



International Arbitration

2019

Fifth Edition

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British Virgin Islands

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Introduction

The British Virgin Islands (the BVI) requires no introduction to those who have either visited its shores or been involved in offshore commerce. It sits on the eastern borders of the Caribbean Sea, and enjoys political sovereignty and economic stability. As a British Overseas Territory, its citizens are British citizens.

The BVI has long been the world's leading destination for company incorporation. The Registry now houses the titles of approaching one million companies. It offers investors highly developed corporate legislation which provides a greater degree of operational flexibility than would usually be found in their domiciliary states. The BVI Courts are naturally well-versed in corporate litigation.

The BVI's legal system descends from, and follows, the English common law.¹ Litigants in the BVI have the comfort and security of knowing that the ultimate appeal lies to the Judicial Committee of the Privy Council of the United Kingdom – the members of which are Justices of the United Kingdom's Supreme Court. It is quite usual for Judges from England to preside over cases in the BVI Commercial Court.

Arbitration is a relative newcomer to the arena of dispute resolution in the BVI. Although there has been an Arbitration Act on the statute books for over 40 years,² it was not readily suited to international work, not least because the BVI was not a party to the New York Convention (“the Convention”).³ However the *status quo* was altered after the BVI became subject to the Convention on 25 May 2014⁴ and passed the Arbitration Act, 2013, which came into force on 1 October 2014 (the “Act”). The Act adopts many of the provisions of the UNCITRAL Model Law (“Model Law”).^{5,6}

It is not an understatement to say that there has been a sea-change in attitude towards arbitration. The British Virgin Islands International Arbitration Centre (“BVIAC”) is a statutory body created pursuant to the Act.⁷ Its purposes include the facilitation and promotion of the BVI as an arbitral hub. The Government has invested heavily in arbitration, commissioning a purpose-built home with state-of-the-art amenities in Road Town, Tortola. This opened in November 2016 and is the only such facility in the Caribbean.

The stated aim of the BVIAC is to become the regional centre of choice for the resolution of disputes arising out of business activity, investments and projects worldwide. Nearly 2,000 of the world's leading arbitration practitioners are members of the BVIAC panel of arbitrators. The BVIAC has its own set of rules (“the Rules”)⁸ based on the 2010 UNCITRAL Arbitration Rules, and which apply to any arbitration administered by the BVIAC.

Parallel to this, in the interest of promoting the BVI as an arbitral hub, the Government has eased immigration formalities for parties and their representatives who travel to the BVI for arbitrations. The hope is that the BVI will soon become the preferred regional venue for international arbitration.

The BVI Commercial Court is widely known to be arbitration friendly. As stated by Leon J in *Hualon Corporation (M) SDN BHD (in receivership) v Marty Limited*:⁹

It is clear in the Act, in the extension of the New York Convention to this jurisdiction, in the arbitration jurisprudence of this jurisdiction (including before the Act), and in the public commitment of the Territory to arbitration as part of its strategic plan, that the Territory of the Virgin Islands as a matter of public policy strongly supports the use of arbitration to resolve international commercial and other disputes.

The Act contains express stipulations that the Court should not interfere with an arbitration unless the Act permits it to do so¹⁰ and, if it does, should give due regard to the wishes of the parties and the provisions of the arbitration agreement.¹¹ The pro-arbitration approach taken by the Court is borne out in the cases.

In *Sonera Holding B.V. v Cukurova Holding S.A.* (BVIHC (Com) No. 119 of 2011), the Court considered the extent to which the Act affects the jurisdiction of the Court to decide cases with an arbitral element. Sonera applied to the Court to enforce an arbitral award for damages obtained against Cukurova and was granted judgment. Cukurova subsequently applied to set aside the judgment on the principal ground that the First Tribunal had exceeded its jurisdiction in making the award. This argument was rejected by the Court, which was upheld by the Court of Appeal and subsequently the Privy Council, in response to which Sonera applied to the Court for an anti-arbitration injunction. In its judgment, the Court gives detailed consideration to the provisions of the Act. In particular, Bannister J noted that the general provisions under sections 7-9 and 11-16 are incapable of having extraterritorial effect. The Court held that the overriding nature of the prohibition contained in Section 3(2)(b) of the Act prevented the Court from interfering with the arbitration process and the application was dismissed.

