

Arbitration (International Commercial) Act, 1998

Number 14 of 1998 -

ARBITRATION (INTERNATIONAL COMMERCIAL) ACT, 1998

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Acts Referred to

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Arbitration Act, 1980	1980, No. 7
Arbitration Acts, 1954 and 1980	
Patents Act, 1992	1992, No. 1
Property Values (Arbitration and Appeals) Act, 1960	1960, No. 45
Trade Marks Act, 1996	1996, No. 6

Number 14 of 1998

ARBITRATION (INTERNATIONAL COMMERCIAL) ACT, 1998

AN ACT TO ENABLE EFFECT TO BE GIVEN IN THE STATE TO THE UNCITRAL MODEL LAW ON INTERNATIONAL COMMERCIAL ARBITRATION (AS ADOPTED BY THE UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW ON 21 JUNE 1985) AND TO AMEND THE ARBITRATION ACTS, 1954 AND 1980 , AND TO MAKE FURTHER AND BETTER PROVISION IN RESPECT OF ARBITRATIONS. [20th May, 1998]

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

PART I

Preliminary and General

Short title and collective citation.

1. (1) This Act may be cited as the Arbitration (International Commercial) Act, 1998.

(2) The Arbitration Acts, 1954 and 1980 and this Act may be cited together as the Arbitration Acts, 1954 to 1998.

References.

2. In this Act

- (a) a reference to any other enactment is to that enactment as amended by or under any other enactment including this Act, unless the context otherwise requires,
- (b) a reference to a section, Part or Schedule is to a section or Part of, or Schedule to, this Act unless it is indicated that reference to some other enactment is intended,
- (c) a reference to a subsection is to a subsection of the provision in which the reference occurs, unless it is indicated that reference to some other provision is intended, and
- (d) a reference to an Article is to an Article of the Model Law.

PART II

International Commercial Arbitration

Interpretation of this Part.

3. (1) In this Part, unless the context otherwise requires

- arbitration agreement means an arbitration agreement concerning international commercial arbitration;
- award includes an interim award;
- international commercial arbitration means arbitration to which the Model Law applies;
- the Model Law means the UNCITRAL Model Law on International Commercial Arbitration (as adopted by the United Nations Commission on International Trade Law on 21 June 1985), the text in the English language of which is set out in the Schedule .

(2) Terms and expressions that are used in this Part and defined in the Model Law have the same meaning in this Part as in that Law unless the context otherwise requires.

Adoption of Model Law.

4. Subject to this Part, the Model Law shall apply in the State.

Construction of Model Law.

5. (1) The reference to an agreement in Article 1(1) shall be construed as referring only to an agreement which has the force of law in the State.

(2) The documents of the United Nations Commission on International Trade Law and its working group relating to the preparation of the Model Law may be considered in ascertaining the meaning or effect of any provision of the Model Law.

Functions of High Court.

6. (1) The High Court is specified for the purposes of Article 6 and is the court for the purposes of Article 9 and the court of competent jurisdiction for the purposes of Articles 27, 35 and 36.

(2) The functions of the High Court under an Article referred to in subsection (1) and its functions under sections 7, 11 (7) and (9) and 14 (1) shall be performed by

- (a) the President of the High Court, or

(b) such Judge of the High Court as may be nominated by the President, subject to any rules of court made in that behalf.

(3) An application may be made in a summary manner to the President of the High Court or to a judge referred to in *subsection (2)(b)* to exercise any of the functions referred to in *subsection (2)*.

Court powers exercisable in support of international commercial arbitration proceedings.

7. (1) For the purposes of giving effect to Article 9 or 27, the High Court may, on application under *section 6 (3)*, make, in relation to an international commercial arbitration, any order in respect of

(a) the preservation, interim custody or sale of any goods which are the subject matter of the arbitral proceedings,

(b) securing the amount at issue in the arbitral proceedings,

(c) security for costs,

(d) interim injunctions,

(e) the appointment of a receiver,

(f) the detention, preservation or inspection of any property or thing which is the subject matter of the arbitral proceedings and authorising

(i) for any of those purposes any person to enter any land or building in the possession of a party, or

(ii) any sample to be taken, any observation to be made or any experiment to be tried which may be necessary or expedient for obtaining full information or evidence,

(g) securing the attendance of witnesses before the arbitral tribunal in order that evidence be given or documents be produced,

(h) the examination on oath or affirmation of any witness before an officer of the Court or other person,

(i) the issue of a commission or request for the examination of a witness outside the State, or

(j) the discovery and inspection of documents and interrogatories,

that it has power to make for the purpose of and in relation to an action or other matter before the High Court.

