

# **ARBITRATION ACT**

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## **CHAPTER I**

### **GENERAL PROVISIONS**

This Act governs arbitral resolution of disputes (hereinafter: arbitration) without a foreign element (hereinafter: internal arbitration) and disputes with a foreign element (hereinafter: international arbitration).

#### **Scope of Application**

##### *Article 2*

Provisions of this Act apply to arbitration and arbitral proceedings if the place of arbitration is in the territory of the Republic of Serbia (hereinafter: the Republic).

When the arbitration is international, the parties may agree otherwise.

Provisions of this Act, which cannot be derogated from by parties' agreement shall be complied with if the place of arbitration is in the Republic.

#### **International Arbitration**

##### *Article 3*

International arbitration, within the meaning of this Act, shall be an arbitration having as its subject matter disputes arising out of international business relations, in particular if:

- 1) the parties to an arbitration agreement have, at the time of the conclusion of that agreement, their places of business in different States;
- 2) one of the following places is situated outside the State in which the parties have their places of business:
  - a) the place of arbitration, if determined in, or pursuant to, the arbitration agreement, or
  - b) the place where a substantial part of the obligations of the business relationship is to be performed or the place with which the subject matter of the dispute is most closely connected;
- 3) the parties have expressly agreed that the subject matter of the arbitration agreement relates to more than one country.

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<sup>1</sup> Translated to English by Professor Dr Maja Stanivuković

If a party does not have a place of business, reference for that party is to be made to his habitual residence.

### **Basis of Arbitration**

#### *Article 4*

A dispute may be resolved by arbitration only on the basis of the parties' agreement.

When the parties have agreed to an arbitration of a dispute, their dispute shall be resolved by an arbitral tribunal, which is composed of arbitrators.

### **Dispute Capable of Arbitration (Arbitrability)**

#### *Article 5*

Parties may agree to an arbitration for the resolution of a pecuniary dispute concerning rights they can freely dispose of, except for disputes that are reserved to the exclusive jurisdiction of courts.

Each natural or legal person, including the State, its instrumentalities, institutions and companies in which a State has a property interest, may agree to an arbitration.

Anyone having the capacity to be a party in the civil procedure pursuant to the provisions of the statute regulating civil procedure may agree to an arbitration.

### **Administration of Arbitration**

#### *Article 6*

Arbitral resolution of disputes shall be administered by a permanent arbitral institution in accordance with its rules and with this Act when the parties have so agreed.

Permanent arbitral institutions may be established by chambers of commerce, or by professional, vocational or civic associations, in accordance with their articles of association and with this Act, provided that is in compliance with their activities.

Parties can also agree to an *ad hoc* arbitration, which will be organised according to the parties' agreement and this Act.

### **Role of Court**

#### *Article 7*

A State court (hereinafter: the court) may only take those actions regarding arbitration, that are expressly specified in this Act.

## **Application of International Treaties**

### *Article 8*

The application of this Act shall be without prejudice to the application of a ratified international treaty.

## **CHAPTER II**

### **ARBITRATION AGREEMENT**

#### **Definition**

### *Article 9*

Parties can entrust their future disputes or disputes which have arisen between them in respect of a defined legal relationship to an arbitral tribunal by virtue of arbitration agreement.

An arbitration agreement for the resolution of future disputes may be contained in a contractual clause (hereinafter: an arbitration clause) or in a separate contract.

#### **Nullity of an Arbitration Agreement**

### *Article 10*

An arbitration agreement shall be null and void if:

- 1) the type of dispute to which it refers is not capable of settlement by arbitration; or
- 2) it is not concluded in the form prescribed by this Act; or
- 3) the parties did not have the necessary qualities or capacity for its conclusion, or
- 4) was concluded by a party acting under duress, fraud or mistake.

An arbitration agreement shall have no effect as to the resolution of a dispute not capable of settlement by arbitration.

#### **Subsequent Agreement**

### *Article 11*

An arbitration agreement may be concluded even after the dispute has already been brought before the court.

## **Form**

### *Article 12*

An arbitration agreement shall be in writing.

An arbitration agreement is in writing if it is contained in documents signed by the parties.

