a legal practitioner from another state.
- (2) Section 15 of the [Legal Profession Act](#) does not apply to a person who
- (a) is not a member of the Law Society of British Columbia, and
  - (b) does one or more of the following:
    - (i) appears as counsel or advocate in arbitral proceedings;
    - (ii) gives legal advice concerning arbitral proceedings;
    - (iii) prepares statements, documents or other materials in connection with arbitral proceedings.

## **Language**

- 22** (1) The parties are free to agree on the language or languages to be used in the arbitral proceedings.



- (2) Failing any agreement referred to in subsection (1), the arbitral tribunal must determine the language or languages to be used in the arbitral proceedings.
- (3) The agreement or determination, unless otherwise specified, applies to any written statement by a party, any hearing and any arbitral award, decision or other communication by the arbitral tribunal.
- (4) The arbitral tribunal may order that any documentary evidence must be accompanied by a translation into the language or languages agreed on by the parties or determined by the arbitral tribunal.

### **Statements of claim and defence**

- 23** (1) Within the period of time agreed on by the parties or determined by the arbitral tribunal, the claimant must state the facts supporting the claim, the points at issue and the relief or remedy sought, and the respondent must state the respondent's defence in respect of these particulars, unless the parties have otherwise agreed as to the required elements of those 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 otherwise agreed by the parties, either party may amend or supplement a claim or defence during the course of the arbitral proceedings, unless the arbitral tribunal considers it inappropriate to allow the amendment or supplement having regard to the delay in making it.

### **Hearings and written proceedings**

- 24** (1) Unless otherwise agreed by the parties, the arbitral tribunal must decide whether to hold oral hearings for the presentation of evidence or for oral argument, or whether the proceedings must be conducted on the basis of documents and other materials.
- (2) Unless the parties have agreed that no oral hearings are to be held, the arbitral tribunal must hold oral hearings at an appropriate stage of the proceedings, if so requested by a party.
  - (3) The parties must be given sufficient advance notice of any hearing and of any meeting of the arbitral tribunal for the purpose of inspection of documents, goods or other property.
  - (4) All statements, documents or other information supplied to, or applications made to, the arbitral tribunal by one party must be communicated to the other party, and any expert report or evidentiary document on which the arbitral tribunal may rely in making its decision is to be communicated to the parties.
  - (5) [Repealed 2018-8-14.]

### **Default of a party**

- 25** (1) Unless otherwise agreed by the parties, if, without showing sufficient cause, the claimant fails to communicate the statement of claim in accordance with section 23 (1), the arbitral tribunal must terminate the proceedings.
- (2) Unless otherwise agreed by the parties, if, without showing sufficient cause, the respondent fails to communicate the statement of defence in accordance with section 23 (1), the arbitral tribunal must continue the proceedings without treating that failure in itself as an admission of the claimant's allegations.
- (3) Unless otherwise agreed by the parties, if, without showing sufficient cause, a party fails to appear at an oral hearing or to produce documentary evidence, the arbitral tribunal may continue the proceedings and make the arbitral award on the evidence before it.

### **Expert appointed by arbitral tribunal**

- 26** (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, and
  - (b) require a party to give the expert any relevant information or to produce, or to provide access to, any relevant documents, goods or other property for the expert's inspection.
- (2) Unless otherwise agreed by the parties, if a party so requests or if the arbitral tribunal considers it necessary, the expert must, after delivery of the expert's written or oral report, participate in an oral hearing where 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.
- (3) Unless otherwise agreed by the parties, the expert must, on the request of a party, make available to that party, for examination, all documents, goods or other property in the expert's possession with which the expert was provided in order to prepare the expert's report.

### **Court assistance in taking evidence**

- 27** The arbitral tribunal, or a party with the approval of the arbitral tribunal, may request from the Supreme Court assistance in taking evidence, and the court may execute the request within its competence and according to its rules on taking evidence.

### **Enforcement of consolidation agreements**

- 27.01** (1) If all parties to 2 or more arbitral proceedings have agreed to consolidate those proceedings, a party, with notice to the other parties, may apply to the Supreme Court for an order that the proceedings be consolidated as agreed to by the parties.
- (2) Subsection (1) does not limit the parties' ability to consolidate arbitral proceedings without a court order.
- (3) If all parties to the arbitral proceedings have agreed to consolidate the proceedings but have not agreed, by adopting procedural rules or otherwise,

- (a) to the designation of parties as claimants or respondents or a method for making those designations, or
  - (b) to the method for determining the composition of the arbitral tribunal,
- the court may, on application under subsection (1) but subject to subsection (4), make an order deciding either or both of those matters.
- (4) If the arbitral proceedings are under different arbitration agreements, the court must not make an order under this section unless, by their arbitration agreements or otherwise, the parties have agreed
- (a) to the same place of arbitration or a method for determining a single place of arbitration for the consolidated proceedings in British Columbia,
  - (b) to the same procedural rules or a method for determining a single set of procedural rules for the conduct of the consolidated proceedings, and
  - (c) either
    - (i) to have the consolidated proceedings administered by the same arbitral institution, or
    - (ii) to have the consolidated proceedings not be administered by any arbitral institution.
- (5) In making an order under this section, the court may have regard to any circumstances it considers relevant, including
- (a) whether one or more arbitrators have been appointed in one or more of the arbitral proceedings,
  - (b) whether the applicant delayed applying for the order, and
  - (c) whether any material prejudice to any of the parties or any injustice may result from making the order.

## **Part 6 — Making of Arbitral Award and Termination of Proceedings**

### **Rules applicable to substance of dispute**

- 28** (1) The arbitral tribunal must decide the dispute in accordance with the rules of law designated by the parties as applicable to the substance of the dispute.
- (2) Any designation by the parties of the law or legal system of a given state must be construed, unless otherwise expressed, as directly referring to the substantive law of that state and not to its conflict of laws rules.
- (3) Failing any designation of the law under subsection (1) by the parties, the arbitral tribunal must apply the rules of law it considers to be appropriate given all the circumstances surrounding the dispute.
- (4) The arbitral tribunal may 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 arbitral tribunal must decide in accordance with the terms of the contract and must take into account the usages of the trade applicable to the transaction.

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

- 29** (1) Unless otherwise agreed by the parties, in arbitral proceedings with more than one arbitrator, any decision of the arbitral tribunal must be made by a majority of all its members.
- (2) Despite subsection (1), if authorized by the parties or all the members of the arbitral tribunal, questions of procedure may be decided by a presiding arbitrator.

### **Settlement**

- 30** (1) It is not incompatible with an arbitration agreement for an arbitral tribunal to encourage settlement of the dispute and, with the agreement of the parties, the arbitral tribunal may use mediation, conciliation or other procedures at any time during the arbitral proceedings to encourage settlement.
- (2) If, during arbitral proceedings, the parties settle the dispute, the arbitral tribunal must terminate the proceedings and, if requested by the parties and not objected to by the arbitral tribunal, record the settlement in the form of an arbitral award on agreed terms.
- (3) An arbitral award on agreed terms must be made in accordance with section 31 and must state that it is an arbitral award.
- (4) An arbitral award on agreed terms has the same status and effect as any other arbitral award on the substance of the dispute.

### **Form and content of arbitral award**

- 31** (1) An arbitral award must be made in writing and must be signed by the members of the arbitral tribunal.
- (2) For the purposes of subsection (1), in arbitral proceedings with more than one arbitrator, the signatures of the majority of all the members of the arbitral tribunal are sufficient if the reason for any omitted signature is stated.
- (3) The arbitral award must state the reasons on which it is based, unless
- (a) the parties have agreed that no reasons are to be given, or
  - (b) the award is an arbitral award on agreed terms under section 30.
- (4) The arbitral award must state its date and the place of arbitration as determined in accordance with section 20 and the award is deemed to have been made at that place.
- (5) After the arbitral award is made, a signed copy must be delivered to each party.
- (6) The arbitral tribunal may, at any time during the arbitral proceedings, make a partial arbitral award that finally determines any matter with respect to which it may make a final arbitral award.

- (7) Unless otherwise agreed by the parties, the arbitral tribunal may award interest.
- (8) Unless otherwise agreed by the parties, the costs of an arbitration are in the discretion of the arbitral tribunal which may, in awarding costs,
  - (a) include as costs,
    - (i) the fees and expenses of the arbitrators and expert witnesses,
    - (ii) legal fees and expenses,
    - (iii) any administration fees of an institution, and
    - (iv) any other expenses incurred in connection with the arbitral proceedings, and
  - (b) specify
    - (i) the party entitled to costs,
    - (ii) the party who must pay the costs,
    - (iii) the amount of costs or method of determining that amount, and
    - (iv) the manner in which the costs must be paid.

### **Termination of proceedings**

- 32** (1) The arbitral proceedings are terminated by the final arbitral award or by an order of the arbitral tribunal under subsection (2).
- (2) The arbitral tribunal must issue an order for the termination of the arbitral proceedings if
- (a) the claimant withdraws the claim, unless the respondent objects to the order and the arbitral tribunal recognizes a legitimate interest on the respondent's part in obtaining a final settlement of the dispute,
  - (b) the parties agree on the termination of the proceedings, or
  - (c) the arbitral tribunal finds that the continuation of the proceedings has for any other reason become unnecessary or impossible.
- (3) Subject to sections 33 and 34 (4), the mandate of the arbitral tribunal terminates with the termination of the arbitral proceedings.

