

## CHAPTER 1

AN ACT concerning international arbitration and supplementing Title 2A of the New Jersey Statutes.

**BE IT ENACTED** *by the Senate and General Assembly of the State of New Jersey:*

C.2A:23E-1 Short title.

1. This act shall be known and may be cited as the “New Jersey International Arbitration, Mediation, and Conciliation Act.”

C.2A:23E-2 Findings, declarations relative to international arbitration.

2. The Legislature finds and declares that:

a. The State of New Jersey is in a unique position to benefit from the growth of international trade, and the State’s position in the region provides important opportunities for the State to participate in international business, trade, and commerce;

b. There will inevitably arise, from time to time, disagreements and disputes arising from international commercial transactions that are amenable to resolution through international arbitration, mediation, conciliation, and other forms of dispute resolution in lieu of international litigation;

c. It is the policy of this State to encourage the use of arbitration, mediation, and conciliation to reduce disputes arising out of international business, trade, commercial, and other relationships; and

d. It is declared that the objective of encouraging the development of New Jersey as an international center for the resolution of international business, commercial, trade, and other disputes be supported through the establishment of certain legal authorities, as set forth in this act.

C.2A:23E-3 Definitions relative to international arbitration.

3. As used in this act:

“Arbitral award” means an award signed by an arbitrator that may be the result of a settlement in arbitration, mediation, conciliation or other form of dispute resolution that involves the assistance of a neutral.

“Center” means any center organized as a non-profit entity, whose principal purpose is to facilitate the resolution of international business, trade, commercial, and other disputes between persons by means of arbitration, mediation, conciliation, and other means as an alternative to litigation.

“Person” means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government, public corporation, or any other legal or commercial entity, including any government subdivision, agency, or instrumentality.

“Resident of the United States” means a person who maintains sole residence within a state, possession, commonwealth, or territory of the United States or within the District of Columbia.

“Written undertaking to arbitrate” means a writing in which a person undertakes to submit a dispute to arbitration, without regard to whether that undertaking is sufficient to sustain a valid and enforceable contract or is subject to defenses. A written undertaking may be part of a contract, may be a separate writing, and may be contained in correspondence, telegrams, telexes, or any other form of written communication.

C.2A:23E-4 Applicability of act.

4. a. This act shall apply only to the arbitration of disputes between:

- (1) two or more persons at least one of whom is a nonresident of the United States; or
- (2) two or more persons all of whom are residents of the United States if the dispute:

(a) involves property located outside the United States;

(b) relates to a contract which envisages enforcement or performance in whole or in part outside the United States; or

(c) bears some other relation to one or more foreign countries.

b. Notwithstanding subsection a. of this section, this act shall not apply to the arbitration of:

(1) any dispute pertaining to the ownership, use, development, or possession of, or a lien of record upon, real property located in this State, unless the parties expressly submit the resolution of that dispute to this act; or

(2) any dispute involving family or domestic relations law.

c. If, in any arbitration within the scope of this act, reference must be made, under applicable conflict of laws principles, to the arbitration law of this State, that reference shall be to this act.

d. This act shall apply to any arbitration within the scope of this act, without regard to whether the place of arbitration is within or without this State:

(1) if the written undertaking to arbitrate expressly provides that the laws of this State shall apply;

(2) in the absence of a choice of law provision applicable to the written undertaking to arbitrate, if that undertaking forms part of a contract the interpretation of which is to be governed by the laws of this State; or

(3) in any other case, any arbitral tribunal or other panel established pursuant to this act that decides under applicable conflict of laws principles that the arbitration shall be conducted in accordance with the laws of this State.

C.2A:23E-5 Consent by parties to arbitration.

5. Conducting arbitration in this State, or making a written agreement to arbitrate which provides for arbitration within this State subject to this act, shall constitute a consent by the parties to that arbitration or undertaking to the exercise of in personam jurisdiction by the courts of this State, but only for the purposes of that arbitration.

C.2A:23E-6 Authority of center.

6. a. A center shall not be considered a department, agency, or public instrumentality of this State, and shall not be subject to the laws of this State applying to departments, agencies, or public instrumentalities of this State.

b. A center shall permit the participants to an arbitration to select any body of rules and procedures for the conduct, administration, and facilitation of that proceeding, whether those rules and procedures have been prepared by private arbitral organizations, created by the participants themselves, or by the center.

c. A center shall have the authority to establish rules and procedures for the conduct, administration, and facilitation of the resolution of all disputes subject to this act.

d. A center shall have the authority to adopt rules providing, without limitation and by way of illustration only, for the establishment of arbitral tribunals or other panels, which shall provide that arbitral tribunals or other panels may:

(1) determine the relevance and materiality of the evidence without the need to follow formal rules of evidence;

(2) be able to utilize any lawful methods that it deems appropriate to obtain evidence additional to that produced by the parties;

(3) issue subpoenas or other requests for the attendance of witnesses or for the production of books, records, documents, and other evidence;

(4) be empowered to administer oaths, order depositions to be taken or other discovery obtained or produced, without regard to the place where the witness or other evidence is located, and appoint one or more experts to report to it;

(5) fix any fees for the attendance of witnesses it deems appropriate; and

(6) make awards of interest, reasonable attorney's fees and costs of arbitration as agreed to in writing by the parties, or in the absence of an agreement, as it deems appropriate.

e. In assuring the exercise of the powers conferred by this act, the participants to an arbitration may apply for assistance from any court of competent jurisdiction. Any application to a court hereunder shall be made and heard in a summary way in the manner provided for the making and hearing of motions, except as otherwise herein expressly provided.

#### C.2A:23E-7 Subpoena power of arbitral tribunal or panel.

7. An arbitral tribunal or panel established pursuant to section 6 of this act may subpoena in writing any person to attend before it as a witness and to bring books, papers, records, and documents. The subpoena shall issue in the name of the arbitral tribunal or panel and be signed by a majority of the tribunal or panel, shall be directed to the person being summoned, and shall be served in the same manner as subpoenas to testify before a court of this State. If any person subpoenaed to testify refuses or neglects to obey the subpoena, upon petition a court of competent jurisdiction may compel the attendance of that person before the arbitral tribunal or panel, or punish that person for contempt in the same manner now provided for the attendance of witnesses or punishment in a court of this State. The arbitral panel may also consider and take action within the arbitration, as deemed appropriate by the arbitral tribunal, in response to non-attendance by any subpoenaed person.

#### C.2A:23E-8 Enforcement of arbitral awards issued by center.

8. a. Arbitral awards issued pursuant to this act by a center shall be enforced by any court of competent jurisdiction as permitted by law and consistent with the Federal Arbitration Act (9 U.S.C. s.1 et seq.), and the enforcement provisions of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, as implemented by the Federal Arbitration Act, except as provided in subsection b. of this section.

b. If the parties specifically submit to jurisdiction under this act pursuant to section 4 of this act, the center may require those parties residing in countries not signatories to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, as implemented by the Federal Arbitration Act, and not having sufficient assets otherwise within the jurisdiction of the courts of this State, to post any bonds or other security as the center shall deem appropriate to assure reasonable likelihood of enforcement of any award or other relief ultimately ordered by the center in the proceeding.

9. This act shall take effect on the 90th day next following enactment.

Approved February 6, 2017.