

PROJET DE LOI

ENTITLED

The Arbitration (Guernsey) Law, 2015

ARRANGEMENT OF SECTIONS

PART I

THE AGREEMENT & COMMENCEMENT OF PROCEEDINGS

1. Agreement to arbitrate.
2. Application of the Law.
3. Arbitration Rules.
4. Severability of agreement to arbitrate.
5. Discharge of an arbitration agreement.
6. Stay of court proceedings.
7. Relief by way of interpleader.
8. Confidentiality.
9. Power of court to extend time.
10. Commencement of arbitration proceedings.

PART II

THE TRIBUNAL

Composition

11. Composition of the tribunal.
12. Procedure for the appointment of arbitrators.
13. Power in case of default to appoint sole arbitrator
14. Failure of appointment procedure.
15. Role of chairman.
16. Decision making where there is no chairman.
17. Revocation of arbitrator's authority.
18. Power of court to remove arbitrator.
19. Resignation of arbitrator.

20. Death of person appointing arbitrator.
21. Filling of vacancy, etc.
22. Joint and several liability of parties to arbitrators for fees and expenses.
23. Immunity of arbitrator.

Jurisdiction

24. Competence of the tribunal to rule on its own jurisdiction.
25. Objection to substantive jurisdiction of tribunal.
26. Determination of preliminary point of jurisdiction.

PART III CONDUCT OF PROCEEDINGS

General provisions

27. General duty of the tribunal.
28. Procedural and evidential matters.
29. Consolidation of proceedings and concurrent hearings.
30. Legal or other representation.
31. Power to appoint experts, legal advisers or assessors.
32. General powers exercisable by the tribunal by way of interim measures.
33. Power to make provisional awards.
34. General duty of parties.
35. Powers of tribunal in case of party's default.

Powers of court

36. Enforcement of peremptory orders of tribunal.
37. Securing the attendance of witnesses.
38. Court powers exercisable in support of arbitration proceedings.
39. Determination of preliminary point of law.

PART IV THE AWARD

Award on merits

40. Rules applicable to the substance of the dispute.
41. Awards on different issues.
42. Remedies.
43. Interest.
44. Extension of time for making award.
45. Settlement.
46. Form and contents of award.
47. Place and date of award.
48. Notification of award.
49. Power to withhold award in case of non-payment.
50. Correction of award or additional award.
51. Interpretation of award.
52. Effect of award.
53. Termination of arbitration proceedings.

Award of costs

54. Costs of the arbitration.
55. Agreement to pay costs in any event.
56. Award of costs.
57. Effect of agreement or award about costs.
58. The recoverable costs of the arbitration.
59. Recoverable fees and expenses of arbitrators.
60. Power to limit recoverable costs.

Powers of the court in relation to the award

61. Enforcement of the award.
62. Challenging the award: substantive jurisdiction.
63. Challenging the award: serious irregularity.
64. Appeal on point of law.
65. Challenge or appeal: supplementary provisions.
66. Challenge or appeal: effect of order of court.

PART V

SUPPLEMENTARY

67. Savings for rights of person who takes no part in proceedings.
68. Loss of right to object.
69. Immunity of persons appointing arbitrators, &tc.
70. Service of notices, &tc.
71. Powers of court in relation to service of documents.
72. Reckoning periods of time.
73. Power of court to extend time limits relating to arbitration proceedings.
75. Notice and time in connection with legal proceedings.
76. Saving for certain matters governed by customary law.
77. Application of prescription.
78. Powers of court in event of default.
79. Application of this Law to consumer contracts.

PART VI STATUTORY ARBITRATION

80. Application of this Law to statutory arbitration.
81. General adaptation of provisions in relation to statutory arbitrations.
82. Specific adaptations of provisions in relation to statutory arbitrations.
83. Provisions excluded from applying to statutory arbitrations.

PART VII RECOGNITION AND ENFORCEMENT OF FOREIGN AWARDS

84. Continuation of Part II of the Arbitration (Guernsey) Law, 1982.
85. New York Convention Awards.
86. Recognition and enforcement of awards.
87. Evidence to be produced by party seeking recognition or enforcement.
88. Refusal of recognition or enforcement.
89. Savings for other bases of recognition or enforcement.

PART VIII FINAL PROVISIONS.

90. Interpretation.
91. General provisions as to subordinate legislation.
92. Repeals and transitional provisions.
93. Amendment to the Arbitration (Guernsey) Law, 1982.
94. Citation.
95. Commencement.

CONSULTATION DRAFT

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The Arbitration (Guernsey) Law, 2015

THE STATES, in pursuance of their Resolution of 25th February, 2004^a and of [*report*], have approved the following provisions which, subject to the Sanction of Her Most Excellent Majesty in Council, shall have force of law in the Island of Guernsey.

PART I

THE AGREEMENT & COMMENCEMENT OF PROCEEDINGS

Agreement to arbitrate.

1. (1) Where two or more persons ("**the parties**") have agreed to arbitrate all, or any particular, dispute between them, and that agreement ("**the arbitration agreement**") -

- (a) is evidenced in writing, and
- (b) the seat of the arbitration is Guernsey,

then the provisions of this Law apply (see also section 2).

(2) For the purpose of subsection (1)(a) an agreement is "**evidenced in writing**" if it is -

- (a) in writing, whether or not signed by the parties,
- (b) made by exchange of communications in writing,

^a Article VIII of Billet d'État No. II of 2004.

- (c) made by reference to a written form of arbitration clause, or to a document containing such a clause, if the reference (expressly or implicitly) incorporates that clause into the agreement between the parties,
- (d) made by an agreement not in writing by reference to terms in writing,
- (e) recorded in writing by one of the parties, or by a third party with the authority of the parties,
- (f) alleged by one of the parties in the exchange of legal submissions and not denied by the other party in the response, or
- (g) otherwise evidenced in writing.

(3) In this Law "**the seat of the arbitration**" means the juridical seat of the arbitration designated -

- (a) by the parties,
- (b) by any person or arbitral institution vested by the parties with powers in that regard, or
- (c) by the arbitral tribunal if so authorised by the parties,

or determined, in the absence of any such designation, having regard to the parties' agreement and all the relevant circumstances.

Application of the Law.

2. (1) Except where provision to the contrary is made, this Law applies to arbitration agreements entered into after the commencement of this Law (see section 92(3)).

(2) The following sections apply even if the seat of the arbitration is outside Guernsey or no seat has been designated or determined -

- (a) sections 6, 7 and 9 (stay of legal proceedings, &c), and
- (b) section 61 (enforcement of awards).

(3) The powers conferred by the following sections apply even if the seat of the arbitration is outside Guernsey or no seat has been designated or determined -

- (a) section 37 (securing the attendance of witnesses), and
- (b) section 38 (court powers exercisable in support of arbitration proceedings),

but the court may refuse to exercise any such power if, in the opinion of the court, the fact that the seat of the arbitration is outside Guernsey, or that when designated or determined the seat is likely to be outside Guernsey, makes it inappropriate to do so.

(4) The court may exercise a power conferred by any provision of this Law not mentioned in subsection (3) or (4) for the purpose of supporting the arbitral process where -

- (a) no seat of the arbitration has been designated or determined, and
- (b) by reason of a connection with Guernsey the court is satisfied that it is appropriate to do so.

(5) Section 4 (severability of arbitration agreement) and section 5 (discharge of arbitration agreement) apply where the law applicable to the arbitration agreement is the law of Guernsey even if the seat of the arbitration is

outside Guernsey or has not been designated or determined.

Arbitration Rules.

3. The Department may specify by regulations default arbitration rules that will apply to arbitrations, unless, and to the extent to which, the parties otherwise agree.

Severability of agreement to arbitrate.

4. Unless otherwise agreed by the parties, an arbitration agreement which forms, or was intended to form, part of another agreement (whether or not in writing) shall not be regarded as invalid, non-existent or ineffective because that other agreement is invalid, did not come into non-existence or has become ineffective, and the arbitration agreement shall for that purpose be treated as a distinct agreement.

Discharge of an arbitration agreement.

5. (1) Unless otherwise agreed by the parties, an arbitration agreement is not discharged by the -

- (a) death, or
- (b) bankruptcy,

of a party and may be enforced by or against the personal representatives, or liquidators, of that party.

(2) Subsection (1) does not affect the operation of any enactment or rule of law by virtue of which a substantive right or obligation is extinguished by death or bankruptcy.

Stay of court proceedings.

6. (1) A party against whom legal proceedings are brought (whether by way of claim or counterclaim) in respect of a matter that is the subject of an arbitration agreement may (upon notice to the other parties to the proceedings) apply to the court in which the proceedings have been brought to stay the proceedings insofar as they concern that matter.

(2) An application may be made under subsection (1) notwithstanding whether the arbitration agreement provides that the matter is to be referred to arbitration only after the exhaustion of other dispute resolution procedures.

(3) An application under subsection (1) may not be made by a party -

- (a) before taking the appropriate procedural step (if any) to acknowledge the legal proceedings, or
- (b) after that party has taken any step in those proceedings to answer the substantive claim.

(4) On an application under this section the court shall grant a stay unless satisfied that the arbitration agreement is null and void, inoperative, or incapable of being performed.

(5) If the court refuses to stay the legal proceedings, any provision that an award is a condition precedent to the bringing of legal proceedings in respect of any matter is of no effect in relation to those proceedings.

Relief by way of interpleader.

7. (1) Where in legal proceedings relief by way of interpleader is granted and any issue between the parties is one in respect of which there is an arbitration agreement between them, the court granting the relief shall direct that the issue be determined in accordance with the agreement unless the circumstances are such that proceedings brought by a plaintiff in respect of the matter would not be stayed.

(2) Where subsection (1) applies but the court does not direct that the issue be determined in accordance with the arbitration agreement, any provision that an award is a condition precedent to the bringing of legal proceedings in respect of any matter shall not affect the determination of that issue by the court.

