



**BERMUDA
1986 : 34**

ARBITRATION ACT 1986

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[28 July 1986]

[preamble and words of enactment omitted]

PART I

CITATION AND INTERPRETATION

Short title and commencement

1 This Act may be cited as the Arbitration Act 1986.

[this Act was brought into operation on 25 August 1986]

Interpretation

2 In this Act, unless the context otherwise requires—

"arbitration agreement" means an agreement in writing (including an agreement contained in an exchange of letters, telegrams, telex messages or any other means of communication used in general business practice) to submit to arbitration present or future differences capable of settlement by arbitration whether an arbitrator is named therein or not;

"Court" means the Supreme Court;

"court" means any court in Bermuda of competent jurisdiction;

[Section 2 amended by 1993 : 29 effective 29 June 1993]

PART II

CONCILIATION

Appointment of conciliator

3 (1) Where an arbitration agreement provides for the appointment of a conciliator by a person who is not one of the parties and that person refuses to make the appointment or does not make it within the time specified in the agreement or, if no time is so specified, within a reasonable time not exceeding two months of being informed of the existence of the dispute, any party to the agreement may serve the person in question with a written notice to appoint a conciliator (and shall forthwith serve a copy of the notice on the other parties to the agreement) and if the appointment is not made within seven clear days after service of the notice the Court or a judge thereof may, on the application of any party to the agreement, appoint a conciliator who shall have the like powers to act in the conciliation proceedings as if he had been appointed in accordance with the terms of the agreement.

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(2) Where an arbitration agreement provides for the appointment of a conciliator and further provides that the person so appointed shall act as an arbitrator in the event of the conciliation proceedings failing to produce a settlement acceptable to the parties—

- (a) no objection shall be taken to the appointment of such person as an arbitrator, or to his conduct of the arbitration proceedings, solely on the ground that he had acted previously as a conciliator in connexion with some or all of the matters referred to arbitration;
- (b) if such person declines to act as an arbitrator any other person appointed as an arbitrator shall not be required first to act as a conciliator unless a contrary intention appears in the arbitration agreement.

(3) Unless a contrary intention appears therein, an arbitration agreement which provides for the appointment of a conciliator shall be deemed to contain a provision that in the event of the conciliation proceedings failing to produce a settlement acceptable to the parties within three months, or such longer period as the parties may agree to, of the date of the appointment of the conciliator or, where he is appointed by name in the arbitration agreement, of the receipt by him of written notification of the existence of a dispute the proceedings shall thereupon terminate.

(4) If the parties to an arbitration agreement which provides for the appointment of a conciliator reach agreement in settlement of their differences and sign an agreement containing the terms of settlement (hereinafter referred to as the "settlement agreement") the settlement agreement shall, for the purposes of its enforcement, be treated as an award on an arbitration agreement and may, by leave of the Court or a judge thereof, be enforced in the same manner as a judgment or order to the same effect, and where leave is so given, judgment may be entered in terms of the agreement,

PART III

ARBITRATION WITHIN BERMUDA

Effect of Arbitration Agreements, etc.

Authority of arbitrators and umpires to be irrevocable

4 The authority of an arbitrator or umpire appointed by or by virtue of an arbitration agreement shall, unless a contrary intention is expressed in the agreement, be irrevocable except by leave of the Court or a judge thereof,

Death of party

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

(2) The authority of an arbitrator shall not be revoked by the death of any party by whom he was appointed.

(3) Nothing in this section shall be taken to affect the operation of any enactment or rule of law by virtue of which any right of action is extinguished by the death of a person.

Bankruptcy

6 (1) Where it is provided by a term in a contract to which a bankrupt is a party that any differences arising thereout or in connexion therewith shall be referred to arbitration, the said term shall, if the trustee in bankruptcy adopts the contract, be enforceable by or against him so far as relates to any such differences.

(2) Where a person who has been adjudged bankrupt had, before the commencement of the bankruptcy, become a party to an arbitration agreement, and any matter to which the agreement applies requires to be determined in connexion with or for the purposes of the bankruptcy proceedings, then, if the case is one to which subsection (1) does not apply, any other party to the agreement, or, with the consent of the committee of inspection, the trustee in bankruptcy, may apply to the Court for an order directing that the matter in question shall be referred to arbitration in accordance with the agreement, and the Court may, if it is of opinion that, having regard to all the circumstances of the case, the matter ought to be determined by arbitration, make an order accordingly.

Staying court proceedings where there is submission to arbitration

7 If any party to an arbitration agreement, or any person claiming through or under him, commences any legal proceedings in any court against any other party to the agreement, or any person claiming through or under him, in respect of any matter agreed to be referred, any party to those legal proceedings may at any time after appearance, and before delivering any pleadings or taking any other steps in the proceedings, apply to that court to stay the proceedings, and that court or a judge thereof, if satisfied that there is no sufficient reason why the matter should not be referred in accordance with the agreement, and that the applicant was, at the time when the proceedings were commenced, and still remains ready and willing to do all things necessary to the proper conduct of the arbitration, may make an order staying the proceedings.

