A Guide to Arbitration in the Cayman Islands

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Introduction

Arbitration is a mechanism of binding dispute resolution which entails resolving disputes outside of the court process in accordance with procedures and standards as determined by the parties in dispute. Arbitration is therefore an alternative to traditional litigation and is distinct from non-binding forms of dispute resolution such as mediation.

The Cayman Islands has a modern arbitral framework as a result of bringing into force: (i) the Arbitration Act (2012) (the **Arbitration Act**); and (ii) procedural rules regulating the Grand Court's practice and procedures in relation to arbitrations [1] in July 2013 (the **Rules**). The foundation of the Arbitration Act is largely the UNCITRAL Model Law on International Commercial Arbitration (the **Model Law**), whilst also utilising successful aspects of arbitral legislative models found in other common law jurisdictions (such as Singapore and Hong Kong). The Arbitration Act has also sought to augment the Model Law where appropriate to suit the nature of the offshore financial business conducted in the Cayman Islands.

There are three fundamental principles to the Arbitration Act which are carried through into the Rules:

1. disputes are to be resolved fairly by an impartial tribunal without undue delay or expense
2. the parties are autonomous to determine how their disputes should be resolved (subject to limited public interest exceptions), and
3. judicial intervention in the arbitral process is extremely limited (the **Fundamental Principles**) [2]

In the first reasoned judgment of the Grand Court decided under the Arbitration Act, *Appalachian Reinsurance (Bermuda) Ltd v. Greenlight Reinsurance Ltd*, [3] the Grand Court explicitly recognised the Fundamental Principals as underpinning the arbitral framework of the Cayman Islands. The

Cayman Islands therefore possesses a modern and responsive arbitral framework governing both domestic and international arbitrations, thereby allowing for the existence of a separate mechanism of binding dispute resolution to traditional litigation and as a consequence, offering another flexible option to parties involved in Cayman Islands' disputes.

The anticipated establishment of the Cayman International Arbitration Centre (**CIAC**) will provide the Cayman Islands with a dedicated and purpose built arbitration centre, with state of the art facilities and an emphasis placed on confidentiality, privacy and innovative technology. It is also anticipated that CIAC will offer specialised CIAC Rules for financial disputes. Parties may opt for a CIAC administered arbitration with CIAC Rules, or may choose an ad hoc arbitration or an arbitration under a different institute, but make use of CIAC's facilities for hearings. Among CIAC's list of panel members are retired Grand Court Judges, local and international bankers, regulators, and representatives of other market participants.

In 2020, the Chartered Institute of Arbitrators (**CIArb**) established a new Cayman Chapter, which now sits within the Caribbean Region of CIArb. The Cayman Chapter offers membership and training opportunities to practitioners within the Cayman Islands, in conjunction with CIAC.

The Cayman Islands has long been recognised as a major global centre with expertise in financial services disputes, a well-established legal infrastructure and experienced lawyers and judiciary. These features, together with its pro-arbitration framework, and its geographical position as a neutral location, conveniently midway between North and South America, makes it a strong choice as a seat for international arbitrations. The anticipated creation of CIAC, and the new Cayman Chapter, will further assist the Cayman Islands to establish itself as a leading international arbitration hub in the region.

This guide will cover the main features and benefits of the arbitration framework in the Cayman Islands.

Agreement to arbitrate: the requirements

There are no legal impediments to arbitrating any type of dispute in the Cayman Islands, except for disputes where the relief sought is only available by order of the Grand Court. [4] A recent decision of the Court of Appeal of the Cayman Islands has confirmed that the underlying dispute in a Cayman Islands just and equitable winding up petition is not capable of being determined by an arbitrator, as a result of the Cayman court's exclusive statutory jurisdiction to determine whether it is just and equitable to make a winding up order. [5]

The parties to arbitration can decide on the substantive law applicable to the dispute. In the absence of agreement, the tribunal determines the proper law of the contract in accordance with accepted principles of private international law; that is to identify the system of law with which the transaction under contract has its closest and most real connection.

