

## **PORTUGUESE LAW ON VOLUNTARY ARBITRATION\***

**(Law no. 31/86, of 29 August 1986, as amended by Decree-Law no. 38/2003, of 8 March 2003)**

### **CHAPTER I**

#### ***Article 1 (Arbitration agreement)***

1. Any dispute relating to disposable rights which has not been exclusively submitted by a special act to a court or to compulsory arbitration may be submitted by the parties for decision by arbitrators.

2. The subject matter of an arbitration agreement may be a present dispute, even if it has been submitted to a court (submission agreement), or future disputes arising from a given legal, contractual or non-contractual relationship (arbitration clause).

3. Besides matters of a strictly contentious nature, the parties may agree to consider as included in the concept of a dispute any other matters, such as matters related to the need to make precise, to complete, to update or even to review the contracts or legal relationships which are at the origin of the arbitration agreement.

4. The State and any other public legal entities may conclude arbitration agreements if they are authorized to do so by a special act or if the subject matter of the arbitration agreement concerns disputes regarding private law relations.

#### ***Article 2 (Requirements of the agreement; revocation)***

1. The arbitration agreement shall be concluded in writing.

2. An arbitration agreement included either in a document signed by the parties or in an exchange of letters, telexes, telegrams or other means of telecommunication of which there is written proof, is considered as concluded in writing if those documents contain the agreement directly or refer to a document in which the agreement is

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\* Unofficial translation prepared by Dário Moura Vicente, Professor of Law, University of Lisbon.

included.

3. The subject matter of the dispute shall be stated precisely in the submission agreement; the legal relations to which the disputes refer shall be specified in the arbitration clause.

4. The arbitration agreement may be revoked by a document signed by the parties before the arbitral award is rendered.

***Article 3 (Nullity of the agreement)***

An arbitration agreement concluded in breach of the provisions of Article 1(1) and (4) and Article 2(1) and (2) is void.

***Article 4 (Lapse of the agreement)***

1. The submission agreement shall lapse and the arbitration clause shall cease to have effect regarding the dispute under consideration:

(a) if one of the arbitrators dies, refuses to accept his mandate or becomes permanently unable to perform it, or if his appointment ceases to have effect, and he is not replaced in accordance with the provisions of Article 13;

(b) if a majority of votes is not attained when the tribunal is composed of more than one arbitrator;

(c) if the award is not rendered before the time limit established in accordance with the provisions of Article 19 has lapsed.

2. Unless the parties have agreed otherwise, the arbitration agreement shall not lapse and the action before the arbitral tribunal shall not be terminated by reason of the death or extinction of the parties.

***Article 5 (Costs of the proceedings)***

The fees of the arbitrators and other intervenors in the proceedings, as well as their apportionment between the parties, shall be fixed in the arbitration agreement or in a document subsequently signed by the parties, unless such matters are provided for in the arbitration rules to which the parties have referred according to the provision of Article 15.

**CHAPTER II - THE ARBITRATORS AND THE ARBITRAL TRIBUNAL**

***Article 6 (Composition of the tribunal)***

1. The tribunal may be composed of a sole or of an uneven number of arbitrators.

2. Unless the number of arbitrators has been determined in the arbitration agreement or in a subsequent document signed by the parties, the tribunal shall be composed of three arbitrators.

***Article 7 (Appointment of arbitrators)***

1. The parties shall, in the arbitration agreement or in a subsequent written document signed by them, either appoint the arbitrators who will compose the arbitral tribunal or determine the method of their appointment.

2. If the parties have neither appointed the arbitrator or arbitrators nor determined the method of their appointment and fail to reach an agreement between them regarding such appointment, each party shall appoint one arbitrator, unless they agree that each party shall appoint more than one arbitrator in equal number, and the arbitrators thus appointed shall choose the arbitrator who will complete the composition of the arbitral tribunal.

***Article 8 (Arbitrators: qualifications)***

Arbitrators must be individuals enjoying full legal capacity.

***Article 9 (Freedom to accept; withdrawal from office)***

1. No one may be compelled to act as arbitrator, but if the mandate has been accepted, a withdrawal from office shall only be lawful if it is based on a supervening impossibility for the appointee to perform his functions.