### **Correction and interpretation of award; additional award**

- 33** (1) Within 30 days after receipt of the arbitral award, unless another period of time has been agreed on by the parties,
- (a) a party may request the arbitral tribunal to correct in the arbitral award any computation errors, any clerical or typographical errors or any other errors of a similar nature, and
  - (b) a party may, if agreed by the parties, request the arbitral tribunal to give an interpretation of a specific point or part of the arbitral award.

- (2) If the arbitral tribunal considers the request made under subsection (1) to be justified, it must make the correction or give the interpretation within 30 days after receipt of the request and the interpretation forms part of the arbitral award.
- (3) The arbitral tribunal may correct any error of the type referred to in subsection (1) (a), on its own initiative, within 30 days after the date of the arbitral award.
- (4) Unless otherwise agreed by the parties, a party may request, within 30 days after receipt of the arbitral award, the arbitral tribunal to make an additional arbitral award as to claims presented in the arbitral proceedings but omitted from the arbitral award.
- (5) If the arbitral tribunal considers the request made under subsection (4) to be justified, it must make the additional arbitral award within 60 days.
- (6) The arbitral tribunal may extend, if necessary, the period of time within which it must make a correction, give an interpretation or make an additional arbitral award under subsection (2) or (4).
- (7) Section 31 applies to a correction or interpretation of the arbitral award or to an additional arbitral award made under this section.

## **Part 7 — Recourse Against Arbitral Award**

### **Application for setting aside arbitral award**

- 34** (1) Recourse to a court against an arbitral award may be made only by an application for setting aside in accordance with subsections (2) and (3).
- (2) An arbitral award may be set aside by the Supreme Court only if
- (a) the party making the application furnishes proof that
    - (i) a party to the arbitration agreement 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 of that law, the law of British Columbia,
    - (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 the party's case,
    - (iv) the arbitral 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, provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, only that part of the arbitral award which contains decisions on matters not submitted to arbitration may be set aside, 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 any 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 British Columbia, or
  - (ii) the arbitral award is in conflict with the public policy in British Columbia.
- (3) An application for setting aside may not be made after 3 months have elapsed from the date on which the party making that application had received the arbitral award or, if a request had been made under section 33, from the date on which that request had been disposed of by the arbitral tribunal.
- (4) When asked to set aside an arbitral award the court may, if it is appropriate and it is requested by a party, adjourn the proceedings to set aside the arbitral award 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 the arbitral award.

## **Part 8 — Recognition and Enforcement of Arbitral Awards**

### **Recognition and enforcement**

- 35** (1) Subject to this section and section 36, an arbitral award, irrespective of the state in which it was made, must be recognized as binding and, on application to the Supreme Court, must be enforced.
- (2) Unless the court orders otherwise, the party relying on an arbitral award or applying for its enforcement must supply
- (a) the duly authenticated original arbitral award or a duly certified copy of it, and
  - (b) the original arbitration agreement or a duly certified copy of it.
- (3) If the arbitral award or arbitration agreement is not made in an official language of Canada, the party must supply a duly certified translation of it into an official language.

### **Grounds for refusing recognition or enforcement**

- 36** (1) Recognition or enforcement of an arbitral award, irrespective of the state 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 arbitration agreement is not valid under the law to which the parties have subjected it or, failing any indication of that law, under the law of the state where the arbitral award was made,
  - (iii) the party against whom the arbitral 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 party's case,
  - (iv) the arbitral 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, provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, that part of the arbitral award which contains decisions on matters submitted to arbitration may be recognized and enforced,
  - (v) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties or, failing any agreement, was not in accordance with the law of the state where the arbitration took place, or
  - (vi) the arbitral award has not yet become binding on the parties or has been set aside or suspended by a court of the state in which, or under the law of which, that arbitral 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 British Columbia, or
  - (ii) the recognition or enforcement of the arbitral award would be contrary to the public policy in British Columbia.
- (2) If an application for setting aside or suspension of an arbitral award has been made to a court referred to in subsection (1) (a) (vi), the court where recognition or enforcement is sought may, if it considers it proper, adjourn its decision and may also, on the application of the party claiming recognition or enforcement of the arbitral award, order the other party to provide appropriate security.
- (3) For the purposes of subsection (1) (b) (ii), third party funding for an arbitration is not contrary to the public policy in British Columbia.
- (4) In subsection (3), "**third party funding**", in relation to an arbitration, means funding for the arbitration that is provided
  - (a) to a party to the arbitration agreement by a person who is not a party to that agreement, and



- (b) in consideration of the person who provides the funding receiving a financial benefit if the funded party is successful in the arbitration.

## **Part 9 — General**

### **Privacy and confidentiality**

**36.01** (1) Unless otherwise agreed by the parties, all hearings and meetings in arbitral proceedings must be held in private.

(2) Unless otherwise agreed by the parties, the parties and the arbitral tribunal must not disclose any of the following:

- (a) proceedings, evidence, documents and information in connection with the arbitration that are not otherwise in the public domain;
- (b) an arbitral award.

(3) Subsection (2) does not apply if disclosure is

- (a) required by law,
- (b) required to protect or pursue a legal right, including for the purposes of preparing and presenting a claim or defence in the arbitral proceedings or enforcing or challenging an arbitral award, or
- (c) authorized by a competent court.

### **Immunity**

**36.02** An arbitrator is not liable for anything done or omitted in connection with an arbitration unless the act or omission is in bad faith or the arbitrator has engaged in intentional wrongdoing.

### **Repealed**

**37** [Repealed 2018-8-22.]

### **Offence Act**

**38** Section 5 of the *Offence Act* does not apply to this Act.

This Act is current to June 24, 2025

See the [Tables of Legislative Changes](#) for this Act's legislative history, including any changes not in force.

## **ARBITRATION ACT**

### **[SBC 2020] CHAPTER 2**

*Assented to March 5, 2020*

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# Part 1 — Interpretation and Application

## Interpretation

1 In this Act:

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

**"arbitration agreement"** means an agreement described in section 5 (1)  
*[arbitration agreement];*

**"designated appointing authority"** means the entity designated under section  
*67 [designated appointing authority];*

**"interim measure"** means any temporary measure, whether in the form of an arbitral award or in another form, by which, at any time before the issuance of the arbitral award by which a 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 arbitral award may be satisfied,
- (d) preserve evidence that may be relevant and material to the resolution of the dispute, or
- (e) provide appropriate security for costs in connection with arbitral proceedings;

**"place of arbitration"** means a place or seat of arbitration.

## Application

- 2 (1) Subject to subsections (4) and (5), this Act applies to an arbitration if the place of arbitration is in British Columbia.
- (2) The place of arbitration is in British Columbia if the arbitration agreement
- (a) names British Columbia or a place in British Columbia as the place of arbitration,
  - (b) does not name a place of arbitration, but provides that the arbitration laws of British Columbia are applicable to the dispute,
  - (c) does not name a place of arbitration and does not provide that the arbitration laws of a specified jurisdiction are applicable to the dispute, but provides that the laws of British Columbia are applicable to the substance of the dispute,
  - (d) empowers a person or entity to name the place of arbitration, and the person or entity names British Columbia or a place in British Columbia as the place of arbitration, or
  - (e) does not do any of the following and the parties to the arbitration agreement have, on the date the parties entered into the arbitration agreement, their places of business in British Columbia:
    - (i) name a place of arbitration;
    - (ii) provide that the arbitration laws of a specified jurisdiction are applicable to the dispute;
    - (iii) provide that the laws of British Columbia are applicable to the substance of the dispute;
    - (iv) empower a person or entity to name the place of arbitration.
- (3) For the purposes of subsection (2) (e),
- (a) if a party has more than one place of business, the party's place of business is that which has the closest relationship to the arbitration agreement, and
  - (b) if a party does not have a place of business, a reference to the party's place of business is to be read as a reference to the party's last known place of residence.
- (4) The following sections of this Act apply to an arbitration whether or not the place of arbitration is in British Columbia:
- (a) section 3 *[waiver of right to object]*;
  - (b) section 4 *[extent of judicial intervention]*;
  - (c) section 7 *[stay of court proceedings]*;
  - (d) section 29 *[production and evidence from non-parties]*;
  - (e) section 43 *[recognition and enforcement of interim measures]*;
  - (f) section 44 *[grounds for refusing recognition or enforcement of interim measures]*;
  - (g) section 45 *[court-ordered interim measures]*;

(h) section 61 [*recognition and enforcement of arbitral awards*].

(5) This Act does not apply to the following:

- (a) an arbitration to which the *International Commercial Arbitration Act* applies;
- (b) an arbitration of a family law dispute as defined in section 1 of the *Family Law Act*;
- (c) an arbitration under a prescribed agreement entered into by the government of British Columbia or the government of Canada and the government of another jurisdiction in or outside Canada, except as provided in the regulations.

