

# LAW ON THE INTERNATIONAL COMMERCIAL ARBITRATION

## BULGARIA

Prom. SG 60/1988, Amend. SG 93/1993, Amend. SG 59/1998, Amend. SG 38/2001, Amend. SG 46/2002

### Chapter I

#### GENERAL PROVISIONS

Art. 1. (1) (amend. SG No 93/1993) This law shall be applicable to the international commercial arbitration, based on an arbitration agreement when the place of arbitration is within the territory of the Republic of Bulgaria.

(2) (amend. SG No 93/1993) The international arbitration shall settle civil property disputes arising from foreign economic relations, as well as disputes concerning the deficiencies in contracts or its adaptation to newly arisen circumstances when the residence or the domicile of at least one of the parties is not within the territory of the Republic of Bulgaria.

Art. 2. (Revoked, SG 38/01)

Art. 3. States and state institutions shall be also considered as party to the international commercial arbitration.

Art. 4. The arbitration could be permanent institution or shall be constituted for the purpose of settling a particular dispute.

Art. 5. A party who knows that a non-imperative provision of this law or requirement under the arbitration agreement has not been observed and yet participates in the arbitration proceedings without objecting immediately or within the time limit provided therefore shall not be allowed to base arguments on the non-compliance.

Art. 6. Court actions in connection with the arbitration proceedings shall be admissible only in the cases provided by this Law.

### Chapter II

#### ARBITRATION AGREEMENT

Art. 7. (1) Arbitration agreement shall mean the agreement of the parties to refer to the arbitration all or certain disputes, that may arise between them in the future or already risen in respect

of contractual or non - contractual legal relations. It shall also mean an arbitration clause in another contract or a separate agreement.

(2) The arbitration agreement shall be in writing. It shall be considered that the agreement is written in case it is evidenced in a document, signed by the parties, or exchange of letters, telex, telegrams or other communication means.

(3) It shall also be considered that the arbitration agreement is evidenced in writing when the defendant accepts in writing or by declaration, recorded in the minutes of the arbitration hearing that the dispute shall be settled by the arbitration or in case the defendant participates in the arbitration proceedings without challenging the arbitration jurisdiction.

Art. 8. (1) The court before which an action is brought which is a matter of dispute accordingly to the arbitration agreement shall be obliged to terminate the proceedings if a party relies on the arbitration agreement in the first court hearing. If the court finds the arbitration agreement null and void or unenforceable, the proceedings shall not be terminated.

(2) The arbitration proceedings may be commenced and continued and arbitration award may be issued notwithstanding that the current dispute is pending before a local or international court.

Art. 9. Each party to the arbitration agreement shall be entitled to request from a court, before or during the arbitration proceedings, to order provisional measures for the claim or perpetuation of evidence.

Art. 10. The provisions of art. 8 and art. 9 shall also be applicable when the arbitration agreement provides for arbitration in another state.

### Chapter III

#### COMPOSITION OF THE ARBITRATION COURT

Art. 11. (1) The arbitration tribunal may consist of one or more arbitrators whose number shall be determinable by the parties. When the parties have not determined their number, the arbitrator shall be three.

(2) (amend. SG No 93/1993) An arbitrator may be also a person who is not a citizen of the Republic of Bulgaria.

Art. 12. (1) The parties shall be free to agree on the procedure for the composition of the arbitration tribunal.

(2) Failing such agreement:

1. if the arbitration tribunal shall consist of three arbitrators, each party shall appoint one arbitrator and the two arbitrators shall appoint the third one;

2. if a party fails to appoint an arbitrator within a period of 30 days form the receipt of the request from the other party or if the two arbitrators fail to agree on the third arbitrator within a period of

30 days from their appointment, the arbitrator shall be appointed by the Chairman of the Bulgarian Chamber of Commerce and Industry upon request by one of the parties;

3. if the arbitration tribunal shall consist of a sole arbitrator and the parties fail to agree on him, he shall be appointed upon a party request by the organ mentioned in the previous point.

