

# Přílohy

Příloha č. 1: UNCITRAL Model Law

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## *Part One*

### **UNCITRAL Model Law on International Commercial Arbitration**

(United Nations documents A/40/17,  
annex I and A/61/17, annex I)

(As adopted by the United Nations Commission on  
International Trade Law on 21 June 1985,  
and as amended by the United Nations Commission  
on International Trade Law on 7 July 2006)

#### CHAPTER I. GENERAL PROVISIONS

##### *Article 1. Scope of application<sup>1</sup>*

(1) This Law applies to international commercial<sup>2</sup> arbitration, subject to any agreement in force between this State and any other State or States.

(2) The provisions of this Law, except articles 8, 9, 17 H, 17 I, 17 J, 35 and 36, apply only if the place of arbitration is in the territory of this State.

*(Article 1(2) has been amended by the Commission at its thirty-ninth session, in 2006)*

(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 States; or

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<sup>1</sup>Article headings are for reference purposes only and are not to be used for purposes of interpretation.

<sup>2</sup>The term "commercial" should be given a wide interpretation so as to cover matters arising from all relationships of a commercial nature, whether contractual or not. Relationships of a commercial nature include, but are not limited to, the following transactions: any trade transaction for the supply or exchange of goods or services; distribution agreement; commercial representation or agency; factoring; leasing; construction of works; consulting; engineering; licensing; investment; financing; banking; insurance; exploitation agreement or concession; joint venture and other forms of industrial or business cooperation; carriage of goods or passengers by air, sea, rail or road.

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

- (i) the place of arbitration if determined in, or pursuant to, the arbitration agreement;
- (ii) any place where a substantial part of the obligations of the commercial relationship is 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 paragraph (3) of this article:

(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 is to be made to his habitual residence.

(5) This Law shall not affect any other law of this State by virtue of which certain disputes may not be submitted to arbitration or may be submitted to arbitration only according to provisions other than those of this Law.

## *Article 2. Definitions and rules of interpretation*

For the purposes of this Law:

(a) "arbitration" means any arbitration whether or not administered by a permanent arbitral institution;

(b) "arbitral tribunal" means a sole arbitrator or a panel of arbitrators;

(c) "court" means a body or organ of the judicial system of a State;

(d) where a provision of this Law, except article 28, leaves the parties free to determine a certain issue, such freedom includes the right of the parties to authorize a third party, including an institution, to make that determination;

(e) where a provision of this Law refers to the fact that the parties have agreed or that they may agree or in any other way refers to an agreement of the parties, such agreement includes any arbitration rules referred to in that agreement;

(f) where a provision of this Law, other than in articles 25(a) and 32(2) (a), refers to a claim, it also applies to a counter-claim, and where it refers to a defence, it also applies to a defence to such counter-claim.

*Article 2 A. International origin and general principles*

*(As adopted by the Commission at its thirty-ninth session, in 2006)*

(1) In the interpretation of this Law, regard is to be had 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 Law which are not expressly settled in it are to be settled in conformity with the general principles on which this Law is based.

*Article 3. Receipt of written communications*

(1) Unless otherwise agreed by the parties:

(a) any written communication is deemed to have been received if it is delivered to the addressee personally or if it is delivered at his place of business, habitual residence or mailing address; if none of these can be found after making a reasonable inquiry, a written communication is deemed to have been 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 which provides a record of the attempt to deliver it;

(b) the communication is deemed to have been received on the day it is so delivered.

(2) The provisions of this article do not apply to communications in court proceedings.

*Article 4. Waiver of right to object*

A party who knows that any provision of this Law from which the parties may derogate or any requirement under the arbitration agreement has not been complied with and yet proceeds with the arbitration without stating his objection to such non-compliance without undue delay or, if a time-limit is provided therefor, within such period of time, shall be deemed to have waived his right to object.

*Article 5. Extent of court intervention*

In matters governed by this Law, no court shall intervene except where so provided in this Law.

*Article 6. Court or other authority for certain functions of arbitration assistance and supervision*

The functions referred to in articles 11(3), 11(4), 13(3), 14, 16(3) and 34(2) shall be performed by ... [Each State enacting this model law specifies the court, courts or, where referred to therein, other authority competent to perform these functions.]

CHAPTER II. ARBITRATION AGREEMENT

*Option I*

*Article 7. Definition and form of arbitration agreement*

*(As adopted by the Commission at its thirty-ninth session, in 2006)*

(1) "Arbitration agreement" is an agreement by the parties to submit to arbitration all or certain disputes which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not. An arbitration agreement may be in the form of an arbitration clause in a contract or in the form of a separate agreement.

(2) The arbitration agreement shall be in writing.

(3) An arbitration agreement is in writing if its content is recorded in any form, whether or not the arbitration agreement or contract has been concluded orally, by conduct, or by other means.

(4) The requirement that an arbitration agreement be in writing is met by an electronic communication if the information contained therein is accessible so as to be useable for subsequent reference; "electronic communication" means any communication that the parties make by means of data messages; "data message" means information generated, sent, received or stored by electronic, magnetic, optical or similar means, including, but not

limited to, electronic data interchange (EDI), electronic mail, telegram, telex or telecopy.

(5) Furthermore, an arbitration agreement is in writing if it is contained in an exchange of statements of claim and defence in which the existence of an agreement is alleged by one party and not denied by the other.

(6) The reference in a contract to any document containing an arbitration clause constitutes an arbitration agreement in writing, provided that the reference is such as to make that clause part of the contract.

### *Option II*

#### *Article 7. Definition of arbitration agreement*

*(As adopted by the Commission at its thirty-ninth session, in 2006)*

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

#### *Article 8. Arbitration agreement and substantive claim before court*

(1) A court before which an action is brought in a matter which is the subject of an arbitration agreement shall, if a party so requests not later than when submitting his 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) Where an action referred to in paragraph (1) of this article 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.

#### *Article 9. Arbitration agreement and interim measures by court*

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

### CHAPTER III. COMPOSITION OF ARBITRAL TRIBUNAL

#### *Article 10. Number of arbitrators*

- (1) The parties are free to determine the number of arbitrators.
- (2) Failing such determination, the number of arbitrators shall be three.

#### *Article 11. Appointment of arbitrators*

(1) No person shall be precluded by reason of his nationality from acting as an arbitrator, unless otherwise agreed by the parties.

(2) The parties are free to agree on a procedure of appointing the arbitrator or arbitrators, subject to the provisions of paragraphs (4) and (5) of this article.

(3) Failing such agreement,

(a) in an arbitration with 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 thirty days of receipt of a request to do so from the other party, or if the two arbitrators fail to agree on the third arbitrator within thirty days of their appointment, the appointment shall be made, upon request of a party, by the court or other authority specified in article 6;

(b) in an arbitration with a sole arbitrator, if the parties are unable to agree on the arbitrator, he shall be appointed, upon request of a party, by the court or other authority specified in article 6.