(6) If another enactment authorizes or requires arbitration, this Act applies with any modifications necessary to give effect to the other enactment.

### **Waiver of right to object**

**3** A party to an arbitration agreement is deemed to have waived the right to object if both of the following apply:

- (a) the party knows that
  - (i) a provision of this Act, other than a provision in respect of which the parties may otherwise agree, has not been complied with, or
  - (ii) a requirement under the arbitration agreement has not been complied with;
- (b) the party proceeds with the arbitration and does not state an objection to the noncompliance without undue delay, or, if a time limit is provided for stating that objection, within that period of time.

### **Extent of judicial intervention**

**4** In matters governed by this Act,

- (a) a court must not intervene unless so provided in this Act, and
- (b) the following must not be questioned, reviewed or restrained by a proceeding under the *Judicial Review Procedure Act* or otherwise except to the extent provided in this Act:
  - (i) an arbitral proceeding of an arbitral tribunal or an order, ruling or arbitral award made by an arbitral tribunal;
  - (ii) a determination or direction by the designated appointing authority.

## **Part 2 — Arbitration Agreement**

### **Arbitration agreement**

**5** (1) Two or more persons may make an agreement to resolve, by arbitration, a matter that

- (a) is the subject of a dispute, or
  - (b) may be the subject of a dispute in the future.
- (2) If the parties to an arbitration agreement make a subsequent agreement regarding how disputes or prospective disputes to which the arbitration agreement applies must or may be arbitrated, the subsequent agreement is a modification of the original arbitration agreement.
- (3) If an arbitration agreement incorporates arbitration rules by reference, those rules form part of the arbitration agreement.
- (4) The reference in a contract to a document containing an arbitration clause constitutes an arbitration agreement if the reference is such as to make that arbitration clause part of the contract.
- (5) For certainty, an arbitration agreement
  - (a) need not be in writing,
  - (b) need not relate to the interpretation, application or performance of a contract, and
  - (c) may, but need not, be part of another agreement.

### **Scott v. Avery clauses**

- 6 An agreement which provides that a matter be adjudicated by arbitration before it may be the subject of a court proceeding is an arbitration agreement in respect of the matter.

### **Stay of court proceedings**

- 7 (1) If a party commences legal proceedings in a court in respect of a matter agreed to be submitted to arbitration, a party to the legal proceedings may, before submitting the party's first response on the substance of the dispute, apply to that court to stay the legal proceedings.
- (2) In an application under subsection (1), the court must make an order staying the legal proceedings unless it determines that the arbitration agreement is void, inoperative or incapable of being performed.
- (3) An arbitration may be commenced or continued and an arbitral award made even if an application has been brought under subsection (1) and the issue is pending before the court.

## **Part 3 — Commencement of Arbitral Proceedings**

### **Commencement of arbitral proceedings**

- 8 (1) If the parties to an arbitration agreement have agreed how arbitral proceedings are to be commenced, arbitral proceedings must be commenced in accordance with that agreement.
- (2) If the parties to an arbitration agreement have not agreed how arbitral proceedings are to be commenced, a party may commence arbitral proceedings,

- (a) if authorized under the arbitration agreement, by delivering to the other party to the arbitration agreement a notice appointing an arbitrator,
  - (b) by delivering to the other party to the arbitration agreement a notice requesting that other party participate in the appointment of an arbitral tribunal,
  - (c) if the arbitration agreement authorizes a person who is not a party to the arbitration agreement to appoint an arbitrator or arbitral tribunal, by delivering to that person a notice requesting the person exercise the power of appointment and by delivering a copy of the notice to any other party to the arbitration agreement, or
  - (d) by delivering to the other party to the arbitration agreement a notice demanding arbitration.
- (3) A person who receives a notice under subsection (2) may deliver to the party who commenced the arbitral proceeding a written request for a concise description of the matter in dispute, unless such a description is already included with the notice.
- (4) A party who receives a request under subsection (3) must comply with the request no more than 10 days after receipt of the request.
- (5) An arbitral tribunal may extend the time period referred to in subsection (4) before or after the expiry of that period.
- (6) A party's failure to comply with subsection (4) does not render a notice delivered under subsection (2) ineffective, but an arbitral tribunal may stay the arbitral proceedings until the party complies with the request under subsection (3).

## **Consolidation**

- 9** (1) If all parties to 2 or more arbitral proceedings agree to consolidate those proceedings, a party, with notice to the other parties, may apply to the Supreme Court for an order that the proceedings be consolidated as agreed by the parties.
- (2) Subsection (1) does not limit the parties' ability to consolidate arbitral proceedings without a court order.
- (3) If all parties to the arbitral proceedings agree to consolidate the proceedings but do not agree, by adopting procedural rules or otherwise, to either of the following matters, the Supreme Court may, on application under subsection (1) but subject to subsection (4), make an order deciding either or both of those matters:
- (a) the designation of parties as claimants or respondents or a method of making those designations;
  - (b) the method for determining the composition of the arbitral tribunal.
- (4) If the arbitral proceedings are under different arbitration agreements, the Supreme Court must not make an order under this section unless, by their



arbitration agreements or otherwise, the parties agree

- (a) to the same place of arbitration or a method for determining a single place of arbitration for the consolidated proceedings in British Columbia,
  - (b) to the same procedural rules or a method for determining a single set of procedural rules for the conduct of the consolidated proceedings, and
  - (c) to have the consolidated proceedings either
    - (i) be administered by the same person or entity, or
    - (ii) not be administered by any person or entity.
- (5) In making an order under this section, the Supreme Court may have regard to any circumstance it considers relevant, including
- (a) whether one or more arbitrators have been appointed in one or more of the arbitral proceedings,
  - (b) whether the applicant delayed applying for the order, and
  - (c) whether any material prejudice to any of the parties or any injustice may result from making the order.
- (6) A Supreme Court decision under this section may not be appealed.

### **Extension of time limit to commence arbitral proceedings**

- 10** (1) If an arbitration agreement provides that a claim to which the agreement applies is barred unless one of the following occurs within a time limit specified in the agreement or otherwise:
- (a) notice to appoint an arbitrator is delivered;
  - (b) an arbitrator is appointed;
  - (c) any other step to commence the arbitral proceedings is taken,
- the Supreme Court may, on application, extend the time limit if it considers that undue hardship would otherwise result.
- (2) An application under subsection (1) must be brought without undue delay.
- (3) A Supreme Court decision under this section may not be appealed.

### **Limitation periods**

- 11** (1) The law with respect to limitation periods for commencing court proceedings applies to commencing arbitral proceedings.
- (2) Subject to section 10 (1), if a party alleges that a claim to which an arbitration agreement applies is barred for failure to commence arbitral proceedings within the time limit specified in the agreement or otherwise or within the applicable limitation period, the arbitral proceedings continue and the arbitral tribunal must determine whether the claim is barred.

### **Commencement of arbitral proceedings when stay ordered**

- 12** If court proceedings are stayed under section 7 [*stay of court proceedings*] and the claim that was the subject of the court proceedings is made in arbitral proceedings no more than 30 days after the court proceedings are stayed, the limitation period applicable to the claim is suspended from the date the claim was made in the court proceedings to the date the claim is made in the arbitral proceedings.

## **Part 4 — Arbitral Tribunals**

### **Division 1 — Composition of Arbitral Tribunals**

#### **Number of arbitrators**

- 13** If the parties to an arbitration agreement do not agree on the number of arbitrators, an arbitral tribunal is composed of one arbitrator.

#### **Appointment of arbitrator**

- 14** (1) Subject to this section, the parties may agree on a procedure for appointing the arbitral tribunal.
- (2) Unless the parties otherwise agree, in an arbitration with a sole arbitrator, if the parties fail to agree on the arbitrator, the designated appointing authority must, on request of a party, appoint the arbitrator.
- (3) Unless the parties otherwise agree, in an arbitration with 3 arbitrators, each party must appoint one arbitrator, and the 2 appointed arbitrators must appoint the third arbitrator.
- (4) If the appointment procedure in subsection (3) applies and either of the following occurs, the designated appointing authority must, on request of a party, appoint an arbitrator:
- (a) a party fails to appoint an arbitrator within 30 days after receipt of a request to do so from the other party;
  - (b) the 2 appointed arbitrators fail to agree on the third arbitrator within 30 days after their appointment.
- (5) If, under an appointment procedure agreed to by the parties, any of the following occurs:
- (a) a party fails to act as required under that procedure;
  - (b) the parties, or 2 appointed arbitrators, fail to reach an agreement expected of them under that procedure;
  - (c) a third party fails to perform any function entrusted to the third party under that procedure,
- a party may request the designated appointing authority to take the necessary measure unless the agreement on the appointment procedure provides other means for securing the appointment.
- (6) If the designated appointing authority does not make the appointment requested under subsection (2) or (4) or take the necessary measure in

accordance with subsection (5) within 7 days of the request, the Supreme Court must, on application, appoint an arbitrator.

