

ACERIS LAW LLC

International Arbitration Laws in Nova Scotia, Canada

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International Commercial Arbitration Act

CHAPTER 234

OF THE

REVISED STATUTES, 1989

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An Act to Implement the Convention on the Recognition and Enforcement of Foreign Arbitral Awards and to Adopt the Model Law on International Commercial Arbitration

Short title

1 This Act may be cited as the *International Commercial Arbitration Act*. R.S., c. 234, s. 1.

Interpretation

2 (1) In this Act,

(a) "Convention" means the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, adopted by the United Nations Conference on International Commercial Arbitration in New York on the tenth day of June, 1958, as set out in Schedule A;

(b) "International Law" means the Model Law On International Commercial Arbitration, adopted by the United Nations Commission on International Trade Law on the twenty-first day of June, 1985, as set out in Schedule B.

Further interpretation

(2) Words and expressions used in this Act have the same meaning as the corresponding words and expressions in the Convention and the International Law, as the case may be. R.S., c. 234, s. 2.

PART I

FOREIGN ARBITRAL AWARDS

Application in Province

3 (1) Subject to this Act, the Convention applies in the Province.

Application of Convention

(2) The Convention applies to arbitral awards and arbitration agreements whether made before or after the tenth day of August, 1986, but applies only in respect of differences arising out of commercial legal relationships, whether contractual or not. R.S., c. 234, s. 3.

Application to Court

4 For the purpose of seeking recognition of an arbitral award pursuant to the Convention, application shall be made to the Trial Division of the Supreme Court. R.S., c. 234, s. 4.

PART II

INTERNATIONAL COMMERCIAL ARBITRATION

Application in Province

5 (1) Subject to this Act, the International Law applies in the Province.

Application of International Law

(2) The International Law applies to international commercial arbitration agreements and awards, whether made before or after the tenth day of August, 1986. R.S., c. 234, s. 5.

Encouragement of settlement

6 For the purpose of encouraging settlement of a dispute, an arbitral tribunal may, with the agreement of the parties, employ mediation, conciliation or other procedures at any time during the arbitration proceedings and, with the agreement of the parties, the members of the arbitral tribunal are not disqualified from resuming their roles as arbitrators by reason of the mediation, conciliation or other procedure. R.S., c. 234, s. 6.

Where arbitrator replaced

7 (1) Unless the parties otherwise agree, if an arbitrator is replaced or removed in accordance with the International Law, any hearing held prior to the replacement or removal shall be repeated.

Article 15

(2) With respect to Article 15 of the International Law, the parties may remove an arbitrator at any time prior to the final award, regardless of how the arbitrator was appointed. R.S., c. 234, s. 7.

Failure to make designation

8 Notwithstanding Article 28(2) of the International Law, if the parties fail to make a designation pursuant to Article 28(1) of the International Law, the arbitral tribunal shall apply the rules of law it considers to be appropriate given all the circumstances respecting the dispute. R.S., c. 234, s. 8.

Power of Court

9 (1) The Trial Division of the Supreme Court, upon application of the parties to two or more arbitration proceedings, may order

- (a) the arbitration proceedings to be consolidated, on terms it considers just;
- (b) the arbitration proceedings to be heard at the same time, or one immediately after another;
- (c) any of the arbitration proceedings to be stayed until after the determination of any other of them.

Appointment of arbitral tribunal

(2) Where the Court orders arbitration proceedings to be consolidated pursuant to clause (a) of subsection (1) and all the parties to the consolidated arbitration proceedings are in agreement as to the choice of the arbitral tribunal for that arbitration proceeding, the arbitral tribunal shall be appointed by the Court, but if all the parties cannot agree, the Court may appoint the arbitral tribunal for that arbitration proceeding.

Interpretation

(3) Nothing in this Section shall be construed as preventing the parties to two or more arbitration proceedings from agreeing to consolidate those arbitration proceedings and taking such steps as are necessary to effect that consolidation. R.S., c. 234, s. 9.

Article 6

10 (1) The functions referred to in Article 6 of the International Law shall be performed by the Trial Division of the Supreme Court.

Interpretation

(2) For the purposes of the International Law, a reference to "court" or "competent court", where in the context it means a court in the Province, means the Trial Division of the Supreme Court except where the context otherwise requires. R.S., c. 234, s. 10.

PART III

GENERAL

Stay of proceedings

11 Where, pursuant to Article II (3) of the Convention or Article 8 of the International Law, a court refers the parties to arbitration, the proceedings of the court are stayed with respect to the matters to which the arbitration relates. R.S., c. 234, s. 11.

Act binds Crown

12 (1) This Act binds Her Majesty in right of the Province.

Enforcement of award against Crown

(2) An award recognized pursuant to this Act is enforceable against Her Majesty in right of the Province in the same manner and to the same extent as a judgment is enforceable against Her Majesty in right of the Province. R.S., c. 234, s. 12.

Interpretation

13 (1) This Act shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the Act in their context and in the light of its objects and purposes.

Interpretation aids

(2) In applying subsection (1) to the International Law, recourse may be had to

(a) the Report of the United Nations Commission on International Trade Law on the work of its 18th session (June 3 - 21, 1985);

(b) the International Commercial Arbitration Commentary on Draft Text of a Model Law on International Commercial Arbitration,

as published in the Royal Gazette. R.S., c. 234, s. 13.

Practice and procedure

14 (1) The judges of the Supreme Court or a majority of them may make rules respecting the practice and procedure, including costs, in judicial proceedings pursuant to this Act.

Civil Procedure Rules

(2) Until rules are made pursuant to subsection (1), the *Civil Procedure Rules*, including rules as to costs, apply *mutatis mutandis* to judicial proceedings pursuant to this Act.

Judicature Act

(3) Rules made pursuant to subsection (1) are rules as defined by the *Judicature Act*. R.S., c. 234, s. 14.

Regulations

15 The Governor in Council may make such regulations as are necessary or advisable to carry out the intent and purpose of this Act. R.S., c. 234, s. 15.

Regulations Act

16 Rules made pursuant to Section 14 and the exercise by the Governor in Council of the authority contained in Section 15 shall be regulations within the meaning of the *Regulations Act*. R.S., c. 234, s. 16.

SCHEDULE A

CONVENTION ON THE RECOGNITION AND ENFORCEMENT OF FOREIGN ARBITRAL AWARDS

Article I

1. This Convention shall apply to the recognition and enforcement of arbitral awards made in the territory of a State other than the State where the recognition and enforcement of such awards are sought, and arising out of differences between persons, whether physical or legal. It shall also apply to arbitral awards not considered as domestic awards in the State where their recognition and enforcement are sought.

2. The term "arbitral awards" shall include not only awards made by arbitrators appointed for each case but also those made by permanent arbitral bodies to which the parties have submitted.

3. When signing, ratifying or acceding to this Convention, or notifying extension under article X hereof, any State may on the basis of reciprocity declare that it will apply the Convention to the recognition and enforcement of awards made only in the territory of another Contracting State. It may also declare that it will apply the Convention only to differences arising out of legal relationships, whether contractual or not, which are considered as commercial under the national law of the State making such declaration.

Article II

1. Each Contracting State shall recognize an agreement in writing under which the parties undertake to submit to arbitration all or any differences which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not, concerning a subject-matter capable of settlement by arbitration.

2. The term "agreement in writing" shall include an arbitral clause in a contract or an arbitration agreement, signed by the parties or contained in an exchange of letters or telegrams.

3. The court of a Contracting State, when seized of an action in a matter in respect of which the parties have made an agreement within the meaning of this article, shall, at the request of one of the parties, refer the

parties to arbitration, unless it finds that the said agreement is null and void, inoperative or incapable of being performed.

Article III

Each Contracting State shall recognize arbitral awards as binding and enforce them in accordance with the rules of procedure of the territory where the award is relied upon, under the conditions laid down in the following articles. There shall not be imposed substantially more onerous conditions or higher fees or charges on the recognition or enforcement of arbitral awards to which this Convention applies than are imposed on the recognition or enforcement of domestic arbitral awards.

Article IV

1. To obtain the recognition and enforcement mentioned in the preceding article, the party applying for recognition and enforcement shall, at the time of the application, supply:

- (a) The duly authenticated original award or a duly certified copy thereof;
- (b) The original agreement referred to in article II or a duly certified copy thereof.

2. If the said award or agreement is not made in an official language of the country in which the award is relied upon, the party applying for recognition and enforcement of the award shall produce a translation of these documents into such language. The translation shall be certified by an official or sworn translator or by a diplomatic or consular agent.

Article V

1. Recognition and enforcement of the award may be refused, at the request of the party against whom it is invoked, only if that party furnishes to the competent authority where the recognition and enforcement is sought, proof that:

- (a) The parties to the agreement referred to in article II were, under the law applicable to them, under some incapacity, or the said agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law of the country where the award was made; or
- (b) The party against whom the award is invoked was not given proper notice of the appointment of the arbitrator or of the arbitration proceedings or was otherwise unable to present his case; or
- (c) The award deals with a difference 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 award which contains decisions on matters submitted to arbitration may be recognized and enforced; or
- (d) The composition of the arbitral authority or the arbitral procedure was not in accordance with the agreement of the parties, or, failing such agreement, was not in accordance with the law of the country where the arbitration took place; or
- (e) The award has not yet become binding on the parties, or has been set aside or suspended by a competent authority of the country in which, or under the law of which, that award was made.

2. Recognition and enforcement of an arbitral award may also be refused if the competent authority in the country where recognition and enforcement is sought finds that:

- (a) The subject-matter of the difference is not capable of settlement by arbitration under the law of that country; or
- (b) The recognition or enforcement of the award would be contrary to the public policy of that country.

Article VI

If an application for the setting aside or suspension of the award has been made to a competent authority referred to in article V(1)(e), the authority before which the award is sought to be relied upon may, if it considers it proper, adjourn the decision on the enforcement of the award and may also, on the application of the party claiming enforcement of the award, order the other party to give suitable security.

Article VII

1. The provisions of the present Convention shall not affect the validity of multilateral or bilateral agreements concerning the recognition and enforcement of arbitral awards entered into by the Contracting States nor deprive any interested party of any right he may have to avail himself of an arbitral award in the manner and to the extent allowed by the law or the treaties of the country where such award is sought to be relied upon.
2. The Geneva Protocol on Arbitration Clauses of 1923 and the Geneva Convention on the Execution of Foreign Arbitral Awards of 1927 shall cease to have effect between Contracting States on their becoming bound and to the extent that they become bound, by this Convention.

