

5th Draft, 31 Jan 2015

**THE WESTERN HEMISPHERE ARBITRATION AND MEDIATION CENTRE BILL,
2015**

A Bill for an Act to improve access to justice, to facilitate the timely and efficient resolution of disputes, to raise public consciousness, and supply public education programs, about the importance and value of such dispute resolution, to provide effective mechanisms for dispute resolution through arbitrators, mediators and other dispute resolution professionals, to establish a center for international commercial arbitration and mediation for the international community and especially the Western Hemisphere, to provide the machinery to resolve contractual disputes in the construction, real property, trust, financial and corporate services, cruise ship, maritime industries and other fields, and to provide for other matters related thereto.

Part I

PRELIMINARY

1. Short title and commencement

- 1) This Act may be cited as the International and Western Hemisphere Arbitration and Mediation Centre Act, 2015, or simply as the IIWHAM Act, 2015.
- 2) This Act comes into operation on a date to be appointed by the Minister by notification in the *Gazette*.

2. Purpose

The purposes of this Act are to:-

- (a) improve access to justice, and to facilitate the timely and efficient resolution of disputes,
- (b) raise public consciousness, and carry out public education programs, about the importance and value of such dispute resolution,
- (c) provide effective mechanisms for dispute resolution through arbitrators, mediators and other dispute resolution professionals

- (d) establish the Western Hemisphere Arbitration and Mediation Centre (IWHAM) as a public corporation to facilitate international commercial arbitration in the construction, real property, trust, financial and corporate services, cruise ship, maritime industries and other fields, but also to promote domestic and community arbitration, mediation and resolution of disputes, and restorative justice;
- (e) establish The Bahamas as a gateway between East and West, and between North and South, for investment, arbitration and mediation;
- (f) recommend or appoint arbitrators and mediators, and to maintain lists of these and other alternative dispute resolution professionals; and
- (g) to uphold the highest international standards in the field of alternative dispute resolution.

3. Interpretation

In this Act, unless the context otherwise requires:—

“alternative dispute resolution professionals” mean arbitrators, arbitration counsel, mediators, stenographers, interpreters, translators, and other professionals frequently employed in proceedings of IWHAM;

“Appointments Committee” means the Board of Directors of IWHAM;

“arbitral amount” means the amount ordered to be paid within the arbitral decision;

“arbitral decision” means the decision made by an arbitrator under subsection 13(2);

“arbitral proceedings” means the process of arbitration under this Act;

“arbitrator” means an individual appointed to conduct the arbitration of a dispute under this Act;

"claimant" means an aggrieved party in a contract who initiates arbitral proceedings;

"Court" means the Supreme Court;

"contract" means a contract to carry out financial, corporate, maritime, cruise ship, construction or other services;

"construction services" means consultancy services in relation to construction work and includes planning and feasibility study, architectural work, engineering, surveying, exterior and interior decoration, landscaping and project management services;

"construction contract" means a construction work contract or construction consultancy contract;

"construction work" means the construction, extension, installation, repair, maintenance, renewal, removal, renovation, alteration, dismantling, or demolition of:

- a. Any building, erection, edifice, structure, wall, or fence, whether constructed wholly or partly above or below ground level;
- b. Any road, harbour works, cableway, canal or aerodrome;
- c. Any drainage, irrigation or river control work;
- d. Any electrical, mechanical, water, gas, oil, petrochemical or telecommunication work; or
- e. Any bridge, viaduct, dam, reservoir, earthworks, pipeline, sewer, aqueduct, culvert, drive, shaft, tunnel or reclamation work,

and includes—

- f. Any work which forms an integral part of, or are preparatory to or temporary for the works described in paragraphs (a) to (e), including site clearance, soil investigation and improvement,

earth-moving, excavation, laying of foundation, site restoration and landscaping; and

- g. Procurement of construction materials, equipment or workers, as necessarily required for any works described in paragraphs (a) to (e);

“construction work contract” means a contract to carry out construction work within the Commonwealth of The Bahamas;

“contract administrator” means an architect, engineer superintending officer or other person howsoever designated who administers a construction contract;

“days” include every day other than a Saturday, a Sunday, or a public holiday;

“financial and corporate services” means the interpretation established under section 2 of the Financial and Corporate Services Providers Act, 2000;

“Government” means the Government of the Commonwealth of The Bahamas;

“Matter” means Supreme Court Action that has been referred by the Court to the Chairman of IWHAM for mediation;

