

ABILL

ENTITLED

AN ACT to Facilitate domestic and international trade and commerce by encouraging the use of arbitration as a method of resolving disputes; to repeal the Arbitration Act, 1900; and for connected matters.

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BE IT ENACTED by The Queen's Most Excellent Majesty, by and with the advice and consent of the Senate and House of Representatives of Jamaica, and by the authority of the same, as follows:—

PART I—*Preliminary*

1. This Act may be cited as the Arbitration Act, 2017, and shall come into operation on a day to be appointed by the Minister by notice published in the *Gazette*.

Short title
and
commence-
ment.

Scope of
application.

2.—(1) This Act applies to domestic arbitration and international commercial arbitration, subject to any agreement in force between Jamaica and any other State or States.

(2) The provisions of this Act, except sections 11, 12, 28, 29, 30, 56 and 57 apply only if the place of arbitration is in Jamaica.

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

Interpretation.

3.—(1) In this Act, unless the context otherwise requires—

“arbitral tribunal” means a sole arbitrator or a panel of arbitrators;

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

“arbitration agreement” means an agreement by 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;

“arbitrator” includes an umpire;

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

“commercial” includes matters arising from all relationships of a commercial nature, whether contractual or not including the following relationships—

- (a) any trade transaction for the supply or exchange of goods or services;
- (b) distribution agreement;
- (c) commercial representation or agency;

- (d) factoring;
- (e) leasing;
- (f) construction of works;
- (g) consulting;
- (h) engineering;
- (i) licensing;
- (j) investment;
- (k) financing;
- (l) banking;
- (m) insurance;
- (n) exploitation agreement or concession;
- (o) joint venture and other forms of industrial or business cooperation;
- (p) carriage of goods or passengers by air, sea, rail or road;

“Court” means the Supreme Court of Judicature of Jamaica;

“data message” means information generated, sent, received or stored by electronic, magnetic, optical or similar means, including, but not limited to, electronic data interchange, electronic mail, telegram, telex or telecopy;

“dispute” includes a difference between parties;

“domestic arbitration” means an arbitration whether or not of a commercial nature relating to disputes arising out of a legal relationship, whether contractual or not, where a party is—

- (a) an individual who is a national of, or habitually resident in Jamaica;
- (b) a body corporate which is incorporated in Jamaica; or

- (c) an association or a body of individuals whose central management and control is exercised in Jamaica;

“electronic communication” means any communication that the parties make by means of data messages;

“foreign representative” means a person who is not ordinarily resident in or a citizen of Jamaica and who has been appointed by a party to represent that party in an international arbitration;

“international arbitration” means any arbitration where—

- (a) the parties to the arbitration agreement have, at the time of the conclusion of that agreement, their places of business in different States;
- (b) one of the following places is 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,

and for the purposes of paragraphs (a) to (c)—

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

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

“mediator” means a person who facilitates and coordinates negotiations by parties to mediation proceedings in a dispute with a view to resolving or reducing the extent of the dispute;

“party” means a party to an arbitration agreement;

“UNCITRAL Model Law” means the UNCITRAL Model Law on International Commercial Arbitration adopted by the United Nations Commission on International Trade Law done at Vienna, Austria on the 21st day of June, 1985, and the amendments adopted by the Commission, at New York, United States of America on the 7th day of July, 2006, and any amendments thereto as adopted from time to time by the Government of Jamaica.

(2) Where a provision of this Act, except section 31, leaves the parties free to determine a certain issue, the freedom includes the right of the parties to authorize a third party, including an institution, to make that determination.

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

(4) Where a provision of this Act, other than sections 28(a) and 35(2)(a), refers to a claim, it also applies to a counterclaim, and where it refers to a defence, it also applies to a defence to the counterclaim.

(5) This Act shall be interpreted and administered in accordance with the following principles—

- (a) subject to the observance of the safeguards that are necessary in the public interest, the parties to a dispute should be free to agree on how the dispute should be resolved;

- (b) the Court shall not interfere in the arbitration of a dispute, except as expressly provided in this Act; and
- (c) where the Court interferes in the arbitration pursuant to the expressed provisions of this Act it shall, as far as possible, give due regard to the wishes of the parties and the provisions of the arbitration agreement.

