



Arbitration

in 47 jurisdictions worldwide

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2009



Published by
GLOBAL ARBITRATION REVIEW

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**GLOBAL ARBITRATION
REVIEW**

THE INTERNATIONAL JOURNAL OF PUBLIC AND PRIVATE ARBITRATION

Cayman Islands

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Appleby

Laws and institutions

1 International multilateral conventions

Is your country a contracting state to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards? Since when has the Convention been in force? Were any declarations or notifications made under articles I, X and XI of the Convention? What other multilateral conventions relating to arbitration is your country a party to?

Yes, the Cayman Islands is party to the New York Convention. The Convention was brought into force by the Foreign Arbitral Awards Enforcement Law, enacted in 1975. Upon notification by the United Kingdom of extension and territorial application to the Cayman Islands, it was declared that the Convention would apply (in accordance with article I, paragraph 3 thereof) only to the recognition and enforcement of awards made in the territory of another contracting state. The Cayman Islands is not party to any other multilateral conventions relating to arbitration.

2 International bilateral agreements

Do bilateral agreements relating to arbitration exist with other countries?

There are no bilateral agreements relating to arbitration between the Cayman Islands and any other countries.

3 Domestic arbitration law

What are the primary domestic sources of law relating to domestic and foreign arbitral proceedings, and recognition and enforcement of awards?

The primary sources of arbitration law are statutory: the Arbitration Law (2001 Revision) governs domestic arbitration proceedings and the enforcement of domestic arbitral awards, while the Foreign Arbitral Awards Enforcement Law (1997 Revision) governs the recognition of foreign arbitration proceedings and the enforcement of foreign arbitral awards. Arbitration case law is developed through judicial decisions in the Grand Court of the Cayman Islands (or appeals therefrom). Foreign arbitral awards to which the New York Convention is not applicable may also be enforced under conflicts of laws principles applied by the Grand Court. Any arbitration proceedings whose governing law is not that of the Cayman Islands are considered foreign arbitration proceedings.

4 Domestic arbitration and UNCITRAL

Is your domestic arbitration law based on the UNCITRAL Model Law? What are the major differences between your domestic arbitration law and the UNCITRAL Model Law?

The Arbitration Law is based on the English Arbitration Act 1950 and not on the UNCITRAL Model Law. Major differences between the Arbitration Law and the Model Law include:

- the Arbitration Law has greater scope for judicial intervention during the course of an arbitration, to assist the parties or the arbitrator, by conferring on the court powers to grant interim measures and preliminary orders (see questions 24 and 27); and
- the Arbitration Law confers a more detailed and more extensive jurisdiction on the court for setting aside and remitting arbitral awards for reconsideration (see question 36).

5 Mandatory provisions

What are the mandatory domestic arbitration law provisions on procedure from which parties may not deviate?

There are mandatory provisions in the Arbitration Law relating to:

- the authority of an arbitrator or umpire appointed under an arbitration agreement being irrevocable, except by leave of the court or by a contrary intention expressed in the agreement;
- an arbitration agreement not being discharged by the death of any party. In these cases the agreement is enforceable by or against the personal representatives of the deceased;
- the court staying a proceeding where the parties to the agreement have submitted to arbitration unless an exception applies;
- the appointment of an umpire where the arbitration agreement provides for three arbitrators;
- the arbitrator or umpire having the power to make an award at any time;
- the default powers of the arbitrator or umpire;
- an award for costs being taxable by the courts, unless the award directs otherwise;
- the interest on an award being carried at the same rate as a judgment debt from the date of the award, unless the award directs otherwise;
- a remitted award being made within three months after the date of the court order, unless the order directs otherwise;
- the power of the court to give relief where an arbitrator is not impartial or the dispute involves a question of fraud by ordering that the arbitration agreement cease to have effect or revoking the authority of any arbitrator or umpire. In this case the court can refuse to stay any action brought in breach of the agreement;
- matters relating to the authority and award of a clerk or special referee as well as the powers of the Grand Court and Court of Appeal as to references by order; and

- miscellaneous powers of the courts in respect to interim orders (see questions 24 and 26).

6 Substantive law

Is there any rule in your domestic arbitration law that provides the arbitral tribunal with guidance as to which substantive law to apply to the merits of the dispute?