“Minister” means the Minister charged with the responsibility for works;

“non-paying party” means a party against whom a payment claim is made pursuant to a construction contract;

“party” means a party to an arbitration agreement or, in any case where an arbitration does not involve all the parties to the arbitration agreement, means a party to the arbitration;

“payment” means a payment for work done or services rendered under the express terms of a construction contract;

“principal” means a party who has contracted with and is liable to make payment to another party where that other party has in turn contracted with and is liable to make payment to a further person in a chain of construction contracts;

“respondent” means the person on whom the notice of arbitration and arbitral claim has been served;

“site” means the place where the construction work is affixed whether on-shore or off-shore;

“unpaid party” means a party who claims payment of a sum which has not been paid in whole or in part under a construction contract; and

“IWHAM” means the International and Western Hemisphere Arbitration and Mediation Centre.

4. The Establishment of the Western Hemisphere Centre as a body Corporate

1. A body corporate shall be established under this section and shall exist by virtue of and for the purpose of this Act and shall be known after the commencement of this section as the Western Hemisphere Arbitration and Mediation Centre.
2. The Schedule shall have effect with respect to IWHAM, its members and staff.

5. Restriction on Domestic Construction and Real Property Disputes.

If any construction work carried out within the Bahamas becomes the subject of a dispute, then the arbitrator, arbitral tribunal, or mediator appointed to hear the dispute, shall be a citizen or citizens of the Bahamas.

Part II

ARBITRATION OF PAYMENT DISPUTES

6. Payment Claim

3. An unpaid party may serve a payment claim on a non-paying party for payment pursuant to a contract.
4. The payment claim shall be in writing and shall include—
 - a. The amount claimed and due date for payment of the amount claimed;
 - b. Details to identify the cause of action including the provision in the contract to which the payment relates;
 - c. Description of the work or services to which the payment relates; and
 - d. A statement that it is made under this Act.

7. Payment Response

1. A non-paying party who admits to the payment claim served on him shall serve a payment response on the unpaid party together with the whole amount claimed or any amount as admitted by him.
2. A non-paying party who disputes the amount claimed in the payment claim, either wholly or partly, shall serve a payment response in writing on the unpaid party stating the amount disputed and the reason for the dispute.
3. A payment response issued under subsection (1) or (2) shall be served on the unpaid party within Fourteen (14) days of the receipt of the payment claim.
4. A non-paying party who fails to respond to a payment claim in the manner provided under this section is deemed to have disputed the entire payment claim.

8. Right to Refer Dispute to Arbitral Proceedings

1. An unpaid party or a non-paying party may refer a dispute arising from a payment claim made under section 6 to arbitral proceedings.
2. The right to refer a dispute to arbitral proceedings shall only be exercised after the expiry of the period to serve a payment response as specified under subsection 7(3).
3. A dispute referred to arbitral proceedings under this Act is subject to the Limitation Act Chapter 83 of the Statute Laws of the Commonwealth of The Bahamas.

9. Initiation of Arbitral Proceedings

1. A claimant may initiate arbitral proceedings by serving a written notice of arbitral proceedings containing the nature and description of the dispute and the remedy sought together with any supporting document on the respondent.
2. Upon receipt by the respondent of the notice described under subsection (1), an arbitrator shall be appointed in the manner described in section 21.
3. A party to the arbitral proceedings may represent himself or be represented by any representative appointed by that party.

10. Arbitral Claim

1. The claimant shall, within Fourteen (14) days from the receipt of the acceptance of appointment by the arbitrator under subsection 23(2) or 24(2), serve a written arbitral claim containing the nature and description of the dispute and the remedy sought together with any supporting document on the respondent.
2. The claimant shall provide the arbitrator with a copy of the arbitral claim together with any supporting document within the time specified under subsection (1).

11. Arbitral Response

1. The respondent shall, within Fourteen (14) days from the receipt of the arbitral claim under subsection 10(1), serve a written a response which shall answer the arbitral claim together with any supporting document on the claimant.
2. The respondent shall provide the arbitrator with a copy of the arbitral response together with any supporting document within the time specified under subsection (1).
3. If the respondent fails to serve any arbitral response, the claimant may proceed with the arbitral proceedings after the expiry of the time specified under subsection (1).

12. Arbitral Reply

1. The claimant may, within Seven (7) days from the receipt of the arbitral response, serve a written reply to the arbitral response together with any supporting document on the respondent.
2. The claimant shall provide the arbitrator with a copy of the arbitral reply together with any supporting document within the time specified under subsection (1).