Confidentiality.

8. (1) Unless the arbitration agreement otherwise provides, an arbitration is confidential and so -

(a) the hearing shall be conducted in private, with only the parties, their advisors and the arbitrators permitted to be present throughout, and

(b) the documents used in, prepared for, and in, the arbitration proceedings ("**the arbitral documents**") shall not be used or disclosed for any other purpose, subject to subsection (2).

(2) Subsection (1)(b) does not prohibit -

(a) the arbitral documents from being disclosed with the consent of the parties, or pursuant to an order or direction of the court,

(b) the use of an arbitral document by any person where -

(i) the document has previously been placed in the public domain in good faith, and

(ii) that person has obtained the document from a source other than the arbitration proceedings,

(c) the disclosure of an arbitration award to a third party if it is necessary to do so to enforce or protect the legal rights of a party to the arbitration agreement.

Power of court to extend time.

9. (1) Where an arbitration agreement to refer future disputes to arbitration provides that a claim shall be barred, or the plaintiff's right extinguished, unless the plaintiff takes within a time fixed by the agreement some step -

- (a) to begin arbitration proceedings, or
- (b) to begin other dispute resolution procedures which must be exhausted before arbitration proceedings can be begun,

the court may by order extend the time for taking that step.

(2) Any party may apply for such an order (upon notice to the other parties), but only -

- (a) after a claim has arisen, and
- (b) after exhausting any available arbitral process for obtaining an extension of time.

(3) The court shall make an order under subsection (1) only if satisfied -

- (a) that the circumstances are such as were outside the reasonable contemplation of the parties when they agreed the provision in question, and that it would be just to extend the time, or
- (b) that the conduct of one party makes it unjust to hold the other party to the strict terms of the provision in question.

(4) The court may extend the time for such period and on such terms as it thinks fit, and may do so whether or not the time previously fixed (by agreement or previous order) has expired.

(5) The leave of the court is required for any appeal from a decision of the court under this section.

(6) An order under this section does not affect the operation of

any prescription period.

Commencement of arbitration proceedings.

10. (1) The parties are free to agree when arbitration proceedings have been commenced for the purposes of this Law and for the purposes of any prescription period.

(2) If there is no such agreement, arbitration proceedings commence in respect of a matter when one party serves a notice in writing -

- (a) on the other party requiring that party to -
 - (i) submit that matter to the arbitrator named or designated in the arbitration agreement, or
 - (ii) appoint an arbitrator or to agree to the appointment of an arbitrator in respect of that matter,

or

- (b) to the person or arbitral institution required, by the terms of the arbitration agreement, to appoint the arbitrator, requesting such an appointment in respect of that matter.

PART II
THE TRIBUNAL

Composition

Composition of the tribunal.

11. (1) The parties are free to agree on the number of arbitrators to form the tribunal and whether there is to be a chairman.

(2) Unless otherwise agreed by the parties, an agreement that the number of arbitrators shall be an even number shall require the appointment of an additional arbitrator as chairman of the tribunal.

(3) If there is no agreement as to the number of arbitrators, the tribunal shall consist of one arbitrator.

Procedure for the appointment of arbitrators.

12. (1) The parties are free to agree on the procedure for appointing the arbitrator or arbitrators, including the procedure for appointing any chairman.

(2) If the parties do not agree a procedure, the tribunal shall be appointed as follows -

(a) if there is a sole arbitrator the parties shall jointly appoint the arbitrator not later than 28 days after service of a request in writing by either party to do so,

(b) if there are to be two arbitrators, each party shall appoint one arbitrator not later than 14 days after service of a request in writing by either party to do so,

(c) if there are to be three arbitrators, two shall be appointed in accordance with paragraph (b), and those two arbitrators shall together appoint a third arbitrator as chairman of the tribunal no later than 28 days after the day on which the last of the two was appointed.

Power in case of default to appoint sole arbitrator.

13. (1) Unless the parties otherwise agree, where each of two parties to an arbitration agreement is to appoint an arbitrator and one party (“A”) refuses to do so, or fails to do so within the time specified, the other party (“B”), having duly appointed an arbitrator, may give notice in writing to A that B proposes to appoint B’s arbitrator to act as sole arbitrator.

- (2) If A does not within 7 clear days of that notice being given -
 - (a) make the required appointment, and
 - (b) notify B of it,

B may appoint B's arbitrator as sole arbitrator whose award shall be binding on both parties as if that arbitrator had been so appointed by agreement.

(3) Where a sole arbitrator has been appointed under subsection (2), the party in default may (upon notice to the appointing party) apply to the court which may set aside the appointment.

(4) The leave of the court is required for any appeal from a decision of the court under this section.

Failure of appointment procedure.

14. (1) The parties are free to agree what is to happen in the event of a failure of the procedure for the appointment of the arbitral tribunal (see section 12).

(2) If or to the extent that there is no such agreement, any party may (upon notice to the other parties) apply to the court to exercise its powers under this section.

- (3) Those powers are -
 - (a) to give directions as to the making of any necessary appointments,
 - (b) to direct that the tribunal shall be constituted by such appointments as have been made,

- (c) to revoke any appointments already made,
- (d) to make any necessary appointments itself.

(4) An appointment made by the court under this section has effect as if made with the agreement of the parties.

(5) In deciding whether to exercise any of its powers under this section the court 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.

(6) The leave of the court is required for any appeal from a decision of the court under this section.

Role of chairman.

15. (1) Where the parties have agreed that there is to be a chairman, they are free to agree what the functions of the chairman are to be in relation to the making of decisions, orders and awards.

(2) If or to the extent that there is no such agreement -

- (a) decisions, orders and awards shall be made by all or a majority of the arbitrators (including the chairman), and
- (b) in the event that there is neither unanimity nor a majority in relation to a decision, order or award, the view of the chairman shall prevail.

Decision making where there is no chairman.

16. (1) Where the parties agree that there shall be two or more arbitrators with no chairman, the parties are free to agree how the tribunal is to make decisions, orders and awards.

(2) If there is no such agreement, decisions, orders and awards shall be made by all or a majority of the arbitrators.

Revocation of arbitrator's authority.

17. (1) The parties are free to agree in what circumstances the authority of an arbitrator may be revoked.

(2) If or to the extent that there is no such agreement the authority of an arbitrator may not be revoked except by -

- (a) the parties acting jointly (and agreed in writing unless the parties also agree (whether or not in writing) to terminate the arbitration agreement), or
- (b) a person or arbitral institution vested by the parties with powers in that regard.

(3) Nothing in this section affects the power of the court -

- (a) to revoke an appointment under section 14 (failure of appointment procedure), or
- (b) to remove an arbitrator on the grounds specified in section 18.

Power of court to remove arbitrator.

18. (1) A party may (upon notice to the other parties and to all arbitrators) apply to the court to remove an arbitrator on any of the following grounds -

- (a) that circumstances exist that give rise to justifiable doubts as to the arbitrator's impartiality,
- (b) that the arbitrator does not possess the qualifications required by the arbitration agreement,

- (c) that the arbitrator is physically or mentally incapable of conducting the proceedings or there are justifiable doubts as to the arbitrator's capacity to do so,
- (d) that the arbitrator has refused or failed -
 - (i) properly to conduct the proceedings, or
 - (ii) to use all reasonable despatch in conducting the proceedings or making an award,

and that substantial injustice has been or will be caused to the applicant.

(2) If there is a person or arbitral institution vested by the parties with power to remove an arbitrator, the court shall not exercise its power of removal unless satisfied that the applicant has first exhausted any available recourse to that person or institution, as the case may be.

(3) The arbitral tribunal may (unless the court orders otherwise) continue the arbitration proceedings and make an award while an application to the court under this section is pending.

(4) Where the court removes an arbitrator, it may make such order as it thinks fit with respect to the arbitrator's entitlement (if any) to fees or expenses, or the repayment of any fees or expenses already paid.

(5) The arbitrator concerned is entitled to appear and be heard by the court before it makes any order under this section.

(6) The leave of the court is required for any appeal from a decision of the court under this section.

Resignation of arbitrator.

19. (1) The parties are free to agree with an arbitrator as to the consequences of the arbitrator's resignation as regards -

- (a) entitlement (if any) to fees or expenses, and
- (b) any liability thereby incurred by the arbitrator.

(2) If or to the extent that there is no such agreement an arbitrator who resigns may (upon notice to the parties) apply to the court -

- (a) to grant relief from any liability thereby incurred by the arbitrator, and
- (b) to make such order as it thinks fit with respect to the arbitrator's entitlement (if any) to fees or expenses or the repayment of any fees or expenses already paid.

(3) If, upon an application under subsection (2), the court is satisfied that in all the circumstances it was reasonable for the arbitrator to resign, it may grant such relief as is mentioned in subsection (2)(a) on such terms as it thinks fit.

(4) The leave of the court is required for any appeal from a decision of the court under subsections (2) and (3).

Death of person appointing arbitrator.

20. Unless otherwise agreed by the parties, the death of the person by whom an arbitrator was appointed does not revoke the arbitrator's authority.

Filling of vacancy, etc.

21. (1) Where an arbitrator ceases to hold office the parties are free to agree -

- (a) whether, and if so how, the vacancy is to be filled,
- (b) whether, and if so to what extent, the previous proceedings should stand, and

- (c) what effect (if any) ceasing to hold office has on any appointment made by the arbitrator (alone or jointly).
- (2) If or to the extent that there is no such agreement -
- (a) the provisions of sections 12 (Procedure for the appointment of arbitrators.) and 14 (Failure of appointment procedure.) apply in relation to the filling of the vacancy as in relation to an original appointment,
 - (b) the arbitral tribunal (when reconstituted) shall determine whether and if so to what extent the previous proceedings should stand, and
 - (c) the arbitrator's ceasing to hold office does not affect any appointment by the arbitrator (alone or jointly) of another arbitrator, and in particular any appointment of a chairman.
- (3) This section does not affect any right of a party to challenge those proceedings on any ground which had arisen before the arbitrator ceased to hold office.

