

This Act is Current to August 27, 2014

INTERNATIONAL COMMERCIAL ARBITRATION ACT

[RSBC 1996] CHAPTER 233

Contents

Part 1 — Application and Interpretation

- 1 Scope of application
- 2 Definitions and interpretation
- 3 Receipt of written communications
- 4 Waiver of right to object
- 5 Extent of judicial intervention
- 6 Construction of Act

Part 2 — Arbitration Agreement

- 7 Definition of arbitration agreement
- 8 Stay of legal proceedings
- 9 Interim measures by court

Part 3 — Composition of Arbitral Tribunal

- 10 Number of arbitrators
- 11 Appointment of arbitrators
- 12 Grounds for challenge
- 13 Challenge procedure
- 14 Failure or impossibility to act
- 15 Termination of mandate and substitution of arbitrator

Part 4 — Jurisdiction of Arbitral Tribunal

- 16 Competence of arbitral tribunal to rule on its jurisdiction
- 17 Interim measures ordered by arbitral tribunal

Part 5 — Conduct of Arbitral Proceedings

- 18 Equal treatment of parties
- 19 Determination of rules of procedure
- 20 Place of arbitration
- 21 Commencement of arbitral proceedings
- 22 Language
- 23 Statements of claim and defence
- 24 Hearings and written proceedings
- 25 Default of a party
- 26 Expert appointed by arbitral tribunal
- 27 Court assistance in taking evidence and consolidating arbitrations

Part 6 — Making of Arbitral Award and Termination of Proceedings

- 28 Rules applicable to substance of dispute
- 29 Decision making by panel of arbitrators
- 30 Settlement

- 31 Form and content of arbitral award
- 32 Termination of proceedings
- 33 Correction and interpretation of award; additional award

Part 7 — Recourse Against Arbitral Award

- 34 Application for setting aside arbitral award

Part 8 — Recognition and Enforcement of Arbitral Awards

- 35 Recognition and enforcement
- 36 Grounds for refusing recognition or enforcement
- 37 Power to make regulations
- 38 Offence Act

Preamble

WHEREAS British Columbia, and in particular the City of Vancouver, is becoming an international financial and commercial centre;

AND WHEREAS disputes in international commercial agreements are often resolved by means of arbitration;

AND WHEREAS British Columbia has not previously enjoyed a hospitable legal environment for international commercial arbitrations;

AND WHEREAS there are divergent views in the international commercial and legal communities respecting the conduct of, and the degree and nature of judicial intervention in, international commercial arbitrations;

AND WHEREAS the United Nations Commission on International Trade Law has adopted the UNCITRAL Model Arbitration Law which reflects a consensus of views on the conduct of, and degree and nature of judicial intervention in, international commercial arbitrations;

THEREFORE HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of British Columbia, enacts as follows:

Part 1 — Application and Interpretation

Scope of application

- 1 (1) This Act applies to international commercial arbitration, subject to any agreement which is in force between Canada and any other state or states and which applies in British Columbia.
- (2) This Act, except sections 8, 9, 35 and 36, applies only if the place of arbitration is in British Columbia.
- (3) An arbitration is international if
 - (a) the parties to an arbitration agreement have, at the time of the conclusion of that agreement, their places of business in different states,

(b) one of the following places is located outside the state in which the parties have their places of business:

- (i) the place of arbitration if determined in, or pursuant to, the arbitration agreement;
- (ii) any place where a substantial part of the obligations of the commercial relationship is to be performed;
- (iii) the place with which the subject matter of the dispute is most closely connected, or

(c) the parties have expressly agreed that the subject matter of the arbitration agreement relates to more than one state.

(4) For the purposes of subsection (3),

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

(b) if a party does not have a place of business, reference is to be made to the party's habitual residence.

(5) For the purposes of subsection (3), the provinces and territories of Canada must be considered one state.

