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NEW ARBITRATION ACT FOR THE BRITISH VIRGIN ISLANDS

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The Arbitration Act, 2013 was passed by the House of Assembly of the British Virgin Islands on 17 December 2013 and will come into force on 1 October 2014 replacing the 38 year old Arbitration Ordinance. Coupled with the British Virgin Islands becoming a party to the 1958 Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the "**New York Convention**") earlier in 2014, the new Act will recognize the enforceability of awards under the New York Convention on the same terms as those applicable to domestic arbitration which can be enforced in the same manner as a judgment or Order of the High Court with leave of the High Court. Therefore, arbitration whether made in or outside the British Virgin Islands would be enforceable in the British Virgin Islands, and likewise an arbitration award made in the British Virgin Islands will also be enforceable within a New York Convention State. This makes the British Virgin Islands an attractive jurisdiction in which to conduct international arbitration.

The new Act takes account of modern principles and practices of arbitration by adopting the UNCITRAL Model Law on International Commercial Arbitration (the "**UNCITRAL Model Law**") with the necessary modifications and supplements. The adoption of the UNCITRAL Model Law will help to facilitate and ensure the fair and speedy resolution of disputes through the medium of arbitration without any unnecessary delay or expense. As part of the supplementary provisions the privacy of the arbitration proceedings is protected even where the Court has limited powers to intervene in arbitration proceedings, so that those court proceedings would continue to respect the arbitration agreement and will generally hear the matter in private as opposed to open court and there are also provisions for the non-disclosure of the judgment of the court. The Act also makes optional provisions that can be incorporated into an arbitration agreement, however, the Act grandfathers under its provisions those arbitration agreements that are entered into before 1 October 2014 and makes certain mandatory provisions for those agreements.

It will, therefore, be necessary to consider legal opinions issued in relation to BVI companies and other legal persons on agreements containing arbitration clauses that took place before 1 October 2014 and those after 1 October 2014. The updating of legal opinions would be unnecessary after 1 October 2014 where the appropriate language is used in the legal opinions. Therefore, it is advisable that proper advice on the effect of the new Act be obtained in relation to arbitration agreements entered into before 1 October 2014.

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If you would like more information about arbitration in the British Virgin Islands, you may contact Jamal S. Smith, who is a member of the Chartered Institute of Arbitrators.

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