Article VIII

1. This Convention shall be open until 31 December 1958 for signature on behalf of any Member of the United Nations and also on behalf of any other State which is or hereafter becomes a member of any specialized agency of the United Nations, or which is or hereafter becomes a party to the Statute of the International Court of Justice, or any other State to which an invitation has been addressed by the General Assembly of the United Nations.
2. This Convention shall be ratified and the instruments of ratification shall be deposited with the Secretary-General of the United Nations.

Article IX

1. This Convention shall be open for accession to all States referred to in article VIII.
2. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

Article X

1. Any State may, at the time of signature, ratification or accession, declare that this Convention shall extend to all or any of the territories for the international relations of which it is responsible. Such a declaration shall take effect when the Convention enters into force for the State concerned.
2. At any time thereafter any such extension shall be made by notification addressed to the Secretary-General of the United Nations and shall take effect as from the ninetieth day after the day of receipt by the Secretary-General of the United Nations of this notification, or as from the date of entry into force of the Convention for the State concerned, whichever is the later.
3. With respect to those territories to which this Convention is not extended at the time of signature, ratification or accession, each State concerned shall consider the possibility of taking the necessary steps in order to extend the application of this Convention to such territories, subject, where necessary for constitutional reasons, to the consent of the Governments of such territories.

Article XI

In the case of a federal or non-unitary State, the following provisions shall apply:

- (a) With respect to those articles of this Convention that come within the legislative jurisdiction of the federal authority, the obligations of the federal Government shall to this extent be the same as those of Contracting States which are not federal States;

(b) With respect to those articles of this Convention that come within the legislative jurisdiction of constituent states or provinces which are not, under the constitutional system of the federation, bound to take legislative action, the federal Government shall bring such articles with a favourable recommendation to the notice of the appropriate authorities of constituent states or provinces at the earliest possible moment;

(c) A federal State Party to this Convention shall, at the request of any other Contracting State transmitted through the Secretary-General of the United Nations, supply a statement of the law and practice of the federation and its constituent units in regard to any particular provision of this Convention, showing the extent to which effect has been given to that provision by legislative or other action.

Article XII

1. This Convention shall come into force on the ninetieth day following the date of deposit of the third instrument of ratification or accession.

2. For each State ratifying or acceding to this Convention after the deposit of the third instrument of ratification or accession, this Convention shall enter into force on the ninetieth day after deposit by such State of its instrument of ratification or accession.

Article XIII

1. Any Contracting State may denounce this Convention by a written notification to the Secretary-General of the United Nations. Denunciation shall take effect one year after the date of receipt of the notification by the Secretary-General.

2. Any State which has made a declaration or notification under article X may, at any time thereafter, by notification to the Secretary-General of the United Nations, declare that this Convention shall cease to extend to the territory concerned one year after the date of the receipt of the notification by the Secretary-General.

3. This Convention shall continue to be applicable to arbitral awards in respect of which recognition or enforcement proceedings have been instituted before the denunciation takes effect.

Article XIV

A Contracting State shall not be entitled to avail itself of the present Convention against other Contracting States except to the extent that it is itself bound to apply the Convention.

Article XV

The Secretary-General of the United Nations shall notify the States contemplated in article VIII of the following:

(a) Signatures and ratifications in accordance with article VIII;

(b) Accessions in accordance with article IX;

(c) Declarations and notifications under articles I, X and XI;

(d) The date upon which this Convention enters into force in accordance with article XII;

(e) Denunciations and notifications in accordance with article XIII.

Article XVI

1. This Convention, of which the Chinese, English, French, Russian and Spanish texts shall be equally authentic, shall be deposited in the archives of the United Nations.

2. The Secretary-General of the United Nations shall transmit a certified copy of this Convention to the States contemplated in article VIII.

SCHEDULE B
UNCITRAL MODEL LAW ON
INTERNATIONAL COMMERCIAL ARBITRATION

(As adopted by the United Nations Commission on
International Trade Law on 21 June 1985)

CHAPTER I. GENERAL PROVISIONS

Article 1. Scope of application

- (1) This Law applies to international commercial arbitration, subject to any agreement in force between this State and any other State or States.
- (2) The provisions of this Law, except articles 8, 9, 35 and 36, apply only if the place of arbitration is in the territory of this State.
- (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; or
 - (b) one of the following places is situated outside the State in which the parties have their places of business:
 - (i) the place of arbitration if determined in, or pursuant to, the arbitration agreement;
 - (ii) any place where a substantial part of the obligations of the commercial relationship is to be performed or the place with which the subject-matter of the dispute is most closely connected; or
 - (c) the parties have expressly agreed that the subject-matter of the arbitration agreement relates to more than one country.
- (4) For the purposes of paragraph (3) of this article:
- (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;
 - (b) if a party does not have a place of business, reference is to be made to his habitual residence.
- (5) This Law shall not affect any other law of this State by virtue of which certain disputes may not be submitted to arbitration or may be submitted to arbitration only according to provisions other than those of this Law.

Article 2. Definitions and rules of interpretation

For the purposes of this Law:

- (a) "arbitration" means any arbitration whether or not administered by a permanent arbitral institution;
- (b) "arbitral tribunal" means a sole arbitrator or a panel of arbitrators;
- (c) "court" means a body or organ of the judicial system of a State;
- (d) where a provision of this Law, except article 28, leaves the parties free to determine a certain issue, such freedom includes the right of the parties to authorize a third party, including an institution, to make that determination;

(e) where a provision of this Law refers to the fact that the parties have agreed or that they may agree or in any other way refers to an agreement of the parties such agreement includes any arbitration rules referred to in that agreement;

(f) where a provision of this Law, other than in articles 25(a) and 32(2)(a), refers to a claim, it also applies to a counter-claim, and where it refers to a defence, it also applies to a defence to such counter-claim.

Article 3. Receipt of written communications

(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 his place of business, habitual residence or mailing address; if none of these can be found after making a reasonable inquiry, a written communication is deemed to have been received if it is sent to the addressee's last-known place of business, habitual residence or mailing address by registered letter or any other means which provides a record of the attempt to deliver it;

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

(2) The provisions of this article do not apply to communications in court proceedings.

Article 4. Waiver of right to object

A party who knows that any provision of this Law from which the parties may derogate or any requirement under the arbitration agreement has not been complied with and yet proceeds with the arbitration without stating his objection to such non-compliance without undue delay or, if a time-limit is provided therefor, within such period of time, shall be deemed to have waived his right to object.

Article 5. Extent of court intervention

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

Article 6. Court or other authority for certain functions of arbitration assistance and supervision

The functions referred to in articles 11(3), 11(4), 13(3), 14, 16(3) and 34(2) shall be performed by ... [Each State enacting this model law specifies the court, courts or, where referred to therein, other authority competent to perform these functions.]

CHAPTER II. ARBITRATION AGREEMENT

Article 7. Definition and form of arbitration agreement

(1) "Arbitration agreement" is an agreement by the parties to submit to arbitration all or certain disputes which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not. An arbitration agreement may be in the form of an arbitration clause in a contract or in the form of a separate agreement.

(2) The arbitration agreement shall be in writing. An agreement is in writing if it is contained in a document signed by the parties or in an exchange of letters, telex, telegrams or other means of telecommunication which provide a record of the agreement, or 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 another. The reference in a contract to a document containing an arbitration clause constitutes an arbitration agreement provided that the contract is in writing and the reference is such as to make that clause part of the contract.

Article 8. Arbitration agreement and substantive claim before court

(1) A court before which an action is brought in a matter which is the subject of an arbitration agreement shall, if a party so requests not later than when submitting his first statement on the substance of the dispute, refer the parties to arbitration unless it finds that the agreement is null and void, inoperative or incapable of being performed.

(2) Where an action referred to in paragraph (1) of this article has been brought, arbitral proceedings may nevertheless be commenced or continued, and an award may be made, while the issue is pending before the court.

Article 9. Arbitration agreement and interim measures by court

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

CHAPTER III. COMPOSITION OF ARBITRAL TRIBUNAL

Article 10. Number of arbitrators

- (1) The parties are free to determine the number of arbitrators.
- (2) Failing such determination, the number of arbitrators shall be three.

Article 11. Appointment of arbitrators

- (1) No person shall be precluded by reason of his nationality from acting as an arbitrator, unless otherwise agreed by the parties.
- (2) The parties are free to agree on a procedure of appointing the arbitrator or arbitrators, subject to the provisions of paragraphs (4) and (5) of this article.
- (3) Failing such agreement,
 - (a) in an arbitration with three arbitrators, each party shall appoint one arbitrator, and the two arbitrators thus appointed shall appoint the third arbitrator; if a party fails to appoint the arbitrator within thirty days of receipt of a request to do so from the other party, or if the two arbitrators fail to agree on the third arbitrator within thirty days of their appointment, the appointment shall be made, upon request of a party, by the court or other authority specified in article 6;
 - (b) in an arbitration with a sole arbitrator, if the parties are unable to agree on the arbitrator, he shall be appointed, upon request of a party, by the court or other authority specified in article 6.
- (4) Where, under an appointment procedure agreed upon by the parties,
 - (a) a party fails to act as required under such procedure, or
 - (b) the parties, or two arbitrators, are unable to reach an agreement expected of them under such procedure, or
 - (c) a third party, including an institution, fails to perform any function entrusted to it under such procedure,any party may request the court or other authority specified in article 6 to take the necessary measure, unless the agreement on the appointment procedure provides other means for securing the appointment.
- (5) A decision on a matter entrusted by paragraph (3) or (4) of this article to the court or other authority specified in article 6 shall be subject to no appeal. The court or other authority, in appointing an arbitrator, shall have due regard to any qualifications required of the arbitrator by the agreement of the parties and to such considerations as are likely to secure the appointment of an independent and impartial arbitrator and, in the case of a sole or third arbitrator, shall take into account as well the advisability of appointing an arbitrator of a nationality other than those of the parties.

Article 12. Grounds for challenge

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

(2) An arbitrator may be challenged only if circumstances exist that give rise to justifiable doubts as to his impartiality or independence, or if he does not possess qualifications agreed to by the parties. A party may challenge an arbitrator appointed by him, or in whose appointment he has participated, only for reasons of which he becomes aware after the appointment has been made.