(6) An arbitration is commercial if it arises out of a relationship of a commercial nature including, but not limited to, the following:

- (a) a trade transaction for the supply or exchange of goods or services;
- (b) a distribution agreement;
- (c) a commercial representation or agency;
- (d) an exploitation agreement or concession;
- (e) a joint venture or other related form of industrial or business cooperation;
- (f) the carriage of goods or passengers by air, sea, rail or road;
- (g) the construction of works;
- (h) insurance;
- (i) licensing;
- (j) factoring;
- (k) leasing;
- (l) consulting;
- (m) engineering;
- (n) financing;

(o) banking;

(p) investing.

(7) If an arbitration agreement respecting an international commercial arbitration contains a reference to the *Arbitration Act*, that reference is deemed to be a reference to this Act.

(8) This Act does not affect any other law in force in British Columbia by virtue of which certain disputes may not be submitted to arbitration or may be submitted to arbitration only in accordance with provisions other than those of this Act.

Definitions and interpretation

2 (1) For the purposes of this Act:

"arbitral award" means any decision of the arbitral tribunal on the substance of the dispute submitted to it and includes

(a) an interim arbitral award, including an interim award made for the preservation of property, and

(b) any award of interest or costs;

"arbitral tribunal" means a sole arbitrator or a panel of arbitrators;

"arbitration" means any arbitration whether or not administered by the B.C. Arbitration Centre or any other permanent arbitral institution;

"B.C. Arbitration Centre" means the British Columbia International Commercial Arbitration Centre located in Vancouver, British Columbia;

"Chief Justice" means the Chief Justice of the Supreme Court or his or her designate;

"court" means a body or an organ of the judicial system of a state;

"party" means a party to an arbitration agreement and includes a person claiming through or under a party;

"Supreme Court" means the Supreme Court of British Columbia.

(2) Where this Act, except section 28, leaves the parties free to determine a certain issue, that freedom includes the right of the parties to authorize a third party, including the B.C. Arbitration Centre or any other institution, to make that determination.

(3) Where this Act

(a) refers to the fact that the parties have agreed or that they may agree, or

(b) in any other way refers to an agreement of the parties, that agreement includes any arbitration rules referred to in that agreement.

(4) Where this Act, other than section 25 (1) or 32 (2) (a), refers to a claim, it also applies to a counterclaim, and where it refers to a defence, it also applies to a defence to that counterclaim.

Receipt of written communications

3 (1) Unless otherwise agreed by the parties,

(a) any written communication is deemed to have been received if it is delivered to the addressee personally or if it is delivered at the addressee's place of business, habitual residence or mailing address, and

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

(2) If none of the places referred to in subsection (1) (a) can be found after making a reasonable inquiry, a written communication is deemed to have been received if it is sent to the addressee's last known place of business, habitual residence or mailing address by registered mail or by any other means which provides a record of the attempt to deliver it.

(3) This section does not apply to written communications in respect of court proceedings.

Waiver of right to object

4 (1) A party who knows that

(a) any provision of this Act, or

(b) any requirement under the arbitration agreement,

has not been complied with and yet proceeds with the arbitration without stating an objection to noncompliance without undue delay or, if a time limit is provided for stating that objection, within that period of time, is deemed to have waived the right to object.

(4) In subsection (1) (a), "**any provision of this Act**" means any provision of this Act in respect of which the parties may otherwise agree.

Extent of judicial intervention

5 In matters governed by this Act,

(a) a court must not intervene unless so provided in this Act, and

(b) an arbitral proceeding of an arbitral tribunal or an order, ruling or arbitral award made by an arbitral tribunal must not be questioned, reviewed or restrained by a proceeding under the *Judicial Review Procedure Act* or otherwise except to the extent provided in this Act.

Construction of Act

6 In construing a provision of this Act, a court or arbitral tribunal may refer to the documents of the United Nations Commission on International Trade Law and its working group respecting the preparation of the UNCITRAL Model Arbitration Law and must give those documents the weight that is appropriate in the circumstances.

Part 2 – Arbitration Agreement

Definition of arbitration agreement

7 (1) In this Act, "**arbitration agreement**" means an agreement by the parties to submit to arbitration all or certain disputes which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not.

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

(3) An arbitration agreement must be in writing.

