

# THE INTERNATIONAL COMMERCIAL ARBITRATION LAW, 1987

(English translation prepared by the Service for the Revision and Consolidation of the Cyprus Legislation and issued by the Ministry of Justice)

## No. 101 of 1987

### A LAW TO PROVIDE FOR INTERNATIONAL ARBITRATION IN COMMERCIAL MATTERS AND FOR MATTERS CONNECTED THEREWITH

(29th May, 1987)

The House of Representatives enacts as follows:

#### Short title.

1. This Law may be cited as the International Commercial Arbitration Law, 1987.

#### Interpretation.

2. (1) In this Law, unless the context requires "arbitration" means any arbitration whether not administered by a permanent arbitral institution;

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

"Court" means the competent District Court or a Judge thereof;

"parties to the agreement" or "parties" means the parties which have concluded the arbitration agreement.

(2) "International" is an arbitration 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

- a. the parties have expressly agreed that the subject-matter of the arbitration agreement relates to more than one country.
1. If a party has more than one place of business, the place of business for the purpose of subsection (2) is that which has the closest relationship to the arbitration agreement; and if a party does not have a place of business, reference is made to his habitual residence.

(4) "Commercial" is an arbitration if it refers to matters arising from relationships of a commercial nature, whether contractual or not.

(5) The term "relationships of a commercial nature" includes, but is not limited to, the following transactions: any trade transaction for the supply or exchange of goods or services: distribution agreement; commercial representation or agency; leasing; construction or 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.

(6) Where a provision of this Law, except section 28, leaves the parties free to determine a certain issue, such freedom includes the right of the parties to authorize a third party, whether an individual or body corporate, including an arbitral institution, to make that determination;

(7) 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;

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

### **Scope of application**

3. (1) This Law shall apply exclusively to international application arbitration subject to any bilateral or multilateral agreement in force in the Republic of Cyprus.

1. The provisions of this Law, except sections 8, 9, 35 and 36, apply only if the place of arbitration is in the territory of the Republic of Cyprus.

#### **Cap. 4.**

(3) The provisions of this Law shall in no way affect any other Laws by virtue of which certain disputes may not be submitted to arbitration or the Arbitration Law, which shall continue to be in force in relation to arbitration of disputes not falling under the provisions of this Law.

#### **Receipt of written communications**

4. (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.
1. The provisions of this section shall apply in relation to communications relating to arbitration proceedings and shall not apply to communications in Court proceedings.

#### **Waiver of right to object**

5. 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.

#### **Extent of Court intervention**

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

### **PART II. - ARBITRATION AGREEMENT**

## **Definition and form of arbitration agreement.**

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

(2) The arbitration agreement shall be in writing.

(3) An 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.

## **Arbitration agreement and substantive claim before Court.**

8. (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 sub-section (1) of this section 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.

## **Interim measures by Court**

9. 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.

## **PART III. - COMPOSITION OF ARBITRAL TRIBUNAL**

### **Number of arbitrators.**

10. (1) The parties are free to determine the number of arbitrators.

(2) Failing such determination, the number of arbitrators shall be three. **Appointment of arbitrators**

11. (1) Subject to the provisions of the following sub-sections of this section, no person shall be precluded by reason of his nationality from acting as an arbitrator, unless otherwise agreed by the parties.

The parties are free to agree on a procedure of appointing the arbitrator, subject to the provisions of sub-sections (4) and (5) of this section.

1. Failing such agreement, the following rules shall apply:
  - 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 at the request of either party;
1. 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, whether an individual or body corporate, including an arbitral institution fails to perform any function entrusted to it under such procedure, any party may request the Court to take the necessary measure, unless the agreement on the appointment procedure provides other means for securing the appointment.
1. A decision on a matter entrusted by sub-sections (3) or (4) of this section to the Court shall be subject to no appeal. The Court 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 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.

**Grounds for challenge**

12. (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 have the same obligation to disclose any such circumstances.

1. 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.
2. 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.

### **Challenge procedure.**

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

1. 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 section 12(2), send a 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 sub-section (2) of this section is not successful, the challenging party may request, within thirty days after having received notice of the decision rejecting the challenge, the Court 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.