An arbitration agreement shall be deemed to be in writing if concluded by an exchange of messages through means of communication which provide a written record of the parties' agreement, regardless of whether the messages were signed by the parties or not.

An arbitration agreement shall be deemed to be in writing also if the parties in a written contract make reference to a document containing an arbitration agreement (general conditions of contract, text of another contract, etc.) provided that the aim of the reference is to make the arbitration agreement part of the contract.

An arbitration agreement shall be deemed to exist also when the claimant initiates arbitral proceedings in writing, and the respondent in writing or by a statement, recorded in the minutes of the arbitration hearing, expressly accepts the arbitration or when the respondent takes part in the arbitral proceedings and fails to challenge the existence of the arbitration agreement or the jurisdiction of the Arbitral Tribunal before engaging in the discussion of the subject matter of the dispute.

## **Transfer**

### *Article 13*

An arbitration agreement shall remain in force even in case of assignment (cession) of the contract or claim, unless agreed otherwise.

An arbitration agreement shall remain in force in case of subrogation, unless agreed otherwise.

Provisions of paragraphs 1 and 2 of this Article shall apply to other cases of transfer of claim, unless agreed otherwise.

## **An Action Before a Court**

### *Article 14*

A court before which an action is brought in a matter which is the subject of an arbitration agreement shall, upon a motion of a party submitted prior to engagement in the discussion of the subject matter of the dispute, dismiss the action for lack of

jurisdiction, unless it finds that the agreement is manifestly null and void, inoperative or incapable of being performed.

### **Interim measures**

#### *Article 15*

Each party may, before or during arbitral proceedings, request from a court interim measures, and the court may grant such measures.

Paragraph 1 of this Article shall also apply when the arbitration agreement concerns an arbitration in another State.

## **CHAPTER III**

### **ARBITRAL TRIBUNAL**

#### **Composition**

#### *Article 16*

The number of arbitrators shall be determined by the parties.

An Arbitral Tribunal shall be composed of one arbitrator (sole arbitrator) or three or more arbitrators (arbitral panel). If the arbitration agreement provides for more than one arbitrator, their number must be odd.

If the parties fail to determine the number of arbitrators, their number shall be determined by a person or institution designated by the parties' agreement (hereinafter: the appointing authority), and if there is no appointing authority or the appointing authority fails to do so, the number of arbitrators shall be determined by the competent court.

If an arbitration is administered by a permanent arbitral institution, the institution shall act as an appointing authority.

#### **Appointment of Arbitrators**

#### *Article 17*

The parties are free to agree on a procedure of appointing the arbitrators, and failing such an agreement, the arbitrators shall be appointed in accordance with this Act.

If the dispute is to be resolved by a sole arbitrator, the parties shall agree on his appointment within 30 days of the day that one party requests the other to jointly appoint the arbitrator. Failing such an agreement, the appointment shall be made by the appointing authority, and if there is no appointing authority or the appointing authority fails to do so, the appointment shall be made by the competent court.

If the dispute is to be resolved by three arbitrators, each party shall appoint one arbitrator within 30 days of the day that other party requests it do to so. If the requested party fails to do so, the arbitrator shall be appointed by the appointing authority designated by the parties, and if there is no appointing authority or the appointing authority fails to do so, the appointment shall be made by the competent court. The third arbitrator who presides over the arbitral tribunal (hereinafter: president or president of the arbitral tribunal), shall be elected by the two previously appointed arbitrators within 30 days of the day of their appointment. Should they fail to elect him, the appointment shall be made by the appointing authority, and if there is no appointing authority or the appointing authority fails to do so, the appointment shall be made by the competent court.

The decision of the court on the appointment of an arbitrator is subject to no appeal.

### **Costs of the Arbitration**

#### *Article 18*

The parties shall bear the costs of arbitration.

The amount of costs referred to in paragraph 1 of this Article shall be determined by the arbitral tribunal.

At the request of the arbitral tribunal, the parties shall pay in advance the costs referred to in paragraph 1 of this Article.

The permanent arbitral institution shall independently establish the costs of arbitration and the scale of such costs.

