

**General Assembly**

Distr.: General
23 January 2003

Original: English

UNITED NATIONS COMMISSION
ON INTERNATIONAL TRADE LAW

CASE LAW ON UNCITRAL TEXTS
(CLOUT)

UNCITRAL Thesaurus of the Model Law on International Arbitration

1. In A/CN.9/SER.C/GUIDE/1, paras. 18-19, it was announced that the Secretariat intended to publish, based on classification schemes (“thesauruses”), separate indices for the UNCITRAL legal texts covered by CLOUT. The purpose of such indices is to assist users of CLOUT in identifying cases relevant to a given issue by listing cases under the provision or sub-issue with which they deal.
2. The first such thesaurus, A/CN.9/SER.C/INDEX/1, was published for the Sales Convention in 1995. It was subsequently decided to prepare a similar thesaurus for cases arising under the UNCITRAL Model Law on International Arbitration.

Chapter I. General Provisions

Article 1. *Scope of application*

Article 2. *Definitions and rules of interpretation*

Article 3. *Receipt of written communications*

Article 4. *Waiver of right to object*

Article 5. *Extent of court intervention*

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



Chapter II. Arbitration agreement

Article 7. *Definition and form of arbitration agreement*

Article 8. *Arbitration and substantive claim before the court*

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

Chapter III. Composition of arbitral tribunal

Article 10. *Number of arbitrators*

Article 11. *Appointment of arbitrators*

Article 12. *Grounds for challenge*

Article 13. *Challenge procedure*

Article 14. *Failure or impossibility to act*

Article 15. *Appointment of substitute arbitrator*

Chapter IV. Jurisdiction of arbitral tribunal

Article 16. *Competence of arbitral tribunal to rule on its jurisdiction*

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

Chapter V. Conduct of arbitral proceedings

Article 18. *Equal treatment of parties*

Article 19. *Determination of rules of procedure*

Article 20. *Place of arbitration*

Article 21. *Commencement of arbitral proceedings*

Article 22. *Language*

Article 23. *Statements of claim and defence*

Article 24. *Hearings and written procedures*

Article 25. *Default of a party*

Article 26. *Expert appointed by arbitral tribunal*

Article 27. *Court assistance in taking evidence*

Chapter VI. Making of award and termination of proceedings

Article 28. *Rules applicable to substance of dispute*

Article 29. *Decision making by panel of arbitrators*

Article 30. *Settlement*

Article 31. *Form and content of award*

Article 32. *Termination of proceedings*

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

Chapter VII. Recourse against award

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

Chapter VIII. Recognition and enforcement of awards

Article 35. *Recognition and enforcement of awards*

Article 36. *Grounds for refusing recognition or enforcement*

Chapter I. General Provisions

Article I. *Scope of application*

[**keywords:** *arbitrability; commercial; habitual residence; internationality; jurisdiction; opt-in clause; place of business; territorial application*]

1(A) Applicable to international commercial arbitration, subject to international agreement, if any (art. 1(1))

1(A)(1) what constitutes a matter arising from a commercial relationship for purpose of this Law (art. 1(1)).

1(B) Law only applicable if place of arbitration is or is deemed to be in this State (art. 1(2) (*see art. 31(3)*))

1(B)(1) *exceptions:* (art. 1(2)): art 8. (*Arbitration agreement and substantive claim before court*); art. 9. (*Arbitration agreement and interim measures by court*); art. 35. (*Recognition and enforcement*); art. 36. (*Grounds for refusing recognition or enforcement*)

1(C) Internationality - *bases for determination*

1(C)(1) Parties to arbitration agreement (*see art. 7*) have places of business, at time of agreement, in different States (art. 1(3)(a))

1(C)(1)(a) who is a party to the arbitration agreement

1(C)(1)(b) determination of place of business or habitual residence (*see art. 1(4)*)

or

1(C)(2) Alternative bases for internationality - one of following places is situated outside State in which parties have their places of business (art. 1(3)(b)) (*see* art. 1(4)):

1(C)(2)(a) place of arbitration pursuant to arbitration agreement (art. 1(3)(b)(i))

1(C)(2)(b) place where substantial obligation is to be performed (art. 1(3)(b)(ii))

1(C)(2)(c) place with closest nexus to subject-matter of dispute (art. 1(3)(b)(ii))

1(C)(2)(d) parties expressly agree that subject-matter of dispute relates to more than one country (art. 1(3)(c))

1(D) Multiple places of business: habitual residence (art. 1(4)) (*see* art. 1(3))

1(D)(1) party with more than one place of business - place of business with closest relationship to arbitration agreement (art. 1(4)(a)) (*see* art. 7)

or

1(D)(2) party with no place of business - habitual residence (art. 1(4)(b))

1(E) Mandatory law- exclusion or limitation of arbitrability of certain matters by operation of other law (art. 1(5))

1(F) Other issues of applicability

Article 2. Definitions and rules of interpretation

[**keywords:** *administered arbitration; arbitral tribunal; claims; counterclaims; courts; defences; definitions; interpretation - rules of*]

2(A) “arbitration”: administered or non-administered (art. 2(a))

2(B) “arbitral tribunal”: sole arbitrator or panel (art. 2(b))

2(C) “court”: body or organ of judicial system of a State (art. 2(c))

2(D) party autonomy (art. 2(d))

2(D)(1) parties may authorize third parties to make decisions regarding specific issues (art. 2(d)).