13. Arbitral Proceedings and Decision

1. The arbitrator shall conduct the arbitral proceedings in the manner as the arbitrator considers appropriate within the powers provided under section 26.
2. Subject to subsection 20(5), the arbitrator shall decide the dispute and deliver the arbitral decision within—
 - a. Sixty(60) days from the service of the arbitral response or reply to the arbitral response, whichever is later;
 - b. Sixty (60) days from the expiry of the period prescribed for the service of the arbitral response if no arbitral response is received; or

- c. Such further time as agreed to by the parties.
3. An arbitral decision which is not made within the period specified in subsection (2) is void.
4. The arbitral decision shall be made in writing and shall contain reasons for such decision unless the requirement for reasons is dispensed with by the parties.
5. The arbitral decision shall also determine the arbitral amount and the time and manner the arbitral amount is payable.
6. The arbitrator shall serve a copy of the arbitral decision, including any corrected arbitral decision made under subsection (7), on the parties and the Appointments Committee of IWHAM.
7. The arbitrator may at any time correct any computational or typographical error on the arbitrator's own initiative or at the request of any party.
8. The enforcement of the arbitral decision shall not be affected in any way by a request for correction under subsection (7) and any correction made is deemed to take effect from the date of the original arbitral decision.

14. Effect of Arbitral Decision

The arbitral decision is binding unless—

- a. It is set aside by the Court on any of the grounds referred to in section 16;
- b. The subject matter of the decision is settled by a written agreement between the parties; or
- c. The dispute is finally decided by the court.

15. Consolidation of Arbitral Proceedings

If two or more arbitral proceedings in respect of the same subject matter are being heard before the same arbitrator, the arbitrator may, with the consent of all the

parties to the arbitral proceedings, consolidate and hear the matters in the same proceedings.

16. Improperly Procured Arbitral Decision

An aggrieved party may apply to the Court to set aside an arbitral decision on one or more of the following grounds:

- a. The arbitral decision was improperly procured through fraud or bribery;
- b. There has been a denial of natural justice;
- c. The arbitrator has not acted independently or impartially; or
- d. The arbitrator has acted in excess of his jurisdiction.

17. Stay of Arbitral Decision

1. A party may apply to the Court for a stay of an arbitral decision in the following circumstances:
 - a. An application to set aside the arbitral decision under section 16 has been made; or
 - b. The subject matter of the arbitral decision is pending final determination by the court.
2. The Court may grant a stay of the arbitral decision or order the arbitral amount or part of it to be deposited with the Chairman of IWHAM or make any other order as it thinks fit.

18. Withdrawal and Re commencement of Arbitral Proceedings

1. A claimant may at any time withdraw an arbitral claim by serving a notice of withdrawal in writing on the respondent and the arbitrator.
2. The claimant shall bear the costs arising out of the withdrawal of the arbitral proceedings unless the arbitrator orders otherwise.

3. The claimant who has withdrawn the arbitral claim is free to recommence arbitral proceedings on the same subject matter by serving a new notice of arbitral proceedings in accordance with section 9.
4. If an arbitrator dies, resigns or is unable through illness or any other cause to complete the arbitral proceedings—
 - a. The arbitral proceedings come to an end and the parties are free to recommence arbitral proceedings afresh; or
 - b. The arbitral proceedings may be continued by a new arbitrator appointed by the parties and the arbitral proceedings shall continue as if there is no change of arbitrator.

19. Costs of Arbitral Proceedings

1. The arbitrator in making the arbitral decision in relation to costs of the arbitral proceedings shall order the costs to follow the event and shall fix the quantum of costs to be paid.
2. Subsection (1) shall prevail over any agreement made by the parties prior to the commencement of the arbitral proceedings by which one party agrees to pay the other party's costs or bear the arbitrator's fees and expenses.

20. Arbitrator's Fees and Expenses, etc.

1. The parties and the arbitrator shall be free to agree to the terms of appointment of the arbitrator and the fees to be paid to the arbitrator.
2. If the parties and the arbitrator fail to agree to the terms of appointment and the fees of the arbitrator, IWHAM's standard terms of appointment and fees for arbitrators shall apply.