## **CHAPTER IV**

### **ARBITRATORS**

#### **Capacity to Act as an Arbitrator**

#### *Article 19*

Any natural person having contractual capacity, irrespective of its nationality, may act as an arbitrator.

An arbitrator must have the qualities agreed upon by the parties.

An arbitrator must be impartial and independent in relation to the parties and to the subject matter of the dispute.

An arbitrator may not be a person sentenced to an unsuspended sentence of imprisonment while the consequences of the conviction are in effect.

## **Acceptance of the Appointment**

### *Article 20*

The arbitrator shall provide a written statement of acceptance of his appointment as an arbitrator.

## **Arbitrator's Duty to Disclose Relevant Circumstances to the Parties**

### *Article 21*

A person who has been proposed as an arbitrator shall, before accepting the appointment, disclose any circumstances that may justifiably raise doubts as to his impartiality or independence.

An arbitrator, from the day of his appointment, shall without delay disclose any circumstances, referred to in paragraph 1 of this Article, if such circumstances have occurred after his appointment.

## **Performance of Duty**

### *Article 22*

An arbitrator shall perform his duty conscientiously and efficiently.

## **Grounds for Challenge**

### *Article 23*

An arbitrator may be challenged only if circumstances exist that may justifiably raise doubts as to his impartiality or independence or if he does not possess qualities agreed upon by the parties.

## **Challenge Procedure**

### *Article 24*

Unless otherwise agreed by the parties, a party shall submit a request for challenge of an arbitrator in writing within 15 days after becoming aware of his appointment or of the grounds for his challenge.

A party may challenge an arbitrator appointed by that party or jointly with the opposing party, only if the grounds for the challenge have occurred or the party has become aware of those grounds after the arbitrator was appointed.

Unless otherwise agreed by the parties, the competent court shall decide on the challenge of an arbitrator.

The parties who entrusted the organisation of their arbitration to a permanent arbitral institution shall be deemed to have agreed that the challenge be decided in accordance with its rules.

The arbitral tribunal may continue the arbitral proceedings and make an award although the challenge procedure is pending.

### **Termination of Arbitrator's Mandate**

#### *Article 25*

An arbitrator may withdraw from his office by a written statement if, for justifiable reasons, including the grounds set out in Article 23 of this Act, he becomes unable to perform his functions.

Parties may agree to terminate an arbitrator's mandate if for *de facto* or *de jure* reasons, including the grounds set out in Article 23 of this Act, he becomes unable to perform his functions or fails to act without undue delay.

If 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 for termination of his mandate.

If the parties fail to agree on the termination of the arbitrator's mandate, a party which considers that an arbitrator has become unable to perform his functions or has failed to act without undue delay, may request the permanent arbitral institution or, in case of an *ad hoc* arbitration, the competent court, to decide on the termination of the arbitrator's mandate.

The decision of the court on the termination of the arbitrator's mandate is subject to no appeal.

### **Appointment of Substitute Arbitrator**

#### *Article 26*

If the mandate of an arbitrator terminates, a substitute arbitrator shall be appointed in accordance with the provisions of this Act on the appointment of arbitrator.

## **CHAPTER V**

### **JURISDICTION OF ARBITRAL TRIBUNAL**

#### **Basis of Jurisdiction**

#### *Article 27*

Jurisdiction of the arbitral tribunal is determined by the parties' agreement.

## **Competence of Arbitral Tribunal to Rule on its Jurisdiction**

### *Article 28*

The arbitral tribunal may rule on its own jurisdiction, including any objection with respect to the existence or validity of the arbitration agreement.

If the arbitration agreement was concluded in the form of an arbitration clause such clause shall be considered independent of the other terms of the contract in the process of deciding on the objection with respect to the existence or validity of the arbitration agreement.

A decision by an arbitral body that the contract containing an arbitration clause is null and void does not entail the invalidity of that clause.

### **Pleas that the Arbitral Tribunal does not Have Jurisdiction and that it is Exceeding the Scope of its Authority**

### *Article 29*

The respondent shall raise the plea that the arbitral tribunal does not have jurisdiction (hereinafter: jurisdictional plea) not later than the submission of his statement of defence.