(6) A reference in this Act to a State shall be construed as including a reference to a territory, dependency or colony (however described) of that State.

International
origin and
general
principles.

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

(2) Questions concerning matters governed by this Act which are not expressly settled in it are to be settled in conformity with the principles set out in section 3(5).

Objects of
Act.

5. The objects of this Act are to—

- (a) facilitate domestic and international trade and commerce by encouraging the use of arbitration as a method of resolving disputes;
- (b) facilitate and obtain the fair and speedy resolution of disputes by arbitration without unnecessary delay or expense;
- (c) facilitate the use of arbitration agreements made in relation to domestic and international trade and commerce;
- (d) facilitate the recognition and enforcement of arbitral awards made in relation to domestic and international trade and commerce; and
- (e) give effect to the UNCITRAL Model Law.

Receipt of
written
communica-
tions.

6.—(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,

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

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

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

7. A party who knows that any provision of this Act from which the parties may derogate or any requirement under the arbitration agreement has not been complied with and yet proceeds with the arbitration without stating his 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.

Waiver of right to object.

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

Extent of court intervention.

9. The functions referred to in sections 14(2) and (3), 16(1) and (2), 19(3) and (4) 31(1), 42, 51(2), 52(1), 52(2)(b), 53(2), 53(6) and (8), 55(1), (2) and (4), 59(1), 60(1), 60(2) and (3) shall be performed by the Court.

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

PART II—*Arbitration Agreement*

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

Form of arbitration agreement.

(2) An arbitration agreement shall be in writing.

(3) An arbitration agreement is in writing if its content is recorded in any form, whether or not the arbitration agreement or contract has been concluded orally, by conduct, or by other means.

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

(5) An arbitration agreement is in writing if it is contained in an exchange of statements of claim and defence in which the existence of an agreement is alleged by one party and not denied by the other.

(6) The reference in a contract to any document containing an arbitration clause constitutes an arbitration agreement in writing, provided that the reference is such as to make that clause part of the contract.

Arbitration agreement and substantive claim before court.

11.—(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 subsection (1) has been brought, arbitral proceedings may nevertheless be commenced or continued, and an award may be made, while the issue is pending before the Court.

Arbitration agreement and interim measures by court.

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

PART III—*Composition of Arbitral Tribunal*

Number of arbitrators.

13.—(1) Subject to subsection (2), the parties are free to determine the number of arbitrators.

(2) Where the parties fail to make a determination under subsection (1), the number of arbitrators shall be three.

Appointment of arbitrators.

14.—(1) A person shall not 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 subsections (4) and (5).

(3) Failing an agreement under subsection (2)—

- (a) in an arbitration with three arbitrators—
- (i) each party shall appoint one arbitrator, and the two arbitrators thus appointed shall appoint the third arbitrator;
 - (ii) if a party fails to appoint the arbitrator within thirty days of receipt of a request to do so from the other party, or if the two arbitrators fail to agree on the third arbitrator within thirty days of their appointment, the appointment shall be made, upon request of a party, by the Court,
- (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.

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

- (a) a party fails to act as required under such procedure;
- (b) the parties, or two arbitrators, are unable to reach an agreement expected of them under such procedure; or
- (c) a third party, including an institution, fails to perform any function entrusted to it under such procedure,

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

(5) A decision on a matter entrusted by subsection (3) or (4) to the Court shall not be subject to appeal.

(6) The Court 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.

Grounds for challenge.

15.—(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.

(2) An arbitrator, from the time of his appointment and throughout the arbitral proceedings, shall disclose, without delay, any such circumstances to the parties unless they have already been informed of them by him.

(3) 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.

(4) 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.

Challenge procedure.

16.—(1) The parties are free to agree on a procedure for challenging an arbitrator, subject to the provisions of subsection (3).

(2) Failing an agreement under subsection (1), 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 section 15(3), send a written statement of the reasons for the challenge to the arbitral tribunal and 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 subsection (2) is not successful, the challenging party may request, within thirty days after having received notice of the decision rejecting the challenge, the Court to decide on the challenge, which decision shall not be subject to appeal, and while such a request is pending, the arbitral tribunal, including the challenged arbitrator, may continue the arbitral proceedings and make an award.