Joint and several liability of parties to arbitrators for fees and expenses.

22. (1) The parties are jointly and severally liable to pay to the arbitrators such reasonable fees and expenses (if any) as are appropriate in the circumstances.

(2) Any party may apply to the court (upon notice to the other parties and to the arbitrators) which may order that the amount of the arbitrators' fees and expenses shall be considered and adjusted by such means and upon such terms as it may direct.

(3) If the application is made after any amount has been paid to the arbitrators by way of fees or expenses, the court may order the repayment of

such amount (if any) as is shown to be excessive, following a determination under subsection (1), but shall not do so unless it is shown that it is reasonable in the circumstances to order repayment.

(4) The above provisions have effect subject to any order of the court under section 18(4) or 19(3)(b) (order as to entitlement to fees or expenses in case of removal or resignation of arbitrator).

(5) Nothing in this section affects any liability of a party to any other party to pay all or any of the costs of the arbitration (see sections 54 to 60) or any contractual right of an arbitrator to payment of fees and expenses.

(6) In this section references to arbitrators include an arbitrator who has ceased to act.

Immunity of arbitrator.

23. (1) An arbitrator is not liable for anything done or omitted in the discharge or purported discharge of that arbitrator's functions unless the act or omission is shown to have been in bad faith.

(2) Subsection (1) applies to an employee or agent of an arbitrator as it applies to the arbitrator.

(3) This section does not affect any liability incurred by an arbitrator by resigning (but see section 19).

Jurisdiction of the arbitral tribunal

Competence of the tribunal to rule on its own jurisdiction.

24. (1) Unless otherwise agreed by the parties, the arbitral tribunal may rule on its own substantive jurisdiction, that is, as to -

- (a) whether there is a valid arbitration agreement,
- (b) whether the tribunal is properly constituted, and

- (c) what matters have been submitted to arbitration in accordance with the arbitration agreement.

(2) For the purpose of subsection (1)(a), an arbitration clause which forms part of a contract shall be treated as an agreement independent of the other terms of the contract and a decision by the arbitral tribunal that the contract is null and void is not determinative of the validity of the arbitration clause.

(3) Any such ruling may be challenged by any available arbitral process of appeal or review or in accordance with the provisions of this Part.

Objection to substantive jurisdiction of tribunal.

25. (1) An objection that the arbitral tribunal lacks substantive jurisdiction at the outset of the proceedings must be raised by a party not later than the time that party takes the first step in the proceedings to contest the merits of any matter in relation to which that party challenges the tribunal's jurisdiction.

(2) A party is not precluded from raising such an objection by the fact that that party has appointed or participated in the appointment of an arbitrator.

(3) Any objection during the course of the arbitration proceedings that the arbitral tribunal is exceeding its substantive jurisdiction must be made as soon as possible after the matter alleged to be beyond its jurisdiction is raised.

(4) The arbitral tribunal may admit an objection later than the time specified in subsection (1) or (3) if it considers the delay justified.

(5) Where an objection is duly taken to the tribunal's substantive jurisdiction and the tribunal has power to rule on its own jurisdiction, it may -

- (a) rule on the matter in an award as to jurisdiction, or
- (b) deal with the objection in its award on the merits.

If the parties agree which of these courses the tribunal should take, the tribunal shall proceed accordingly.

(6) The tribunal may in any case, and shall if the parties so agree, stay proceedings whilst an application is made to the court under section 26 (determination of preliminary point of jurisdiction).

Determination of preliminary point of jurisdiction.

26. (1) The court may, on the application of a party to arbitration proceedings (upon notice to the other parties), determine any question as to the substantive jurisdiction of the tribunal provided that the party has not lost the right to object (see section 68).

(2) An application under this section shall not be considered unless -

(a) it is made with the agreement in writing of all the other parties to the proceedings, or

(b) it is made with the permission of the tribunal and the court is satisfied -

(i) that the determination of the question is likely to produce substantial savings in costs,

(ii) that the application was made without delay, and

(iii) that there is good reason why the matter should be decided by the court.

(3) An application under this section, unless made with the agreement of all the other parties to the proceedings, shall state the grounds on which it is said that the matter should be decided by the court.

(4) Unless otherwise agreed by the parties, the arbitral tribunal may continue the arbitration proceedings and make an award while an application to the court under this section is pending.

(5) The decision of the court on the question of jurisdiction shall be treated as a judgment of the court for the purposes of an appeal.

(6) The court shall not give leave to appeal unless it considers that the question involves a point of law which is one of general importance or is one which for some other special reason should be considered by the Court of Appeal.

PART III THE PROCEEDINGS

Conduct of proceedings

General duty of the tribunal.

27. (1) The arbitral tribunal shall -

- (a) act fairly and impartially as between the parties, giving each party a reasonable opportunity of putting that party's case and dealing with that of the opponent, and
- (b) adopt procedures suitable to the circumstances of the particular case, avoiding unnecessary delay or expense, so as to provide a fair means for the resolution of the matters to be determined.

(2) The tribunal shall comply with that general duty in conducting the arbitration proceedings, in its decisions on matters of procedure and evidence and in the exercise of all other powers conferred on it.

Procedural and evidential matters.

28. (1) Subject to the right of the parties to agree any matter, it shall be for the tribunal to decide all procedural and evidential matters.

(2) Procedural and evidential matters include (without limitation)

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- (a) when and where any part of the proceedings is to be held,
- (b) the language(s) to be used in the proceedings and whether translations of any relevant documents are to be supplied,
- (c) whether any, and if so what form of, written statements of claim and defence are to be used, when these should be supplied and the extent to which such statements can be later amended,
- (d) whether any, and if so which, documents or classes of documents should be disclosed between and produced by the parties and at what stage,
- (e) whether any, and if so what, questions should be put to and answered by the respective parties and when and in what form this should be done,
- (f) whether to apply strict rules of evidence (or any other rules) as to the admissibility, relevance or weight of any material (oral, written or other) sought to be tendered on any matters of fact, law or opinion, and the time, manner and form in which such material should be exchanged and presented,
- (g) whether, and to what extent, the tribunal should itself take the initiative in ascertaining the facts and the law,
- (h) whether, and to what extent, there should be oral or written evidence or submissions.

(3) The tribunal may fix the time within which any directions given by it are to be complied with, and may, if it thinks fit, extend the time so

fixed (whether or not it has expired).

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

Consolidation of proceedings and concurrent hearings.

29. (1) The parties are free to agree -

- (a) that the arbitration proceedings shall be consolidated with other arbitration proceedings, or
- (b) that concurrent hearings shall be held,

on such terms as may be agreed.

(2) Unless the parties agree to confer such power on the tribunal, the tribunal has no power to order consolidation of proceedings or concurrent hearings.

(3) In the absence of agreement between the parties as to consolidation, a party to more than one set of arbitration proceedings in respect of the same matter, may apply to the Court for consolidation of those proceedings.

(4) Where an application is made under subsection (3), the Court may order consolidation of proceedings if it is satisfied -

- (a) that consolidation is likely to produce substantial savings in costs for all parties,
- (b) that the application was made without delay, and
- (c) that it is in the interests of justice to do so.

Legal or other representation.

30. Unless otherwise agreed by the parties, a party to arbitration proceedings may choose to be represented in the proceedings by a lawyer or by any other person.

Power to appoint experts, legal advisers or assessors.

31. (1) Unless otherwise agreed by the parties -

(a) the tribunal may -

(i) appoint experts or legal advisers to report to it and the parties, or

(ii) appoint assessors to assist it on technical matters,

and may allow any such expert, legal adviser or assessor to attend the proceedings, and

(b) the parties shall be given a reasonable opportunity to comment on any information, opinion or advice offered by any such person.

(2) The fees and expenses of an expert, legal adviser or assessor appointed by the tribunal for which the arbitrators are liable are expenses of the arbitrators for the purposes of this Law.

General powers exercisable by the tribunal by way of interim measures.

32. (1) The parties are free to agree on the powers exercisable by the tribunal for the purposes of, and in relation to, the proceedings.

(2) Unless otherwise agreed by the parties the tribunal may, by way of interim measure -

(a) order a claimant to provide security for the costs of the arbitration, save that this power shall not be exercised

solely on the ground that the claimant is a person ordinarily resident outside Guernsey, which, in the case of a legal person that shall mean established, incorporated or controlled in a place other than Guernsey,

- (b) by order restrict the manner in which a party may deal with that party's assets during the proceedings,
- (c) give directions in relation to any property which is the subject of the proceedings or as to which any question arises in the proceedings, and which is owned by or is in the possession of a party -
 - (i) for the inspection, photographing, preservation, custody or detention of the property by the tribunal, an expert or a party, or
 - (ii) ordering that samples be taken from, or any observation be made of or experiment conducted upon, the property,
- (d) direct that a party or witness shall be examined on oath or affirmation, and may for that purpose administer any necessary oath or take any necessary affirmation,
- (e) give directions to a party for the preservation for the purposes of the proceedings of any evidence in that party's custody or control,
- (f) give such directions as may be necessary to preserve the relative positions of the parties or the arbitration proceedings,
- (g) modify, suspend or terminate any interim measure made by the tribunal.

(3) When considering whether or not to make an interim measure the tribunal shall have regard to the effect of that measure on the parties, taking into account the harm that may arise if the measure is not made, and where the measure is sought by a party -

- (a) the tribunal shall take into account the prospects of success of the requesting party,
- (b) if the measure is made, the tribunal may -
 - (i) require the requesting party to provide appropriate security in connection with the measure,
 - (ii) require the requesting party to disclose promptly any material change in circumstances on the basis of which the measure was made,
 - (ii) make a subsequent order against the requesting party if it transpires that the measure should not have been made, in respect of costs and damages caused by the measure to any party.

