

CHAPTER 2010-60

Committee Substitute for House Bill No. 821

An act relating to international commercial arbitration; amending s. 48.196, F.S.; conforming a reference to changes made by the act; creating s. 684.0001, F.S.; providing a short title; creating s. 684.0002, F.S.; defining the scope of application of the Florida International Commercial Arbitration Act; creating s. 684.0003, F.S.; defining terms; providing rules of interpretation for the act; creating s. 684.0004, F.S.; providing intent that the act be applied and interpreted with respect to its purpose; creating s. 684.0005, F.S.; specifying when a written communication is received; creating s. 684.0006, F.S.; specifying circumstances that constitute a waiver of the right to object; creating s. 684.0007, F.S.; limiting the ability of a court to intervene in an arbitral proceeding; creating s. 684.0008, F.S.; designating the circuit court in which an arbitration is or will be held as the court that may take certain actions authorized by the act; creating s. 684.0009, F.S.; requiring a court to refer matters governed by an arbitration agreement to arbitration; creating s. 684.001, F.S.; authorizing a court to grant an interim measure of protection before or during an arbitral proceeding; creating s. 684.0011, F.S.; authorizing the parties to an arbitration to determine the number of arbitrators; specifying the number of arbitrators for a proceeding if the number of arbitrators is not determined by the parties; creating s. 684.0012, F.S.; specifying procedures for the appointment of an arbitrator; creating s. 684.0013, F.S.; requiring a person who is approached to be an arbitrator to make disclosures relating to conflicts of interest; authorizing the appointment of an arbitrator to be challenged based on a perceived conflict of interest or qualifications; creating s. 684.0014, F.S.; providing procedures to challenge the appointment of an arbitrator; creating s. 684.0015, F.S.; providing for the termination of the mandate of an arbitrator due to failure or impossibility to act; creating s. 684.0016, F.S.; providing a procedure for the appointment of a substitute arbitrator; creating s. 684.0017, F.S.; authorizing an arbitral tribunal to determine its jurisdiction; authorizing a court to determine the jurisdiction of an arbitral tribunal; creating s. 684.0018, F.S.; authorizing an arbitral tribunal to grant an interim measure; creating s. 684.0019, F.S.; specifying conditions under which an interim measure may be granted; creating s. 684.002, F.S.; specifying conditions under which an interim order may be granted to prevent a party from frustrating the purpose of an interim measure; creating s. 684.0021, F.S.; requiring a party to be notified of information relating to an interim measure or preliminary order; requiring that a party be given an opportunity to object to a preliminary order; creating s. 684.0022, F.S.; authorizing an arbitral tribunal to modify, suspend, or terminate an interim measure or preliminary order under certain circumstances; creating s. 684.0023, F.S.; authorizing an arbitral tribunal to require security as a condition of granting an interim measure; requiring security as a condition of granting a preliminary order; creating s. 684.0024, F.S.;

requiring certain disclosures as a condition of granting or maintaining an interim measure or preliminary order; creating s. 684.0025, F.S.; providing for liability and an award of costs and damages; creating s. 684.0026, F.S.; providing for the recognition and enforcement of an interim measure by a court; authorizing the court to require security under certain circumstances; creating s. 684.0027, F.S.; specifying grounds under which a court may refuse to enforce an interim measure; creating s. 684.0028, F.S.; authorizing a court to grant an interim measure; creating s. 684.0029, F.S.; requiring parties to an arbitral proceeding to be treated with equality and given an opportunity to present their cases; creating s. 684.003, F.S.; authorizing parties to an arbitration to agree to arbitration procedures; providing default procedures; creating s. 684.0031, F.S.; authorizing parties to an arbitration to agree on the place of arbitration; providing criteria to determine a default location for the arbitration; creating s. 684.0032, F.S.; specifying the date of commencement of an arbitral proceeding; creating s. 684.0033, F.S.; authorizing parties to an arbitration to agree on the language to be used in the proceeding; authorizing the arbitral tribunal to determine the language in the absence of a decision by the parties; creating s. 684.0034, F.S.; providing for the submission of claims and defenses to an arbitral tribunal; creating s. 684.0035, F.S.; providing for the determination of the method by which evidence will be presented before an arbitral proceeding; creating s. 684.0036, F.S.; specifying actions that constitute a default by a party to an arbitral proceeding; creating s. 684.0037, F.S.; authorizing an arbitral tribunal to appoint an expert and for the parties to question and present other experts to the tribunal's expert, unless otherwise agreed by the parties; creating s. 684.0038, F.S.; authorizing a party or an arbitral tribunal to request the assistance of a court in taking evidence; creating s. 684.0039, F.S.; providing for the choice of law applicable in an arbitral proceeding; creating s. 684.004, F.S.; specifying the number of arbitrators who must make a decision, unless specified otherwise by the parties; creating s. 684.0041, F.S.; authorizing the parties to an arbitral proceeding to enter into a settlement that is recorded as an award by the arbitral tribunal; creating s. 684.0042, F.S.; specifying the form and content of an arbitral award; creating s. 684.0043, F.S.; specifying events that terminate or require an arbitral tribunal to terminate an arbitral proceeding; creating s. 684.0044, F.S.; authorizing an arbitral tribunal to correct and interpret an arbitral award or make an additional award under certain conditions; creating s. 684.0045, F.S.; providing judicial immunity to arbitrators acting under ch. 684, F.S.; creating s. 684.0046, F.S.; specifying conditions under which a court may set aside an arbitral award; creating s. 684.0047, F.S.; providing for the recognition and enforcement of arbitral awards by a court; creating s. 684.0048, F.S.; specifying grounds under which a court may refuse to recognize or enforce an arbitral award; repealing parts I, II, and III of ch. 684, F.S., which create the Florida International Arbitration Act and provide procedures for the conduct of international arbitrations and authorize court proceedings in connection with such arbitrations; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (1) of section 48.196, Florida Statutes, is amended to read:

