Written by leading practitioners in the field, this fifth edition of *Arbitration World* provides readers with a single reference guide to over 50 different arbitration regimes and institutions around the world.

Arbitration World provides an informative, comparative and balanced overview of the key issues and is an essential resource for parties and lawyers engaged in arbitration, or considering arbitration as an option.

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FIFTH EDITION

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General Editors: Karyl Nairn QC & Patrick Heneghan
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FOREWORD

Karyl Nairn QC & Patrick Heneghan | Skadden, Arps, Slate, Meagher & Flom (UK) LLP

We are delighted to have been invited once again by Thomson Reuters to edit this fifth edition of *Arbitration World*, published by its widely recognised legal arm, Sweet & Maxwell (and forming part of their new *International Series*).

Following the success of the previous publication, we are hoping that this revised and extended fifth edition will serve as an invaluable reference guide to the key arbitration jurisdictions, rules and institutions across the globe.

In the three years since the last edition was published, the arbitral landscape has continued to evolve, with important developments in both the law and practice of arbitration. For example, new arbitration centres have opened in New York, Seoul, Moscow and Mumbai; established institutions such as the LCIA, AAA, HKIAC, ICDR, SIAC, VIAC, UNCITRAL and WIPO have published revised arbitration rules; new arbitration legislation has been enacted in Hong Kong, Australia, Belgium and Austria; while other jurisdictions, such as India, have sought through case law to improve their "arbitration-friendly" credentials.

The global status and popularity of arbitration has also grown since the last edition of *Arbitration World*. From 2012 to 2014, ICSID saw the highest annual number of filings in its history, notwithstanding the criticisms in certain quarters about the legitimacy of the existing system of investment treaty arbitration. Arbitration is also extending its global reach – arbitral institutions are reporting that the parties to arbitration are more diversified than ever; 156 state parties have now adopted the New York Convention.

To reflect this trend of expansion, we have continued to broaden the scope of *Arbitration World*. This latest edition has 55 chapters, including 38 jurisdictions and 16 arbitration institutions. We feature 11 new chapters, comprising Belgium, Cayman Islands, Colombia, Egypt, Korea, Malta, Peru, Scotland and the arbitral institutions of CIETAC, SIAC and the SCC.

Arbitration World aims to provide a simple and practical guide to arbitration law and practice for parties and practitioners, enabling its readers to assess the comparative benefits and challenges of arbitrating in various jurisdictions and/or under the auspices of different institutions.

We should like to take this opportunity to express our gratitude to all the authors of *Arbitration World*, old and new. The popularity of this publication is testament to the quality and expertise of the leading law firms, practitioners and institutions who have committed their time to the project.

We should also like to thank Emily Kyriacou and her team at Thomson Reuters, including Katie Burrington, Nicola Pender and Chris Myers, for their superb management and coordination efforts. We also extend our gratitude to Michele O'Sullivan for commissioning the project all those years ago.

Finally, we wish to pay tribute to our hard-working colleagues at Skadden, Gulnaar Zafar, Ben Jacobs, Sabeen Sheikh, Bing Yan, Anna Grunseit, Judy Fu, Nicholas Lawn, Kam Nijar, Laura Feldman, David Edwards, Ekaterina Churanova, Calvin Chan, Ross Rymkiewicz, Catherine Kunz, Melis Acuner, Emma Farrow, Devika Khopkar, Sara

Nadeau-Seguin, Nicholas Adams, Ahmed Abdel-Hakam, Simon Mercouris, Anna Heimbichner, Joseph Landon-Ray, Simon Walsh, Alex van der Zwaan, Tom Southwell, Christopher Lillywhite and Eleanor Hughes, who have assisted with the review and editing of the chapters featured in this latest edition; *Arbitration World* has been a true Skadden team effort and we are most grateful for all the support received.

Patrick Heneghan and Karyl Nairn QC, July 2015

MALTA

Antoine G Cremona & Anselmo Mifsud Bonnici | GANADO Advocates

1. EXECUTIVE SUMMARY

1.1 What are the advantages and disadvantages relevant to arbitrating or bringing arbitration-related proceedings in your jurisdiction?