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Staying court proceedings where party proves arbitration agreement

8 (1) If any party to an arbitration agreement to which this section applies, or any person claiming through or under him, commences any legal proceedings in any court against any other party to the agreement, or any person claiming through or under him, in respect of any matter agreed to be referred, any party to the proceedings may at any time after appearance, and before delivering any pleadings or taking any other steps in the proceedings, apply to the court to stay the proceedings; and the court, unless satisfied that the arbitration agreement is null and void, inoperative or incapable of being performed or that there is not in fact any dispute between the parties with regard to the matter agreed to be referred, shall make an order staying the proceedings.

(2) Subsection (1)—

- (a) does not apply in relation to a domestic arbitration agreement, but
- (b) applies, in relation to other arbitration agreements, instead of section 7.

(3) In this section "domestic arbitration agreement" means an arbitration agreement which does not provide, expressly or by implication, for arbitration in a State or territory other than Bermuda and to which neither—

- (a) an individual who is a national of, or habitually resident in, any State or territory other than Bermuda; nor
- (b) a body corporate which is incorporated in, or whose central management and control is exercised in, any State or territory other than Bermuda; nor
- (c) an exempted undertaking as defined in the Companies Act 1981 [*title 17 item 5*],

is a party at the time the proceedings are commenced.

Consolidation of arbitrations

9 (1) Where in relation to two or more arbitration proceedings in respect of identical parties it appears to the Court—

- (a) that some common question of law or fact arises in both or all of them, or
- (b) that the rights to relief claimed therein are in respect of or arise out of the same transaction or series of transactions, or
- (c) that for some other reason it is desirable to make an order under this section,

the Court may order those arbitration proceedings to be consolidated on such terms as it thinks just or may order them to be heard at the same time, or one immediately after another, or may order any of them to be stayed until after determination of any other of them.

(2) Where the Court orders arbitration proceedings to be consolidated under subsection (1) and all parties to the consolidated arbitration proceedings are in agreement as to the choice of arbitrator or umpire for those proceedings the same shall be appointed by the Court but if all parties cannot agree the Court shall have power to appoint an arbitrator or umpire for those proceedings.

Reference of interpleader issues to arbitration

10 Where relief by way of interpleader is granted and it appears to the Court that the claims in question are matters to which an arbitration agreement to which the claimants are parties, applies, the Court may direct the issue between the claimants to be determined in accordance with the agreement.

Arbitrators and Umpires

When reference is to a single arbitrator

11 Unless a contrary intention is expressed therein, every arbitration agreement shall, if no other mode of reference is provided, be deemed to include a provision that the reference shall be to a single arbitrator.

Power of parties in certain cases to supply vacancy

12 Where an arbitration agreement provides that the reference shall be to two arbitrators, one to be appointed by each party, then, unless a contrary intention is expressed therein—

- (a) if either of the appointed arbitrators refuses to act, or is incapable of acting, or dies, the party who appointed him may appoint a new arbitrator in his place;
- (b) if, on such a reference, one party fails to appoint an arbitrator, either originally, or by way of substitution as aforesaid, for fourteen clear days after the other party, having appointed his arbitrator, has served the party making default with notice to make the appointment, the party who has appointed an arbitrator may appoint that arbitrator to act as sole arbitrator in the reference and his award shall be binding on both parties as if he had been appointed by consent:

Provided that the Court or a judge thereof may set aside any appointment made in pursuance of this section.

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Umpires

13 (1) Unless a contrary intention is expressed therein, every arbitration agreement shall, where the reference is to two arbitrators, be deemed to include a provision that the two arbitrators may appoint an umpire at any time after they are themselves appointed and shall do so forthwith if they cannot agree.

(2) Unless a contrary intention is expressed therein, every arbitration agreement shall, where such a provision is applicable to the reference, be deemed to include a provision that if the arbitrators have delivered to any party to the arbitration agreement, or to the umpire, a notice in writing stating that they cannot agree, the umpire may forthwith enter on the reference in lieu of the arbitrators.

(3) At any time after the appointment of an umpire, however appointed, the Court may, on the application of any party to the reference and notwithstanding anything to the contrary in the arbitration agreement, order that the umpire shall enter upon the reference in lieu of the arbitrators and as if he were a sole arbitrator.

Majority award of three arbitrators

14 Unless the contrary intention is expressed in the arbitration agreement, where there is a reference to three arbitrators, the award of any two of the arbitrators shall be binding and in the event that no two of the arbitrators agree to the award, the award of the arbitrator appointed by the arbitrators to be chairman shall be binding.

Power of Court in certain cases to appoint an arbitrator or umpire

15 (1) In any of the following cases:

- (a) where an arbitration agreement provides that the reference shall be to a single arbitrator, and all the parties do not, after differences have arisen, concur in the appointment of an arbitrator;
- (b) if an appointed arbitrator refuses to act, or is incapable of acting, or dies, and the arbitration agreement does not show that it was intended that the vacancy should not be supplied and the parties do not supply the vacancy;
- (c) where the parties or two arbitrators are required or are at liberty to appoint an umpire or third arbitrator and do not appoint him;
- (d) where an appointed umpire or third arbitrator refuses to act, or is incapable of acting, or dies, and the arbitration agreement does not show that it was intended that the vacancy should not be supplied, and the parties or arbitrators do not supply the vacancy,

any party may serve the other parties or the arbitrators, as the case may be, with a written notice to appoint, or, as the case may be, concur in appointing, an arbitrator, umpire or third arbitrator, and if the appointment is not made within fourteen clear days after the service of the notice, the Court or a judge thereof may, on application by the party who gave the notice, appoint an arbitrator, umpire or third arbitrator who shall have the like powers to act in the reference and make an award as if he had been appointed by consent of all parties.