2(D)(1)(a) *exception*: art. 28 (Rules applicable [by the arbitral tribunal] to the substance of the dispute)

2(D)(2) agreement of parties deemed to include agreement regarding arbitration rules where referenced (art. 2(e)).

2(E) references in this Law to a claim also apply to a counterclaim; references to a defence also apply to a defence to a counterclaim (art. 2(f))

2(E)(1) *exception*: arts. 25(a) (Default of a party); 32(2)(a) (Termination of proceedings)

Article 3. Receipt of written communications

[**keywords**: *documents; habitual residence; notice; place of business; receipt; writings-receipt*]

3(A) Unless otherwise agreed by the parties, receipt of written communication: (art. 3(1)(a))

3(A)(1) occurs if delivered to addressee personally;

or

3(A)(2) occurs if delivered at addressee's place of business, habitual residence, or mailing address;

or

3(A)(3) if cannot be found after reasonable inquiry:

3(A)(3)(a) is deemed delivered if sent by registered letter or analogous means to addressee's last known place of business, habitual residence, or mailing address

3(B) Unless otherwise agreed by the parties, a written communication is deemed to occur on day it is so delivered. (art. 3(1)(b)).

3(C) Article 3 does not apply to documents in court proceedings. (art. 3(2))

Article 4. Waiver of right to object

[**keywords**: *estoppel; knowledge; procedure; procedural default; venire contra factum proprium; waiver*]

4(A) Party must object to known non-compliance with this Law or arbitration agreement, or right to object is waived (art. 4) (*see* art. 7)

4(A)(1) objection must occur without undue delay after proceeding with arbitration;

or

4(A)(2) objection must occur within time-limit provided, if any

Article 5. Extent of court intervention

[**keywords:** *courts; judicial assistance; judicial intervention; jurisdiction; procedure*]

5 Intervention by courts in arbitration conducted pursuant to this Law limited to specific matters (art. 5) (*see* arts. 6; 8; 9; 11(4,5); 13(2,3); 14(1); 16(3); 27; 34; 35; 36)

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

[**keywords:** *courts; judicial assistance; judicial intervention; jurisdiction; procedure*]

6 State to designate court(s) or other authority to perform specific functions (art. 6) (*see* arts. 11(3); 11(4); 13(3); 14; 16(3); 34(2))

Chapter II. Arbitration Agreement

Article 7. Definition and form of arbitration agreement

[**keywords:** *arbitration agreement; arbitration clause; claims; clause compromissoire; compromis; contracts; defences; documents; electronic commerce; fax; form of arbitration agreement; formal requirements; incorporation by reference; signatures; telecommunications; writing*]

7(A) “arbitration agreement”: agreement by parties to submit to arbitration (art. 7(1)) (*see* arts. 1(5); 2(e)):

7(A)(1) all disputes;

or

7(A)(2) certain disputes;

7(A)(3) existing disputes;

or

7(A)(4) potential disputes

7(A)(5) not limited to contractual disputes

7(B) form of arbitration agreement

7(B)(1) form generally (art. 7(1))

7(B)(1)(a) arbitration clause in contract

7(B)(1)(a)(i) arbitration agreement may be incorporated by reference in written contract (art. 7(2)).

7(B)(1)(b) separate arbitration agreement

7(B)(2) agreement to arbitrate must be in writing (art. 7(2))

7(B)(2)(a) what constitutes a “writing”

7(B)(2)(a)(i) document signed by the parties;

7(B)(2)(a)(i)(I) what constitutes a “signature”

or

7(B)(2)(a)(ii) exchange of communications which record agreement to arbitrate

7(B)(2)(a)(ii)(I) letters

7(B)(2)(a)(ii)(II) other forms of telecommunication

or

7(B)(2)(a)(iii) exchange of statement of claim or defence referring to agreement to arbitrate (art. 7(2))

Article 8. Arbitration agreement and substantive claim before court

[**keywords:** *arbitration agreement; courts; judicial assistance; procedural default; procedure; validity; waiver*]