The choice of Malta as a seat of arbitration has become increasingly more popular, mainly due to the following reasons:

- Malta's arbitration law is closely modeled on the UNCITRAL Model Law on International Arbitration 1985 (with amendments as adopted in 2006) (UNCITRAL Model Law). As such, it is familiar to experienced arbitration practitioners and corporate counsel alike.
- An arbitral award, once registered with the Malta Arbitration Centre (MAC), constitutes an executive title and can be executed very efficiently.
- The availability (and enforcement by the courts) of protective and interim measures are similar to those available in leading arbitration venues.
- The MAC offers a panel of experienced arbitrators from whom parties may choose, without limiting the choice of arbitrators by the parties.
- The geographical location of Malta enables it to serve as an accessible, neutral location, and it is very often perceived as an ideal location for the settlement of disputes between European and Northern African companies.
- Malta is a party to The Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 (New York Convention), and its provisions have been incorporated into domestic law. The courts have generally applied the New York Convention with a pro-enforcement bias.
- As a seat of arbiration, Malta can be said to provide an exceptionally good cost to quality ratio.

However, Maltese arbitration law does not provide for discovery proceedings, and this may be perceived as a handicap by parties coming from a non-civil law jurisdiction.

1.2 How would you rate the supportiveness of your jurisdiction to arbitration on a scale of 1 to 5, with the number 5 being highly supportive and 1 being unsupportive of arbitration? Where your jurisdiction is in the process of reform, please add a + sign after the number

The jurisdiction is generally supportive of arbitration, and the courts have extensive powers of support (including interim relief) for both domestic and international arbitrations having their seat in Malta. However, some recent court judgments have been inconsistent with Malta's historically pro-arbitration position, hence we would grade the jurisdiction with a score of 3 at the present time.

It seems unlikely that these judgments will be followed in the future and under Maltese law judgments do not constitute binding legal precedent. Therefore, in our opinion, it is very likely that the traditional pro-arbitration approach will be fully restored in the coming months.

2. GENERAL OVERVIEW AND NEW DEVELOPMENTS

2.1 How popular is arbitration as a method of settling disputes? What are the general trends and recent developments in your jurisdiction?

Arbitration is currently a widely used dispute resolution method in commercial matters. An ever increasing number of disputes in insurance, maritime, building and construction, and corporate claims are being resolved by way of arbitration.

2.2 Are there any unique jurisdictional attributes or particular aspects of the approach to arbitration in your jurisdiction that bear special mention?

Chapter 387 of the Laws of Malta (the Arbitration Act) establishes the publicly funded MAC, which acts as the default arbitration registry/secretariat in domestic arbitration and can be selected as the default appointing authority, in international arbitrations having Malta as their seat of arbitration.

2.3 Principal laws and institutions

2.3.1 What are the principal sources of law and regulation relating to international and domestic arbitration in your jurisdiction?

The Arbitration Act and the Arbitration Rules (*Subsidiary Legislation 387.01*) are the principal legislative instruments regulating arbitration in Malta. The Arbitration Act is modelled on the UNCITRAL Model Law, and the Arbitration Rules are likewise modelled on the UNCITRAL Arbitration Rules 1976 (revised in 2010). The Arbitration Act also incorporates the New York Convention, the Geneva Protocol on Arbitration Clauses of 1923, the Convention on the Execution of Foreign Arbitral Awards 1927 (Geneva Convention) and the Convention on the Settlement of Investment Disputes between States and Nationals of Other States 1965.

2.3.2 Which are the principal institutions that are commonly used and/or government agencies that assist in the administration or oversight of international and domestic arbitrations?

The MAC is the principal institution that oversees the conduct of domestic arbitrations and international arbitrations having Malta as their seat of arbitration. It is run by a publicly appointed board of governors that is responsible for the policy and general administration of the affairs and business of the Centre. The MAC offers not only the necessary facilities for the conduct of arbitration, but also a choice of arbitrator(s) from panels of professionals in different areas of law.

Malta can and does serve as the seat of ad hoc international arbitrations, as well as the seat of institutional arbitrations under the rules of leading arbitration institutions (including the International Chamber of Commerce (ICC) and the London Court of International Arbitration (LCIA)).

2.3.3 Which courts or other bodies have judicial oversight or supervision of the arbitral process?

The superior courts (First Hall Civil Courts and the Court of Appeal, as the case may be) are vested with the powers to stay arbitration proceedings, grant interim relief, hear procedural challenges and make recognition orders. The specific division of powers and jurisdiction of the particular courts depends on the nature of the relief sought. They are regulated by the Arbitration Act and the Code of Organization and Civil Procedure (*Chapter 12 of the Laws of Malta*), and will be addressed in more detail in the questions below.

3. ARBITRATION IN YOUR JURISDICTION – KEY FEATURES

3.1 The appointment of an arbitral tribunal

3.1.1 Are there any restrictions on the parties' freedom to choose arbitrators?

The parties' freedom of choice of arbitrators is safeguarded by the Arbitration Act in both domestic and international arbitrations, and is unlimited subject to the traditional rules of independence and impartiality.