(2) Where—

- (a) an arbitration agreement provides for the appointment of an arbitrator or umpire by a person who is neither one of the parties nor an existing arbitrator (whether the provision applies directly or in default of agreement by the parties or otherwise); and
- (b) that person refuses to make the appointment or does not make it within the time specified in the agreement or, if no time is so specified, within a reasonable time,

any party to the agreement may serve the person in question with a written notice to appoint an arbitrator or umpire and, if the appointment is not made within fourteen clear days after the service of the notice, the Court or a judge thereof may, on the application of the party who gave the notice, appoint an arbitrator or umpire who shall have the like powers to act in the reference and make an award as if he had been appointed in accordance with the terms of the agreement.

Reference to official referee

16 Where an arbitration agreement provides that the reference shall be to an official referee, any official referee to whom application is made shall, subject to any order of the Court or a judge thereof as to transfer or otherwise, hear and determine the matters agreed to be referred.

Power of judges to take arbitrations

17 (1) Subject to the following provisions of this section, a judge, magistrate or public officer, may, if in all the circumstances he thinks fit, accept appointment as a sole or joint arbitrator, or as umpire, by or by virtue of an arbitration agreement.

(2) A judge or a magistrate shall not accept appointment as an arbitrator or umpire unless the Chief Justice has informed him that he can be made available to do so.

(3) A public officer shall not accept appointment as an arbitrator or umpire unless the Attorney General has informed him that he can be made available to do so.

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(4) The fees payable (if any) for the services of a judge, magistrate or public officer as an arbitrator or umpire shall be paid into the Consolidated Fund.

(5) The Schedule shall have effect for modifying, and in certain cases replacing, provisions of this Act in relation to arbitration by a judge as a sole arbitrator or umpire and, in particular, for substituting the Court of Appeal for the Court in provisions whereby arbitrators and umpires, their proceedings and awards, are subject to control and review by the Court.

(6) Subject to section 32(3), any jurisdiction which is exercisable by the Court in relation to arbitrators and umpires otherwise than under this Act shall, in relation to a judge appointed as a sole arbitrator or umpire, be exercisable instead by the Court of Appeal.

Conduct of Proceedings, Witnesses, etc.

Proper law of contract

18 An agreement out of which the dispute or arbitration arises shall, if the arbitration is held in Bermuda, be governed by the municipal law of Bermuda unless—

- (a) the agreement expresses a contrary intention;
- (b) a subsequent agreement entered into by all the parties to the dispute or arbitration concerned expresses a contrary intention; or
- (c) the parties agree to leave the arbitrator to determine the proper law.

Procedural law

19 Unless a contrary intention is expressed in an arbitration agreement, where an arbitration is held in Bermuda the arbitration proceedings shall be governed by the procedural law of Bermuda.

Conduct of proceedings, witnesses, etc.

20 (1) Unless a contrary intention is expressed therein, every arbitration agreement shall, where such a provision is applicable to the reference, be deemed to contain a provision that the parties to the reference, and all persons claiming through them respectively, shall, subject to any legal objection, submit to be examined by the arbitrator or umpire, on oath or affirmation, in relation to the matters in dispute, and shall, subject as aforesaid, produce before the arbitrator or umpire all documents within their possession or power respectively which may be required or called for, and do all other things which during the proceedings on the reference the arbitrator or umpire may require.

(1A) For the purposes of subsection (1) the examination of witnesses on oath or affirmation and the administering of oaths or the

taking of affirmations of witnesses in the arbitration may be conducted by appropriate electronic means.

(2) Unless a contrary intention is expressed therein, every arbitration agreement shall, where such a provision is applicable to the reference, be deemed to contain a provision that the witnesses on the reference shall, if the arbitrator or umpire thinks fit, be examined on oath or affirmation.

(3) An arbitrator or umpire shall, unless a contrary intention is expressed in the arbitration agreement, have power to administer oaths to, or take the affirmations of, the parties to and witnesses on a reference under the agreement and shall also have power to adjourn the arbitration proceedings to such place as he thinks fit.

(4) Any party to a reference under an arbitration agreement may sue out a writ of *subpoena ad testificandum* or a writ of *subpoena duces tecum* but no person shall be compelled under any such writ to produce any document which he could not be compelled to produce on the trial of an action, and the Court or a judge thereof may order that a writ of *subpoena ad testificandum* or of *subpoena duces tecum* shall issue to compel the attendance before an arbitrator or umpire of a witness wherever he may be within Bermuda.

(5) The Court or a judge thereof may also order that a writ of *habeas corpus* shall issue to bring up a prisoner for examination before an arbitrator or umpire.