The arbitral tribunal is competent to rule on its own jurisdiction, including over any objections to the existence of or validity of the arbitration agreement. [6] No particular time limits exist for jurisdictional challenges, although a party is required to act promptly in applying to the Court, and the application seeking the stay of the proceedings should be made before the applicant delivers any pleadings or takes any other steps in the proceedings, otherwise relief may not be granted.

The Agreement

An arbitration agreement is usually considered binding where there is any agreement in writing to submit to arbitration a dispute that has arisen, or may arise in the future, between the parties to the agreement. It is not necessary to name the arbitrator in the agreement. There are no other form or content requirements. A separate arbitration agreement is not required and it is sufficient to include an arbitration clause as part of a wider agreement and such a clause may be included in general terms and conditions.

Repudiation, frustration or rescission of a contract will not by itself prevent enforcement of an arbitration clause in the contract, which survives such an event; thus, the arbitrator can determine whether the contract has been repudiated, frustrated or rescinded. An arbitration agreement will not be enforced (by staying legal proceedings brought in breach of that agreement) if the Grand Court is satisfied that it is null and void, inoperative or incapable of being performed, or if there is not in fact any dispute between the parties with regard to the subject matter of the arbitration agreement.

Effects on third parties

The general rule is that a third party is not privy to and not bound by an arbitration agreement (and may only fall under obligations as witnesses in an arbitration). However, in the following scenarios an arbitration agreement can be extended to a third party:

a. agency or trusts – the claimant is a person for whose benefit, or for whose account, the contract was made

b. succession – the claimant has succeeded by operation of law to the rights of the named party

c. novation – by virtue of a statutory or consensual novation, the claimant has replaced the person originally named as a party to the contract

d. assignment – the claimant is the assignee of the benefit of the contract, or

e. insolvency – the claimant is a trustee in bankruptcy who has adopted a contract containing the arbitration agreement

In the decision of *Re an Application of BDO Cayman Ltd concerning Argyle Funds SPC Inc*, [7] the Cayman Court confirmed that, if a liquidator sues on a contract which contains an arbitration clause, the liquidator is bound by the arbitration clause as well.

In addition to the circumstances listed above, third parties have been granted direct rights of enforcement in respect of contracts to which they are not a party. The Contracts (Rights of Third Parties) Act, 2014 was brought into force on 21 May 2014. A third party may therefore, in his own right, enforce a term of an arbitration agreement if the agreement is executed after 21 May 2014 and expressly provides that he is entitled to do so.

Appointment of arbitrators

There are no restrictions on who may act as an arbitrator in the Cayman Islands and the parties to an arbitration agreement can choose any number of arbitrators and their method of selection. [8] This is a key advantage of arbitration, as although the Cayman Islands has an extremely capable judiciary who are particularly experienced in dealing with financial services disputes, the arbitral parties are able to choose their tribunal or stipulate the mechanism whereby that tribunal is chosen. This enables the parties to select a tribunal with the specialist expertise suited to the matters in issue between the parties rather than being allocated a judge. In the absence of agreed rules for the appointment of the arbitral tribunal, or where there is a failure to comply with any agreed rules, then the Arbitration Act provides for a default appointment procedure. [9]

Terms as to the remuneration, expenses and liabilities of arbitrators are a matter of contract between the parties and the arbitrator to be appointed. In default of an agreement between the parties, such fees may be assessed by the Grand Court in accordance with the usual rules applicable to an assessment of costs within the court. Whatever is agreed in regard to the arbitral tribunal's remuneration and whichever party appoints an arbitrator, each arbitrator, once appointed, is expected to act impartially otherwise he or she may be removed. In addition to the arbitral tribunal's duty to act impartially the other general duties of the arbitral tribunal include: (i) allowing each party a reasonable opportunity to present their case; and (ii) conducting the arbitration without unnecessary delay and expense.