Article 13. Challenge procedure

(1) The parties are free to agree on a procedure for challenging an arbitrator, subject to the provisions of paragraph (3) of this article.

(2) Failing such agreement, a party who intends to challenge an arbitrator shall, within fifteen days after becoming aware of the constitution of the arbitral tribunal or after becoming aware of any circumstance referred to in article 12(2), send a written statement of the reasons for the challenge to the arbitral tribunal. Unless the challenged arbitrator withdraws from his office or the other party agrees to the challenge, the arbitral tribunal shall decide on the challenge.

(3) If a challenge under any procedure agreed upon by the parties or under the procedure of paragraph (2) of this article is not successful, the challenging party may request, within thirty days after having received notice of the decision rejecting the challenge, the court or other authority specified in article 6 to decide on the challenge, which decision shall be subject to no appeal; while such a request is pending, the arbitral tribunal, including the challenged arbitrator, may continue the arbitral proceedings and make an award.

Article 14. Failure or impossibility to act

(1) If an arbitrator becomes *de jure* or *de facto* unable to perform his functions or for other reasons fails to act without undue delay, his mandate terminates if he withdraws from his office or if the parties agree on the termination. Otherwise, if a controversy remains concerning any of these grounds, any party may request the court or other authority specified in article 6 to decide on the termination of the mandate, which decision shall be subject to no appeal.

(2) If, under this article or article 13(2), an arbitrator withdraws from his office or a party agrees to the termination of the mandate of an arbitrator, this does not imply acceptance of the validity of any ground referred to in this article or article 12(2).

Article 15. Appointment of substitute arbitrator

Where the mandate of an arbitrator terminates under article 13 or 14 or because of his withdrawal from office for any other reason or because of the revocation of his mandate by agreement of the parties or in any other case of termination of his mandate, a substitute arbitrator shall be appointed according to the rules that were applicable to the appointment of the arbitrator being replaced.

CHAPTER IV. JURISDICTION OF

ARBITRAL TRIBUNAL

Article 16. Competence of arbitral tribunal to rule on its jurisdiction

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

(2) A plea that the arbitral tribunal does not have jurisdiction shall be raised not later than the submission of the statement of defence. A party is not precluded from raising such a plea by the fact that he has appointed, or participated in the appointment of, an arbitrator. A plea that the arbitral tribunal is exceeding the scope of its authority shall be raised as soon as the matter alleged to be beyond the scope of its authority is raised during the arbitral proceedings. The arbitral tribunal may, in either case, admit a later plea if it considers the delay justified.

(3) The arbitral tribunal may rule on a plea referred to in paragraph (2) of this article either as a preliminary question or in an award on the merits. If the arbitral tribunal rules as a preliminary question that it has jurisdiction, any party may request, within thirty days after having received notice of that ruling, the court specified in article 6 to decide the matter, which decision shall be subject to no appeal; while such a request is pending, the arbitral tribunal may continue the arbitral proceedings and make an award.

Article 17. Power of arbitral tribunal to order interim measures

Unless otherwise agreed by the parties, the arbitral tribunal may, at the request of a party, order any party to take such interim measure of protection as the arbitral tribunal may consider necessary in respect of the subject-matter of the dispute. The arbitral tribunal may require any party to provide appropriate security in connection with such measure.

CHAPTER V. CONDUCT OF ARBITRAL PROCEEDINGS

Article 18. Equal treatment of parties

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

Article 19. Determination of rules of procedure

(1) Subject to the provisions of this Law, the parties are free to agree on the procedure to be followed by the arbitral tribunal in conducting the proceedings.

(2) Failing such agreement, the arbitral tribunal may, subject to the provisions of this Law, conduct the arbitration in such manner as it considers appropriate. The power conferred upon the arbitral tribunal includes the power to determine the admissibility, relevance, materiality and weight of any evidence.

Article 20. Place of arbitration

(1) The parties are free to agree on the place of arbitration. Failing such agreement, the place of arbitration shall be determined by the arbitral tribunal having regard to the circumstances of the case, including the convenience of the parties.

(2) Notwithstanding the provisions of paragraph (1) of this article, 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 goods, other property or documents.

Article 21. Commencement of arbitral proceedings

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.

Article 22. Language

(1) The parties are free to agree on the language or languages to be used in the arbitral proceedings. Failing such agreement, the arbitral tribunal shall determine the language or languages to be used in the proceedings. This agreement or determination, unless otherwise specified therein, shall apply to any written statement by a party, any hearing and any award, decision or other communication by the arbitral tribunal.

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

Article 23. Statements of claim and defence

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

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

Article 24. Hearings and written proceedings

(1) Subject to any contrary agreement by the parties, the arbitral tribunal shall decide whether to hold oral hearings for the presentation of evidence or for oral argument, or whether the proceedings shall be conducted on the basis of documents and other materials. However, unless the parties have agreed that no hearings shall be held, the arbitral tribunal shall hold such hearings at an appropriate stage of the proceedings, if so requested by a party.

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

(3) All statements, documents or other information supplied to the arbitral tribunal by one party shall be communicated to the other party. Also any expert report or evidentiary document on which the arbitral tribunal may rely in making its decision shall be communicated to the parties.

Article 25. Default of a party

Unless otherwise agreed by the parties, if, without showing sufficient cause,

(a) the claimant fails to communicate his statement of claim in accordance with article 23(1), the arbitral tribunal shall terminate the proceedings;

(b) the respondent fails to communicate his statement of defence in accordance with article 23(1), the arbitral tribunal shall continue the proceedings without treating such failure in itself as an admission of the claimants allegations;

(c) any party fails to appear at a hearing or to produce documentary evidence, the arbitral tribunal may continue the proceedings and make the award on the evidence before it.

Article 26. Expert appointed by arbitral tribunal

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

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

(b) may require a party to give the expert any relevant information or to produce, or to provide access to, any relevant documents, goods or other property for his inspection.

(2) Unless otherwise agreed by the parties, if a party so requests or if the arbitral tribunal considers it necessary, the expert shall, after delivery of his written or oral report, participate in a hearing where the parties have the opportunity to put questions to him and to present expert witnesses in order to testify on the points at issue.

Article 27. Court assistance in taking evidence

The arbitral tribunal or a party with the approval of the arbitral tribunal may request from a competent court of this State assistance in taking evidence. The court may execute the request within its competence and according to its rules on taking evidence.

CHAPTER VI. MAKING OF AWARD AND

TERMINATION OF PROCEEDINGS

Article 28. Rules applicable to substance of dispute

(1) The arbitral tribunal shall decide the dispute in accordance with such rules of law as are chosen by the parties as applicable to the substance of the dispute. Any designation of the law or legal system of a given State shall be construed, unless otherwise expressed, as directly referring to the substantive law of that State and not to its conflict of laws rules.

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

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

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

Article 29. Decision making by panel of arbitrators

In arbitral proceedings with more than one arbitrator, any decision of the arbitral tribunal shall be made, unless otherwise agreed by the parties, by a majority of all its members. However, questions of procedure may be decided by a presiding arbitrator, if so authorized by the parties or all members of the arbitral tribunal.

Article 30. Settlement

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

(2) An award on agreed terms shall be made in accordance with the provisions of article 31 and shall state that it is an award. Such an award has the same status and effect as any other award on the merits of the case.

Article 31. Form and contents of award

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

(2) The award shall state the reasons upon which it is based, unless the parties have agreed that no reasons are to be given or the award is an award on agreed terms under article 30.

(3) The award shall state its date and the place of arbitration as determined in accordance with article 20(1). The award shall be deemed to have been made at that place.

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

Article 32. Termination of proceedings

(1) The arbitral proceedings are terminated by the final award or by an order of the arbitral tribunal in accordance with paragraph (2) of this article.

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

(a) the claimant withdraws his claim, unless the respondent objects thereto and the arbitral tribunal recognizes a legitimate interest on his 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.

(3) The mandate of the arbitral tribunal terminates with the termination of the arbitral proceedings, subject to the provisions of articles 33 and 34(4).

Article 33. Correction and interpretation of award; additional award

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

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

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

If the arbitral tribunal considers the request to be justified, it shall make the correction or give the interpretation within thirty days of receipt of the request. The interpretation shall form part of the award.

(2) The arbitral tribunal may correct any error of the type referred to in paragraph (1)(a) of this article on its own initiative within thirty days of the date of the award.

(3) Unless otherwise agreed by the parties, a party, with notice to the other party, may request, within thirty days of receipt of the award, the arbitral tribunal to make an additional award as to claims presented in the arbitral proceedings but omitted from the award. If the arbitral tribunal considers the request to be justified, it shall make the additional award within sixty days.

(4) The arbitral tribunal may extend, if necessary, the period of time within which it shall make a correction, interpretation or an additional award under paragraph (1) or (3) of this article.

(5) The provisions of article 31 shall apply to a correction or interpretation of the award or to an additional award.

CHAPTER VII. RECOURSE AGAINST AWARD

Article 34. Application for setting aside as exclusive recourse against arbitral award

(1) Recourse to a court against an arbitral award may be made only by an application for setting aside in accordance with paragraphs (2) and (3) of this article.

(2) An arbitral award may be set aside by the court specified in article 6 only if:

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

(i) a party to the arbitration agreement referred to in article 7 was under some incapacity; or the said agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law of this State; or

(ii) the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or

(iii) the award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or contains decisions on matters beyond the scope of the submission to arbitration, provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, only that part of the award which contains decisions on matters not submitted to arbitration may be set aside; or

(iv) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless such agreement was in conflict with a provision of this Law from which the parties cannot derogate, or, failing such agreement, was not in accordance with this Law; or

(b) the court finds that:

(i) the subject-matter of the dispute is not capable of settlement by arbitration under the law of this State; or

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

(3) An application for setting aside may not be made after three months have elapsed from the date on which the party making that application had received the award or, if a request had been made under article 33, from the date on which that request had been disposed of by the arbitral tribunal.

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

CHAPTER VIII. RECOGNITION AND

ENFORCEMENT OF AWARDS

Article 35. Recognition and enforcement

(1) An arbitral award, irrespective of the country in which it was made, shall be recognized as binding and, upon application in writing to the competent court, shall be enforced subject to the provisions of this article and of article 36.