The respondent is entitled to raise the jurisdictional plea even if he has appointed, or participated in the appointment of, an arbitrator.

A party shall raise the plea that the arbitral tribunal is exceeding the scope of its authority (hereinafter: plea of exceeding the authority) as soon as the matter alleged to be beyond the scope of the arbitral tribunal's authority is raised during the arbitral proceedings.

The arbitral tribunal may allow the pleas referred to in par. 1 to 3 of this Article to be raised later, if it considers the delay justified.

## **Deciding on Pleas**

### *Article 30*

The arbitral tribunal may rule on pleas raised in accordance with Art. 28 and 29 of this Act either as a preliminary question or in an award on the merits.

If the arbitral tribunal rules on pleas as a preliminary question, any party may request, within 30 days after having received the ruling, the court specified by statute to decide the matter.

The decision of the court referred to in par. 2 of this Article is subject to no appeal.

The arbitral tribunal may continue the arbitral proceedings and make an award while the proceedings before the court regarding the pleas referred to in par. 2 of this Article are pending.

### **Power of Arbitral Tribunal to Order Interim Measures**

#### *Article 31*

Unless otherwise agreed by the parties, the arbitral tribunal may, at the request of a party, order an interim measure that it considers necessary in respect of the subject matter of the dispute, and may at the same time order the opposing party to provide appropriate security.

## **CHAPTER VI**

### **PROCEEDINGS BEFORE ARBITRAL TRIBUNAL**

#### **Determination of Rules of Procedure**

#### *Article 32*

The parties are free to agree on the procedure to be followed by the arbitral tribunal or to refer to particular arbitration rules, in accordance with the provisions of this Act.

If the arbitration is international, the parties may agree that a foreign law be applied to the arbitral proceedings, in accordance with the provisions of this Act.

If the parties fail to agree on the rules of procedure, the arbitral tribunal may conduct the arbitral proceedings in such a manner as it considers appropriate, in accordance with the provisions of this Act.

The power of arbitral tribunal referred to in par. 3 of this Article includes the power to determine the admissibility, relevance and weight of any evidence that was proposed and taken.

#### **Fundamental Principles of the Proceedings**

#### *Article 33*

The parties are equal in the proceedings before the arbitral tribunal.

The arbitral tribunal shall provide each party with an opportunity to present his case and evidence, as well as to state his position with respect to acts and proposals of the opposing party.

## **Place of Arbitration**

### *Article 34*

The parties are free to agree on the place of arbitration.

If the parties did not agree on the place of arbitration, the place of arbitration shall be determined by the arbitral tribunal having regard to the circumstances of the case, including the convenience of the parties.

If the parties agreed to entrust the administration of their arbitration to a permanent arbitral institution, the place of arbitration shall be determined in accordance with its rules.

If the place of arbitration is not determined in accordance with par. 1 to 3 of this Article, the place of arbitration shall be deemed to be the place indicated in the arbitral award as the place where the award was made.

Notwithstanding the provisions of par. 1 to 4 of this Article, the arbitral tribunal may, unless otherwise agreed by the parties, meet at any place it considers appropriate for the deliberation of arbitrators or for hearing of witnesses, experts or the parties, as well as for inspection of goods, other property or documents.

## **Language**

### *Article 35*

The parties are free to agree on the language or languages to be used in the arbitral proceedings, and failing such agreement, the arbitral tribunal shall decide upon it, taking into account the place of arbitration and the language used by the parties in their legal relationship.

Permanent arbitral institutions may regulate the issue of language of the arbitral proceedings by their rules.

The language of arbitration shall apply to any written statement by the parties, any hearing, any arbitral award and any other act of the arbitral tribunal, unless otherwise agreed by the parties or unless, failing such agreement, the arbitral tribunal decided otherwise.

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

Until the language of the proceedings is determined, a statement of claim, a statement of defence and any other written submission may be submitted in the language of the contract, or in the language of the arbitration agreement, or in the Serbian language.

## **Statements of Claim and Defence**

### *Article 36*

Unless otherwise agreed by the parties, the claimant shall state the facts supporting his claim, the points at issue and the relief or remedy sought in his statement of claim.