The procedure for challenge to the appointment of an arbitrator may be agreed between the parties, and in default of agreement, the Arbitration Act requires that the party challenging the appointment of an arbitrator must send a written statement of the grounds for challenge to the arbitral tribunal within 15 days of the constitution of the tribunal or of becoming aware of the grounds for challenge. [10] The arbitral tribunal decides on the challenge and, should the challenge prove unsuccessful, an aggrieved party may apply to the Grand Court to determine the challenge and the Court may make such order as it thinks fit. The Grand Court may, provided that all other options have been exhausted, on the application of an arbitral party also remove an arbitrator where an arbitrator: [11]

a. is physically or mentally incapable of conducting the proceedings

b. has refused or failed to properly conduct the proceedings

c. has failed to use all reasonable dispatch in entering on and proceeding with the arbitration and

making an award, or

d. will or has already caused substantial injustice to a party

The Grand Court has ancillary powers to appoint replacement arbitrators to enable the arbitration to proceed. Alternatively (in rare cases) it can order that an arbitration agreement ceases to have effect.

Conduct of proceedings

Procedure

There is no default mechanism to determine the place, language, or seat of the arbitration proceedings, which the parties to an arbitration may therefore decide themselves. In default of agreement, then the arbitral tribunal determines these issues having regard to the circumstances of the case.

The parties usually select a set of procedural rules in the arbitration agreement, either by reference to and incorporation of a recognised body of institutional rules (such as those of the ICC or AAA) or by including tailor-made rules to govern the particular subject matter of any reference to arbitration. Once CIAC is established, the parties may also choose to incorporate the CIAC Rules into their arbitration.

The parties can, for example, agree whether or not to have a hearing, and in the absence of any agreement between the parties, the arbitrator can decide whether a hearing is necessary. If the chosen rules do not address a particular procedural issue that arises in the course of the arbitration, the arbitrator can "conduct the arbitration in such manner as it considers appropriate." [12] In *Appalachian*, the Grand Court upheld the relevant arbitration clause by which the parties expressly agreed that the arbitrators were "not obliged to follow judicial formalities or rules of evidence". In that case, the tribunal's decision to hear a summary judgment application without an oral hearing was not found in any way to represent a breach of the rules of natural justice as alleged nor was it contrary to the public interest for the tribunal to do so.

Powers of the arbitral tribunal

The Arbitration Act provides that arbitral tribunals have the following powers, unless a contrary intention is expressed in the arbitration agreement: [13]

a. to set their own rules of evidence

b. to provide that a party gives security for the other party's costs of the arbitral proceedings

c. to administer oaths, or take affirmations of the parties and witnesses

d. to order, but not compel, the disclosure of documents or attendance of a witness (an arbitrator cannot penalise a third party for non-compliance with an order; however, where an arbitrator deems it necessary to compel the disclosure of documents or attendance of a witness, the assistance of the Grand Court can be sought)

e. to provide for the appointment of appropriate experts (the arbitral tribunal can also require that the expert be provided with access to relevant information and documentation and to conduct inspections of property)

f. to provide for the custody and preservation of any evidence for the purpose of the proceedings

g. to order that questions may be put to the other party, and

h. to call for the production of all documents within the possession or power of the parties (the parties can agree different rules on disclosure, including electronic discovery, that are far more flexible in comparison to the strict rules of disclosure in litigation).

Supervision and assistance of the Grand Court

The Grand Court can assist in the arbitration process where appropriate, and will supervise arbitral proceedings and intervene only where it is absolutely necessary, so as to protect the integrity of the arbitral process or to further the Fundamental Principles. The Rules require that all applications made to the Grand Court arising out of arbitrations must be made in the Financial Services Division, which is the division most experienced in handling the Cayman Islands' complex commercial disputes and which assigns specialist judges to hear such matters.

There are a number of ways the Grand Court can assist an arbitration. The Grand Court can assist in gathering evidence and may issue orders to compel the attendance and examination of witnesses, and the production of documents, to the same extent as if it were trying the action in the Grand Court. However before it does so, the Rules provide that the Court must be satisfied that the arbitral tribunal permits the application to be made, or that it is made with the agreement of the other parties.