- (7) In appointing an arbitrator, the designated appointing authority or the Supreme Court must have due regard to
- (a) any qualifications required of the arbitrator by the agreement of the parties, and
  - (b) any other considerations as are likely to secure the appointment of an independent and impartial arbitrator.
- (8) An appointment of an arbitrator made by the designated appointing authority or the Supreme Court may not be appealed.

## **Division 2 — Removal and Replacement of Arbitrator**

### **No revocation of appointment**

- 15** Subject to this Division, a party to arbitral proceedings may not revoke the appointment of an arbitrator unless all other parties to the arbitral proceedings consent.

### **Independence and impartiality of arbitrator**

- 16** (1) Unless otherwise agreed by the parties to arbitral proceedings, an arbitrator must be independent of the parties.
- (2) An arbitrator must be impartial and act impartially.
- (3) If a person is approached in connection with the person's possible appointment as an arbitrator, the person must, without delay, disclose any circumstances likely to give rise to justifiable doubts as to the person's independence or impartiality.
- (4) An arbitrator, from the time of the arbitrator's appointment and throughout the arbitral proceedings, must, without delay, disclose to the parties any circumstances referred to in subsection (3).

### **Grounds for challenge**

- 17** (1) An arbitrator may be challenged only if
- (a) subject to an agreement described in section 16 (1), circumstances exist that give rise to justifiable doubts as to the arbitrator's independence,
  - (b) circumstances exist that give rise to justifiable doubts as to the arbitrator's impartiality, or
  - (c) the arbitrator does not possess the qualifications agreed to by the parties.
- (2) For the purposes of subsection (1) (a) and (b), there are justifiable doubts as to the arbitrator's independence or impartiality only if there is a real danger of bias on the part of the arbitrator in conducting the arbitration.

- (3) A party may challenge an arbitrator appointed by that 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**

- 18** (1) Subject to subsection (4), the parties to arbitral proceedings may agree on a procedure for challenging an arbitrator.
- (2) Failing any agreement referred to in subsection (1), a party who intends to challenge an arbitrator must, within 15 days after becoming aware of the constitution of the arbitral tribunal or any circumstances referred to in section 17 (1), send a written statement of the reasons for the challenge to the arbitral tribunal.
- (3) Unless the arbitrator challenged under subsection (2) withdraws from office or the other party agrees to the challenge, the arbitral tribunal must decide on the challenge.
- (4) If a challenge under any procedure agreed to by the parties or under the procedure referred to in subsection (2) is not successful, the challenging party may, within 30 days after receiving notice of the decision rejecting the challenge, apply to the Supreme Court to decide on the challenge.
- (5) If an application is made under subsection (4), the Supreme Court may refuse to decide on the challenge if it is satisfied that, under the procedure agreed to by the parties, the party making the application had an opportunity to have the challenge decided on by a person or entity other than the arbitral tribunal.
- (6) A decision of the Supreme Court under subsection (4) may not be appealed.
- (7) While an application under subsection (4) is pending, the arbitral tribunal, including the challenged arbitrator, may continue the arbitral proceedings and make an arbitral award.

### **Failure or impossibility to act**

- 19** (1) The mandate of an arbitrator terminates if
- (a) the arbitrator becomes in law or in fact unable to perform the arbitrator's functions or for other reasons fails to act without undue delay, and
  - (b) the arbitrator withdraws from office or the parties agree to the termination of the arbitrator's mandate.
- (2) On application by a party, the Supreme Court may terminate the mandate of an arbitrator on a ground referred to in subsection (1) (a).
- (3) A decision of the Supreme Court under subsection (2) may not be appealed.
- (4) If, under this section or section 18 (3), an arbitrator withdraws from office or the parties agree 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 17 (1) [*grounds for challenge*].

## **Termination of mandate and substitution of arbitrator**

- 20** (1) In addition to the circumstances referred to in section 18 or 19, the mandate of an arbitrator terminates
- (a) if the arbitrator withdraws from office for any reason, or
  - (b) by or pursuant to agreement of the parties to the arbitral proceedings.
- (2) If the mandate of an arbitrator terminates, a substitute arbitrator must be appointed according to the rules applied to the appointment of the arbitrator being replaced.
- (3) Unless otherwise agreed by the parties to the arbitral proceedings,
- (a) if the sole or presiding arbitrator is replaced, any hearings previously held must be repeated, and
  - (b) if an arbitrator, other than the sole or presiding arbitrator, is replaced, any hearings previously held may be repeated at the discretion of the arbitral tribunal.
- (4) Unless otherwise agreed by the parties to the arbitral proceedings, an order or ruling of the arbitral tribunal made before the replacement of an arbitrator under this section is not invalid solely because there has been a change in the composition of the arbitral tribunal.

## **Part 5 — Arbitral Proceedings**

### **Division 1 — Duties of Arbitral Tribunals and Parties**

#### **General duties of arbitral tribunal**

- 21** An arbitral tribunal must
- (a) treat each party fairly,
  - (b) give each party a reasonable opportunity to present its case and to answer any case presented against it, and
  - (c) strive to achieve a just, speedy and economical determination of the proceeding on its merits.

#### **General duties of parties**

- 22** (1) Parties to arbitral proceedings must do all things necessary for the just, speedy and economical determination of the proceedings, in accordance with the agreement of the parties and the orders and directions of the arbitral tribunal.
- (2) A party must not wilfully do or cause to be done any act to delay or prevent an arbitral award being made.

### **Division 2 — Jurisdiction of Arbitral Tribunals**

#### **Competence of arbitral tribunal to rule on its jurisdiction**

- 23** (1) An arbitral tribunal may rule on its own jurisdiction, including ruling on any objections with respect to the existence or validity of the arbitration agreement, and for that purpose,
- (a) an arbitration agreement which forms part of a contract must be treated as an agreement independent of the other terms of the contract, and
  - (b) a decision by the arbitral tribunal that the contract is null and void must not entail, as a matter of law, the invalidity of the arbitration agreement.
- (2) A plea that the arbitral tribunal does not have jurisdiction must be raised not later than the submission of the first response on the substance of the dispute.
- (3) A party to arbitral proceedings is not precluded from raising a plea referred to in subsection (2) by the fact that the party appointed, or participated in the appointment of, an arbitrator.
- (4) A plea that the arbitral tribunal is exceeding the scope of its authority must be raised as soon as the matter alleged to be beyond the scope of its authority is raised during the arbitral proceedings.
- (5) The arbitral tribunal may, in either of the cases referred to in subsection (2) or (4), admit a later plea if it considers the delay justified.
- (6) The arbitral tribunal may rule on a plea referred to in subsection (2) or (4) either as a preliminary question or in an arbitral award on the merits.
- (7) If the arbitral tribunal rules as a preliminary question on a plea referred to in subsection (2) or (4), any party may, within 30 days after receiving notice of that ruling, apply to the Supreme Court to decide the matter.
- (8) A decision of the Supreme Court under subsection (7) may not be appealed.
- (9) While an application under subsection (7) is pending, the arbitral tribunal may continue the arbitral proceedings and make an arbitral award.

## **Division 3 — Representation in Arbitral Proceedings and Applicable Law**

### **Representation in arbitral proceedings**

- 24** A party to arbitral proceedings may appear or act in person or, subject to the [Legal Profession Act](#), may be represented by another person.

### **Law applicable to substance of dispute**

- 25** (1) The law applicable to the substance of a dispute is the law designated by the parties to the arbitration agreement.
- (2) If the parties to the arbitration agreement have not designated the law applicable to the substance of a dispute, the arbitral tribunal may choose the applicable law.
- (3) An arbitral tribunal must decide the substance of a dispute in accordance with the applicable law, including any equitable rights or defences available under

that law.

- (4) An arbitral tribunal may grant relief or remedies under the applicable law, including orders of specific performance, injunctions, declarations or other equitable remedies available under that law.

### **Conflict of laws**

- 26** A designation by the parties to the arbitration agreement of the law of a jurisdiction refers to the jurisdiction's substantive law and not to its conflict of laws rules unless the parties expressly state that the designation includes the conflict of laws rules.

### **Application of agreed standards**

- 27** Despite section 25, if all parties agree, an arbitral tribunal may resolve a dispute *ex aequo et bono*, as *amiable compositeur* or by applying some other standard.

## **Division 4 — Powers of Arbitral Tribunals in Respect of Arbitral Proceedings**

### **Evidence**

- 28** (1) An arbitral tribunal may decide all evidentiary matters, including the admissibility, relevance, materiality and weight of any evidence, and may draw such inferences as the circumstances justify.
- (2) Unless otherwise agreed by the parties to the arbitral proceedings, the arbitral tribunal is not required to apply the law of evidence other than the law of privilege.
- (3) Unless otherwise agreed by the parties to the arbitral proceedings or directed by the arbitral tribunal, the direct evidence of every witness must be presented in written form.