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

(a) a party fails to act as required under such procedure, or

(b) the parties, or two arbitrators, are unable to reach an agreement expected of them 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 or other authority specified in article 6 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 paragraph (3) or (4) of this article to the court or other authority specified in article 6 shall be subject to no

appeal. The court or other authority, in appointing an arbitrator, shall have due regard to any qualifications required of the arbitrator by the agreement of the parties and to such considerations as are likely to secure the appointment of an independent and impartial arbitrator and, in the case of a sole or third arbitrator, shall take into account as well the advisability of appointing an arbitrator of a nationality other than those of the parties.

*Article 12. Grounds for challenge*

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

(2) An arbitrator may be challenged only if circumstances exist that give rise to justifiable doubts as to his impartiality or independence, or if he does not possess qualifications agreed to by the parties. A party may challenge an arbitrator appointed by him, or in whose appointment he has participated, only for reasons of which he becomes aware after the appointment has been made.

*Article 13. Challenge procedure*

(1) The parties are free to agree on a procedure for challenging an arbitrator, subject to the provisions of paragraph (3) of this article.

(2) Failing such agreement, a party who intends to challenge an arbitrator shall, within fifteen days after becoming aware of the constitution of the arbitral tribunal or after becoming aware of any circumstance referred to in article 12(2), send a written statement of the reasons for the challenge to the arbitral tribunal. Unless the challenged arbitrator withdraws from his 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 under the procedure of paragraph (2) of this article is not successful, the challenging party may request, within thirty days after having received notice of the decision rejecting the challenge, the court or other authority specified in article 6 to decide on the challenge, which decision shall be subject to no appeal; while such a request is pending, the arbitral tribunal, including the challenged arbitrator, may continue the arbitral proceedings and make an award.

*Article 14. Failure or impossibility to act*

(1) If an arbitrator becomes *de jure* or *de facto* unable to perform his functions or for other reasons fails to act without undue delay, his mandate terminates if he withdraws from his 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 or other authority specified in article 6 to decide on the termination of the mandate, which decision shall be subject to no appeal.

(2) If, under this article or article 13(2), an arbitrator withdraws from his office or a party agrees to the termination of the mandate of an arbitrator, this does not imply acceptance of the validity of any ground referred to in this article or article 12(2).

*Article 15. Appointment of substitute arbitrator*

Where the mandate of an arbitrator terminates under article 13 or 14 or because of his withdrawal from office for any other reason or because of the revocation of his mandate by agreement of the parties or in any other case of termination of his mandate, a substitute arbitrator shall be appointed according to the rules that were applicable to the appointment of the arbitrator being replaced.

CHAPTER IV. JURISDICTION OF ARBITRAL TRIBUNAL

*Article 16. 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 which 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 null and void shall not entail *ipso jure* the invalidity of the arbitration clause.

(2) A plea that the arbitral tribunal does not have jurisdiction shall be raised not later than the submission of the statement of defence. A party is not precluded from raising such a plea by the fact that he has appointed, or participated in the appointment of, an arbitrator. A plea that the arbitral tribunal is exceeding the scope of its authority shall 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 referred to in paragraph (2) of this article either 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 thirty days after having received notice of that ruling, the court specified in article 6 to decide the matter, which decision shall be subject to no appeal; while such a request is pending, the arbitral tribunal may continue the arbitral proceedings and make an award.

#### CHAPTER IV A. INTERIM MEASURES AND PRELIMINARY ORDERS

*(As adopted by the Commission at its thirty-ninth session, in 2006)*

##### *Section 1. Interim measures*

###### *Article 17. Power of arbitral tribunal to order interim measures*

(1) Unless otherwise agreed by the parties, the arbitral tribunal may, at the request of a party, grant interim measures.

(2) An interim measure is any temporary measure, whether in the form of an award or in another form, by which, at any time prior to the issuance of the award by which the dispute is finally decided, the arbitral tribunal orders a party to:

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

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

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

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

*Article 17 A. Conditions for granting interim measures*

(1) The party requesting an interim measure under article 17(2)(a), (b) and (c) shall 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) There is a reasonable possibility that the requesting party will succeed on the merits of the claim. The determination on this possibility shall not affect the discretion of the arbitral tribunal in making any subsequent determination.

(2) With regard to a request for an interim measure under article 17(2)(d), the requirements in paragraphs (1)(a) and (b) of this article shall apply only to the extent the arbitral tribunal considers appropriate.

*Section 2. Preliminary orders*

*Article 17 B. 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 directing a party not to frustrate the purpose of the interim measure requested.

(2) The arbitral tribunal may grant a preliminary order provided 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 defined under article 17A apply to any preliminary order, provided that the harm to be assessed under article 17A(1)(a), is the harm likely to result from the order being granted or not.

*Article 17 C. Specific regime for preliminary orders*

(1) Immediately after the arbitral tribunal has made 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, including by indicating the content of any oral communication, between any party and the arbitral tribunal in relation thereto.

(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 shall decide promptly on any objection to the preliminary order.

(4) A preliminary order shall expire after twenty days from 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 has been given notice and an opportunity to present its case.

(5) A preliminary order shall be binding on the parties but shall not be subject to enforcement by a court. Such a preliminary order does not constitute an award.

### *Section 3. Provisions applicable to interim measures and preliminary orders*

#### *Article 17 D. Modification, suspension, termination*

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.

#### *Article 17 E. 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.

*Article 17 F. Disclosure*

(1) The arbitral tribunal may require any party promptly to disclose any material change in the circumstances on the basis of which the 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 shall continue until the party against whom the order has been requested has had an opportunity to present its case. Thereafter, paragraph (1) of this article shall apply.

*Article 17 G. Costs and damages*

The party requesting an interim measure or applying for a preliminary order shall be liable for any costs and damages caused by the measure or the order to any party if the arbitral tribunal later determines that, in the circumstances, 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 4. Recognition and enforcement of interim measures*

*Article 17 H. 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 the provisions of article 17 I.

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

(3) The court of the State 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 where such a decision is necessary to protect the rights of third parties.

*Article 17 I. Grounds for refusing recognition or enforcement<sup>3</sup>*

(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:

- (i) Such refusal is warranted on the grounds set forth in article 36(1)(a)(i), (ii), (iii) or (iv); or
- (ii) 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
- (iii) The interim measure has been terminated or suspended by the arbitral tribunal or, where so empowered, by the court of the State in which the arbitration takes place or under the law of which that interim measure was granted; or

(b) If the court finds that:

- (i) 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 purposes of enforcing that interim measure and without modifying its substance; or
- (ii) Any of the grounds set forth in article 36(1)(b)(i) or (ii), apply to the recognition and enforcement of the interim measure.