### **Failure or impossibility to act.**

14. (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 to decide on the termination of the mandate, which decision shall be subject to no appeal.

1. If, under this section or section 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 section or section 12(2).

### **Appointment of substitute arbitrator.**

15. Where the mandate of an arbitrator terminates under section 13 or 14 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 provisions of section 11 of this Law that were applicable to the appointment of the arbitrator being replaced.

## **PART IV. - JURISDICTION OF ARBITRAL TRIBUNAL**

### **Competence of arbitral tribunal to rule on its jurisdiction.**

16. (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 the purposes of this sub-section, 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.

1. 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.
2. The arbitral tribunal may rule on a plea referred to in sub-section (2) of this section 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 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.

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

17. 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.

## **PART V. – CONDUCT OF ARBITRAL PROCEEDINGS**

### **Equal treatment of parties.**

18. During arbitral proceedings the parties shall have the same rights and the same obligations subject to the principle of equality, and each party shall be given a full opportunity of presenting his case.

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

1. 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 includes the power to determine the admissibility, relevance, materiality and weight of any evidence.

### **Place of arbitration.**

20. (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.

1. Notwithstanding the provisions of sub-section (1) of this section, 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.

### **Commencement of arbitral proceedings.**

21. (1) 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.

### **Cap. 4**

1. Commencement of the arbitral proceedings shall cause suspension of the period of limitation in accordance with the provisions of the following sub-section.
2. The limitation period in relation to any claims which are referred to arbitration in accordance with the provisions of this Law shall be governed, subject to the provisions of this Law, by the provisions of sub-sections (1), (2), (5), (6) and (7) of section 24, of the Arbitration Law.

### **Cap. 15**

3. The words "is absent from the Republic" in the fifth line of section 8 of the Limitation of Actions Law shall not apply in the case of claims which are referred to arbitration in accordance with the provisions of this Law.

**57 of 1964.**

4. The limitation of Actions (Suspension) Law shall not apply in relation to claims which are referred to arbitration in accordance with the provisions of this Law.

**Language.**

22. (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 communications by the arbitral tribunal.

1. The arbitral tribunal may order that any documentary evidence shall be accompanied by a translation into the language or languages agreed upon the parties or determined by the arbitral tribunal as provided in the preceding subsection.

**Statements of claim and defence.**

23. (1) Unless otherwise agreed by the parties, the statement of claim shall contain the facts supporting the claim, the points at issue and the relief of remedy sought, and the statement of defence shall clearly state the defence in respect of these particulars. The statement of claim and the statement of defence shall be submitted within the time agreed by the parties or determined by the arbitration tribunal and may be accompanied by all documents they consider to be relevant or may add a reference to the documents or other evidence they will submit.

1. 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.

**Hearings and written proceedings.**

24. (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.

1. The parties shall be given sufficient advance notice of any meeting of the arbitral tribunal for the purposes of a hearing or inspection of goods, other property of documents.
2. Documents of any kind 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.

#### **Default of a party.**

25. Unless otherwise agreed by the parties, if, without showing sufficient cause,
- a. the claimant fails to communicate his statement of claim in accordance with section 23(1), the arbitral tribunal shall terminate the proceedings;
  - b. the respondent fails to communicate his statement of defence in accordance with section 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.

#### **Appointment of experts.**

26. (1) Unless otherwise agreed by the parties, the arbitral tribunal-
- a. may appoint one or more experts to report to it on specific issues put to them by the arbitral tribunal;
  - a. 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.
1. 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.

#### **Court assistance in taking evidence.**

27. The arbitral tribunal or a party with the approval of the arbitral tribunal may request from a Court assistance in taking evidence. The Court may execute the request within its competence and according to its rules on taking evidence.

## **PART VI. - MAKING OF AWARD**

### **AND TERMINATION OF PROCEEDINGS**

28. (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.

1. Failing any designation by the parties, the arbitral tribunal shall apply the law determined by the conflict of laws rules which it considers applicable.
2. The arbitral tribunal shall decide *aequo at bono* or as *amiable compositeur* only if the parties have expressly authorized it to do so.
3. In all cases, the arbitral tribunal shall decide in accordance with the terms of the contract and shall take into account the usage of the trade applicable to the transaction.