In *Jinpeng Group Limited v Peak Hotels and Resorts Limited* BVIHCMAP 2014/0025 and 2015/0003, the Court of Appeal considered whether to stay a winding-up petition in favour of arbitration. The Court held that where a debt was not disputed on genuine and substantial grounds, but fell under the terms of an arbitration clause, the Court has a wide discretion to stay or dismiss the originating application to allow for arbitration to proceed. The Court of Appeal held that the applicant did not have to prove that exceptional circumstances existed in order for the Court to exercise its discretion to make a winding-up order.

In *Anzen Ltd. & Ors v Hermes Ones Ltd.* BVIHCMAP 2014/0013, Anzen (*et al*) appealed a decision not to grant a stay of proceedings filed in the Commercial Court in favour of arbitration. Anzen had not referred the disputes to arbitration and, in applying for the stay, relied instead on an arbitration clause in a shareholders' agreement. The Court of Appeal held that an arbitration clause which provides for an option to arbitrate does not create an immediately binding contract to arbitrate. However, as soon as one of the parties invokes the arbitration clause by referring the dispute to arbitration, there is a binding agreement to arbitrate, which is covered by section 2 of the Arbitration Act. If one of the parties by-passes the arbitration clause and files a claim at Court, the other party still has the option to invoke the arbitration clause, refer the matter to arbitration and apply for a stay of the court proceedings. If the party against which the court proceedings were brought does not refer

the matter to arbitration or submits to the court's jurisdiction, the dispute will proceed under the Court's jurisdiction.

In *Vendort v Evrostroy*¹² it was held that an applicant could rely on an arbitration award alone to issue a statutory demand (and to make an application for the appointment of a liquidator), without the need to first enforce the award or for any further order of the Court. This decision was upheld by the Court of Appeal (BVIHC VAP 2012/0041) and the Privy Council ([2016] UKPC 15).

It remains rare in practice to find an arbitration clause within any form of contract providing for the BVI to be the seat of arbitration. It is currently more common to encounter a foreign arbitral award pursuant to which a party has made an application that the award be enforced or recognised within the BVI, in accordance with the Act. However, with the opening of the Arbitration Centre, development of the applicable law in the BVI and the privacy afforded in arbitration proceedings, this is an area with potential for development.

As the Rules came into force only in November 2016, it is too soon to say whether they will be adopted in future agreements involving BVI entities. However, we are hopeful they will prove to be popular. Accordingly, this chapter will consider in tandem arbitrations carried out without and within the auspices of the BVIIAC. We are optimistic that the BVIIAC will become an attractive venue for arbitrations as it conveniently lies between North and South America, and should be regarded as an excellent neutral jurisdiction in which to resolve disputes.

The arbitration agreement

Formalities

The formalities required by the Act for any arbitration agreement follow those set out in Article 7 of the Model Law.¹³ Thus arbitration agreements must be in writing, and may be contained in arbitration clauses in broader agreements or in separate agreements. Being "*in writing*" is widely defined, and includes electronic communications such as email.¹⁴

The Rules operate at the election of the parties, wherever the arbitration is conducted. The BVIIAC has drafted a model arbitration clause which may be used should the parties agree to come within the procedure of the BVIIAC.¹⁵

Arbitrability

There is nothing within the Act that limits the scope of any arbitration. The procedure is clearly tailored towards commercial disputes, and the remedies available to arbitral tribunals would not be suitable for other types of claim (such as non-financial family disputes). Where there is dispute, the BVI Court will follow English common law by limiting the scope of any arbitration to prohibit arbitrators considering matters that might trespass into the territory of public policy.¹⁶

Joinder

There is no express mechanism within the Act that permits joinder of another party to an arbitration. By contrast, Article 17(5) of the Rules permits the tribunal to allow any other party to the arbitration agreement to be joined into the arbitration. If a respondent to a claim wishes to join another party, it may do so when putting in its Response to the claim.¹⁷ The Rules do not permit a third party that is not a party to the arbitration agreement to apply to be joined.