The parties to an arbitration can decide on the substantive law applicable to the dispute. In the absence of agreement, the tribunal has to determine 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.

7 Arbitral institutions

What are the most prominent arbitral institutions in your country?

The Chartered Institute of Arbitrators has recently established a Cayman chapter (with the author, Jeremy Walton, as its chairman) for the purpose of providing arbitral services in the Cayman Islands. Arbitrations can and do take place in the Cayman Islands by agreement between the parties under the rules of other international institutions, including:

- the American Arbitration Association (AAA);
- the International Chamber of Commerce (ICC); and
- the London Court of International Arbitration (LCIA).

More often, ad hoc arbitrations are conducted under rules of the parties' own devising (whether or not by adoption of an external set of rules).

Arbitration agreement

8 Arbitrability

Are there any types of disputes that are not arbitrable?

There are no legal impediments to arbitrating any type of dispute, save where the relief sought by the claimant is only available by order of the Grand Court. This will include:

- remedies prescribed by particular statutes (such as the Companies Law, the Registered Land Law, or the Trusts Law); and
- orders pursuant to regulatory laws (such as the Banks and Trust Companies Law, the Mutual Funds Law or the Securities Investment Business Law).

9 Requirements

What formal and other requirements exist for an arbitration 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 that the arbitrator is named in the agreement. There are no other form or content requirements. A separate arbitration agreement is not required: 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.

10 Enforceability

In what circumstances is an arbitration agreement no longer enforceable?

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.

A domestic arbitration agreement may not be enforced (by staying legal proceedings brought in breach of that agreement) if a court is satisfied that there is sufficient reason why the matter should not be referred in accordance with the arbitration agreement, or that the other party is not ready and willing to do all things necessary to the proper conduct of the arbitration.

A foreign arbitration agreement will not be enforced (by staying legal proceedings brought in breach of that agreement) if a 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.

11 Third parties

In which instances can third parties or non-signatories be bound by an arbitration agreement?

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:

- agency/trusts – the claimant is a person for whose benefit, or for whose account, the contract was made;
- succession – the claimant has succeeded by operation of law to the rights of the named party;
- novation – by virtue of a statutory or consensual novation, the claimant has replaced the person originally named as a party to the contract;
- assignment – the claimant is the assignee of the benefit of the contract; or
- insolvency – the claimant is a trustee in bankruptcy who has adopted a contract containing the arbitration agreement;

12 Groups of companies

Do courts and arbitral tribunals in your jurisdiction extend an arbitration agreement to non-signatory parent or subsidiary companies of a signatory company, provided that the non-signatory was somehow involved in the conclusion, performance or termination of the contract in dispute, under the 'group of companies' doctrine?

The Grand Court has not recognised (but neither has it refused to recognise) the 'group of companies' doctrine, which therefore does not presently form part of the law of the Cayman Islands.

13 Multiparty arbitration agreements

What are the requirements for a valid multiparty arbitration agreement?

There are no particular requirements for a valid multiparty arbitration agreement: that concept is not addressed by (nor prohibited by) the domestic arbitration law of the Cayman Islands.

Constitution of arbitral tribunal

14 Appointment of arbitrators

Are there any restrictions as to who may act as an arbitrator?

There are no restrictions on who may act as an arbitrator. At the same time, there are also no statutory provisions prescribing the terms on which judges may accept appointments as arbitrators.

15 Appointment of arbitrators

Failing prior agreement of the parties, what is the default mechanism for the appointment of arbitrators?

The Arbitration Law imposes the following provisions for the number and method of selection of the arbitrators, in the absence of agreement between the parties:

- if no other preference is given, then a single arbitrator must be appointed;
- if the choice is two arbitrators, an umpire must be appointed by the arbitrators to determine the arbitration if they cannot agree;
- where each party is to appoint one of two arbitrators, but one party fails to do so or his appointee fails to act (and is not replaced), the other party may appoint his appointee as the sole arbitrator whose award will be binding on both parties (unless the court subsequently decides to set aside such appointment);
- if an arbitration agreement provides that three arbitrators must be appointed, one appointed by each party and the third appointed by the other two, this is treated as an agreement for the appointment of an umpire, rather than a third arbitrator, by the other two arbitrators. If three arbitrators are to be appointed by some other means, an award by any two of them is binding on the parties;
- an arbitrator, third arbitrator or umpire may be appointed by the court if the parties' appointment procedure is not complied with or if an appointee fails to act; and
- the court can appoint an arbitrator in place of one who has been removed or whose authority has been revoked.