(4) An arbitration agreement is in writing if it is contained in

(a) a document signed by the parties,

(b) an exchange of letters, telex, telegrams or other means of telecommunication which provide a record of the agreement, or

(c) an exchange of statements of claim and defence in which the existence of an agreement is alleged by one party and not denied by the other.

(5) The reference in a contract to a document containing an arbitration clause constitutes an arbitration agreement if the contract is in writing and the reference is such as to make that arbitration clause part of the contract.

Stay of legal proceedings

8 (1) If a party to an arbitration agreement commences legal proceedings in a court against another party to the agreement in respect of a matter agreed to be submitted to arbitration, a party to the legal proceedings

may, before service of any pleadings or taking any other step in the proceedings, apply to that court to stay the proceedings.

(2) In an application under subsection (1), the court must make an order staying the legal proceedings unless it determines that the arbitration agreement is null and void, inoperative or incapable of being performed.

(3) Even if an application has been brought under subsection (1) and even if the issue is pending before the court, an arbitration may be commenced or continued and an arbitral award made.

Interim measures by court

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

Part 3 — Composition of Arbitral Tribunal

Number of arbitrators

10 (1) The parties are free to determine the number of arbitrators.

(2) Failing the determination referred to in subsection (1), the number of arbitrators is 3.

Appointment of arbitrators

11 (1) A person of any nationality may be an arbitrator.

(2) Subject to subsections (6) and (7), the parties are free to agree on a procedure for appointing the arbitral tribunal.

(3) Failing any agreement referred to in subsection (2), in an arbitration with 3 arbitrators, each party must appoint one arbitrator, and the 2 appointed arbitrators must appoint the third arbitrator.

(4) If the appointment procedure in subsection (3) applies and

(a) a party fails to appoint an arbitrator within 30 days after receipt of a request to do so from the other party, or

(b) the 2 appointed arbitrators fail to agree on the third arbitrator within 30 days after their appointment,

the appointment must be made, on request of a party, by the Chief Justice.

(5) Failing any agreement referred to in subsection (2), in an arbitration with a sole arbitrator, if the parties fail to agree on the arbitrator, the appointment must be made, on request of a party, by the Chief Justice.

(6) If, under an appointment procedure agreed on by the parties,

- (a) a party fails to act as required under that procedure,
- (b) the parties, or 2 appointed arbitrators, fail to reach an agreement expected of them under that procedure, or
- (c) a third party, including an institution, fails to perform any function entrusted to the third party under that procedure,

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

(7) A decision on a matter entrusted by subsection (4), (5) or (6) to the Chief Justice is final and is not subject to appeal.

(8) The Chief Justice, in appointing an arbitrator, must have due regard to

- (a) any qualifications required of the arbitrator by the agreement of the parties, and
- (b) other considerations as are likely to secure the appointment of an independent and impartial arbitrator.

(9) Unless the parties have previously agreed to the appointment of a sole or third arbitrator who is of the same nationality as any of the parties, the Chief Justice must not appoint a sole or third arbitrator who is of the same nationality as that of any of the parties.

Grounds for challenge

12 (1) When a person is approached in connection with his or her possible appointment as an arbitrator, the person must disclose any circumstances likely to give rise to justifiable doubts as to the person's independence or impartiality.

(2) An arbitrator, from the time of his or her appointment and throughout the arbitral proceedings, must, without delay, disclose to the parties any circumstances referred to in subsection (1) unless they have already been informed of them by the arbitrator.

(3) An arbitrator may be challenged only if

- (a) circumstances exist that give rise to justifiable doubts as to the arbitrator's independence or impartiality, or
- (b) the arbitrator does not possess the qualifications agreed to by the parties.

(4) A party may challenge an arbitrator appointed by that party, or in whose appointment the party has participated, only for reasons of which the party becomes aware after the appointment has been made.