(2) A party shall not be ordered under this section to provide security for costs solely on the ground that the party is

(a) an individual who is ordinarily resident outside the State, or

(b) a corporation or association incorporated or formed under a law other than the law of the State or whose central management and control is exercised outside the State.

(3) Nothing in this section shall be taken to prejudice

(a) the generality of Articles 9 and 27, or

(b) any power of an arbitral tribunal to make orders in respect of any of the matters mentioned in *subsection (1)*.

Powers of arbitral tribunal in relation to examination of witnesses, etc.

8. Unless otherwise agreed by the parties, the arbitral tribunal may

(a) direct that a party to an arbitration agreement or a witness who gives evidence in proceedings before the arbitral tribunal be examined on oath or affirmation, and

(b) administer any oaths or take any affirmations necessary for the purposes of the examination.

Consolidation of arbitral proceedings and concurrent hearings.

9. (1) The parties to an arbitration agreement may agree

(a) that the arbitral proceedings shall be consolidated with other arbitral proceedings, or

(b) that concurrent hearings shall be held,

on such terms as may be agreed.

(2) The arbitral tribunal has no power to order consolidation of proceedings or concurrent hearings unless the parties agree to confer such power on that tribunal.

Interest.

10. (1) The parties to an arbitration agreement may agree on the arbitral tribunal's powers regarding the award of interest.

(2) Unless otherwise agreed by the parties, the arbitral tribunal may award simple or compound interest from the dates, at the rates and with the rests that it considers meet the justice of the case

(a) on all or part of any amount awarded by the arbitral tribunal, in respect of any period up to the date of the award;

(b) on all or part of any amount claimed in the arbitration and outstanding at the commencement of the arbitration but paid before the award was made, in respect of any period up to the date of payment.

(3) Unless otherwise agreed by the parties, the arbitral tribunal may award simple or compound interest from the date of the award (or any later date) until payment, at the rates and with the rests that it considers meet the justice of the case, on the outstanding amount of any award (including any award of interest under *subsection (2)* and any award of costs).

(4) References in this section to an amount awarded by the arbitral tribunal include an amount payable in consequence of a declaratory award by the arbitral tribunal.

(5) This section shall not affect any other power of the arbitral tribunal to award interest.

Recoverable costs of arbitration and recoverable fees and expenses of arbitral tribunal.

11. (1) The parties to an arbitration agreement are free to agree on how the costs of the international commercial arbitration are to be allocated and on the costs that are recoverable.

(2) An agreement of the parties to arbitrate subject to the rules of an arbitral institution shall be deemed to be an agreement to abide by the rules of that institution as to how costs are to be allocated and as to the costs that are recoverable.

(3) References in *subsections (1) and (2)* to *costs* include the costs as between the parties and the fees and expenses of the arbitral tribunal.

(4) Where there is no agreement of the parties as to the recoverable costs of the international commercial arbitration as between the parties, the arbitral tribunal may, with the consent of the parties to the arbitral proceedings, determine by award those costs on the basis it thinks fit.

(5) Where there is no agreement of the parties as to the recoverable fees and expenses of the arbitral tribunal, the tribunal may determine by award those fees and expenses on the basis it thinks fit.

(6) Where the tribunal makes a determination under *subsection (4) or (5)*, it shall specify

(a) the basis on which it acted,

(b) the items of recoverable costs, fees or expenses, as appropriate, and the amount referable to each, and

(c) by and to whom they shall be paid.

(7) Where a party does not consent to the arbitral tribunal making a determination under *subsection (4)* or where for any other reason the arbitral tribunal does not make that determination

(a) any party to the arbitral proceedings may apply to the High Court within 30 days after receipt of the award, or such further time as the Court may direct, for a determination of the recoverable costs as between the parties, and

(b) the Court may determine those costs on the basis it thinks fit or may order that they be determined by the means and on the terms it specifies.