(3) When appointing an arbitrator the Chairman of the Bulgarian Chamber of Commerce and Industry shall have due regard to his qualifications required by the arbitration agreement as well as for all circumstances likely to secure the appointment of an independent and impartial arbitrator.

(4) The decision of the Chairman of the Bulgarian Chamber of Commerce and Industry under art. 12 (2) and art.12 (3) shall be final.

Art. 13. When a person is appointed for arbitrator he shall disclose all circumstances which could give rise to justifiable doubts as to his impartiality or independence. The arbitrator shall be obliged to do this after his appointment as well.

Art. 14. (1) An arbitrator can be challenged only if there are circumstances giving rise to justifiable doubts as to his impartiality or independence or if he does not possess the necessary qualification agreed by the parties.

(2) A party may challenge an arbitrator, appointed by that same party or in whose appointment the party has participated only for reasons for which the party has become aware of after the appointment.

Art. 15. (1) The parties shall be free to agree on the challenging procedure. They shall not be allowed to exclude the application of art. 16.

(2) Failing an agreement, the challenging may take place not later than 15 days after the party has become aware of the constitution of the arbitration tribunal or after the party has become aware of the circumstances used as grounds for the challenge.

(3) The challenge shall be made by a written request pointing out the reasons for it.

(4) The arbitration tribunal shall decide on the challenge unless the arbitrator withdraws from his office or unless the other party agrees to the challenge.

Art. 16. (Amend., SG 38/01) (1) If the arbitration court does not grant the challenge the party which requested it shall be entitled, within a period of 7 days after the notification, to request from the Sofia City Court to rule on it. Sofia City Court shall consider the complaint according to art. 126b and 126c of the Civil Procedure Code and its decision shall be final.

(2) The arbitration court can continue the consideration of the case and rule a decision on it regardless of the challenge and the complaint under para 1.

Art. 17. (1) When an arbitrator shall become unable to perform his obligations or fails to act without justifiable reasons, his mandate shall be terminated.

(2) (amend. SG No 59/1998) If in the cases mentioned in the previous subsection the arbitrator does not withdraw from his office or the parties fail to agree on the termination of his mandate, each party shall be entitled to request from the Sofia City Court to decide on the matter. The decision of the Court shall be final.

#### Chapter IV

### JURISDICTION OF THE ARBITRATION TRIBUNAL

Art. 19. (1) The arbitration tribunal shall be entitled to rule on its own jurisdiction even when it is challenged on the grounds that the arbitration agreement is not existing or is null and void.

(2) An arbitration agreement included in a contract shall be considered independent of the other terms of the contract. The nullity of the contract shall not render by itself the contents of the arbitration agreement invalid as well.

Art. 20. (1) A plea that the arbitration tribunal does not have jurisdiction shall be made at the latest with the reply to the statement of the claim. It may also be raised by the party who has appointed or has participated in the appointment of an arbitrator.

(2) If a matter exceeding the scope of the arbitration tribunal jurisdiction is raised the plea for lack of jurisdiction shall be raised immediately.

(3) The arbitration tribunal may admit a later plea given that justifiable grounds for the delay are existing.

(4) The arbitration tribunal may rule on the plea under the previous subsections with a ruling or with the arbitration award.

Art. 21. Unless otherwise agreed by the parties, the arbitration tribunal may, at request of one of the parties, order the other party to take suitable measures for protecting the rights of the petitioner. When ordering such measures the arbitration tribunal may rule that a security is to be provided by the petitioner.

#### Chapter V

### ARBITRATION PROCEEDINGS

Art. 22. The parties shall be treated with equality in the arbitration proceedings. The arbitration tribunal shall give each party a full opportunity to defend its rights.

Art. 23. Unless otherwise agreed by the parties, the arbitration proceedings shall begin when the respondent has received a request for the dispute to be referred to the arbitration.