The Act does contain a procedure permitting competing arbitrations to be consolidated.¹⁸ It allows a Court, on application, to consolidate two or more arbitral proceedings where there

are commonalities of law, fact, relief or for other good reason. The Court may also stay arbitrations pending conclusion of other arbitrations dealing with the same factual matrix. This part of the Act only automatically applies to agreements entered into before the Act came into force¹⁹ (i.e. before 1 October 2014) or within six years after coming into force²⁰ (i.e. any agreements until 30 September 2020) which provide for domestic arbitrations.²¹ The parties may agree that this section does not apply.²²

Competence-competence and separability

Section 32(1) of the Act preserves the doctrine of *competence-competence* found at Article 16 of the Model Law, namely that the arbitral tribunal has the power to rule on all matters connected to the arbitration, including its own jurisdiction and the validity of any arbitration agreement. The same section enshrines the doctrine of separability, meaning that for the purposes of considering its jurisdiction, the tribunal treats the arbitration clause as standing independently of the balance of the agreement. A ruling that the arbitral tribunal does not have jurisdiction is not open to appeal.²³

Arbitration procedure

The object of the Act is “*to facilitate the fair and speedy resolution of disputes by arbitration without unnecessary delay or expense*”.²⁴ Article 17 of the Rules carries a similar sentiment.

Commencement

Arbitral disputes commence on the date at which the Respondent receives a request that the dispute be referred to arbitration, unless otherwise agreed.²⁵ The form of the request is not prescribed. Where any limitation period refers to the bringing of an action, it is deemed to mean the commencement of arbitral proceedings.²⁶

For an arbitration conducted through the BVIIAC, the party wishing to commence arbitration should communicate the same to the other parties, and send a notice of arbitration to the Secretariat of the BVIIAC.²⁷ Arbitral proceedings are deemed to commence on the date of receipt of that notice, subject to the payment of the correct fee. The Respondent then only has 30 days within which to communicate and send a response.²⁸

Any challenges to the jurisdiction of the tribunal must be made no later than the submission of the statement of Defence.²⁹

Place of arbitration

The Act contains no geographical restriction upon the place of arbitration, but in default of agreement it is left to the tribunal to decide.³⁰ For BVIIAC arbitrations, the parties are also free to agree the place of arbitration but, if no agreement is reached, then the venue will default to Road Town, Tortola, the capital of the BVI. The tribunal still has the power to decide that another venue is more appropriate.³¹

Procedural requirements

Parties may adopt their own agreed procedure,³² failing which the tribunal can conduct the arbitration in any manner that it considers appropriate.³³ The initial step is usually the selection and appointment of the arbitral tribunal (which we deal with below). The tribunal can then consider any challenges to jurisdiction and scope and move on to look at specific procedural requirements relevant to the case being considered, such as the timings of Statements of Claim and Defences³⁴ and whether oral hearings are necessary.³⁵

The Rules are slightly more restrictive in that they require the tribunal to set out a provisional timetable after receiving representations.³⁶

Evidential rules

An arbitral tribunal is not bound by the rules of evidence but may receive relevant evidence and give it appropriate weight.³⁷ The Rules mirror precisely Article 19(2) of the Model law which gives the tribunal the power to determine admissibility, relevance, materiality and weight. In this author's view, there is no significant difference. In practice, this evidential rule makes appeals against the substance of arbitration awards extremely difficult.

If the parties agree, the arbitral tribunal may make reference to the IBA Rules on the Taking of Evidence in International Arbitration 2010 ("the IBA Rules"), although there is no statutory compulsion to do so.