(2) Any determination made by the court on any ground in paragraph (1) of this article shall be effective only for the purposes of the application to recognize and enforce the interim measure. The court where recognition or enforcement is sought shall not, in making that determination, undertake a review of the substance of the interim measure.

*Section 5. Court-ordered interim measures**Article 17 J. Court-ordered interim measures*

A court shall have the same power of issuing an interim measure in relation to arbitration proceedings, irrespective of whether their place is in

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<sup>3</sup>The conditions set forth in article 17 I are intended to limit the number of circumstances in which the court may refuse to enforce an interim measure. It would not be contrary to the level of harmonization sought to be achieved by these model provisions if a State were to adopt fewer circumstances in which enforcement may be refused.



the territory of this State, as it has in relation to proceedings in courts. The court shall exercise such power in accordance with its own procedures in consideration of the specific features of international arbitration.

## CHAPTER V. CONDUCT OF ARBITRAL PROCEEDINGS

### *Article 18. Equal treatment of parties*

The parties shall be treated with equality and each party shall be given a full opportunity of presenting his case.

### *Article 19. Determination of rules of procedure*

(1) Subject to the provisions of this Law, the parties are free to agree on the procedure to be followed by the arbitral tribunal in conducting the proceedings.

(2) Failing such agreement, the arbitral tribunal may, subject to the provisions of this Law, 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 any evidence.

### *Article 20. Place of arbitration*

(1) The parties are free to 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 the provisions of paragraph (1) of this article, 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.

### *Article 21. 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 arbitration is received by the respondent.

*Article 22. Language*

(1) The parties are free to agree on the language or languages to be used in the arbitral proceedings. Failing such agreement, the arbitral tribunal shall determine the language or languages to be used in the proceedings. This agreement or determination, unless otherwise specified therein, shall apply 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 shall be accompanied by a translation into the language or languages agreed upon by the parties or determined by the arbitral tribunal.

*Article 23. Statements of claim and defence*

(1) Within the period of time agreed by the parties or determined by the arbitral tribunal, the claimant shall state the facts supporting his claim, the points at issue and the relief or remedy sought, and the respondent shall state his defence in respect of these particulars, 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 his claim or defence 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.

*Article 24. 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 shall 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 communicated to the other party. Also any expert report or evidentiary document on which the arbitral tribunal may rely in making its decision shall be communicated to the parties.

*Article 25. Default of a party*

Unless otherwise agreed by the parties, if, without showing sufficient cause,

(a) the claimant fails to communicate his statement of claim in accordance with article 23(1), the arbitral tribunal shall terminate the proceedings;

(b) the respondent fails to communicate his statement of defence in accordance with article 23(1), the arbitral tribunal shall continue the proceedings without treating such failure in itself as an admission of the claimant's allegations;

(c) any 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.

*Article 26. Expert appointed by arbitral tribunal*

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

(a) may appoint one or more experts to report to it on specific issues to be determined by the arbitral tribunal;

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

(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 his written or oral report, participate in a hearing where the parties have the opportunity to put questions to him and to present expert witnesses in order to testify on the points at issue.

*Article 27. Court assistance in taking evidence*

The arbitral tribunal or a party with the approval of the arbitral tribunal may request from a competent court of this State assistance in taking evidence.



The court may execute the request within its competence and according to its rules on taking evidence.

## CHAPTER VI. MAKING OF AWARD AND TERMINATION OF PROCEEDINGS

### *Article 28. Rules applicable to substance of dispute*

(1) The arbitral tribunal shall decide the dispute in accordance with such rules of law as are chosen by the parties as applicable to the substance of the dispute. Any designation of the law or legal system of a given State shall be construed, unless otherwise expressed, as directly referring to the substantive law of that State and not to its conflict of laws rules.

(2) Failing any designation by the parties, the arbitral tribunal shall apply the law determined by the conflict of laws rules which 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 applicable to the transaction.

### *Article 29. Decision-making by panel of arbitrators*

In arbitral proceedings with 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.

### *Article 30. 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 in accordance with the provisions of article 31 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.

*Article 31. 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 with more than one arbitrator, the signatures of the majority of all members of the arbitral tribunal shall suffice, provided that 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 article 30.
- (3) The award shall state its date and the place of arbitration as determined in accordance with article 20(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 in accordance with paragraph (1) of this article shall be delivered to each party.

*Article 32. Termination of proceedings*

- (1) The arbitral proceedings are terminated by the final award or by an order of the arbitral tribunal in accordance with paragraph (2) of this article.
- (2) The arbitral tribunal shall issue an order for the termination of the arbitral proceedings when:
  - (a) the claimant withdraws his claim, unless the respondent objects thereto and the arbitral tribunal recognizes a legitimate interest on his part in obtaining a final settlement of the dispute;
  - (b) the parties agree on the termination of the proceedings;
  - (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 the provisions of articles 33 and 34(4).

*Article 33. Correction and interpretation of award; additional award*

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

(b) 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.

If the arbitral tribunal considers the request to be justified, it shall make the correction or give the interpretation within thirty days of receipt of the request. The interpretation shall form part of the award.

(2) The arbitral tribunal may correct any error of the type referred to in paragraph (1)(a) of this article on its own initiative within thirty days of the date of the award.

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

(4) The arbitral tribunal may extend, if necessary, the period of time within which it shall make a correction, interpretation or an additional award under paragraph (1) or (3) of this article.

(5) The provisions of article 31 shall apply to a correction or interpretation of the award or to an additional award.

## CHAPTER VII. RECOURSE AGAINST AWARD

### *Article 34. Application for setting aside as exclusive recourse against arbitral award*

(1) Recourse to a court against an arbitral award may be made only by an application for setting aside in accordance with paragraphs (2) and (3) of this article.

(2) An arbitral award may be set aside by the court specified in article 6 only if:

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

(i) a party to the arbitration agreement referred to in article 7 was under some incapacity; or the said 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; or

- (ii) 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 his case; or
- (iii) the award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or contains decisions on matters beyond the scope of the submission to arbitration, provided that, 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
- (iv) 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 Law from which the parties cannot derogate, or, failing such agreement, was not in accordance with this Law; or

(b) the court finds that:

- (i) the subject-matter of the dispute is not capable of settlement by arbitration under the law of this State; or
- (ii) the award is in conflict with the public policy of this State.

(3) An application for setting aside may not be made after three months have elapsed from the date on which the party making that application had received the award or, if a request had been made under article 33, from 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, where appropriate and so requested by a party, suspend the setting aside proceedings 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 for setting aside.