In relation to procedural issues, the Grand Court:

a. is compelled to stay legal proceedings commenced in breach of an arbitration agreement [14]

b. may extend any time limits for starting arbitration proceedings and for making an award

c. may determine any question of law arising during an arbitration referred to it by the arbitral parties [15]

d. may assess and enforce the payment of an arbitrator's fees and the payment of costs awarded by an arbitrator against a party, and

e. may enforce an arbitral award in the same way as a judgment (this can include a foreign

arbitral award)

In respect of available interim remedies, the Grand Court has the same broad powers in its arsenal as are ancillary to an action in the Grand Court, but these powers are exercisable only if or to the extent that the arbitral tribunal has no power to deal with the issue at hand or is unable for the time being to act effectively. [16] In particular, it may:

a. make asset preservation orders where the application is urgent and with the permission of the parties/arbitral tribunal where the application is not urgent
b. grant interim injunctions
c. make search and seizure orders, and
d. appoint a receiver

These powers are not exclusive to the Grand Court, inasmuch as equivalent powers may be vested in the arbitrator, although they may be preferred since equivalent orders from the arbitral tribunal will not bind third parties (such as custodians of assets) who are not party to the arbitration agreement.

The Grand Court of the Cayman Islands will take steps to uphold the primacy of the parties' agreement to arbitrate. Pursuant to section 9 of the Arbitration Act, where there is a valid and binding arbitration agreement, the Grand Court must recognise and enforce it by staying any legal proceedings started in breach of such an agreement, unless it is satisfied that the arbitration agreement is null and void, inoperative or incapable of being performed. Likewise, section 4 of the Foreign Arbitral Awards Enforcement Law (1997 Revision) (the **Enforcement Law**) provides that a stay will be granted in favour of an overseas arbitration, subject to the same exceptions.

In recent years, there have been a number of cases which have considered the applicability of the mandatory stay provision in the context of insolvency proceedings, where a creditor petitions to wind up a company for non-payment of a contractual debt, which is disputed and arises out of a contract containing an arbitration clause. The approach taken by the Cayman courts in decisions such *Re Sphinx Group of Companies* and *Re Times Property Holdings Ltd* [17] confirms that the Court will ordinarily grant a stay of a winding up petition based on a disputed debt where the underlying dispute falls within the scope of an agreement to arbitrate, thereby demonstrating the Cayman Islands' pro arbitration stance. It should be noted however that in the recent decision of *Re Grand State Investments Limited* [18] the Court did confirm that the mere presence of a dispute will not be enough: the Court needs to be satisfied as to the existence of a bona fide dispute on substantial grounds prior to being able to exercise its discretion to stay a petition in favour of arbitration.

The issue is more complicated in the context of winding up proceedings which are brought on the just and equitable ground. In the recent decision of *FamilyMart China Holdings Holding CO LTD. v*

Ting Chuan (Cayman Islands) Holding Corporation, [19] the Cayman Islands Court of Appeal (overturning the earlier lower Court decision) held whilst it is possible to "hive off" issues to be determined by the arbitrator in the context of winding up proceedings on the grounds of insolvency, the same cannot be said for just and equitable winding up petitions, as the Cayman court has exclusive jurisdiction to make a winding up order where "the court is of the opinion" that it just and equitable to do so. [20] It is therefore necessary for the court to form its own opinion as to whether it is just and equitable to wind up a company; it will not hive off that issue to an arbitrator.

Consolidation of proceedings

In recognition of the fact that the Cayman Islands is home to the majority of offshore investment funds and the multitude of parties often involved in investment fund disputes, specific provisions allow for multi-party arbitrations and related issues concerning the consolidation of arbitral proceedings. The ambit of arbitral proceedings may also be extended, and the parties may refer additional disputes to which the relevant arbitration agreement applies.