Power to make provisional awards.

33. (1) The parties are free to agree that the tribunal shall have power to order on a provisional basis any relief which it would have power to grant in a final award.

- (2) This includes, for instance, making -
 - (a) a provisional order for the payment of money or the disposition of property as between the parties, or
 - (b) an order to make an interim payment on account of the costs of the arbitration.

(3) Any such order shall be subject to the tribunal's final adjudication, and the tribunal's final award (on the merits or as to costs) shall take account of any such order.

(4) Unless the parties agree to confer such power on the tribunal, the tribunal has no such power. This does not affect its powers under section 41 (awards on different issues).

General duty of parties.

34. (1) The parties shall do all things necessary for the proper and expeditious conduct of the arbitration proceedings.

(2) This includes without limitation -

(a) complying without delay with any determination as to procedural or evidential matters, or with any order or directions of the tribunal, and

(b) where appropriate, taking without delay any necessary steps to obtain a decision of the court on a preliminary question of jurisdiction or law (see sections 26 and 39).

(3) If any party breaches this duty, then the tribunal may exercise its powers under section 34(2)(b)(iii).

Powers of tribunal in case of party's default.

35. (1) The parties are free to agree on the powers of the tribunal in case of a party's failure to do something necessary for the proper and expeditious conduct of the arbitration.

(2) If the parties fail to reach such agreement, and -

(a) if the tribunal is satisfied that there has been inordinate and inexcusable delay on the part of the claimant in

pursuing the claim and that the delay -

- (i) gives rise, or is likely to give rise, to a substantial risk that it is not possible to have a fair resolution of the issues in that claim, or
- (ii) has caused, or is likely to cause, serious prejudice to the respondent,

the tribunal may make an award dismissing the claim,

(b) if without showing sufficient cause a party -

- (i) fails to attend or be represented at an oral hearing of which due notice was given, the tribunal may continue the proceedings in the absence of that party,
- (ii) where matters are to be dealt with in writing, fails after due notice to submit written evidence or make written submissions, the tribunal may continue the proceedings without any written evidence or submissions on that party's behalf, and may make an award on the basis of the evidence before it, or
- (iii) fails to comply with any determination, order or directions of the tribunal, the tribunal may make a peremptory order to the same effect, prescribing such time for compliance with it as the tribunal considers appropriate,

(c) if a claimant fails to comply with a peremptory order of the tribunal to provide security for costs, the tribunal may make an award dismissing that party's claim,

- (d) if a party fails to comply with any other kind of peremptory order, then, without prejudice to section 36 (enforcement by court of tribunal's peremptory orders), the tribunal may do any of the following -
- (i) direct that the party in default shall not be entitled to rely upon any allegation or material which was the subject matter of the order,
 - (ii) draw such adverse inferences from the act of non-compliance as the circumstances justify,
 - (iii) proceed to an award on the basis of such materials as have been properly provided to it,
 - (iv) make such order as it thinks fit as to the payment of costs of the arbitration incurred in consequence of the non-compliance.

Powers of the court

Enforcement of peremptory orders of tribunal.

36. (1) Unless otherwise agreed by the parties, the court may make an order requiring a party to comply with a peremptory order made by the tribunal.

- (2) An application for an order under this section may be made -
- (a) by the tribunal (upon notice to the parties),
 - (b) by a party with the permission of the tribunal (and upon notice to the other parties), or
 - (c) where the parties have agreed that the powers of the court under this section shall be available.

(3) The court shall not act unless it is satisfied that the applicant has exhausted any available arbitral process in respect of failure to comply with the tribunal's order.

(4) No order shall be made under this section unless the court is satisfied that -

- (a) the person to whom the tribunal's order was directed has failed to comply with it within the time prescribed in the order or, if no time was prescribed, within a reasonable time, and
- (b) it is in the interests of justice for such an order to be made to assist the proper functioning of the arbitral process.

(5) The leave of the court is required for any appeal from a decision of the court under this section.

Securing the attendance of witnesses.

37. (1) A party to arbitration proceedings may use the same court procedures as are available in relation to legal proceedings in the Royal Court to secure the attendance before the tribunal of a witness in order to give oral testimony or to produce documents or other material evidence.

(2) This may only be done with the permission of the tribunal or the agreement of the other parties.

(3) The court procedures may only be used if -

- (a) the witness is in Guernsey, and
- (b) the arbitration proceedings are being conducted in Guernsey.

(4) A person shall not be compelled by virtue of this section to

produce any document or other material evidence which that person could not be compelled to produce in legal proceedings.

Court powers exercisable in support of arbitration proceedings.

38. (1) Unless otherwise agreed by the parties, the Court has for the purposes of, and in relation to, arbitration proceedings the same power of making orders about the matters listed below as it has for the purposes of and in relation to legal proceedings.

(2) Those matters are -

- (a) the taking of the evidence of witnesses,
- (b) the preservation of evidence,
- (c) making orders relating to property which is the subject of the proceedings or as to which any question arises in the proceedings -
 - (i) for the inspection, photographing, preservation, custody or detention of the property, or
 - (ii) ordering that samples be taken from, or any observation be made of or experiment conducted upon, the property,

and for that purpose authorising any person to enter any premises in the possession or control of a party to the arbitration,

- (d) the sale of any goods the subject of the proceedings,
 - (e) the granting of an interim injunction or the appointment of a liquidator.
- (3) If the case is one of urgency, the court may, on the

application of a party or proposed party to the arbitration proceedings, make such orders as it thinks necessary for the purpose of preserving evidence or assets, including, *inter alia*, contractual rights.

(4) If the case is not one of urgency, the court shall act only on the application of a party to the arbitration proceedings (upon notice to the other parties and to the tribunal) made with the permission of the tribunal or the agreement in writing of the other parties.

(5) In any case the court shall act only if, or to the extent that, the tribunal, and any person or arbitral institution vested by the parties with power in that regard, has no power or is unable for the time being to act effectively.

(6) If the court so orders, an order made by it under this section shall cease to have effect in whole or in part on the order of the tribunal or of any such person or arbitral institution having power to act in relation to the subject-matter of the order.

(7) The leave of the court is required for any appeal from a decision of the court under this section.

Determination of preliminary point of law.

39. (1) Unless otherwise agreed by the parties, the court may on the application of a party (upon notice to the other parties) determine any question of law arising in the course of the proceedings which the court is satisfied substantially affects the rights of one or more of the parties. An agreement to dispense with reasons for the tribunal's award shall be considered an agreement to exclude the court's jurisdiction under this section.

(2) An application under this section shall not be considered unless -

(a) it is made with the agreement of all the other parties to the proceedings, or

(b) it is made with the permission of the tribunal and the

court is satisfied -

- (i) that the determination of the question is likely to produce substantial savings in costs, and
- (ii) that the application was made without delay.

(3) The application shall identify the question of law to be determined and, unless made with the agreement of all the other parties to the proceedings, shall state the grounds on which it is said that the question should be decided by the court.

(4) Unless otherwise agreed by the parties, the arbitral tribunal may continue the arbitration proceedings and make an award while an application to the court under this section is pending.

(5) The decision of the court on the question of law shall be treated as a judgment of the court for the purposes of an appeal.

(6) The court shall not give leave to appeal unless it considers that the question is one of general importance or is one which for some other special reason should be considered by the Court of Appeal.

PART IV THE AWARD

Award on merits

Rules applicable to the substance of the dispute.

- 40.** (1) The arbitral tribunal shall decide the dispute -
- (a) in accordance with the substantive law chosen by the parties as applicable to dispute, or
 - (b) if the parties so agree, in accordance with such other rules as are agreed by them or determined by the

tribunal.

(2) For this purpose the reference to the substantive law of a territory does not include the conflict of laws rules.

(3) If or to the extent that there is no such choice or agreement, the tribunal shall apply the substantive law as determined by the conflict of laws rules which it considers applicable.

(4) The arbitral tribunal shall decide the dispute according to principles of justice and fairness, rather than as a matter of strict law, only if the parties have expressly authorised it to do so.

(5) In all cases, where appropriate to do so, 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.

Awards on different issues.

41. (1) Unless otherwise agreed by the parties, the tribunal may make more than one award at different times on different aspects of the matters to be determined.

(2) The tribunal may, in particular, make an award relating -

(a) to an issue affecting the whole claim, or

(b) to a part only of the claims or cross-claims submitted to it for decision.

(3) If the tribunal does so, it shall specify in the award the issue, or the claim or part of the claim, which is the subject matter thereof.

Remedies.

42. (1) The parties are free to agree on the powers exercisable by the arbitral tribunal as regards remedies.

- (2) Unless otherwise agreed by the parties, the tribunal -
 - (a) may make a declaration as to any matter to be determined in the proceedings,
 - (b) may order the payment of a sum of money, in any currency, and
 - (c) has the same powers as the court to order -
 - (i) a party to do or refrain from doing anything,
 - (ii) the rectification, setting aside or cancellation of a deed or other document.

Interest.

43. (1) The parties are free to agree on the powers of the tribunal as regards the award of interest.

- (2) Unless otherwise agreed by the parties the tribunal may -
 - (a) award simple or compound interest from such dates, at such rates and with such rests as it considers meets the justice of the case on the whole or part of -
 - (i) any amount awarded by the tribunal, in respect of any period up to the date of the award, or
 - (ii) any amount claimed in the arbitration and outstanding at the commencement of the arbitration proceedings but paid before the award was made, in respect of any period up to the date of payment,
 - (b) award simple or compound interest from the date of the award (or any later date) until payment, at such

rates and with such rests as it considers meets the justice of the case, on the outstanding amount of any award (including any award of interest under subparagraph (a) and any award as to costs).

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

(4) The above provisions do not affect any other power of the tribunal to award interest.

Extension of time for making award.