3.1.2 Are there specific provisions of law regulating the appointment of arbitrators?

In default of any agreement on the procedure for the appointment of arbitrators, the Arbitration Act provides that, in the case of an arbitration with three arbitrators, each party will appoint one arbitrator, then the two arbitrators will appoint the third, who shall act as the chairman of the arbitration tribunal. However, if a party fails to either appoint the arbitrator within 30 days of receipt of a request to do so from the other party or if the two arbitrators fail to agree on the third arbitrator within 30 days of their appointment, the appointment shall be made, upon request of a party, by the Chairman of the MAC.

In an arbitration with a sole arbitrator, where the parties fail to agree on the arbitrator, he or she shall be appointed, upon request of a party, by the Chairman of the MAC.

In the context of international arbitration, the MAC chairman fills the role of default appointing authority and the functions mentioned in Articles 11(3), 11(4), 13(3) and 14 of the UNCITRAL Model Law.

3.1.3 Are there alternative procedures for appointing an arbitral tribunal in the absence of agreement by the parties?

As discussed in *Section 3.1.2*, in case the parties do not agree on the arbitrator(s), at one of the parties' request the Chairman shall appoint the arbitrator(s).

3.1.4 Are there requirements (including disclosure) for "impartiality" and/or "independence", and do such requirements differ as between domestic and international arbitrations?

The Arbitration Act provides that any person who is approached as a prospective arbitrator is duty bound to disclose to those who approach him any circumstances likely to give rise to justifiable doubts as to his impartiality or independence. This obligation stands from the time of his appointment and throughout the arbitral proceedings. These rules apply to both domestic and international arbitrations.

3.1.5 Are there provisions of law governing the challenge or removal of arbitrators?

The grounds for which an arbitrator may be challenged or removed are circumscribed. Challenge and removal of arbitrators are regulated by Article 24 of the Arbitration Act and Articles 12 and 13 of Chapter II of the First Schedule of the Arbitration Act. However, a party may only challenge his or her appointee on the arbitration tribunal for reasons which arise after the appointment has been made.

3.1.6 What role do national courts have in any such challenges?

In terms of the applicable provisions, a challenge of one or more arbitrators is a matter to be decided upon by the arbitration tribunal. A party who intends to challenge an arbitrator, shall send notice of his challenge within 15 days after the appointment of the challenged arbitrator has been notified to that party or within 15 days after circumstances related to the arbitrator's impartiality or independence become known to that party, as specifically mentioned in Articles 23 and 24 of the Arbitration Act.

The challenge shall be notified to the registrar, to the other party, to the arbitrator who is challenged and to the other members of the arbitral tribunal.

3.1.7 What principles of law apply to determine the liability of arbitrators for acts related to their decision-making function?

The arbitrator shall only be liable in respect of anything wilfully done or omitted to be done by him as arbitrator where his action or omission is attributable to malice or fraud on his or her part. This is not a principle of mandatory law and the liability of arbitrators can be specifically dealt with in engagement documentation, which can, for instance, set their duty to act diligently, with undue delay, and to preserve confidentiality. In any case, arbitrators are bound to remain independent and impartial throughout the process.

3.2 Confidentiality of arbitration proceedings

3.2.1 Is arbitration seated in your jurisdiction confidential? What are the relevant legal or institutional rules which apply?

There is an implied duty of confidentiality in arbitration, and arbitration awards are not published by the MAC, nor are they publicly accessible through online databases or regular publications. However, it is advisable to reinforce this by including appropriate wording in the arbitration agreement, or by adopting a set of procedural rules which make express provision for confidentiality.

3.2.2 To what matters does any duty of confidentiality extend (for example, does it cover the existence of the arbitration, pleadings, documents produced, the hearing and/or the award)?

The Arbitration Rules clearly state that every person who participates in the arbitration proceedings in whatever capacity must maintain the confidentiality of the arbitration. Moreover, the existence of arbitration proceedings, the filing of the notice and the award will not be published.

Hearings should be held in a private setting, and no person other than the parties, their assistants or representatives and the registrar will be permitted to attend unless otherwise directed by the tribunal.

For international arbitrations having Malta as their seat of arbitration the duty of confidentiality will generally be regulated by the relevant institutional rules (for example, ICC, LCIA, American Arbitration Association).