Interim measures

After the arbitral tribunal has been constituted and unless otherwise agreed by the parties, the tribunal may grant interim measures ordering a party to: [21]

a. maintain or restore the original position of the other party pending determination of the dispute

b. take action that would prevent, or refrain from taking action that is likely to cause, current or imminent harm or prejudice to the arbitral process

c. provide a means of preserving assets out of which a subsequent award may be satisfied, or

d. preserve evidence that may be relevant and material to the resolution of the dispute

The party seeking the interim measure is under an ongoing duty to disclose all circumstances that are likely to be relevant to the arbitral tribunal's determination whether to grant or maintain the order sought. Should the arbitral tribunal grant an interim measure then the requesting party is liable for any costs or damages caused by the measure should the tribunal later find that the measure ought not to have been granted and, the arbitral tribunal may require the party requesting an interim measure to provide appropriate security in connection with the measure.

Confidentiality

The Arbitration Act imposes a duty of confidentiality on the parties and the proceedings are conducted in private. [22] There is no public record of arbitral proceedings, no public statements of the parties' respective positions, nor any public hearings or reported judgments. The definition of what constitutes "confidential information" is broad, and includes all documents and evidence

produced for the purposes of the proceedings, notes or transcripts of the proceedings, and rulings and awards made by the arbitral tribunal or information relating to such findings. Disclosure of confidential information is only permitted if authorised by the parties or in certain limited public interest exceptions, and the parties and the tribunal must take reasonable steps to prevent the unauthorised disclosure of information by third parties.

The Grand Court is also willing, where appropriate, to address the parties' confidentiality concerns, where, for example, an application is made to the Court to enforce an award. This can include the sealing of specific documents on the Court files.

Arbitral awards

The Arbitration Act does not limit the types of awards that can be made and, subject to any contrary agreement by the parties as to the powers exercisable by the arbitral tribunal in relation to remedies, it may award any remedy or relief that could have been ordered by the Court if the dispute had been the subject of civil proceedings. It may also make interim awards. An award is final and binding on the parties and may be relied on by any of the parties by way of defence, set-off or otherwise in any proceedings in any court. An award is capable, with the permission of the Grand Court, of being enforced in the same way as a judgment or order of the Court.

A sum directed to be paid by an award shall, unless the award otherwise directs, carry interest from the date of the award and at the same rate as a judgment debt. The prescribed judgment rate changes from time to time and varies depending on the currency in which judgment is given.

Correction and interpretation of awards

Parties can request, within 30 days of the receipt of an award (or such other time period as agreed by the parties), that an arbitral tribunal correct any clerical, computational, or typographical error in an award, which it is empowered to do. Clarification can also be sought from the arbitral tribunal of a specific point or part of the award provided that all parties agree to such an interpretation being given.

Challenge and appeals

The Arbitration Act substantially limits the circumstances in which it is possible to appeal an arbitral award and the parties are able to opt out of such an appeal. [23] Leave to appeal to the Grand Court on a question of law is available where the Grand Court determines that the question is one that the arbitral tribunal was asked to determine and the issue will substantially affect the rights of one of the arbitral parties. In addition, the findings of fact made in the award must be obviously wrong or the question be found to be one of general public importance and the arbitral tribunal's decision is open to serious doubt. The Grand Court is left with a residual discretion not to grant leave to appeal where it considers that it is not just and proper in all the circumstances for the court to determine the question. A further appeal to the Cayman Islands' Court of Appeal is

possible, but leave to do so must be granted by either the Grand Court or the Court of Appeal.