(2) The party relying on an award or applying for its enforcement shall supply the duly authenticated original award or a duly certified copy thereof, and the original arbitration agreement referred to in article 7 or a duly certified copy thereof. If the award or agreement is not made in an official language of this State, the party shall supply a duly certified translation thereof into such language.

Article 36. Grounds for refusing recognition or enforcement

(1) Recognition or enforcement of an arbitral award, irrespective of the country in which it was made, may be refused only:

(a) at the request of the party against whom it is invoked, if that party furnishes to the competent court where recognition or enforcement is sought proof that:

(i) a party to the arbitration agreement referred to in article 7 was under some incapacity; or the said agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law of the country where the award was made; or

(ii) the party against whom the award is invoked was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or

(iii) the award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration, provided that, if the decisions on matters submitted to arbitration can be separated from

those not so submitted, that part of the award which contains decisions on matters submitted to arbitration may be recognized and enforced; or

(iv) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties or, failing such agreement, was not in accordance with the law of the country where the arbitration took place; or

(v) the award has not yet become binding on the parties or has been set aside or suspended by a court of the country in which, or under the law of which, that award was made; or

(b) if the court finds that:

(i) the subject-matter of the dispute is not capable of settlement by arbitration under the law of this State; or

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

(2) If an application for setting aside or suspension of an award has been made to a court referred to in paragraph (1)(a)(v) of this article, the court where recognition or enforcement is sought may, if it considers it proper, adjourn its decision and may also, on the application of the party claiming recognition or enforcement of the award, order the other party to provide appropriate security.

R.S., c. 234, Sch. B.



BILL NO. 100



*1st Session, 57th General Assembly
Nova Scotia
47-48 Elizabeth II, 1998-99*

Government Bill

Commercial Arbitration Act

CHAPTER 5 OF THE ACTS OF 1999

The Honourable Robert S. Harrison
Minister of Justice

[First Reading](#): May, 20, 1999

Second Reading: May 25, 1999

[Third Reading](#): June 4, 1999 (WITH COMMITTEE AMENDMENTS)

Royal Assent: June 17, 1999

An Act to Reform the Law Respecting Domestic Commercial Arbitration and to Promote and Encourage the Use of Arbitration as a Means of Alternative Dispute Resolution

Be it enacted by the Governor and Assembly as follows:

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

2 The purpose of this Act is to revise and update the law respecting commercial arbitration and thereby encourage and promote the use of arbitration as an alternative to court proceedings in resolving disputes between parties to a contract.

3 (1) In this Act,

(a) "arbitration agreement" means, subject to subsections (2) and (3), an agreement or part of an agreement by which two or more persons agree to submit a matter in dispute to arbitration;

(b) "arbitrator" includes an umpire;

(c) "award" means an award made by an arbitral tribunal pursuant to this Act;

(d) "court" means,

(i) in Sections 8 and 9, the Supreme Court of Nova Scotia and the Provincial Court of Nova Scotia, and

(ii) in all other Sections, the Supreme Court of Nova Scotia;

(e) "party" means a party to an arbitration agreement.

(2) Where the parties to an arbitration agreement make a further agreement in connection with the arbitration, that further agreement forms part of the arbitration agreement.

(3) Where a matter is authorized or required pursuant to an enactment to be submitted to arbitration, a reference in this Act to an arbitration agreement is a reference to the enactment, unless the context otherwise requires.

4 (1) This Act applies to an arbitration conducted under an arbitration agreement or authorized or required pursuant to an enactment unless

(a) the application of this Act is excluded by an agreement of the parties or by law; or

(b) Part II of the International Commercial Arbitration Act applies to the arbitration.

(2) Where there is a conflict between this Act and another enactment that authorizes or requires the arbitration, the other enactment prevails.

(3) This Act does not apply to an arbitration authorized or required pursuant to any of the following:

(a) the Trade Union Act;

(b) a collective agreement under the Trade Union Act;

(c) any enactment set out in the regulations.

(4) This Act binds Her Majesty in right of the Province.

5 The parties to an arbitration agreement may agree to vary or exclude any provision of this Act, except subsection 7(2), Sections 22 and 43, subsection 48(2) and Sections 49, 51 and 53.

6 A party to an arbitration who is aware of a non-compliance with this Act, except with a provision referred to in Section 5, or non-compliance with the arbitration agreement and who does not object to the non-compliance within the time limit provided or, where none is provided, within a reasonable time, not to exceed thirty days, is deemed to have waived the right to object.

7 (1) An arbitration agreement is not required to be in writing.

(2) An agreement requiring or having the effect of requiring that a matter in dispute be adjudicated by arbitration before the matter may be dealt with by a court has the same effect as an arbitration agreement.

(3) An arbitration agreement may only be rescinded in accordance with the law of contract.

COURT INTERVENTION

8 No court may intervene in matters governed by this Act, except for the following purposes as provided by this Act:

- (a) to assist the arbitration process;
- (b) to ensure that an arbitration is carried out in accordance with the arbitration agreement;
- (c) to prevent manifestly unfair or unequal treatment of a party to an arbitration agreement;
- (d) to enforce awards.

9 (1) Where a party to an arbitration agreement commences a proceeding in a court in respect of a matter in dispute to be submitted to arbitration under the agreement, the court shall, on the motion of another party to the arbitration agreement, stay the proceeding.

(2) The court may refuse to stay the proceeding pursuant to subsection (1) only in the following cases:

- (a) a party entered into the arbitration agreement while under a legal incapacity;
- (b) the arbitration agreement is invalid;
- (c) the subject-matter of the dispute is not capable of being the subject of arbitration pursuant to the law of the Province;
- (d) the motion to stay the proceeding was brought with undue delay;
- (e) the matter in dispute is a proper one for default or summary judgment.

(3) An arbitration of the matter in dispute may be commenced or continued while the motion pursuant to subsection (1) is before the court.

(4) Where the court refuses to stay the proceeding,

(a) no arbitration of the matter in dispute shall be commenced; and

(b) an arbitration that has been commenced shall not be continued and anything done in connection with the arbitration, before the refusal of the court, is without effect.

(5) The court may stay the proceeding with respect to the matters in dispute dealt with in the arbitration agreement and allow the proceeding to continue with respect to other matters if the court finds that

(a) the agreement deals with only some of the matters in dispute in respect of which the proceeding was commenced; and

(b) it is reasonable to separate the matters in dispute dealt with in the agreement from the other matters.

(6) There is no appeal from the decision of the court pursuant to this Section.

10 (1) The powers of the court with respect to the detention, preservation and inspection of property, interim injunctions and the appointment of receivers are the same in arbitration as in court actions.

(2) On the application of an arbitral tribunal, or on the application of a party with the consent of the other parties or the arbitral tribunal, the court may determine any question of law that arises during the arbitration.

(3) The determination of the court of a question of law may be appealed to the Nova Scotia Court of Appeal with leave of that Court.

(4) On the application of all the parties to more than one arbitration, the court may order, on terms that the court considers just,

(a) that the arbitrations be consolidated;

(b) that the arbitrations be conducted simultaneously or consecutively; or

(c) that any of the arbitrations be stayed until any of the others are completed.

(5) When the court orders, pursuant to subsection (4), that arbitrations be consolidated, the court may appoint an arbitral tribunal for the consolidated arbitration and, where all the parties agree as to the choice of the arbitral tribunal, the court shall appoint that arbitral tribunal.

(6) Subsection (4) does not prevent the parties to more than one arbitration from agreeing to consolidate the arbitrations and doing everything necessary to effect the consolidation.

ARBITRAL TRIBUNAL

11 Where an arbitration agreement does not specify the number of arbitrators who are to form the arbitral tribunal, the tribunal shall be composed of one arbitrator.

12 (1) The court may appoint the arbitral tribunal, on the application of a party, if

(a) the arbitration agreement provides no procedure for appointment of the arbitral tribunal; or

(b) the person with power to appoint the arbitral tribunal has not done so within the time provided in the agreement or after a party has given the person seven days notice to do so, whichever is later.

(2) There is no appeal from the appointment of the court of the arbitral tribunal.

(3) Subsections (1) and (2) apply to the appointment of individual members of arbitral tribunals.

(4) An arbitral tribunal composed of three or more arbitrators shall, and an arbitral tribunal composed of two arbitrators may, elect a chair from among the arbitrators.

13 (1) An arbitrator shall be independent of the parties and impartial as between the parties.

(2) Before accepting an appointment as an arbitrator, a person shall disclose to all parties to the arbitration any circumstances of which that person is aware that may give rise to a reasonable apprehension of bias.

(3) An arbitrator who, during an arbitration, becomes aware of circumstances that may give rise to a reasonable apprehension of bias shall promptly disclose the circumstances to all the parties.

14 A party cannot revoke the appointment of an arbitrator.

15 (1) A party may challenge an arbitrator only on one of the following grounds:

(a) circumstances exist that may give rise to a reasonable apprehension of bias;

(b) the arbitrator does not possess qualifications that the parties have agreed are necessary.

(2) A party who appointed an arbitrator or participated in the appointment of an arbitrator may challenge the arbitrator only on grounds of which the party was unaware at the time of the appointment.

(3) A party shall not challenge an arbitrator pursuant to clause 1(b) after the commencement of the arbitration hearing.

(4) A party who wishes to challenge an arbitrator shall send the arbitral tribunal a statement of the grounds for the challenge within fifteen days of becoming aware of the grounds for challenge.

(5) The other parties may agree to remove the arbitrator who is being challenged or the arbitrator may resign.

(6) Where the arbitrator is not removed by the parties or does not resign, the arbitral tribunal, including the arbitrator who is being challenged, shall decide the issue within seven days and shall immediately notify the parties of the decision of the arbitral tribunal.

(7) Within ten days after being notified of the decision of the arbitral tribunal pursuant to subsection (6), a party may make an application to the court to decide the issue.

(8) While an application is pending pursuant to subsection (7), the arbitral tribunal, including the arbitrator who is being challenged, may continue the arbitration and make an award, unless the court otherwise orders.

16 (1) The mandate of an arbitrator terminates when

(a) the arbitrator resigns or dies;

(b) the parties agree to remove the arbitrator;

(c) ten days elapse after all the parties are notified of the decision of the arbitral tribunal to uphold a challenge of the arbitrator and remove the arbitrator, and no application is made to the court pursuant to subsection 15(7); or

(d) the court removes the arbitrator pursuant to subsection 17(1).