3. The parties to the arbitral proceedings are jointly and severally liable to pay the arbitrator's fees and expenses and the arbitrator may recover the fees and expenses due as a debt.
4. The parties shall contribute and deposit with the Chairman of IWHAM a reasonable proportion of the fees in equal share as directed by the arbitrator in advance as security.
5. Before releasing the arbitral decision to the parties, the arbitrator may require full payment of the fees and expenses to be deposited with the Chairman of IWHAM.
6. An arbitrator is not entitled to any fees or expenses relating to the arbitral proceedings if the arbitrator fails to decide the dispute within the period specified under subsection 13(2) except when the delay in the delivery of the decision is due to the failure of the parties to deposit the full payment of the arbitrator's fees and expenses with the Chairman of IWHAM under subsection (5).

21. Confidentiality of Arbitral Proceedings

The arbitrator and any party to the dispute shall not disclose any statement, admission or document made or produced for the purposes of the arbitral proceedings to another person except—

- a. With the consent of the other party;
- b. To the extent that the information is already in the public domain;
- c. To the extent that disclosure is necessary for the purposes of the enforcement of the arbitral decision or any proceedings in the court; or
- d. To the extent that disclosure is required for any purpose under this Act or otherwise required in any written law.

Part III

THE ARBITRATOR

22. Appointment of Arbitrator

An arbitrator may be appointed in the following manner:

- a. By agreement of the parties in dispute within Fourteen (14) days from the service of the notice of arbitral proceedings by the claimant; or
- b. By the Chairman of IWHAM on the recommendation of the Appointments Committee:-
 - i. Upon the request of either party in dispute if there is no agreement of the parties under paragraph (a); or
 - ii. Upon the request of the parties in dispute.

23. Appointment of Arbitrator by Parties

1. The claimant shall notify the arbitrator to be appointed under paragraph 22(a) in writing and provide him with a copy of the notice of arbitral proceedings.
2. The arbitrator shall propose and negotiate his terms of appointment including fees chargeable with the parties and shall within Fourteen (14) days from the date he was notified of his appointment, indicate his acceptance and terms of his appointment.
3. If the arbitrator rejects his appointment or fails to indicate his acceptance of the appointment within the period specified in subsection (2), the parties may proceed to appoint another arbitrator in the manner provided under section 22.

24. Appointment of Arbitrator by the Chairman on the recommendation of the Appointments Committee of the IWHAM

1. The Appointments Committee of IWHAM shall appoint an arbitrator under paragraph 22(b) within Seven (7) days upon receipt of a request and shall notify the parties and the arbitrator in writing.
2. The arbitrator shall propose and negotiate his terms of appointment including fees chargeable with the parties and shall within Ten (10) business days from the date he was notified of his appointment, indicate his acceptance and terms of his appointment.
3. If the arbitrator rejects his appointment or fails to indicate his acceptance of the appointment within the period specified in subsection (2)-
 - a. The parties may agree to appoint another arbitrator in the manner provided under paragraph 22(a); or
 - b. The Appointments Committee of IWHAM may proceed to appoint another arbitrator in the manner provided under paragraph 22(b).

25. Duties and Obligations of the Arbitrator

The arbitrator shall at the time of the acceptance of appointment as an arbitrator make a declaration in writing that—

- a. There is no conflict of interest in respect of his appointment;
- b. He shall act independently, impartially and in a timely manner and avoid incurring unnecessary expense;
- c. He shall comply with the principles of natural justice a; and
- d. There are no circumstances likely to give rise to justifiable doubts as to the arbitrator's impartiality and independence.

26. Powers of the Arbitrator

Under this Act the arbitrator shall have the powers to:—

- a. Establish the procedures in conducting the arbitral proceedings including limiting the submission of documents by the parties;
- b. Order the discovery and production of documents;
- c. Set deadlines for the production of documents;
- d. Draw on his own knowledge and expertise;
- e. Appoint independent experts to inquire and report on specific matters with the consent of the parties;
- f. Call for meetings with the parties;
- g. Conduct any hearing and limiting the hearing time;
- h. Carry out inspection of the site, work, material or goods relating to the dispute including opening up any work done;
- i. Inquisitorially take the initiative to ascertain the facts and the law required for the decision;
- j. Issue any direction as may be necessary or expedient;
- k. Order interrogatories to be answered;
- l. Order that any evidence be given on oath;
- m. Decide or declare on any matter notwithstanding no certificate has been issued in respect of the matter.
- n. Award financing costs and interest; and
- o. Extend any time limit imposed on the parties under this Act as reasonably required.