The Grand Court may set aside an arbitral award on public policy grounds or if it is proved to the court's satisfaction that: [24]

a. a party to the arbitration agreement was under an incapacity or placed under duress to enter into an arbitration agreement
b. the arbitration agreement is not valid under the law to which the parties have subjected it
c. the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitration proceedings or was otherwise unable to present his case
d. the award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or contains decisions on matters beyond the scope of the submission to arbitration [25]
e. the composition of the arbitral tribunal or the arbitral procedure is not in accordance with the agreement of the parties or is contrary to the provisions of the Arbitration Act
f. the making of the award was induced or affected by fraud, corruption or misconduct on the part of an arbitrator, or
g. a breach of the rules of natural justice occurred in connection with the making of the award by which the rights of any party have been prejudiced

It is important to note that an applicant party seeking to appeal or to set aside an arbitral award may only apply to do so if all other avenues to seek redress within the arbitral process are first exhausted. On appeal or an application to set aside an award, the Grand Court can confirm, vary, or set aside the award and it may remit the award to the arbitral tribunal (in whole or in part) for reconsideration in light of the court's determination. Should a party seek that an arbitration award be set aside, the Grand Court may also require that the sum of the award be paid into Court and that the party making the application provide security for costs.

Costs of arbitral proceedings

The flexibility of the arbitral process affords the parties considerable scope to limit what traditionally have been the most expensive areas of court litigation. So, for example, the parties may substantially restrict the extent of the discovery of documents, to limit the nature and extent of the factual or expert evidence, or even decide that an oral hearing should be dispensed with altogether and the dispute determined on the papers. As is noted above, the tribunal is obliged under the Arbitration Act to conduct the arbitration without unnecessary delay and without incurring unnecessary expense, whilst allowing each party a reasonable opportunity of presenting its case.

The arbitration agreement can provide for the allocation of costs incurred by the parties. In the absence of any agreement to the contrary, the arbitral tribunal has a wide discretion in awarding costs between the parties. If no provision for costs is made in an award, any party can apply to the arbitrator for a costs order and must be given a reasonable opportunity to make submissions in this regard before the arbitral tribunal directs the payment of costs. In practice, awards as to costs tend to follow the traditional costs rules for litigation and costs will normally follow the event (ie the unsuccessful party will normally be required to pay a reasonable proportion of the successful party's costs).

Recognition and enforcement

The Cayman Islands (as an overseas territory of the United Kingdom) is a party to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the **New York Convention**), which has widespread applicability in the majority of jurisdictions across the world thus making it relatively straightforward to enforce any arbitral award obtained here elsewhere (and vice versa to enforce an foreign arbitral award in the Cayman Islands by reason of the Enforcement Law which gives effect to the provisions of the New York Convention.

Importantly, the Arbitration Act goes even further, by providing that an arbitral award irrespective of the country in which it was made shall be recognised as binding and, upon application to the Court, will be enforced subject to the provisions of the Enforcement Law regardless of whether it is a New York Convention award or not. Therefore, arbitral awards from any foreign state (not just signatories to the New York Convention) may be easily and quickly enforced in the Cayman Islands.

In enforcing any arbitral award, the Court will interpret it according to its plain and obvious meaning and will not seek to improve the award. [26]

In August 2020, the Cayman Islands Court of Appeal handed down an important decision in *VRG Linhas Aereas S.A. v Matlin Patterson Global Opportunities Partners (Cayman) II L.P.* [27] which deals with difficult issues relating to the enforcement of foreign arbitral awards that are the subject of robust challenge before the courts of supervisory jurisdiction. The Court of Appeal, overturning an earlier Grand Court decision, permitted enforcement of an ICC arbitration award in favour of a Brazilian airline; Ogier successfully acted for the award creditor. The Court of Appeal held that the award debtors and respondents to the appeal were estopped from challenging enforcement of the award, as all of the various challenges had already been raised and dismissed before the Brazilian courts.

In terms of the procedure itself, an application for leave to enforce an arbitral award is straightforward and inexpensive. Once leave is obtained from the Court, judgment will be entered in the terms of the award and all common enforcement mechanisms will then be available in the usual way, including garnishee orders, the appointment of receivers by equitable execution and charging orders.