8(A) Court shall refer a matter before it which is the subject of an arbitration agreement to arbitration [*two requirements*] (art.8(1)) (*see art. 7*)

8(A)(1) party must request reference to arbitration no later than submission of first statement on substance of dispute

and

8(A)(2) agreement must not be null and void, inoperative, or incapable of performance

8(B) Arbitral proceedings may begin and continue to conclusion and award during period while court deciding on request for reference to arbitration (art. 8(2))

Article 9. Arbitration agreement and interim measures by court

[**keywords:** *arbitration agreement; courts; injunctions; interim measures; judicial assistance; judicial intervention; procedure; protective orders; sequestration*]

9 Existence of agreement to arbitrate does not prevent granting of interim measures of protection by a court prior to, or during, arbitration proceedings, upon request of a party

Chapter III. Composition of arbitral tribunal

Article 10. Number of arbitrators

[**keywords:** *arbitral tribunal; arbitrators*]

10 Parties may agree on number of arbitrators (art. 10(1))

10(A) if no agreement, tribunal consists of three arbitrators (art. 10(2))

Article 11. Appointment of arbitrators

[keywords: *administered arbitration; appointment procedures; arbitral institutions; arbitral tribunal; arbitrators; arbitrators - appointment of; arbitrators - qualifications; courts; institutional arbitration; judicial assistance; judicial intervention; nationality; procedure*]

11(A) Arbitrators may be of any nationality (art. 11(1))

11(A)(1) parties may agree otherwise

11(B) Parties may agree on procedure for appointment of arbitrator(s) (art. 11(2)) (*see* arts. 11(4,5); 10)

11(B)(1) agreement may establish procedure to be followed upon failure of appointment process;

or

11(B)(2) if default procedure not provided for in appointment agreement and any party, party arbitrator, third party or institution, fails to perform its function as provided in the agreement regarding appointment of an arbitrator:

11(B)(2)(a) any party may request court or other authority to take necessary action (art. 11(4)) (*see* art. 6)

11(B)(2)(b) decisions of court or other authority not subject to appeal

11(C) If parties have not agreed on procedure for appointment of arbitrators: (art. 11(3))

11(C)(1) different appointment procedures for sole and multiple arbitrators:

11(C)(1)(a) if three arbitrators: (*see* art. 10)

11(C)(1)(a)(i) each party appoints one arbitrator

11(C)(1)(a)(i)(I) party to appoint within 30 days of request from other party or appointment will be made by court or other authority (*see* art. 6)

11(C)(1)(a)(i)(I)(A) party may request court or other authority to appoint

11(C)(1)(a)(i)(1)(B) decisions of court or other authority not subject to appeal (art. 11(5))

11(C)(1)(a)(ii) the two appointed arbitrators appoint the third arbitrator

11(C)(1)(a)(ii)(I) arbitrators to appoint third arbitrator within 30 days of their appointment or appointment will be made by court or other authority (*see* art. 10)

11(C)(1)(a)(ii)(I)(A) party may request court or other authority to appoint

11(C)(1)(a)(ii)(I)(B) decisions of court or other authority not subject to appeal (art. 11(5))

11(C)(1)(b) if sole arbitrator selected by agreement of the parties

11(C)(1)(b)(i) if parties cannot agree (*see* art. 11(3)(b) (sole arbitrator appointed by court or other body)) (*see* art. 6)

11(C)(1)(b)(i)(I) party may request court or other authority to appoint

11(C)(1)(b)(i)(II) decisions of court or other body not subject to appeal (art. 11(5))

11(D) Appointment by court or other authority (art. 11(5))

11(D)(1) factors for consideration for appointment

Article 12. Grounds for challenge

[**keywords:** *appointment procedures; arbitrators; arbitrators - appointment of; arbitrators - challenge of; arbitrators - duty of disclosure; arbitrators - independence of; arbitrators - qualifications; challenge; conflicts of interest; disclosure; knowledge*]

12(1) Potential arbitrator shall disclose to the parties circumstances likely to give rise to questions regarding impartiality or independence (art. 12(1))

12(1)(A) duty of disclosure begins before appointment and continues throughout arbitral proceedings

12(1)(A)(1) no duty to disclose when previously communicated to the parties (art. 12(1))

12(2) Grounds for challenge: (art. 12(2))

12(2)(A) justifiable doubts about impartiality or independence; or

12(2)(B) lack of agreed-upon qualifications

12(3) Party can challenge arbitrator it was involved in appointing only if it becomes aware of circumstances after appointment (art. 12(2))

Article 13. Challenge procedure

[**keywords:** *arbitral tribunal; arbitrators; arbitrators - challenge of; arbitrators - withdrawal of; challenge; courts; judicial assistance; judicial intervention; procedure; withdrawal - of arbitrator*]

13(1) Party challenge of arbitrator (art. 13(2)).