If the claimant submitted his request for arbitration before filing the statement of claim, the statement of claim shall be filed within the time limit agreed upon by the parties, and failing such agreement, within the time limit determined by the arbitral tribunal.

Unless otherwise agreed by the parties, the respondent shall, within the time limit agreed upon by the parties or determined by the arbitral tribunal, state his defence and take his position with respect to claims, statements and evidence contained in the statement of claim.

The parties may, during the course of the arbitral proceedings, amend or supplement their statement of claim, or statement of defence, unless they agreed otherwise or unless the arbitral tribunal decides otherwise for the purpose of efficiency of the proceedings.

## **Counterclaim**

### *Article 37*

Unless otherwise agreed by the parties, the respondent may submit a counterclaim.

The provisions of this Act pertaining to the statement of claim shall apply to a counterclaim.

## **Commencement of Arbitral Proceedings**

### *Article 38*

Unless otherwise agreed by the parties, the arbitral proceedings shall commence:

- 1) if an arbitration is administered by a permanent arbitral institution, on the day that the institution receives a request for arbitration or a statement of claim,
- 2) in an *ad hoc* arbitration, on the day the respondent receives the request for arbitration or a statement of claim and a notification that the claimant appointed an arbitrator or proposed a sole arbitrator and invited the opposing party to appoint his arbitrator or to state his position with respect to the proposed sole arbitrator.

## **Hearings and Written Proceedings**

### *Article 39*

Unless otherwise agreed by the parties, the arbitral tribunal shall decide whether to hold an oral hearing or to conduct the proceedings on the basis of documents and other written materials.

If one of the parties requests that an oral hearing be held, the arbitral tribunal shall hold such a hearing unless the parties have agreed to exclude it.

### **Duty to Notify the Parties**

#### *Article 40*

The parties shall be timely notified of any hearing and of any meeting of the arbitral tribunal for the purposes of inspection of goods, other property or documents.

All statements, documents and information supplied to the arbitral tribunal by one party shall be communicated to the other party.

Any expert report or evidentiary document shall be communicated to the parties.

### **Manner of Delivery and Receipt of Written Documents**

#### *Article 41*

Unless otherwise agreed by the parties, any written communication is deemed to have been received on the day it is delivered to the addressee personally or on the day it is sent to the recipient's mailing address.

A mailing address is the address at which the addressee regularly receives his mail. If the addressee has not designated any other address or if the circumstances of the case do not indicate otherwise, a mailing address is the address of the legal entity's principal place of business or branch, natural person's habitual residence, or the address referred to in the arbitration agreement.

If none of the addresses referred to in paragraph 2 of this article can be found, a written notification shall be deemed to have been made if it is sent to the addressee's last known mailing address by registered letter or any other means which provides a written record of the fact that the written communication was sent.

Unless otherwise agreed by the parties, the communication is deemed to have been received on the day it is delivered in accordance with the provisions of this Act.

### **Consequences of Default**

#### *Article 42*

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

- 1) the claimant, after filing the request for arbitration, fails to communicate his statement of claim in accordance with article 36, par. 2 of this Act, the arbitral tribunal shall terminate the proceedings, or
- 2) the respondent fails to communicate his statement of defence in accordance with article 36, par. 3 of this Act, the arbitral tribunal shall continue the proceedings, without treating such failure in itself as an admission by the respondent of the allegations and claims from the statement of claim, or
- 3) a party, although regularly summoned, 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 that was produced.

### **Loss of Right to Object**

#### *Article 43*

A party who knows that a particular provision of this Act from which the parties may derogate or any requirement arising out of the arbitration agreement was not complied with and yet continues to participate in the arbitral proceedings, without raising an objection without delay or within the time-limit provided therefor, shall lose his right to object to non-compliance with the said statutory provision or requirement.

### **Witnesses**

#### *Article 44*

As a rule, witnesses shall be examined at a hearing.

Witnesses may also be examined outside the hearing if they so agree and if the parties do not object.

The arbitral tribunal may request the witness to answer the questions posed to him within a specified time-limit, if the parties do not object.

Witnesses shall be examined without taking oath.

The arbitral tribunal may not pronounce procedural measures or penalties against witnesses.