#### **Decision making by a panel of arbitrators.**

29. 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, question of procedure may be decided by a presiding arbitrator, if so authorised by the parties or all members of the arbitral tribunal.

30. (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.

1. An award on agreed terms shall be made in accordance with the provisions of the following section 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.

31. (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 therein.

1. 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 section 30.
2. The award shall state its date and the place of arbitration as determined in accordance with section 20(1). The award shall be deemed to have been made at that place.
3. After the award is made, a copy signed by the arbitrators in accordance with sub-section (1) shall be communicated to each party.

32. (1) The arbitral proceedings are terminated by the final award or by an order of the arbitral tribunal in accordance with the following sub-section.

1. The arbitral tribunal shall issue an order for the termination of the arbitral proceedings when:
  - a. the claimant withdraws his claim, unless the respondent objects thereto and the arbitral tribunal recognises a legitimate interest on his part in obtaining a final settlement of the dispute;
  - b. the parties agree on the termination of the proceedings;
  - c. the arbitral tribunal finds that the continuation of the proceedings has for any other reason become the provisions unnecessary or impossible.
1. The mandate of the arbitral tribunal terminates with the termination of the arbitral proceedings, subject to the provisions of sections 33 and 34(4).

#### **Correction and interpretation of award; additional award.**

33. (1) Within thirty days of receipt of the award, unless another period of time has been agreed upon by the parties, a party, with notice to the other party, may:

- a. 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, request the arbitral tribunal to give an interpretation of a specific point or part of the award.
1. 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 sub-section (1)(a) 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 subsections (2), (3) or (4).
5. The provisions of section 31 shall apply to a correction or interpretation of the award or to an additional award.

## **PART VII. - RECOURSE AGAINST AWARD**

### **Application and grounds for setting aside an award.**

34. (1) Recourse to a Court against an arbitral award may be made only by an application for setting aside in accordance with the following provisions of this section.

1. An arbitral award may be set aside by the Court only if:
  - a. the party making the application furnishes proof that:
    - i. a party to the arbitration agreement referred to in section 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 Republic of Cyprus; 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 decision 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, or, failing such agreement, was not in accordance with this Law; or

a. Court finds that:

i. the subject - matter of the dispute is not capable of settlement by arbitration under the law of the Republic of Cyprus; or

(ii) the award is in conflict with provisions relating to public order of the Republic of Cyprus.

1. An application for setting aside may not be made after three months have elapsed from the date on which the party making that application had received the award or if a re-quest had been made under section 33, from the date on which that request had been disposed of by the arbitral tribunal.
2. The Court, when asked to set aside an award, may, where appropriate and so requested by a party, suspend the set-ting 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.

## **PART VIII. - RECOGNITION AND ENFORCEMENT**

### **OF AWARDS**

#### **Recognition and enforcement of an award**

35. (1) An arbitral award, irrespective of the country in which and enforcement it was made, shall be recognized as binding. Upon application in writing by either party, the Court, shall issue an order of enforcement of the arbitral award, subject to the provisions of this or the following section.

1. 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 section 7 or a duly certified copy thereof. If the award or agreement is not made in an official language of the republic of Cyprus the Court may request the party to supply a duly certified translation thereof into such language.

#### **Grounds for refusing recognition or enforcement of an arbitral award.**

36. (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 proof that:

- i. a party to the arbitration agreement referred to in section 7 was under some incapacity; or the said agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law of the country where the award was made; or
- ii. the party against whom the award is invoked was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or
- iii. the award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration; provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, that part of the award which contains decisions on matters submitted to arbitration may be recognized and enforced; or
- iv. the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties or, failing such agreement, was not in accordance with the law of the country where the arbitration took place; or
- 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

a. if the Court finds that:

- i. the subject-matter of the dispute is not capable of settlement by arbitration under the law of the Republic of Cyprus; or
- ii. the recognition or enforcement of the award would be contrary to provision relating to public order of the republic of Cyprus.

1. If an application for setting aside or suspension of an award has been made to a Court referred to in sub-section (1)(a)(v) of this section, 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.