Conclusions

Arbitration is increasingly being recognised as an effective alternative to court proceedings, to resolve international commercial disputes. While arbitrations are not going to be the appropriate mechanism for determining every dispute, the benefits of arbitration, including the ability to tailor proceedings to meet the specific circumstances of the matters in dispute in a cost effective and flexible manner, confidentiality and the ease of enforcement of arbitral awards, are obviously attractive to potential litigants. The Cayman Islands has a modern, pro-arbitration framework which, together with its status as a major global financial centre and neutral geographical location, puts it in good stead to establish itself as a leading international arbitration hub in the region. The anticipated creation of CIAC, and the creation of the new Cayman Chapter of CIArb will also likely act as a catalyst to increase the number of arbitrations conducted in the Cayman Islands.

Ogier has a leading offshore dispute resolution team which is increasingly involved in domestic arbitrations and regularly deals with enforcement actions in the Cayman Islands and the British Virgin Islands in particular.

For further information about arbitration, please reach out to your usual Ogier contact.

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[1] Introduced by way of amendments to the Grand Court Rules

[2] Section 3 of the Arbitration Act

[3] *Appalachian Reinsurance (Bermuda) Ltd v. Greenlight Reinsurance Ltd*, Unreported, 5 February 2014

[4] Such as remedies prescribed by particular statutes (such as the Companies Act, the Registered Land Act, or the Trusts Act); and others pursuant to regulatory laws (such as the Banks and Trust Companies Act, the Mutual Funds Act or the Securities Investment Business Act)

[5] *FamilyMart China Holdings Holding CO LTD. v Ting Chuan (Cayman Islands) Holding Corporation, CICA*, Unreported 24 April 2020

[6] Section 27 of the Arbitration Act

[7] [2018 (1) CILR 114]

[8] If the parties are unable to decide on the number of arbitrators then a single arbitrator must be appointed per section 15(2) of the Arbitration Act

[9] Section 16 of the Arbitration Act

[10] Section 19 of the Arbitration Act

[11] Section 20 of the Arbitration Act

[12] Section 29(2) of the Arbitration Act

[13] Sections 37 and 38(2) of the Arbitration Act

[14] Section 9 of the Arbitration Act

[15] Section 71 of the Arbitration Act provides that parties to an arbitration can seek a preliminary determination of the Grand Court on any question of law arising during the course of the arbitration or an award, provided that the arbitration agreement does not provide otherwise and the Grand Court is satisfied that the issue substantially affects the rights of one or more of the parties. In addition the Grand Court will only entertain such an application provided that: (i) all of the parties to the arbitration agree that the application ought to be made (ii) the arbitral tribunal permits the making of the application; (iii) the Grand Court is satisfied that the determination of the question is likely to produce substantial savings in costs; and (iv) the application is made without delay.

[16] Section 43(5) of the Arbitration Act

[17] In *Re Sphinx Group, Court of Appeal*, Unreported, 2 February 2016 and *Re Times Property Holdings Ltd* [2011 (1) CILR 223]

[18] *Re Grand State Investments Limited* 28 April 2021, FSD 11/2021

[19] *FamilyMart China Holdings Holding CO LTD. v Ting Chuan (Cayman Islands) Holding Corporation, CICA,* Unreported, 24 April 2020

[20] Section 92(e) of the Companies Act

[21] Section 44 of the Arbitration Act

[22] Section 81 of the Arbitration Act

[23] Section 76 of the Arbitration Act

[24] Section 75 of the Arbitration Act

[25] In *Appalachian*, Foster J derived assistance from the English Case of *Peterson [2003]* EWHC 2298 (QB) where Tomlinson J considered the similar English statutory provision and interpreted this ground to mean: "the whole question being whether the arbitration agreement is, on its true

construction or in the circumstances, apt to embrace those claims."

[26] *MNC Media Inv. Ltd. V Ang (C.A.), 2016* (1) CILR N [1]

[27] *VRG Linhas Aereas S.A. v Matlin Patterson Global Opportunities Partners (Cayman) II L.P.*, CICA, Unreported, 11 August 2020

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