27. Power of Arbitrator Not Affected by Non-Compliance

1. Subject to subsection (2), the non-compliance by the parties with the provisions of this Act whether in respect of time limit, form or content or in any other respect shall be treated as an irregularity and shall not invalidate the power of the arbitrator to hear the dispute nor nullify the arbitral proceedings or arbitral decision.
2. The arbitrator may on the ground that there has been non-compliance in respect of the arbitral proceedings or document produced in the arbitral proceedings—

- a. Set aside either wholly or partly the arbitral proceedings;
- b. Make any order dealing with the arbitral proceedings as the arbitrator deems fit; or
- c. Allow amendment to be made to the document produced in the arbitral proceedings.

28. Jurisdiction of Arbitrator

The Jurisdiction of the Arbitrator is subject to section 41(1)(a) of the Arbitration Act, 2009.

Part IV

ENFORCEMENT OF DECISIONS

29. Enforcement of arbitral decision as judgment

1. A party may enforce an arbitral decision by applying to the Court for an order to enforce the arbitral decision as if it is a judgment or order of the Court.
2. The Court may make an order in respect of the arbitral decision either wholly or partly and may make an order in respect of interest on the arbitral amount payable.
3. The order made under subsection (2) may be executed in accordance with the rules on execution of the orders or judgment of the Supreme Court.

30. Suspension or Reduction of Rate of Progress of Performance

1. A party may suspend performance or reduce the rate of progress of performance of any construction work or construction consultancy services under a construction contract if the arbitral amount pursuant to an arbitral decision has not been paid wholly or partly after receipt of the arbitral decision under subsection 13(6).

2. The party intending to suspend the performance or reduce the rate of progress of performance under subsection (1) shall give written notice of intention to suspend performance or reduce the rate of progress of performance to the other party if the arbitral amount is not paid within Fourteen (14) days from the date of receipt of the notice.
3. The party intending to suspend the performance or reduce the rate of progress of performance under subsection (1) shall have the right to suspend performance or reduce the rate of progress of performance of any construction work or construction consultancy services under a construction contract upon the expiry of Fourteen (14) days of the service of the notice given under subsection (2).
4. The party who exercises his right under subsection (3) —
 - a. Is not in breach of contract;
 - b. Is entitled to a fair and reasonable extension of time to complete his obligations under the contract;
 - c. Is entitled to recover any loss and expenses incurred as a result of the suspension or reduction in the rate of progress of performance from the other party; and
 - d. Shall resume performance or the rate of progress of performance of the construction work or construction consultancy services under a construction contract in accordance with the contract within Fourteen (14) days after having been paid the arbitral amount or an amount as may be determined by the court pursuant to subsection 38(1).

31. Direct Payment from Principal

1. If a party against whom an arbitral decision was made fails to make payment of the arbitral amount, the party who obtained the arbitral decision in his favour may make a written

request for payment of the arbitral amount direct from the principal of the party against whom the arbitral decision is made.

2. Upon receipt of the written request under subsection (1), the principal shall serve a notice in writing on the party against whom the arbitral decision was made to show proof of payment and to state that direct payment would be made after the expiry of Fourteen (14) days of the service of the notice.
3. In the absence of proof of payment requested under subsection (2), the principal shall pay the arbitral amount to the party who obtained the arbitral decision in his favour.
4. The principal may recover the amount paid under subsection (3) as a debt or set off the same from any money due or payable by the principal to the party against whom the arbitral decision was made.
5. This section shall only be invoked if money is due or payable by the principal to the party against whom the arbitral decision was made at the time of the receipt of the request under subsection (1).

32. Concurrent Exercise of Remedies

1. Unless a stay is granted under section 17, a party who obtained an arbitral decision in his favour may exercise any or all of the remedies provided in this Act concurrently to enforce the arbitral decision.
2. The remedies provided by this Act are without prejudice to other rights and remedies available in the construction contract or any written law, including any penalty provided under any written law.