44. (1) Where the time for making an award is limited by or in pursuance of the arbitration agreement, then, unless otherwise agreed by the parties, the court may by order extend that time in accordance with the following provisions.

(2) An application for an order under this section may be made -

(a) by the tribunal (upon notice to the parties), or

(b) by any party to the proceedings (upon notice to the tribunal and the other parties),

but only after exhausting any available arbitral process for obtaining an extension of time.

(3) The court shall only make an order if satisfied that a substantial injustice would otherwise be done.

(4) The court may extend the time for such period and on such terms as it thinks fit, and may do so whether or not the time previously fixed (by or under the agreement or by a previous order) has expired.

(5) The leave of the court is required for any appeal from a

decision of the court under this section.

Settlement.

45. If during arbitration proceedings the parties settle the dispute, unless otherwise agreed by the parties -

- (a) the tribunal shall terminate the substantive proceedings, and, if so requested by the parties and not objected to by the tribunal, shall record the settlement in the form of an agreed award,
- (b) an agreed award shall state that it is an award of the tribunal and shall have the same status and effect as any other award on the merits of the case,
- (c) the provisions relating to awards (sections 46 to 52) apply to an agreed award, and
- (d) unless the parties have also settled the matter of the payment of the costs of the arbitration, the provisions relating to costs (sections 54 to 60) continue to apply.

Form and contents of award.

46. (1) The parties are free to agree on the form of an award.

(2) If or to the extent that there is no such agreement, the award -

- (a) shall be in writing signed by all the arbitrators or a majority of the arbitrators provided that the reason for any omitted signature is stated in the award,
- (b) shall contain the reasons for the award unless it is an agreed award or the parties have agreed to dispense with reasons, and
- (c) shall state the seat of the arbitration and the date on

which the award is made (see section 47).

Place and date of award.

47. (1) Unless otherwise agreed by the parties where the seat of the arbitration is in Guernsey, any award in the proceedings shall be treated as made there, regardless of where it was signed, despatched or delivered to any party.

(2) Unless otherwise agreed by the parties the tribunal may decide what is to be the date on which the award was made. In the absence of any such decision, the date of the award is the date on which it is signed by the final arbitrator to sign it.

Notification of award.

48. (1) The parties are free to agree on the requirements as to notification of the award to the parties.

(2) If there is no such agreement, the award shall be notified to the parties by service on each of them of copies of the award, which shall be done without delay after the award is made.

(3) Nothing in this section affects section 49 (power to withhold award in case of non-payment).

Power to withhold award in case of non-payment.

49. (1) The tribunal may refuse to deliver an award to the parties except upon full payment of the fees and expenses of the arbitrators.

(2) If the tribunal refuses on that ground to deliver an award, a party to the arbitration proceedings may (upon notice to the other parties and the tribunal) apply to the court, which may order that -

- (a) the tribunal shall deliver the award on the 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 properly payable shall be determined by such means and upon such terms as the court may direct, and
- (c) out of the money paid into court there shall be paid ~~out~~ such fees and expenses as may be found to be properly payable and the balance of the money (if any) shall be paid out to the applicant.

(3) For this purpose the amount of fees and expenses properly payable is the amount the applicant is liable to pay under section 22 or any agreement relating to the payment of the arbitrators.

(4) No application to the court may be made where there is any available arbitral process for appeal or review of the amount of the fees or expenses demanded.

(5) References in this section to arbitrators include an arbitrator who has ceased to act.

(6) The provisions of this section also apply in relation to any person or arbitral institution vested by the parties with powers in relation to the delivery of the tribunal's award. As they so apply, the references to the fees and expenses of the arbitrators shall be construed as including the fees and expenses of that person or institution.

(7) The leave of the court is required for any appeal from a decision of the court under this section.

(8) Nothing in this section shall be construed as excluding an application under section 22 where payment has been made to the arbitrators in order to obtain the award.

Correction of award or additional award.

50. (1) The parties are free to agree on the powers of the tribunal to correct an award or make an additional award.

- (2) If or to the extent there is no such agreement -
- (a) the tribunal may on its own initiative or on the application of a party -
 - (i) correct an award so as to remove any clerical mistake or error arising from an accidental slip or omission or clarify or remove any ambiguity in the award, or
 - (ii) make an additional award in respect of any claim (including a claim for interest or costs) which was presented to the tribunal but was not dealt with in the award,

but these powers shall not be exercised without first affording the other parties a reasonable opportunity to make representations to the tribunal,

- (b) any application for the exercise of those powers must be made within 28 days of the date of the award or such longer period as the parties may agree,
- (c) any correction of an award shall be made within 28 days of the date the application was received by the tribunal or, where the correction is made by the tribunal on its own initiative, within 28 days of the date of the award or, in either case, such longer period as the parties may agree,
- (d) any additional award shall be made within 56 days of the date of the original award or such longer period as the parties may agree,
- (e) the tribunal may, if it thinks necessary, extend any

period of time in this subsection, and

- (f) any correction of an award shall form part of the award and the provisions relating to awards (sections 46 to 52) apply to any additional award or correction.

Interpretation of award.

51. (1) If agreed by the parties, within 28 days of receipt of the award, or within any another period of time 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.

(2) If the arbitral tribunal considers the request to be justified, it shall give the interpretation within 28 days of receipt of the request.

(3) Any interpretation given under subsection (2) shall form part of the award and the provisions relating to awards (sections 46 to 52) apply to it.

Effect of award.

52. (1) Unless otherwise agreed by the parties, an award made by the tribunal pursuant to an arbitration agreement is final and binding both on the parties and on any persons claiming through or under them.

(2) This does not affect the right of a person to challenge the award by any available arbitral process of appeal or review or in accordance with the provisions of this Part.

Termination of arbitration proceedings.

53. (1) The arbitral proceedings are terminated by the final award or by an order of the tribunal under subsection (2).

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

- (a) the claimant withdraws the claim, unless the respondent objects and the arbitral tribunal recognises

a legitimate interest on the respondent's part in obtaining a final settlement of the dispute,

- (b) the parties agree on the termination of the proceedings,
- (c) the arbitral tribunal finds that the continuation of the proceedings has for any other reason become unnecessary or impossible.

(3) The mandate of the arbitral tribunal terminates with the termination of the arbitral proceedings, subject to section 43.

Award of costs

Costs of the arbitration.

54. References to the costs of the arbitration are to -

- (a) the arbitrators' fees and expenses,
- (b) the fees and expenses of any person (other than the parties) or arbitral institution concerned,
- (c) the legal or other costs of the parties, and
- (d) the costs of or incidental to any proceedings to determine the amount of the recoverable costs of the arbitration (see section 58).

Agreement to pay costs in any event.

55. Unless otherwise agreed by the parties, an agreement which has the effect that a party is to pay the whole or part of the costs of the arbitration in any event is only valid if made after the dispute in question has arisen.

Award of costs.

56. (1) The tribunal may make an award allocating the costs of the arbitration as between the parties, subject to any agreement of the parties.

(2) Unless the parties otherwise agree, the tribunal shall award costs on the general principle that costs should follow the event except where it appears to the tribunal that in the circumstances this is not appropriate in relation to the whole or part of the costs.

Effect of agreement or award about costs.

57. Unless the parties otherwise agree, any obligation under an agreement between them as to how the costs of the arbitration are to be borne, or under an award allocating the costs of the arbitration, extends only to such costs as are recoverable in accordance with section 58.

The recoverable costs of the arbitration.

58. (1) The parties are free to agree what costs of the arbitration are recoverable, if or to the extent there is no such agreement, the following provisions apply.

(2) The tribunal may determine by award the recoverable costs of the arbitration on such basis as it thinks fit. If it does so, it shall specify -

- (a) the basis on which it has acted, and
- (b) the items of recoverable costs and the amount referable to each.

(3) If the tribunal does not determine the costs, and there is a person or an arbitral institution vested by the parties with power to determine the costs, that person or institution, as the case may be, shall determine the costs in accordance with subsection (2).

(4) If the recoverable costs of the arbitration are not determined in accordance with subsection (2) or (3), any party to the arbitration proceedings may apply to the court (upon notice to the other parties) which may -

- (a) determine the recoverable costs of the arbitration on such basis as it thinks fit, or
- (b) order that they shall be determined by such means and upon such terms as it may specify.

(5) The court shall not exercise the power in subsection (4) unless satisfied that the applicant has first exhausted any available recourse to the tribunal or person or institution, as the case may be.

(6) Unless the person or body determining the costs of the arbitration decides otherwise -

- (a) the recoverable costs of the arbitration shall be determined on the basis that there shall be allowed a reasonable amount in respect of all costs reasonably incurred, and
- (b) any doubt as to whether costs were reasonably incurred or were reasonable in amount shall be resolved in favour of the paying party.

(7) This section has effect subject to section 59 (recoverable fees and expenses of arbitrators).

(8) Nothing in this section affects any right of the arbitrators, any expert, legal adviser or assessor appointed by the tribunal, or any person or arbitral institution, to payment of their fees and expenses.

Recoverable fees and expenses of arbitrators.

59. (1) If there is any question as to what reasonable fees and expenses of the arbitrators are appropriate in the circumstances, and the matter is not already before the court on an application under section 58(4) and provided that section 57(5) does not apply, the court may on the application of any party (upon notice to the other parties) -

- (a) determine the matter, or
- (b) order that it be determined by such means and upon such terms as the court may specify.

(2) Subsection (1) has effect subject to any order of the court under section 18(4) or 19(2)(b) (order as to entitlement to fees or expenses in case of removal or resignation of arbitrator).

(3) Nothing in this section affects any right of the arbitrator to payment of fees and expenses.

Power to limit recoverable costs.

60. (1) Unless otherwise agreed by the parties, the tribunal may direct that the recoverable costs of the arbitration, or of any part of the arbitration proceedings, shall be limited to a specified amount.