Challenge procedure

- 13** (1) Subject to subsection (4), the parties are free to agree on a procedure for challenging an arbitrator.
- (2) Failing any agreement referred to in subsection (1), a party who intends to challenge an arbitrator must, within 15 days after becoming aware of the constitution of the arbitral tribunal or after becoming aware of any circumstances referred to in section 12 (3), send a written statement of the reasons for the challenge to the arbitral tribunal.
- (3) Unless the arbitrator challenged under subsection (2) withdraws from office or the other party agrees to the challenge, the arbitral tribunal must decide on the challenge.
- (4) If a challenge under any procedure agreed on by the parties or under the procedure under subsection (2) is not successful, the challenging party may request the Supreme Court, within 30 days after having received notice of the decision rejecting the challenge, to decide on the challenge.
- (5) If a request is made under subsection (4), the Supreme Court may refuse to decide on the challenge, if it is satisfied that, under the procedure agreed on by the parties, the party making the request had an opportunity to have the challenge decided on by other than the arbitral tribunal.
- (6) The decision of the Supreme Court under subsection (4) is final and is not subject to appeal.
- (7) While a request under subsection (4) is pending, the arbitral tribunal, including the challenged arbitrator, may continue the arbitral proceedings and make an arbitral award.

Failure or impossibility to act

- 14** (1) The mandate of an arbitrator terminates if
- (a) the arbitrator becomes de jure or de facto unable to perform the arbitrator's functions or for other reasons fails to act without undue delay, and
 - (b) the arbitrator withdraws from office or the parties agree to the termination of the arbitrator's mandate.
- (2) If a controversy remains concerning any of the grounds referred to in subsection (1) (a), a party may request the Supreme Court to decide on the termination of the mandate.
- (3) A decision of the Supreme Court under subsection (2) is final and is not subject to appeal.
- (4) If, under this section or section 13 (3), an arbitrator withdraws from office or a party agrees to the termination of the mandate of an

arbitrator, this does not imply acceptance of the validity of any ground referred to in this section or section 12 (3).

Termination of mandate and substitution of arbitrator

15 (1) In addition to the circumstances referred to in section 13 or 14, the mandate of an arbitrator terminates

- (a) if the arbitrator withdraws from office for any reason, or
- (b) by or pursuant to agreement of the parties.

(2) If the mandate of an arbitrator terminates, a substitute arbitrator must be appointed according to the rules that were applicable to the appointment of the arbitrator being replaced.

(3) Unless otherwise agreed by the parties,

- (a) if the sole or presiding arbitrator is replaced, any hearings previously held must be repeated, and
- (b) if an arbitrator, other than the sole or presiding arbitrator is replaced, any hearings previously held may be repeated at the discretion of the arbitral tribunal.

(4) Unless otherwise agreed by the parties, an order or ruling of the arbitral tribunal made before the replacement of an arbitrator under this section is not invalid solely because there has been a change in the composition of the tribunal.

Part 4 – Jurisdiction of Arbitral Tribunal

Competence of arbitral tribunal to rule on its jurisdiction

16 (1) The arbitral tribunal may rule on its own jurisdiction, including ruling on any objections with respect to the existence or validity of the arbitration agreement, and for that purpose,

- (a) an arbitration clause which forms part of a contract must be treated as an agreement independent of the other terms of the contract, and
- (b) a decision by the arbitral tribunal that the contract is null and void must not entail ipso jure the invalidity of the arbitration clause.

(2) A plea that the arbitral tribunal does not have jurisdiction must be raised not later than the submission of the statement of defence; however, a party is not precluded from raising such a plea by the fact that the party has appointed, or participated in the appointment of, an arbitrator.

(3) A plea that the arbitral tribunal is exceeding the scope of its authority must be raised as soon as the matter alleged to be beyond the scope of its authority is raised during the arbitral proceedings.

(4) The arbitral tribunal may, in either of the cases referred to in subsection (2) or (3), admit a later plea if it considers the delay justified.

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

(6) If the arbitral tribunal rules as a preliminary question that it has jurisdiction, any party may request the Supreme Court, within 30 days after having received notice of that ruling, to decide the matter.

(7) The decision of the Supreme Court under subsection (6) is final and is not subject to appeal.

(8) While a request under subsection (6) is pending, the arbitral tribunal may continue the arbitral proceedings and make an arbitral award.