Part V

FUNCTIONS AND POLICY DIRECTIONS

33. *Functions of IWHAM*

IWHAM shall be responsible for the following:

- a. Setting of competency standards for arbitrators, arbitration counsel, mediators, and other alternative dispute resolution professionals;
- b. Determination of the standard terms of appointment of an arbitrator or mediator and fees for the services of an arbitrator or mediator;
- c. Administrative support for the conduct of arbitration, mediation or other form of alternative dispute resolution under this Act;
- d. Making and implementing proposals to improve access to justice, and to facilitate the timely and efficient resolution of disputes;
- e. Designing and carrying out public education programs, about the importance and value of such dispute resolution;
- f. Facilitating international commercial arbitration in the construction, real property, trust, financial and corporate services, cruise ship, maritime industries and other fields;
- g. Promoting domestic and community arbitration, mediation and resolution of disputes, and restorative justice;
- h. Making proposals to establish and maintain The Bahamas as a gateway between East and West, and between North and South, for investment and international business and trade, and as a centre to resolve disputes in those sectors through arbitration and mediation;
- i. Recommending or appointing arbitrators and mediators, and to maintain lists of these and other alternative dispute resolution professionals;

- j. Providing the list of approved mediators eligible to deal with references from the court;
- k. Upholding the highest international standards in the field of alternative dispute resolution;
- l. Cooperation with and, where it deems necessary, membership of, international arbitral and other relevant institutions, in order to encourage their use of IWHAM and to promote alternative dispute resolution around the world; and
- m. Any functions as may be required for the timely and efficient conduct of arbitration, mediation or other forms of dispute resolution under this Act.

34. Policy Directions

- 1. The Board shall formulate its own policies, and the rules of IWHAM.
- 2. In carrying out its international commercial functions under section 33, IWHAM shall consult with the Minister charged with the responsibility for investments.
- 3. In carrying out its social functions under section 33, notably under subsection (g), IWHAM shall consult with the Ministers charged with the responsibility for social services and the police.

Part VI

GENERAL

35. Immunity of Arbitrators Mediators and IWHAM

- 1. No action or suit shall be instituted or maintained in any court against an arbitrator, mediator or IWHAM or its officers for any act or omission done in good faith in the performance of his or its functions under this Act.

2. An arbitrator or mediator who has heard a dispute under this Act cannot be compelled to give evidence in any court proceedings in connection with the dispute that has been heard by him.

36. Prohibition of Conditional Payment

1. Any conditional payment provision in a contract in relation to payment under the contract is void.
2. For the purposes of this section, it is a conditional payment provision when:
 - a. The obligation of one party to make payment is conditional upon that party having received payment from a third party; or
 - b. The obligation of one party to make payment is conditional upon the availability of funds or drawdown of financing facilities of that party.

37. Default Provisions in the Absence of Terms of Payment in a Construction Contract

1. Unless otherwise agreed by the parties, a party who has agreed to carry out construction work or provide construction consultancy services under a construction contract has the right to progress payment at a value' calculated by reference to—
 - a. The contract price for the construction work or construction consultancy services;
 - b. Any other rate specified in the construction contract;
 - c. Any variation agreed to by the parties to the construction contract by which the contract price or any other rate specified in the construction contract is to be adjusted;and

- d. The estimated reasonable cost of rectifying any defect or correcting any non-conformance or the diminution in the value of the construction work or construction consultancy services performed, whichever is more reasonable.
2. In the absence of any of the matters referred to in paragraphs (1)(a) to (d), reference shall be made to:
 - a. The fees prescribed by the relevant regulatory board under any written law; or
 - b. If there are no prescribed fees referred to in paragraph (a), the fair and reasonable prices or rates prevailing in the construction industry at the time of the carrying out of the construction work or the construction consultancy services.
3. The frequency of progress payment is:
 - a. Monthly, for construction work and construction consultancy services; and
 - b. Upon the delivery of supply, for the supply of construction materials, equipment or workers in connection with a construction contract.
4. The due date for payment under subsection (3) is Twenty-eight (28) days from the receipt of the invoice.

38. Relationship Between Arbitration and Other Dispute Resolution Processes

1. A dispute in respect of payment under a contract may be referred concurrently to mediation or the court.
2. An arbitral proceeding is terminated if the dispute being heard is settled by agreement in writing between the parties or decided by the court.
3. The court may refer disputes to be mediated to the Chairman of IWHAM in accordance with the Rules of the Supreme Court.

Part VII

THE COURT'S REFERRAL OF A MATTER TO IWHAM FOR MEDIATION

39. Appointment of the Mediator

1. Within 14 days after the Court has referred a matter to the Chairman of IWHAM for mediation, the Appointments Committee of IWHAM shall appoint the mediator.
2. There shall be one mediator unless the parties otherwise agree.
3. No person may act as a mediator in any matter in which that person has any financial or personal interest or any conflict of interest likely to affect or which might reasonably be perceived to affect the mediator's independence or ability to act impartially at all times, unless the intended mediator has notified the parties of the said conflicts in writing and the parties thereafter consent to the appointment in writing.
4. If, following appointment, a mediator becomes aware of any circumstances that may create a reasonable perception of bias, partiality or lack of neutrality, the mediator shall immediately so inform the parties and the Chairman of IWHAM. IWHAM shall thereafter appoint another mediator in his stead.