16 Challenge and replacement of arbitrators

On what grounds and how can an arbitrator be challenged and replaced? Please discuss in particular the grounds for challenge and replacement, and the procedure, including challenge in court.

In relation to the removal of an arbitrator the Grand Court can:

- order an umpire to take charge of an arbitration as the sole arbitrator;
- remove an arbitrator or umpire who fails to make sufficient progress in the arbitration in a reasonable time;
- remove an arbitrator who fails to be impartial;
- revoke the authority of an arbitrator who is not impartial;
- remove an arbitrator or umpire who is guilty of misconduct or has conducted the proceedings unsatisfactorily (in these circumstances, it can set aside an award); and
- remove an arbitrator or umpire who fails to use all reasonable dispatch in entering on and proceeding with the arbitration and making an award.

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

17 Relationship between parties and arbitrators

What is the relationship between parties and arbitrators?

Terms as to the remuneration, expenses and liabilities of arbitrators are a matter of contract between the parties and the arbitrator to be appointed. Whatever is agreed in this regard, and whichever party appoints an arbitrator, each arbitrator, once appointed, is expected to act impartially, otherwise he may be removed.

Jurisdiction**18 Court proceedings despite arbitration agreement**

What is the procedure for disputes over jurisdiction if court proceedings are initiated despite an existing arbitration agreement, and what time limits exist for jurisdictional objections?

Where there is a valid and binding arbitration agreement, the Grand Court recognises and enforces it by staying any legal proceedings started in breach of such an agreement, as long as the applicant is ready and willing to do all things necessary for the proper conduct of the arbitration. The court may even grant an anti-suit injunction to restrain foreign proceedings in appropriate circumstances, where the party acting in breach of the arbitration agreement is subject to the jurisdiction of the Grand Court. 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.

19 Jurisdiction of arbitral tribunal

What is the procedure for disputes over jurisdiction of the arbitral tribunal once arbitral proceedings have been initiated and what time limits exist for jurisdictional objections?

The Arbitration Law does not contain a specific provision allowing the arbitral tribunal to rule on its own substantive jurisdiction nor does it set out any procedural requirements for such an objection. However, the arbitrator, through adoption of the concept of *Kompetenz-Kompetenz*, can determine a dispute regarding issues of jurisdiction. The court can also determine disputes on jurisdiction in the same way that it would in any proceedings that come before it.

Arbitral proceedings**20 Place and language of arbitration**

Failing prior agreement of the parties, what is the default mechanism for the place of arbitration and the language of the arbitral proceedings?

There is no default mechanism for the place and language of the arbitration proceedings. The seat of the arbitration is presumed to be the Cayman Islands, whose governing language is English.

21 Commencement of arbitration

How are arbitral proceedings initiated?

The Arbitration Law does not stipulate any formal requirements for initiating arbitration proceedings: these are normally set out in the arbitration agreement. Where the terms of an agreement provide for notice being given or some other procedural step taking place within a fixed time to commence the arbitration proceeding, the Grand Court can, if it is of the opinion that in the circumstances of the case undue hardship would be caused, extend the time for commencing arbitration proceedings for such period as it sees fit.

22 Hearing

Is a hearing required and what rules apply?

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. 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. If the chosen rules do not address a particular procedural issue that arises in the course of the arbitration, the arbitrator can refer to the procedural law of the seat of the arbitration.

23 Evidence

By what rules is the arbitral tribunal bound in establishing the facts of the case? What types of evidence are admitted and how is the taking of evidence conducted?

The arbitral tribunal may set its own rules of evidence, subject to the terms of the arbitration agreement. The Arbitration Law provides that arbitrators have the following powers, unless a contrary intention is expressed in the arbitration agreement:

- to administer oaths, or take affirmations of the parties and witnesses to the reference;
- 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: 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); and
- 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).

24 Court involvement

In what instances can the arbitral tribunal request assistance from a court and in what instances may courts intervene?