(6) The Court shall have, for the purpose of and in relation to a reference, the same power of making orders in respect of—

- (a) discovery of documents and interrogatories;
- (b) the giving of evidence by affidavit;
- (c) payment into court;
- (d) examination on oath of any witness before an officer of the Court or any other person, and the issue of a commission or request for the examination of a witness out of the jurisdiction;
- (e) the preservation, interim custody or sale of any goods which are the subject matter of the reference;
- (f) securing the amount in dispute in the reference;
- (g) the detention, preservation or inspection of any property or thing which is the subject of the reference or as to which any question may arise therein, and authorizing for any of the purposes aforesaid any person to enter upon or into any land or building in the possession of any party to the reference, or authorizing any samples to

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be taken or any observation to be made or experiment to be tried which may be necessary or expedient for the purpose of obtaining full information or evidence; and

(h) interim injunctions or the appointment of a receiver,

as it has for the purpose of and in relation to an action or matter in the Court:

Provided that nothing in this subsection shall be taken to prejudice any power which may be vested in an arbitrator or umpire of making orders with respect to any of the matters aforesaid.

[Section 20(1A) inserted by 1999:26 s.33 & Sch effective 4 October 1999]

Provisions as to Awards

Time for making award

21 (1) Subject to section 33(2) and anything to the contrary in the arbitration agreement, an arbitrator or umpire shall have power to make an award at any time.

(2) The time, if any, limited for making an award, whether under this Act or otherwise, may from time to time be enlarged by order of the Court or a judge thereof, whether that time has expired or not.

(3) The Court may, on the application of any party to a reference, remove an arbitrator or umpire who fails to use all reasonable dispatch in entering on and proceeding with the reference and making an award, and an arbitrator or umpire who is removed by the Court under this subsection shall not be entitled to receive any remuneration in respect of his services.

(4) For the purposes of subsection (3) "proceeding with the reference" includes, in a case where two arbitrators are unable to agree, giving notice of that fact to the parties and to the umpire.

Interim awards

22 Unless a contrary intention is expressed therein, every arbitration agreement shall, where such a provision is applicable to the reference, be deemed to contain a provision that the arbitrator or umpire may, if he thinks fit, make an interim award, and any reference in this Part to an award includes a reference to an interim award.

Specific performance

23 Unless a contrary intention is expressed therein, every arbitration agreement shall, where such a provision is applicable to the reference, be deemed to contain a provision that the arbitrator or umpire shall have the [*sic*] power as the Court to order specific performance of any contract other than a contract relating to land or any interest in land.

Awards to be final

24 Unless a contrary intention is expressed therein, every arbitration agreement shall, where such a provision is applicable to the reference, be deemed to contain a provision that the award to be made by the arbitrator or umpire shall be final and binding on the parties and the persons claiming under them respectively.

Power to correct slips

25 Unless a contrary intention is expressed in the arbitration agreement, the arbitrator or umpire shall have power to correct in an award any clerical mistake or error arising from any accidental slip or omission.

Costs, Fees and Interest

Costs

26 (1) Unless a contrary intention is expressed therein, every arbitration agreement shall be deemed to include a provision that the costs of the reference and award shall be in the discretion of the arbitrator or umpire, who may direct to and by whom and in what manner those costs or any part thereof shall be paid, and may tax or settle the amount of costs to be so paid or any part thereof, and may award costs to be paid as between attorney and client.

(2) Any costs directed by an award to be paid shall, unless the award otherwise directs, be taxable in the Court.

(3) Any provision in an arbitration agreement to the effect that the parties or any party thereto shall in any event pay their or his own costs of the reference or award or any part thereof shall be void, and this Part shall, in the case of an arbitration agreement containing any such provision, have effect as if that provision were not contained therein:

Provided that nothing in this subsection shall invalidate such a provision when it is a part of an agreement to submit to arbitration a dispute which has arisen before the making of that agreement.

(4) If no provision is made by an award with respect to the costs of the reference, any party to the reference may, within fourteen days of the publication of the award or such further time as the Court or a judge thereof may direct, apply to the arbitrator for an order directing by and to whom those costs shall be paid, and thereupon the arbitrator shall, after hearing any party who may desire to be heard, amend his award by adding thereto such direction as he may think proper with respect to the payment of the costs of the reference.

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Taxation of arbitrator's or umpire's fees

27 (1) If in any case an arbitrator or umpire refuses to deliver his award except on payment of the fees demanded by him, the Court may, on an application for the purpose, order that the arbitrator or umpire shall deliver the award to the applicant on payment into court by the applicant of the fees demanded, and further that the fees demanded shall be taxed by the taxing officer and that out of the money paid into court there shall be paid out to the arbitrator or umpire by way of fees such sum as may be found reasonable on taxation and that the balance of the money, if any, shall be paid out to the applicant.

(2) An application for the purposes of this section may be made by any party to the reference unless the fees demanded have been fixed by a written agreement between him and the arbitrator or umpire.

(3) A taxation of fees under this section may be reviewed in the same manner as a taxation of costs.

(4) The arbitrator or umpire shall be entitled to appear and be heard on any taxation or review of taxation under this section.