Expert evidence

It is, of course, for the parties to agree whether or not expert evidence is necessary. The tribunal also has the power to appoint an expert to consider specific issues and may order a party to produce documents, goods or property for inspection by the expert.³⁸

It is sometimes the case that a party will be reluctant to co-operate with the court-appointed expert. Should that occur, the tribunal has the ability to request assistance from the competent Court in the BVI which can order the attendance of any person and the production of any evidence.³⁹ However, this power to order documents to be produced is limited by Section 54(9) of the Act, which provides that a person is not required to produce in arbitral proceedings any document or other evidence that he would not be required to produce in civil proceedings before a court.

The Rules allow the tribunal to appoint an expert after consulting with the parties.⁴⁰ There is no veto available to a disgruntled Claimant or Respondent, though they may object to the appointment on the grounds of qualification, impartiality or independence.⁴¹

The tribunal may also appoint assessors to assist in the assessment of costs.⁴² The parties are unable to object to such an appointment.

Confidentiality

It is normal in most arbitrations that proceedings remain confidential arising, as they will, from commercial contracts which contain confidentiality clauses. The BVI Courts will follow the English common law in implying a term that the arbitral proceedings and documents are confidential.⁴³ The Act places this on a statutory footing by providing that no party is to publish, disclose or communicate any information relating to the arbitral proceedings or the award unless either agreed,⁴⁴ required to protect a legal right, or enforce or challenge the award,⁴⁵ as required by law⁴⁶ or to any professional or other adviser of any party.⁴⁷

Article 17(6) of the Rules states that the arbitral proceedings are confidential to the parties and tribunal save where disclosure of an award is required pursuant to a legal duty or to protect or pursue a legal right.⁴⁸ This confidentiality extends to the existence of proceedings and any pleadings, evidence, documents and other materials save that are already in the public domain.⁴⁹

Arbitrators

Appointment

The parties are free to choose the number of arbitrators⁵⁰ and the procedure for selection.⁵¹ A procedure is set out in the Act for what should occur if the parties are not in agreement as to the choice of tribunal. These include making applications to the Court.⁵²

The Rules provide a parallel system. If the parties cannot agree the number of persons on the tribunal, then three will be appointed.⁵³ Each party may nominate an arbitrator in the respective notice of arbitration⁵⁴ and Response.⁵⁵ The appointment is made by the Appointing authority, who is the CEO of the BVIIAC.⁵⁶ The arbitrators are not required to be drawn from the list of panel of arbitrators, which is maintained by the BVIIAC.⁵⁷

Any arbitrator appointed has a duty to declare matters that might give rise to doubts about his or her independence or impartiality.⁵⁸

Challenge

A challenge to the appointment of an arbitrator can only be on the narrow ground of there being doubts about their independence, impartiality or qualifications.⁵⁹ The Rules only allow challenges for doubts about impartiality and independence,⁶⁰ presumably because the CEO of the BVIIAC will initially check the qualifications of the arbitrator to assess his or her suitability for the case.

The Act incorporates the timings for challenges to be made as set out at Article 13 of the Model Law, namely that a party has 15 days to send to the tribunal written reasons for the challenge.⁶¹ The tribunal will then decide and, if so determined, may continue the arbitration (notwithstanding any further request to the Court which must be made within 30 days of the tribunal's decision).⁶² If the Court ultimately upholds the challenge, it may set aside any award that has been made.⁶³

The Rules contain slightly different timings.⁶⁴ They provide that in the event of a challenge, a committee formed of three arbitrators from the BVIIAC's panel will decide the matter.⁶⁵ The decision that is made is final and no further appeal lies to the Court.⁶⁶

Immunity

Judicial immunity from suit is a well-established principle of English common law. However, it was not clear that arbitrators shared the same protection.⁶⁷ Any remaining doubt is removed by Section 101(1) of the Act which gives the tribunal, and any of its employees or agents, immunity for actions carried out in their capacity as a tribunal, unless they have acted in bad faith. There is a similar statutory immunity for the BVIIAC or its members.⁶⁸

The Rules provide similar protection for arbitrators, any person appointed by the arbitrator, the BVIIAC and any of its employees.⁶⁹ The exception is if there has been "*intentional wrongdoing*".⁷⁰ This is probably narrower than the 'bad faith' exception within the Act.