### **Production and evidence from non-parties**

- 29** (1) If, on application by a party to arbitral proceedings, an arbitral tribunal determines that a person who is not a party to the proceedings should give evidence or produce records, the arbitral tribunal may
- (a) issue a subpoena to a person in British Columbia requiring the person to give evidence or produce for inspection records in the person's possession or control, or
  - (b) request a court of competent jurisdiction to assist the arbitral tribunal by requiring a person in or outside British Columbia to give evidence or produce for inspection records in the person's possession or control.
- (2) A subpoena under subsection (1) (a) must set out, and a request under subsection (1) (b) must propose, the following, as applicable:
- (a) how, where and when the person is to give evidence;
  - (b) the records the person is to produce;
  - (c) how, where and when the records are to be produced and copied;

- (d) conditions for the payment of the expenses of the person named in the subpoena or request.
- (3) A subpoena under subsection (1) (a) has the same effect as if it were issued in court proceedings.
- (4) A subpoena under subsection (1) (a) may be set aside on application by the person named in the subpoena to the arbitral tribunal or the Supreme Court.
- (5) A party to arbitral proceedings may apply to the Supreme Court for an order providing the assistance described in a request issued under subsection (1) (b).
- (6) If an application is brought to the Supreme Court under subsection (5), the court must, after notice it finds appropriate is delivered to the person named in the request, and if satisfied that the conditions proposed are reasonable, make one of the following:
  - (a) if the person named in the request is in British Columbia, an order that the person attend to give evidence or produce records as described in the request;
  - (b) if the person named in the request is outside British Columbia, a request for assistance to another court of competent jurisdiction.
- (7) Subsection (8) applies to arbitral proceedings if all of the following apply:
  - (a) the place of arbitration is within another province or territory;
  - (b) the arbitration is not considered to be an international arbitration under the laws of the place of arbitration;
  - (c) the arbitral tribunal has issued a request substantially conforming to the requirements of a request under subsection (1) (b).
- (8) A party to arbitral proceedings to which this subsection applies may apply to the Supreme Court for an order providing the assistance described in the request referred to in subsection (7) (c), and the request must be enforced in the manner and to the extent provided under the [Subpoena \(Interprovincial\) Act](#) as if it were a subpoena issued by a court of the place of arbitration.
- (9) A person must not be compelled by an order under this section, in relation to arbitral proceedings, to give evidence or produce for inspection property or records in the person's possession or control that the person may not be compelled to give or produce in court proceedings.
- (10) A Supreme Court decision under this section may not be appealed.

### **Hearings and written proceedings**

- 30** (1) Unless otherwise agreed by the parties to the arbitral proceedings, the arbitral tribunal must decide whether to hold oral hearings for the presentation of evidence or for oral argument, or whether the proceedings must be conducted on the basis of documents and other written materials.
- (2) Unless the parties have agreed that no oral hearings are to be held, the arbitral tribunal must, on request of a party, hold oral hearings at an appropriate stage of the proceedings.



- (3) The parties must be given sufficient advance notice of any hearing and of any meeting of the arbitral tribunal for the purpose of the inspection of records, goods or other property.
- (4) All statements, documents and other information supplied to, or applications made to, the arbitral tribunal by one party must be communicated to the other party, and any expert report or evidentiary document on which the arbitral tribunal may rely in making its decision is to be communicated to the parties.

### **Hearing location**

- 31** (1) Except as provided in this section, any in-person hearing to receive oral evidence or oral submissions must take place at
- (a) a location agreed to by the parties, or
  - (b) if the parties have not agreed to a location, a location determined by the arbitral tribunal.
- (2) An arbitral tribunal may receive oral evidence or oral submissions at any location by telephone, video conference or other electronic means.
- (3) An arbitral tribunal may meet wherever it considers appropriate for consultation among its members.
- (4) An arbitral tribunal may conduct an inspection of records, goods or other property or receive evidence of a witness at any location.

### **Procedural powers of arbitral tribunal**

- 32** (1) Subject to this Act and any agreement of the parties, an arbitral tribunal may establish procedures and make procedural orders for the conduct of the arbitral proceedings.
- (2) For certainty, and without limiting subsection (1), an arbitral tribunal may
- (a) administer an oath or affirmation, and
  - (b) make orders respecting any of the following:
    - (i) statements of position or pleadings, including when they should be delivered, their form and content, and whether amendments are allowed;
    - (ii) requiring security for the arbitral tribunal's fees and expenses;
    - (iii) requiring a party to provide security for costs that may be incurred by another party;
    - (iv) the determination of some matters in dispute before other matters in dispute;
    - (v) giving directions for the preservation of evidence;
    - (vi) subject to privilege, requiring a party to produce records or information;
    - (vii) establishing protocols for searching for and producing electronically stored records, and allocating the costs of

- implementing the protocols;
- (viii) giving directions in relation to any property which is the subject of the arbitral proceedings or as to which any question arises in the proceedings, and which is owned by or in the possession of a party, for the purposes of
  - (A) the inspection, photographing, preservation, custody or detention of the property by the arbitral tribunal, an expert or a party, or
  - (B) taking samples from, or making observations of any test or experiment conducted upon, the property;
- (ix) the form in which evidence and argument are presented;
- (x) regarding the confidentiality in the arbitral proceedings and providing for sanctions against parties for failure to observe any confidentiality requirements;
- (xi) regarding the use of video or telephone conferencing or other technology to enable the examination of witnesses who are not physically present at an evidentiary hearing;
- (xii) allocating hearing time between the parties;
- (xiii) excluding witnesses or potential witnesses from attending any part of an oral evidentiary hearing;
- (xiv) the examination of a witness on oath or affirmation;
- (xv) the language to be used in the proceedings and whether translations of any records are to be supplied, and allocating the costs of interpreting or translating evidence;
- (xvi) varying a procedural order, including by shortening or extending a time limit established by the order before or after the expiry of the time limit.

## **Party default**

**33** (1) In this section:

**"claim"** means,

- (a) in relation to a party who commenced arbitral proceedings, the matters put in dispute by that party, and
- (b) in relation to a party who brings a counterclaim in arbitral proceedings, the matters put in dispute by the counterclaim;

**"procedural time limit"** means a time limit set by enactment, agreement of the parties or order of the arbitral tribunal for taking a procedural step, other than a time limit for the commencement of arbitral proceedings.

(2) If, after commencement of arbitral proceedings, a party who commenced the proceedings or who brings a counterclaim in the proceedings fails to comply with a procedural time limit, the arbitral tribunal may

- (a) terminate the arbitral proceedings in relation to the party's claim, or

- (b) suspend the arbitral proceedings in relation to the party's claim, pending fulfilment of conditions.
- (3) If a party fails to comply with a procedural time limit, the arbitral tribunal may continue the arbitral proceedings and make an order it considers appropriate, including an order that precludes the party from taking a procedural step.
- (4) If, without showing sufficient cause, a party fails to appear at an oral hearing or produce documentary evidence, the arbitral tribunal may continue the proceedings and make an arbitral award on the evidence before it.
- (5) Unless the arbitral tribunal determines otherwise at the time of termination, an arbitral award made before termination or suspension of arbitral proceedings under this section remains valid and enforceable.

### **Expert appointed by arbitral tribunal**

- 34** (1) Unless otherwise agreed by the parties, an arbitral tribunal may appoint an expert to report to the arbitral tribunal and the parties on an issue.
- (2) The arbitral tribunal may order a party to deliver to the expert relevant information or to produce or provide access to relevant records, goods or other property for inspection.
- (3) The arbitral tribunal may, after the expert has delivered the expert's report to the arbitral tribunal, order the expert to participate in a hearing at which the parties may question the expert on the report and present evidence on issues arising from the report.
- (4) Unless otherwise agreed by the parties, the expert must, on the request of a party, make available to that party, for examination, all documents, goods or other property in the expert's possession with which the expert was provided in order to prepare the expert's report.
- (5) The costs of an expert appointed under this section must be borne by the parties as directed by the arbitral tribunal.

### **Duty of expert**

- 35** (1) In giving an opinion to an arbitral tribunal, an expert appointed by one or more parties or by the arbitral tribunal has a duty to assist the arbitral tribunal and is not to be an advocate for any party.
- (2) If an expert is appointed by one or more of the parties or by the arbitral tribunal, the expert must, in any report the expert prepares, certify that the expert
- (a) is aware of the duty referred to in subsection (1),
  - (b) has made the report in conformity with that duty, and
  - (c) will, if called on to give oral or written testimony, give that testimony in conformity with that duty.

## **Part 6 — Interim Measures and Preliminary Orders**

## **Division 1 — Interim Measures**

### **Power of arbitral tribunal to order interim measures**

- 36** Unless otherwise agreed by the parties, the arbitral tribunal may, at the request of a party, grant an interim measure.

## **Division 2 — Preliminary Orders**

### **Applications for preliminary orders and conditions for granting preliminary orders**

- 37** (1) Unless otherwise agreed by the parties, a party may, without notice to any other party, make a request for an interim measure together with an application for a preliminary order directing a party not to frustrate the purpose of the interim measure requested.
- (2) An arbitral tribunal may grant a preliminary order if the arbitral tribunal 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 interim measure.