48.196 Service of process in connection with actions under the Florida International Commercial Arbitration Act.—

(1) Any process in connection with the commencement of an action before the courts of this state under chapter 684, the Florida International Commercial Arbitration Act, shall be served:

(a) In the case of a natural person, by service upon:

1. That person;
2. Any agent for service of process appointed in, or pursuant to, any applicable agreement or by operation of any law of this state; or
3. Any person authorized by the law of the jurisdiction where process is being served to accept service for that person.

(b) In the case of any person other than a natural person, by service upon:

1. Any agent for service of process appointed in, or pursuant to, any applicable agreement or by operation of any law of this state;
2. Any person authorized by the law of the jurisdiction where process is being served to accept service for that person; or
3. Any person, whether natural or otherwise and wherever located, who by operation of law or internal action is an officer, business agent, director, general partner, or managing agent or director of the person being served; or
4. Any partner, joint venturer, member or controlling shareholder, wherever located, of the person being served, if the person being served does not by law or internal action have any officer, business agent, director, general partner, or managing agent or director.

Section 2. Section 684.0001, Florida Statutes, is created to read:

684.0001 Short title.—This chapter may be cited as the “Florida International Commercial Arbitration Act.”

Section 3. Section 684.0002, Florida Statutes, is created to read:

684.0002 Scope of application.—

(1) This chapter applies to international commercial arbitration, subject to any agreement in force between the United States of America and any other country or countries.

(2) This chapter, except ss. 684.0009, 684.001, 684.0026, 684.0027, 684.0028, 684.0047, and 684.0048, applies only if the place of arbitration is in this state.

(3) An arbitration is international if:

(a) The parties to an arbitration agreement have, at the time of the conclusion of that agreement, their places of business in different countries;

(b) One of the following places is situated outside the country in which the parties have their places of business:

1. The place of arbitration if determined in, or pursuant to, the arbitration agreement; or

2. Any place where a substantial part of the obligations of the commercial relationship are to be performed or the place with which the subject matter of the dispute is most closely connected; or

(c) The parties have expressly agreed that the subject matter of the arbitration agreement relates to more than one country.

(4) For the purposes of subsection (3):

(a) If a party has more than one place of business, the place of business is that which has the closest relationship to the arbitration agreement.

(b) If a party does not have a place of business, reference shall be made to his or her habitual residence.

(5) This chapter does not affect any law that may prohibit a matter from being resolved by arbitration or that specifies the manner in which a specific matter may be submitted or resolved by arbitration.

Section 4. Section 684.0003, Florida Statutes, is created to read:

684.0003 Definitions and rules of interpretation.—

(1) As used in this chapter, the term:

(a) “Arbitral tribunal” means a sole arbitrator or panel of arbitrators.

(b) “Arbitration” means any arbitration whether or not administered by a permanent arbitral institution.

(c) “Arbitration agreement” means an agreement by the parties to submit to arbitration all or certain disputes that have arisen or may arise between them in respect of a defined legal relationship, whether contractual or not.

(d) “Court” means a circuit court of this state.

(2) A provision of this chapter, except s. 684.0038, which leaves the parties free to determine a certain issue, includes the right of the parties to authorize a third party, including an institution, to make that determination.

(3) A provision of this chapter which refers to the fact that the parties have agreed or that they may agree to a procedure refers to an agreement of the parties. The agreement includes any arbitration rules referenced in that agreement.

(4) A provision of this chapter, other than in s. 684.0036(1) or s. 684.0043(2)(a), which refers to a claim also applies to a counter claim, and a provision that refers to a defense also applies to a defense to such counter claim.

Section 5. Section 684.0004, Florida Statutes, is created to read:

684.0004 International origin and general principles.—

(1) This chapter shall be interpreted with regard to its international origin and to the need to promote uniformity in its application and the observance of good faith.