Where parties choose the Arbitration Rules to regulate their arbitration proceedings, rule 47 shall apply. The rule provides that every person who participates in the arbitration proceedings in whatever capacity must maintain the confidentiality of the arbitration. The existence of arbitration proceedings, the filing of the notice and the award will not be publicised or otherwise publicly acknowledged by the MAC or the parties. The MAC shall treat all documents filed with it as confidential except to the extent authorised by the parties or otherwise necessary to implement the provisions of the Arbitration Act. Moreover, the hearings will be held in private chambers, and no person other than the parties, their assistants or representatives and the registrar will be permitted to attend except in support of the proceedings as ordered by the arbitral tribunal (for example, a person may be requested to give witness testimony during the arbitral proceedings).

3.2.3 Can documents or evidence disclosed in arbitration be used in other proceedings or contexts?

The use of any document disclosed in arbitration should be regulated by the arbitration agreement, though institutional arbitration rules (for example, ICC, LCIA, American Arbitration Association) can vary in this respect. The default position under Maltese law is that a party is not prohibited from producing documents exchanged in arbitration in other proceedings whether related or unrelated unless otherwise agreed to in the arbitration agreement.

3.2.4 When is confidentiality not available or lost?

Parties cannot claim the confidentiality of arbitration proceedings where the parties have agreed that the proceedings should not remain private and confidential. Where parties choose to regulate the arbitration through the Arbitration Rules, rule 48 contains three exceptions to the otherwise applicable principle of confidentiality:

:

- Where the parties expressly consent to the publication of any of the events stated in rule 47 of the Arbitration Rules (*see Section 3.2.2 above*), and to such extent as may be consented to.
- If any party seeks recourse in terms of the arbitration agreement or the Arbitration Act and limitedly to such extent, or otherwise is required to divulge the information to protect his own interests.
- In the case of mandatory arbitrations., the Arbitration Act specifically excludes the application of confidentiality rules unless the parties expressly agree to such rules and notify the arbitrator and the MAC accordingly.

3.3 Role of (and interference by) the national courts and/or other authorities

3.3.1 Will national courts stay or dismiss court actions in favour of arbitration?

If any party to an arbitration agreement commences any legal proceedings in any court against any other party to the arbitration agreement, in respect of any matter agreed to be referred to arbitration, parties to such legal proceedings may at any time before delivering any pleadings or taking other steps in the proceedings apply to that court to stay the proceedings, and that court or a judge thereof, unless satisfied that the arbitration agreement has become inoperative or cannot proceed, shall make an order staying the proceedings.

3.3.2 Are there any grounds on which the national courts will order a stay of arbitral proceedings?

The national courts shall stay proceedings unless the arbitration agreement has become inoperative or cannot proceed as stated in *Section 3.3.1*.

3.3.3 What is the approach of national courts to parties who commence court proceedings in your jurisdiction or elsewhere in breach of an agreement to arbitrate?

As described in *Sections 3.3.1 and 3.3.2*, the court will stay proceedings if there is a valid arbitration clause. With a few exceptions, the approach of national courts has been positive in the preservation of jurisdiction of the arbitrator.

3.3.4 Is there a presumption of arbitrability or policy in support of arbitration? Have national courts shown a willingness to interfere with arbitration proceedings on any other basis?

As a signatory of the New York Convention, and having modelled the Arbitration Act on the UNCITRAL Model Law, Malta is generally a jurisdiction which supports the arbitration process. National courts are less likely to interfere with international arbitrations that have Malta as their seat of arbitration than they are with domestic arbitrations, where they still have residual powers. In general, Maltese courts cannot prevent a party from trying to frustrate arbitration proceedings through court actions. However, when this happens, with a few exceptions, the Maltese courts have shown themselves to be generally supportive of arbitration and unsympathetic to such claims.

3.3.5 Are there any other legal requirements for arbitral proceedings to be recognisable and enforceable?

There are no other legal requirements for arbitral proceedings to be recognisable and enforceable in the case of international arbitrations having Malta as the seat of arbitration. The recognition and enforcement of arbitral awards are discussed in *Sections 1 and 6*.

With respect to domestic arbitrations, the claimant must file a notice of arbitration with MAC. Such notice may be filed at any stage prior to the delivery of the award, but is required *ad validitatem*. In other words, a domestic arbitration which is not accompanied by a notice of arbitration does not produce a legally enforceable award at law.

3.4 Procedural flexibility and control

3.4.1 Are specific procedures mandated in particular cases, or in general, which govern the procedure of arbitrations or the conduct of an arbitration hearing? To what extent can the parties determine the applicable procedures?