### **Experts**

#### *Article 45*

Unless otherwise agreed by the parties, the arbitral tribunal may:

1) appoint one or more experts to provide to it reports and opinions on issues determined by the arbitral tribunal;

2) require parties to give the expert any necessary information, to provide him with any necessary documents or provide him with access to documents, goods or other property.

Unless otherwise agreed by the parties, if a party so requests or if the arbitral tribunal so determines, the expert shall, after delivery of his written or oral report and opinion, participate in a hearing where the parties may put questions to him or present other experts to discuss the points at issue with the appointed expert.

The provisions of this Act regarding the challenge of arbitrators shall be applied accordingly to the challenge of experts.

### **Court Assistance in Taking Evidence**

#### *Article 46*

The arbitral tribunal may request from a court assistance in taking evidence.

The arbitral tribunal shall assess the evidence taken before the court as evidence taken by itself.

### **Termination of the Arbitral Proceedings**

#### *Article 47*

The arbitral proceedings shall be terminated by making of the final arbitral award.

The arbitral proceedings may be terminated if:

1) the claimant withdraws his claim, unless the respondent objects thereto and the arbitral tribunal finds that the respondent has a legitimate interest in obtaining a final arbitral award on the dispute;

2) the parties agree on the termination of the proceedings;

3) the arbitral tribunal finds that the continuation of the arbitral proceedings has become impossible;

4) the arbitral proceedings have been suspended in accordance with this Act.

## **CHAPTER VII**

### **ARBITRAL AWARD**

#### **Awards**

*Article 48*

The arbitral tribunal shall make the award on the substance of the dispute by which it shall decide all claims of the parties (the final arbitral award).

The arbitral tribunal may make a partial or interim award.

**Award Based on Law or on Equity**

*Article 49*

The arbitral tribunal shall decide by application of law or legal rules, contracts and usages.

The arbitral tribunal may decide on the basis of justice and equity (*ex aequo et bono, amiable composition*) only if the parties have expressly agreed so.

**Applicable Law**

*Article 50*

The arbitral tribunal in an international arbitration shall make the award by application of the law or legal rules determined by the parties' agreement.

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

If the parties did not designate the applicable law or legal rules, the arbitral tribunal in an international arbitration shall determine that law or rules on the basis of conflict of laws rules it finds appropriate.

The arbitral tribunal shall always take into account the terms of the contract and usages.

**Making of Award**

*Article 51*

The award shall be made in writing and shall be signed by the arbitrator or arbitrators.

An arbitral panel shall make the award after deliberation in which all arbitrators must participate, unless otherwise agreed by the parties.

An arbitral panel shall make the award by majority vote of arbitrators, unless otherwise agreed by the parties.

The award made by an arbitral panel shall be valid if the majority of arbitrators sign it and note the refusal of signature on the award.

### **Dissenting Opinion of an Arbitrator**

#### *Article 52*

An arbitrator who disagrees with the award or with the statement of reasons in the award may write a dissenting opinion, which shall be communicated to the parties along with the award if the arbitrator so requests.

### **Contents of the Arbitral Award**

#### *Article 53*

The award shall contain an introduction, a decision on the substance of the dispute and on the costs of arbitration and a statement of reasons, unless the parties agreed to exclude it.

The award must state the date and place of its making.

### **Award on Agreed Terms**

#### *Article 54*

If, during arbitral proceedings, the parties settle the dispute, the arbitral tribunal shall, at their request, make the arbitral award on agreed terms, unless the effects of the settlement are contrary to public policy.

An arbitral award on agreed terms shall have the same legal effect as any other award, except that it need not contain a statement of reasons.

### **Written Notifications**

#### *Article 55*

The permanent arbitral institution that administers the arbitration shall notify the award to the parties in accordance with its rules.

In *ad hoc* arbitration, the award shall be notified to the parties by the arbitral tribunal.

The award referred to in paras. 1 and 2 of this Article may, on the joint request of the parties, be deposited with the court at the place of arbitration.

### **Corrections, Interpretations and Supplementation of Award**

#### *Article 56*

The arbitral tribunal shall, at the request of any party, correct language and technical errors in the award or give specific interpretations of the award.