Interim measures ordered by arbitral tribunal

17 (1) Unless otherwise agreed by the parties, the arbitral tribunal may, at the request of a party, order a party to take any interim measure of protection as the arbitral tribunal may consider necessary in respect of the subject matter of the dispute.

(2) The arbitral tribunal may require a party to provide appropriate security in connection with a measure ordered under subsection (1).

Part 5 — Conduct of Arbitral Proceedings

Equal treatment of parties

18 The parties must be treated with equality and each party must be given a full opportunity to present their case.

Determination of rules of procedure

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

(2) Failing any agreement referred to in subsection (1), the arbitral tribunal may, subject to this Act, conduct the arbitration in the manner it considers appropriate.

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

Place of arbitration

20 (1) The parties are free to agree on the place of arbitration.

(2) Failing any agreement referred to in subsection (1), the place of arbitration must be determined by the arbitral tribunal having regard to the circumstances of the case, including the convenience of the parties.

(3) Despite subsection (1), the arbitral tribunal may, unless otherwise agreed by the parties, meet at any place it considers appropriate for consultation among its members, for hearing witnesses, experts or the parties, or for inspection of documents, goods or other property.

Commencement of arbitral proceedings

21 Unless otherwise agreed by the parties, the arbitral proceedings in respect of a particular dispute commence on the date on which a request for that dispute to be referred to arbitration is received by the respondent.

Language

22 (1) The parties are free to agree on the language or languages to be used in the arbitral proceedings.

(2) Failing any agreement referred to in subsection (1), the arbitral tribunal must determine the language or languages to be used in the arbitral proceedings.

(3) The agreement or determination, unless otherwise specified, applies to any written statement by a party, any hearing and any arbitral award, decision or other communication by the arbitral tribunal.

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

Statements of claim and defence

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

(2) The parties may submit with their statements all documents they consider to be relevant or may add a reference to the documents or other evidence they will submit.

(3) Unless otherwise agreed by the parties, either party may amend or supplement a claim or defence during the course of the arbitral proceedings, unless the arbitral tribunal considers it inappropriate to

allow the amendment or supplement having regard to the delay in making it.

Hearings and written proceedings

24 (1) Unless otherwise agreed by the parties, the arbitral tribunal must decide whether to hold oral hearings for the presentation of evidence or for oral argument, or whether the proceedings must be conducted on the basis of documents and other materials.

(2) Unless the parties have agreed that no oral hearings are to be held, the arbitral tribunal must hold oral hearings at an appropriate stage of the proceedings, if so requested by a party.

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

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

(5) Unless otherwise agreed by the parties, all oral hearings and meetings in arbitral proceedings are to be held in private.

Default of a party

25 (1) Unless otherwise agreed by the parties, if, without showing sufficient cause, the claimant fails to communicate the statement of claim in accordance with section 23 (1), the arbitral tribunal must terminate the proceedings.

(2) Unless otherwise agreed by the parties, if, without showing sufficient cause, the respondent fails to communicate the statement of defence in accordance with section 23 (1), the arbitral tribunal must continue the proceedings without treating that failure in itself as an admission of the claimant's allegations.

(3) Unless otherwise agreed by the parties, if, without showing sufficient cause, a party fails to appear at an oral hearing or to produce documentary evidence, the arbitral tribunal may continue the proceedings and make the arbitral award on the evidence before it.

Expert appointed by arbitral tribunal

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

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

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

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

(3) Unless otherwise agreed by the parties, the expert must, on the request of a party, make available to that party, for examination, all documents, goods or other property in the expert's possession with which the expert was provided in order to prepare the expert's report.

Court assistance in taking evidence and consolidating arbitrations

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

(2) If the parties to 2 or more arbitration agreements have agreed, in their respective arbitration agreements or otherwise, to consolidate the arbitrations arising out of those arbitration agreements, the Supreme Court may, on application by one party with the consent of all the other parties to those arbitration agreements, do one or more of the following:

(a) order the arbitrations to be consolidated on terms the court considers just and necessary;

(b) if all the parties cannot agree on an arbitral tribunal for the consolidated arbitration, appoint an arbitral tribunal in accordance with section 11 (8);

(c) if all the parties cannot agree on any other matter necessary to conduct the consolidated arbitration, make any other order it considers necessary.