Failure or impossibility to act.

17.—(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 to decide on the termination of the mandate, which decision shall not be subject to appeal.

(2) If, under this section or section 16(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 section or section 15(3).

18. Where the mandate of an arbitrator terminates under section 16 or 17 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.

Appointment
of substitute
arbitrator.

PART IV—*Jurisdiction of Arbitral Tribunal* *Jurisdiction Generally*

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

Competence
of arbitral
tribunal to
rule on its
jurisdiction.

(2) The following provisions apply to pleas under this section—

- (a) a plea that the arbitral tribunal does not have jurisdiction shall be raised at the time of the submission of the statement of defence;
- (b) 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;
- (c) 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; and

- (d) the arbitral tribunal may, in either case referred to in paragraph (a) or (c), admit a later plea if it considers the delay justified.

(3) The arbitral tribunal may rule on a plea referred to in subsection (2) either as a preliminary question or in an award on the merits.

(4) 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 to decide the matter, which decision shall not be subject to appeal, and while such a request is pending, the arbitral tribunal may continue the arbitral proceedings and make an award.

Interim Measures and Preliminary Orders

Interim measures and preliminary orders.

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

(2) An interim measure is any temporary measure, whether in the form of an award or in another form, by which, at any time prior to the issuance of the award by which the dispute is finally decided, the arbitral tribunal orders a party to—

- (a) maintain or restore the status quo pending determination of the dispute;
- (b) take action that would prevent, or refrain from taking action that is likely to cause, current or imminent harm or prejudice to the arbitral process itself;
- (c) provide a means of preserving assets out of which a subsequent award may be satisfied; or
- (d) preserve evidence that may be relevant and material to the resolution of the dispute.

Conditions for granting interim measures.

21. The party requesting an interim measure under section 20 (2)(a), (b) or (c) shall satisfy the arbitral tribunal that—

- (a) harm not adequately reparable by an award of damages is likely to result if the measures, is not ordered, and such harm substantially outweighs the harm that is likely to result to the

party against whom the measure is directed if the measure is granted; and

- (b) there is a reasonable possibility that the requesting party will succeed on the merits of the claim; and the determination on this possibility shall not affect the discretion of the arbitral tribunal in making any subsequent determination.

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

Preliminary Orders

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

Applications for preliminary orders and conditions for granting preliminary orders.

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

(3) The conditions set out in section 21 apply to any preliminary order, provided that the harm to be assessed under section 21(1)(a), is the harm likely to result from the order being granted or not.

23.—(1) Immediately after the arbitral tribunal has made a determination in respect of an application for a preliminary order, the arbitral tribunal shall give notice to all parties of the request for the interim measure, the application for the preliminary order, the preliminary order, if any, and all other communications, including by indicating the content of any oral communication, between any party and the arbitral tribunal in relation thereto.

Specific regime for preliminary orders.

(2) The arbitral tribunal shall give an opportunity to any party against whom a preliminary order is directed to present its case at the earliest practicable time.

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

(4) A preliminary order shall expire after twenty days from the date on which it was issued by the arbitral tribunal, however, the arbitral tribunal may issue an interim measure adopting or modifying the preliminary order, after the party against whom the preliminary order is directed has been given notice and an opportunity to present its case.

(5) A preliminary order—

- (a) shall be binding on the parties but shall not be subject to enforcement by a court; and
- (b) does not constitute an award.

*Provisions Applicable to Interim
Measures and Preliminary Orders*

Modification,
suspension,
termination.

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

Provision of
security.

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

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

Disclosure.

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

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

Costs and
damages.

27.—(1) The party requesting an interim measure or applying for a preliminary order shall be liable for any costs and damages caused by

the measure or the order to any party if the arbitral tribunal later determines that, in the circumstances, the measure or the order should not have been granted.

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

Recognition and Enforcement of Interim Measures

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

Recognition
and
enforcement.

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

(3) The court of the State where recognition or enforcement is sought may, if it considers it proper, order the requesting party to provide appropriate security if the arbitral tribunal has not already made a determination with respect to security or where such a decision is necessary to protect the rights of third parties.