(2) Questions concerning matters governed by this chapter which are not expressly settled pursuant to it shall be settled in conformity with the general principles on which this chapter is based.

Section 6. Section 684.0005, Florida Statutes, is created to read:

684.0005 Receipt of written communications.—

(1) Unless otherwise agreed by the parties, a written communication is deemed to be received if it is delivered to the addressee personally or if it is delivered to the addressee's place of business, habitual residence, or mailing address. If one of these locations cannot be found after a reasonable inquiry, the written communication is deemed to be received if it is sent to the addressee's last known place of business, habitual residence, or mailing address by registered letter or any other means that provides a record of the attempt to deliver it. The communication is deemed to be received on the day it is delivered.

(2) This section does not apply to communications in court proceedings.

Section 7. Section 684.0006, Florida Statutes, is created to read:

684.0006 Waiver of right to object.—A party waives its right to object if the party proceeds with the arbitration and fails to object without undue delay or within a provided time limit to:

(1) Noncompliance of any provision of this chapter from which the parties may derogate and have not derogated; or

(2) Noncompliance of any requirement under the arbitration agreement.

Section 8. Section 684.0007, Florida Statutes, is created to read:

684.0007 Extent of court intervention.—In matters governed by this chapter, a court may not intervene except to the extent authorized by this chapter.

Section 9. Section 684.0008, Florida Statutes, is created to read:

684.0008 Court for certain functions of arbitration assistance and supervision.—The functions referenced in ss. 684.0012(3) and (4), 684.0014(3), 684.0015, 684.0017(3), and 684.0046(2) shall be performed by the circuit court in the county in which the seat of the arbitration is located.

Section 10. Section 684.0009, Florida Statutes, is created to read:

684.0009 Arbitration agreement and substantive claim before court.—

(1) A court before which an action is brought in a matter that is the subject of an arbitration agreement shall, if a party so requests not later than when submitting its first statement on the substance of the dispute, refer the parties to arbitration unless it finds that the agreement is null and void, inoperative, or incapable of being performed.

(2) If an action described in subsection (1) has been brought, arbitral proceedings may nevertheless be commenced or continued, and an award may be made, while the issue is pending before the court.

Section 11. Section 684.001, Florida Statutes, is created to read:

684.001 Arbitration agreement and interim measures by a court.—It is not incompatible with an arbitration agreement for a party to request from a court, before or during arbitral proceedings, an interim measure of protection and for a court to grant such a measure.

Section 12. Section 684.0011, Florida Statutes, is created to read:

684.0011 Number of arbitrators.—

(1) The parties may determine the number of arbitrators.

(2) If the parties fail to determine the number of arbitrators, the number of arbitrators shall be three.

Section 13. Section 684.0012, Florida Statutes, is created to read:

684.0012 Appointment of arbitrators.—

(1) A person is not precluded by reason of his or her nationality from acting as an arbitrator, unless otherwise agreed by the parties.

(2) The parties may agree on a procedure of appointing the arbitrator or arbitrators, subject to subsections (4) and (5).

(3) Failing such agreement:

(a) In an arbitration having three arbitrators, each party shall appoint one arbitrator, and the two arbitrators thus appointed shall appoint the third arbitrator. If a party fails to appoint the arbitrator within 30 days after 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 after their appointment, the appointment shall be made, upon request of a party, by the court specified in s. 684.0008.

(b) In an arbitration having a single arbitrator, if the parties are unable to agree on the arbitrator, the arbitrator shall be appointed, upon request of a party, by the court specified in s. 684.0008.

(4) If, under an appointment procedure agreed upon by the parties:

(a) A party fails to act as required under such procedure;

(b) The parties, or two arbitrators, are unable to reach an agreement under such procedure; or

(c) A third party, including an institution, fails to perform any function entrusted to it under such procedure,

any party may request the court specified in s. 684.0008 to take the necessary measure, unless the agreement on the appointment procedure provides other means for securing the appointment.

(5) A decision on a matter entrusted by subsection (3) or subsection (4) to the court specified in s. 684.0008 is not appealable. The court, in appointing an arbitrator, shall have due regard to any qualifications required by the arbitrator by the agreement of the parties and to such considerations that are likely to secure the appointment of an independent and impartial arbitrator. In the case of the appointment of a sole or third arbitrator, the court shall take into account the advisability of appointing an arbitrator of a nationality other than those of the parties.

Section 14. Section 684.0013, Florida Statutes, is created to read:

684.0013 Grounds for challenge.—

(1) When a person is approached in connection with a possible appointment as an arbitrator, the person must disclose any circumstances likely to give rise to justifiable doubts as to the person’s impartiality or independence. An arbitrator, from the time of appointment and throughout the arbitral proceedings, shall disclose any such circumstances to the parties without delay, unless they have already been informed of them by him or her.