(2) The resignation of an arbitrator or an agreement of a party to terminate the mandate of an arbitrator does not imply acceptance of the validity of any reason advanced for challenging or removing the arbitrator.

17 (1) The court may remove an arbitrator on the application of a party pursuant to subsection 15(7), or may do so on the application of a party, if the arbitrator becomes unable to perform the functions of an arbitrator, commits a corrupt or fraudulent act, delays unduly in conducting the arbitration or does not conduct the arbitration in accordance with Section 21.

(2) The arbitrator is entitled to be heard by the court on an application pursuant to subsection (1).

(3) When the court removes an arbitrator, the court may give directions on the conduct of the arbitration.

(4) Where the court removes an arbitrator for a corrupt or fraudulent act or for undue delay, the court may order that the arbitrator receive no payment for services and may order that the arbitrator compensate the parties for all or part of the costs, as determined by the court, that were incurred by the parties in connection with the arbitration before the removal of the arbitrator.

(5) The arbitrator or a party may, within thirty days after receiving the decision of the court, appeal an order made pursuant to subsection (4) or the refusal to make such an order to the Nova Scotia Court of Appeal with leave of that Court.

(6) Except as provided in subsection (5), there is no appeal from the decision of the court or from directions given by the court pursuant to this Section.

18 (1) When the mandate of an arbitrator terminates, a substitute arbitrator shall be appointed, following the procedures that were used in the appointment of the arbitrator being replaced.

(2) When the mandate of an arbitrator terminates, the court may, on the application of any party, give directions concerning the conduct of the arbitration.

(3) The court may appoint the substitute arbitrator on the application of a party if

- (a) the arbitration agreement provides no procedure for appointing the substitute arbitrator; or
- (b) a person with power to appoint the substitute arbitrator has not done so within the time provided in the agreement or after a party has given the person seven days notice to do so, whichever is later.
- (4) There is no appeal from the decision of the court or from directions given by the court pursuant to this Section.
- (5) Where the arbitration is to be conducted only by a named arbitrator, the parties to the arbitration agreement may provide in the agreement that this Section does not apply.

JURISDICTION OF ARBITRAL TRIBUNAL

- 19 (1) An arbitral tribunal may rule on its own jurisdiction to conduct the arbitration and may, in that connection, rule on objections with respect to the existence or validity of the arbitration agreement.
- (2) The arbitral tribunal may determine any question of law that arises during the arbitration.
- (3) Where the arbitration agreement forms part of another agreement, the arbitration agreement shall, for the purpose of a ruling on jurisdiction, be treated as an independent agreement that may survive even if the other agreement is found to be invalid.
- (4) A party who objects to the jurisdiction of an arbitral tribunal to conduct an arbitration shall object no later than the beginning of the hearing or, where there is no hearing, no later than the first occasion on which the party submits to the tribunal a statement referred to in Section 27.
- (5) A party who has appointed or who has participated in the appointment of an arbitrator is not prevented from objecting to the jurisdiction of the arbitral tribunal to conduct the arbitration.
- (6) A party who objects on the grounds that the arbitral tribunal is exceeding its jurisdiction shall object as soon as the matter alleged to be beyond the jurisdiction of the tribunal is raised during the arbitration.
- (7) Notwithstanding Section 6, where the arbitral tribunal considers the delay justified, a party may object after the time referred to in subsection (4) or (6), as the case may be, has passed.
- (8) The arbitral tribunal may rule on an objection when the objection is raised or may deal with the objection in an award.
- (9) Where the arbitral tribunal rules on an objection as a preliminary question, a party may, within thirty days after receiving notice of the ruling, make an application to the court to decide the matter and the court, when deciding the matter, shall apply the principles set out in Section 8.
- (10) There is no appeal from the decision of the court on an application pursuant to subsection (9).
- (11) While an application is pending pursuant to subsection (9), the arbitral tribunal may continue the arbitration and make an award.

20 (1) On the request of a party, an arbitral tribunal may make an order for the detention, preservation or inspection of property and documents that are the subject of the arbitration or as to which a question may arise in the arbitration and may order a party to provide security in that connection.

(2) The court may enforce the order of an arbitral tribunal made pursuant to subsection (1) as if the order were a similar order made by the court in an action.

CONDUCT OF ARBITRATION

21 (1) An arbitral tribunal shall treat the parties equally and fairly.

(2) Each party shall be given an opportunity to present a case and to respond to the case presented by the other parties.

22 (1) An arbitral tribunal may determine the procedure to be followed in the arbitration.

(2) An arbitral tribunal that is composed of more than one arbitrator may delegate the determination of questions of procedure to the chair of the arbitral tribunal.

23 (1) An arbitral tribunal is not bound by the rules of evidence or any other law applicable to judicial proceedings and has power to determine the admissibility, relevance and weight of any evidence.

(2) An arbitral tribunal may determine the manner in which evidence is to be admitted.

24 (1) An arbitral tribunal shall determine the time, date and place of arbitration, taking into consideration the convenience of the parties and the other circumstances of the case.

(2) An arbitral tribunal may meet at any place the tribunal considers appropriate for consultation among the members of the tribunal, for hearing witnesses, experts or parties or for inspecting property or documents.

25 (1) An arbitration may be commenced in any way recognized by law, including the following:

(a) a party to an arbitration agreement serves on the other parties notice to appoint or to participate in the appointment of an arbitrator under the agreement;

(b) where the arbitration agreement gives a person who is not a party power to appoint an arbitrator, a party serves notice to exercise that power on the person and serves a copy of the notice on the other parties;

(c) a party serves on the other parties a notice demanding arbitration under the arbitration agreement.

(2) An arbitral tribunal may exercise the powers of the tribunal when every member of the tribunal has accepted appointment.

26 An arbitration commenced without identifying the matters in dispute is deemed to refer to arbitration all matters in dispute that the arbitration agreement entitles the party commencing the arbitration to refer to arbitration.

27 (1) An arbitral tribunal may require that the parties submit statements within a specified period of time.

(2) The statements of the parties referred to in subsection (1) shall indicate the facts supporting the position of the parties, the points at issue and the relief sought by the parties.

(3) The parties may submit, with the statements referred to in subsection (1), the documents the parties consider relevant or may refer to the documents or other evidence the parties intend to submit.

(4) The parties may amend or supplement the statements referred to in subsection (1) during the arbitration, but the arbitral tribunal may disallow a change that is unduly delayed.

(5) The parties may submit the statements referred to in subsection (1) orally with the permission of the arbitral tribunal.

(6) The parties, and persons claiming through or under the parties, shall, subject to any legal objection, comply with the directions of the arbitral tribunal, including directions to

(a) submit to examination on oath or affirmation with respect to the matters in dispute; or

(b) produce records and documents that are in the possession or under the control of the parties or the persons claiming through or under the parties.

(7) The court may enforce a direction of the arbitral tribunal pursuant to this Section as if the direction were a direction made by the court in an action.

28 (1) An arbitral tribunal may conduct the arbitration on the basis of documents or may hold hearings for the presentation of evidence and for oral argument, but the tribunal shall hold a hearing if a party requests a hearing.

(2) An arbitral tribunal shall give the parties sufficient notice of hearings and of meetings of the tribunal for the purpose of inspecting property or documents.

(3) A party shall

(a) provide to the other parties a copy of any statement submitted to the arbitral tribunal; and

(b) make available to the other parties any other information supplied to the arbitral tribunal.

(4) An arbitral tribunal shall not rely on an expert report or other document of which the parties have not been informed.

29 (1) Where the party commencing an arbitration does not submit a statement within the period of time specified pursuant to subsection 27(1), the arbitral tribunal may dismiss the claim by making an award terminating the arbitration, unless the party offers a satisfactory explanation.

(2) Where a party other than the one who commenced the arbitration does not submit a statement within the period of time specified pursuant to subsection 27(1), the arbitral tribunal may continue the arbitration unless that party offers a satisfactory explanation, but the tribunal shall not treat the failure of that party to submit a statement as an admission of an allegation of any other party.

(3) Where a party fails to appear at a hearing or to produce documentary evidence, the arbitral tribunal may continue the arbitration and make an award on the evidence before the tribunal, unless the party offers a satisfactory explanation.

(4) In the case of an unreasonable delay by the party who commenced the arbitration, the arbitral tribunal may

(a) make an award terminating the arbitration; or

(b) give directions for the speedy determination of the arbitration,

and may impose conditions on its decision.

30 (1) An arbitral tribunal may appoint an expert to report to the tribunal on specific issues concerning the arbitration.

(2) The expert referred to in subsection (1) shall be a person agreed on by the parties and, failing an agreement, shall be determined by the arbitral tribunal.

(3) The remuneration to be paid to the expert shall be paid by the parties in equal portions, subject to the direction of the arbitral tribunal.

(4) The arbitral tribunal may require the parties to give the expert any relevant information or to allow the expert to inspect property or documents.

(5) At the request of a party or of the arbitral tribunal, the expert, after making a report, shall participate in a hearing in which the parties may question the expert and present the testimony of another expert on the subject-matter of the report.

31 (1) A party may serve a person with a notice requiring the person to attend and give evidence at the arbitration at the time and place named in the notice.

(2) The notice has the same effect as a notice in a court proceeding requiring a witness to attend at a hearing or produce documents and shall be served in the same way.

(3) An arbitral tribunal may administer oaths, affirmations and declarations.

(4) An arbitral tribunal shall require witnesses to testify under oath, affirmation or declaration.

(5) On the application of a party or of the arbitral tribunal, the court may make orders and give directions with respect to the taking of evidence for an arbitration as if the arbitration were a court proceeding.

32 No person shall be compelled to produce information, property or documents or to give evidence in an arbitration that the person could not be compelled to produce or give in a court proceeding.

33 (1) Notwithstanding anything contained in Sections 21 to 32, unless the parties otherwise agree, an arbitration pursuant to this Act shall be conducted following the procedure set out in Schedule A to this Act.

(2) Notwithstanding subsection (1) but subject to subsection (3), the parties may agree to have the arbitration conducted following the expedited procedure set out in Schedule B to this Act.