## CHAPTER VIII. RECOGNITION AND ENFORCEMENT OF AWARDS

### *Article 35. 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 the provisions of this article and of article 36.

(2) The party relying on an award or applying for its enforcement shall supply the original award or a copy thereof. If the award is not made in an official language of this State, the court may request the party to supply a translation thereof into such language.<sup>4</sup>

*(Article 35(2) has been amended by the Commission at its thirty-ninth session, in 2006)*

*Article 36. 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:

- (i) a party to the arbitration agreement referred to in article 7 was under some incapacity; or the said 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; or
- (ii) 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 his case; or
- (iii) 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, provided that, 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; or
- (iv) 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

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<sup>4</sup>The conditions set forth in this paragraph are intended to set maximum standards. It would, thus, not be contrary to the harmonization to be achieved by the model law if a State retained even less onerous conditions.



- (v) 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:
  - (i) the subject-matter of the dispute is not capable of settlement by arbitration under the law of this State; or
  - (ii) 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 referred to in paragraph (1)(a)(v) of this article, 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.

Příloha č. 2: Překlad kapitoly šesté belgického OSŘ do anglického jazyka

**Belgian Judicial Code Provisions**

In force as from September 1, 2013

**CHAPTER 6: ARBITRATION**

**Chapter I. General provision**

Art. 1676

§ 1. Any pecuniary claim may be submitted to arbitration. Non-pecuniary claims with regard to which a settlement agreement may be made may also be submitted to arbitration.

§ 2. Whosoever has the capacity or is empowered to make a settlement may conclude an arbitration agreement.

§ 3. Without prejudice to specific laws, public legal entities may only enter into an arbitration agreement if the object thereof is to resolve disputes relating to an agreement. The conditions that apply to the entering into of the agreement, which constitutes the object of the arbitration, also apply to the entering into of the arbitration agreement. Moreover, public legal entities may enter into arbitration agreements on all matters defined by law or by royal decree decided by the Council of Ministers. The decree may also set forth the conditions and rules to be respected for the entering into of such an agreement.

§ 4. The above-mentioned provisions shall apply without prejudice to the exceptions provided by law.

§ 5. Without prejudice to the exceptions provided by law, an arbitration agreement entered into prior to any dispute that falls under the jurisdiction of the Labour Court pursuant to articles 578 through 583, shall be automatically null and void.

§ 6. Articles 5 through 14 of the Law of 16 July 2004 on private international law also apply to arbitration and the Belgian courts also have jurisdiction where the place of arbitration is located in Belgium as defined in article 1701, § 1, when the proceedings are introduced. Where the place of arbitration has not been determined, the Belgian courts have jurisdiction to take the measures set out in articles 1682 and 1683.

§ 7. Unless otherwise agreed by the parties, Part 6 of this Code shall apply where the place of arbitration as defined in article 1701, § 1, is located in Belgium.

§ 8. By way of derogation from § 7, the provisions of articles 1682, 1683, 1696 through 1698, 1708 and 1719 through 1722 shall apply irrespective of the place of arbitration and notwithstanding any clause to the contrary.

Art. 1677

§ 1. In this Part of the Code,

1. the words "arbitral tribunal" mean a sole arbitrator or a panel of arbitrators;

2. the word "communication" means the transmission of a written document between the parties, between the parties and the arbitrators or between the parties and third parties organising the arbitration, by means of a method of communication or in a manner that provides proof of sending.

§ 2. Where a provision of this Part, with the exception of article 1710, leaves the parties free to determine an issue referred to herein, this freedom includes the right of the parties to authorise a third party to make that determination.

Art. 1678

§ 1. Unless otherwise agreed by the parties, the communication is delivered or sent to the addressee, either to his domicile, his residence or his email address, or, in the case of a legal entity, to its registered office, main place of business or email address.

If none of these can be found after making reasonable inquiries, a communication is deemed

to have been received if it is sent to the addressee's last-known domicile or residence, or, in the case of a legal entity, to its last-known registered office, its last-known main place of business or its last-known email address.

§ 2. Unless otherwise agreed by the parties, periods starting to run with regard to the addressee from the communication date are calculated as follows:

a) where the communication is made by hand in return for a dated acknowledgement of receipt, from the following day;

b) where the communication is made by email or other method of communication that provides proof of sending, from the first day after the date indicated on the acknowledgement of receipt;

c) where the communication is made by registered post with acknowledgement of receipt, from the first day following the date on which the letter was delivered in person to the addressee at his domicile or residence, or to its registered office or main place of business or, where applicable, to the last-known domicile or residence or to the last-known registered office or main place of business;

d) where the communication is made by registered letter, from the third working day after the date on which the letter was delivered to the postal service, unless the addressee provides proof to the contrary.

§ 3. The communication is deemed to have been made to the addressee on the date of the acknowledgement of receipt.

§ 4. This article does not apply to communications in court proceedings.

#### Art. 1679

A party that, knowingly and for no legitimate reason refrains from raising, in due time, an irregularity before the arbitral tribunal is deemed to have waived its right to assert such irregularity.

#### Art. 1680

§ 1. The President of the Court of First Instance, ruling as in summary proceedings, on a unilateral request by the most diligent party, shall appoint the arbitrator in accordance with article 1685, § 3 and § 4.

The President of the Court of First Instance, ruling as in summary proceedings, following the issue of a writ of summons, shall replace the arbitrator in accordance with article 1689, § 2.

The decision to appoint or replace the arbitrator shall not be subject to any recourse.

However, this decision may be appealed where the President of the Court of First Instance rules that there are no grounds for an appointment.

§ 2. The President of the Court of First Instance, ruling as in summary proceedings, following the issue of a writ of summons, shall rule on the withdrawal of an arbitrator in accordance with article 1685, §7, challenge of an arbitrator in accordance with article 1687, § 2, and on the failure or impossibility to act of an arbitrator in the case provided for in article 1688, § 2. This decision shall not be subject to any recourse.

§ 3. The President of the Court of First Instance, ruling as in summary proceedings, may set a time limit for an arbitrator to render his award as set out in article 1713, § 2. This decision shall not be subject to any recourse.

§ 4. The President of the Court of First Instance, ruling as in summary proceedings, shall take all necessary measures for the taking of evidence in accordance with article 1709. This decision shall not be subject to any recourse.

§ 5. The Court of First Instance shall have jurisdiction except in the cases mentioned in § 1 through § 4. Its decisions, following the issue of a writ of summons, are final and not subject to a recourse.

§ 6. Subject to article 1720, the claims referred to in this article fall under the jurisdiction of the Court whose seat is that of the Court of Appeal in whose jurisdiction the place of



arbitration is fixed.

Where this place is not fixed, the Court having jurisdiction shall be the Court whose seat is that of the Court of Appeal in whose jurisdiction is situated the Court that would have had jurisdiction over the matter, had the matter not been submitted to arbitration.

## **Chapter II. Arbitration agreement**

### Art. 1681

An arbitration agreement is an agreement by the parties to submit to arbitration all or certain disputes which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not.