## **Appendix 2**

### **CONVENTION ON THE RECOGNITION AND ENFORCEMENT OF FOREIGN ARBITRAL AWARDS**

Done at New York, 10 June 1958

United Nations, Treaty Series, vol. 330 P. 38 No. 4739 (19.59)

#### **Article I**

1. This Convention shall apply to the recognition and enforcement of arbitral awards made in the territory of a State other than the State where the recognition and enforcement of such awards are sought, and arising out of differences between persons, whether physical or legal. It shall also apply to arbitral awards not considered as domestic awards in the State where their recognition and enforcement are sought.
2. The term "arbitral awards" shall include not only awards made by arbitrators appointed for each case but also those made by permanent arbitral bodies to which the parties have submitted.
3. When signing, ratifying or acceding to this Convention, or notifying extension under article X hereof, any State may on the basis of reciprocity declare that it will apply the Convention to the recognition and enforcement of awards made only in the territory of another Contracting State. It may also declare that it will apply the Convention only to differences arising out of legal relationships, whether contractual or not, which are considered as commercial under the national law of the State making such declaration.

#### **Article II**

1. Each Contracting State shall recognise an agreement in writing under which the parties undertake to submit to arbitration all or any differences which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not, concerning a subject matter capable of settlement by arbitration.
2. The term "agreement in writing" shall include an arbitral clause in a contract or an arbitration agreement, signed by the parties or contained in an exchange of letters or telegrams.
3. The court of a Contracting State, when seized of an action in a matter in respect of which the parties have made an agreement within the meaning of this article, at the request of one of the parties, refer the parties to arbitration, unless it finds that the said agreement is null and void, inoperative or incapable of being performed.

### **Article III**

Each Contracting State shall recognize arbitral awards as binding and enforce them in accordance with the rules of procedure of the territory where the award is relied upon, under the conditions laid down in the following articles. There shall not be imposed substantially more onerous conditions or higher fees or charges on the recognition or enforcement of arbitral awards to which this convention applies than are imposed on the recognition or enforcement of domestic arbitral awards.

### **Article IV**

1. To obtain the recognition and enforcement mentioned the party applying for recognition and enforcement shall, at the time of the application, supply:
  - a. The duly authenticated original award or a duly certified copy thereof;
  - b. The original agreement referred to in article 11 or a duly certified copy thereof.
1. If the said award or agreement is not made in an official language of the country in which the award is relied upon, the party applying for recognition and enforcement of the award shall produce a translation of these documents into such language. The translation shall be certified by an official or sworn translator or by a diplomatic or consular agent.

### **Article V**

1. Recognition and enforcement of the award may be refused, at the request of the party against whom it is invoked, only if that party furnishes to the competent authority where the recognition and enforcement is sought, proof that:
  - (a) The parties to the agreement referred to in article 11 were, under the law applicable to them, 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
  - (b) the party against whom the award is invoked was not given proper notice of the appointment of the arbitrator or of the arbitration proceedings or was otherwise unable to present his case; or
- a. the award deals with a difference not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration, provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, that part of the award which contains decisions on matters submitted to arbitration may be recognized and enforced; or

- b. the composition of the arbitral authority 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
  - c. the award has not yet become binding on the parties, or has been set aside or suspended by a competent authority of the country in which, or under the law of which, that award was made.
1. Recognition and enforcement of an arbitral award may also be refused if the competent authority in the country where recognition and enforcement is sought finds that:
  - a. The subject matter of the difference is not capable of settlement by arbitration under the law of that country; or
  - b. the recognition or enforcement of the award would be contrary to the public policy of that country.

### **Article VI**

If an application for the setting aside or suspension of the award has been made to a competent authority referred to in article V (1) (e), the authority before which the award is sought to be relied upon may if it considers it proper, adjourn the decision of the party claiming enforcement of the award, order the other party to give suitable security.