Art. 24. The parties shall be free to agree on the procedure to be followed by the settling of the dispute. Failing such agreement, the arbitration tribunal shall be free to conduct the arbitration in a manner which it considers appropriate. In both cases it shall be bound to give each party an equal opportunity to defend its rights.

Art. 25. The parties shall be free to agree on the place for settling the dispute. Failing such agreement the place shall be determined by the arbitration tribunal with regard to the circumstances of the particular case and the convenience of the parties.

Art. 26. The parties shall be free to agree on the language or languages to be used in the arbitration proceedings. Failing such agreement, the language or the languages shall be determined by the arbitration tribunal. The tribunal may order each written piece of evidence to be accompanied by a translation into the language or the languages agreed by the parties or determined by the arbitration tribunal.

Art. 27. (1) In the statement of claim shall be pointed out the names and the addresses of the parties, the facts supporting the claim as well as the remedy sought and in the written reply of the respondent - his standpoints on those facts.

(2) The statement of claim and the reply shall be forwarded within a period of time agreed by the parties or determined by the arbitration tribunal.

(3) Together with the statement of claim and the reply the parties shall produce the written evidence and shall point out the other they intend to submit.

Art. 28. The defendant shall be entitled to raise a counter-claim at the latest with the reply to the statement of claim.

Art. 29. Unless otherwise agreed, each party shall be entitled to amend or supplement its claim or defence. The arbitration tribunal may not allow the amendment if it considers that it may cause considerable difficulties to the other party.

Art. 30. The parties shall be free to agree that the dispute be settled on written evidence and pleadings only, without being summoned. The arbitration tribunal may order a hearing with the participation of the parties if necessary for the right decision of the case.

Art. 31. (1) The parties shall be informed in due time for the hearing or for the inspection on the spot of the documentation, goods or other property.

(2) Written evidence and statements as well as expert reports shall be delivered to the parties in due time.

Art. 32. (1) When the seat, the domicile or the usual residence or address cannot be found after a diligent inquiry, the communication shall be deemed received if it is sent to the addressee's last known seat, domicile, usual residence or address by a registered letter or by any other means providing a record of the attempt to deliver it.

(2) The communication shall be deemed delivered when the addressee has refused or has failed to appear in the post office to receive it given those facts are certified by the post office.

Art. 33. The arbitration tribunal shall terminate the proceedings if the claimant fails to raise its statement of claim in the time limit agreed by the parties or determined by the arbitration tribunal. This provision shall not be applicable if the omission is due to excusable reasons.

Art. 34. The arbitration tribunal shall settle the disputes also if the respondent fails to reply to the statement of claim.

Art. 35. The arbitration tribunal shall continue the proceedings and shall produce an arbitration award on the evidence even if one of the parties or both parties fail to appear at the hearing.

Art. 36. (1) The arbitration tribunal may appoint one or more experts to give a conclusion on the clarification of some issues for which a special knowledge is necessary. The tribunal may order the parties to supply the experts with the necessary information or to provide access to documents, goods or other property when necessary for the elaboration of the conclusion.

(2) The arbitration tribunal at request from either of the parties or on its own initiative may order the expert to participate in a hearing in order to give clarifications after delivering his conclusion. At request of the parties other experts could also be appointed for the purpose of reporting on the disputed issue.

Art. 37. The arbitration tribunal or the interested party with its approval may request from the competent court to collect some evidence necessary for the case. The court shall be obliged to fulfil the request accordingly to the Civil Procedure Code.

## Chapter VI

### MAKING OF THE AWARD AND TERMINATION OF THE PROCEEDINGS

Art. 38. (1) The arbitration tribunal shall decide on the dispute in accordance with the law chosen by the parties. Unless otherwise agreed, the choice of law shall concern the substantial law and not the conflict law rules.

(2) If the parties have failed to designate the applicable law the arbitration tribunal shall apply the law pointed out by the conflict law rules which it considers applicable.

(3) In all cases the arbitration tribunal shall apply the terms of the contract and shall take into account the trade usages.

(4) The arbitration award shall be final and shall put an end to the dispute.