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

Grounds for
refusing
recognition
or
enforcement.

- (a) at the request of the party against whom it is invoked if the court is satisfied that—
- (i) the refusal is warranted on the grounds set out in section 57(1)(a)(i), (ii), (iii) or (iv); or
 - (ii) the arbitral tribunal's decision with respect to the provision of security in connection with the interim measure issued by the arbitral tribunal has not been complied with; or
 - (iii) the interim measure has been terminated or suspended by the arbitral tribunal or, where so empowered, by the court of the State in which the arbitration takes place or under the Act of which that interim measure was granted; or

- (b) if the court finds that—
- (i) the interim measure is incompatible with the powers conferred upon the court unless the court decides to reformulate the interim measure to the extent necessary to adapt it to its own powers and procedures for the purposes of enforcing that interim measure and without modifying its substance; or
 - (ii) any of the grounds set out in section 57(1)(b)(i) or (ii), apply to the recognition and enforcement of the interim measure.

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

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

Court—Ordered Interim Measures

Court—
ordered
interim
measures.

30. A court shall—

- (a) have the same power of issuing an interim measure in relation to arbitration proceedings, irrespective of whether their place is in Jamaica, as it has in relation to proceedings in courts; and
- (b) exercise such power in accordance with its own procedures in consideration of the specific features of international arbitration.

PART V—Mediation

Appointment
of mediator.

31.—(1) If—

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

- (b) that person—
 - (i) refuses to make the appointment; or
 - (ii) does not make the appointment within the time specified in the arbitration agreement or, if no time is so specified, within a reasonable time after being requested by any party to make the appointment,

the Court may, on the application of any party, appoint a mediator.

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

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

- (a) no objection may be made against the person's acting as an arbitrator, or against the person's conduct of the arbitral proceedings, solely on the ground that the person had acted previously as a mediator in connection with some or all of the matters relating to the dispute submitted to arbitration; or
- (b) if the person declines to act as an arbitrator, any other person appointed as an arbitrator is not required first to act as a mediator unless it is otherwise expressed in the arbitration agreement.

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

Power of arbitrator to act as mediator.

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

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

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

(b) shall treat the information obtained by the arbitrator from a party as confidential, unless otherwise agreed by that party or unless subsection (4) applies.

(4) If—

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

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

the arbitrator shall, before resuming the arbitral proceedings, disclose to all other parties as much of that information as the arbitrator considers is material to the arbitral proceedings.

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

PART VI—*Conduct of Arbitral Proceedings*

Equal
treatment of
parties.

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

Determination
of rules of
procedure.

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

(2) Failing an agreement under subsection (1), the arbitral tribunal may, subject to the provisions of this Act, conduct the arbitration in such manner as it considers appropriate.

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

Place of
arbitration.

35.—(1) The parties are free to agree on the place of arbitration but failing 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 subsection (1), the arbitral tribunal may, unless otherwise agreed by the parties, meet at any place it considers appropriate for consultation among its members, for hearing witnesses, experts or the parties, or for inspection of goods, other property or documents.

36. 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. Commence-
ment of
arbitral
proceedings.

37.—(1) The parties are free to agree on the language or languages to be used in the arbitral proceedings but failing such agreement, the arbitral tribunal shall determine the language or languages to be used in the proceedings and 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. Language.

(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.

38.—(1) Within the period of time agreed by the parties or determined by the arbitral tribunal— Statements of
claim and
defence.

- (a) 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 statement; and
- (b) 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.

Hearings and
written
proceedings.

39.—(1) Subject to any contrary agreement by the parties, the arbitral tribunal shall decide whether to hold oral hearings for the presentation of evidence or for oral argument, or whether the proceedings shall be conducted on the basis of documents and other materials, however, unless the parties have agreed that no hearings shall be held, the arbitral tribunal shall hold the 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 and any expert report or evidentiary document on which the arbitral tribunal may rely in making its decision shall be communicated to the parties.

Default of a
party.