Interim relief

The arbitral tribunal has broad powers to grant interim measures which (a) preserve the *status quo*; (b) prevent any action that may harm the arbitral process; (c) preserve assets; and/or (d) preserve evidence.^{71,72} The preconditions for the grant of an interim measure require the party requesting the measure to satisfy the tribunal that: (i) if any harm caused is not remediable by damages, then the harm caused by not granting the measure substantially outweighs harm that would be caused by granting it; and (ii) that there is a reasonable possibility that the requesting party will succeed on the merits of the claim.⁷³

Section 33(2) of the Act specifically excludes from the definition of the above interim measures those procedures set out at Section 54 of the Act. These are the following powers of the arbitral tribunal: to make orders giving security for costs; to direct the discovery of documents or delivery of interrogatories; and to direct that evidence be given by affidavit and in relation to the preservation of evidence or the testing of properties. The tribunal may exercise those powers without needing to balance the relative harm caused or to consider

the wider merits of the case. Should a party not comply with an order made under Section 54, the tribunal may dismiss or stay the claim.⁷⁴ There is no obvious reason why the Act does not expressly allow a Response to be dismissed should a Respondent be in default. This is likely to be a slip of the draftsmen's pen rather than a statutory choice to deliberately create an inequality of arms.

The tribunal may ask the requesting party to provide appropriate security⁷⁵ and to disclose any material change in circumstances.⁷⁶ If it transpires later that the interim measure should not have been granted, the requesting party may be liable for costs and damages.⁷⁷ The arbitral tribunal's decisions will be reinforced by orders of the Court.⁷⁸

The Rules provide a tribunal with very similar powers in relation to a BVIIAC arbitration.⁷⁹ In a recent civil appeal, *Kishigi Limited & Ors v Donna Union Foundation*,⁸⁰ the Court of Appeal held that, by virtue of section 43 of the Act, it is open to the Court to grant interim measures in aid of foreign arbitration proceedings. These interim measures include orders made in support of the enforcement of a potential arbitral award. The Court further held there was no basis upon which the Court could “*read into the express wording of the Act, the need for assets to be in the [BVI] in order for the Court to be able to grant interim measures in aid of foreign arbitration*”. The Court of Appeal stated in clear terms that the Act comprehensively provides the Court with the jurisdiction to grant interim measures.

The arbitration award

Formalities

The formalities of the award required by Article 31 of the Model Law are brought into BVI law by Section 65 of the Act. Thus the award must be in writing, signed by all or the majority of arbitrators,⁸¹ and should provide reasons for the decision unless otherwise agreed.⁸² For BVIIAC arbitrations, as well as the formalities, the Award is also submitted to the Secretariat for any suggestions. Only after that can the Award be rendered.⁸³

Within 30 days of the Award being received, a party may ask that it be corrected or specific points be interpreted.⁸⁴ The Act allows the tribunal 30 days to respond,⁸⁵ the Rules allow 30 days for corrections⁸⁶ but 45 days for interpretations.⁸⁷

The parties may also ask for an additional award in respect of claims presented in the arbitration, but not decided in the Award. The tribunal is initially permitted 60 days within which to respond.⁸⁸

Remedies available to the tribunal

The arbitral tribunal is able to grant any relief that a Court could have granted had the matter been litigated.⁸⁹ However, unless the parties agree, it does not have the power to order specific performance in relation to a contract relating to land or interests in land.⁹⁰

Costs

The Act provides that costs are in the complete discretion of the arbitral tribunal.⁹¹ When it comes to taxation, it is not bound to follow the scales and practices adopted by the Court.⁹² Indeed, it contains a provision that actually renders void any agreement by the parties that each party should bear its own costs⁹³ unless the agreement to arbitrate was made after the dispute arose.⁹⁴ This is an unusual intervention given the freedom of parties to otherwise choose nearly every other aspect of how their disputes should be resolved.

