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## Arbitration in the Cayman Islands

This Briefing Note provides a brief overview of arbitration in the Cayman Islands and the circumstances in which clients may consider it useful to consider agreeing to this form of alternative dispute resolution (“**ADR**”) in their contractual arrangements.

### Benefits of Arbitration

Arbitration is a form of ADR in which the parties agree to have their disputes resolved outside of court by an independent third party, whose decision is binding upon them and from whom there are limited rights of appeal. In the Cayman Islands arbitration is governed by the Arbitration Law 2012 (the “**Arbitration Law**”), which is largely based on the UNICITRAL Model Law on International Commercial Arbitration. The benefits of arbitration are chiefly the freedom which it allows the parties to decide how they would like to have their disputes resolved. Subject to the Arbitration Law, this includes the liberty to decide who should arbitrate, the number of arbitrators and the procedure which should be followed.

The main driver for choosing to arbitrate, however, is that pursuant to section 81 of the Arbitration Law, proceedings are confidential. This often helps to lessen the impact of any dispute on the parties’ wider business dealings.

### Agreement to Arbitrate

Normally parties agree in advance to refer any dispute arising out of contractual relationships to arbitration. Pursuant to section 4 of the Arbitration Law an arbitration agreement may be in the form of an arbitration clause in a contract or in the form of a separate agreement. Generally such agreements are to be in writing and any dispute as to the validity of an arbitration agreement is to be determined by the arbitral tribunal (section 7, Arbitration Law). The effect of such an agreement is that the parties are bound to refer any disputes covered by the agreement to arbitration and the Grand Court in the Cayman Islands (the “**Grand Court**”) will stay any legal proceedings arising out of the same unless it is satisfied that the agreement is null and void, inoperative or incapable of being performed (section 9(2), Arbitration Law).

The parties to an arbitration agreement may choose any number of arbitrators to determine their dispute (section 15(1), Arbitration Law), or failing agreement, a single arbitrator will be appointed (section 15(2), Arbitration Law). The parties are also free to determine a procedure for the appointment of an arbitrator or to adopt the rules of an appointing authority which is normally a professional organisation or body.



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## What Disputes can be Resolved by Arbitration?

Pursuant to section 26(1) of the Arbitration Law, any dispute may be determined by arbitration unless the arbitration agreement is contrary to public policy, or pursuant to any other law of the Cayman Islands, such a dispute is not capable of determination by arbitration. Further, the arbitral tribunal may rule on its own jurisdiction, including any objections to the existence or validity of the arbitration agreement.

### Arbitration Proceedings

Arbitral proceedings are governed by Part VII of the Arbitration Law. Section 28 provides that the arbitral tribunal is to:

- (a) act fairly and impartially;
- (b) allow each party a reasonable opportunity to present its case;
- (c) conduct the arbitration without unnecessary delay; and
- (d) conduct the arbitration without unnecessary expense.

However, subject to the provisions of the Arbitration Law, the parties are otherwise free to agree on the rules to be followed by the tribunal in conducting the proceedings (section 29(1), Arbitration Law) and this includes the seat of arbitration, or the law to be followed in resolving the dispute (section 30(1), Arbitration Law), where the proceedings should take place (section 30(3), Arbitration Law) and the language or languages to be used in the proceedings (section 31, Arbitration Law). The arbitral tribunal also has broad powers to grant interim measures and make preliminary orders pending the determination of the dispute (Part VIII of the Arbitration Law). Unless otherwise agreed, the costs of the arbitration are at the discretion of the arbitral tribunal.

### Court involvement in Arbitration Proceedings

As set out above the involvement of the Grand Court in the arbitration process is limited. The Court may make orders in certain circumstances in support of the arbitration proceedings (section 43, Arbitration Law). In addition, pursuant to section 71 of the Arbitration Law, unless otherwise agreed by the parties, the Grand Court may, on the application of a party to the arbitration proceedings and who has given notice to the other parties, determine any question of law arising in the course of the proceedings which the Grand Court is satisfied substantially affects the rights of one or more of the parties. However, pursuant to section 73 of the Arbitration Law, the Grand Court does not have jurisdiction to review, confirm, vary, set aside or remit an award based on the arbitration agreement. The limited circumstances in which it may do so are set out in section 75 of the Arbitration Law and include grounds such as a breach of natural justice, fraud and procedural impropriety.



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Appeals to the Grand Court from an arbitral tribunal are similarly limited to questions of law and leave to appeal will only be given where:

- (a) the determination of the question will substantially affect the rights of one or more of the parties;
- (b) the question is one which the arbitral tribunal was asked to determine;
- (c) the decision on the basis of the findings of fact was obviously wrong; or
- (d) the question is one of general public importance; and
- (e) it is just and proper in all of the circumstances for the Grand Court to determine the question.

In limited circumstances an appeal from the decision of the Grand Court may then lie to the Cayman Islands Court of Appeal. Importantly an award made by the arbitral tribunal pursuant to the arbitration agreement may, with leave of the Grand Court, be enforced in the same manner as a judgment or order of the Court.

The Commercial Disputes Resolution and Litigation Team at Loeb Smith has a wealth of experience of international arbitration and the enforcement of international arbitral awards. We are also able to provide secretarial services to Arbitrators. For more information, please contact:

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