### Art. 1682

1. The Court before which is brought a dispute that is also the object of an arbitration agreement shall declare itself without jurisdiction at the request of a party, unless the arbitration agreement is invalid with regard to this dispute or has ceased to exist. The plea must be raised before any other plea or defence, failing which it shall be inadmissible.

§ 2. Where an action referred to in § 1 has been brought, arbitral proceedings may nevertheless be commenced or continued, and an award may be made ".

### Art. 1683

It is not incompatible with an arbitration agreement for a request to be made to a court for an interim or conservatory measure before or during arbitral proceedings and for a court to grant such measure, nor shall any such request imply a waiver of the arbitration agreement.

## **Chapter III. Composition of arbitral tribunal**

### Art. 1684

§1. The Arbitral Tribunal must be composed of an odd number of arbitrators. A sole arbitrator is allowed.

§ 2. Should the arbitration agreement provide for an even number of arbitrators, an additional arbitrator shall be appointed.

§ 3. Where the parties have not agreed on the number of arbitrators, the arbitral tribunal shall be composed of three arbitrators.

### Art. 1685

§ 1. No person shall be precluded by reason of his nationality from acting as an arbitrator, unless otherwise agreed by the parties.

§ 2. The parties are free to agree on a procedure for appointing the arbitrator or arbitrators, subject to the provisions of § 3 and § 4 of this article and the general requirement of independence and impartiality of the arbitrator or of the arbitrators.

§ 3. Failing such determination;

a) in an arbitration with 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 thirty days of receipt of a request to do so from the other party, or if the two arbitrators fail to agree on the third arbitrator within thirty days of the appointment of the second arbitrator, the appointment shall be made by the President of the Court of First Instance, ruling on the request of the most diligent party, in accordance with article 1680, § 1;

b) in an arbitration with a sole arbitrator, if the parties are unable to agree on the selection of the arbitrator, he shall be appointed by the President of the Court of First Instance, ruling on the request of the most diligent party, in accordance with article 1680, § 1;

c) in an arbitration with more than three arbitrators, if the parties are unable to agree on the composition of the arbitral tribunal, it shall be appointed by the President of the Court of First Instance, ruling on the request of the most diligent party, in accordance with article

1680, § 1;

§ 4. Where, under an appointment procedure agreed upon by the parties,

a) a party fails to act as required under such procedure, or

b) the parties, or two arbitrators, are unable to reach an agreement under such procedure, or a third party, including an institution, fails to perform any function entrusted to it under such procedure, any party may request the President of the Court of First Instance ruling in accordance with article 1680, § 1 to take the necessary measure, unless the agreement on the appointment procedure provides other means for securing the appointment.

§ 5. The President of the Court of First Instance, when appointing an arbitrator, shall have due regard to any qualifications required of the arbitrator by the agreement of the parties and to such considerations as are likely to secure the appointment of an independent and impartial arbitrator.

§ 6. The appointment of an arbitrator, once notified, may not be withdrawn.

§ 7. Once he has accepted his mission, an arbitrator may not withdraw without the consent of the parties or without being so authorised by the President of the Court of First Instance ruling in accordance with article 1680, § 2.

#### Art. 1686

§1. When a person is approached in connection with his possible appointment as an arbitrator, he shall disclose any circumstances likely to give rise to justifiable doubts as to his independence or impartiality. An arbitrator, from the time of his appointment and throughout the arbitral proceedings, shall disclose without delay any such circumstances to the parties

§ 2. An arbitrator may be challenged only if circumstances exist that give rise to justifiable doubts as to his independence or impartiality, or if he does not have the qualifications agreed to by the parties. A party may challenge an arbitrator appointed by the said party, or in whose appointment it participated, only for reasons of which it becomes aware after the appointment has been made.

#### Art. 1687

§1. The parties are free to agree on a procedure for challenging an arbitrator.

§ 2. Failing such agreement,

a) a party who intends to challenge an arbitrator shall send a written statement of the reasons for the challenge to the relevant arbitrator and, where applicable, to the other arbitrators if the tribunal has more than one arbitrator, and to the opposing party. This statement must be sent within fifteen days after the challenging party has become aware of the constitution of the arbitral tribunal or after becoming aware of any circumstance referred to in article 1686, § 2, failing which the statement shall be inadmissible.

b) Unless the challenged arbitrator withdraws from his office or the other party agrees to the challenge within ten days of the challenging statement being sent, the challenging party shall summon the arbitrator and the other parties within ten days, failing which the challenge shall be inadmissible, to appear before the President of the Court of First Instance ruling in accordance with article 1680, § 2. Pending a ruling by the President of the Court of First Instance, the arbitral tribunal, including the challenged arbitrator, may continue the arbitral proceedings and make an award.

#### Art. 1688

§1. Unless otherwise agreed by the parties, if an arbitrator becomes de jure or de facto unable to perform his functions or for other reasons fails to act without undue delay, his mandate terminates if he withdraws from his office in the conditions foreseen in article 1685, § 7, or if the parties agree on the termination of the mandate.

§ 2. Otherwise, if a controversy remains concerning any of these grounds, the most diligent party shall summon the other parties and the arbitrator referred to in § 1 to appear before the

President of the Court of First Instance who shall rule in accordance with article 1680, § 2.  
§ 3. If, under this article or under article 1687, an arbitrator withdraws from his office or a party agrees to the termination of the mandate of an arbitrator, this does not imply acceptance of the validity of any ground referred to in article 1687 or in this article.

#### Art. 1689

§1. In all cases where the arbitrator's mandate is terminated before the final award is made, a substitute arbitrator shall be appointed. This appointment shall be made in accordance with the rules that were applicable to the appointment of the arbitrator being replaced unless otherwise agreed by the parties.

§ 2. If the arbitrator is not replaced in accordance with § 1, either party may refer the matter to the President of the Court of First Instance who will rule in accordance with article 1680, §1.

§ 3. Once the substitute arbitrator has been appointed, the arbitrators, after hearing the parties, shall decide if there are grounds to repeat the arbitral proceedings entirely or in part; they may not revise any partial final awards already made.

### **Chapter IV. Jurisdiction of arbitral tribunal**

#### Art. 1690

§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 agreement which 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 null and void shall not entail ipso jure the invalidity of the arbitration agreement.

§ 2. A plea that the arbitral tribunal does not have jurisdiction shall be raised not later than the communication of the first written pleadings by the asserting party, within a period and in a manner in accordance with article 1704.

A party is not precluded from raising such a plea by the fact that he has appointed or participated in the appointment of an arbitrator.

A plea that the arbitral tribunal is exceeding the scope of its authority shall be raised as soon as the matter alleged to be beyond the scope of its authority is raised during the arbitral proceedings.

