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THE ARBITRATION LAW (2 OF 1974)
(1996 Revision)

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ARBITRATION LAW

(1996 Revision)

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ARBITRATION LAW

(1996 Revision)

PART I-Preliminary

1. This Law may be cited as the Arbitration Law (1996 Revision). Short title
2. In this Law- Definitions

“arbitration agreement” means an agreement in writing (which may or may not form part of a wider agreement) to submit to arbitration a dispute which has arisen or which may in future arise between the parties thereto, whether an arbitrator is named therein or not;

“Clerk” means the Clerk of the Grand Court;

“Court” means the Grand Court and includes a Judge of that Court;

“dispute” includes difference;

“party” means a party to a particular arbitration agreement or reference (including a reference by order of the Court) and includes such party’s personal representatives, trustee in bankruptcy and any person claiming through or under him; and

“Special Referee” means a person who is appointed by the Court under section 23(1) upon such terms as to remuneration and otherwise as the Court may order.

PART II-Effect of Arbitration Agreements, and Appointments of Arbitrators and Umpires, etc.

3. The authority of an arbitrator or umpire appointed under an arbitration agreement shall, unless a contrary intention is expressed in the agreement, be irrevocable except by leave of the Court. Authority of arbitrators and umpires to be irrevocable
4. (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 personal representative of the deceased. Death of party

(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

5. (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 connection 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 it 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 connection 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 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

6. If any party to an arbitration agreement commences any legal proceedings in any court against any other party to the agreement 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, 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.

Reference of interpleader issues to arbitration

7. 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.

Provisions deemed to be contained in arbitration agreements

8. Unless a contrary intention is expressed therein, every arbitration agreement shall be deemed to contain the following provisions as far as they are applicable to the reference -

- (a) if no other mode of reference is provided, the reference shall be to a single arbitrator;
- (b) where the reference is to two arbitrators-

- (i) the two arbitrators shall appoint an umpire immediately after they are themselves appointed; or
- (ii) if the arbitrators have delivered to any party, 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:

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

- (c) the parties 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;
- (d) the witnesses on the reference shall, if the arbitrator or umpire thinks fit, be examined on oath or affirmation;
- (e) the arbitrator or umpire shall have the same power as the Court to order specific performance of any contract other than a contract relating to land or any interest in land;
- (f) the arbitrator or umpire may, if he thinks fit, make an interim award, and any reference in this Law to an award includes a reference to an interim award;
- (g) the award to be made by the arbitrator or umpire shall be final and binding on the parties; and
- (h) 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-at-law and client.

9. 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 -

Powers of parties in certain cases to supply vacancy

- (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; and

- (b) if, on such 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 may set aside any appointment made under this section.

Agreements for reference to three arbitrators

10. (1) Where an arbitration agreement provides that the reference shall be to three arbitrators, one to be appointed by each party and the third to be appointed by the two appointed by the parties, the agreement shall have effect as if it provided for the appointment of an umpire, and not for the appointment of a third arbitrator, by the two arbitrators appointed by the parties.

(2) Where an arbitration agreement provides that the reference shall be to three arbitrators to be appointed otherwise than as mentioned in subsection (1), the award of any two of the arbitrators shall be binding.

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

11. Where-

- (a) 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) 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) the parties or two arbitrators are at liberty to appoint an umpire or third arbitrator and do not appoint him, or where two arbitrators are required to appoint an umpire and do not appoint him; or
- (d) 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 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.

12. (1) Subject to section 18(2), and anything to the contrary in the arbitration agreement, an arbitrator or umpire shall have power to make an award at any time. Time for making award

(2) The time, if any, limited for making an award, whether under this Law or otherwise, may, from time to time, be enlarged by order of the Court 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) In 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.

13. Unless a contrary intention is expressed in the arbitration agreement an arbitrator or umpire acting under a reference shall have power - Powers of arbitrator or umpire

- (a) to administer oaths to, or take affirmations of, the parties to and witnesses on the reference; and
- (b) to correct in an award any clerical mistake or error arising from any accidental slip or omission.

PART III-Costs, Fees and Interest

Costs

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

(2) 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 Law, 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 provision when it is a part of an agreement to submit to arbitration a dispute which has arisen before the making of that agreement.

(3) 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 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 directions as he may think proper with respect to the payment of the costs of the reference.

Taxation of arbitrator's
or umpire's fees

15. (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.

16. 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. Interest on awards

PART IV-Special Cases, Remission and Setting Aside of Awards, etc.

17. (1) An arbitrator or umpire may, and shall if so directed by the Court, state Statement of case
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- (a) any question of law arising in the course of the reference; or
- (b) an award or any part of an award,

in the form of a special case for the decision of the Court.

(2) A special case with respect to an interim award or with respect to a question of law arising in the course of a reference may be stated, or may be directed by the Court to be stated, notwithstanding that proceedings under the reference are still pending.

(3) A decision of the Court under this section shall be deemed to be a judgment of the Court within the meaning of section 5 of the Court of Appeal Law (1996 Revision), (which relates to the jurisdiction of the Court of Appeal to hear and determine appeals from any judgment of the Court), but no appeal shall lie from the decision of the Court on any case stated under paragraph (a) of subsection (1) without the leave of the Court or of the Court of Appeal. 1996 Revision

18. (1) In all cases of reference to arbitration the Court may, from time to time, remit the matters referred, or any of them, to the reconsideration of the arbitrator or umpire. Power to remit award

(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.