(3) The expedited procedure referred to in subsection (2) may be utilized by the parties within five days of the dispute arising provided that the dispute has not already been referred to arbitration or that the time for referring the dispute to arbitration has not expired.

(4) The procedure set out in Schedule A to this Act applies to the expedited procedure set out in Schedule B to this Act, but where there is a conflict between Schedule A and Schedule B, Schedule B prevails.

AWARD AND TERMINATION OF ARBITRATION

34 An arbitral tribunal shall decide a matter in dispute in accordance with the law, including equity, and may order specific performance, injunctions and other equitable remedies.

35 (1) In deciding a matter in dispute, an arbitral tribunal shall apply the law of a jurisdiction designated by the parties or, where none is designated, the law of the jurisdiction the arbitral tribunal considers appropriate in the circumstances.

(2) A designation by the parties of the law of the jurisdiction refers to the substantive law of that jurisdiction and not to the conflict of laws rules of that jurisdiction, unless the parties expressly indicate that the designation includes those conflict of laws rules.

36 An arbitral tribunal shall decide the matters in dispute in accordance with the arbitration agreement and the contract, if any, under which the matters arose and shall also take into consideration any applicable usages of trade.

37 Where an arbitral tribunal is composed of more than one member, a decision of a majority of the members is a decision of the arbitral tribunal but, where there is no majority decision or unanimous decision, the decision of the chair governs.

38 (1) The members of an arbitral tribunal may, where the parties consent, use mediation, conciliation or similar techniques during the arbitration to encourage settlement of the matters in dispute.

(2) After the members of an arbitral tribunal use a technique referred to in subsection (1), the members of the arbitral tribunal may resume their roles as arbitrators without disqualification.

39 (1) During any arbitration under this Act, the parties may agree to adjourn the arbitration and refer any or all matters in dispute to mediation.

(2) Where a matter is referred to mediation pursuant to subsection (1), unless otherwise agreed by the parties, the procedure for conducting the mediation shall be as set out in Schedule C to this Act.

(3) Where the mediation is unsuccessful, or where either party withdraws from the mediation, the arbitration shall re-commence at a time to be set by the arbitral tribunal.

(4) Where an arbitration is re-commenced pursuant to subsection (3), the members of the arbitral tribunal may resume their roles as arbitrators without disqualification.

(5) A mediator shall not act as a representative or counsel of a party in proceedings in respect of a dispute that is the subject-matter of the mediation and the mediator shall not be subpoenaed to give evidence as a witness in any such proceedings nor shall the mediator voluntarily offer to give such evidence.

(6) The parties shall not rely on or introduce as evidence in any proceedings, whether or not such proceedings relate to the subject-matter of the mediation,

(a) any views expressed, or suggestions made, by the other party in respect of a possible settlement of the dispute;

(b) any admissions made by the other party in the course of mediation;

(c) any proposals or recommendations made by the mediator; or

(d) the fact that the other party has indicated willingness to accept a proposal or recommendation for settlement made by the mediator.

40 Where the parties settle the matters in dispute during arbitration, the arbitral tribunal shall terminate the arbitration and shall record the settlement in the form of a consent award.

41 An award made by an arbitral tribunal binds the parties unless the award is set aside or varied pursuant to Section 48 or 49.

42 (1) An award made by an arbitral tribunal shall be made in writing and, except in the case of an award pursuant to Section 40, shall, unless the parties otherwise agree, state the reasons on which the award is based.

(2) An award shall indicate the place where and the date on which the award was made.

(3) An award shall be dated and signed by all the members of the arbitral tribunal, or by a majority of the members if an explanation of the omission of the other signatures is included.

(4) A copy of an award shall be sent to each party.

43 The court may extend the time in which an arbitral tribunal is required to make an award, even if the time has expired.

44 (1) A party may, within fifteen days after receiving a copy of the award of the arbitral tribunal, request, in writing, that the arbitral tribunal provide a further explanation of the reasons on which the award is based.

(2) Where the arbitral tribunal does not give a sufficient explanation within fifteen days after receiving a request pursuant to subsection (1), the court, on the application of the party, may order the tribunal to give an explanation.

(3) An application pursuant to subsection (2) shall be made within forty-five days after the party receives a copy of the award.

45 (1) The arbitral tribunal may make interim awards.

(2) The arbitral tribunal may make more than one final award, disposing of one or more matters in dispute referred to arbitration in each award.

46 (1) An arbitration is terminated when

(a) the arbitral tribunal makes a final award or awards in accordance with this Act, disposing of all matters in dispute referred to arbitration;

(b) the arbitral tribunal terminates the arbitration pursuant to subsection (2) or subsections 29(1) or (4); or

(c) the mandate of the arbitrator is terminated pursuant to Section 16, if the arbitration agreement provides that the arbitration is to be conducted only by that arbitrator.

(2) An arbitral tribunal shall make an order terminating the arbitration if

(a) the party that commenced the arbitration withdraws the matters in dispute, unless the other party objects to the termination and the arbitral tribunal agrees that the other party is entitled to obtain a final settlement of the matters in dispute;

(b) the parties agree that the arbitration should be terminated; or

(c) the arbitral tribunal finds that the continuation of the arbitration has become unnecessary or impossible.

(3) An arbitration that is terminated may only be revived for the purpose of Section 47, subsections 49(7) and (8) or subsection 56(4).

(4) The death of a party to an arbitration does not terminate an arbitral tribunal.

(5) Subsection (4) does not affect a rule of law or an enactment under which the death of a person extinguishes a cause of action.

47 (1) An arbitral tribunal may, on its own initiative within thirty days after making an award or at the request of a party made within thirty days after receiving the award,

(a) correct typographical errors, errors of calculation and similar errors in the award;

(b) amend the award to correct an injustice caused by an oversight on the part of the arbitral tribunal.

(2) The arbitral tribunal may

(a) on its own initiative within thirty days after making an award or such longer time as approved by the parties; or

(b) at the request of a party within thirty days after receipt of the award by that party,

make an additional award to deal with a matter in dispute that was presented in the arbitration but omitted from the earlier award.

(3) The arbitral tribunal is not required to hold a hearing or meeting before rejecting a request made pursuant to this Section.

APPEALS AND SETTING ASIDE

48 (1) Unless the parties otherwise agree, there is no appeal of an award.

(2) Where an arbitration agreement so provides, a party may appeal an award to the court on a question of law, on a question of fact or on a question of mixed law and fact.

49 (1) On the application of a party, the court may set aside an award on any of the following grounds:

(a) a party entered into the arbitration agreement while under a legal incapacity;

(b) the arbitration agreement is invalid or has ceased to exist;

(c) the award deals with a matter in dispute that the arbitration agreement does not cover or contains a decision on a matter in dispute that is beyond the scope of the agreement;

(d) the composition of the arbitral tribunal was not in accordance with the arbitration agreement or, where the agreement did not deal with the matter, was not in accordance with this Act;

(e) the subject-matter of the arbitration is not capable of being the subject of arbitration pursuant to the law of the Province;

(f) the applicant was treated manifestly unfairly and unequally, was not given an opportunity to present a case or to respond to the case of another party or was not given proper notice of the arbitration or of the appointment of an arbitrator;

(g) the procedures followed in the arbitration did not comply with this Act or the arbitration agreement;

(h) an arbitrator committed a corrupt or fraudulent act or there is a reasonable apprehension of bias;

(i) the award was obtained by fraud.

(2) Where clause (1)(c) applies and it is reasonable to separate the decisions on matters covered by the arbitration agreement from the impugned decisions, the court shall set aside the impugned decisions and allow the other decisions to stand.

(3) The court shall not set aside an award on grounds referred to in clause (1)(c) if the applicant has agreed to the inclusion of the matters in dispute, waived the right to object to its inclusion or agreed that the arbitral tribunal has power to decide what matters in dispute have been referred to it.

(4) The court shall not set aside an award on grounds referred to in clause (1)(h) if the applicant had an opportunity to challenge the arbitrator on those grounds pursuant to Section 15 before the award was made and did not do so or if those grounds were the subject of an unsuccessful challenge.

(5) The court shall not set aside an award on a ground to which the applicant is deemed, pursuant to Section 6, to have waived the right to object.

(6) Where the ground alleged for setting aside the award could have been raised as an objection to the jurisdiction of the arbitral tribunal to conduct the arbitration, the court may set the award aside on that ground if the court considers the failure of the applicant to make an objection in accordance with Section 19 justified.

(7) When the court sets aside an award pursuant to this Section, the court may remove an arbitrator or the arbitral tribunal and may give directions concerning the conduct of the arbitration.

(8) Instead of setting aside an award pursuant to this Section, the court may remit the award to the arbitral tribunal and give directions concerning the conduct of the arbitration.

50 (1) The following actions shall be commenced within thirty days after an appellant or applicant receives the award, correction, explanation, change or statements of reasons on which the appeal or application is based:

(a) an appeal pursuant to subsection 48(2);

(b) an application to set aside an award pursuant to Section 49.

(2) An application to set aside an award on the grounds that an arbitrator has committed a corrupt or fraudulent act or that the award was obtained by fraud shall be commenced

(a) within the period referred to in subsection (1); or

(b) within thirty days after the applicant discovers or ought to have discovered the fraud or corrupt act,

whichever is later.

51 (1) At any stage during or after an arbitration, on the application of a party who has not participated in the arbitration, the court may grant a declaration that the arbitration is invalid because

- (a) a party entered into the arbitration agreement while under a legal incapacity;
- (b) the arbitration is invalid or has ceased to exist;
- (c) the subject-matter of the arbitration is not capable of being the subject of arbitration pursuant to the law of the Province; or
- (d) the arbitration agreement does not apply to the matter in dispute.

(2) When the court grants a declaration pursuant to subsection (1), the court may also grant an injunction prohibiting the commencement or continuation of the arbitration.

52 An appeal from the decision of the court in

- (a) an appeal of an award;
- (b) an application to set aside an award; or
- (c) an application for a declaration of invalidity,

may be made to the Nova Scotia Court of Appeal with leave of that Court.

ENFORCEMENT

53 (1) A party who is entitled to enforce an award may file the award with the prothonotary of the court.

(2) Upon filing with the court pursuant to subsection (1), the award is a judgment of the court and may be enforced as any other judgment of the court.