13(1)(A) within 15 days of:

13(1)(A)(1) becoming aware of composition of tribunal;

or

13(1)(A)(2) becoming aware of challengeable grounds under art. 12(2)

13(1)(B) Party sends written challenge containing reasons to arbitral tribunal [*two potential outcomes*]

13(1)(B)(1) challenged arbitrator withdraws;

or

13(1)(B)(2) arbitral tribunal decides on challenge (art. 13(2))

13(1)(C) Parties are free to vary this challenge procedure (art. 13(1))

13(1)(C)(1) *exception:* cannot vary procedure regarding court decision concerning unsuccessful challenge (*see* art. 13(3))

13(2) If challenge is unsuccessful, party may request court or other authority to decide (*see* art. 6)

13(2)(A) request must be made within 30 days of receipt of notice of rejection of challenge

13(2)(B) court or other authority decision not subject to appeal

13(2)(C) Arbitral proceedings may continue to conclusion and award with the participation of the challenged arbitrator during period while court or other authority decides on request for decision on merits of the challenge (art. 13(3)).

Article 14. Failure or impossibility to act

[**keywords:** *arbitrators; arbitrators - challenge of; arbitrators - mandate; arbitrators - qualifications; arbitrators - withdrawal of; courts; judicial assistance; judicial intervention; procedure; withdrawal - of arbitrator*]

14(1). Mandate of arbitrator continues who becomes *de jure* or *de facto* unable to fulfil arbitral functions, or who fails to act without undue delay (art. 14(1))

14(1)(A) mandate terminates if arbitrator withdraws from office;

or

14(1)(B) mandate terminates if parties agree on termination;

or

14(1)(C) party may request court or other authority to make determination on termination (*see* art. 6).

14(1)(C)(1) decision of court or other authority not subject to appeal. (art. 14(1))

14(2) termination by arbitrators or parties does not imply validity of grounds for challenge (art. 14(2)) (*see* arts. 12(2); 13(2)).

Article 15. Appointment of substitute arbitrator

[**keywords:** *appointment procedures; arbitrators; arbitrators - appointment of; arbitrators - replacement of; arbitrators - substitutes; procedure; substitute arbitrators; withdrawal - of arbitrator*]

15 When substitute arbitrator is required, the substitute is appointed according to the rules applicable to replaced arbitrator (art. 15) (*see* arts. 11; 13; 14)

Chapter IV. Jurisdiction of arbitral tribunal

Article 16. Competence of arbitral tribunal to rule on its jurisdiction

[**keywords:** *arbitral tribunal; arbitration agreement; arbitration clause; competence; contracts; courts; defences; estoppel; judicial assistance; judicial intervention; jurisdiction; kompetenz-kompetenz; procedure; severability; waiver*]

16(1) Arbitral tribunal is competent to rule on its jurisdiction (art. 16(1)).

16(1)(A) jurisdictional ruling by tribunal may extend to decisions on existence or validity of arbitration agreement

16(1)(A)(1) arbitration clause treated as agreement independent of other terms of the contract

16(1)(A)(1)(a) decision by tribunal that the contract is null and void does not itself mean the arbitration clause is invalid

16(2) Procedural considerations (art. 16(2,3))

16(2)(A) lack of jurisdiction must be raised not later than statement of defence

16(2)(A)(1) tribunal has discretion to admit a later plea (*compare* art. 4)

16(2)(A)(2) participation in appointment of arbitral tribunal does not waive right to object to jurisdiction

16(2)(B) plea that tribunal is exceeding its jurisdiction to be raised as soon as jurisdiction exceeded during arbitral proceedings

16(2)(B)(1) tribunal has discretion to admit a later plea (*compare* art. 4)

16(2)(C) Tribunal may rule on jurisdictional plea as a preliminary question or in an award on the merits (art. 16(3)).

16(2)(C)(1) if tribunal rules as a preliminary question, party may request court or other authority to decide (*see* art. 6)

16(2)(C)(1)(i) request must be made within 30 days of receiving notice of ruling by tribunal

16(2)(C)(1)(ii) decision by court or other authority not subject to appeal

16(2)(C)(2) arbitral tribunal may continue its proceedings and make an award while request is pending.

Article 17. Power of arbitral tribunal to order interim measures

[**keywords:** *arbitral tribunal; injunctions; interim measures; jurisdiction; procedure; protective orders; security; sequestration*]

17(A) Arbitral tribunal may order interim measures of protection (art. 17)

17(A)(1) party must request interim measures

17(A)(2) tribunal may require any party to provide appropriate security in connection with interim measures

17(B) Parties may agree that arbitral tribunal may not order interim measures of protection.