The costs regime in the Rules uses as a starting point that the unsuccessful party ought to carry the costs of the arbitration. However, the tribunal can apportion costs taking into

account the circumstances of the case.⁹⁵ This follows traditional litigation.

As yet, the issue of the costs of third party litigation funding has not yet arisen in the BVI. The Courts would not allow this, but the English High Court in the landmark case of *Essar Oilfields Services Limited v Norscot Rig Management PVT Limited*⁹⁶ has held that it is permissible to recover those costs in arbitral proceedings.

Challenge to the award

Seasoned practitioners will appreciate that it is not straightforward to challenge the decision of an arbitral tribunal.

Section 79(1) of the Act incorporates Article 34 of the Model Law and allows for challenges to the Court to be made as set out below. By contrast, the Rules do not include any explicit mechanism whereby the Award can be challenged. It is to be noted that Article 34(2) of the Rules provides that awards shall be “final and binding on the parties”. It is open to argument whether these words alone are sufficient to displace any further recourse to the Court. Parties are certainly advised to consider the potential effects of this section before agreeing that the BVIIAC Rules are to apply to any arbitration that may arise in the future.

Under the Act, any potential applicant to the Court must first ensure it has exhausted all avenues in the arbitration itself.⁹⁷ Having done so, any application to set aside the Award must only be made on one or more of the following grounds:

- (i) incapacity of a party;
- (ii) invalidity of the arbitration agreement;
- (iii) lack of proper notice of the appointment of the arbitrator or proceedings;
- (iv) inability to present the case;
- (v) the Award oversteps its jurisdiction in dealing with irrelevant matters;
- (vi) the tribunal or procedure was not in accordance with the agreement of the parties (unless the agreement itself would not have been lawful);
- (vii) the subject matter of the dispute is not capable of being arbitrated; or
- (viii) the Award is contrary to public policy.

Challenges may also be made on the grounds that there has been a serious irregularity affecting the tribunal, the proceedings or the award.⁹⁸ The Act defines “serious irregularity” as one or more of the following which has or may cause substantial injustice:⁹⁹

- (i) A failure by the tribunal to comply with section 44 of the Act. That section imports Article 18 of the Model Law requiring the arbitrator to act with equality, fairly, impartially and with independence.
- (ii) The tribunal exceeding its powers (otherwise than exceeding its jurisdiction).
- (iii) A failure to conduct proceedings in accordance with the parties’ agreement.
- (iv) A failure to deal with the issues.
- (v) A failure by the tribunal to correct and/or interpret the Award if so requested by the parties.
- (vi) The Award being obtained by fraud or being in any way contrary to public policy.
- (vii) A failure to comply with the form of Award.
- (viii) Irregularity in the conduct of the proceedings.

Right to appeal

Finally, parties have a limited right to appeal to the Court on a point of law.¹⁰⁰ Unless the counter-party consents, leave of the Court will be required.¹⁰¹ The parties thus will have to consider whether an agreement should contain an automatic appeal on a question of law. If leave is required, it will only be given if the question of law was one that was before the tribunal, is one that would substantially affect the rights of one or more of the parties, and the tribunal's decision was obviously wrong or, where the point is of general importance, is at least open to serious doubt.¹⁰² Any further applications to appeal require leave of the Court.¹⁰³

Enforcement of the award

The BVI is a contracting state to which the (New York) Convention applies. The Convention is widely regarded as one of the most successful international treaties. 150 countries fall within its umbrella.