The parties are at liberty to determine the procedure to be followed by the arbitral tribunal in international arbitrations having Malta as their seat of arbitration. The Arbitration Act and the Arbitration Rules provide default rules on procedure in cases where parties do not agree on the procedure.

The general public policy provisions regulating fair trial (due process) naturally apply.

In domestic arbitrations procedural flexibility is much more limited.

3.4.2 Are there any requirements governing the place or seat of arbitration, or any requirement for arbitral hearings to be held at the seat?

The parties are at liberty to choose the place or seat of arbitration. There is no requirement that proceedings should physically take place at the seat of arbitration.

3.4.3 What procedural powers and obligations does national law give or impose on an arbitral tribunal?

In domestic arbitration, and in international arbitration where the parties adopt the Arbitration Rules to regulate their arbitration, rule 71 provides that the arbitral tribunal shall have all the necessary powers to issue orders to the parties. Moreover, the arbitral tribunal shall have the power to impose penalties for non-compliance with orders, for failure to observe time limits and for failure to attend hearings or cancellation thereof without valid reasons.

3.4.4 Evidence

3.4.4.1 What is the general approach to the gathering and tendering of written evidence at the pleading stage and at the hearing stage?

The parties to the arbitration are at liberty to decide how the gathering and tendering of evidence should be carried out. Generally, parties do so through the incorporation of institutional rules or the choice of the Arbitration Rules. In default of such choice, the arbitration tribunal shall regulate the evidence before it to ensure compliance with the applicable law, which is generally the law of the seat of arbitration.

The evidence in arbitration may be produced either viva voce or by affidavits, and a documents only arbitration is recognised under Maltese law.

The same rules regulating legal privilege, the use of witness statements and so on applicable to litigation apply to arbitration proceedings. The principle of discovery is not recognised in the Maltese legal system.

3.4.4.2 Can parties agree the rules on disclosure? How does the disclosure in arbitration typically differ to that in litigation?

Yes, parties may agree on disclosure. However, as noted above in *Section 3.4.4.1*, the process of discovery is not recognised in the Maltese legal system.

3.4.4.3 What are the rules on oral (factual or expert witness) evidence? Is cross-examination used?

The Arbitration Rules provide that the arbitral tribunal shall regulate the production of evidence before it to ensure compliance with the provisions of the Arbitration Act. Any application for the subpoena of a witness before an arbitral tribunal shall indicate that the witness is to appear before an arbitral tribunal for the purpose of an arbitral proceedings and shall indicate clearly the address of the place the witness is to attend and the date and time of attendance.

The arbitral tribunal may administer oaths to persons called as witnesses or experts to give evidence before an arbitral tribunal.

The Arbitration Act provides in Article 36 that the evidence of witnesses in an arbitration shall be produced either viva voce or by affidavit, and the rules of the Code of Organization and Civil Procedure shall apply as they apply to the production of evidence before a court of civil jurisdiction. Where the evidence of any person is required, the

registrar may issue writs of subpoena to compel the attendance of a witness to give evidence or produce documents before an arbitral tribunal.

3.4.4.4 If there is no express agreement, what powers of compulsion are there for arbitrators to require attendance of witnesses (factual or expert) or production of documents, either prior to or at the substantive hearing? To what extent are national courts willing or able to assist? Are there differences between domestic and international arbitrations, or between orders sought as against parties and non-parties?

The Arbitration Act provides in Article 36 that, if the evidence of any person is required, the registrar may issue writs of subpoena to compel the attendance of a witness to give evidence or produce documents before an arbitral tribunal. Where any person who has been properly subpoenaed to appear before an arbitral tribunal in accordance with the aforementioned article fails to appear before the said tribunal without reasonable excuse, the tribunal may make a report thereon to the registrar, who shall by application bring the report to the attention of the First Hall Civil Court, requesting it to deal with the matter in the same manner as if the person concerned had failed to appear before that court when properly subpoenaed and thereupon the court shall deal with the matter in the said manner.

3.4.4.5 Do special provisions exist for arbitrators appointed pursuant to international treaties (that is, bilateral or multilateral investment treaties)?

No specific provisions exist on this point.

3.4.5 Are there particular qualification requirements for representatives appearing on behalf of the parties in your jurisdiction?

Those appearing on behalf of parties to arbitration proceedings are not required to have any particular qualifications. However, representatives should be familiar with both the legal and procedural rules relating to the matter in dispute, as well as the arbitration law and procedure.