Interest on awards

28 (1) A sum directed to be paid by an award shall, unless the award otherwise directs, carry interest as from the date of the award and at the same rate as a judgment debt.

(2) An arbitrator shall have the power, unless the award otherwise directs, to award interest at such rate as he may determine, up to the date of his award.

Judicial Review, Determination of Preliminary Point of Law, Exclusion Agreements, Interlocutory Orders, Remission and Setting aside and enforcement of Awards, etc.

Judicial review of arbitration awards

29 (1) Without prejudice to the right of appeal conferred by subsection (2), the Supreme Court or the Court of Appeal shall not have jurisdiction to set aside or remit an award on an arbitration agreement on the ground of errors of fact or law on the face of the award.

(2) Subject to subsection (3), an appeal shall lie to the Court of Appeal on any question of law arising out of an award made on an arbitration agreement; and on the determination of such an appeal the Court of Appeal may by order—

(a) confirm, vary or set aside the award; or

(b) remit the award to the reconsideration of the arbitrator or umpire together with the Court's opinion on the question of law which was the subject of the appeal;

and where the award is remitted under paragraph (b) the arbitrator or umpire shall, unless the order otherwise directs, make his award within three months after the date of the order.

(3) An appeal under this section may be brought by any of the parties to the reference—

- (a) with the consent of all the other parties to the reference; or
- (b) subject to section 31, with the leave of the Supreme Court.

(4) The Supreme Court shall not grant leave under subsection (3)(b) unless it considers that, having regard to all the circumstances, the determination of the question of law concerned could substantially affect the rights of one or more of the parties to the arbitration agreement; and the Court may make any leave which it gives conditional upon the applicant complying with such conditions as it considers appropriate.

(5) Subject to subsection (6), if an award is made and, on an application made by any of the parties to the reference—

- (a) with the consent of all the other parties to the reference; or
- (b) subject to section 31, with the leave of the Supreme Court,

it appears to the Supreme Court that the award does not or does not sufficiently set out the reasons for the award, the Supreme Court may order the arbitrator or umpire concerned to state the reasons for his award in sufficient detail to enable the Court of Appeal, should an appeal be brought under this section, to consider any question of law arising out of the award.

(6) Where an award is made without any reason being given, the Supreme Court shall not make an order under subsection (5) unless it is satisfied—

- (a) that before the award was made one of the parties to the reference gave notice to the arbitrator or umpire concerned that a reasoned award would be required; or
- (b) that there is some special reason why such a notice was not given.

(7) Where the award of an arbitrator or umpire is varied on appeal, the award as varied shall have effect (except for the purposes of this section) as if it were the award of the arbitrator or umpire.

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Determination of preliminary point of law by Court

30 (1) Subject to subsection (2) and section 31, on an application to the Supreme Court made by any of the parties to a reference—

- (a) with the consent of an arbitrator who has entered on the reference or, if an umpire has entered on the reference, with his consent, or
- (b) with the consent of all the other parties,

the Supreme Court shall have jurisdiction to determine any question of law arising in the course of the reference.

(2) The Supreme Court shall not entertain an application under subsection (1)(a) with respect to any question of law unless it is satisfied that—

- (a) the determination of the application might produce substantial savings in costs to the parties; and
- (b) the question of law is one in respect of which leave to appeal would be likely to be given under section 29(3)(b).

(3) A decision of the Supreme Court under subsection (1) shall be deemed to be a judgment of the Court within the meaning of section 12 of the Court of Appeal Act 1964 [*title 8 item 4*] (appeals to the Court of Appeal), but no appeal shall lie from such a decision unless the Supreme Court or the Court of Appeal gives leave.

(4) Proceedings in the Supreme Court or the Court of Appeal under this section and section 29 may, if the Supreme Court or the Court of Appeal consider it necessary or expedient in circumstances where publicity would prejudice the interest of justice, be conducted otherwise than in open court.

Exclusion agreements affecting rights under sections 29 and 30

31 (1) Subject to the following provisions of this section and section 32—

- (a) the Supreme Court shall not, under section 29(3)(b), grant leave to appeal with respect to a question of law arising out of an award; and
- (b) the Supreme Court shall not, under section 29(5)(b), grant leave to make an application with respect to an award; and
- (c) no application may be made under section 30(1)(a) with respect to a question of law,

if the parties to the reference in question have entered into an agreement in writing (in this section referred to as an "exclusion agreement") which excludes the right of appeal under section 29 in relation to that award

or, in a case falling within paragraph (c), in relation to an award to which the determination of the question of law is material.

(2) If the parties to an exclusion agreement subsequently enter into agreement in writing to revoke the exclusion agreement subsection (1) shall cease to apply to the reference or references in question until such time as a further exclusion agreement is entered into by the parties.

(3) An exclusion agreement may be expressed so as to relate to a particular award, to awards under a particular reference or to any other description of awards, whether arising out of the same reference or not; and an agreement may be an exclusion agreement for the purposes of this section whether it is entered into before or after the passing of this Act and whether or not it forms part of an arbitration agreement.