GENERAL

54 (1) The law with respect to limitation periods applies to an arbitration as if the arbitration were an action and a matter in dispute in the arbitration were a cause of action.

(2) Where the court sets aside an award, terminates an arbitration or declares an arbitration to be invalid, the court may order that the period from the commencement of the arbitration to the date of the order shall be excluded from the computation of the time within which an action may be brought on a cause of action that was a matter in dispute in the arbitration.

(3) An application for the enforcement of an award may not be made more than

- (a) two years after the day on which the applicant receives the award; or
- (b) two years after all appeal periods have expired,

whichever is later.

55 (1) A notice or other document may be served on an individual by leaving the notice or document with that individual.

(2) A notice or other document may be served on a corporation, partnership, association, society or other entity by leaving the notice or document with an officer, director or agent of the corporation, partnership, association, society or other entity, or at a place of business of the corporation, partnership, association, society or other entity with a person who appears to be in control or management of the place.

(3) A notice or other document may be served by sending the notice or document to the addressee by telephone transmission of a facsimile to the number that the addressee specified in the arbitration agreement or furnished to the arbitral tribunal.

(4) Where a reasonable effort to serve a notice or other document pursuant to subsection (1) or (2) is not successful and it is not possible to serve the notice or document pursuant to subsection (3), the notice or document may be sent by prepaid registered mail to the mailing address that the addressee specified in the arbitration agreement or furnished to the arbitral tribunal or, where no mailing address was specified or furnished, to the addressee's last known place of business or residence.

(5) Unless the addressee establishes that the addressee, acting in good faith, through absence, illness or other cause beyond the control of the addressee failed to receive the notice or other document until a later date, it is deemed to have been received

(a) on the day it is given or transmitted, in the case of service pursuant to subsection (1), (2) or (3); or

(b) on the fifth day after the day of mailing, in the case of service pursuant to subsection (4).

(6) The court may make an order for substituted service or an order dispensing with service in the same manner as under the Civil Procedure Rules if the court is satisfied that it is necessary to serve the notice or other document to commence an arbitration or proceed towards the appointment of an arbitral tribunal and that it is impractical for any reason to effect prompt service pursuant to subsection (1), (2), (3) or (4).

(7) This Section does not apply to the service of documents in respect of court proceedings.

56 (1) An arbitral tribunal may award the costs of an arbitration.

(2) The arbitral tribunal may award all or part of the costs of an arbitration on a solicitor-client basis, a party-and-party basis or any other basis.

(3) The costs of an arbitration consist of the legal expenses of the parties, the fees and expenses of the arbitral tribunal and any other expenses related to the arbitration.

(4) Where the arbitral tribunal does not deal with costs in an award, a party may, within thirty days after receiving an award, request that the arbitral tribunal make a further award dealing with costs.

(5) In the absence of an award dealing with costs, each party is responsible for that party's own legal expenses and for an equal share of the fees and expenses of the arbitral tribunal and of any other expenses related to the arbitration.

(6) Where a party makes an offer, in writing, to another party to settle the matter in dispute or part of the matter, the offer is not accepted and the award of the arbitral tribunal is no more favourable to the party to which the offer was made than was the offer, the arbitral tribunal may take that fact into account in awarding costs in respect of the period from the making of the offer to the making of the award.

(7) The fact that an offer to settle has been made shall not be communicated to the arbitral tribunal until the tribunal has made a final determination of all aspects of the matters in dispute other than costs.

(8) In this Section, "party-and-party costs" means party-and-party costs as set out in the Civil Procedure Rules.

57 (1) An arbitral tribunal has the same power with respect to interest as the court has under the Interest on Judgments Act, but the provision for payment into court does not apply.

(2) An award is a judgment of the court for the purpose of the Interest Act (Canada).

58 (1) The fees and expenses of the arbitrator shall be those set out in an agreement between the parties and, where there is no agreement between the parties with respect to the costs and expenses of the arbitrator, the fees and expenses paid to an arbitrator shall not exceed the fair and reasonable value of the services performed and the necessary and reasonable expenses actually incurred.

(2) A party to an arbitration may apply to the clerk of the court to have the account for fees and expenses of an arbitrator taxed by a taxing officer in the same manner as a charge for services as a barrister and solicitor pursuant to the Civil Procedure Rules.

(3) Where the arbitral tribunal awards costs and directs that the costs be taxed, or awards costs without fixing the amount or indicating how the amount is to be ascertained, a party to the arbitration may have the costs taxed by a taxing officer in a similar manner as costs pursuant to the Civil Procedure Rules, having regard to the special characteristics of arbitrations.

(4) In taxing the part of the costs represented by the fees and expenses of the arbitral tribunal, the taxing officer shall apply the same principles as in the taxation of an account pursuant to subsection (1).

(5) Subsection (2) applies even if the account has been paid.

59 (1) Subject to Section 4 and clause 60(1)(a), this Act applies to an arbitration conducted under an arbitration agreement entered into before the coming into force of this Act if the arbitration is commenced on or after the coming into force of this Act.

(2) The Arbitration Act applies to arbitrations commenced before the coming into force of this Act.

60 (1) The Governor in Council may make regulations

(a) prescribing enactments to which this Act does not apply;

(b) amending the Schedules to this Act;

(c) defining any word or expression used but not defined in this Act;

(d) respecting any matter necessary or advisable to carry out effectively the intent and purpose of this Act.

(2) The exercise by the Governor in Council of the authority contained in subsection (1) is regulations within the meaning of the Regulations Act.

61 Chapter 19 of the Revised Statutes, 1989, the Arbitration Act, is amended by adding immediately after Section 3 the following Section:

3A Notwithstanding anything contained in this Act, this Act does not apply to an arbitration commenced pursuant to the Commercial Arbitration Act.

62 (1) Subsections 33(1) and (2) of Chapter 85 of the Revised Statutes, 1989, the Condominium Act, as enacted by Chapter 28 of the Acts of 1998, are amended by striking out "Arbitration Act" wherever it appears and substituting "Commercial Arbitration Act".

(2) Subsections (6) to (8) of Chapter 85 are repealed.

63 This Act comes into force on such day as the Governor in Council orders and declares by proclamation.

SCHEDULE A

ARBITRATION PROCEDURE - CONDUCT OF ARBITRATION

Representation

1 The parties to an arbitration may be represented or assisted by any person during an arbitration.

2 Where a party intends to be represented or assisted by a lawyer, that party shall, in writing, advise the other party of the lawyer's name and the capacity in which the lawyer is acting at least five days before any scheduled hearing or meeting.

Place of Arbitration

3 Unless otherwise agreed, the arbitration shall be held in Halifax, but the arbitrator may meet in any other place that the arbitrator considers necessary for consultation, to hear witnesses, experts or other parties or for the inspection of documents, goods or other property.

Pre-arbitration Meeting

4 The parties shall meet with the arbitrator within seven days of the date of the arbitrator's appointment for a pre-arbitration meeting to

- (a) identify the issues in dispute;
- (b) discuss the procedure to be followed in the arbitration;
- (c) establish time periods for taking certain steps, including the dates, time and location of the arbitration; and
- (d) deal with any other matter that will assist the parties to settle their differences and assist the arbitration to proceed in an efficient and expeditious manner.

5 The pre-arbitration meeting may take place by conference telephone call.

6 The arbitrator shall record any agreements or consensus reached at the pre-arbitration meeting and shall, within three days of that meeting, send a copy of that document to each of the parties or their representatives.

Conduct of the Arbitration

7 Subject to the rules in this Schedule, the arbitrator may conduct the arbitration in the manner the arbitrator considers appropriate, but each party shall be treated fairly and shall be given full opportunity to present a case.

8 Under this Schedule, the power of the arbitrator includes, but is not limited to,

- (a) ordering the arbitration to be conducted by documents only or with limited oral hearings;
- (b) controlling or refusing discovery examinations;
- (c) determining in what order issues will be dealt with;
- (d) limiting or extending the extent of document disclosure;
- (e) requiring further particulars of the claim and the issues advanced;
- (f) requiring earlier disclosure of intended witnesses and documents;
- (g) limiting the number of experts or refusing to allow expert evidence;
- (h) requiring the use of a single independent expert to deal with a particular issue or any number of issues;
- (i) requiring experts to file written reports in place of giving oral testimony;
- (j) requiring expert reports earlier in the process than required under this Schedule;
- (k) determining when and in what order experts will be heard;
- (l) setting the dates, times and location for the arbitration;
- (m) ordering pre-arbitration meetings as required; and
- (n) fixing and awarding costs, including solicitor/client costs and the costs of the arbitration proceeding.

Exchange of Documents

9 Within fifteen days of the pre-arbitration meeting, or where the parties agree that no pre-arbitration meetings will be held, within fifteen days after the arbitrator has been appointed, the claimant shall send a written statement to the respondent and the arbitrator outlining the facts supporting the claim of the claimant, the points at issue and the relief or remedy sought.

10 Within fifteen days after the respondent receives the claimants statement, the respondent shall send a written statement to the claimant and the arbitrator outlining the respondent's defence, the particulars requested in the statement of claim and a written statement of the respondents counterclaim, if any.

11 The claimant, when responding to a counterclaim, shall send a written statement to the respondent and the arbitrator outlining the claimants defence to the counterclaim within fifteen days after the claimant receives the counterclaim.

12 Each party shall submit with the partys statement a list of the documents upon which the party intends to rely and the list of documents shall describe each document by specifying its document type, date, author, recipient and subject-matter.

Amendment of or Supplemental Claim

13 The arbitrator may allow a party to amend or supplement the partys claim or counterclaim or defence during the course of the arbitration unless the arbitrator considers the delay in amending or supplementing the claim to be prejudicial to the other party or unless the arbitrator considers that the amendment or supplement goes beyond the terms of the arbitration agreement or the submission to arbitrate.

Production of Documents

14 The arbitrator may, on application of a party or on the arbitrators own motion, order a party to produce any documents the arbitrator considers relevant to the arbitration within a time the arbitrator specifies and, where such an order is made, the other party may inspect those documents and make copies of them.

15 Each party shall make available to the other for inspection and copying any documents upon which the party intends to rely.

Agreed Statement of Facts

16 The parties shall, within a period of time specified by the arbitrator, identify those facts, if any, that are not in dispute and submit to the arbitrator an agreed statement of facts.