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

- (a) the claimant fails to communicate his statement of claim in accordance with section 38(1), the arbitral tribunal shall terminate the proceedings;
- (b) the respondent fails to communicate his statement of defence in accordance with section 38(1), the arbitral tribunal shall continue the proceedings without treating such failure in itself as an admission of the claimant's 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.

Expert
appointed by
arbitral
tribunal.

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

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

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

(3) Unless otherwise agreed by the parties, the arbitral tribunal may, at the request of a party, make available to that party, for examination, all documents, goods or other property that may have been submitted to the expert for the purposes of the report referred to in subsection (2).

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

PART VII—*Making of Awards and Termination of Proceedings*

43.—(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 and any designation of the law or legal system of a given State shall be construed, unless otherwise expressed, as directly referring to the substantive law of that State and not to its conflict of laws rules. Rules applicable to substance of dispute.

(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.

Decision making by panel of arbitrators.

44. 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.

Settlement.

45.—(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 section 46 and shall state that it is an award.

(3) An award to which subsection (2) relates has the same status and effect as any other award on the merits of the case.

Form and contents of award.

46.—(1) The award shall be made in writing and shall be signed by the arbitrator or arbitrators.

(2) In arbitral proceedings with more than one arbitrator, the signatures of the majority of all members of the arbitral tribunal shall suffice, provided that the reason for any omitted, signature is stated.

(3) The award shall state the reasons upon which it is based, unless the parties have agreed that no reasons are to be given or the award is an award on agreed terms under section 45.

(4) The award shall state its date and the place of arbitration as determined in accordance with section 35(1) and the award shall be deemed to have been made at that place.

(5) After the award is made, a copy signed by the arbitrators in accordance with subsections (1) and (2) shall be delivered to each party.

Termination of proceedings.

47.—(1) The arbitral proceedings are terminated by the final award or by an order of the arbitral tribunal in accordance with subsection (2).

(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 sections 48 and 55(4).

48.—(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.

Correction and interpretation of award; additional award.

(2) 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, and the interpretation shall form part of the award.

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

(4) Unless otherwise agreed by the parties, a party, with notice to the other party, may request, within thirty days of receipt of the award, the arbitral tribunal to make an additional award as to claims

presented in the arbitral proceedings but omitted from the award, and if the arbitral tribunal considers the request to be justified, it shall make the additional award within sixty days.

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

(6) The provisions of section 46 shall also apply to a correction or interpretation of the award and to an additional award.

Costs of
arbitration.

49.—(1) Unless a contrary intention is expressed, every arbitration agreement shall be deemed to include a provision that the costs of the arbitration shall be in the discretion of the arbitral tribunal.

(2) If no provision is made by an award with respect to the costs of the arbitration, any party to the arbitration may, within fourteen days of the delivery of the award, or such further time as the arbitral tribunal may allow, apply to the arbitral tribunal for a direction as to whom or by whom such costs shall be paid.

(3) The arbitral tribunal shall, after giving the parties a reasonable opportunity to be heard, amend its award by including in the award such directions as it thinks fit with respect to the payment of the costs of the arbitration.

Interest on
award.

50.—(1) The parties to an arbitration agreement may agree on the arbitral tribunal's powers regarding the award of interest.

(2) Unless otherwise agreed to the contrary by the parties, the arbitral tribunal may award simple or compound interest from the dates and at the rates that it considers fair and reasonable—

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

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

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

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

51.—(1) Parties are jointly and severally liable to pay to the arbitral tribunal such reasonable fees and expenses as are appropriate in the circumstances. Fees of arbitral tribunal.

(2) Unless the fees of an arbitral tribunal have been fixed by written agreement, or such agreement has provided for a determination of the fees by a person or institution agreed to by the parties, any party to the arbitration may require that such fees be assessed by the Court.

52.—(1) Unless otherwise agreed in writing by the parties to the arbitration agreement, where an arbitration is commenced but, for any reason the arbitration fails, the Court may, on the application of a party to the arbitration agreement or the arbitral tribunal, make such orders in relation to the costs of the arbitration as it thinks fit. Costs of aborted arbitration.

(2) For the purposes of this section, an arbitration shall be deemed to have failed where—

- (a) no final award is made by the arbitral tribunal before the arbitration terminates; or
- (b) an award made is wholly set aside by the court.