The Convention is set out in Part X of the Act. Section 84 of the Act provides that Convention awards are enforceable in the territory in the same manner as they would be in any other Convention country. The preconditions are merely that originals, or certified copies, of the Arbitration Agreement and Award are provided (suitably translated if necessary).¹⁰⁴ The Courts will recognise the Award, and enforcement can only be challenged on grounds similar to those in which a domestic award could be challenged, namely:¹⁰⁵

- (i) the parties to the agreement were under some incapacity or the arbitration agreement was not valid under the law of the agreement or under the law of the country where the award was made; or
- (ii) the losing party was not given proper notice of the appointment of the arbitrator or of the arbitration proceedings or was otherwise unable to present his or her case; or
- (iii) the Award deals with matters falling outside the terms of the submission to arbitration, or contains decisions on matters beyond the scope of the submission, provided that if the decisions on matters submitted to arbitration can be separated from those not submitted, then that part of the award may be recognised and/or enforced; or
- (iv) the composition of the arbitral authority or the arbitral procedure was not in accordance with the agreement of the parties or, failing such agreement, was not in accordance with the law of the country where the arbitration took place; or
- (v) the Award has not yet become binding on the parties, or has been set aside or suspended by a competent authority of the country in which, or under the law of which, that award was made; or
- (vi) the subject matter of the difference is not capable of settlement by arbitration under the law of that country; or
- (vii) the recognition or enforcement of the Award would be contrary to the public policy of that country.

If necessary, the Convention will be interpreted in accordance with principles of international law interpretation as set out in Articles 31 and 32 of the Vienna Convention on the Law of Treaties.

Non-convention awards are similarly enforceable in the BVI.¹⁰⁶ The grounds for not enforcing are identical save for an important additional provision that the Court may refuse to enforce an award for any other reason if it considers it just to do so.¹⁰⁷ There is no such discretion in relation to Convention awards.

Endnotes

1. Section 72 of the Common Law (Declaration of Application) Act (Cap 13) of 1705 provides that English common law is extended to the BVI. Sections 13 to 21 of the Eastern Caribbean Supreme Court (Virgin Islands) Act incorporate the rules of common law and equity from time to time in force in England. *Veda Doyle v Agnes Deane* HCVAP 2011/020 confirmed that where there is no local statute, the Court will have regard to the English common law.
2. BVI Arbitration Ordinance 1976.
3. Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 1958).
4. On 24 February 2014, the United Kingdom submitted a notification to extend territorial application of the Convention to the British Virgin Islands.
5. United Nations Commission on International Trade Law Model law on International Commercial Arbitration (1985), with amendments as adopted in 2006.
6. Section 4 of the Act gives the UNCITRAL Model Law force of law save as amended.
7. Section 93(1) of the Act.
8. Pursuant to Section 107 of the Act.
9. BVIHC (Com) 2014/0090.
10. Section 3(2)(b) of the Act.
11. Sections 3(2)(c) of the Act.
12. BVIHCP 2012/0041.
13. Section 17 of the Act.
14. Section 17(3) of the Act.15.
[http://bviiac.org/Portals/0/Files/Arbitration%20Documents/2016BVIIACArbitration Clause.pdf](http://bviiac.org/Portals/0/Files/Arbitration%20Documents/2016BVIIACArbitrationClause.pdf).
16. *Fulham FC Ltd v Richards & anr* [2011] EWCA Civ 855.
17. Article 4(2)(a) of the Rules.
18. Schedule 2 Paragraph 1 of the Act.
19. Section 90(1)(a)(i) of the Act.
20. Section 90(1)(b) of the Act.
21. Meaning those which do not provide for any jurisdiction save for the BVI: Section 90(2) of the Act.
22. Section 91 of the Act.
23. Section 32(4) of the Act.
24. Section 3(1) of the Act.
25. Section 47 of the Act, incorporating Article 21 of the Model Law.
26. Section 12(2) of the Act.
27. Article 3(2) of the Rules.
28. Article 4(1) of the Rules.
29. Section 32 of the Act implementing Article 16(2) of the Model Law.
30. Section 46(1) of the Act.
31. Article 18 of the Rules.
32. Section 45(1) of the Act.
33. Section 45(2) substituting Article 19(2) of the Model Law.