The arbitral tribunal shall, at the request of a party, make a supplementary award as to claims presented in the arbitral proceedings but not decided in the arbitral award.

The party must submit the claims referred to in paras. 1 and 2 of this Article at the latest within 30 days of the day of receipt of the award.

The correction or interpretation of the award or supplementary award shall make a constituent part of the award to which it relates.

The notification of the award referred to in par. 4 of this article shall be made in accordance with article 55 of this Act.

## **CHAPTER VIII**

### **SETTING ASIDE OF THE AWARD**

#### **Application for Setting Aside**

##### *Article 57*

An application for setting aside may be made only against a domestic arbitral award.

A domestic arbitral award is an award made in internal or international arbitration in the Republic.

The court at the place of arbitration shall have territorial jurisdictions to decide upon an application for setting aside.

#### **Grounds for Setting Aside**

##### *Article 58*

The court shall grant the claim for setting aside only if the applicant furnishes proof that:

- 1) the arbitration agreement is not valid under the law determined by the parties' agreement or under the law of the Republic, unless the parties agreed otherwise;
- 2) the party against whom the arbitral award was made was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case;
- 3) the award deals with a dispute not falling within the terms of the arbitration agreement or contains decisions on matters beyond the scope of that agreement. If it is found that the part of the award going beyond the scope of the arbitration

agreement may be separated from the remaining part of the award, only that part of the award may be set aside;

4) the composition of the arbitral tribunal or the arbitral proceedings was not in accordance with the arbitration agreement or with the rules of the permanent arbitral institution which was entrusted with administration of the arbitration, unless such agreement was in conflict with a provision of this Act from which the parties cannot derogate, or, failing such agreement, the composition of arbitral tribunal or arbitral proceedings was not in accordance with the provisions of this Act, or

5) the award was based on a false statement of a witness or expert or on a forged document or the award results from a criminal act of an arbitrator or a party, if these grounds are proven by a final judgement.

The court shall set aside the award also, if it finds that:

1) the subject matter of the dispute is not capable of settlement by arbitration under the law of the Republic, or

2) effects of the award are contrary to the public policy of the Republic.

### **Time-Limit for the Making of an Application for Setting Aside**

#### *Article 59*

An application for setting aside of the arbitral award may be filed within three months from the day on which the party making the application had received the award.

If a party submitted a request for a correction, interpretation or supplementation of the award, an application for setting aside may be filed within three months from the day on which the decision on the request had been communicated to the parties.

### **Stay of the Setting Aside Proceedings**

#### *Article 60*

The court before which the application for setting aside has been filed may, at the request of a party, suspend the proceedings in order to give the arbitral tribunal an opportunity to take such actions as in the Arbitral Tribunal's opinion will eliminate the grounds for setting aside.

### **Application of the Civil Procedure Rules**

#### *Article 61*

Provisions of the Act regulating civil procedure shall apply to the proceedings for setting aside of the arbitral award.

## **Advance Waiver of the Right to Apply for Setting Aside**

### *Article 62*

The parties may not waive in advance their right to apply for setting aside of the arbitral award.

## **Arbitral Proceedings After Setting Aside of the Award**

### *Article 63*

If the court set aside the arbitral award on grounds not relating to the existence and validity of the arbitration agreement in which the names of arbitrators were not specified, that agreement shall continue to bind the parties, as long as they do not agree otherwise.

New arbitral proceedings between the same parties and regarding the same matter may be conducted only on the basis of a new arbitration agreement.

If grounds for setting aside of the award are disputed between the parties, the court may decide on the issue at the request of a party.

## **CHAPTER IX**

### **RECOGNITION AND ENFORCEMENT OF AWARDS**

#### **Effects of the Award**

### *Article 64*

A domestic arbitral award shall have the effect of a final judgement of the domestic court and shall be enforced in accordance with provisions of the statute regulating enforcement procedure.

A foreign arbitral award shall have the effect of a final judgement of the domestic court after being recognised by the competent court in the Republic.