(2) An arbitrator may be challenged only if circumstances exist that give rise to justifiable doubts as to the arbitrator’s impartiality or independence, or if the arbitrator does not possess qualifications agreed to by the parties. A

party may challenge an arbitrator appointed by it, or in whose appointment the party participated, only for reasons of which the party became aware after the appointment was made.

Section 15. Section 684.0014, Florida Statutes, is created to read:

684.0014 Challenge procedure.—

(1) The parties may agree on a procedure for challenging an arbitrator, subject to subsection (3).

(2) Failing such agreement, a party who intends to challenge an arbitrator shall, within 15 days after becoming aware of the constitution of the arbitral tribunal or after becoming aware of any circumstance described in s. 684.0013(2), send a written statement of the reasons for the challenge to the arbitral tribunal. Unless the challenged arbitrator withdraws from his or her office or the other party agrees to the challenge, the arbitral tribunal shall decide on the challenge.

(3) If a challenge under any procedure agreed upon by the parties or pursuant to subsection (2) is not successful, the challenging party may request, within 30 days after having received notice of the decision rejecting the challenge, the court specified in s. 684.0008 to decide on the challenge. The decision of the court is not appealable. While such a request is pending, the arbitral tribunal, including the challenged arbitrator, may continue the arbitral proceedings and make an award.

Section 16. Section 684.0015, Florida Statutes, is created to read:

684.0015 Failure or impossibility to act.—

(1) If an arbitrator becomes de jure or de facto unable to perform his or her functions or for other reasons fails to act without undue delay, his or her mandate terminates if he or she withdraws from office or if the parties agree on the termination. Otherwise, if a controversy remains concerning any of these grounds, any party may request the court specified in s. 684.0008 to decide on the termination of the mandate. The decision of the court is not appealable.

(2) If, under this section or s. 684.0014(2), an arbitrator withdraws from his or her office or a party agrees to the termination of the mandate of an arbitrator, such actions do not imply the acceptance of the validity of any ground described in this section or in s. 684.0013(2).

Section 17. Section 684.0016, Florida Statutes, is created to read:

684.0016 Appointment of substitute arbitrator.—If the mandate of an arbitrator terminates pursuant to s. 684.0014 or s. 684.0015 or because of his or her withdrawal from office for any other reason or because of the revocation of the mandate by agreement of the parties or in any other case of termination of the mandate, a substitute arbitrator shall be appointed

pursuant to the rules that applied to the appointment of the arbitrator being replaced.

Section 18. Section 684.0017, Florida Statutes, is created to read:

684.0017 Competence of arbitral tribunal to rule on its jurisdiction.—

(1) The arbitral tribunal may rule on its own jurisdiction, including any objections with respect to the existence or validity of the arbitration agreement. For that purpose, an arbitration clause that forms part of a contract shall be treated as an agreement independent of the other terms of the contract. A decision by the arbitral tribunal that the contract is not valid does not entail ipso jure the invalidity of the arbitration clause.

(2) A plea that the arbitral tribunal does not have jurisdiction must be raised not later than the submission of the statement of defense. A party is not precluded from raising such a plea by the fact that the party appointed, or participated in the appointment of, an arbitrator. A plea that the arbitral tribunal is exceeding the scope of its authority must be raised as soon as the matter alleged to be beyond the scope of its authority is raised during the arbitral proceedings. The arbitral tribunal may, in either case, admit a later plea if it considers the delay justified.

(3) The arbitral tribunal may rule on a plea referenced in subsection (2) as a preliminary question or in an award on the merits. If the arbitral tribunal rules as a preliminary question that it has jurisdiction, any party may request, within 30 days after receiving notice of that ruling, that the court specified in s. 684.0008 decide the matter. The decision of the court is not appealable. While such a request is pending, the arbitral tribunal may continue the arbitral proceedings and make an award.

Section 19. Section 684.0018, Florida Statutes, is created to read:

684.0018 Power of arbitral tribunal to order interim measures.—Unless otherwise agreed by the parties, the arbitral tribunal may, at the request of a party, grant interim measures. An interim measure is any temporary measure, whether in the form of an award or in another form, by which, at any time before the issuance of the award by which the dispute is finally decided, the arbitral tribunal orders a party to:

(1) Maintain or restore the status quo pending determination of the dispute;

(2) Take action to prevent, or refrain from taking action that is likely to cause, current or imminent harm or prejudice to the arbitral process;

(3) Provide a means of preserving assets out of which a subsequent award may be satisfied; or

(4) Preserve evidence that may be relevant and material to the resolution of the dispute.

Section 20. Section 684.0019, Florida Statutes, is created to read:

684.0019 Conditions for granting interim measures.—

(1) The party requesting an interim measure under s. 684.0018 must satisfy the arbitral tribunal that:

(a) Harm not adequately reparable by an award of damages is likely to result if the measure is not ordered, and such harm substantially outweighs the harm that is likely to result to the party against whom the measure is directed if the measure is granted; and

(b) A reasonable possibility exists that the requesting party will succeed on the merits of the claim. The determination on this possibility does not affect the discretion of the arbitral tribunal in making any subsequent determination.