(2) Any direction may be made or varied at any stage, but this must be done sufficiently in advance of the incurring of costs to which it relates, or the taking of any steps in the proceedings which may be affected by it, for the limit to be taken into account.

Powers of the court in relation to the award

Enforcement of the award.

61. (1) An award made by the tribunal pursuant to an arbitration agreement may, by leave of the court, be enforced in the same manner as a judgment or order of the court to the same effect.

(2) Where leave is so given, judgment may be entered in terms of the award.

(3) Leave to enforce an award shall not be given where, or to the extent that, the person against whom it is sought to be enforced shows that the tribunal lacked substantive jurisdiction to make the award, provided that the right to

raise such an objection has not been lost (see section 68).

(4) Nothing in this section affects the recognition or enforcement of an award under any other enactment or rule of law, in particular under Part II of the Arbitration (Guernsey) Law, 1982^b (enforcement of awards under Geneva Convention) or the provisions of Part VII of this Law relating to the recognition and enforcement of awards under the New York Convention or by an action on the award.

Challenging the award: substantive jurisdiction.

62. (1) A party may (upon notice to the other parties and to the tribunal) apply to the court -

- (a) challenging any award of the arbitral tribunal as to its substantive jurisdiction, or
- (b) for an order declaring an award made by the tribunal on the merits to be of no effect, in whole or in part, because the tribunal did not have substantive jurisdiction.

A party may lose the right to object (see section 68) and the right to apply is subject to the restrictions in section 65(1) and (2).

(2) The arbitral tribunal may continue the arbitration proceedings and make a further award while an application to the court under this section is pending in relation to an award as to jurisdiction.

(3) On an application under this section challenging an award of the arbitral tribunal as to its substantive jurisdiction, the court may by order -

- (a) confirm the award,

^b Ordres en Conseil Vol. XXVII, p. 525.

- (b) vary the award, or
- (c) set aside the award in whole or in part.

(4) The leave of the court is required for any appeal from a decision of the court under this section.

Challenging the award: serious irregularity.

63. (1) A party may (upon notice to the other parties and to the tribunal) apply to the court challenging an award in the proceedings on the ground of serious irregularity affecting the tribunal, the proceedings or the award. A party may lose the right to object (see section 68) and the right to apply is subject to the restrictions in section 65(1) and (2).

(2) Serious irregularity means an irregularity of one or more of the following kinds which the court considers has caused or will cause substantial injustice to the applicant -

- (a) failure by the tribunal to comply with section 27 (general duty of tribunal),
- (b) the tribunal exceeding its powers (otherwise than by exceeding its substantive jurisdiction: see section 62),
- (c) failure by the tribunal to conduct the proceedings in accordance with the procedure agreed by the parties,
- (d) failure by the tribunal to deal with all the issues that were put to it,
- (e) any arbitral institution or person vested by the parties with powers in relation to the proceedings or the award exceeding its powers,
- (f) uncertainty or ambiguity as to the effect of the award,

- (g) the award being obtained by fraud or the award or the way in which it was procured being contrary to public policy,
- (h) failure to comply with the requirements as to the form of the award, or
- (i) any irregularity in the conduct of the proceedings or in the award which is admitted by the tribunal or by any arbitral institution or person vested by the parties with powers in relation to the proceedings or the award.

(3) If there is shown to be serious irregularity affecting the tribunal, the proceedings or the award, the court may -

- (a) remit the award to the tribunal, in whole or in part, for reconsideration,
- (b) set the award aside in whole or in part, or
- (c) declare the award to be of no effect, in whole or in part.

The court shall not exercise its power to set aside or to declare an award to be of no effect, in whole or in part, unless it is satisfied that it would be inappropriate to remit the matters in question to the tribunal for reconsideration.

(4) The leave of the court is required for any appeal from a decision of the court under this section.

Appeal on point of law.

64. (1) Unless otherwise agreed by the parties, a party may (upon notice to the other parties and to the tribunal) appeal to the court on a question of law arising out of an award made in the proceedings. An agreement to dispense

with reasons for the tribunal's award shall be considered an agreement to exclude the court's jurisdiction under this section.

- (2) An appeal shall not be brought under this section except -
 - (a) with the agreement of all the other parties to the proceedings, or
 - (b) with the leave of the court.

The right to appeal is also subject to the restrictions in section 65(1) and (2).

(3) Leave to appeal shall be given only if the court is satisfied that -

- (a) the determination of the question will substantially affect the rights of one or more of the parties,
- (b) the question is one which the tribunal was asked to determine,
- (c) on the basis of the findings of fact in the award -
 - (i) the decision of the tribunal on the question is obviously wrong, or
 - (ii) the question is one of general public importance and the decision of the tribunal is at least open to serious doubt, and
- (d) despite the agreement of the parties to resolve the matter by arbitration, it is just and proper in all the circumstances for the court to determine the question.

(4) An application for leave to appeal under this section shall identify the question of law to be determined and state the grounds on which it is

alleged that leave to appeal should be granted.

(5) The court shall determine an application for leave to appeal under this section without a hearing unless it appears to the court that a hearing is required.

(6) The leave of the court is required for any appeal from a decision of the court under this section to grant or refuse leave to appeal.

(7) On an appeal under this section the court may by order -

- (a) confirm the award,
- (b) vary the award,
- (c) remit the award to the tribunal, in whole or in part, for reconsideration in the light of the court's determination, or
- (d) set aside the award in whole or in part.

The court shall not exercise its power to set aside an award, in whole or in part, unless it is satisfied that it would be inappropriate to remit the matters in question to the tribunal for reconsideration.

(8) The decision of the court on an appeal under this section shall be treated as a judgment of the court for the purposes of a further appeal.

(9) The court shall not give leave to appeal unless it considers that the question is one of general importance or is one which for some other special reason should be considered by the Court of Appeal.

Challenge or appeal: supplementary provisions.

65. (1) An application or appeal may not be brought under sections 62, 63, or 64 if the applicant or appellant has not first exhausted -

- (a) any available arbitral process of appeal or review, and
- (b) any available recourse under section 50 (correction of award or additional award).

(2) Subject to section 73 (power of court to extend time limits) and to the agreement of the parties, any such application or appeal must be brought within 28 days of -

- (a) the date of the award, save that where the award has been corrected in accordance with section 50 the date of the award shall be the date of the correction of the award or,
- (b) if there has been any arbitral process of appeal or review, of the date when the applicant or appellant was notified of the result of that process.

(3) If on such an application or appeal it appears to the court that the award -

- (a) does not contain the tribunal's reasons,
- (b) does not set out the tribunal's reasons in sufficient detail to enable the court properly to consider the application or appeal,

the court may order the tribunal to state the reasons for its award in sufficient detail for that purpose.

(4) Where the court makes an order under subsection (3), it may make such further order as it thinks fit with respect to any additional costs of the arbitration resulting from its order.

(5) The court may order the applicant or appellant to provide security for the costs of the application or appeal, and may direct that the

application or appeal be dismissed if the order is not complied with. However, the power to order security for costs shall not be exercised solely on the ground that the applicant or appellant is a person ordinarily resident outside Guernsey, which, in the case of a legal person that shall mean established, incorporated or controlled in a place other than Guernsey.

(6) The court may order that any money payable under the award shall be paid into court or otherwise secured pending the determination of the application or appeal, and may direct that the application or appeal be dismissed if the order is not complied with.

(7) The court may grant leave to appeal subject to conditions to the same or similar effect as an order under subsection (5) or (6). This does not affect the general discretion of the court to grant leave subject to conditions.

Challenge or appeal: effect of order of court.

66. (1) The following provisions have effect where the court makes an order under section 62, 63 or 64 with respect to an award.

(2) Where the award is varied, the variation has effect as part of the tribunal's award.

(3) Where the award is remitted to the tribunal, in whole or in part, for reconsideration, the tribunal shall make a fresh award in respect of the matters remitted within three months of the date of the order for remission or such longer or shorter period as the court may direct.

(4) Where the award is set aside or declared to be of no effect, in whole or in part, the court may also order that any provision that an award is a condition precedent to the bringing of legal proceedings in respect of a matter to which the arbitration agreement applies, is of no effect as regards the subject matter of the award or, as the case may be, the relevant part of the award.

PART V
SUPPLEMENTARY

Savings for rights of person who takes no part in proceedings.

67. (1) A person alleged to be a party to arbitration proceedings but who takes no part in the proceedings may question -

- (a) whether there is a valid arbitration agreement,
- (b) whether the tribunal is properly constituted, or
- (c) what matters have been submitted to arbitration in accordance with the arbitration agreement,

by proceedings in the court for a declaration or injunction or other appropriate relief.

(2) Such a person also has the same right as a party to the arbitration proceedings to challenge an award -

- (a) by an application under section 62 on the ground of lack of substantive jurisdiction in relation to that person, or
- (b) by an application under section 63 on the ground of serious irregularity (within the meaning of that section) affecting that person,

and section 65(1) (duty to exhaust arbitral procedures) does not apply in that person's case.

Loss of right to object.

68. (1) If a party to arbitration proceedings takes part, or continues to take part, in the proceedings without making any objection (detailed in subsection (2)), either forthwith or within such time as is allowed by -

- (a) the arbitration agreement,
- (b) the tribunal, or

- (c) any provision of this Law,

that party may not raise that objection later, before the tribunal or the court, unless that party shows that, at the time that party took part or continued to take part in the proceedings, that party did not know and could not with reasonable diligence have discovered the grounds for the objection.

- (2) The objections referred to in subsection (1) are -
 - (a) that the tribunal lacks substantive jurisdiction,
 - (b) that the proceedings have been improperly conducted,
 - (c) that there has been a failure to comply with the arbitration agreement or with any provision of this Law, or
 - (d) that there has been any other irregularity affecting the tribunal or the proceedings.