(4) Where—

- (a) an arbitration agreement, other than a domestic arbitration agreement, provides for disputes between the parties to be referred to arbitration; and
- (b) a dispute to which the agreement relates involves the question whether a party has been guilty of fraud; and
- (c) the parties have entered into an exclusion agreement which is applicable to any award made on the reference of that dispute,

then, except in so far as the exclusion agreement otherwise provides, the Supreme Court shall not exercise its powers under section 35(2) in relation to that dispute.

(5) Except as provided by subsection (1), sections 29 and 30 shall have effect notwithstanding anything in any agreement purporting—

- (a) to prohibit or restrict access to the Supreme Court or the Court of Appeal; or
- (b) to restrict the jurisdiction of the Supreme Court or the Court of Appeal; or
- (c) to prohibit or restrict the making of a reasoned award.

(6) An exclusion agreement shall be of no effect in relation to an award made on, or a question of law arising in the course of a reference under a statutory arbitration, that is to say, such an arbitration as is referred to in section 43(1).

(7) An exclusion agreement shall be of no effect in relation to an award made on, or a question of law arising in the course of a reference under an arbitration agreement which is a domestic arbitration agreement unless the exclusion agreement is entered into after the

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commencement of the arbitration in which the award is made or, as the case may be, in which the question of law arises.

(8) In this section "domestic arbitration agreement" means an arbitration agreement which does not provide, expressly or by implication, for arbitration in a State or territory other than Bermuda and to which neither—

- (a) an individual who is a national of, or habitually resident in, any State or territory other than Bermuda; nor
- (b) a body corporate which is incorporated in, or whose central management and control is exercised in, any State or territory other than Bermuda; nor
- (c) an exempted undertaking as defined in the Companies Act 1981 [*title 17 item 5*],

is a party at the time the arbitration agreement is entered into.

Interlocutory orders

32 (1) If any part to a reference under an arbitration agreement fails within the time specified in the order or, if no time is so specified, within a reasonable time to comply with an order made by the arbitrator or umpire in the course of the reference, then, on the application of the arbitrator or umpire or of any party to the reference, the Court may make an order extending the powers of the arbitrator or umpire as mentioned in subsection (2).

(2) If an order is made by the Court under this section, the arbitrator or umpire shall have power, to the extent and subject to any conditions specified in that order, to continue with the reference in default of appearance or of any other act by one of the parties in like manner as a judge of the Court might continue with proceedings in that court where a party fails to comply with an order of that court or a requirement of rules of court.

(3) Section 17(6) shall not apply in relation to the power of the Court to make an order under this section, but in the case of a reference to a judge-arbitrator or judge-umpire that power shall be exercisable as in the case of any other reference to arbitration and also by the judge-arbitrator or judge-umpire himself.

(4) Anything done by a judge-arbitrator or judge-umpire in the exercise of the power conferred by subsection (3) shall be done by him in his capacity as judge of the Court and have effect as if done by that Court.

(5) The preceding provisions of this section have effect notwithstanding anything in any agreement but do not derogate from any powers conferred on an arbitrator or umpire, whether by an arbitration agreement or otherwise.

(6) In this section "judge-arbitrator" and "judge-umpire" have the same meaning as in the Second Schedule.

Power to remit award

33 (1) In all cases of reference to arbitration the Court or a judge thereof may from time to time remit the matters referred, or any of them, to the arbitrator or umpire for reconsideration.

(2) Where an award is remitted, the arbitrator or umpire shall, unless the order otherwise directs, make his award within three months after the date of the order.

Removal of arbitrator and setting aside of award

34 (1) Where an arbitrator or umpire has misconducted himself or the proceedings, the Court may remove him.

(2) Where an arbitrator or umpire has misconducted himself or the proceedings, or an arbitration or award has been improperly procured, the Court may set the award aside.

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

Power of Court to give relief where arbitrator is not impartial or the dispute involves question of fraud

35 (1) Where an agreement between any parties provides that disputes which may arise in the future between them shall be referred to an arbitrator named or designated in the agreement, and after a dispute has arisen any party applies, on the ground that the arbitrator so named or designated is not or may not be impartial, for leave to revoke the authority of the arbitrator or for an injunction to restrain any other party or the arbitrator from proceeding with the arbitration, it shall not be a ground for refusing the application that the said party at the time when he made the agreement knew, or ought to have known, that the arbitrator, by reason of his relation towards any other party to the agreement or of his connexion with the subject referred, might not be capable of impartiality.

(2) Where an agreement between any parties provides that disputes which may arise in the future between them shall be referred to arbitration, and a dispute which so arises involves the question whether any such party has been guilty of fraud, the Court shall, so far as may be necessary to enable that question to be determined by the Court, have power to order that the agreement shall cease to have effect and power to give leave to revoke the authority of any arbitrator or umpire appointed by or by virtue of the agreement.

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(3) Where by virtue of this section the Court has power to order that an arbitration agreement shall cease to have effect or to give leave to revoke the authority of an arbitrator or umpire, the Court may refuse to stay any action brought in breach of the agreement.