34. Section 49(1) of the Act applying Article 23 of the Model Law.
35. Section 50 of the Act applying Article 24 of the Model Law.
36. Article 17(2) of the Rules.
37. Section 45(3) of the Act.
38. Section 52(1) of the Act applying Article 26 of the Model Law.
39. Sections 53(1) and (2) of the Act.
40. Article 29(1) of the Rules.
41. Article 29(2) of the Rules.
42. Section 52(2) of the Act.
43. *Glidepath BV and Ors v John Thompson and Ors* [2005] EWHC 818 (Comm).
44. Section 16(1).
45. Section 16(2)(a) of the Act.
46. Section 16(2)(b) of the Act.
47. Section 16(2)(c). This is a curious addition because one would expect the other party to have disclosed any relevant information to its own advisers.
48. Article 34(8) of the Rules.
49. Article 17(7) of the Rules.
50. Section 21(3) of the Act.
51. Section 22(2) of the Act.
52. Section 22 of the Act generally.
53. Article 7(1) of the Rules.
54. Article 3(3)(g) and 3(4) of the Rules.
55. Article 4(2)(b) of the Rules.
56. Article 6(1) and 6(3) and Article 7(3) of the Rules.
57. Article 7(4) of the Rules.
58. Section 23 of the Act implementing Article 12(1) of the Model Law.
59. Section 23 of the Act implementing Article 12(2) of the Model Law.
60. Article 12(1) of the Rules.
61. Section 24(1) of the Act.
62. Section 24(1) of the Act.
63. Section 24(5) of the Act.
64. Article 13 of the Rules.
65. Article 13(5) of the Rules.
66. Article 13(5) of the Rules.
67. *Sutcliffe v Thackrah* [1974] AC 727 and *Arenson v Arenson* [1977] AC 405.
68. Section 102 of the Act.
69. Article 16(1) of the Rules: the parties agree to waive any claim.
70. Article 16(1) of the Rules.
71. Section 33 of the Act applying Article 17 of the Model Law.
72. For instance, the worldwide freezing injunction granted in *PT Ventures SGPS SA v Vidatel Ltd* BVIHC (Com) 2015/017.
73. Section 34 of the Act applying Article 17A of the Model Law.

74. Section 54(3) of the Act.
75. Section 38 of the Act incorporating Article 17E of the Model Law.
76. Section 39(1) of the Act incorporating Article 17F(1) of the Model Law
77. Section 40 of the Act incorporating Article 17G of the Model Law.
78. Section 43 of the Act replacing Article 17J of the Model Law.
79. Article 26 of the Rules.
80. BVIHCMAP 2018/0043 and 0050.
81. If any arbitrator's signature is missing, reason should be provided: Section 65(1) of the Act.
82. Section 65 of the Act. The Award should also be dated and have the location set out: Section 65(3) of the Act.
83. Article 34(5) of the Rules.
84. Section 67 of the Act applying Article 33 of the Model Law; Articles 37(1) and 38(1) of the Rules.
85. Section 65(2) of the Act.
86. Article 38(2) of the Rules.
87. Article 37(2) of the Rules.
88. Section 67 of the Act incorporating Article 33(4) of Model Law; Article 39 of the Rules.
89. Section 68(1) of the Act.
90. Section 68(2) of the Act.
91. Section 72(1) and (2) of the Act.
92. Section 72(6) of the Act.
93. Section 72(8) of the Act.
94. Section 72(9) of the Act.
95. Article 43(2) of the Rules.
96. [2016] EWHC 2361.
97. Para 7(1) of Schedule 2 of the Act.
98. Paragraph 4 of Schedule 2 to the Act.
99. Paragraph 4(2) of Schedule 2 to the Act.
100. Paragraph 5(1) of Schedule 2 to the Act.
101. Paragraph 6(1) of Schedule 2 to the Act.
102. Paragraph 6(4) of Schedule 2 to the Act.
103. Paragraph 6(6) of Schedule 2 to the Act.
104. Section 85 of the Act applying Article IV of the Convention.
105. Article 5 of the Convention as set out at Sections 86(2) and (3) of the Act.
106. Section 82(1) of the Act.
107. Section 83(2)(c) of the Act.

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