A foreign arbitral award is an award made by an arbitral tribunal, the place of which is outside the Republic, as well as an award made by an arbitral tribunal in the Republic, if a foreign law was applied to the arbitral proceedings.

#### **Jurisdiction and the Procedure for Recognition and Enforcement**

### *Article 65*

The court determined by the statute shall decide on the recognition and enforcement of a foreign arbitral award and territorial jurisdiction belongs to the court in whose territory the award should be enforced.

The court may decide on the recognition of a foreign arbitral award as a preliminary matter in the enforcement proceedings.

The provisions of this Act shall not exclude the application of provisions of the statute that regulates enforcement procedure concerning jurisdiction to decide on preliminary measures and their enforcement.

The recognition and enforcement procedure shall be initiated before a court by a request to which a party shall enclose:

- 1) the original arbitral award or a certified copy thereof;
- 2) the arbitration agreement or a document witnessing the acceptance of arbitration in the original or a certified copy thereof, and
- 3) a certified translation of the foreign arbitral award and of the arbitration agreement to the official language of the competent court.

### **Grounds for Refusing Recognition and Enforcement**

#### *Article 66*

Recognition and enforcement of a foreign arbitral award may be refused, at the request of the party against whom it is invoked, if that party furnishes proof that:

- 1) the arbitration agreement is not valid under the law determined by the parties' agreement or under the law of the country where the award was made;
- 2) the party against whom the award is made was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case;
- 3) the award deals with a dispute not falling within the terms of the arbitration agreement or contains decisions on matters beyond the scope of that agreement. If it is found that the part of the award going beyond the scope of arbitration agreement may be separated from the remaining part of the award, a partial refusal of the recognition and enforcement of that award shall be possible;
- 4) the arbitral tribunal or the arbitral proceedings were not in accordance with the arbitration agreement or, failing such agreement, was not in accordance with the law of the country where the arbitration took place;
- 5) 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.

The competent court shall refuse recognition and enforcement of the award if it finds that:

- 1) the subject matter of the dispute is not capable of settlement by arbitration under the law of the Republic, or
- 2) effects of the award are contrary to the public policy of the Republic.

### **Effects of the Setting Aside Procedure Initiated Abroad**

#### *Article 67*

The court before which recognition and enforcement of the foreign arbitral award is sought may, if it considers it necessary, adjourn its decision if the proceedings for setting aside or suspension of enforcement of the award were initiated in the state in which or under the laws of which the award was made.

The court before which recognition and enforcement of a foreign arbitral award is sought may, at the request of a party, condition its decision on adjournment of the recognition and enforcement proceedings upon provision of an appropriate security by the opposing party.

### **Ruling on Recognition and Enforcement**

#### *Article 68*

A ruling of the court on recognition and enforcement of a foreign arbitral award shall contain a statement of reasons.

An appeal against the ruling referred to in par. 1 of this Article may be submitted within 30 days of the day of its notification.

Provisions of the statute regulating enforcement procedure shall also apply to recognition of a foreign arbitral award, when the issue of recognition was decided upon as a preliminary issue in the enforcement proceedings.

## **CHAPTER X**

### **FINAL PROVISIONS**

#### **Repeal of the Previous Act**

#### *Article 69*

The provisions of chapter thirty-one (arts. 468a-487) of the Civil Procedure Act ("Official Journal of the SFRY", Nos. 4/77, 36/77, 6/80, 36/80, 43/82, 72/82, 69/82, 58/84, 74/87, 57/89, 20/90, 27/90 i 35/91 and "Official Journal of the FRY", Nos.

27/92, 31/93, 24/94, 12/98, 15/98 and 3/02) shall be repealed on the day of entry into force of this Act.

The provisions of the arts. 97-100 of the Act on Resolution of Conflicts of Laws with Regulations of Other Countries ("Official Journal of the SFRY", Nos. 43/82, 72/82 and "Official Journal of the FRY", No. 46/96) shall be repealed on the day of entry into force of this Act.

### **Entry into Force of the Act**

#### *Article 70*

This Act shall enter into force eight days after its publication in the "Official Journal of the Republic of Serbia".<sup>2</sup>

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<sup>2</sup> Note: The Arbitration Act entered into force on June 10, 2006.