(8) Notice of an application to the High Court under *subsection (7)* or *subsection (9)* shall be given to the arbitral tribunal and to the other parties to the arbitral proceedings.

(9) Where the arbitral tribunal makes a determination under *subsection (5)*

(a) any party to the arbitral proceedings may apply to the High Court within 30 days after receipt of the determination, and

(b) the Court may order that the amount of the arbitral tribunal's fees and expenses be reviewed and adjusted by the means and on the terms the Court specifies.

(10) Subject to an order under *subsection (9)(b)*, nothing in this section affects any right of the arbitral tribunal to payment of its fees and expenses.

(11) References in this section to the fees and expenses of the arbitral tribunal include the fees and expenses of any expert appointed by the tribunal.

Restriction on liability of arbitrators, etc.

12. (1) An arbitrator shall not be liable for anything done or omitted in the discharge or purported discharge of his or her functions as arbitrator unless the act or omission is shown to have been in bad faith.

(2) *Subsection (1)* shall apply to an employee, agent or advisor of an arbitrator and to an expert appointed under Article 26, as it applies to the arbitrator.

(3) An arbitral or other institution or person designated or requested by the parties to appoint or nominate an arbitrator shall not be liable for anything done or omitted in the discharge or purported discharge of that function unless the act or omission is shown to have been in bad faith.

(4) An arbitral or other institution or person by whom an arbitrator is appointed or nominated shall not be liable for anything done or omitted by the arbitrator (or his or her employees or agents) in the discharge or purported discharge of his or her functions as arbitrator.

(5) *Subsections (3) and (4)* shall apply to an employee or agent of an arbitral or other institution or person as they apply to the institution or person himself or herself.

(6) A witness who gives evidence in proceedings before an arbitral tribunal shall have the same privileges and immunities as witnesses have in proceedings before the High Court.

(7) A person who

(a) is a barrister or solicitor or holds qualifications that have been obtained in another jurisdiction and are equivalent to those of a barrister or solicitor, and

(b) appears in proceedings before an arbitral tribunal,

shall have the same privileges and immunities as barristers and solicitors have in proceedings before the High Court.

(8) A person who is a patent agent as defined in section 94 (3) of the Patents Act, 1992 , or a registered agent as defined in section 91 (3) of the Trade Marks Act, 1996 , shall have the same privileges and immunities referred to in *subsection (7)* when appearing in proceedings before an arbitral tribunal on

(a) in the case of a patent agent, any matter concerning the protection of an invention, patent, design or technical information or any matter involving passing off, and

(b) in the case of a registered agent, any matter relating to the protection of a trade mark or any matter involving passing off.

Time limits for setting aside award. **13.** The time limit specified in Article 34(3) shall not apply to an application to the High Court to have an arbitral award set aside on the grounds that the award is in conflict with the public policy of the State.

Effect of award. **14.** (1) An award made by an arbitral tribunal under an arbitration agreement shall be enforceable in the State either by action or, by leave of the High Court, in the same manner as a judgment or order of that Court to the same effect and, where leave is given, judgment may be entered in terms of the award.

(2) An award referred to in *subsection (1)* shall be treated as binding for all purposes on the parties between whom it was made, and may accordingly be relied on by any of those parties by way of defence, set-off or otherwise in any legal proceedings in the State, and any reference in this section to the enforcement of an award shall be construed as including a reference to the reliance on such an award.

(3) Unless otherwise agreed by the parties, Articles 35 and 36 shall apply to orders made by an arbitral tribunal under Article 17 as if a reference in Articles 35 or 36 to an award were a reference to such an order and *subsections (1) and (2)* shall apply accordingly.

(4) Nothing in this section affects the recognition or enforcement of an award under

(a) Part V of the Arbitration Act, 1954 (enforcement of awards under the Geneva Convention), or

(b) Parts III and IV of the Arbitration Act, 1980 (enforcement of awards under the New York and Washington Conventions).

Transitional provisions. **15.** (1) This Part shall not apply to an international commercial arbitration commenced before the day on which this Act comes into operation unless

(a) the arbitration is concluded after that day, and

(b) the parties agree that this Part shall apply.