(3) Nothing in this section is to be construed as preventing the parties to 2 or more arbitrations from agreeing to consolidate those arbitrations and taking any steps that are necessary to effect that consolidation.

Part 6 — Making of Arbitral Award and Termination of Proceedings

Rules applicable to substance of dispute

- 28** (1) The arbitral tribunal must decide the dispute in accordance with the rules of law designated by the parties as applicable to the substance of the dispute.
- (2) Any designation by the parties of the law or legal system of a given state must be construed, unless otherwise expressed, as directly referring to the substantive law of that state and not to its conflict of laws rules.
- (3) Failing any designation of the law under subsection (1) by the parties, the arbitral tribunal must apply the rules of law it considers to be appropriate given all the circumstances surrounding the dispute.
- (4) The arbitral tribunal must decide *ex aequo et bono* or as *amiable compositeur* if the parties have expressly authorized it to do so.
- (5) In all cases, the arbitral tribunal must decide in accordance with the terms of the contract and must take into account the usages of the trade applicable to the transaction.

Decision making by panel of arbitrators

- 29** (1) Unless otherwise agreed by the parties, in arbitral proceedings with more than one arbitrator, any decision of the arbitral tribunal must be made by a majority of all its members.
- (2) Despite subsection (1), if authorized by the parties or all the members of the arbitral tribunal, questions of procedure may be decided by a presiding arbitrator.

Settlement

- 30** (1) It is not incompatible with an arbitration agreement for an arbitral tribunal to encourage settlement of the dispute and, with the agreement of the parties, the arbitral tribunal may use mediation, conciliation or other procedures at any time during the arbitral proceedings to encourage settlement.
- (2) If, during arbitral proceedings, the parties settle the dispute, the arbitral tribunal must terminate the proceedings and, if requested by the parties and not objected to by the arbitral tribunal, record the settlement in the form of an arbitral award on agreed terms.
- (3) An arbitral award on agreed terms must be made in accordance with section 31 and must state that it is an arbitral award.
- (4) An arbitral award on agreed terms has the same status and effect as any other arbitral award on the substance of the dispute.

Form and content of arbitral award

31 (1) An arbitral award must be made in writing and must be signed by the members of the arbitral tribunal.

(2) For the purposes of subsection (1), in arbitral proceedings with more than one arbitrator, the signatures of the majority of all the members of the arbitral tribunal are sufficient if the reason for any omitted signature is stated.

(3) The arbitral award must state the reasons on which it is based, unless

(a) the parties have agreed that no reasons are to be given, or

(b) the award is an arbitral award on agreed terms under section 30.

(4) The arbitral award must state its date and the place of arbitration as determined in accordance with section 20 and the award is deemed to have been made at that place.

(5) After the arbitral award is made, a signed copy must be delivered to each party.

(6) The arbitral tribunal may, at any time during the arbitral proceedings, make an interim arbitral award on any matter with respect to which it may make a final arbitral award.

(7) Unless otherwise agreed by the parties, the arbitral tribunal may award interest.

(8) Unless otherwise agreed by the parties, the costs of an arbitration are in the discretion of the arbitral tribunal which may, in making an order for costs,

(a) include as costs,

(i) the fees and expenses of the arbitrators and expert witnesses,

(ii) legal fees and expenses,

(iii) any administration fees of the B.C. Arbitration Centre or any other institution, and

(iv) any other expenses incurred in connection with the arbitral proceedings, and

(b) specify

(i) the party entitled to costs,

(ii) the party who must pay the costs,

(iii) the amount of costs or method of determining that amount, and

(iv) the manner in which the costs must be paid.

Termination of proceedings

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

(2) The arbitral tribunal must issue an order for the termination of the arbitral proceedings if

(a) the claimant withdraws the claim, unless the respondent objects to the order and the arbitral tribunal recognizes 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, or

(c) the arbitral tribunal finds that the continuation of the proceedings has for any other reason become unnecessary or impossible.

(3) Subject to sections 33 and 34 (4), the mandate of the arbitral tribunal terminates with the termination of the arbitral proceedings.