Art. 39. (1) When the arbitrators are more than one, the award shall be made, unless otherwise agreed by the parties, by a majority. An arbitrator who disagrees with the award shall give his dissenting opinion in writing.

(2) If a majority cannot be reached, the award shall be made by the presiding arbitrator.

Art. 40. If the parties settle the dispute by concluding an agreement the proceedings shall be terminated. The parties shall be entitled to request from the arbitration tribunal to reproduce the settlement in an award on agreed terms. This award shall have the force of an award on their merits.

Art. 41. (1) The award shall state the reasons upon which it is based, unless the parties have agreed otherwise or the award is on agreed terms. It shall indicate the date and the place of arbitration.

(2) The award shall be signed by the arbitrator or by the arbitrators. In arbitration proceedings with more than one arbitrator, the signatures of the majority shall suffice provided that the arbitrators who signed it point out the reason for the omitted signature.

(3) (add. SG No 93/1993) The award signed by the arbitrators shall be sent to the parties. It shall be considered announced with the handing over to one of the parties. With its handing over the award shall come into force, shall be binding for the parties and shall be enforceable.

Art. 42 The arbitration tribunal shall terminate the proceedings with a ruling, when:

1. the claimant withdraws his statement of claim unless the respondent objects thereto and the arbitration tribunal recognizes that he has a legitimate interest in the making of an award;

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

3. the arbitration tribunal finds that another hinder for the examination of the dispute on the merits is existing.

Art. 43. (1) The arbitration tribunal, upon request of either party or on its own initiative, may correct the award in connection with any computation errors as well as any other evident factual error made by it. The other party shall be informed for the so requested correction by the petitioner or by the arbitration tribunal if it acts on its own initiative.

(2) Each party after informing the other one shall be entitled to request from the arbitration tribunal to interpret the award.

(3) The request for correction or interpretation shall be made within a period of 60 days after the receipt of the award unless another time limit has been agreed by the parties. When the arbitration

tribunal acts on its own initiative it shall conduct the correction within 60 days from the announcement of the award.

(4) The arbitration tribunal shall make the correction or the interpretation after hearing

the parties or after giving them the opportunity to forward written statements within time limit determined by it. It shall decide on the correction or the interpretation within 30 days from the request.

The decisions on those issues shall be made in accordance with art. 39 and art.41. The corrections and the interpretations shall become part of the award.

Art. 44. The arbitration tribunal may give an additional award upon request from either of the parties on claims omitted in the first award. The party that requests the additional award shall inform the other party for the request within 30 days from the receipt of the award. Given the request is well grounded, the arbitration tribunal make the additional award within 60 days applying correspondingly the provision of art. 43(4).

Art. 45. The arbitration tribunal may extend the time limit for the correction, the interpretation or for the supplementation of the award.

Art. 46. The mandate of the arbitration tribunal shall terminate with the termination of the arbitration proceedings except for the cases of art. 43 and art. 44

## Chapter VII

### SETTING ASIDE, RECOGNITION AND ENFORCEMENT OF THE ARBITRATION AWARD

Art. 47 (Amend., SG 46/02) The arbitration decision can be revoked by the Supreme Cassation Court if the party requesting the revoking proves some of the following grounds:

1. the party was incapable at the time of the conclusion of the arbitration agreement;
2. there was no arbitration agreement concluded or it is not valid under the law chosen by the parties or failing such choice - under the present law;
3. the subject of the dispute is not subject to arbitration or the arbitration decision contradicts the public order of the Republic of Bulgaria;
4. the party was not duly notified for the appointment of an arbitrator or for the arbitration proceedings or was unable to participate in the arbitration proceedings due to causes not depending on it;

5. the arbitration award concerns a dispute not contemplated by the arbitration agreement or issues outside the subject - matter of the dispute;

6. the composition of the arbitration tribunal or the arbitration procedure was not conformable with the arbitration agreement unless it is in conflict with imperative provisions of this law or failing such agreement was not conformable with the provisions of this law.