In either case, the arbitral tribunal may admit a later plea if it considers the delay justified.

§ 3. The arbitral tribunal may rule on the pleas mentioned in § 2 either as a preliminary question or in its award on the merits.

§ 4. The arbitral tribunal's decision that it has jurisdiction may only be contested together with the award on the merits and in the course of the same procedure.

At the request of one of the parties, the Court of First Instance may also rule on the merits of the arbitral tribunal's decision that it lacks jurisdiction.

#### Art. 1691

Without prejudice to the powers accorded to the courts and tribunals by virtue of article 1683, and unless otherwise agreed by the parties, the arbitral tribunal may order any interim or conservatory measures it deems necessary.

However, the arbitral tribunal may not authorise attachment orders.

#### Art. 1692

At the request of one of the parties, the arbitral tribunal may amend, suspend or terminate an interim or conservatory measure.

#### Art. 1693

The arbitral tribunal may require the party requesting an interim or conservatory order to provide appropriate security.

Art. 1694

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

Art. 1695

The party requesting an interim or conservatory measure shall be liable for any costs and damages caused by the measure to another party if the arbitral tribunal later determines that, in the circumstances, the measure should not have been granted. The arbitral tribunal may award such costs and damages at any point during the proceedings.

Art. 1696

§1. An interim or protective measure issued by an arbitral tribunal shall be recognised as binding and, unless otherwise provided by the arbitral tribunal, enforced by the Court of First Instance, irrespective of the country in which it was issued, subject to the provisions of article 1697.

§ 2. The party who is seeking or has obtained recognition or enforcement of an interim or conservatory measure shall promptly inform the sole arbitrator or the chairman of the arbitral tribunal of any termination, suspension or modification of that measure.

§ 3. The Court of First Instance 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 where such a decision is necessary to protect the rights of the respondent and of third parties.

Art. 1697

§1. Recognition or enforcement of an interim or conservatory measure may be refused only:

a) At the request of the party against whom it is invoked:

i) If such refusal is warranted on the grounds set forth in article 1721, §1(a), i., ii., iii., iv. or v.; or

ii) if the arbitral tribunal's decision with respect to the provision of security has not been complied with; or

iii) if the interim or conservatory measure has been terminated or suspended by the arbitral tribunal or, where so empowered, by the court of the State in which the arbitration takes place or under the law of which that interim measure was granted;

or

b) if the Court of First Instance finds that any of the grounds set forth in article 1721, §1(b) apply to the recognition and enforcement of the interim or conservatory measure.

§ 2. Any determination made by the Court of First Instance on any ground in § 1 shall be effective only for the purposes of the application to recognise and enforce the interim or conservatory measure. The Court of First Instance where recognition or enforcement is sought shall not, in making that determination, undertake a review of the substance of the interim or conservatory measure.

Art. 1698

The Court ruling in summary proceedings shall have the same power of issuing an interim or conservatory measure in relation to arbitration proceedings, irrespective of whether they take place on Belgian territory, as it has in relation to court proceedings. The Court shall exercise such power in accordance with its own procedures taking into account the specific features of arbitration.

**Chapter V. Conduct of arbitral proceedings**

Art. 1699

Notwithstanding any agreement to the contrary, the parties shall be treated with equality and each party shall be given a full opportunity of presenting his case, pleas in law and

arguments in conformity with the principle of adversarial proceedings. The arbitral tribunal shall ensure that this requirement as well as the principle of fairness of the debates are respected.

#### Art. 1700

§1. The parties are free to agree on the procedure to be followed by the arbitral tribunal in conducting the proceedings.

§ 2. Failing such agreement, the arbitral tribunal may, subject to the provisions of Part 6 of this Code, determine the rules of procedure applicable to the arbitration in such manner as it considers appropriate.

§ 3. Unless otherwise agreed by the parties, the arbitral tribunal shall freely assess the admissibility and weight of the evidence.

§ 4. The arbitral tribunal shall set the necessary investigative measures unless the parties authorise it to entrust this task to one of its members.

It may hear any person and such hearing shall be taken without oath.

If a party holds a piece of evidence, the arbitral tribunal may enjoin it to disclose the evidence according to such terms as the arbitral tribunal shall decide and, if necessary, on pain of a penalty payment.

§ 5. With the exception of applications relating to authentic instruments, the arbitral tribunal shall have the power to rule on applications to verify the authenticity of documents and to rule on allegedly forged documents. For applications relating to authentic instruments, the arbitral tribunal shall leave it to the parties to refer the matter to the Court of First Instance within a given time limit.

In the circumstances referred to in § 2, the time limits of the arbitral proceedings are automatically suspended until such time as the arbitral tribunal has been informed by the most diligent party of the final court decision on the incident.

#### Art. 1701

§1. The parties are free to 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.

If the place of arbitration has not been determined by the parties or the arbitrators, the place where the award is rendered is deemed to be the place of arbitration.

§ 2. Notwithstanding the provisions of § 1 and unless otherwise agreed by the parties, the arbitral tribunal, after consulting the parties, may hold its hearings and meetings at any place it deems appropriate.

#### Art. 1702

Unless otherwise agreed by the parties, the arbitral proceedings start on the on the date on which an arbitration application is received by the respondent, in accordance with article 1678, § 1(a).

#### Art. 1703

§1. The parties are free to agree on the language or languages to be used in the arbitral proceedings. Failing such agreement, the arbitral tribunal shall determine the language or languages to be used in the proceedings. This agreement or determination, unless otherwise specified therein, shall apply to any communication between the parties, any hearing and any award, decision or other communication by the arbitral tribunal.

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

Art. 1704

§1. Within the period of time and as agreed by the parties or determined by the arbitral tribunal, the parties shall develop all the pleas and arguments supporting their claim or defence as well as all facts in support thereof.

The parties may agree on, or the arbitral tribunal may order, the exchange of additional written pleadings between the parties as well as the terms for such exchange.

The parties shall submit with their written pleadings all documents that they wish to produce in evidence.

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

Art. 1705

§1. Unless the parties have agreed that no hearings shall be held, the arbitral tribunal shall hold such hearings at an appropriate stage of the proceedings, if so requested by a party.

§ 2. The chairman of the arbitral tribunal shall set the schedule of the hearings and shall preside over them.

Art. 1706

Unless otherwise agreed by the parties, if, without showing sufficient cause,

a) the claimant fails to communicate his statement of claim in accordance with article 1704, § 1, the arbitral tribunal shall terminate the proceedings, without prejudice to the handling of the claims of another party.

b) the respondent fails to communicate his statement of defence in accordance with article 1704, § 1, the arbitral tribunal shall continue the proceedings without treating such failure in itself as an admission of the claimant's allegations;

c) any party fails to appear at an oral hearing or to produce documentary evidence, the arbitral tribunal may continue the proceedings and make the award on the evidence before it.