Chapter V. Conduct of arbitral proceedings

Article 18. Equal treatment of parties

[**keywords:** *arbitral tribunal; due process; equal treatment; notice; procedure*]

18(A) Parties to be treated with equality (art. 18)

18(B) Each party to have a full opportunity to present its case (*see* art. 25 (Default of a party))

Article 19. Determination of rules of procedure

[**keywords:** *arbitral tribunal; evidence; procedure*]

19(A) Parties are free to agree on procedures for the arbitral tribunal (art. 19(1))

19(A)(1) extent of party autonomy regarding procedure

19(B) If no agreement, tribunal may conduct the arbitration as it considers appropriate (art. 19(2)) (*see* art. 28)

19(B)(1) arbitral tribunal's powers include decisions regarding evidence (art. 19(2))

Article 20. Place of arbitration

[**keywords:** *applicable law; arbitral tribunal; evidence; experts; forum; place of arbitration; procedure; territorial application*]

20(A) Parties may designate the place of arbitration (art. 20(1)) (*see* arts. 1(2); 1(3); 31(3); 36(a))

20(A)(1) subject to agreement of parties, tribunal may meet elsewhere, if it considers appropriate: (art. 20(2)).

20(B) If no agreement, tribunal determines place of arbitration. (art. 20(1)).

Article 21. Commencement of arbitral proceedings

[**keywords:** *arbitral proceedings; commencement; interpretation - rules of; notice; prescription period; procedure; receipt; request for arbitration; respondent*]

21(A) Arbitral proceedings commence on the date that the request to refer a matter under dispute to arbitration is received by the respondent. (art. 21) (*see art. 3*)

21(B) Parties may agree otherwise

Article 22. Language

[**keywords:** *arbitral tribunal; documents; evidence; language; procedure; translations*]

22(A) Parties may agree on a language or languages to be used in the arbitral proceedings (art. 22(1))

22(A)(1) If no agreement, tribunal determines language or languages to be used (*see arts. 18; 19*)

22(B) Arbitral tribunal may order translation of documentary evidence (art. 22(2)).

Article 23. Statements of claim and defence

[**keywords:** *amendment - claims; arbitral tribunal; claims; content; defences; documents; evidence; form of arbitration agreement; formal requirements; pleadings; procedure; statement of claim; statement of defence; supplemental claims*]

23(A) Statements of claim and defence shall contain supporting facts, points at issue, relief sought, and responses (art. 23(1)) (*see art. 2(f)*)

23(A)(1) parties may agree as to required elements of statements of claim and defence

23(A)(2) parties may include all relevant documents or make reference to documents or evidence they will submit

23(A)(3) statements of claim and defence are to be submitted within time:

23(A)(3)(a) agreed by the parties;

or

23(A)(3)(b) determined by the arbitral tribunal

23(B) Subject to agreement of the parties or the discretion of arbitral tribunal, either party may amend or supplement claim or defence during arbitral proceeding (art. 23(2))

Article 24. Hearings and written proceedings

[**keywords:** *arbitral proceedings; arbitral tribunal; documents; due process; evidence; experts; hearings; notice; procedure*]

24(A) The parties may agree that the tribunal shall not hold oral hearings (art. 24(1))

24(B) In the absence of an agreement of the parties regarding hearings:

24(B)(1) if requested by a party the tribunal shall hold oral hearings (art. 24(1)).

24(B)(2) if no party requests oral hearings, the tribunal decides whether to hold oral hearings or conduct the arbitral proceedings on the basis of documents and other materials (art. 24(1)).

24(C) Notice of hearings, documents, and expert reports:

24(C)(1) parties shall be given sufficient advance notice of hearings or meetings of the tribunal for the inspection of goods, property, or documents; (art. 24(2)) (*see* art. 18).

24(C)(2) statements, documents, and other information supplied by a party to the tribunal shall also be communicated to the other party (art. 24(3))

24(C)(3) expert reports and other evidentiary documents relied upon by the tribunal shall be communicated to the parties (art. 24(3))

Article 25. Default of a party

[**keywords:** *arbitral proceedings; arbitral tribunal; claimant; default; documents; due process; estoppel; evidence; hearings; notice; procedure; procedural default; respondent; statement of claim; statement of defence; termination of proceedings*]

25(A) The parties may agree as to the consequences of the failure to follow procedures regarding statements of claim and defence (*see* art. 23) or failure to appear at a hearing or submit documentary evidence. (art. 25)

25(B) If claimant fails to communicate their statement of claim pursuant to art. 23(1), the tribunal shall terminate the proceedings (art. 25(a))

25(B)(1) tribunal has discretion if claimant shows sufficient cause

25(C) If respondent fails to communicate their statement of defence pursuant to art. 23(1), the tribunal shall continue the proceedings without treating such failure in itself as an admission of the claimant's allegations (art. 25(b))

25(C)(1) tribunal has discretion if respondent shows sufficient cause

25(D) If any party fails to appear at a hearing or produce documentary evidence, the tribunal may continue and make the award on evidence before it. (art. 25(c)) (*see* arts. 18; 24(2)).