Correction and interpretation of award; additional award

33 (1) Within 30 days after receipt of the arbitral award, unless another period of time has been agreed on by the parties,

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

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

(2) If the arbitral tribunal considers the request made under subsection (1) to be justified, it must make the correction or give the interpretation within 30 days after receipt of the request and the interpretation forms part of the arbitral award.

(3) The arbitral tribunal may correct any error of the type referred to in subsection (1) (a), on its own initiative, within 30 days after the date of the arbitral award.

(4) Unless otherwise agreed by the parties, a party may request, within 30 days after receipt of the arbitral award, the arbitral tribunal to make an additional arbitral award as to claims presented in the arbitral proceedings but omitted from the arbitral award.

(5) If the arbitral tribunal considers the request made under subsection (4) to be justified, it must make the additional arbitral award within 60 days.

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

(7) Section 31 applies to a correction or interpretation of the arbitral award or to an additional arbitral award made under this section.

Part 7 — Recourse Against Arbitral Award

Application for setting aside arbitral award

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

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

(a) the party making the application furnishes proof that

(i) a party to the arbitration agreement was under some incapacity,

(ii) the arbitration agreement is not valid under the law to which the parties have subjected it or, failing any indication of that law, the law of British Columbia,

(iii) the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present the party's case,

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

(v) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless that agreement was in conflict with a provision of this Act from which the parties cannot derogate, or, failing any agreement, was not in accordance with this Act, or

(b) the court finds that

- (i) the subject matter of the dispute is not capable of settlement by arbitration under the law of British Columbia, or
- (ii) the arbitral award is in conflict with the public policy in British Columbia.

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

(4) When asked to set aside an arbitral award the court may, if it is appropriate and it is requested by a party, adjourn the proceedings to set aside the arbitral award for a period of time determined by it in order to give the arbitral tribunal an opportunity to resume the arbitral proceedings or to take such other action as in the arbitral tribunal's opinion will eliminate the grounds for setting aside the arbitral award.

Part 8 — Recognition and Enforcement of Arbitral Awards

Recognition and enforcement

35 (1) Subject to this section and section 36, an arbitral award, irrespective of the state in which it was made, must be recognized as binding and, on application to the Supreme Court, must be enforced.

(2) Unless the court orders otherwise, the party relying on an arbitral award or applying for its enforcement must supply

(a) the duly authenticated original arbitral award or a duly certified copy of it, and

(b) the original arbitration agreement or a duly certified copy of it.

(3) If the arbitral award or arbitration agreement is not made in an official language of Canada, the party must supply a duly certified translation of it into an official language.

Grounds for refusing recognition or enforcement

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

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

- (i) a party to the arbitration agreement was under some incapacity,
- (ii) the arbitration agreement is not valid under the law to which the parties have subjected it or, failing any indication of that law, under the law of the state where the arbitral award was made,
- (iii) the party against whom the arbitral award is invoked was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present the party's case,
- (iv) the arbitral award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration, provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, that part of the arbitral award which contains decisions on matters submitted to arbitration may be recognized and enforced,
- (v) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties or, failing any agreement, was not in accordance with the law of the state where the arbitration took place, or
- (vi) the arbitral award has not yet become binding on the parties or has been set aside or suspended by a court of the state in which, or under the law of which, that arbitral award was made, or

(b) if the court finds that

- (i) the subject matter of the dispute is not capable of settlement by arbitration under the law of British Columbia, or
- (ii) the recognition or enforcement of the arbitral award would be contrary to the public policy in British Columbia.

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

Power to make regulations

37 The Lieutenant Governor in Council may make regulations

(a) exempting from an enactment, or any provision of it, a person or class of persons who acts in a professional capacity in an international commercial arbitration and is not entitled under the enactment to practise that profession in British Columbia, and

(b) imposing different conditions on exemptions granted under paragraph (a) to different persons or classes of persons.

Offence Act

38 Section 5 of the *Offence Act* does not apply to this Act.

Copyright (c) Queen's Printer, Victoria, British Columbia, Canada