40. Role of the Mediator

1. The mediator shall assist the parties in an independent and impartial manner to reach an amicable settlement of the matter.
2. The mediator may conduct the mediation in such manner as the mediator considers appropriate and necessary, having regard to the circumstances of the case, the wishes of the parties and any practical considerations which might be relevant for the satisfactory and prompt resolution of the dispute.
3. The mediator shall communicate with the parties together, but shall not communicate with any party separately.

4. The parties may be required by the mediator to participate in a preliminary conference prior to the commencement of the formal mediation. The purpose of the preliminary conference is to enable the parties, with the assistance of the mediator, to:-
 - a. Discuss and agree upon issues in matter or formulate a process by which those issues are to be clarified and agreed;
 - b. Make provision for, in accordance with the mediator's directions, the service and exchange of documentary material relevant to the mediation including position papers by all parties;
 - c. Make provision for such other planning and administrative arrangements as are necessary and appropriate to enable the mediation to proceed.

41. Role of the Parties

Each party to the mediation has a duty to participate in good faith in the mediation.

42. Representation

Each party to a mediation may be assisted or represented by their respective representatives in the Supreme Court Action, or may appoint any other representative of their choice. The identity, contact details and roles of any such persons must be disclosed to all parties and to the mediator.

43. Settlement Agreement

Upon the parties arriving at a settlement, the mediator shall cause:

- a. A settlement agreement to be drawn up;
 - b. The settlement agreement to be signed by the parties;
 - c. The settlement agreement to be sealed by the mediator;
- and

- d. The settlement agreement be filed in the original Supreme Court Action.

A copy of the filed settlement agreement is to be sent to the Judge in the original Supreme Court Action and to the Chairman of IWHAM.

44. Termination of the Mediation

1. The mediator may suspend or terminate the mediation or withdraw as mediator if he has reason to believe that the circumstances require it, including when he has reasonable grounds to suspect that:-
 - a. The parties are involved in illegal/fraudulent conduct;
or
 - b. The parties are unable to participate meaningfully and reasonably in negotiations; or
 - c. Continuation of the mediation process would cause significant harm to any party or a third party.
2. When the mediator determines that it is necessary to suspend or terminate a mediation, the mediator must do so without violating the obligation of confidentiality and in a manner that will cause the least possible harm to the parties.
3. The mediator shall promptly inform the Chairman of IWHAM of the termination.
4. The Chairman of IWHAM shall thereafter refer the matter back to the Supreme Court to be determined by a Supreme Court Judge.

Part VII

INTERNATIONAL COMMERCIAL ARBITRATION

45. The Board shall make policies and rules to give effect to its function of promoting international commercial arbitration in The Bahamas, and raising the profile of this jurisdiction worldwide as a premier arbitration-friendly seat and place for international commercial arbitration.

46. 1. Arbitrators and arbitration counsel, who are not Bahamian nationals shall apply in advance for work permits in the usual way to the immigration department, simultaneously delivering copies of the complete applications also to IWHAM.

2. If the immigration department is satisfied that the applications are complete and bona fide, they shall be granted timely, normally within Three (3) working days of receipt by the immigration department of the complete application.

3. Such work permits shall be granted gratis or at no cost to the applicant for a period up to 30 days, and may be renewed for further periods. Applicants are required to deliver complete applications for renewal to the immigration department, copied to IWHAM, not less than Three (3) working days before expiry.

PART VIII

MISCELLANEOUS

47. Service of Notices and Documents

Service of a notice or any other document under this Act shall be effected on the party to be served—

- a. By delivering the notice or document personally to the party;
- b. By leaving the notice or document at the usual place of business of the party during the normal business hours of that party;
- c. By sending the notice or document to the usual or last-known place of business of the party by registered post; or
- d. By any other means as agreed in writing by the parties.

48. Rules and regulations

The Minister may, upon the recommendation(s) of IWHAM, make rules and regulations as may be expedient or necessary for giving full effect or the better carrying out of the provisions of this Act.