(3) Where the arbitral tribunal rules that it has substantive jurisdiction and a party to arbitration proceedings who could have questioned that ruling -

- (a) by any available arbitral process of appeal or review, or
- (b) by challenging the award,

does not do so, or does not do so within the time allowed by the arbitration agreement or any provision of this Part, that party may not object later to the tribunal's substantive jurisdiction on any ground which was the subject of that ruling.

Immunity of persons appointing arbitrators, &tc.

69. (1) A person designated or requested by the parties to appoint or nominate an arbitrator is not liable for anything done or omitted in the discharge or purported discharge of that function unless the act or omission is shown to have been in bad faith.

(2) A person by whom an arbitrator is appointed or nominated is not liable, by reason of having made the appointment or nomination, for anything done or omitted by the arbitrator (or the arbitrator's employees or agents) in the discharge or purported discharge of the arbitrator's functions.

(3) This section applies to an employee or agent as they apply to the person.

Service of notices, &tc.

70. (1) The parties are free to agree on the manner of service of any notice or other document required or authorised to be given or served in pursuance of the arbitration agreement or for the purposes of the arbitration proceedings.

(2) If or to the extent that there is no such agreement -

(a) a notice or other document may be served on a person by any effective means (including electronic transmission),

(b) if a notice or other document is addressed, pre-paid and sent by post -

(i) to the addressee's last known principal residence or, if the addressee is or has been carrying on a trade, profession or business, the last known principal business address, or

(ii) where the addressee is a legal person, to the body's registered or principal office,

it shall be treated as effectively served.

(3) This section does not apply to the service of documents for the purposes of legal proceedings for which provision is made by rules of court.

(4) References to a notice or other document include any form of communication in writing and references to giving or serving a notice or other document shall be construed accordingly.

(5) For the purpose of this section "**electronic transmission**" means transmitted by electronic communication, facsimile transmission or other similar means which produce or enable the production of a document containing the text of the communication (in which event the document shall be regarded as served when it is received).

Powers of court in relation to service of documents.

71. (1) This section applies where service of a document on a person in the manner agreed by the parties, or in accordance with the provisions of section 70 having effect in default of agreement, is not reasonably practicable.

(2) Unless otherwise agreed by the parties, the court may make such order as it thinks fit -

(a) for service in such manner as the court may direct, or

(b) dispensing with service of the document.

(3) Any party to the arbitration agreement may apply for an order, but only after exhausting any available arbitral process for resolving the matter.

(4) The leave of the court is required for any appeal from a decision of the court under this section.

Reckoning periods of time.

72. (1) The parties are free to agree on the method of reckoning periods of time for the purposes of any provision agreed by them or any provision of this Law having effect in default of such agreement.

(2) If or to the extent there is no such agreement -

- (a) where the act is required to be done within a specified period after or from a specified date, the period begins immediately after that date,
- (b) where the act is required to be done a specified number of clear days after a specified date, at least that number of days must intervene between the day on which the act is done and that date,
- (c) where the period is a period of 7 days or less which would include -
 - (i) a non-business day, or
 - (ii) a public holiday in the place where anything which has to be done within the period falls to be done,

that day shall be excluded.

Power of court to extend time limits relating to arbitration proceedings.

73. (1) Unless the parties otherwise agree, the court may by order extend any time limit agreed by them in relation to any matter relating to the arbitration proceedings or specified in any provision of this Law having effect in default of such agreement.

(2) This section does not apply to a time limit to which section 9 applies (power of court to extend time).

- (3) An application for an order may be made -
- (a) by any party to the arbitration proceedings (upon notice to the other parties and to the tribunal), or
 - (b) by the arbitral tribunal (upon notice to the parties).
- (4) The court shall not exercise its power to extend a time limit unless it is satisfied -
- (a) that any available recourse to the tribunal, or to any arbitral institution or person vested by the parties with power in that regard, has first been exhausted, and
 - (b) that a substantial injustice would otherwise be done.
- (5) The court's power under this section may be exercised whether or not the time has already expired.
- (6) An order under this section may be made on such terms as the court thinks fit.
- (7) The leave of the court is required for any appeal from a decision of the court under this section.

Constitution and rules of Royal Court.

74. (1) In this Law "**the Court**" means the Royal Court sitting as an Ordinary Court constituted by the Bailiff sitting unaccompanied by the Jurats, and for the purposes of this Law the Royal Court may appoint one or more assessors to assist it in the determination of any matter before it.

(2) The Royal Court sitting as a Full Court may by order make rules dealing with all procedural and incidental matters arising under this Law in respect of the court and its powers, proceedings, practice and procedure.

(3) Rules under subsection (2) may, without limitation, regulate

and prescribe -

- (a) the procedure, including the method of pleading, and the practice to be followed in proceedings,
 - (b) the means by which matters may be proved, and
 - (c) the manner and the way in which evidence may be adduced.
- (4) In addition, rules of court may amend the provisions of this

Part -

- (a) with respect to the time within which any application or appeal to the court must be made,
- (b) so as to keep any provision made by this Law in relation to arbitration proceedings in step with the corresponding provision of rules of court applying in relation to proceedings in the court, or
- (c) so as to keep any provision made by this Law in relation to legal proceedings in step with the corresponding provision of rules of court applying generally in relation to proceedings in the court.

Notice and time in connection with legal proceedings.

75. (1) References in this Law (however expressed) -

- (a) to an application, appeal or other step in relation to legal proceedings being taken “upon notice” to the other parties to the arbitration proceedings, or to the tribunal, are to such notice of the originating process as is required by rules of court and do not impose any separate requirement, and

- (b) to making an application or appeal to the court within a specified period are to the issue within that period of the appropriate originating process in accordance with rules of court.

(2) Where any provision of this Law requires an application or appeal to be made to the court within a specified time, the rules of court relating to the reckoning of periods, the extending or abridging of periods, and the consequences of not taking a step within the period prescribed by the rules, apply in relation to that requirement.

Saving for certain matters governed by customary law.

76. Nothing in this Law shall be construed as excluding the operation of any rule of law consistent with the provisions of this Law, in particular, any rule of law as to -

- (a) matters which are not capable of settlement by arbitration,
- (b) the effect of an oral arbitration agreement, or
- (c) the refusal of recognition or enforcement of an arbitral award on grounds of public policy.

Application of prescription.

77. (1) The Guernsey law of prescription shall apply to arbitration proceedings as it applies to legal proceedings, subject to any agreement between the parties to the contrary.

(2) The court may order that in computing the time prescribed by the Guernsey law of prescription for the commencement of proceedings (including arbitration proceedings) in respect of a dispute which was the subject matter of -

- (a) an award, or
- (b) the affected part of an award,

which the court orders to be set aside, or declares to be of no effect, the period between the commencement of the arbitration and the date of the court order shall be excluded.

(3) In determining when a cause of action accrued for the purposes of prescription, any provision that an award is a condition precedent to the bringing of legal proceedings shall be disregarded in respect of a matter subject to an arbitration agreement.

Powers of court in event of default.

78. If a person does not comply with an order of the Royal Court under this Law requiring that person to do anything, the Royal Court may, on such terms and conditions as it thinks fit, order that the thing be done by another person, nominated for the purpose by the court, at the expense of the person in default (or otherwise as the court directs), and a thing so done has effect in all respects as if done by the person in default.

Application of this Law to consumer contracts.

79. (1) If a person enters into a contract as a consumer that contains an arbitration agreement, that arbitration agreement shall not bind that consumer except where -

(a) that consumer -

(i) has given written consent to be so bound, after the dispute in question has arisen, or

(ii) has submitted to arbitration under that agreement in respect of the dispute or any other dispute arising thereunder, or

(b) the Court has made an order under subsection (2).

(2) Where the court is satisfied that it would not be detrimental to the consumer for the dispute in question to be referred to arbitration, in accordance

with subsection (3), the Court may order that the arbitration agreement shall bind the consumer, on application by any prospective party to the proceedings made after the dispute has arisen.

(3) In determining whether a reference to arbitration is detrimental to the interests of the consumer, the court shall have regard to all factors appearing to be relevant.

(4) For the purposes of this section a person enters into a contract "**as a consumer**" if -

- (a) he neither makes the contract in the course of a business nor holds himself out as doing so,
- (b) the other party makes the contract in the course of a business, and
- (c) the services or goods passing under or in pursuance of the contract are of a type ordinarily supplied for private use or consumption,

but on a sale by auction or by competitive tender the buyer is not in any circumstances to be regarded as entering into the contract as a consumer.

(5) In subsection (4) "**business**" includes a profession and the activities of any public authority or person.

(6) It is for those claiming that a person entered into a contract otherwise than as a consumer to show that he did so.

PART VI STATUTORY ARBITRATIONS

Application of this Law to statutory arbitration.

80. (1) The provisions of this Law apply to every arbitration under a Guernsey enactment (a "**statutory arbitration**"), subject to the adaptations and exclusions specified in sections 81 to 83.

(2) The provisions of this Law do not apply to a statutory arbitration if or to the extent that their application -

- (a) is inconsistent with the provisions of the enactment concerned, or with any rules of procedure authorised or recognised by it, or
- (b) is excluded by any other enactment.

General adaptation of provisions in relation to statutory arbitrations.

81. (1) The provisions of this Law apply to a statutory arbitration -

- (a) as if the arbitration were pursuant to an arbitration agreement and as if the enactment were that agreement, and
- (b) as if the persons by and against whom a claim subject to arbitration in pursuance of the enactment may be or has been made were parties to that agreement.

(2) Every statutory arbitration shall be taken to have its seat in Guernsey.

Specific adaptations of provisions in relation to statutory arbitrations.

82. (1) The following provisions this Law apply to a statutory arbitration with the following adaptations.

(2) In section 24(1) (competence of tribunal to rule on its own jurisdiction), the reference in paragraph (a) to whether there is a valid arbitration agreement shall be construed as a reference to whether the enactment applies to the dispute or difference in question.