2. The mandate is deemed to be accepted whenever the appointee shows the intent to act as an arbitrator or does not state in a written document, addressed to any of the parties within the first ten days subsequent to the notice of the appointment, that he does not wish to perform such functions.

3. The arbitrator who, having accepted his mandate, unjustifiably withdraws from office shall be responsible for the damages he has caused.

***Article 10 (Challenge of arbitrators)***

1. The provisions of the law of civil procedure regarding the challenge of judges shall be applicable to the challenge of arbitrators who have not been appointed by agreement of the parties.

2. The party which has appointed the arbitrator may not challenge him unless one of the grounds of challenge mentioned in the previous paragraph supervenes.

***Article 11 (Constitution of the tribunal)***

1. The party wishing to refer a dispute to the arbitral tribunal shall notify that fact to the other party.

2. The notice shall be made by registered mail with acknowledgement of receipt.

3. The notice shall refer to the arbitration agreement and specify the subject matter of the dispute if it has not yet been specified in the arbitration agreement, notwithstanding its subsequent amplification by the other party.

4. If the parties' arbitration agreement provides for the appointment of one or more arbitrators, the notice shall include the appointment of the arbitrator or arbitrators by the party wishing to commence the arbitral proceedings as well as an invitation addressed to the other party to appoint the arbitrators whom that party may appoint.

5. If a sole arbitrator is to be appointed by both parties, the notice shall indicate the proposed arbitrator and an invitation addressed to the other party to accept him.

6. If one or more arbitrators are to be appointed by a third person, that person shall be notified to make such appointment if he has not yet done so and to inform the parties.

***Article 12 (Appointment of the arbitrators by the president of the court)***

1. Whenever an arbitrator or arbitrator has not been appointed according to the provisions of the previous articles, such appointment shall be made by the president of the Court of Appeal at the place of arbitration or, if that place has not been established, at the domicile of the applicant.

2. In the cases mentioned in Article 11(4) and (5), the appointment may be requested one month after the notification mentioned in Article 11(1), or in the case mentioned in Article 7(2), within one month subsequent to the last appointment of the arbitrators who have been empowered to make such a choice.

3. The appointments made in accordance with the provisions of the previous paragraphs may not be challenged.

4. If the arbitration agreement is manifestly void, the president of the court of appeal shall declare that the appointment of the arbitrators and the specification of the subject matter of the dispute shall not take place; this decision may be the object of a complaint to the conference of the court of appeal preceded by a distribution procedure, and from the decision thus rendered an appeal may be lodged under the general terms.

***Article 13 (Replacement of arbitrators)***

If any of the arbitrators dies, withdraws from office, becomes permanently unable to perform his functions or if his appointment ceases to have effect, he shall be replaced according to the rules applicable to the appointment, appropriately adapted.

***Article 14 (Chairman of the arbitral tribunal)***

1. If the tribunal is composed of more than one arbitrator, the members shall choose the chairman among themselves, unless the parties have agreed otherwise in a document signed before the acceptance by the first arbitrator.

2. If the appointment of the chairman is not possible according to the procedure established in the previous paragraph, such choice shall be made by the president of the Court of Appeal.

3. Unless otherwise agreed, the chairman of the arbitral tribunal shall be empowered to prepare the proceedings, to direct the taking of evidence, to conduct the hearings and to coordinate the debates.

**CHAPTER III - THE ARBITRAL PROCEEDINGS**

***Article 15 (Rules of procedure)***

1. The parties may agree, either in the arbitration agreement or in a subsequent written document concluded before the acceptance by the first arbitrator, on the rules of procedure to be followed in the arbitration as well as on the place of arbitration.

2. The parties may also agree regarding the matters mentioned in the previous paragraph by choosing the arbitration rules of one of the entities mentioned in Article 38 or by electing one of those entities to organize the arbitration.

3. Failing an agreement by the parties on the rules of procedure to be followed in the arbitration and on the place of arbitration, such choice shall be made by the arbitrators.

***Article 16 (Basic principles to be observed in the proceedings)***

The following basic principles shall be observed in any case in the arbitral proceedings:

(a) the parties shall be treated with absolute equality;

(b) the respondent shall be summoned to submit his defence;

(c) in all stages of the proceedings the adversarial system shall be observed;

(d) both parties shall be given an opportunity to present their case, either orally or in writing, before the final award is rendered.