53.—(1) Unless otherwise agreed by the parties, an arbitral tribunal may refuse to deliver an award to the parties if the parties have not made full payment of the fees and expenses of the arbitrators. Power to withhold award in case of non-payment.

(2) Where subsection (1) applies, a party may, upon notice to the other parties and the arbitral tribunal, apply to the Court, which may order that—

- (a) the arbitral tribunal shall deliver the award upon payment into court by the applicant of the fees and expenses demanded, or such lesser amount as the court may specify;
- (b) the amount of the fees and expenses demanded shall be assessable by the Court; and
- (c) out of the money paid into Court, the arbitral tribunal shall be paid such fees and expenses as may be found to be properly payable and the balance of such money, if any, shall be paid out to the applicant.

(3) An assessment of fees under this section shall be reviewed in the same manner as an assessment of costs.

(4) The arbitral tribunal or any member thereof shall be entitled to appear and be heard on any assessment or review of an assessment under this section.

(5) For the purposes of this section, the amount of fees and expenses properly payable is the amount the applicant is liable to pay under this Act or under any agreement relating to the payment of fees and expenses of the arbitrators.

(6) An application to the Court shall not be made unless the Court is satisfied that the applicant has first exhausted any available arbitral process for appeal or review of the amount of the fees or expenses demanded by the arbitrators.

(7) This section shall apply to any arbitral tribunal or person vested with powers by the parties in relation to the delivery of the award by the tribunal and any reference to the fees and expenses of the arbitrators shall be construed as including the fees and expenses of that institution or person.

(8) The leave of the Court shall be required for an appeal from a decision of the Court under this section.

54. Unless otherwise agreed by the parties, a court may, where the representative of a party has rendered services during arbitration proceedings, order that property recovered or preserved in the proceedings be charged as if the arbitral proceedings were a proceeding in the court, and the Court may make declarations and orders accordingly.

Court may charge property for payment of costs of party's representative.

PART VIII—*Recourse Against Award*

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

Application for setting aside as exclusive recourse against arbitral award.

(2) An arbitral award may be set aside by the Court only if—

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

- (i) a party to the arbitration agreement referred to in section 10 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 Jamaica;
- (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;
- (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 Act from which the parties cannot derogate, or, failing such agreement, was not in accordance with this Act; or

(b) the Court finds that—

- (i) the subject-matter of the dispute is not capable of settlement by arbitration under the laws of Jamaica; or
- (ii) the award is in conflict with the public policy of Jamaica.

(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 section 48, 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 tribunal's opinion will eliminate the grounds for setting aside.

PART IX—*Recognition and Enforcement of Awards*

Recognition
and
enforcement.

56.—(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 Court, shall be enforced subject to the provisions of this section and of section 57.

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

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

57.—(1) Recognition or enforcement of an arbitral award, Grounds for refusing recognition or enforcement. 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 Court where recognition or enforcement is sought proof that—
- (i) a party to the arbitration agreement referred to in section 10 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;
 - (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;
 - (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, however, 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;
 - (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 laws 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 Laws of Jamaica; or
- (ii) the recognition or enforcement of the award would be contrary to the public policy of Jamaica.

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

Foreign
representation
in
international
arbitrations.

58.—(1) Where an application in support of an international arbitration is required to be made in any court or before an arbitral tribunal, a foreign representative of any party appearing before the Court or the arbitral tribunal shall be permitted to have a right of audience where that foreign representative appears together with any person who is admitted to practise as a lawyer in Jamaica where the leave of the court has been granted.

(2) A foreign representative appearing before the Court under subsection (1) shall receive leave of the court and shall comply with such regulations as may be prescribed.

(3) For the purposes of this Act, appearing on behalf of or for any party in an international arbitration shall not constitute practise as a lawyer within the meaning of section 2(1) of the *Legal Profession Act*.

(4) Fees, charges and expenses incurred by any arbitrator or foreign representative in an international arbitration which lasts for a continuous period of thirty days or less in a period of three hundred sixty-five days shall not be subject to any income tax or any other tax of Jamaica.