(2) With regard to a request for an interim measure under s. 684.0018, the requirements in subsection (1) apply only to the extent the arbitral tribunal considers appropriate.

Section 21. Section 684.002, Florida Statutes, is created to read:

684.002 Applications for preliminary orders and conditions for granting preliminary orders.—

(1) Unless otherwise agreed by the parties, a party may, without notice to any other party, make a request for an interim measure together with an application for a preliminary order prohibiting a party from frustrating the purpose of the interim measure requested.

(2) The arbitral tribunal may grant a preliminary order if it considers that prior disclosure of the request for the interim measure to the party against whom it is directed risks frustrating the purpose of the measure.

(3) The conditions described in s. 684.0019 apply to any preliminary order if the harm assessed under s. 684.0019(1)(a) is the harm likely to result from the order being granted or not granted.

Section 22. Section 684.0021, Florida Statutes, is created to read:

684.0021 Specific regime for preliminary orders.—

(1) Immediately after the arbitral tribunal makes a determination in respect of an application for a preliminary order, the arbitral tribunal shall give notice to all parties of the request for the interim measure, the application for the preliminary order, the preliminary order, if any, and all other communications. The notice shall include a description of the content of any oral communication between any party and the arbitral tribunal in relation to any such request or application.

(2) At the same time, the arbitral tribunal shall give an opportunity to any party against whom a preliminary order is directed to present its case at the earliest practicable time.

(3) The arbitral tribunal must decide promptly on any objection to the preliminary order.

(4) A preliminary order expires 20 days after the date on which it was issued by the arbitral tribunal. However, the arbitral tribunal may issue an interim measure adopting or modifying the preliminary order after the party against whom the preliminary order is directed is given notice and an opportunity to present its case.

(5) A preliminary order is binding on the parties but is not enforceable by a court. Such a preliminary order does not constitute an award.

Section 23. Section 684.0022, Florida Statutes, is created to read:

684.0022 Modification, suspension, or termination; interim measure or preliminary order.—The arbitral tribunal may modify, suspend, or terminate an interim measure or a preliminary order it has granted upon application of any party or, in exceptional circumstances and upon prior notice to the parties, on the arbitral tribunal’s own initiative.

Section 24. Section 684.0023, Florida Statutes, is created to read:

684.0023 Provision of security.—

(1) The arbitral tribunal may require the party requesting an interim measure to provide appropriate security in connection with the measure.

(2) The arbitral tribunal shall require the party applying for a preliminary order to provide security in connection with the order unless the arbitral tribunal considers it inappropriate or unnecessary to do so.

Section 25. Section 684.0024, Florida Statutes, is created to read:

684.0024 Disclosure.—

(1) The arbitral tribunal may require any party promptly to disclose any material change in the circumstances on the basis of which the interim measure was requested or granted.

(2) The party applying for a preliminary order shall disclose to the arbitral tribunal all circumstances that are likely to be relevant to the arbitral tribunal’s determination whether to grant or maintain the order, and such obligation continues until the party against whom the order has been requested has had an opportunity to present its case. Thereafter, subsection (1) applies.

Section 26. Section 684.0025, Florida Statutes, is created to read:

684.0025 Costs and damages.—The party requesting an interim measure or applying for a preliminary order is liable for any costs and damages caused by the measure or the order to any party if the arbitral tribunal later determines that the measure or the order should not have been granted. The arbitral tribunal may award such costs and damages at any point during the proceedings.

Section 27. Section 684.0026, Florida Statutes, is created to read:

684.0026 Recognition and enforcement.—

(1) An interim measure issued by an arbitral tribunal shall be recognized as binding and, unless otherwise provided by the arbitral tribunal, enforced upon application to the competent court, irrespective of the country in which it was issued, subject to s. 684.0019(1).

(2) The party who is seeking or has obtained recognition or enforcement of an interim measure shall promptly inform the court of the termination, suspension, or modification of the interim measure.

(3) The court where recognition or enforcement is sought may, if it considers it proper, order the requesting party to provide appropriate security if the arbitral tribunal has not already made a determination with respect to security or if such a decision is necessary to protect the rights of third parties.