Power of Court where arbitrator is removed or authority of arbitrator is revoked

36 (1) Where an arbitrator, not being a sole arbitrator, or two or more arbitrators, not being all the arbitrators, or an umpire who has not entered on the reference is or are removed by the Court, the Court may, on the application of any party to the arbitration agreement, appoint a person or persons to act as arbitrator or arbitrators or umpire in place of the person or persons so removed.

(2) Where the authority of an arbitrator or arbitrators or umpire is revoked by leave of the Court, or a sole arbitrator or all the arbitrators or an umpire who has entered on the reference is or are removed by the Court, the Court may, on the application of any party to the arbitration agreement, either—

(a) appoint a person to act as sole arbitrator in place of the person or person removed; or

(b) order that the arbitration agreement shall cease to have effect with respect to the dispute referred.

(3) A person appointed under this section by the Court as an arbitrator or umpire shall have the like power to act in the reference and to make an award as if he had been appointed in accordance with the terms of the arbitration agreement.

(4) Where it is provided, whether by means of a provision in the arbitration agreement or otherwise, that an award under an arbitration agreement shall be a condition precedent to the bringing of an action with respect to any matter to which the agreement applies, the Court, if it orders, whether under this section or under any other enactment, that the agreement shall cease to have effect as regards any particular dispute, may further order that the provision making an award a condition precedent to the bringing of an action shall also cease to have effect as regards that dispute.

Enforcement of award

37 An award on an arbitration agreement may, by leave of the Court or a judge thereof, be enforced in the same manner as a judgment or order to the same effect, and where leave is so given, judgment may be entered in terms of the award.

Miscellaneous

Power of Court to extend time for commencing arbitration proceedings

38 Where the terms of an agreement to refer future disputes to arbitration provide that any claims to which the agreement applies shall be barred unless notice to appoint an arbitrator is given or an arbitrator is appointed or some other step to commence arbitration proceedings is taken within a time fixed by the agreement, and a dispute arises to which the agreement applies, the Court, if it is of opinion that in the circumstances of the case undue hardship would otherwise be caused, and notwithstanding that the time so fixed has expired, may, on such terms, if any, as the justice of the case may require, but without prejudice to the provisions of any enactment limiting the time for the commencement of arbitration proceedings, extend the time for such period as it thinks proper.

Delay in prosecuting claims

39 (1) In every arbitration agreement, unless the contrary be expressly provided therein, there is an implied term that in the event of a difference arising which is capable of settlement by arbitration it shall be the duty of the claimant to exercise due diligence in the prosecution of his claim.

(2) Where there has been undue delay by a claimant in instituting or prosecuting his claim pursuant to an arbitration agreement, then, on the application of the arbitrator or umpire or of any party to the arbitration proceedings, the Court may make an order terminating the arbitration proceedings and prohibiting the claimant from commencing further arbitration proceedings in respect of any matter which was the subject of the terminated proceedings.

(3) The Court shall not make an order under subsection (2) unless it is satisfied that—

- (a) the delay has been intentional and vexatious; or
- (b) there has been inordinate and inexcusable delay on the part of the claimant or his advisers; and that—
 - (i) the delay will give rise to a substantial risk that it is not possible to have a fair trial of the issues in the arbitration proceedings, or
 - (ii) the delay is such as is likely to cause or to have caused serious prejudice to the other parties to the arbitration proceedings either as between themselves and the claimant or between each other or between them and a third party.

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(4) A decision of the Court under subsection (2) shall be deemed to be a judgment of the Court within the meaning of section 12 of the Court of Appeal Act 1964 [*title 8 item 4*] (appeals to the Court of Appeal) but no appeal shall lie from such a decision unless the Court or the Court of Appeal gives leave.

Terms as to costs

40 Any order made under this Part may be made on such terms as to costs or otherwise (including, the case of an order under section 39, the remuneration of the arbitrator in respect of his services) as the authority making the order thinks just.

Commencement of arbitration

41 (1) An arbitration shall, unless otherwise agreed, be deemed to be commenced when one party to the arbitration agreement serves on the other party or parties a notice requiring him or them to appoint or concur in appointing an arbitrator, or, where the arbitration agreement provides that the reference shall be to a person named or designated in the agreement, requiring him or them to submit the dispute to the person so named or designated.

(2) Any such notice as is mentioned in subsection (1) may be served either—

- (a) by delivering it to the person on whom it is to be served;
or
- (b) by leaving it at the usual or last known place of abode in Bermuda of that person and in the case of a company at its registered office; or
- (c) by sending it by post in a registered letter addressed to that person at his usual or last known place of abode in Bermuda,

as well as in any other manner provided in the arbitration agreement, and where a notice is sent by post in manner prescribed by paragraph (c), service thereof shall, unless the contrary is proved, be deemed to have been effected at the time at which the letter would have been delivered in the ordinary course of post.

Crown to be bound

42 This Part shall apply to any arbitration to which the Crown is a party.

Application of Part III to statutory arbitrations

43 (1) Subject to section 44, this Part, except the provisions thereof specified in subsection (2), shall apply to every arbitration under any other enactment other than the Labour Relations Act 1975 [*title 18 item 1*], whether passed before or after 25 August 1986, as if the arbitration were pursuant to an arbitration agreement and as if that

other enactment were an arbitration agreement, except in so far as this Act is inconsistent with that other enactment or with any rules or procedure authorized or recognized thereby.