Arbitration Hearings

17 The arbitrator shall set the dates for any oral hearings or meetings and shall give at least seven days written notice of such hearings or meetings to the parties.

18 All oral hearings and meetings shall be held in private and all written documentation shall be kept confidential by the arbitrator and the parties and not disclosed to any other person, except by the consent of all parties.

Evidence

19 Each party shall prove the facts relied upon to support the partys claim or defence.

20 Where a party is presenting evidence through a witness, the party shall, no later than seven days before the commencement of the oral hearing, advise the arbitrator and the other party of the name and address of the witness and provide a brief summary of the evidence to be given by the witness.

21 The written statement of an expert shall be given to the other party and the arbitrator at least fourteen days before the commencement of the oral hearing.

22 The arbitrator shall be the judge of the relevance and materiality of the evidence offered and the arbitrator is not required to apply the legal rules of evidence.

23 All oral evidence shall be taken in the presence of the arbitrator and all the parties, except where any of the parties is absent, in default or has waived the right to be present.

24 The parties shall prepare books containing all of the documents to be introduced at the oral hearing and shall submit those books to the other party and to the arbitrator no later than fourteen days before the commencement of the oral hearing.

25 The parties are deemed to have consented to the authenticity of all documents contained in the document books, unless the party gives notice of objection within seven days of the oral hearing to the other party and the arbitrator.

26 The arbitrator may allow a party to introduce into evidence at the oral hearing a document that was not disclosed or submitted at least fourteen days before the commencement of the hearing, but the arbitrator may take that failure into account at the time the arbitrator fixes any costs.

Examination of Parties

27 At an oral hearing an arbitrator may order a party, or a person claiming through a party, to submit to being examined by the arbitrator under oath and to submit all the documents that the arbitrator requires.

Witnesses

28 The arbitrator may determine the manner in which witnesses are to be examined and may require a witness, other than a party or the party's representative, to leave the oral hearing during the testimony of another witness.

29 Where an arbitrator allows the evidence of a witness to be presented by a written statement, the other party may require that the witness be present at an oral hearing for cross-examination.

30 The arbitrator may call a witness on the motion of the arbitrator, but where a witness is called by the arbitrator, the parties have the right to cross-examine that witness and call evidence in rebuttal.

Experts

31 The arbitrator may appoint one or more experts to report on specific issues to be determined by the arbitrator and may require a party to give the expert any relevant information or to produce, or to provide access to, any relevant documents, goods or other property for inspection by the expert.

32 The arbitrator shall communicate the experts terms of reference to the parties.

33 Any dispute between a party and an expert as to the relevance of the required information or the production of the information shall be referred to the arbitrator for decision.

34 Upon receipt of the experts report, the arbitrator shall inform the parties of the contents of the report and the parties shall be given an opportunity to express, in writing, their opinion on the report.

35 The expert shall, at the request of a party, make available to that party for inspection all documents, goods or other property in the experts possession which the expert was provided with in order to prepare the experts report and the expert shall provide that party with a list of all documents, goods or other property not in the experts possession but with which the expert was provided in order to prepare the experts report and a description and location of those documents, goods or other property.

36 Where the party so requests or if the arbitrator considers it necessary, the expert shall, after delivery of the experts written or oral report, be present at an oral hearing where the parties have the opportunity to cross-examine the expert and call evidence in rebuttal.

Default of Party

37 Where a claimant, without sufficient cause and after five days notice from the arbitrator, fails to communicate the claimants statement of claim within the required time, the arbitrator may terminate the arbitration with respect to that claim.

38 Where the respondent, without sufficient cause and after five days notice from the arbitrator, fails to communicate the respondents statement of defence within the required time, the arbitrator shall continue the arbitration and an award shall not be made solely on the default of the respondent and the arbitrator shall require the claimant to submit such evidence as the arbitrator may require for the making of the award.

39 Where a party, without sufficient cause, fails to appear at an oral hearing or fails to produce documentary evidence, the arbitrator may continue the arbitration and the arbitrator shall make an award based upon the evidence before the arbitrator.

40 Where a party, without sufficient cause, fails to comply with any order or direction of the arbitrator or any requirement under the Act or this Schedule, the arbitrator may grant such relief as the arbitrator deems appropriate, including costs.

General Powers of Arbitrator

41 The arbitrator may

- (a) order an adjournment of the proceedings from time to time;
- (b) make an interim order on any matter with respect to which the arbitrator may make a final order, including an interim order for the preservation of property which is the subject matter of the dispute;
- (c) order "on-site" inspection of documents, exhibits or other property;
- (d) order the taking down and recording of a transcription of any oral hearing;
- (e) at any time extend or abridge a period of time required in this Schedule or fixed or determined by the arbitrator where the arbitrator considers it just and appropriate in the circumstances.

SCHEDULE B

EXPEDITED ARBITRATION PROCEDURE

Representation

1 The parties may be represented or assisted by any person during an arbitration.

2 Where a party intends to be represented or assisted by a lawyer, the party shall, in writing, advise the other party of the lawyers name and the capacity in which the lawyer is acting at least five days before any scheduled meeting or hearing.

Appointment of Arbitrator

3 The parties shall appoint a sole arbitrator within five days of the commencement of the expedited arbitration procedure.

Time and Place of Arbitration

4 Unless otherwise agreed, the arbitration shall be held at a place determined by the arbitrator.

5 A hearing shall be commenced within fifteen days of the appointment of the arbitrator.

Conduct of Expedited Arbitration Process

6 Subject to the rules in this Schedule, the arbitrator may conduct the arbitration in the manner the arbitrator considers appropriate, but each party shall be treated fairly and shall be given full opportunity to present the partys case.

Exchange of Documents

7 Within five days of the appointment of the arbitrator, the claimant shall send a written statement to the respondent and the arbitrator outlining the facts supporting the claimants claim, the points at issue and the relief or remedy sought.

8 Within five days after the respondent receives the claimants statement, the respondent shall send a written statement to the claimant and the arbitrator outlining the respondent's defence, the particulars requested in the statement of claim and a written statement of the respondents counterclaim, if any.

9 The claimant, when responding to a counterclaim, shall send a written statement to the respondent and the arbitrator outlining the claimants defence to the counterclaim within five days after the claimant receives the counterclaim.

10 Each party shall submit with the partys statement a list of the documents upon which the party intends to rely and the list of documents shall describe each document by specifying its document type, date, author, recipient and subject-matter.

Production of Documents

11 The arbitrator may, on the application of a party or on the arbitrators own motion, order a party to produce any documents the arbitrator considers relevant to the arbitration within a time the arbitrator specifies and, where such an order is made, the other party may inspect those documents and make copies of them.

12 Each party shall make available to the other for inspection and the making of copies, any documents upon which the former party intends to rely.

Confidentiality

13 All oral hearings and meetings shall be held in private and all written documents shall be kept confidential by the arbitrator and the parties and shall not be disclosed to any other person, except with the consent of all parties.

Evidence

14 Each party shall provide the facts relied upon to support the partys claim or defence.

15 The arbitrator is the judge of relevancy and materiality of the evidence offered and is not required to apply the legal rules of evidence.

Examination of Parties

16 In an oral hearing, an arbitrator may order a party, or a person claiming through a party, to submit to being examined by the arbitrator under oath and to submit all documents that the arbitrator requires.

Decision of the Arbitrator

17 The sole arbitrator shall render a decision within ten days after completion of the arbitration.

Time for Completion of Arbitration

18 The arbitration shall be completed within thirty days of the appointment of the arbitrator.

SCHEDULE C

MEDIATION PROCEDURE

Appointment of Mediator

1 The appointed mediator shall sign a statement verifying that the mediator has no interest in the case nor is the mediator aware of any circumstances that could raise the likelihood of a claim of bias.

Time and Place of Mediation

2 Unless otherwise agreed, the mediation shall commence no later than four days after the appointment of the mediator at a place determined by the mediator.

Pre-conference Preparation

3 Each party shall prepare a brief summary, not to exceed three pages, of the issues in dispute with the party's position with respect to those issues.

4 The summaries shall be delivered to the mediator at least two days before the first mediation conference.

Process

5 At the mediation conference, each party should be prepared to make a brief oral statement explaining the party's position.

6 Each party is expected to participate in structured negotiations with the active assistance of the mediator.

7 Each party should bring any documents the party needs in order to effectively negotiate.

8 The documents referred to above will be used by the mediator to understand the position of the party but may be kept confidential on request and, where confidentiality is requested, the documents shall not be revealed to the other party.

9 The mediator may caucus privately with any party during the mediation conference if the mediator considers that it will assist the process.

10 Any party may request a private caucus with the mediator at any time.

11 Each party shall co-operate in good faith with the mediator.

12 Each party shall make every effort to attend a scheduled conference and shall co-operate to avoid any unnecessary delays.

Necessary Parties

13 All parties necessary to the reaching of a final settlement should be present at the mediation conference.

14 The goal of the mediation is to reach an agreed upon settlement and, therefore, all individuals with the appropriate authority to agree to the settlement terms and conditions should be present at the mediation conference.

Presentation

15 Although oral evidence, other than that of the parties to the dispute, is not encouraged at a mediation conference, the mediator may allow persons other than parties to make presentations.

Representation

16 A party may be represented at a mediation conference by counsel or another representative and, where so represented, may request the opportunity to meet privately with counsel or that representative at any time during the mediation conference.

Resort to Other Proceedings

17 Unless it is necessary for a party to initiate or continue arbitral or judicial proceedings to preserve the party's rights, no party shall initiate or continue any arbitral or judicial proceeding in respect of any of the matters in the dispute that is the subject-matter of the mediation, during the mediation process.

Record

18 No transcript shall be kept of the mediation conference.

Confidentiality

19 The mediator, the parties and their counsel or representatives shall keep confidential all matters relating to the mediation, except where disclosure of a settlement agreement is necessary to implement or enforce that agreement.

Adjournment

20 The mediator may adjourn or cancel a mediation conference at any time.

Withdrawal

21 Either party may withdraw from the mediation at any time.

Settlement Agreement

22 When the parties reach a settlement, the parties shall reduce the agreement to writing.

23 Where the parties are unrepresented, the mediator may suggest the parties seek independent legal advice before a settlement agreement is signed.

"Without Prejudice" Proceeding

24 In all respects, the mediation conference is deemed to be a "without prejudice" proceeding.

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