(2) This Part shall apply to an international commercial arbitration commenced on or after the day on which this Act comes into operation

(a) under an arbitration agreement entered into on or after that day, or

(b) if the parties so agree, under an arbitration agreement entered into before that day.

Non-application of Arbitration Acts. **16.** Subject to *section 14 (4)*, the Arbitration Acts, 1954 and 1980, shall not apply to an arbitration to which this Part applies.

PART III

Amendments to Arbitration Acts, 1954 and 1980

Amendment to Arbitration Act, 1954. **17.** The Arbitration Act, 1954, is hereby amended by substituting the following for section 34:

Interest on awards.

34. (1) The parties to an arbitration agreement may agree on the powers of the arbitrator or umpire as regards the award of interest.

(2) Unless otherwise agreed by the parties, the arbitrator or umpire may award simple or compound interest from the dates, at the rates and with the rests that he or she considers meet the justice of the case

(a) on all or part of any amount awarded by the arbitrator or umpire, in respect of any period up to the date of the award;

(b) on all or part of any amount claimed in the arbitration and outstanding at the commencement of the arbitration but paid before the award was made, in respect of any period up to the date of payment.

(3) Unless otherwise agreed by the parties, the arbitrator or umpire may award simple or compound interest from the date of the award (or any later date) until payment, at the rates and with the rests that he or she considers meet the justice of the case, on the outstanding amount of any award (including an award of interest under subsection (2) and an award of costs).

(4) References in this section to an amount awarded by an arbitrator or umpire include an amount payable in consequence of a declaratory award by the arbitrator or umpire.

(5) This section shall not apply to an arbitration commenced before the day on which the *Arbitration (International Commercial) Act, 1998*, comes into operation unless

(a) the arbitration is concluded after that day, and

(b) the parties agree that this section shall apply.

(6) This section shall apply to an arbitration commenced on or after the day on which the *Arbitration (International Commercial) Act, 1998* comes into operation

(a) under an arbitration agreement entered into on or after that day, or

(b) if the parties so agree, under an arbitration agreement entered into before that day.

(7) This section shall not apply to an arbitration conducted by a property arbitrator appointed under

section 2 of the Property Values (Arbitration and Appeals) Act, 1960 .□.

Amendment to Arbitration Act, 1980.

18.□ Section 5 of the Arbitration Act, 1980 , is hereby amended by the insertion of the following subsection after subsection (2):

□(3) Nothing in this section shall prevent any party to an arbitration agreement from invoking the alternative method, provided by the Rules of Court (as amended from time to time), of commencing and dealing with a civil proceeding in respect of a small claim.□.

SCHEDULE

Text of UNCITRAL MODEL LAW ON INTERNATIONAL COMMERCIAL ARBITRATION as adopted by the United Nations Commission on International Trade Law on 21 June 1985

(UNCITRAL) Model Law

Section 3 .

CHAPTER I.

General Provisions

Article 1.

*Scope of application **

(1) This Law applies to international commercial ** 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, 35 and 36, apply only if the place of arbitration is in the territory of this State.

(3) An arbitration is international if:

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

(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 authorise 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 counterclaim, and where it refers to a defence, it also applies to a defence to such counter-claim.

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

Article 7.

Definition and form of arbitration agreement

(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. An agreement is in writing if it is contained in a document signed by the parties or in an exchange of letters, telex, telegrams or other means of telecommunication which provide a record of the agreement, or 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 another. The reference in a contract to a document containing an arbitration clause constitutes an arbitration agreement provided that the contract is in writing and the reference is such as to make that clause part of the contract.

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.

Article 17.

Power of arbitral tribunal to order interim measures

Unless otherwise agreed by the parties, the arbitral tribunal may, at the request of a party, order any party to take such interim measure of protection as the arbitral tribunal may consider necessary in respect of the subject-matter of the dispute. The arbitral tribunal may require any party to provide appropriate security in connection with such measure.

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 duly authenticated original award or a duly certified copy thereof, and the original arbitration agreement referred to in article 7 or a duly certified copy thereof. If the award or agreement is not made in an official language of this State, the party shall supply a duly certified translation thereof into such language. ***

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 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

- (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.

* Article headings are for reference purposes only and are not to be used for purposes of interpretation.

** 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 co-operation; carriage of goods or passengers by air, sea, rail or road.

*** 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.