(3) Section 29 (consolidation of proceedings and concurrent hearings) applies only so as to authorise the consolidation of proceedings, or concurrent hearings in proceedings, under the same enactment.

(4) Section 40 (rules applicable to substance of dispute) applies with the omission of subsection (1)(b) (determination in accordance with considerations agreed by parties).

Provisions excluded from applying to statutory arbitrations.

83. The following provisions of this Law do not apply in relation to a statutory arbitration -

- (a) section 5 (whether agreement discharged by death or bankruptcy of a party),
- (b) section 9 (power of court to extend agreed time limits),
- (c) sections 6(5), 7(2) and 66(4) (restrictions on effect of provision that award condition precedent to right to bring legal proceedings).

PART VII

RECOGNITION AND ENFORCEMENT OF FOREIGN AWARDS

Continuation of Part II of the Arbitration (Guernsey) Law, 1982^c.

84. Part II of the Arbitration (Guernsey) Law, 1982 (enforcement of certain foreign awards) continues to apply in relation to foreign awards within the meaning of that Part which are not also New York Convention awards.

^c Ordres en Conseil Vol. XXVII, p. 525 as amended.

New York Convention Awards.

85. (1) In this Part a “**New York Convention award**” means an award made, in pursuance of an arbitration agreement, in the territory of a state which is a party to the New York Convention.

(2) For the purposes of subsection (1) and of the provisions of this Part relating to such awards -

(a) “**arbitration agreement**” means an arbitration agreement in writing, and

(b) an award shall be treated as made at the seat of the arbitration, regardless of where it was signed, despatched or delivered to any of the parties.

(3) If Her Majesty by Order in Council declares that a state specified in the Order is a party to the New York Convention, or is a party in respect of any territory so specified, the Order shall, while in force, be conclusive evidence of that fact.

(4) In this Law “**the New York Convention**” means the Convention on the Recognition and Enforcement of Foreign Arbitral Awards adopted by the United Nations Conference on International Commercial Arbitration on 10th June 1958.

Recognition and enforcement of awards.

86. (1) A New York Convention award shall be recognised as binding on the persons as between whom it was made, and may accordingly be relied on by those persons by way of defence, set-off or otherwise in any legal proceedings in Guernsey.

(2) A New York Convention award may, by leave of the court, be enforced in the same manner as a judgment or order of the court to the same effect.

(3) Where leave is so given, judgment may be entered in terms of

the award.

Evidence to be produced by party seeking recognition or enforcement.

87. (1) A party seeking the recognition or enforcement of a New York Convention award must produce -

- (a) the duly authenticated original award or a duly certified copy of it, and
- (b) the original arbitration agreement or a duly certified copy of it.

(2) If the award or agreement is in a foreign language, the party must also produce a translation of it certified by an official or sworn translator or by a diplomatic or consular agent.

Refusal of recognition or enforcement.

88. (1) Recognition or enforcement of a New York Convention award shall not be refused except in the following cases.

(2) Recognition or enforcement of the award may be refused if the person against whom it is invoked proves -

- (a) that a party to the arbitration agreement was (under the law applicable to that party) under some incapacity,
- (b) that the arbitration agreement was not valid under the law to which the parties subjected it or, failing any indication thereon, under the law of the country where the award was made,
- (c) that that person was not given proper notice of the appointment of the arbitrator or of the arbitration proceedings or was otherwise unable to present that person's case,

- (d) that the award deals with a difference 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 (but see subsection (4)),
- (e) that the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties or, failing such agreement, with the law of the country in which the arbitration took place,
- (f) that the award has not yet become binding on the parties, or has been set aside or suspended by a competent authority of the country in which, or under the law of which, it was made.

(3) Recognition or enforcement of the award may also be refused if the award is in respect of a matter which is not capable of settlement by arbitration, or if it would be contrary to public policy to recognise or enforce the award.

(4) An award which contains decisions on matters not submitted to arbitration may be recognised or enforced to the extent that it contains decisions on matters submitted to arbitration which can be separated from those on matters not so submitted.

(5) Where an application for the setting aside or suspension of the award has been made to such a competent authority as is mentioned in subsection (2)(f), the court before which the award is sought to be relied upon may, if it considers it proper, adjourn the decision on the recognition or enforcement of the award. It may also on the application of the party claiming recognition or enforcement of the award order the other party to give suitable security.

Savings for other bases of recognition or enforcement.

89. Nothing in the preceding provisions of this Part affects any right to rely upon or enforce a New York Convention award at customary law or under section 61.

PART VIII
FINAL PROVISIONS

Interpretation.

90. (1) In this Law, unless the context otherwise requires -

"**agreed award**": see section 45(1),

"**the arbitration agreement**": for its meaning in this Law other than in Part VII, see section 1(1), for its meaning in Part VII, see section 85(2),

"**available arbitral process**", in relation to any matter, includes any process of appeal to or review by an arbitral or other institution or person vested by the parties with powers in relation to that matter,

"**bankrupt**" includes -

(a) a person -

(i) whose affairs have been declared in a state of "désastre" by arresting creditors at a meeting held before a Commissioner of the Royal Court, the Court of Alderney or the Court of the Seneschal,

(ii) against whom an interim vesting order has been made in respect of any real property in the Bailiwick,

(iii) in respect of whom a declaration of insolvency has been made under the Loi ayant rapport aux

Débiteurs et à la Renonciation, 1929^d, and

- (b) a corporation -
 - (i) in respect of which a liquidator (provisional or otherwise) has been appointed or which (otherwise than for the sole purpose of solvent amalgamation, solvent reconstruction or solvent winding-up) has passed a special resolution requiring it to be wound up voluntarily, or
 - (ii) which is otherwise insolvent,

and "**bankruptcy**" shall be construed accordingly,

"**claimant**", unless the context otherwise requires, includes a counterclaimant, and related expressions shall be construed accordingly,

"**corporation**" means a body corporate wherever incorporated,

"**costs of the arbitration**": see section 54(1),

"**evidenced in writing**", see section 1(4),

"**legal proceedings**" means civil proceedings in the Royal Court,

"**the New York Convention**" see section 85(4),

"**non-business day**" means -

- (a) a Saturday, a Sunday, Christmas Day and Good

^d Ordres en Conseil Vol. VIII, p. 310.

Friday, and

- (b) a day appointed as a public holiday by Ordinance of the States of Deliberation under section 1(1) of the Bills of Exchange (Guernsey) Law, 1958^e,

"the parties": see section 1(1),

"peremptory order" means an order made under section 35(2)(b)(iii) or made in exercise of any corresponding power conferred by the parties,

"premises" includes land, buildings, moveable structures, vehicles, vessels, aircraft and hovercraft,

"person" includes both natural and legal persons and an unincorporate body of persons,

"provisions of this Law" includes the provisions of any Ordinance, regulation or rules hereunder,

"Royal Court" means the Royal Court, constituted in accordance with section 74,

"the seat of the arbitration" has the meaning given to it in section 1(5),

"statutory arbitration", see section 80(1),

"States" means the States of Guernsey,

^e Ordres en Conseil Vol. XVII, p. 384; Vol. XXIV, p. 84; No. XI of 1993; and No. XIV of 1994.

"**substantive jurisdiction**", in relation to an arbitral tribunal, refers to jurisdiction in respect of the matters specified in section 24(1)(a) to (c), and references to the tribunal exceeding its substantive jurisdiction shall be construed accordingly, and

"**writing**" means information recorded in any form whether electronically or in hard copy.

(2) For the purposes of this Law, a corporation is resident in the place in which it has its registered office.

(3) Any reference in this Law to an enactment or subordinate legislation is a reference thereto as from time to time amended, re-enacted (with or without modification), extended or applied.

(4) References in this Law to a party to an arbitration agreement include any person claiming under or through a party to the agreement.

General provisions as to subordinate legislation.

91. (1) An Ordinance or regulations under this Law -

(a) may be amended or repealed by a subsequent Ordinance or rule, as the case may be, hereunder, and

(b) may contain such consequential, incidental, supplementary and transitional provision as may appear to be necessary or expedient including, in the case of an Ordinance, provision amending any enactment.

(2) Any power conferred by this Law to make an Ordinance or regulations may be exercised -

(a) in relation to all cases to which the power extends, or in relation to all those cases subject to specified

exceptions, or in relation to any specified cases or classes of cases,

- (b) so as to make, as respects the cases in relation to which it is exercised -
 - (i) the full provision to which the power extends, or any lesser provision (whether by way of exception or otherwise),
 - (ii) the same provision for all cases, or different provision for different cases or classes of cases, or different provision for the same class of case for different purposes,
 - (iii) any such provision either unconditionally or subject to any prescribed conditions.

Repeals and transitional provisions.

92. (1) The following enactments are repealed -

- (a) the Arbitration Act, 1968^f,
- (b) Parts I and III of the Arbitration (Guernsey) Law, 1982^g, and
- (c) the Arbitration (Amendment) (Guernsey) Law, 1986^h.

(2) Anything done before the date of commencement of this Law or in the process of being done on that date under the Arbitration (Guernsey) Law,

^f Ordres en Conseil Vol. XXI, p. 272.

^g Ordres en Conseil Vol. XXVII, p. 525.

^h Ordres en Conseil Vol. XXIX, p. 178.

1982 which could be done under this Law shall have effect as if done or, as the case may be, may be continued under this Law.

(3) The provisions of this Law do not apply to arbitration proceedings commenced before the date of commencement of this Law, unless the parties otherwise agree (see section 2).

Amendment to the Arbitration (Guernsey) Law, 1982.

93. In section 32(1) of the Arbitration (Guernsey) Law, 1982 replace "section twenty-six of this Law" with "section 61 of the Arbitration (Guernsey) Law, 2015".

Citation.

94. This Law may be cited as the Arbitration (Guernsey) Law, 2015.

Commencement.

95. This Law shall come into operation on the 28th day after the date of its registration on the records of the Island of Guernsey.