Art. 48 (1) An action for setting aside may be raised within a period of 3 months from the day in which the claimant has received the award. When a request for correction, interpretation or supplementation of the award was made the time limit shall begin to run from the day on which the request has been disposed by the arbitration tribunal.

(2) (amend. SG No 59/1998; amend., SG 38/01; amend., SG 46/02) Stopping of the execution of an arbitration award as a security measure on claims under art. 47 shall be admitted only by the Supreme Cassation Court against presentation of a security amounting to the interest in revoking the arbitration award.

(3) (Revoked - SG 38/01; New, SG 46/02) The size of the state fee for consideration of the claims by the order of art. 47 of this law shall be determined in compliance with art. 54 and 55 of the Civil Procedure Code.

Art. 49. (New - SG 38/01) If the state court, by an enacted decision, revokes the arbitration decision on some of the grounds under art. 47, item 1, 2 and 3, the interested party can lay a claim related to the dispute before the competent state court, and when the arbitration decision is revoked on some of the grounds under art. 47, item 4, 5 and 6 the state court shall return the case to the arbitration court for a new consideration. Each of the parties can request the consideration of the case by other arbitrators.

Art. 50 (revoked - SG No 93/1993)

Art. 51 (amend. SG No 93/1993) (1) The Sofia City Court shall render a writ for execution upon a request by the interested party on the base of the enforced arbitration award. The request shall be accompanied by the arbitration award and a proof that it has been delivered to the debtor in the execution relation.

(2) For the recognition and the execution of a foreign arbitration award shall be applicable the international treaties signed by the Republic of Bulgaria.

(3) (New, SG 38/01) The claim for acknowledging and admission of the fulfilment of a foreign arbitration decision shall be laid, unless stipulated otherwise by an international agreement party to which is the Republic of Bulgaria, at Sofia City Court and applied for its consideration shall be respectively art. 305 and 306 of the Civil Procedure Code, with exception of the right of the debtor to contest the acquittal of the taking.

Additional provisions

§ 1. (new - SG No 93/1993) In art. 1 (1) and (2), art. 11 (2), art. 47 (2), art. 49 (2) and art. 50 (2) the words " the People's Republic of Bulgaria" shall be substituted by " the Republic of Bulgaria".

Transitional and concluding provisions (Title - amend. SG No 93/1993)

§ 2. (Former § 1., amend. SG 93/1993) In the Civil Procedure Code in art. 237, 'a' and art. 242 (2) the words " Arbitration Court at the Bulgarian Chamber of Commerce and Industry and the agreements signed before it when the arbitration is compulsory" shall be substituted by " the arbitration tribunals and the agreements on arbitration disputes concluded before them".

§ 3. (new - SG No 93/ 1993) (1) (Amend., SG 38/01) This law shall be applicable also for arbitration between parties having a residence or a seat within the territory of the Republic of Bulgaria except for the cases under referred to in Art. 1 (2), Art. 11 (2), except when party to the dispute is an enterprise with predominant foreign participation, Art. 26 and the words "according to a law chosen by the parties and failing such a choice" in Art. 47 (1) , p.2.

(2) In case of disputes concerning non - commercial relations, the appointing authority referred to shall be the Sofia City Court.

(3) In case of arbitration between parties having a residence or a seat within the territory of the Republic of Bulgaria the provisions of Art. 38 (1) and (2) shall be applicable only if the dispute has an international element which according to the Bulgarian international private law requires the application of a foreign law.

§ 4. (new - SG No 93/ 1993) This law shall be applicable to the pending arbitration cases. It shall be applicable also to the arbitration awards, made before if they have not been executed, the term for the application for the setting aside of those awards referred to in Art. 48 (1) beginning to run on the day of the entering into force of this law.

§ 5. (new - SG No 93/ 1993) Art. 98 from the Decree on the economic activity shall be abrogated.

§ 6. (former § 2. - amend. SG No 93/ 1993) The implementation of this law shall be entrusted to the Minister of Justice.