

Arbitration Act 1997

| | |
|---|-----------|
| 1. INTRODUCTION | 1 |
| What is arbitration | 1 |
| Key features of arbitration | 1 |
| A comparison between arbitration and other dispute resolution procedures | 3 |
| The validity of other dispute resolution procedures and the relationship between them and arbitration | 5 |
| Selecting the appropriate dispute resolution mechanism(s) | 7 |
| 2. THE NEW ACT | 9 |
| Genesis | 9 |
| The UNCITRAL Model Law | 9 |
| The structure of the new Act | 11 |
| Key themes - increased emphasis on party autonomy | 12 |
| Key themes - reduced judicial scrutiny | 13 |
| Key themes - increased powers for the arbitral tribunal | 15 |
| Key themes - confidentiality | 16 |
| Comparisons with the old law | 17 |
| Transitional provisions: arbitration agreements made prior to 1 July 1997 | 20 |
| Arbitration agreements in contracts with consumers | 21 |
| The abolition of court ordered arbitration | 23 |
| Statutory references to arbitration | 24 |
| Arbitrable disputes only | 25 |
| 3. ARBITRAL PROCEDURE UNDER THE NEW ACT | 29 |
| Introduction | 29 |
| General provisions | 29 |
| <i>Scope of application</i> | 29 |
| <i>Definitions and rules of interpretation</i> | 30 |
| <i>Receipt of written communications</i> | 33 |
| <i>Waiver of right to object</i> | 34 |
| <i>Extent of court intervention</i> | 35 |
| <i>Court or other authority for certain functions of arbitration assistance and supervision</i> | 36 |
| Arbitration agreement | 36 |
| <i>Form of arbitration agreement</i> | 36 |
| <i>Arbitration agreement and substantive claim before court</i> | 37 |
| <i>Arbitration agreement and interim measures by court</i> | 40 |
| Composition of Arbitral Tribunal | 42 |
| <i>Number of arbitrators</i> | 42 |
| <i>Appointment of arbitrators</i> | 43 |
| <i>Grounds for challenge</i> | 46 |
| <i>Challenge procedure</i> | 48 |
| <i>Failure or impossibility to act</i> | 49 |
| <i>Appointment of substitute arbitrator</i> | 51 |
| <i>The Liability of Arbitrators</i> | 52 |
| Jurisdiction of Arbitral Tribunal | 53 |
| <i>Competence of arbitral tribunal to rule on its own jurisdiction</i> | 53 |
| Power of arbitral tribunal to order interim measures | 57 |
| Conduct of Arbitral proceedings | 58 |
| <i>Equal Treatment of parties</i> | 58 |
| <i>Determination of rules of procedure</i> | 59 |
| <i>Place of arbitration</i> | 62 |
| <i>Commencement of arbitral proceedings</i> | 63 |
| <i>Extension of time for commencing arbitral proceedings</i> | 63 |
| <i>Language</i> | 64 |
| <i>Statements of claim and defence</i> | 65 |
| <i>Hearings and written proceedings</i> | 66 |

| | |
|--|-----|
| <i>Default of a party</i> | 67 |
| <i>Determination of preliminary points of law by court</i> | 68 |
| <i>Expert Appointed by Arbitral Tribunal</i> | 71 |
| <i>Court assistance in taking evidence</i> | 72 |
| <i>Consolidation of arbitral proceedings</i> | 73 |
| <i>Making of Award and Termination of Proceedings</i> | 75 |
| <i>Powers of arbitral tribunal in deciding the disputes</i> | 75 |
| <i>Rules applicable to substance of dispute</i> | 77 |
| <i>Decision-making by panel of arbitrators</i> | 78 |
| <i>Settlement</i> | 79 |
| <i>Form and Contents of Award</i> | 79 |
| <i>Termination of proceedings</i> | 81 |
| <i>Correction and interpretation of award; additional award</i> | 83 |
| 4. COSTS AND EXPENSES OF AN ARBITRATION | 85 |
| 5. RECOURSE AGAINST AWARD | 88 |
| Application to set aside as the exclusive recourse against arbitral award | 88 |
| 6. APPEALS ON QUESTIONS OF LAW | 93 |
| 7. RECOGNITION AND ENFORCEMENT OF AWARDS | 101 |
| Recognition and enforcement | 101 |
| Grounds for refusing recognition or enforcement | 102 |
| 8. INTERNATIONAL COMMERCIAL ARBITRATION | 104 |
| The Growth of International Commercial Arbitration | 104 |
| Reasons for Choosing Arbitration for International Commercial Disputes | 104 |
| <i>Neutrality</i> | 104 |
| <i>Enforceability</i> | 105 |
| <i>Waiver of Sovereign Immunity</i> | 105 |
| <i>Certainty</i> | 105 |
| <i>Confidentiality</i> | 106 |
| <i>Specialised Competence</i> | 106 |
| <i>Procedural Flexibility</i> | 106 |
| <i>Speed</i> | 106 |
| <i>Cost</i> | 106 |
| Ad Hoc Versus Institutional Arbitration | 107 |
| Distinguishing Features of the Various Rules | 108 |
| <i>The ICC Rules: "Supervised" Arbitration</i> | 108 |
| <i>The LCIA and AAA Rules: "Administered" Arbitration</i> | 109 |
| <i>The ICSID Rules: State Investment Dispute Arbitration</i> | 109 |
| <i>The UNCITRAL Rules: Ad Hoc Arbitration</i> | 110 |
| Specific Provisions | 110 |
| New Zealand cases | 111 |
| <i>Attorney-General v Mobil Oil NZ Ltd</i> | 112 |
| <i>CBI NZ Ltd v Badger-Chiyoda</i> | 113 |
| Appendix 1 – Drafting Arbitration Agreements – Selecting the Appropriate Arbitral Procedures | |
| Appendix 2 – Comparative Table | |
| Appendix 3 – List of Texts and Articles | |
| Appendix 4 – Case Law on UNCITRAL Texts – New Zealand Correspondent | |