Art. 1707

§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 to produce, or to provide access to, any relevant documents, goods or other property for his inspection.

§ 2. If a party so requests or if the arbitral tribunal considers it necessary, the expert shall participate in a hearing where the parties have the opportunity to put questions to him.

§ 3. § 2 applies to the technical experts appointed by the parties.

§ 4. An expert may be challenged on grounds outlined in article 1686 and according to the procedure set out in article 1687.

Art. 1708

With the approval of the arbitral tribunal, a party may apply to the President of the Court of First Instance ruling as in summary proceedings to order all necessary measures for the taking of evidence in accordance with article 1680, § 4.

Art. 1709

§ 1. Any interested third party may apply to the arbitral tribunal to join the proceedings. The request must be put to the arbitral tribunal in writing, and the tribunal shall communicate it to the parties.

§ 2. A party may call upon a third party to join the proceedings.

§ 3. In any event, the admissibility of such joinder requires an arbitration agreement between the third party and the parties involved in the arbitration. Moreover, such joinder is subject to the unanimous consent of the arbitral tribunal.

## **Chapter VI. Arbitral award and termination of proceedings**

### Art. 1710

§1. The arbitral tribunal shall decide the dispute in accordance with such rules of law as are chosen by the parties as applicable to the substance of the dispute.

Any designation of the law of a given State shall be construed, unless otherwise expressed, as directly referring to the substantive law of that State and not to its conflict of laws rules.

§ 2. Failing any designation by the parties, the arbitral tribunal shall apply the law determined by the conflict of laws rules which 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. Irrespective of whether it decides on the basis of rules of law or ex aequo et bono or as amiable compositeur, the arbitral tribunal shall decide in accordance with the terms of the contract if the dispute opposing the parties is contractual in nature and shall take into account the usages of the trade if the dispute is between commercial parties.

### Art. 1711

§1. In arbitral proceedings with more than one arbitrator, any decision of the arbitral tribunal shall be made, unless otherwise agreed by the parties, by a majority of all of its members.

§ 2. Questions of procedure may be decided by the chairman of the arbitral tribunal if so authorised by the parties.

§ 3. The parties are also free to decide that the chairman's vote shall be decisive where no majority can be formed.

§ 4. Where an arbitrator refuses to participate in deliberations or in the voting on the arbitral award, the other arbitrators are free to decide without him, unless otherwise agreed by the parties. The parties shall be given advance notice of the intention to make an award without the arbitrator refusing to participate in the deliberations or in the vote.

### Art. 1712

§1. If, during arbitral proceedings, the parties settle the dispute, the arbitral tribunal shall terminate the proceedings and, if requested by the parties, shall record the settlement in an award on agreed terms, unless this violates public policy.

§ 2. An award on agreed terms shall be made in accordance with the provisions of article 1713 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.

§ 3. The decision granting enforceability to the award becomes ineffective when the award on agreed terms is set aside.

### Art. 1713

§1. The arbitral tribunal shall make a final decision or render interlocutory decisions by way of one or several awards.

§ 2. The parties may determine the time limit within which the Arbitral Tribunal must render its award, or the terms for setting such a time limit.

Failing this, if the arbitral tribunal is late in rendering its award, and a period of six months has elapsed between the date on which the last arbitrator has been appointed, the President of the Court of First Instance, at the request of one of the parties, may impose a time limit on the arbitral tribunal in accordance with article 1680, § 3.

The mission of the arbitrators ends if the arbitral tribunal has not rendered its award at the expiry of this time limit.

§ 3. The award shall be made in writing and shall be signed by the arbitrator. In arbitral

proceedings with more than one arbitrator, the signatures of the majority of all members of the arbitral tribunal shall suffice, provided that the reason for any omitted signature is stated.

§ 4. The award shall state the reasons upon which it is based.

§ 5. In addition to the decision itself, the award shall contain, inter alia:

- a) the names and domiciles of the arbitrators;
- a) the names and domiciles of the parties;
- c) the object of the dispute;
- d) the date on which the award is rendered;
- e) the place of arbitration determined in accordance with article 1701, § 1, and the place where the award is rendered.

§ 6. The final award shall fix the costs of the arbitration and decide which of the parties shall bear them or in what proportion they shall be borne by the parties. Unless otherwise agreed by the parties, these costs shall include the fees and expenses of the arbitrators, the fees and expenses of the parties' counsel and representatives, the costs of services rendered by the instances in charge of the administration of the arbitration and all other expenses arising from the arbitral proceedings.

§ 7. The arbitral tribunal may order a party to pay a penalty. Articles 1385 bis through octies shall apply mutatis mutandis.

§ 8. Once the arbitral award has been rendered, a copy shall be sent, in accordance with article 1678, § 1, to each party by the sole arbitrator or by the chairman of the arbitral tribunal, who shall moreover ensure that each party receives an original copy if the method of communication retained in accordance with article 1678, § 1 did not entail the delivery of such an original. He shall file the original copy with the court clerk of the Court of First Instance, and shall notify the parties of this filing.

§ 9. The award shall have the same effect as a court decision in the relationship between the parties.

#### Art. 1714

§1. The arbitral proceedings are terminated by the signing of the arbitral award which exhausts the jurisdiction of the arbitral tribunal or by a decision of the arbitral tribunal to terminate the proceedings in accordance with § 2.

§ 2. The arbitral tribunal shall issue an order for the termination of the arbitral proceedings when:

- a) the claimant withdraws his claim, unless the respondent objects thereto and the arbitral tribunal recognises a legitimate interest on his part in obtaining a final settlement of the dispute;
- b) the parties agree on the termination of the proceedings.

§ 3. The mandate of the arbitral tribunal terminates with the termination of the arbitral proceedings, the communication of the award and its filing, subject to the provisions of articles 1715 and 1717, § 6.

#### Art. 1715

§1. Within one month of receipt of the award, in accordance with article 1678, § 1, unless another period of time has been agreed upon by the parties.

- a) a party, with notice to the other party, may request the arbitral tribunal to correct in the award any errors in calculation, any clerical or typographical errors or any errors of similar nature;
- b) 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.

If the arbitral tribunal considers the request to be justified, it shall make the correction or give the interpretation within one month of receipt of the request. The interpretation shall form part of the award.

§ 2. The arbitral tribunal may correct any error of the type referred to in §1(a) on its own



initiative within one month of the date of the award.

§ 3. Unless otherwise agreed by the parties, a party, with notice to the other party, may request, within one month of receipt of the award in accordance with article 1678, § 1, 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 two months, even if the time limits set out in article 1713, § 2 have expired.

§ 4. The arbitral tribunal may, if necessary, extend the period of time within which it may make a correction, interpretation or an additional award under § 1 or § 3.