(2) The provisions referred to in subsection (1) are sections 5(1), 6, 10, 26(3), 35 and 38.

Transitional Part III

44 [omitted]

PART IV

[Repealed by 1993 : 29 effective 29 June 1993]

PART V

REPEALS

Repeals

51 [omitted]

[The original First Schedule repealed by 1993 : 29 effective 29 June 1993]

SCHEDULE (Sections 17(5), 32(6))

APPLICATION OF THIS ACT TO JUDGE-ARBITRATORS

1 In this Schedule "judge-arbitrator" and "judge-umpire" mean a judge appointed as sole arbitrator or, as the case may be, as umpire by or by virtue of an arbitration agreement.

2 In section 4 (authority of arbitrator to be irrevocable except by leave of the Court), in its application to a judge-arbitrator or judge-umpire, the Court of Appeal shall be substituted for the Court.

3 The power of the Court under section 12 (vacancy among arbitrators supplied by parties) to set aside the appointment of an arbitrator shall not be exercisable in the case of the appointment of a judge-arbitrator.

4 Section 13(3) (power of Court to order umpire to enter on reference as sole arbitrator) shall not apply to a judge-umpire; but a judge-umpire may, on the application of any party to the reference and notwithstanding anything to the contrary in the arbitration agreement, enter on the reference in lieu of the arbitrators and as if he were the sole arbitrator.

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5 (1) The powers conferred on the Court or a judge thereof by section 20(4), (5) and (6) (summoning of witnesses, interlocutory orders, etc.) shall be exercisable in the case of a reference to a judge-arbitrator or judge-umpire as in the case of any other reference to arbitration, but shall in any such case be exercisable also by the judge-arbitrator or judge-umpire himself.

(2) Anything done by an arbitrator or umpire in the exercise of powers conferred by this paragraph shall be done by him in his capacity as judge of the Court and have effect as if done by that court; but nothing in this paragraph prejudices any power vested in the arbitrator or umpire in his capacity as such.

6 Section 21 (2) and (3) (extension of time for making award; provision for ensuring that reference is conducted with reasonable dispatch) shall not apply to a reference to a judge-arbitrator or judge-umpire; but a judge-arbitrator or judge-umpire may enlarge any time limited for making his award (whether under this Act or otherwise), whether that time has expired or not.

7 Section 26(4) (provision enabling a party in an arbitration to obtain an order for costs) shall apply, in the case of a reference to a judge-arbitrator, with the omission of the following—

", within fourteen days of the publication of the award or such further time as the Court or a judge thereof may direct,".

8 (1) Section 27 (power of Court to order delivery of award on payment of arbitrator's fees into court) shall not apply with respect to the award of a judge-arbitrator or judge-umpire.

(2) A judge-umpire may withhold his award until the fees payable to the arbitrators have been paid into the Court,

(3) Arbitrators' fees paid into court under this paragraph shall be paid out in accordance with rules of court, subject to the right of any party to the reference to apply (in accordance with the rules) for any fee to be taxed, not being a fee which has been fixed by written agreement between him and the arbitrator.

(4) A taxation under this paragraph may be reviewed in the same manner as a taxation of the costs of an award.

(5) On a taxation under this paragraph, or on a review thereof, an arbitrator shall be entitled to appear and be heard.

9 In sections 33 and 34 (remission and setting aside of awards, etc.), in their application to a judge-arbitrator or judge-umpire, and to a reference to him and to his award thereon, the Court of Appeal shall be substituted for the Court.

10 (1) Section 35(2) (removal of issue of fraud for trial in the Court) shall not apply to an agreement under or by virtue of which a

judge-arbitrator or judge-umpire has been appointed; nor shall leave be given by the Court under that subsection to revoke the authority of a judge-arbitrator or judge-umpire.

(2) Where, on a reference of a dispute to a judge-arbitrator or judge-umpire, it appears to the judge that the dispute involves the question whether a party of the dispute has been guilty of fraud, he may, so far as may be necessary to enable that question to be determined by the Court, order that the agreement by or by virtue of which he was appointed shall cease to have effect and revoke his authority as arbitrator or umpire.

(3) An order made by a judge-arbitrator or judge-umpire under this paragraph shall have effect as if made by the Court.

11 Section 36 (powers of Court on removal of arbitrator or revocation of arbitration agreement) shall be amended as follows—

- (a) after the words "the Court" where they first occur in subsection (1), where they occur for the first and second time in subsection (2), and in subsections (3) and (4), there shall be inserted the words "or the Court of Appeal"; and
- (b) after those words where they occur for the second time in subsection (1) and for the third time in subsection (2) there shall be inserted the words "or the Court of Appeal, as the case may be".

12 The leave required by section 37 (enforcement in Court) for an award on an arbitration agreement to be enforced as mentioned in that section may, in the case of an award by a judge-arbitrator or a judge-umpire, be given by the judge-arbitrator or judge-umpire himself.

[Schedule amended by 1993 : 29 effective 29 June 1993]

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[Amended by:
1993 : 29
1999 : 26]