3.5 The award

3.5.1 Are there provisions governing an arbitral tribunal's ability to determine the controversy in the absence of a party who, on appropriate notice, fails to appear at the arbitral proceedings?

The failure by a party to appear before an arbitration tribunal or to contest an arbitration when validly served notice thereof does not prevent the arbitration tribunal from proceeding and producing a default award.

3.5.2 Are there limits on arbitrators' powers to fashion appropriate remedies, for example, punitive or exemplary damages, specific performance, rectification, injunctions, interest and costs?

The arbitrators' remedies should be based on the pleas of the parties and the applicable law to the arbitration, unless the parties expressly authorise the arbitrator to decide *ex aequo et bono* or as *amiable compositeur*. The remedies that can be fashioned by the arbitrator will be regulated by the law applicable to the merits of the dispute.

3.5.3 Must an award take a particular form? Are there any other legal requirements, for example, in writing, signed, dated, place stipulated, the need for reasons, method of delivery?

The award shall be made in writing and shall be signed by the arbitrator or arbitrators. In arbitral proceedings with more than one arbitrator, the signatures of the majority of all members of the arbitral tribunal shall suffice, provided

that the reason for any omitted signature is stated. The law does not require that the award be signed by all the arbitrators.

Moreover, the award shall include the date and the place of arbitration, and shall state the reasons upon which the award is based (unless it is agreed otherwise by the parties).

3.5.4 Can an arbitral tribunal order the unsuccessful party to pay some or all of the costs of the dispute? Is an arbitral tribunal bound by any prior agreement by the parties as to costs?

The arbitral tribunal may, in both domestic and international arbitrations, order the unsuccessful party to pay a part or the full amount of the costs of the dispute. In both domestic and international arbitrations, the Arbitration Act specifies that the costs of arbitration shall in principle be borne by the unsuccessful party; however, it is in the discretion of the arbitral tribunal to apportion the costs, taking into account the particular circumstances of the case.

3.5.5 What matters are included in the costs of the arbitration?

The Arbitration Act specifically provides that the costs of the arbitration include:

(a) The fees of the arbitral tribunal, to be stated separately as to each arbitrator and to be fixed by the tribunal itself.

(b) The travel and other expenses incurred by the arbitrators.

(c) The costs of expert advice and of other assistance required by the arbitral tribunal.

(d) The travel and other expenses of witnesses to the extent that such expenses are approved by the arbitral tribunal.

(e) The costs for legal representation and assistance of the successful party if such costs were claimed during the arbitral proceedings, and only to the extent that the arbitral tribunal determines that the amount of such costs is reasonable.

(f) Any fees and expenses payable to the arbitration centre.

3.5.6 Are there any practical or legal limitations on the recovery of costs in arbitration?

In both domestic and international arbitrations, the MAC shall request each party to deposit with it an equal sum as an advance for the costs referred to in *Section 3.5.5(a)–(c)*. During the course of the arbitral proceedings, the arbitral tribunal may request from the parties supplementary deposits to cover further costs. If the required deposits are not paid in full within 30 days from the receipt of the request, the arbitral tribunal shall so inform the parties in order that any one of them may make the required payment. If such payment is not made, the arbitral tribunal may order the suspension or termination of the arbitral proceedings.

This provision may unfortunately sometimes favour a recalcitrant party who wishes to prolong the arbitration. Nevertheless, a party interested in proceeding expeditiously to an arbitration award may pay the costs of the arbitration and such payment would be recoverable together with the award, in terms of the cost order contained in the same award.

3.5.7 Are there any rules relating to the payment of taxes (including VAT) by foreign and domestic arbitrators? If taxes are payable, can these be included in the costs of arbitration?

The only VAT rules applicable to the services granted by foreign and domestic arbitrators are those included in the VAT regulation on the provision of professional services. These same VAT rules apply to the supply of any cross-border professional services without distinction. These costs may also be included in the costs of arbitration.

3.6 Arbitration agreements and jurisdiction

3.6.1 Are there form, content or other legal requirements for an enforceable agreement to arbitrate? How may they be satisfied? What additional elements is it advisable to include in an arbitration agreement?

The arbitration agreement must be in writing and contained in one of the following:

- A document signed by the parties.
- An exchange of letters, telexes, telegrams or other means of telecommunication which provide a record of the agreement.
- An exchange of statements of claim and defence in which the existence of an agreement is alleged by one party and not denied by another.

Such an agreement may be in the form of an arbitration clause in a contract or a separate agreement. The agreement by the parties shall include whether all or certain disputes which have arisen or which may arise between them in respect of a defined legal relationship will be settled by way of arbitration.

