

- Incorporation of the UNCITRAL Model Law into the Act
- Extension to the BVI of the New York Convention
- Creation of the BVI International Arbitration Centre

The BVI Arbitration Act: A Significant Legislative Milestone

The British Virgin Islands' (BVI) government has announced by proclamation that the Arbitration Act 2013 will come into force on 1 October 2014. The stated intention has been to bring the Act into force at the same time as the BVI IAC Arbitration Rules 2014. It promises to be a significant legislative milestone which is expected to generate alternative dispute resolution in the BVI, positioning the jurisdiction for development as an international arbitration centre.

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It is expected to incorporate the following key features:

Incorporation of the UNCITRAL Model Law into the Act

The Act is modelled on the UNCITRAL Model Law on International Commercial Arbitration as adopted by the UN Commission (on 21 June 1985) and further amended (7 July 2006), which provides rules on arbitration proceedings and is recognised internationally by many countries. The incorporation of the UNCITRAL model law into the Act will ensure that BVI arbitration will be conducted according to international standards and arbitrations in the BVI will also be recognised in virtually every country in the world.

Extension to the BVI of the New York Convention

On 25 May 2014 the BVI became a signatory to the New York Convention, that is the UN Convention on Recognition and Enforcement of Foreign Arbitral awards. The extension to the New York Convention will ensure that arbitration awards pursuant to the Act will be enforceable in all countries signed up to the New York Convention. Previously, the wording of the New York Convention was copied into the 1976 Act which the Court of Appeal held was a clear intent by the legislature in *IPOC International v LV Finance Group Limited* (2007), which was guided by the procedure set out in the Eastern Caribbean Supreme Court Civil Procedure Rules Part 43

on Enforcement. Although there were mechanisms in place because the BVI was not actually a party to the New York Convention, arbitral awards from the BVI were therefore not readily enforceable in other New York Convention member countries. With the extension of the New York Convention, this will be remedied and arbitrations taking place in the BVI will now be recognised by all the member states throughout the world.

Creation of the BVI International Arbitration Centre

In order to be effective arbitration must be seen to be speedy, fair and productive. The establishment of an International Arbitration Centre under the Act is aimed to promoting arbitration, providing the necessary facilities for arbitral proceedings, providing the necessary support to arbitral tribunals and providing access to parties who choose to settle their disputes through arbitration. In addition to being charged with the responsibility for providing guidelines and regulations, the International Arbitration Centre will be responsible for maintaining a register of arbitrators which will be readily available.

Construction of an arbitration agreement

The Act provides that an arbitration agreement is an agreement by the parties (whether it is signed or not) to submit to arbitration all or certain disputes which have arisen between them in respect of a defined legal relationship whether contractual or not. The agreement must be in writing. An agreement is in writing if its content is recorded in any form, whether or not the arbitration agreement has been concluded orally, by conduct, or by other means. The Act gives guidance as to satisfying the requirement:

- electronic communication, if it is accessible so as to be used for subsequent reference;
- if it is contained in an exchange of a statements of claim and defence which the existence of an agreement is alleged by one party and not denied by the order;
- there is reference in a contract to any document containing an arbitration clause provided the reference is such as to make the clause party of the contract.

Composition of the Arbitration Tribunal

The Act provides that parties are free to determine the number of arbitrators. The Act provides the appointment procedures for the arbitration tribunal whether it is an even panel, uneven panel or a sole arbitrator. Unless the parties otherwise agree, the arbitrators can appoint an umpire at any time after their own appointment in instances where there is an even number of arbitrators.

Court's role

The Act has limited the court's role where the parties agree to an arbitration, as the court must give due regard to the parties' wishes and the provisions of the arbitration agreement. Previously, case law has shown that where there is evidence of the existence of an arbitration clause, the court tends to restrict its role and honour the parties' wishes to arbitrate. In *Ennio Zanotti v Interlog Finance Corp & Others* (BVIHCV 2009/034), the judge stayed the proceedings where a shareholder had wrongly refused to participate in an arbitration process which was provided for in the company's memorandum and articles of association.

In *Pacific China Holdings Ltd v Grand Pacific Holdings Limited* (HCVAP 2010/007), the Court of Appeal stressed the need for procedural fairness of the arbitration process and held that it had a narrow discretion to override convention defences.

Conclusion

With the passing of the Act the BVI aims to emerge as an international arbitration centre along with countries such as New York, London and Hong Kong on the international level, and Barbados and Trinidad on a regional level. The BVI has registered over 950,000 corporate vehicles and historically most of those entities have included a clause in their articles of association with an option for arbitration. One advantage to alternative dispute resolutions such as arbitration is the privacy parties are afforded in relation to the resolution of their dispute. With the changing tide of the global market and with companies gravitating towards alternative dispute resolution, the Act will give the BVI an edge on the global stage.

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