The Grand Court can assist in every stage of the arbitration process and, in particular, in the following areas.

Taking of evidence

The Grand Court can 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.

Procedural issues

The Grand Court can:

- stay legal proceedings started in a matter that falls within the scope of an arbitration agreement;
- extend any time limits for starting arbitration proceedings and for making an award;
- determine any question of law arising during an arbitration referred to it by an arbitrator;
- enforce the payment of an arbitrator's fees and the payment of costs awarded by an arbitrator against a party; and
- enforce an arbitral award in the same way as a judgment (this can include a foreign arbitral award).

Interim measures

The Grand Court can:

- order a party that starts an arbitration to provide security for the other party's costs; and
- use the same broad powers as are ancillary to an action in the Grand Court to:
 - make asset preservation orders;
 - grant interim injunctions;
 - make search and seizure orders; and
 - appoint a receiver.

25 Confidentiality

Is confidentiality ensured?

The Arbitration Law does not impose any duty of confidentiality on the parties. Therefore, the scope and duration of confidentiality in arbitrations relies on agreement, although there is usually (at a minimum) an implied term in arbitration agreements that proceedings are confidential. Proceedings are held in private and the arbitrator can give explicit directions about keeping particular matters confidential (such as commercially sensitive information that has been disclosed).

Interim measures

26 Interim measures by the courts

What interim measures may be ordered by courts before and after arbitration proceedings have been initiated?

The Grand Court can:

- order a party that starts an arbitration to provide security for the other party's costs; and
- use the same broad powers as are ancillary to an action in the Grand Court to make asset preservation orders, grant interim injunctions, make search and seizure orders, and appoint a receiver.

These powers are not exclusive to the 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.

27 Interim measures by the arbitral tribunal

What interim measures may the arbitral tribunal order after it is constituted? In which instances can security for costs be ordered by an arbitral tribunal?

The tribunal cannot order security for costs or other interim measures unless it is agreed by the parties to give the tribunal the power to make such orders. However, the Arbitration Law provides the court with jurisdiction to make interim orders (in the same way as a court proceeding) such as:

- security for costs;
- discovery of documents and interrogatories;
- giving of evidence by witness statement;
- examination on oath of any witnesses within and outside of the jurisdiction;
- preserving interim custody or sale of any goods that are the subject of dispute;
- securing the amount in dispute;
- detaining, preserving or inspecting any property or thing that is a subject of the reference; and
- interim injunctions and appointment of a receiver.

Awards

28 Decisions by the arbitral tribunal

Failing party agreement, is it sufficient if decisions by the arbitral tribunal are made by a majority of all its members or is a unanimous vote required? What are the consequences if an arbitrator refuses to take part in a vote or sign the award?

- If an arbitral tribunal consists of two arbitrators and an umpire, and the two arbitrators have given notice that they cannot agree, the umpire may take over the arbitration and deliver an award as if he were a sole arbitrator.

- If the tribunal consists of three arbitrators, an award by any two of them will be binding.
- If there are two arbitrators, one appointed by each party, and one refuses to act, he must be replaced by his appointing party otherwise the other party may appoint the other arbitrator to act as sole arbitrator whose award is binding as if he had been appointed by consent.

29 Form and content requirements

What form and content requirements exist for an award? Does the award have to be rendered within a certain time limit?

There are no form or content requirements. A final award is valid as long as it:

- resolves all disputes validly referred to the arbitrator;
- does not go beyond the jurisdiction conferred on the arbitrator by the arbitration agreement;
- is capable of being carried out; and
- is enforceable by the court.

There is no time limit within which an award must be rendered, unless specified in the arbitration agreement (and any such time limit may be extended by the court). However, an arbitrator who fails to deliver his award with all reasonable dispatch may be removed by the court, on application by one of the parties.

30 Date of award

For what time limits is the date of the award decisive and for what time limits is the date of delivery of the award decisive?

The parties may (and frequently do) provide in the arbitration agreement for an appeal: such provisions may also validly provide that any appeal thereunder must be commenced within a certain time or not at all. Otherwise, any application to the court to set aside or remit an award (see question 36) must be made within 28 days after the award has been made and published to the parties.

31 Types of awards

What types of awards are possible and what types of relief may the arbitral tribunal grant?