Additional elements, such as the language of proceedings and the number of arbitrators to be appointed, should also be include in an arbitration agreement.

3.6.2 Can an arbitral clause be considered valid even if the rest of the contract in which it is included is determined to be invalid?

Yes, the arbitration clause can still be considered valid in such circumstances and does not automatically suffer the fate of the contract in which it is embedded. This applies to both domestic and international arbitrations. Article 16 of the UNCITRAL Model Law clearly states that should a contract be considered null and void, this shall not entail *ipso jure* the invalidity of the arbitration clause.

3.6.3 Can an arbitral tribunal determine its own jurisdiction ("competence-competence")? When will the national courts deal with the issue of jurisdiction of an arbitral tribunal? Need an arbitral tribunal suspend its proceedings if a party seeks to resolve the issue of jurisdiction before the national courts?

Yes, an arbitral tribunal may determine its own jurisdiction in both domestic and international arbitrations. In the event that proceedings are filed before any court for a declaration relating to the jurisdiction of an arbitral tribunal, such proceedings shall be dismissed and the parties shall be referred to the arbitral tribunal for its decision on such issue, unless the court considers that any party will suffer irreparable harm unless it determines the issue. Article 32 of the Arbitration Act regulates in detail the procedure in the context of domestic arbitrations.

3.6.4 Is arbitration mandated for certain types of dispute? Is arbitration prohibited for certain types of dispute?

Arbitration is mandated by the Arbitration Act in condominium disputes (disputes between owners of parts of a common building or a group of buildings falling within the remit of the Condominium Act, Chapter 398 of the Laws of Malta), motor traffic disputes, paying agency disputes and disputes connected with the provision of certain utility services (electricity and water services).

However, the Arbitration Act sets certain limitations as to the specific issues which might be included or excluded by mandatory arbitration. Not all disputes are arbitrable: for example, criminal law disputes, acts of civil status and public law disputes are not arbitrable.

3.6.5 What, if any, are the rules which prescribe the limitation periods for the commencement of arbitration proceedings and what are such periods?

The Arbitration Act does not stipulate any time limitations for the commencement of arbitration proceedings. The statute of limitations applies equally to arbitration as to the Maltese courts.

3.6.6 Does national law enable an arbitral tribunal to assume jurisdiction over persons who are not party to the arbitration agreement?

With the exception of mandatory arbitrations, which are exceptional in nature and treated separately in Maltese law, an arbitration agreement applies only to the parties that have signed the arbitration agreement and the arbitral tribunal may not assume jurisdiction over persons who are not party to an arbitration agreement. The only exception to this rule is stated by the Arbitration Act in cases of mandatory arbitration, where a third party may be joined in proceedings.

3.7 Applicable law

3.7.1 How is the substantive law governing the issues in dispute determined?

In international arbitration, the arbitral tribunal shall apply the law designated by the parties as applicable to the substance of the dispute. Any designation of the law or legal system of a given state shall be construed, unless otherwise expressed, as directly referring to the substantive law of that state and not to its conflict of laws rules.

Failing any designation by the parties, the arbitral tribunal shall apply the law determined by the conflict of laws rules which it considers applicable.

In domestic arbitration, if the parties fail to identify a designated law, the arbitral tribunal shall apply Maltese law, including the rules of Maltese law relative to the conflict of laws.

3.7.2 Are there any mandatory laws (of the seat or elsewhere) which will apply?

In domestic arbitration, if the parties fail to identify a designated law, the arbitral tribunal shall apply Maltese law, including the rules of Maltese law relative to the conflict of laws.

4. SEEKING INTERIM MEASURES IN SUPPORT OF ARBITRATION CLAIMS

4.1 Can an arbitral tribunal order interim relief? If so, in what circumstances? What forms of interim relief are available and what are the legal tests for qualifying for such relief?

Unless otherwise agreed by the parties, the arbitral tribunal may, at the request of a party, order any party to take such interim measure of protection as the arbitral tribunal considers necessary in respect of the subject matter of the dispute. The arbitral tribunal may require any party to provide appropriate security in connection with such measure.

A party may request, before or during arbitral proceedings, from a court an interim measure of protection. Such measures include:

- A warrant of description.
- A warrant of seizure.
- A warrant of seizure of a commercial going concern.
- A garnishee order.
- A warrant of arrest of sea vessels.
- A warrant of arrest of aircraft.
- A warrant of prohibitory injunction.