25(D)(1) tribunal has discretion if defaulting party shows sufficient cause

Article 26. Expert appointed by arbitral tribunal

[**keywords:** *arbitral tribunal; evidence; experts; procedure*]

26(A) Unless otherwise agreed, arbitral tribunal may appoint one or more experts (art. 26(1)(a))

26(B) Arbitral tribunal may require a party to provide information and cooperate with the expert (art. 26(1)(b))

26(C) Expert's reports may be oral or written. (art. 26(2))

26(D) Following the delivery of the expert's report: (art. 26(2))

26(D)(1) the expert shall participate in a hearing; if:

26(D)(1)(a) a party requests such a hearing;

or

26(D)(1)(b) the tribunal considers the hearing necessary.

26(D)(2) the parties shall have the opportunity to question the expert and present their own expert witnesses.

Article 27. Court assistance in taking evidence

[**keywords:** *applicable law; arbitral proceedings; arbitral tribunal; courts; documents; evidence; judicial assistance; judicial intervention; procedure*]

27(A) Arbitral tribunal may request assistance of court in taking evidence (art. 27)

27(B) Party, with approval of arbitral tribunal, may request assistance of court in taking evidence

27(C) Court assistance governed by other law

Chapter VI. Making of award and termination of proceedings

Article 28. Rules applicable to substance of dispute

[**keywords:** *amiable compositeur; applicable law; arbitral proceedings; arbitral tribunal; choice of law; conflicts of law; contracts; ex aequo et bono; general principles of law; interpretation - rules of; lex mercatoria; private international law; procedure; substantive law; trade usages*]

28(A) Arbitral tribunal decides dispute according to:

28(A)(1) parties' choice of rules of law (art. 28(1))

28(A)(1)(a) choice of law of a State construed as substantive law of the State excluding conflict of laws rule

28(A)(1)(b) choice of rules of law other than that of a State (*e.g., lex mercatoria* or general principles of law),

or

28(A)(2) if no choice of law by parties, tribunal selects law according to conflicts rules it considers applicable (art. 28(2));

and

28(A)(3) terms of contract (art. 28(4));

and

28(A)(4) trade usages taken into account (art. 28(4)).

28(B) Parties must expressly authorize decisions to be made *ex aequo et bono* or as *amiable compositeur* (art. 28(3)).

Article 29. Decision making by panel of arbitrators

[**keywords:** *arbitral proceedings; arbitral tribunal; arbitrators; arbitrators - presiding arbitrator; decisions; presiding arbitrator; procedure*]

29(A) Decisions by panel of arbitrators shall be made by majority of all members (art. 29)

29(A)(1) parties may otherwise agree

29(B) Procedural decisions may be made by a presiding arbitrator:

29(B)(1) if parties agree;

or

29(B)(2) if all members of arbitral tribunal agree (art. 29)

Article 30. Settlement

[**keywords:** *arbitral awards; arbitral tribunal; award; form of arbitration agreement; procedure; settlement*]

30(A) Parties may settle disputes during arbitral proceedings (art. 30(1))

30(A)(1) tribunal terminates proceedings

30(B) Upon request by the parties, tribunal may record settlement as arbitral award (art. 30(1))

30(B)(1) settlement recorded as award to be made pursuant to provisions of article 31 (art. 30(2))

30(B)(2) settlement recorded as award to have same effect as award on merits

30(B)(3) tribunal may refuse to record settlement as award (art. 30(1))

Article 31. Form and contents of award

[**keywords:** *arbitral awards; arbitrators; formal requirements; place of arbitration; procedure; reasoned awards; settlement; signatures; writing*]

31(A) Form and contents of award (art. 31) (*see* art. 33)

31(A)(1) award to be in writing (art. 31(1)) (*see* art. 7)

31(A)(2) arbitrators sign award (art. 31(1)) (*see* art. 7)

31(A)(2)(a) signatures of majority of all members sufficient

31(A)(2)(a)(i) must state reason for omission of any signature

31(A)(3) award must state reasons (art. 31(2))

31(A)(3)(a) *exception*: parties agree not to have reasons stated in award;

or

31(A)(3)(b) award is an award on agreed terms. (*see* art. 30)

31(A)(4) award must state its date and place of arbitration (art. 31(3)) (*see* art. 20(1))