Section 28. Section 684.0027, Florida Statutes, is created to read:

684.0027 Grounds for refusing recognition or enforcement.—

(1) Recognition or enforcement of an interim measure may be refused only:

(a) At the request of the party against whom it is invoked if the court is satisfied that:

1. Such refusal is warranted on the grounds set forth in s. 684.0048(1)(a) 1., 2., 3., or 4.;

2. The arbitral tribunal's decision with respect to the provision of security in connection with the interim measure issued by the arbitral tribunal has not been complied with; or

3. The interim measure was terminated or suspended by the arbitral tribunal or, if so empowered, by the court of the state or country in which the arbitration takes place or under the law of which that interim measure was granted; or

(b) If the court finds that:

1. The interim measure is incompatible with the powers conferred upon the court, unless the court decides to reformulate the interim measure to the

extent necessary to adapt it to its own powers and procedures for the purpose of enforcing that interim measure and without modifying its substance; or

2. Any of the grounds set forth in s. 684.0048(1)(b)1. or 2. apply to the recognition and enforcement of the interim measure.

(2) A determination made by the court on any ground in subsection (1) is effective only for the purposes of the application to recognize and enforce the interim measure. The court may not in making that determination undertake a review of the substance of the interim measure.

Section 29. Section 684.0028, Florida Statutes, is created to read:

684.0028 Court-ordered interim measures.—A court has the same power of issuing an interim measure in relation to arbitration proceedings, irrespective of whether the arbitration proceedings are held in this state, as it has in relation to the proceedings in courts. The court shall exercise such power in accordance with its own procedures and in consideration of the specific features of international arbitration.

Section 30. Section 684.0029, Florida Statutes, is created to read:

684.0029 Equal treatment of parties.—The parties shall be treated with equality and each party shall be given a full opportunity of presenting its case.

Section 31. Section 684.003, Florida Statutes, is created to read:

684.003 Determination of rules of procedure.—Subject to the provisions of this chapter, the parties may agree on the procedure to be followed by the arbitral tribunal in conducting the proceedings. Failing such agreement, the arbitral tribunal may, subject to the provisions of this chapter, conduct the arbitration in such manner as it considers appropriate. The power conferred upon the arbitral tribunal includes the power to determine the admissibility, relevance, materiality, and weight of evidence.

Section 32. Section 684.0031, Florida Statutes, is created to read:

684.0031 Place of arbitration.—

(1) The parties may agree on the place of arbitration. Failing such agreement, the place of arbitration shall be determined by the arbitral tribunal having regard to the circumstances of the case, including the convenience of the parties.

(2) Notwithstanding subsection (1), the arbitral tribunal may, unless otherwise agreed by the parties, meet at any place it considers appropriate for consultation among its members, for hearing witnesses, experts, or the parties, or for inspection of goods, other property, or documents.

Section 33. Section 684.0032, Florida Statutes, is created to read:

684.0032 Commencement of arbitral proceedings.—Unless otherwise agreed by the parties, the arbitral proceedings in respect of a particular dispute commence on the date on which a request for that dispute to be referred to an arbitration is received by the respondent.

Section 34. Section 684.0033, Florida Statutes, is created to read:

684.0033 Language.—

(1) The parties may agree on the language or languages to be used in the arbitral proceedings. Failing such agreement, the arbitral tribunal shall specify the language or languages to be used in the proceedings. This agreement or determination, unless otherwise specified therein, applies to any written statement by a party, any hearing, and any award, decision, or other communication by the arbitral tribunal.

(2) The arbitral tribunal may order that any documentary evidence be accompanied by a translation into the language or languages agreed upon by the parties or specified by the arbitral tribunal.

Section 35. Section 684.0034, Florida Statutes, is created to read:

684.0034 Statements of claim and defense.—

(1) Within the period of time agreed by the parties or specified by the arbitral tribunal, the claimant shall state the facts supporting its claim, the points at issue, and the relief or remedy sought, and the respondent shall state its defense to the claim, unless the parties have otherwise agreed as to the required elements of such statements. The parties may submit with their statements all documents they consider to be relevant or may add a reference to the documents or other evidence they will submit.

(2) Unless otherwise agreed by the parties, either party may amend or supplement its claim or defense during the course of the arbitral proceedings, unless the arbitral tribunal considers it inappropriate to allow such amendment having regard to the delay in making it.

Section 36. Section 684.0035, Florida Statutes, is created to read:

684.0035 Hearings and written proceedings.—

(1) Subject to any contrary agreement by the parties, the arbitral tribunal shall decide whether to hold oral hearings for the presentation of evidence or for oral argument, or whether the proceedings shall be conducted on the basis of documents and other materials. However, unless the parties have agreed that no hearings will be held, the arbitral tribunal shall hold such hearings at an appropriate stage of the proceedings, if so requested by a party.

(2) The parties shall be given sufficient advance notice of any hearing and of any meeting of the arbitral tribunal for the purposes of inspection of goods, other property, or documents.

(3) All statements, documents, or other information supplied to the arbitral tribunal by one party shall be provided to the other party. Also, any expert report or evidentiary document on which the arbitral tribunal may rely in making its decision shall be provided to the parties.

Section 37. Section 684.0036, Florida Statutes, is created to read:

684.0036 Default of a party.—Unless otherwise agreed by the parties, if, without showing sufficient cause:

(1) The claimant fails to provide its statement of claim pursuant to s. 684.0034(1), the arbitral tribunal shall terminate the proceedings.