### **Specific regime for preliminary orders**

- 38** (1) Immediately after an arbitral tribunal makes a determination in respect of an application for a preliminary order, the arbitral tribunal must give notice to all the parties of the following:
- (a) the request for the interim measure;
  - (b) the application for the preliminary order;
  - (c) the preliminary order, if any;
  - (d) all other communications, including the content of any oral communication, between any party and the arbitral tribunal in relation to a matter referred to in paragraph (a), (b) or (c).
- (2) The arbitral tribunal must give an opportunity to any party against whom a preliminary order is directed to present the party's case at the earliest practicable time.
- (3) The arbitral tribunal must decide promptly on any objection to a preliminary order.
- (4) A preliminary order expires 20 days after the date on which it was issued by the arbitral tribunal.
- (5) After the party against whom a preliminary order is directed has been given notice and an opportunity to present its case, the arbitral tribunal may issue an interim measure adopting or modifying the preliminary order.
- (6) A preliminary order
- (a) is binding on the parties but is not subject to enforcement by a court, and
  - (b) is not an arbitral award.

## **Division 3 — Provisions Applicable to Interim Measures and Preliminary Orders**

### **Modification, suspension or termination of interim measures and preliminary orders**

- 39** On application of any party or, in exceptional circumstances and with prior notice to the parties, on the arbitral tribunal's own initiative, an arbitral tribunal may modify, suspend or terminate an interim measure or a preliminary order it has granted.

### **Provision of security**

- 40** (1) An arbitral tribunal may require the party requesting an interim measure to provide appropriate security in connection with the measure.
- (2) An arbitral tribunal must 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**

- 41** (1) An arbitral tribunal may require any party to promptly disclose any material change in the circumstances on the basis of which an interim measure was requested or granted.
- (2) A party applying for a preliminary order must 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.
- (3) The disclosure obligation under subsection (2) continues until the party against whom the preliminary order has been requested has had an opportunity to present its case.
- (4) After the party against whom a preliminary order has been requested has had an opportunity to present its case, the arbitral tribunal may require any party to promptly disclose any material change in the circumstances on the basis of which the preliminary order was requested or granted.

### **Costs and damages**

- 42** (1) A party requesting an interim measure or applying for a preliminary order is liable for any costs and damages caused by the interim measure or the preliminary 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 the costs and damages referred to in subsection (1) at any time during the arbitral proceedings.

## **Division 4 — Recognition and Enforcement of Interim Measures**

### **Recognition and enforcement**

- 43** (1) Subject to section 44, an interim measure issued by an arbitral tribunal must be recognized as binding and, unless otherwise provided by the arbitral tribunal, enforced on application to the Supreme Court.

- (2) A party who is seeking or has obtained recognition or enforcement of an interim measure must promptly inform the court of any modification, suspension or termination of that interim measure.
- (3) The Supreme Court may, if the court 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**

- 44** (1) Recognition or enforcement of an interim measure may be refused only
- (a) at the request of the party against whom the interim measure is directed if the court is satisfied that
    - (i) such refusal is warranted on the grounds referred to in section 58 (1) [*applications for setting aside arbitral awards*],
    - (ii) a decision of the arbitral tribunal with respect to the provision of security in connection with the interim measure has not been complied with, or
    - (iii) the interim measure has been suspended or terminated by the arbitral tribunal or, where so empowered, by a court of the place of arbitration or under the law of which that interim measure was granted, or
  - (b) if the court finds that
    - (i) the interim measure is incompatible with the powers conferred upon the court, unless the court decides to vary the interim measure to the extent necessary to adapt the interim measure to its own powers and procedures for the purposes of enforcing that interim measure and without modifying its substance, or
    - (ii) the recognition or enforcement of the interim measure would be contrary to the public policy in British Columbia.
- (2) A determination made by the court on a ground referred to in subsection (1) is effective only for the purposes of the application to recognize or enforce the interim measure.
- (3) The court where recognition or enforcement is sought may not, in making a determination on a ground referred to in subsection (1), undertake a review of the substance of the interim measure.

## **Division 5 — Court-Ordered Interim Measures**

### **Court-ordered interim measures**

- 45** (1) A court has the same powers to issue an interim measure in relation to arbitral proceedings as that court has in relation to court proceedings.
- (2) When requested to grant an interim measure, a court may, if it considers it proper, refer the request to an arbitral tribunal.

- (3) 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 a court to grant that measure.

## **Part 7 — Making of Arbitral Awards and Termination of Arbitral Proceedings**

### **Majority decision**

- 46** (1) Unless otherwise agreed by the parties and subject to subsection (2), in arbitral proceedings with more than one arbitrator, any decision of the arbitral tribunal must be made by a majority of all its members.
- (2) If authorized by the parties or all the members of the arbitral tribunal, questions of procedure may be decided by a presiding arbitrator.
- (3) Unless otherwise agreed by the parties, if there is no majority decision on any matter to be decided in an arbitration, the decision of the presiding arbitrator is the decision on that matter.

### **Settlement**

- 47** (1) It is not incompatible with an arbitration agreement for an arbitral tribunal to encourage settlement of the dispute and, with the agreement of the parties, the arbitral tribunal may use mediation, conciliation or other procedures at any time during arbitral proceedings to encourage settlement.
- (2) If, during arbitral proceedings, the parties settle the dispute, the arbitral tribunal must terminate the proceedings and, if the parties request it and the arbitral tribunal does not object, record the settlement in the form of an arbitral award on agreed terms.
- (3) An arbitral award on agreed terms must be made in accordance with section 48 and must state that it is an arbitral award.
- (4) An arbitral award on agreed terms has the same status and effect as any other arbitral award on the substance of the dispute.

### **Form, content and delivery of arbitral award**

- 48** (1) An arbitral award must be in writing and must be delivered to the parties.
- (2) The arbitral tribunal must, on request of a party, deliver an original signed or certified copy of the arbitral award to each party.
- (3) An arbitral tribunal must provide reasons for an arbitral award, unless
- (a) the parties to the arbitral proceeding have agreed that no reasons are to be provided, or
  - (b) the award is an arbitral award on agreed terms under section 47 (2).
- (4) An arbitral award must state the place of arbitration and the date on which the arbitral award is made.

- (5) A failure to comply with subsection (4) is a clerical error that may be corrected under section 56 *[corrections, interpretations and additional awards]*.
- (6) All members of the arbitral tribunal must sign an arbitral award.
- (7) Despite subsection (6), a majority of the members of the arbitral tribunal may sign an arbitral award if the award includes an explanation for the omission of the signatures of the other members.

### **Partial awards**

- 49** An arbitral tribunal may make an arbitral award finally deciding a matter in dispute while retaining jurisdiction to decide another matter in dispute.

### **Costs**

- 50** (1) A costs award may be made at any time during arbitral proceedings, including at the termination of the proceedings, and may be made payable at any time.
- (2) Unless otherwise agreed by the parties, the costs of an arbitration are in the discretion of the arbitral tribunal, which may, in awarding costs,
  - (a) include the following as costs:
    - (i) the fees and expenses of the arbitrators and expert witnesses;
    - (ii) legal fees and expenses;
    - (iii) any administration fees of an institution;
    - (iv) any other expenses incurred in connection with the arbitral proceedings,
  - (b) specify the following:
    - (i) the party entitled to costs;
    - (ii) the party who must pay the costs;
    - (iii) the amount of costs or method of determining that amount;
    - (iv) the manner in which the costs must be paid,
  - (c) determine the amount of a costs award by reference to actual reasonable legal fees, expenses and witness fees, and
  - (d) summarily determine the amount of costs.
- (3) If a party makes an offer to another party to settle the dispute or part of the dispute and the offer is not accepted, the arbitral tribunal may take that fact into account when awarding costs of the arbitration.
- (4) The content of an offer to settle the dispute or part of the dispute must not be communicated to the arbitral tribunal unless the arbitral tribunal has issued an arbitral award determining all aspects of the dispute other than costs.

### **Interest**

- 51** (1) Unless otherwise agreed by the parties, an arbitral tribunal may award simple or compound interest for the time period and at the rate that the arbitral



tribunal considers appropriate as follows:

- (a) on the whole or part of any amount awarded by the arbitral tribunal, in respect of any period up to the date of the arbitral award;
  - (b) on the whole or part of any amount claimed in the arbitration and outstanding at the commencement of the arbitral proceedings but paid before the arbitral award was made, in respect of any period before the date of payment.
- (2) Unless otherwise agreed by the parties, an arbitral tribunal may award simple or compound interest from the date of the arbitral award, or any later date, until payment, at such rates as the arbitral tribunal considers appropriate, on the outstanding amount of any arbitral award, including any interest awards under subsection (1) and any costs awards.