19. (1) Where an arbitrator or umpire has misconducted himself or the proceedings, the Court may remove him. Removal of arbitrator and setting aside of award

(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

20. (1) Where an arbitration agreement provides that disputes which may arise in the future between the parties 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 connection with the subject referred, might not be capable of impartiality.

(2) Where an arbitration agreement provides that disputes which may arise in the future between the parties 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-

- (a) to order that the agreement shall cease to have effect; and
- (b) to give leave to revoke the authority of any arbitrator or umpire appointed by or by virtue of the agreement.

(3) In any case 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

21. (1) Where an arbitrator (not being a sole arbitrator), of 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-

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

- (b) order that the arbitration agreement shall cease 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 to 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.

22. An award on an arbitration agreement may, by leave of the Court, 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. Enforcement of award

PART V-References by Order of the Court

23. (1) Subject to Rules of Court and to any right to have particular cases tried by a jury, the Court may refer any question arising in any cause or matter other than a criminal proceeding by the Crown) for enquiry or report to the Clerk or a Special Referee. References by order of the Court

(2) The report of the Clerk or a Special Referee may be adopted wholly or partially by the Court, and if so adopted may be enforced as a judgment or order to the same effect.

24. In any cause or matter (other than a criminal proceeding by the Crown) - References by consent of parties in any cause or matter to Registrar or Special Referee

- (a) if all the parties interested who are not under disability consent;
- (b) if the cause or matter requires any prolonged examination of documents or any scientific or local investigation which cannot, in the opinion of the Court, conveniently be made before a jury; or
- (c) if the question in dispute consists wholly or in part of matters of account,

the Court may, at any time, order the whole cause or matter, or any question or issue of fact arising therein, to be tried before an arbitrator agreed on by the parties, or before the Clerk or a Special Referee.

Clerk or Special Referee officers of Court	<p>25 (1) In all cases of reference to the Clerk or a Special Referee or arbitrator under an order of the Court in any cause or matter, the Clerk or Special Referee or arbitrator shall be deemed to be an officer of the Court, and shall have such authority, and shall conduct the reference in such manner, as may be prescribed by Rules of Court, and subject thereto as the Court may direct.</p> <p>(2) The report or award of the Clerk or a Special Referee or arbitrator on any such reference shall, unless set aside by the Court, be equivalent to the verdict of a jury.</p> <p>(3) The remuneration to be paid to any Special Referee or arbitrator to whom any matter is referred under order of the Court shall be determined by the Court.</p>
Power of Court as to references by order	<p>26. The Court shall, as to references under order of the Court, have all the powers which are by this Law conferred on the Court as to references by consent out of Court.</p>
Stating case for opinion of the Court	<p>27. The Clerk or any Special Referee or arbitrator may, at any stage of the proceeding under a reference made under section 23 or 24, and shall, if so directed by the Court, state in the form of a special case for the opinion of the Court any question of law arising in the course of the reference.</p>
Court of Appeal	<p>28. The Court of Appeal shall have all the powers conferred by this Law on the Court under the provisions relating to reference under order of the Court.</p>

PART VI-Miscellaneous

Power of Court to extend time for commencing arbitration proceedings	<p>29. 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 any enactment limiting the time for the commencement of arbitration proceedings, extend the time for such period as it thinks proper.</p>
Court may order writ of subpoena	<p>30. (1) A party may sue out a writ of <i>subpoena ad testificandum</i> or a writ of <i>subpoena duces tecum</i>, 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</p>

an action, and the Court 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 or before the Clerk or a Special Referee of a witness wherever he may be within the Islands.

(2) The Court may also order that a writ of *habeas corpus ad testificandum* shall issue to bring up a prisoner for examination before an arbitrator or umpire or before the Clerk or Special Referee.

31. The Court shall have, for the purpose of and in relation to a reference, the same power of making orders in respect of -

Miscellaneous powers of the Court

- (a) security for costs;
- (b) discovery of documents and interrogatories;
- (c) the giving of evidence by affidavit;
- (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 authorising for any of the purposes aforesaid any persons to enter upon or into any land or building in the possession of any party to the reference, or authorising any samples to 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 section shall be taken to prejudice any power which may be vested in any arbitrator or umpire of making orders with respect to any of the matters aforesaid.

32. Any order made under this Law may be made on such terms as to costs or otherwise as the authority making the order thinks just.

Terms as to costs, etc.

33. This Law shall, except as in this Law expressly mentioned, apply to any arbitration to which the Attorney-General, either in right of the Crown or otherwise, or the Attorney-General on behalf of the Crown, or the Government of the Islands is party, but nothing in this Law shall empower the Court to order any

Cases to which the Crown or Government is party

proceedings to which Her Majesty, or the Attorney-General on behalf of the Crown or the Government of the Islands is a party, or any question or issue in any such proceedings, to be tried before the Clerk or any Special Referee or arbitrator without the consent of the Attorney-General, or shall affect the law as to costs payable by the Crown.

Application of Law

34. This Law, except sections 4(1), 5, 7, 14(2), 20, 21 and 23, shall apply to every arbitration under any other law as if the arbitration were pursuant to an arbitration agreement and as if that other law were an arbitration agreement, except insofar as this Law is inconsistent with that other law or with any rules or procedure authorised or recognised thereby.

Publication in revised form authorised by the Governor in Council this 11th day of June, 1996.

Mona N. Banks-Jackson
Clerk of Executive Council