4.2 Have national courts recognised and/or limited any power of an arbitral tribunal to grant interim relief?

The courts recognise the freedom of the parties to choose the venue from which to seek interim relief. They have not so far limited the powers of arbitral tribunal to grant interim measures. Where interim measures have been granted by the tribunal, the courts will recognise and enforce such measures upon the application of the party in whose favour the measure has been granted.

4.3 Will national courts grant interim relief in support of arbitration proceedings and, if so, in what circumstances?

The Arbitration Act stipulates that, in both international and domestic arbitrations, unless otherwise agreed by the parties, any party may request, before or during arbitral proceedings, from a court an interim measure of protection.

4.4 Are national courts willing to grant interim relief in support of arbitration proceedings seated elsewhere?

Yes, Maltese courts grant interim measures in support of arbitration proceedings seated outside of Malta.

5. CHALLENGING ARBITRATION AWARDS

5.1 Can an award be appealed to, challenged in or set aside by the national courts? If so, on what grounds?

Recourse to the national courts against an arbitral award may be had only by an application for set aside in accordance with specific provisions provided by the Arbitration Act.

The party making the application must furnish proof that:

- A party to the arbitration agreement was under some incapacity.
- The agreement is not valid under the law which the parties have stipulated it or, failing any indication thereon, under the law of Malta.
- 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 his or her case.
- 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, provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, only that part of the award which contains decisions on matters not submitted to arbitration may be set aside.
- The composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless such agreement was in conflict with a provision of the Arbitration Act from which the parties cannot derogate or, failing such agreement, was not in accordance with the Arbitration Act.

The national courts will find that:

- The subject matter of the dispute is not capable of settlement by arbitration under the law of Malta.
- The award is in conflict with the public policy of Malta.

However, an application for set aside may not be made after three months have elapsed from the date on which the party making that application had received the award or, if a request had been made for an additional award, from the date on which that request had been disposed of by the Arbitration Tribunal.

Special rules on appeals against arbitration awards in domestic arbitrations apply.

Recourse against an arbitral award delivered under Part V of the Arbitration Act (international arbitration) may be made to the Court of Appeal by an appeal on a point of law only if the parties to the arbitration agreement have expressly agreed that such right of appeal is available to the parties in addition to the rights of recourse as contemplated in Article 34 of the UNCITRAL Model Law.

5.2 Can the parties exclude rights of appeal or challenge?

The parties may expressly by agreement exclude the right of appeal in domestic arbitrations either in the arbitration agreement or in a separate document in writing.

5.3 What are the provisions governing modification, clarification or correction of an award (if any)?

The Arbitration Act provides that within 30 days of receipt of the award, unless another period has been agreed upon by the parties:

- A party, with notice to the other party, may request the arbitral tribunal to correct in the award any errors in computation, any clerical or typographical errors or any errors of similar nature.
- If so agreed by the parties, a party, with notice to the other party, may request the arbitral tribunal to give an interpretation of a specific point or part of the award.

If the arbitral tribunal considers the request to be justified, it shall make the correction or give the interpretation within 30 days of receipt of the request. The interpretation shall form part of the award. The arbitral tribunal may extend, if necessary, the period of time within which it shall make a correction or an interpretation.

However, the arbitral tribunal also has the prerogative to correct any errors in computation, any clerical or typographical errors or any errors of similar nature on its own initiative within 30 days of the date of the award.

Moreover, unless otherwise agreed by the parties, a party, with notice to the other party, may request, within 30 days of receipt of the award, the arbitral tribunal to make an additional award as to claims presented in the arbitral proceedings but omitted from the award. If the arbitral tribunal considers the request to be justified, it shall make the additional award within 60 days.

6. ENFORCEMENT

6.1 Has your jurisdiction ratified the New York Convention or any other regional conventions concerning the enforcement of arbitration awards? Has it made any reservations?

Malta has implemented both the New York Convention and the Geneva Convention. Both reservations applicable under the New York Convention have been adopted by Malta.

6.2 What are the procedures and standards for enforcing an award in your jurisdiction?

The procedure for enforcing an award in Malta is quite simple and requires only registration with the MAC. However, this process takes time due to the MAC's accumulated backlog of cases.

6.3 Is there a difference between the rules for enforcement of "domestic" awards and those for "non-domestic" awards?

The enforcement instruments available to an award creditor are the same in both domestic and non-domestic awards. The latter class of awards would, however, have to pass through the recognition procedures stipulated in the Arbitration Act, including registration with the MAC referred to above, prior to the issuance of enforcement instruments in the form, for example, of executive warrants.

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