### **Withholding arbitral award**

- 52** (1) Despite section 48 [*form, content and delivery of arbitral award*] and unless the designated appointing authority directs otherwise, an arbitral tribunal may withhold an arbitral award from the parties if the arbitral tribunal has not received full payment of its fees and expenses.
- (2) A time limit for delivering the arbitral award is extended until security is provided for an amount claimed under subsection (1).
- (3) If the arbitral tribunal refuses or fails to deliver an arbitral award, a party may, upon notice to the other parties and the arbitral tribunal, make a request to the designated appointing authority for one or more of the following:
- (a) a direction that the arbitral tribunal deliver the arbitral award on the payment in trust to the designated appointing authority of all or part of the fees and expenses demanded;
  - (b) a summary determination of the amount of the fees and expenses payable to the arbitral tribunal under section 55 (2) [*arbitral tribunal fees and expenses*];
  - (c) a direction that the fees and expenses as determined under paragraph (b) be paid out of the money paid in trust to the designated appointing authority;
  - (d) a direction as to how the balance of the money paid in trust to the designated appointing authority be paid out.
- (4) If the designated appointing authority does not make a determination or direction under subsection (3) within 30 days of the application, a party may apply to the Supreme Court for an order on a similar basis.
- (5) A determination or direction of the designated appointing authority or an order of the Supreme Court under this section may not be appealed.

### **Extension of time for arbitral award**

- 53** (1) An arbitral tribunal or a party may apply to the Supreme Court for an order extending the time within which the arbitral tribunal is required to make an

arbitral award.

- (2) The Supreme Court must make the order referred to in subsection (1) if satisfied that a substantial injustice would otherwise be done.
- (3) An order under subsection (2) may be made before or after the expiry of the time within which the arbitral tribunal is required to make the arbitral award.
- (4) An order under this section may not be appealed.

### **Binding nature of arbitral award**

**54** An arbitral award is final and binding on all the parties to the award.

### **Arbitral tribunal fees and expenses**

**55** (1) The fees and expenses payable to an arbitrator must be

- (a) in accordance with the agreement of the parties and the arbitrator, or
  - (b) in the absence of an agreement of the parties and the arbitrator, set at the sum of
    - (i) the fair value of the services performed, and
    - (ii) the necessary and reasonable expenses actually paid or incurred by the arbitrator.
- (2) Unless otherwise agreed by the parties and the arbitrator, a party or an arbitrator may apply to the designated appointing authority for a summary determination of the fees and expenses payable if
- (a) the party alleges the fees and expenses paid to or demanded by the arbitrator exceed the amount owing, or
  - (b) the arbitrator alleges the party failed to pay fees and expenses owed.
- (3) An application under subsection (2) must be made no later than 60 days after the earlier of the following, as applicable:
- (a) the date on which payment was demanded;
  - (b) the date on which payment was made.
- (4) If the designated appointing authority does not make a summary determination within 30 days of an application under subsection (2), a party may apply to the Supreme Court for a summary determination of the fees and expenses payable.
- (5) A decision of the designated appointing authority or the Supreme Court under this section may not be appealed.

### **Corrections, interpretations and additional arbitral awards**

- 56** (1) Within 30 days after receipt of an arbitral award, unless another period of time has been agreed to by the parties,
- (a) a party may request the arbitral tribunal to correct in the arbitral award any computation, clerical or typographical errors or any

other errors of a similar nature, and

- (b) a party may, if agreed by the parties, request the arbitral tribunal to give an interpretation of a specific point or part of the arbitral award.
- (2) If the arbitral tribunal considers the request made under subsection (1) to be justified, it must make the correction or give the interpretation within 30 days after receipt of the request, and the interpretation forms part of the arbitral award.
- (3) The arbitral tribunal may correct, on its own initiative, any type of error described in subsection (1) (a) within 30 days after the date of the arbitral award.
- (4) Unless otherwise agreed by the parties, a party may request, within 30 days after receipt of the arbitral award, the arbitral tribunal to make an additional arbitral award as to a claim, including a claim for interest or costs, presented in the arbitral proceedings but omitted from the arbitral award.
- (5) If the arbitral tribunal considers the request made under subsection (4) to be justified, it must make the additional arbitral award within 60 days.
- (6) The arbitral tribunal may, if necessary, extend the period of time within which it must make a correction, give an interpretation or make an additional arbitral award under subsection (2) or (5).
- (7) Section 48 [*form, content and delivery of arbitral award*] applies to a correction or interpretation of an arbitral award or to an additional arbitral award made under this section.

### **Termination of proceedings**

- 57** (1) Arbitral proceedings are terminated by the final arbitral award or by an order of the arbitral tribunal under subsection (2).
- (2) The arbitral tribunal must issue an order for the termination of the arbitral proceedings if any of the following occurs:
- (a) the claimant withdraws the claim, unless the respondent objects to the order and the arbitral tribunal recognizes a legitimate interest on the respondent's part in obtaining a final settlement of the dispute;
  - (b) the parties agree on the termination of the proceedings;
  - (c) the arbitral tribunal finds that the continuation of the proceedings has for any other reason become unnecessary or impossible;
  - (d) the arbitral tribunal terminates the proceedings under section 33 (2) (a) [*party default*].
- (3) Subject to this Act, the arbitral tribunal's mandate terminates with the termination of the arbitral proceedings.

## **Part 8 — Recourse Against and Enforcement of Arbitral Awards**

## Applications for setting aside arbitral awards

**58** (1) A party may apply to the Supreme Court to set aside an arbitral award only on one or more of the following grounds:

- (a) a person entered into the arbitration agreement while under a legal incapacity;
- (b) the arbitration agreement is void, inoperative or incapable of being performed;
- (c) the arbitral award deals with a dispute not falling within the terms of the arbitration agreement or contains a decision on a matter that is beyond the scope of the arbitration agreement;
- (d) the composition of the arbitral tribunal was not in accordance with the arbitration agreement or this Act;
- (e) the subject matter of the dispute is not capable of resolution by arbitration under the law of British Columbia;
- (f) the applicant was not given proper notice of the arbitration or of the appointment of an arbitrator;
- (g) there are justifiable doubts as to the arbitrator's independence or impartiality;
- (h) the applicant was not given a reasonable opportunity to present its case or to answer the case presented against it;
- (i) the arbitral award was the result of fraud or corruption by a member of the arbitral tribunal or was obtained by fraudulent behaviour by a party or its representative in connection with the conduct of the arbitral proceeding.

(2) If the Supreme Court finds that the grounds described in subsection (1) (c) or (e) apply in respect of only part of the subject matter of the arbitral award, the court may set aside part of the arbitral award.

(3) For the purposes of subsection (1) (g), there are justifiable doubts as to the arbitrator's independence or impartiality only if there was a real danger of bias on the part of the arbitrator in conducting the arbitration.

(4) The Supreme Court must not set aside an arbitral award on grounds referred to in subsection (1) (g) if, before the award was made,

- (a) the applicant was aware of the circumstances it relies upon to set aside the arbitral award and failed to follow the applicable procedure required by the arbitration agreement or this Act for seeking the removal of the arbitrator, or
- (b) the court determined that substantially the same circumstances as are relied upon to set aside the arbitral award were not sufficient to justify the removal of the arbitrator.

(5) The Supreme Court must not set aside an arbitral award if the applicant is deemed under section 3 [*waiver of right to object*] to have waived the right to object on the grounds on which the applicant relies.

- (6) A party may appeal a Supreme Court decision under this section to the Court of Appeal with leave of a justice of the Court of Appeal.

### **Appeals on questions of law**

- 59** (1) There is no appeal to a court from an arbitral award other than as provided under this section.
- (2) A party to an arbitration may appeal to the Court of Appeal on any question of law arising out of an arbitral award if
- (a) all the parties to the arbitration consent, or
  - (b) subject to subsection (3), a justice of that court grants leave to appeal under subsection (4).
- (3) A party to an arbitration may seek leave to appeal to the Court of Appeal on any question of law arising out of an arbitral award unless the arbitration agreement expressly states that the parties to the agreement may not appeal any question of law arising out of an arbitral award.
- (4) On an application for leave under subsection (3), a justice of the Court of Appeal may grant leave if the justice determines that
- (a) the importance of the result of the arbitration to the parties justifies the intervention of the court and the determination of the point of law may prevent a miscarriage of justice,
  - (b) the point of law is of importance to some class or body of persons of which the applicant is a member, or
  - (c) the point of law is of general or public importance.
- (5) If a justice of the Court of Appeal grants leave to appeal under subsection (4), the justice may attach to the order granting leave conditions that the justice considers just.
- (6) On an appeal to the Court of Appeal, the court may
- (a) confirm, amend or set aside the arbitral award, or
  - (b) remit the arbitral award to the arbitrator together with the court's opinion on the question of law that was the subject of the appeal.

### **Time limit for applications to set aside and appeals**

- 60** (1) Subject to subsection (2), an application to set aside an arbitral award under section 58 [*applications for setting aside arbitral awards*], an appeal under section 59 (2) (a) or an application for leave to appeal under section 59 (3) must be brought no more than 30 days after date on which the appellant or applicant receives the arbitral award, correction, interpretation or additional award on which the appeal or application is based.
- (2) If the applicant alleges corruption or fraud, an application to set aside the arbitral award under section 58 must be brought within 30 days after the date on which the applicant first knew or reasonably ought to have known of the circumstances relied upon to set aside the award.