31(A)(4)(a) award deemed to have been made at place stated (art. 31(3))

31(B) Signed copy of award to be delivered to each party (art. 31(4)) (*see* art. 31(1))

Article 32. Termination of proceedings

[**keywords:** *arbitral awards; arbitral proceedings; arbitral tribunal; arbitrators - mandate; award; jurisdiction; prescription period; procedure; settlement; termination of proceedings; withdrawal - of claim*]

32(A) Arbitral proceedings terminated by:

32(A)(1) final award; (art. 32(1))

or

32(A)(2) order of the tribunal: (art. 32(2))

32(A)(2)(a) when claimant withdraws claim; (art. 32(2)(a))

32(A)(2)(a)(i) *exception*: respondent objects and tribunal recognizes legitimate interest of respondent in obtaining final settlement of dispute;

or

32(A)(2)(b) parties agree on termination; (art. 32(2)(b))

or

32(A)(2)(c) tribunal finds for other reasons that the proceedings have become unnecessary or impossible. (art. 32(2)(c))

32(B) Mandate of tribunal terminates with the termination of arbitral proceedings (art. 32(3))

32(B)(1) *exceptions*: correction of award, additional award (*see* art. 33); possible actions upon application to set aside award (*see* art. 34(4)).

Article 33. Correction and interpretation of award; additional award

[**keywords:** *additional award; arbitral awards; arbitral proceedings; arbitral tribunal; award; award and correction-additional; award and correction- interpretation of; clerical errors; errors; form of arbitration agreement; interpretation - rules of; jurisdiction; notice; procedure*]

33(A) Computational, clerical, typographic or similar errors may be corrected by the tribunal:

33(A)(1) upon request by a party within 30 days of receipt of the award, with notice to the other party; (art. 33(1)(a))

33(A)(1)(a) tribunal must consider request justified (art. 33(1))

or

33(A)(2) by the tribunal on its own authority within 30 days of the date of the award (art. 33(2)).

33(A)(3) parties may agree on a different period of time for correction (art. 33(1))

33(A)(4) tribunal may extend time for correction of errors if necessary (art. 33(4))

33(B) Interpretations of a specific point or part of the award may be given by the tribunal:

33(B)(1) upon request by a party within 30 days of receipt of the award, with notice to the other party; (art. 33(1)(b))

33(B)(1)(a) tribunal must consider request justified (art. 33(1))

and

33(B)(1)(b) parties are so agreed. (art. 33(1)(b)).

33(B)(2) tribunal interpretations to be given within 30 days of receipt of the request

33(B)(3) tribunal may extend time for interpretations if necessary (art. 33(4))

33(B)(4) interpretations form part of award. (art. 33(1)).

33(C) Additional awards as to claims presented in the arbitral proceedings, but omitted from the award, may be taken up by the tribunal:

33(C)(1) upon request by a party within 30 days of receipt of the award, with notice to the other party, (art. 33(3))

33(C)(1)(a) tribunal must consider request justified (art. 33(3))

33(C)(2) additional awards to be made within sixty days (art. 33(3))

33(C)(3) tribunal may extend time for additional awards, if necessary (art. 33(4))

33(D) Article 31 form and content requirements apply to corrections or interpretations of awards, or to additional awards (art. 33(5))

Chapter VII. Recourse against award

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

[**keywords:** *applicable law; appointment procedures; arbitrability; arbitral awards; arbitral proceedings; arbitral tribunal; arbitration agreement; arbitration clause; arbitrators; arbitrators -*

appointment of; arbitrators - mandate; award; award - setting aside; choice of law; courts; due process; notice; ordre public; procedure; public policy; remission - of award; severability; substantive law; subject matter arbitrability; validity]

34(A) Arbitral award may be set aside by court or other authority only:

34(A)(1) if applying party furnishes proof that (*see* art. 7):

34(A)(1)(a) a party was under some incapacity;

or

34(A)(1)(b) the arbitration agreement is invalid under the governing law;

34(A)(1)(b)(i) governing law is the law chosen by the parties or the law of this State (art. 34(2)(a)(i));

or

34(A)(2) that the party (art. 34(2)(a)(ii)):

34(A)(2)(a) was not given proper notice of appointment of an arbitrator or of the arbitral proceedings; (*see* arts. 3; 11)

or

34(A)(2)(b) was unable to present its case; (*see* arts. 18; 23)

or

34(A)(3) that the award deals with or contains decisions on a matter outside the terms of the submission to arbitration; (art. 34(2)(a)(iii)) (*see* art. 7(1)):

34(A)(3)(a) if award is severable, court or other authority only sets aside decisions outside scope of submission;

or

34(A)(4) that the arbitral tribunal was not composed:

34(A)(4)(a) according to the agreement of the parties (art. 34(2)(a)(iv)) (*see* arts. 10(1); 11(2)):

or

34(A)(4)(b) in accordance with this Law

or

34(A)(5) that the arbitral tribunal did not follow procedures:

34(A)(5)(a) agreed upon by the parties; (art. 34(2)(a)(iv)) (*see* art. 19)

or

34(A)(5)(b) in accordance with this Law

or

34(B) if the court finds (art. 34(2)(b)):

34(B)(1) the subject-matter of the dispute is not arbitrable under the law of this State; (*see* art. 1(5))

or

34(B)(2) the award is in conflict with public policy of this State.