The Arbitration Law does not limit the types of award that can be made, except only that mandatory injunctions are not ordered in arbitral awards. The Arbitration Law expressly provides that, unless a contrary indication is expressed in the arbitration agreement, an arbitrator or umpire shall have the same power as the Grand Court to order specific performance of any contract other than a contract relating to land or any interest in land.

32 Termination of proceedings

By what other means than an award can proceedings be terminated?

A default award may be made in the absence of another party who refuses to participate in the proceedings. If the parties settle their dispute, they may agree to terminate the proceedings in any way they like, which deprives the arbitrator of any further authority to continue the arbitration.

33 Cost allocation and recovery

How are the costs of the arbitral proceedings allocated in awards? What costs are recoverable?

The arbitration agreement can provide for the allocation of costs incurred by the parties. However, any provision stating that, regard-

less of the outcome of the arbitration, a party must pay part or all of its own costs, is void. In the absence of any agreement to the contrary, the arbitrator 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. Any costs ordered by an award are subject to taxation (assessment) in the Grand Court, unless the award indicates otherwise. As a result, a successful party to arbitration is likely to recover a large part of its costs (usually 50 to 75 per cent), in accordance with the principles and rules governing the recovery of costs in legal proceedings before the Grand Court.

34 Interest

May interest be awarded for principal claims and for costs and at what rate?

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 varies depending on the currency in which judgment is given, although this is currently 5 per cent per annum for judgments in United States dollars.

Proceedings subsequent to issuance of award

35 Interpretation and correction of awards

Does the arbitral tribunal have the power to correct or interpret an award on its own or at the parties' initiative? What time limits apply?

An arbitrator or umpire has a limited power to correct in an award any clerical mistake or error arising from any accidental slip or omission, unless a contrary intention is expressed in the arbitration agreement. No time limits are prescribed.

36 Challenge of awards

How and on what grounds can awards be challenged and set aside?

Arbitrators can state, in the form of a special case for the decision of the Grand Court, any question of law arising in the course of the arbitration or an award (including any part of an award). They can also be compelled to do so by a court order, on a party's application.

A special case can be stated while arbitration proceedings are still pending. It must be a question of law, and which is:

- open to serious argument;
- important to the resolution of the dispute; and
- raised in good faith without an ulterior motive (such as a desire to cause delay).

This means that parties to an arbitration effectively have a right of appeal (subject to the Grand Court's leave) in a genuine case, and they cannot validly deprive the arbitrator of this discretionary power or oust the supervisory jurisdiction of the Grand Court in an arbitration agreement.

A special case typically contains two alternative awards, one of which is adopted and enforced by the Grand Court, depending on its view of the arbitrator's own conclusion on the question of law.

A Grand Court decision on a special case can be appealed to the Cayman Islands Court of Appeal, but not without leave from either the Grand Court or the Court of Appeal.

The Grand Court:

- can set aside an award where an arbitrator or umpire is guilty of misconduct or has conducted the proceedings in an unsatisfactory manner (known in other jurisdictions as 'serious irregularity');
- has a general discretion to remit an award, or any of the matters referred to arbitration, for reconsideration by the arbitrator; and
- arguably has an inherent jurisdiction to set aside awards (although

this jurisdiction is rarely invoked) for admitted mistake; an error of law on the face of the award; or having no jurisdiction.

- 37** How many levels of appeal are there? How long does it generally take until a challenge is decided at each level? Approximately what costs are incurred at each level? How are costs apportioned among the parties?

In the circumstances described in question 36 above, parties have an effective right of appeal in genuine cases to the Grand Court. The decision of the Grand Court can in turn be appealed to the Cayman Islands Court of Appeal with leave as stated above. In cases of general public importance, decisions of the Court of Appeal can be appealed to the Privy Council in London, but not without leave from either the Court of Appeal or the Privy Council itself.

The time taken until a challenge at each level is decided will depend on whether leave must first be sought from the appellate tribunal. However, appeals (i) to the Grand Court are generally decided within 3 months of instigating the appeal; (ii) to the Court of Appeal are generally decided within 6 to 9 months of instigating the appeal; and (iii) to the Privy Council within 24 to 30 months of instigating the appeal. The costs to be incurred at each level would depend on the nature of the appeal and again whether leave must first be sought from the appellate tribunal, although it is likely that the costs of pursuing an appeal to the Privy Council would exceed the costs of appealing to the Grand Court or the Court of Appeal.