***Article 17 (Representation of the parties)***

The parties may choose the persons who will represent or assist them before the tribunal.

***Article 18 (Evidence)***

1. Any evidence admitted by the law of civil procedure may be submitted to the arbitral tribunal.

2. If one of the parties or a third person refuses the necessary cooperation in the taking of evidence, a party may, with the permission of the arbitral tribunal, request a judicial court to take the evidence and to send the results to the tribunal.

**CHAPTER IV - THE ARBITRAL AWARD**

***Article 19 (Time limit to render the award)***

1. The parties may, in the arbitration agreement or in a subsequent written document, concluded before the acceptance by the first arbitrator, determine the time limit within which the arbitral tribunal shall render the award or the method to determine such time limit.

2. Failing such agreement of the parties, the time limit to render the award shall be six months.

3. Unless the parties have agreed otherwise, the time limit mentioned in paragraphs 1 and 2 shall be counted from the day of the appointment of the last arbitrator.

4. The time limit to render the award may, by written agreement of the parties, be extended up to twice its original duration.

5. The arbitrators who unjustifiably obstruct the rendering of the award within the determined time limit shall be responsible for the damages they have caused.

***Article 20 (Deliberation)***

1. If the tribunal is composed of more than one member, the decision shall be made by a majority of votes in a deliberation in which all arbitrators must participate, unless the parties have demanded a qualified majority in the arbitration agreement or in a subsequent written document, concluded before the acceptance by the first arbitrator.

2. The parties may also agree that, failing the necessary majority, the chairman shall decide or that the dispute shall be decided according to his vote.

3. If the necessary majority is not achieved solely due to differences regarding the sum of money to be paid by the unsuccessful party, that question shall be decided, unless the parties have agreed otherwise, according to the chairman's vote.

***Article 21 (Award on the tribunal's own jurisdiction)***

1. The arbitral tribunal may decide on its own jurisdiction, even if for that purpose it has decided on the existence, the validity or the effectiveness of the arbitration agreement of the contract of which it forms a part or on the applicability of the said agreement.

2. The nullity of the contract of which the arbitration agreement

forms part shall not entail the nullity of the arbitration agreement, unless it is shown that the contract would not have been concluded without the said agreement.

3. A plea that the arbitral tribunal lacks jurisdiction may only be raised up to the moment of the submission of the statement of defence on the merits of the dispute or jointly with it.

4. The award by the arbitral tribunal which declares that it has jurisdiction may only be examined by a court after the award on the merits of the dispute has been rendered and in the proceedings mentioned in Articles 27 and 31.

***Article 22 (Applicable law; resort to equity)***

The arbitrators shall decide in accordance with the law, unless the parties have authorized them to decide according to equity in the arbitration agreement or in a document signed before the acceptance by the first arbitrator.

***Article 23 (Contents of the award)***

1. The final award of the arbitral tribunal shall be made in writing and shall contain:

- (a) the identity of the parties;
- (b) a reference to the arbitration agreement;
- (c) the subject matter of the dispute;
- (d) the identity of the arbitrators;
- (e) the place of arbitration and the place and the date on which the award was rendered;
- (f) the signature of the arbitrators;
- (g) a mention of the arbitrators who could not or were not willing to sign the award.

2. The award shall be signed by at least the majority of the arbitrators and shall include the appropriately identified dissenting opinions.

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

4. The award shall contain a decision on the costs of the proceedings and their apportionment among the parties.

***Article 24 (Notification and deposit of the award)***

1. The chairman of the tribunal shall order that each party be notified



of the award and that a copy be sent by registered mail to each of them.

2. The original of the award shall be deposited with the registry of the court of the place of arbitration, unless the parties have, in the arbitration agreement or in a subsequent written document, relieved the tribunal of the necessity of such deposit, or, in the case of institutional arbitration, if the rules provide another form of deposit.