49. Exemption

The Minister may, upon the recommendation(s) of IWHAM, by order published in the Gazette, exempt—

- a. Any person or class of persons; or
- b. Any contract, matter or transaction or any class thereof, from all or any of the provisions of this Act, subject to such terms and conditions as may be prescribed.

5. Savings

Nothing in this Act shall affect any proceedings relating to any payment dispute under a contract which had been commenced in any court or before the coming into operation of this Act.

SCHEDULE (Section 4(2)) THE IWHAM (Corporation), ITS MEMBERS AND STAFF

A Body Corporate

1. (1) The Corporation is a body corporate having perpetual succession and a common seal, with power to purchase, lease or otherwise acquire and hold and dispose of land and other property of whatsoever kind.

(2) The Corporation may sue and be sued in its corporate name and may for all purposes be described by such name, and service upon the Corporation of any document of whatsoever kind must be made by delivering the document to, or sending it by registered post addressed to, the secretary of the Corporation at the office of the Corporation.

2. (1) The seal of the Corporation must be kept in the custody of any officer of the Centre as the Centre may approve, and may be affixed to instruments pursuant to

a resolution of the Corporation and in the presence of the chairman or the deputy chairman and one other member.

(2) The seal of the Corporation must be authenticated by the signature of the chairman or deputy chairman and another member, and the seal shall be officially and judicially noticed.

(3) All documents, other than those required by law to be under seal, made by, and all decisions of the Corporation may be signified under the hand of the chairman or deputy chairman.

3. Nothing in this Act shall exempt the Corporation from liability for any tax, duty, rate, levy or other charge whatsoever.

Chairman and Members

4. (1) The Corporation shall consist of a board of directors of Seven (7) persons: the Minister of Financial Services or a representative; the Chief Justice or a Judge nominated by him; the Chairman, Vice-Chairman, Secretary General and Education Officer of The Chartered Institute of Arbitrators Bahamas Branch; the the President, Executive Director or other representative of the Bahamas Chamber of Commerce; and the President, Executive Director or other representative of the Grand Bahama Chamber of Commerce;, and they shall annually elect a Chairman, Deputy Chairman and Secretary of the Board.

(2) The Attorney General, Minister in charge of Immigration, Governor of the Central Bank and the Registrar of Insurance shall be *ex officio* members of the Corporation.

5. The appointment, removal, death or resignation of any member of the Corporation shall be notified in the *Gazette*.

6. The Corporation shall have a bank account for the purpose of conducting its business.

7. There shall be paid from the funds of the Corporation to the Chairman and other members of the Corporation such remuneration, if any, whether by way of honorarium, salary or fees, and such allowances, if any.

Proceedings

8. (1) The Board shall meet at such times as may be necessary or expedient for the transaction of business, and such meetings shall be held at such places and time and on such days as the Chairman may determine.

(2) The Chairman, or in his absence the Deputy Chairman, shall preside at all meetings of the Board.

(3) The Chairman, or in his absence the Deputy Chairman, and two other members of the Board shall constitute a quorum.

(4) The decisions of the Board shall be by a majority of votes and in addition to an original vote, in any case in which the voting is equal the Chairman or the Deputy Chairman presiding at the meeting has a casting vote.

(5) Minutes in proper form of each meeting are to be kept by the secretary or any officer the Board may appoint for the purpose and confirmed by the Board at the next meeting and signed by the chairman or the deputy chairman as the case may be.

(6) The Board may co-opt any one or more persons to attend any particular meetings of the Board for the purpose of assisting or advising the Board in any matter which the Corporation is dealing, but no co-opted person has the right to vote.

(7) The validity of any proceeding of the Board shall not be affected by any vacancy amongst the members thereof or by any defect in the appointment of a member thereof.

9. Subject to the provisions of this Schedule, the Board has the power to regulate its own proceedings.

Staff

10. The Board may appoint and employ on such terms and conditions as it thinks fit any officers, servants or agents as it considers necessary for the proper carrying out of the provisions of this Act.

11. (1) Except as provided in any contract of employment with the Corporation, the Board may grant to any employee of the Corporation in respect of his service with the Corporation pensions, gratuities or other like allowances at the rate prescribed by and in accordance with the provisions of the Pensions Act.

(2) The pensions, gratuities or other like allowances which are payable under subsection (1) shall be charged on and paid out of the funds of the Corporation or the Consolidated Fund.

12. The Board shall have the power to rent or purchase premises for IWHAM, and to enter into agreements related thereto.

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