38 Recognition and enforcement

What requirements exist for recognition and enforcement of domestic and foreign awards, what grounds exist for refusing recognition and enforcement, and what is the procedure?

In general, the Grand Court is favourably disposed to supporting the arbitration process by upholding and enforcing arbitral awards.

Enforcement of domestic awards

A domestic award can, by leave of the court, be enforced in the same way as a court order to the same effect and, where leave is given, judgment can be entered in the terms of the award. It can then be subject to enforcement proceedings like any other court order.

Enforcement of foreign awards

Generally, a foreign arbitration award is enforceable under conflicts of law principles, which require the award to be both:

- made in accordance with an arbitration agreement that is valid by

Update and trends

The Law Society of the Cayman Islands is in the process of preparing recommendations and draft new arbitration legislation modelled on the UNCITRAL Model Law for the consideration of the government, in order to stimulate Cayman's growth as an international arbitration centre. The author is the chairman of that committee. It is hoped that the current projected time frame for the conclusion of the review process will allow the implementation of the proposed reforms to take place during 2009.

its applicable law; and

- valid and final according to the law governing the arbitration proceedings.

In addition, an award made under an arbitration agreement in the territory of a state that is party to the New York Convention is recognised and enforced according to its principles, on production of the original arbitration agreement and award or certified copies. Recognition or enforcement can be refused only if the defaulting party proves that:

- a party to the arbitration agreement was (under the applicable law) under some incapacity;
- the arbitration agreement was not valid under its applicable law, or if the agreement does not provide for an applicable law, under the law of the country where the award was made;
- it was not given proper notice of the arbitrator's appointment or of the arbitration proceedings, or was otherwise unable to present its case;
- the award deals with a dispute outside the terms of, or contains decisions on matters beyond the scope of, the submission to arbitration (although if the award also contains separable decisions on matters that were submitted to arbitration, they can be enforced);
- the composition of the arbitral tribunal or the arbitration procedure breached the arbitration agreement or (in the absence of any agreement) the law of the Cayman Islands; or
- the award has not yet become binding on the parties, or it has been set aside or suspended by the Grand Court or by another competent authority under the law of which the award was made. As an interim measure, proceedings to enforce an award can be adjourned pending the determination of an application to set aside or suspend the award before a competent authority.

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39 What is the attitude of domestic courts to the enforcement of foreign awards set aside by the courts at the place of arbitration?

If a foreign arbitral award has been set aside by the courts of the place of arbitration, the Grand Court will decline to recognise or enforce the award on the grounds that the award is not valid and binding on the parties under the law governing the arbitration proceedings as stated in question 38.

40 Cost of enforcement

What costs are incurred in enforcing awards?

An arbitral award may be enforced in the same manner as a judgment, by leave of the court, which may also give judgment in terms of the award. This is a very straightforward and inexpensive process.

Further enforcement proceedings follow the same procedures as in normal litigation, with a similar range of procedural options including: contempt applications; garnishee applications; and bankruptcy petitions.

Some enforcement processes can be very swift, while others take more time, which will correspondingly impact on the costs involved (since these are usually charged on a time-spent basis).

Other

41 Judicial system influence

What dominant features of your judicial system might exert an influence on an arbitrator from your country?

The judicial system of the Cayman Islands is closely modelled on the English common law system. As a result, a Cayman-based arbitrator is likely to follow similar litigation procedures (absent contrary provisions in the arbitration agreement) subject to what the parties submit and he or she considers is appropriate for the particular dispute to be arbitrated. This approach is reinforced by the Arbitration Law, which provides the court with the same powers to make procedural orders as it has for the purpose of court proceedings (see question 27).

42 Regulation of activities

What particularities exist in your jurisdiction that a foreign practitioner should be aware of?

Foreign practitioners who appear in an arbitration in Cayman (whether as counsel or arbitrator) will only need a temporary work permit, which is straightforward to obtain. They will not need to be admitted to the local bar or become bound by local rules of professional conduct, and will not be subject to any local taxes on income earned from the arbitration.