(2) The respondent fails to communicate its statement of defense pursuant to s. 684.0034(1), the arbitral tribunal shall continue the proceedings without treating such failure in itself as an admission of the claimant’s allegations.

(3) A party fails to appear at a hearing or to produce documentary evidence, the arbitral tribunal may continue the proceedings and make the award on the evidence before it.

Section 38. Section 684.0037, Florida Statutes, is created to read:

684.0037 Expert appointed by arbitral tribunal.—

(1) Unless otherwise agreed by the parties, the arbitral tribunal may:

(a) Appoint one or more experts to report to it on specific issues to be determined by the arbitral tribunal.

(b) Require a party to give the expert any relevant information or produce or provide access to any relevant documents, goods, or other property for inspection by the expert.

(2) Unless otherwise agreed by the parties, if a party so requests or if the arbitral tribunal considers it necessary, the expert shall, after delivery of a written or oral report, participate in a hearing in which the parties have the opportunity to question the expert and to present expert witnesses in order to testify on the points at issue.

Section 39. Section 684.0038, Florida Statutes, is created to read:

684.0038 Court assistance in taking evidence.—The arbitral tribunal, or a party upon the approval of the arbitral tribunal, may request assistance in taking evidence from a competent court of this state. The court may execute the request within its competence and according to its rules on taking evidence.

Section 40. Section 684.0039, Florida Statutes, is created to read:

684.0039 Rules applicable to substance of dispute.—

(1) The arbitral tribunal shall decide the dispute pursuant to the rules of law chosen by the parties to apply to the substance of the dispute. Any designation of the law or legal system of a state or country shall be construed, unless otherwise expressed, as directly referring to the substantive law of that state or country and not to its conflict-of-laws rule.

(2) Failing any designation by the parties, the arbitral tribunal shall apply the law determined by the conflict-of-laws rules that it considers applicable.

(3) The arbitral tribunal shall decide ex aequo et bono or as amiable compositeur, only if the parties have expressly authorized it to do so.

(4) In all cases, the arbitral tribunal shall decide in accordance with the terms of the contract and shall take into account the usages of the trade which apply to the transaction.

Section 41. Section 684.004, Florida Statutes, is created to read:

684.004 Decisionmaking by panel of arbitrators.—In arbitral proceedings having more than one arbitrator, any decision of the arbitral tribunal shall be made, unless otherwise agreed by the parties, by a majority of all its members. However, questions of procedure may be decided by a presiding arbitrator, if so authorized by the parties or all members of the arbitral tribunal.

Section 42. Section 684.0041, Florida Statutes, is created to read:

684.0041 Settlement.—

(1) If, during arbitral proceedings, the parties settle the dispute, the arbitral tribunal shall terminate the proceedings and, if requested by the parties and not objected to by the arbitral tribunal, record the settlement in the form of an arbitral award on agreed terms.

(2) An award on agreed terms shall be made pursuant to s. 684.0042 and shall state that it is an award. Such an award has the same status and effect as any other award on the merits of the case.

Section 43. Section 684.0042, Florida Statutes, is created to read:

684.0042 Form and contents of award.—

(1) The award shall be made in writing and shall be signed by the arbitrator or arbitrators. In arbitral proceedings having more than one arbitrator, the signatures of the majority of all members of the arbitral tribunal shall suffice, if the reason for any omitted signature is stated.

(2) The award shall state the reasons upon which it is based, unless the parties have agreed that no reasons are to be given or the award is an award on agreed terms under s. 684.0041.

(3) The award shall state its date and the place of arbitration as determined pursuant to s. 684.0031(1). The award shall be deemed to have been made at that place.

(4) After the award is made, a copy signed by the arbitrators pursuant to subsection (1) shall be delivered to each party.

Section 44. Section 684.0043, Florida Statutes, is created to read:

684.0043 Termination of proceedings.—

(1) Arbitral proceedings are terminated by the final award or by an order of the arbitral tribunal pursuant to subsection (2).

(2) The arbitral tribunal shall issue an order for the termination of the arbitral proceedings when:

(a) The claimant withdraws its claim, unless the respondent objects to the withdrawal of the claim and the arbitral tribunal recognizes that the respondent has a legitimate interest in obtaining a final settlement of the dispute;

(b) The parties agree on the termination of the proceedings; or

(c) The arbitral tribunal finds that the continuation of the proceedings has for any other reason become unnecessary or impossible.

(3) The mandate of the arbitral tribunal terminates with the termination of the arbitral proceedings, subject to ss. 684.0044 and 684.0046(4).

Section 45. Section 684.0044, Florida Statutes, is created to read:

684.0044 Correction and interpretation of award; additional award.—

(1)(a) Within 30 days after receipt of the award, unless another period of time has been agreed upon by the parties:

1. 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.

2. 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.