3. The chairman of the arbitral tribunal shall notify the parties of the deposit.

***Article 25 (Termination of the arbitrators' power)***

The arbitrators' jurisdictional power shall terminate upon notification of the deposit of the award that has settled the dispute or, if the tribunal has been relieved of the necessity of such deposit, upon notification of the award to the parties.

***Article 26 (Force of res judicata and enforceability)***

1. After the arbitral award has been notified to the parties and if necessary deposited with the court as provided in Article 24, it shall become res judicata from the moment it is no longer capable of being appealed.

2. The arbitral award shall be enforced on the same terms as a judgment of the Court of First Instance.

**CHAPTER V - RECOURSE AGAINST ARBITRAL AWARD**

***Article 27 (Setting aside of the award)***

1. The arbitral award may only be set aside by a court on one of the following grounds:

- (a) the dispute is not capable of settlement by arbitration;
- (b) the award was rendered by a tribunal which did not have jurisdiction or which was irregularly constituted;
- (c) the occurrence during the proceedings of a breach of the principles mentioned in Article 16 which had a decisive influence on the outcome of the dispute;
- (d) a breach of the provisions of Article 23(1)(f), (2) and (3) occurred;
- (e) the tribunal dealt with matters beyond its mandate or it failed to

decide matters it should have decided;

2. The ground for setting aside mentioned in subparagraph (b) of the previous paragraph may not be invoked by a party who had known of it during the arbitral proceedings but did not raise it at the appropriate moment.

3. If an appeal against the arbitral award is possible and has effectively been lodged, the above-mentioned grounds for setting aside may only be examined in the appeal.

***Article 28 (Right to apply for setting aside; time limit)***

1. The right to apply for setting aside of the arbitral award may not be excluded.

2. An application for setting aside may only be made within a period of one month from the date of notification of the arbitral award.

***Article 29 (Appeals)***

1. Unless the parties have waived the right to appeal, the same appeals which are admissible regarding a judgement of the Court of First Instance may be lodged with the Court of Appeal against the arbitral award.

2. Permission given to arbitrators to decide according to equity constitutes a waiver of the right to appeal.

**CHAPTER VI - ENFORCEMENT OF THE ARBITRAL AWARD**

***Article 30 (Enforcement of the award)***

The proceedings for the enforcement of the arbitral award shall take place at the Court of First Instance and follow the conditions established by the law of civil procedure.

***Article 31 (Request for refusal of enforcement)***

The grounds for setting aside may be invoked in a request for refusal of enforcement, even if the time limit for an application for setting aside has lapsed.

## CHAPTER VII - INTERNATIONAL ARBITRATION

### ***Article 32 (Concept of international arbitration)***

Arbitration is considered international if it implicates the interests of international trade.

### ***Article 33 (Applicable law)***

1. The parties may choose the law to be applied by the arbitrators, unless they have authorized them to decide according to equity.

2. Failing such choice, the tribunal shall apply the most appropriate law to the dispute.

### ***Article 34 (Appeals)***

The award of the arbitral tribunal in an international arbitration may not be appealed, unless the parties have agreed on the possibility and the terms of an appeal.

### ***Article 35 (Amiable composition)***

If the parties have so authorized, the tribunal may decide the dispute by appealing to a reconciliation of the parties on the basis of the balance of the interests at stake.

## CHAPTER VIII - FINAL PROVISIONS

### ***Article 36 (Amendments to the Code of Civil Procedure)***

The following provisions of the Code of Civil Procedure are hereby amended and substituted as follows: [see Annex II]

### ***Article 37 (Territorial scope of application)***

This act shall apply to arbitrations that take place on national territory.

### ***Article 38 (Institutional arbitration)***

The Government shall determine by decree-law the rules regarding the granting of jurisdiction to certain entities to organize voluntary, institutional arbitrations. The rules shall contain in each case a

specification of the general or specialized nature of such arbitrations, as well as rules regarding the re-examination and possible revocation, whenever justified, of the permits so granted.

***Article 39 (Repealed law)***

1. Decree-Law no. 243/84 of 17 July is repealed.
2. Article 55 of the Code of Judicial Costs is repealed.
3. Title I of Book IV, "On the voluntary arbitral tribunal", of the Code of Civil Procedure, is repealed.

***Article 40 (Entry into force)***

This act shall enter into force three months after its publication.