## **Recognition and enforcement of arbitral awards**

- 61** (1) A party may apply to the Supreme Court to recognize and enforce an arbitral award made in an arbitration with a place of arbitration in Canada.
- (2) Unless the Supreme Court otherwise orders, an application under subsection (1) must be made on notice to the person against whom enforcement is sought, in accordance with the Rules of Court.
- (3) An application under subsection (1) must be accompanied by an original or certified copy of the award and evidence as to whether
- (a) the time limit for commencing an application to set aside or appeal the award at the place of arbitration has elapsed,
  - (b) there is a pending application to set aside or appeal the award,
  - (c) a stay of enforcement of the award has been issued,
  - (d) the award has been set aside, or
  - (e) the award has been remitted to the arbitral tribunal.
- (4) The Supreme Court must recognize and enforce the arbitral award unless
- (a) the award has been set aside by a court of competent jurisdiction,
  - (b) the subject matter of the dispute is not capable of resolution by arbitration under the law of British Columbia,
  - (c) the court does not have the jurisdiction to grant the relief sought,
  - (d) the time limit for commencing an application to set aside or appeal the award under the laws of the place of arbitration has not yet elapsed,
  - (e) there is a pending application to set aside or appeal the award, or a stay of enforcement of the award has been issued, at the place of arbitration, or
  - (f) the award has been remitted to the arbitral tribunal.
- (5) If subsection (4) (d) or (e) applies, the Supreme Court may order that recognition and enforcement of the arbitral award is stayed for a time and on conditions, including conditions as to the deposit of security.
- (6) A Supreme Court decision to recognize and enforce an arbitral award has the same effect as a court judgment granting the remedy described in the award.
- (7) A party may appeal a Supreme Court decision under this section to the Court of Appeal with leave of a justice of the Court of Appeal.

## **Part 9 — General**

### **Immunity**

- 62** (1) Subject to subsection (2), no legal proceeding for damages lies or may be commenced or maintained against an arbitrator because of anything done or omitted

- (a) in the performance or intended performance of any duty under an enactment governing an arbitration or under an arbitration agreement, or
  - (b) in the exercise or intended exercise of any power under an enactment governing an arbitration or under an arbitration agreement.
- (2) Subsection (1) does not apply to an arbitrator in relation to anything done or omitted in bad faith.

### **Privacy and confidentiality**

- 63** (1) Unless otherwise agreed by the parties, all hearings and meetings in arbitral proceedings must be held in private.
- (2) Unless otherwise agreed by the parties, the parties and the arbitral tribunal must not disclose any of the following:
- (a) proceedings, evidence, documents and information in connection with the arbitration that are not otherwise in the public domain;
  - (b) an arbitral award.
- (3) Subsection (2) does not apply if disclosure is
- (a) required by law,
  - (b) required to protect or pursue a legal right, including for the purposes of preparing and presenting a claim or defence in the arbitral proceedings or enforcing or challenging an arbitral award, or
  - (c) authorized by a competent court.

### **Delivery of record**

- 64** (1) If the parties have agreed on a method for delivering a record, a record must be delivered in accordance with the agreement.
- (2) If the parties have not agreed on a method for delivering a record, a record may be delivered to an individual by
- (a) leaving it with the individual,
  - (b) leaving it at the individual's last known place of business, place of residence or mailing address,
  - (c) sending it electronically to an address or number specified by the individual for that purpose,
  - (d) sending it to the individual's last known place of business, place of residence or mailing address by registered letter or another means that provides a record of receipt, or
  - (e) after the arbitral tribunal has been constituted, by any other method the arbitral tribunal directs.
- (3) If the parties have not agreed on a method for delivering a record, a record may be delivered to a corporation or extraprovincial corporation by

- (a) leaving it with an officer, director or agent of the corporation,
  - (b) leaving it at a place of business of the corporation with a person who has apparent control or management of the place,
  - (c) sending it electronically to an address or number specified by the corporation for that purpose,
  - (d) any other means provided by applicable law, or
  - (e) after the arbitral tribunal has been constituted, any other method the arbitral tribunal directs.
- (4) If the parties have not agreed on a date on which receipt of a record is deemed to occur, then, unless the addressee establishes that the addressee, acting in good faith, did not actually receive it until a later date,
- (a) a record delivered under subsection (2) (a), (b) or (c) or (3) (a), (b) or (c) is deemed to have been received on the date it is delivered, and
  - (b) a record delivered under subsection (2) (d) or (e) or (3) (d) or (e) is deemed to have been received 5 days after it is delivered.
- (5) If a party is satisfied that it is impractical or impossible to deliver a record in a manner described in subsection (1) or (2), the party may apply to the arbitral tribunal for an order authorizing an alternative method of delivering the record.
- (6) If the arbitral tribunal fails to make an order under subsection (5) within 7 days of the request, the party may apply to the Supreme Court for an order authorizing an alternative method of delivering the record.
- (7) An order under subsection (5) or (6) must state the date on which receipt of the record is deemed to occur.
- (8) This section does not apply to the service or delivery of records in respect of court proceedings.

### **Death of party**

- 65** (1) If a party to an arbitration agreement dies, the personal representatives of the deceased party are bound by, and are not by the death precluded from enforcing, the terms of the arbitration agreement.
- (2) The authority of an arbitrator to hear and decide on the arbitration is not revoked by the death of the party who appointed the arbitrator.
- (3) Subsections (1) and (2) are subject to an agreement by the parties to an arbitration agreement.
- (4) This section does not affect a rule of law or an enactment under which the death of a person extinguishes a right of action.

### **Reference by court order**

- 66** A court may order at any time that one or more of the matters at issue in a court proceeding, or a question of fact arising in a court proceeding, other than a criminal proceeding, be tried before an arbitrator agreed on by the parties to an



arbitration agreement if all the parties to the court proceeding consent and are not under a disability.

### **Designated appointing authority**

- 67** The Lieutenant Governor in Council may designate by regulation an entity to act as the designated appointing authority under this Act.

### **Section 5 of *Offence Act***

- 68** Section 5 of the *Offence Act* does not apply to this Act or the regulations.

### **Regulations**

- 69** (1) The Lieutenant Governor in Council may make regulations referred to in section 41 of the *Interpretation Act*.
- (2) The Lieutenant Governor in Council may make regulations for the purposes of section 2 (5) (c) [*agreements this Act does not apply to*] of this Act,
- (a) prescribing agreements entered into by the government of British Columbia or the government of Canada and the government of another jurisdiction in or outside Canada, and
  - (b) respecting the application of this Act to an arbitration under a prescribed agreement.

### **Transition**

- 70** (1) This Act applies to an arbitral proceeding if the arbitral proceeding is commenced on or after the date this section comes into force.
- (2) For the purposes of an arbitral proceeding to which this Act applies, a reference in the arbitration agreement to any of the following Acts is deemed to be a reference to this Act:
- (a) the *Arbitration Act*, R.S.B.C. 1979, c. 18;
  - (b) the *Commercial Arbitration Act*, R.S.B.C. 1996, c. 55;
  - (c) the *Arbitration Act*, R.S.B.C. 1996, c. 55.

## **Part 10 — Validation Provision, Repeal and Consequential and Related Amendments**

### **Retroactive validation**

- 71** (1) In this section:

**"relevant regulation"**, in relation to a specified arbitration, means the regulation that prescribed the agreement described in the definition of "specified arbitration";

**"specified arbitration"** means an arbitration under an agreement prescribed by a regulation described in subsection (2).

- (2) A regulation enacted by the Lieutenant Governor in Council under section 2 (4) (d) of the *Arbitration Act*, R.S.B.C. 1996, c. 55, that would have

been validly enacted had this Act been in force when the regulation was made is conclusively deemed to have been validly enacted.

- (3) All things done under the [Arbitration Act](#), R.S.B.C. 1996, c. 55, in relation to a specified arbitration that would have been validly done had this Act been in force when the relevant regulation was made are conclusively deemed to have been validly done.
- (4) This section is retroactive to the extent necessary to give full force and effect to its provisions and must not be construed as lacking retroactive effect in relation to any matter because it makes no specific reference to that matter.

### Repeal

#### Editorial Note

Section(s)	Affected Act
72	<a href="#">Arbitration Act, R.S.B.C. 1996, c. 55</a>

### Consequential and Related Amendments

73-74	<a href="#">Family Law Act</a>
75	<a href="#">Family Maintenance Enforcement Act</a>
76-80	<a href="#">International Commercial Arbitration Act</a>

### Amendment to this Act

81	<a href="#">Arbitration Act, S.B.C. 2020, c. 2</a>
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### Commencement

- 82** The provisions of this Act referred to in column 1 of the following table come into force as set out in column 2 of the table:

Item	Column 1 Provisions of Act	Column 2 Commencement
1	Anything not elsewhere covered by this table	The date of Royal Assent
2	Sections 1 to 80	By regulation of the Lieutenant Governor in Council
3	Section 81	The date of Royal Assent or the date that section 25 of the <i>Attorney General Statutes Amendment Act, 2018</i> , S.B.C. 2018, c. 49, comes into force, whichever is later.