(b) If the arbitral tribunal considers the request to be justified, it shall make the correction or give the interpretation within 30 days after the request. The interpretation becomes part of the award.

(2) The arbitral tribunal may correct any error described in subparagraph (1)(a)1. on its own initiative within 30 days after the date of the award.

(3) Unless otherwise agreed by the parties, a party, with notice to the other party, may request, within 30 days after the 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 after the request.

(4) The arbitral tribunal may extend, if necessary, the period of time within which it shall make a correction, interpretation, or additional award pursuant to subsection (1) or subsection (3).

(5) Section 684.0042, specifying the form and contents of an award, applies to a correction or interpretation of the award or to an additional award.

Section 46. Section 684.0045, Florida Statutes, is created to read:

684.0045 Immunity for arbitrators.—An arbitrator serving under this chapter shall have judicial immunity in the same manner and to the same extent as a judge.

Section 47. Section 684.0046, Florida Statutes, is created to read:

684.0046 Application to set aside as exclusive recourse against arbitral award.—

(1) Recourse to a court against an arbitral award may be made only by an application to set aside an arbitral award pursuant to subsections (2) and (3).

(2) An arbitral award may be set aside by the court specified in s. 684.0008 only if:

(a) The party making the application furnishes proof that:

1. A party to the arbitration agreement defined in s. 684.0003(1)(c) was under some incapacity or the arbitration agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law of this state;

2. 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 its case;

3. The award deals with a dispute not contemplated by or not falling within the terms of the submissions to arbitration, or contains decisions on matters beyond the scope of the submission to arbitration. However, 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; or

4. 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 this chapter from which the parties may not derogate, or, failing such agreement, was not in accordance with this chapter; or

(b) The court finds that:

1. The subject matter of the dispute is not capable of settlement by arbitration under the law of this state; or

2. The award is in conflict with the public policy of this state.

(3) An application to set aside an arbitral award may not be made after 3 months have elapsed after the date on which the party making that application receives the award or, if a request had been made under s. 684.0044, after 3 months have elapsed after the date on which that request had been disposed of by the arbitral tribunal.

(4) The court, when asked to set aside an award, may, if appropriate and so requested by a party, suspend the proceedings to set aside the award for a period of time determined by it in order to give the arbitral tribunal an opportunity to resume the arbitral proceedings or to take such other action as in the arbitral tribunal’s opinion will eliminate the grounds to set aside the award.

Section 48. Section 684.0047, Florida Statutes, is created to read:

684.0047 Recognition and enforcement.—

(1) An arbitral award, irrespective of the country in which it was made, shall be recognized as binding and, upon application in writing to the competent court, shall be enforced subject to this section and s. 684.0048.

(2) The party relying on an award or applying for its enforcement shall supply the original or copy of the award. If the award is not made in the English language, the court may request the party to supply a translation of the award.

Section 49. Section 684.0048, Florida Statutes, is created to read:

684.0048 Grounds for refusing recognition or enforcement.—

(1) Recognition or enforcement of an arbitral award, irrespective of the country in which it was made, may be refused only:

(a) At the request of the party against whom it is invoked, if that party furnishes to the competent court where recognition or enforcement is sought proof that:

1. A party to the arbitration agreement defined in s. 684.0003(1)(c) was under some incapacity or the arbitration agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law of the country where the award was made;

2. The party against whom the award is invoked was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present its case;

3. The award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration. However, if the decisions on matters submitted to arbitration can be separated from those not so submitted, that part of the award which contains decisions on matters submitted to arbitration may be recognized and enforced;

4. The composition of the arbitral tribunal 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

5. The award has not yet become binding on the parties or has been set aside or suspended by a court of the country in which, or under the law of which, that award was made; or

(b) If the court finds that:

1. The subject matter of the dispute is not capable of settlement by arbitration under the laws of this state; or

2. The recognition or enforcement of the award would be contrary to the public policy of this state.

(2) If an application for setting aside or suspension of an award has been made to a court referenced in subparagraph (1)(a)5., the court where recognition or enforcement is sought may, if it considers it proper, adjourn its decision and may also, on the application of the party claiming recognition or enforcement of the award, order the other party to provide appropriate security.

Section 50. Parts I, II, and III of chapter 684, Florida Statutes, consisting of sections 684.01, 684.02, 684.03, 684.04, 684.05, 684.06, 684.07, 684.08, 684.09, 684.10, 684.11, 684.12, 684.13, 684.14, 684.15, 684.16, 684.17, 684.18, 684.19, 684.20, 684.21, 684.22, 684.23, 684.24, 684.25, 684.26, 684.27, 684.28, 684.29, 684.30, 684.31, 684.32, 684.33, 684.34, and 684.35, are repealed.

Section 51. This act shall take effect July 1, 2010.

Approved by the Governor May 11, 2010.

Filed in Office Secretary of State May 11, 2010.