(5) The exemption under subsection (3) shall apply to an arbitrator or a foreign representative only once in any period of three hundred and sixty-five days.

59.—(1) A foreign representative shall not appear in a domestic arbitration unless the need for such foreign representative has been justified before the Court and the leave of the Court has been granted. Legal representatives in domestic arbitrations.

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

60.—(1) If, in relation to two or more arbitral proceedings, it appears to the Court— Consolidation of arbitrations.

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

the Court may, on the application of any party to those arbitral proceedings—

- (i) order those arbitral proceedings—
 - (A) to be consolidated on such terms as it thinks just; or
 - (B) to be heard at the same time or one immediately after another; or
- (ii) order any of those arbitral proceedings to be stayed until after the determination of any other of them.

(2) If the Court orders arbitral proceedings to be consolidated under subsection (1)(A)(i) or to be heard at the same time or one

immediately after another under subsection (1)(B)(i), the Court has the power—

- (a) to make consequential directions as to the payment of costs in those arbitral proceedings; and
- (b) if—
 - (i) all parties to those arbitral proceedings are in agreement as to the choice of arbitrator for those arbitral proceedings, to appoint that arbitrator; or
 - (ii) the parties cannot agree as to the choice of arbitrator for those arbitral proceedings, to appoint an arbitrator for those arbitral proceedings (and, in the case of arbitral proceedings to be heard at the same time or one immediately after another, to appoint the same arbitrator for those arbitral proceedings).

(3) If the Court make an appointment of an arbitrator under subsection (2) any appointment of another arbitrator that has been made for any of those arbitral proceedings ceases to have effect for all purposes on and from the appointment under subsection (2).

Act binds the Crown.

61. This Act binds the Crown.

PART X—*General*

Regulations.

62. The Minister may make regulations for the better carrying out of the objects and purposes of this Act.

Review of Act.

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

Transitional.

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

Repeal.

65. The *Arbitration Act, 1900*, is repealed.

66. The *Arbitration (Recognition and Enforcement of Foreign Awards) Act* is amended in section 4 by deleting the words “section 13” and substituting therefor the words “section 56”.

Amendment
of
*Arbitration
(Recognition
and Enforce-
ment of
Foreign
Awards) Act.*

Passed in the House of Representatives this 24th day of January, 2016 with four (4) amendments.

PEARNEL CHARLES, CD, MP, JP
Speaker

Passed in the Senate this 21st day of April, 2017 with fifty (50) amendments.

THOMAS TAVARES-FINSON, CD, QC, JP
President

MEMORANDUM OF OBJECTS AND REASONS

The UNCITRAL Model Law on International Commercial Arbitration (“the Model Law”) was adopted by the United Nations Commission on International Trade Law (UNCITRAL) on 21 June, 1985, “in view of the desirability of uniformity of the law of arbitral procedures and the specific needs of international commercial arbitration practice”. The Model Law was amended by UNCITRAL on 7 July, 2006. The General Assembly, in its resolution 61/33 of 4 December, 2006, recommended “that all States give favourable consideration to the enactment of the revised articles of the UNCITRAL Model Law on International Commercial Arbitration, or the revised UNCITRAL Model Law on International Commercial Arbitration, when they enact or revise their laws”.

The Model Law covers all stages of the arbitral process from the arbitration agreement to the recognition and enforcement of the arbitral award and reflects a worldwide consensus on the principles and important issues of international arbitration practice. Since its adoption by UNCITRAL, the Model Law has come to represent the accepted international legislative standard for a modern arbitration law and a significant number of jurisdictions have enacted arbitration legislation based on the Model Law.

Consequently, this Bill seeks to incorporate the Model Law into domestic law in order to facilitate domestic and international trade and commerce by encouraging the use of arbitration as a method of resolving disputes.

The Bill further seeks to repeal the Arbitration Act, 1900.

DELROY CHUCK
Minister of Justice.

A BILL
ENTITLED

AN ACT to Facilitate domestic and international trade and commerce by encouraging the use of arbitration as a method of resolving disputes; to repeal the Arbitration Act, 1900; and for connected matters.

As passed in the Honourable House of Representatives.

As passed in the Honourable Senate.