§ 5. Article 1713 shall apply to a correction or interpretation of the award or to an additional award.

§ 6. When the same arbitrators can no longer be reunited, the request for interpretation, correction or an additional award shall be submitted to the Court of First Instance.

§ 7. If the Court of First Instance remits an arbitral award by virtue of article 1717, § 6, article 1713 and this article shall apply mutatis mutandis to the award rendered in accordance with the decision to remit.

## **Chapter VII. Recourse against arbitral award**

### **Art. 1716**

An appeal can only be made against an arbitral award if the parties have provided for that possibility in the arbitration agreement. Unless otherwise stipulated, the time limit for an appeal is one month as of the notification of the award, in accordance with article 1678, § 1.

### **Art. 1717**

§ 1. The application to set aside the award is admissible only if the award can no longer be contested before the arbitrators.

§ 2. The arbitral award may only be contested before the Court of First Instance, by means of a writ of summons, and it may be set aside solely for a cause mentioned in this article.

§ 3. The arbitral award may only be set aside if:

a) the party making the application furnishes proof that:

i) a party to the arbitration agreement referred to in article 1681 was under some incapacity; or the said agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law of Belgium; or

ii) 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 his case; in this case, the award may not be set aside if it is established that the irregularity has had no effect on the arbitral award; or

iii) the award deals with a dispute not provided for in, or not falling within, the terms of the arbitration agreement, or contains decisions on matters beyond the scope of the arbitration agreement, provided that, if the provisions of the award 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

iv) if the award is not reasoned; or

v) the composition of the arbitral tribunal or the arbitral proceedings were not in accordance with the agreement of the parties, unless such agreement was in conflict with a provision of Part 6 of this Code from which the parties cannot derogate, or, failing such agreement, was not in accordance with Part 6 of this Code; with the exception of an irregularity affecting the composition of the arbitral tribunal, such irregularities may however not give rise to a setting aside of the arbitral award if it is established that they have had no effect on the award; or

vi) the arbitral tribunal has exceeded its powers; or

b) the Court of First Instance finds:

i) that the subject-matter of the dispute is not capable of settlement by arbitration; or

ii) that the award is in conflict with public policy; or  
iii) that the award was obtained by fraud;

§ 4. Except in the case mentioned in article 1690, § 4(1), an application for setting aside may not be made after three months have elapsed from the date on which the party making that application had received the award in accordance with article 1678, § 1(a) or, if an application had been made under article 1715, from the date on which the party making the application for setting aside received the arbitral tribunal's decision on the application made under article 1715, in accordance with article 1678, § 1(a).

§ 5. The causes mentioned in § 2(a), (i), (ii), (iii) and (v) shall not give rise to the setting aside of the arbitral award, whenever the party that invokes them has learned of the said cause in the course of the proceedings but failed to invoke it at that time.

§ 6. The Court of First Instance, when asked to set aside an arbitral award, may, where appropriate and if so requested by a party, suspend the setting aside proceedings 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 latter's opinion will eliminate the grounds for setting aside.

#### Art. 1718

By an explicit declaration in the arbitration agreement or by a later agreement, the parties may exclude any application for the setting aside of an arbitral award, where none of them is a natural person of Belgian nationality or a natural person having his domicile or normal residence in Belgium or a legal person having its registered office, its main place of business or a branch office in Belgium.

### **Chapter VIII. Recognition and enforcement of arbitral awards**

#### Art. 1719

§ 1. The arbitral award rendered in Belgium or abroad may only be enforced after the Court of First Instance has granted enforcement in full or in part in accordance with the procedure set out in article 1720.

§ 2. The Court of First Instance can render the award enforceable only if it can no longer be contested before the arbitrator(s) or if the arbitrators have declared it to be provisionally enforceable notwithstanding an appeal.

#### Art. 1720

§ 1. The Court of First Instance has jurisdiction over an application relating to the recognition and enforcement of an arbitral award rendered in Belgium or abroad.

§ 2. The court with territorial jurisdiction is the Court of First Instance of the seat of the Court of Appeal in the jurisdiction of which the person against whom the enforcement is requested has his domicile or, in the absence of a domicile, his usual place of residence or, where applicable, its registered office or, failing this, its place of business or branch office. If that person is neither domiciled in, or a resident of, Belgium, nor has its registered office, place of business or branch office in Belgium, the application is made to the Court of First Instance of the seat of the Court of Appeal in the jurisdiction of which the award is to be enforced.

§ 3. The application shall be introduced and dealt with on a unilateral request. The applicant shall elect domicile in the jurisdiction of the Court.

§ 4. The applicant shall enclose with his request the original copy or a certified copy of the arbitral award and of the arbitration agreement.

§ 5. The award may only be recognised or enforced if it does not violate the conditions of article 1721.

#### Art. 1721

§ 1. The Court of First Instance may only refuse to recognise or enforce an arbitral award,

irrespective of the country in which it was made, in the following circumstances:

- a) at the request of the party against whom it is invoked, if that party furnishes proof that:
  - i) a party to the arbitration agreement referred to in article 1681 was under some incapacity; or the said agreement is not valid under the law to which the parties have subjected it or, failing any such indication, under the law of the country where the award was rendered; or
  - ii) 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 his case; in this case, recognition or enforcement of the arbitral award may not be refused if it is established that the irregularity has had no effect on the arbitral award; or
  - iii) the award deals with a dispute not contemplated by, or not falling within, the terms of the arbitration agreement, or it contains decisions on matters beyond the scope of the arbitration agreement, provided that, if the provisions of the award on matters submitted to arbitration can be separated from those not so submitted, only that part of the award which contains decisions on matters submitted to arbitration may be recognised or enforced ; or
  - iv) the award is not reasoned whereas such reasons are prescribed by the rules of law applicable to the arbitral proceedings under which the award was rendered; or
  - v) the composition of the arbitral tribunal or the arbitral proceedings 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; with the exception of an irregularity affecting the composition of the arbitral tribunal, such irregularities may however not give rise to a refusal to recognise or enforce the arbitral award if it is established that they have had no effect on the award; or
  - vi) 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
  - vii) the arbitral tribunal has exceeded its powers; or
- b) if the Court of First Instance finds that:
  - i) the subject-matter of the dispute is not capable of settlement by arbitration; or
  - ii) the recognition or enforcement of the award would be contrary to public policy.

§ 2. The Court of First Instance shall ipso jure stay the application for as long as a written award signed by the arbitrators in accordance with article 1713, § 3 is not provided in support of the application.

§ 3. Where there is a reason to apply an existing treaty between Belgium and the country in which the award was rendered, the treaty shall prevail.

## **Chapter IX. Time bar**

### Art. 1722

The condemnation pronounced by an arbitral award shall be time barred ten years after the date on which the arbitral award has been communicated.