### **Article VII**

1. The provisions of the present Convention shall not affect the validity of multilateral or bilateral agreements concerning the recognition and enforcement of arbitral awards entered into by the Contracting States nor deprive any interested party of any right he may have to avail himself of an arbitral award in the manner and to the extent allowed by the law or the treaties of the country where such award is sought to be relied upon.
2. The Geneva Protocol on Arbitration Clauses of 1923 and Geneva Convention on the Execution of Foreign Arbitral Awards of 1927 shall cease to have effect between Contracting States on their becoming bound and to the extent that they become bound, by this Convention.

### **Article VIII**

1. This Convention shall be open until 31 December, 1958 for signature on behalf of any Member of the United Nations and also on behalf of any other State which is or hereafter becomes a member of any specialized agency of the United Nations, or which is or hereafter becomes a party to the Statute of the International Court of Justice, or any other State to which any invitation has been addressed by the General Assembly of the United Nations.
2. This Convention shall be ratified and the instrument of ratification shall be deposited with the Secretary-General of the United Nations.

### **Article IX**

1. This Convention shall be open for accession to all States referred to in article VIII.
2. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

### **Article X**

1. Any State may, at the time of signature, ratification or accession, declare that its Convention shall extend to all or any of the territories for the international relations of which it is responsible. Such a declaration shall take effect when the Convention enters into force for the State concerned.
2. At any time thereafter any such extension shall be made by notification addressed to the Secretary-General of the United Nations and shall take effect as from the ninetieth day after the day of receipt by the Secretary-General of the United Nations of this notification, or as from the date of entry into force of the Convention for the State concerned, whichever is the later.
3. With respect to those territories to which this Convention is not extended at the time of signature ratification or accession, each State concerned shall consider the possibility of taking the necessary steps in order to extend the application of this Convention to such territories, subject, where necessary for constitutional reasons, to the consent of the Governments of such territories.

### **Article XI**

In the case of a federal non-unitary State, the following provision shall apply:

- a. With respect to the those articles of this Convention that come within the legislative jurisdiction of the federal authority, the obligations of the federal Government shall to this extent be the same as those of Contracting States which are not federal States;
- b. With respect to those article of this Convention that come within the legislative jurisdiction of constituent states or provinces which are not, under the constitutional system of the federation, bound to take legislative action, the federal Government shall bring such articles with a favourable recommendation to the notice of the appropriate authorities of constituent states or provinces at the earliest possible moment;
- c. A federal State Party to this Convention shall, at the request of any other Contracting State transmitted through the Secretary-General of the United nations, supply a statement of the law and practice of the federation and its constituent units in regard to any particular provision of this Convention, showing the extent to which effect has been given to that provision by legislative or other action.

### **Article XII**

1. This Convention shall come into force on the ninetieth day following the date of deposit of the third instrument of ratification or accession.

2. For each State ratifying or acceding to this Convention after the deposit of the third instrument of ratification or accession, this Convention shall enter into force on the ninetieth day after deposit by such State of its instrument or ratification of accession.

### **Article XIII**

1. Any Contracting State may denounce this Convention by a written notification to the Secretary-General of the United Nations. Denunciation shall take effect one year after the date of receipt of the notification by the Secretary-General.
2. Any State which has made a declaration or notification under article X may, at any time thereafter, by notification to the Secretary-General of the United Nations, declare that this Convention shall cease to extend to the territory concerned one year after the date of the receipt of the notification by the Secretary-General.
3. This Convention shall continue to be applicable to arbitral awards in respect of which recognition or enforcement proceedings have been instituted before the denunciation takes effect.

### **Article XIV**

A contracting State shall not be entitled to avail itself of the present Convention against other Contracting States except to the extent that it is itself bound to apply the Convention.

### **Article XV**

The Secretary-General of the United Nations shall notify the States contemplated in article VIII of the following:

- a. Signatures and ratifications in accordance with article VIII;
- b. accessions in accordance with article IX;
- c. declarations and notifications under articles I, X and XI;
- d. the date upon which this Convention enters into force in accordance with article XII;
- e. denunciations and notifications in accordance with article XIII.

### **Article XVI**

1. This Convention, of which the Chinese, English, French, Russian and Spanish texts shall be equally authentic, shall be deposited in the archives of the United Nations.
  2. The Secretary-General of the United Nations shall transmit a certified copy of this Convention to the States contemplated in article VIII.