34(C) Applications to set aside an award must be made within three months of the date: (art. 34(3))

34(C)(1) the applying party received the award;

or

34(C)(2) the tribunal disposed of any requests for correction, interpretation, or additional awards under art. 33.

34(D) Court may suspend setting aside proceedings to permit arbitral tribunal to act so as to eliminate the grounds for setting aside. (art. 34(4))

Chapter VIII. Recognition and enforcement of awards

Article 35. Recognition and enforcement

[**keywords:** *arbitral awards; award; courts; documents; enforcement; form of arbitration agreement; formal requirements; language; procedure, recognition - of award; translations*]

35(A) Arbitral awards are binding and enforceable by the court: (art. 35(1))

35(A)(1) regardless of country where award was made;

35(A)(2) upon written application by party relying on award or seeking enforcement;

35(A)(3) subject to specific exceptions (*see* art. 36))

35(B) Written applications by party relying on award or seeking enforcement shall include: (art. 35(2))

35(B)(1) duly authenticated original award or duly certified copy; (*see* art. 31)

and

35(B)(2) original arbitration agreement or duly certified copy. (*see* art. 7)

35(C) Awards and arbitration agreements must be in official language of this State or duly certified translations provided. (art. 35(2)).

Article 36. Grounds for refusing recognition or enforcement

[**keywords:** *applicable law; appointment procedures; arbitrability; arbitral awards; arbitral proceedings; arbitral tribunal; arbitration agreement; arbitration clause; arbitrators; award; award - recognition and enforcement; award - setting aside; choice of law; courts; due process; enforcement; notice; ordre public; procedure; public policy; recognition - of award; security; substantive law; subject matter arbitrability; validity*]

36(A) Recognition and enforcement of an arbitral award, irrespective of the country in which it was made, may be refused by a court only:

36(A)(1) at the request of the party against whom it is invoked, if that party furnishes proof to the court where recognition and enforcement is sought, that (art. 36(1)(a)(i)):

36(A)(1)(a) a party was under some incapacity;

or

36(A)(1)(b) the arbitration agreement is invalid under the governing law;

36(A)(1)(b)(i) governing law is law chosen by the parties or the law of the State where award was made;

or

36(A)(2) that the party

36(A)(2)(a) was not given proper notice of appointment of an arbitrator or of the arbitral proceedings; (art. 36(1)(a)(ii)) (*see* art. 11)

or

36(A)(2)(b) was unable to present its case; (*see* art. 18)

or

36(A)(3) that the award deals with or contains decisions on a matter outside the terms of the submission to arbitration; (art. 36(1)(a)(iii)) (*see* arts. 7; 31):

36(A)(3)(a) if award is severable, court only sets aside decisions outside scope of submission;

or

36(A)(4) that the arbitral tribunal was not composed according to the agreement of the parties: (art. 36(1)(a)(iv)) (*see* art. 11)

36(A)(4)(a) if no agreement, the law of the State where the arbitration took place;

36(A)(5) that the arbitral tribunal did not follow procedures:

36(A)(5)(a) agreed upon by the parties; (art. 36(1)(a)(iv)) (*see* art. 19)

or

36(A)(5)(b) if no agreement, the law of the State where the arbitration took place

or

36(A)(6) that the award has not become binding upon the parties; (art. 36(1)(a)(v)) (*see* arts. 32; 33)

or

36(A)(7) that the award has been set aside or suspended by a court of the State in which, or under which, the award was made; (art. 36(1)(a)(v)) (*see* art. 34)

or

36(A)(8) if the court finds: (art. 36(1)(b)):

36(A)(8)(a) the subject-matter of the dispute is not arbitrable under the law of this State; (*see* art. 1(5))

or

36(A)(8)(b) recognition or enforcement of the award would be in conflict with public policy of this State.

36(B) If award has not yet become binding or has been set aside or suspended by a court in which, or under the law of which the award was made, the court where recognition and enforcement is sought may: (art. 36(2)) (*see* art. 36(1)(a)(v))

36(B)(1) adjourn its decision,

and

36(B)(2) on application claiming recognition or enforcement order the other party to provide appropriate security.