

Switzerland - International Arbitration Convention March 27/ August 29, 1969

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Chapter I: - General Provisions

Article 1 - Scope

This Convention shall apply to any proceedings before an arbitral tribunal the seat of which is within one of the cantons party to this Agreement.

However this Convention shall not affect the application of rules of arbitration of private or public institutions or of arbitration compromises or clauses insofar as they do not contravene any of the mandatory provisions of this Convention.

The following provisions of this Convention are mandatory: Article 2 (2) and (3). Articles 4 to 9, 12, 13, 18 to 21, 22 (2), Articles 25, 26 to 29, 31 (1), Article 33 (1), (a) to (f), (2) and (3), and Articles 36 to 46.

Article 2 - Seat of the Arbitral Tribunal

The seat of the arbitral tribunal shall be at the place chosen by agreement between the parties or by a decision of the body designated by them for that purpose, or in default, by a decision of the arbitrators.

Where neither the parties, nor the body designated by them nor the arbitrators have chosen the place of the arbitration, the seat shall be in the forum of the court which would have jurisdiction to try the merits of the dispute in default of arbitration.

Where several courts would have jurisdiction for the purposes of the preceding paragraph, the seat of the arbitral tribunal shall be in the forum of the first judicial authority seised by virtue of Article 3.

Article 3 - Competent Judicial Authority at the Seat of the Arbitral Tribunal

Subject to Article 45 (2), the high court of common civil jurisdiction of the canton in which the arbitration takes place shall be the competent judicial authority to:

a. a. appoint the arbitrators where they have not been designated by the parties or by the body chosen by the parties,

b. determine objections to the arbitrators, revoke their authority and provide for their replacement,

c. extend in time the authority of the arbitrators,

d. assist in executing the measures requested by the arbitral tribunal for the taking of evidence,

e. accept deposit of the arbitral award and give notification of it,

- f. give judgement on actions to annul or review the award, 18
- g. declare the award enforceable. 19

Chapter II: - The Arbitration Agreement 20

Article 4 - Compromises and Arbitration Clauses 21

The arbitration agreement shall be concluded in the form of a compromise or an arbitration clause. 22

In a compromise, the parties submit an existing dispute to arbitration. 23

Arbitration clauses may refer only to future disputes arising out of a particular legal relationship. 24

Article 5 - Subject Matter of the Arbitration 25

The arbitration may relate to any right of which the parties may freely dispose unless the suit falls within the exclusive jurisdiction of a State authority by virtue of a mandatory provision of the law. 26

Article 6 - Form 27

The arbitration agreement shall be in writing. 28

It may take the form of a written declaration whereby the parties agree to adhere by the statutes of a body corporate provided that the declaration expressly refers to the arbitration clause contained in the statutes or rules made under them. 29

Article 7 - Prohibition of the Exclusion of Lawyers 30

Any provision in an arbitration clause prohibiting the assistance of lawyers in an arbitration, whether as arbitrators, secretaries or representatives of the parties, shall be void. 31

Article 8 - Jurisdiction of the Arbitral Tribunal 32

If the validity of the arbitration agreement or its content or scope are disputed before the arbitral tribunal, that tribunal shall in an interlocutory order or final award determine its own jurisdiction. 33

The plea of lack of jurisdiction of the arbitral tribunal must be raised prior to any defence on the merits. 34

Article 9 - Appeal as to Jurisdiction

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The interlocutory order whereby the arbitral tribunal declares itself to have or not to have jurisdiction may form the basis of an immediate action for annulment as provided in Article 36 (b).

36

**Chapter III: - Designation and Appointment of the Arbitrators.
Duration of Their Authority. Lis Pendens**

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Article 10 - Number of Arbitrators

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The arbitral tribunal shall consist of three arbitrators, unless the parties have agreed on a different uneven number and in particular on a single arbitrator.

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However the parties may agree to designate an even number of arbitrators without a designation of an umpire. *

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Article 11 - Designation by the Parties

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The parties may designate the arbitrator or arbitrators by common consent in the arbitration agreement itself or in a later agreement. They may also cause them to be designated by a body of their choice.

42

If an arbitrator is designated only by reference to his office, the designation shall be deemed to refer to the holder of the office at the time of acceptance of the arbitral function.

43

In default of consent, each party shall designate an equal number of arbitrators and the arbitrators thus designated shall unanimously elect an umpire.

44

Where the arbitrators are even in number, the parties shall agree either to give a casting vote to the umpire, or to require a unanimous or qualified majority vote from the tribunal.

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Article 12 - Appointment by the Judicial Authority

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If the parties cannot agree on the designation of a single arbitrator, if one of them fails to designate the arbitrator or arbitrators as required of him, or if the designated arbitrators cannot agree on the choice of an umpire, the judicial authority referred to in Article 3 shall, at the request of one of the parties, proceed to make the appointment unless the agreement has provided for another appointing body.

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Article 13 - Lis Pendens

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The arbitral proceedings shall be deemed to be pending:

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a. from the time when one of the parties seises the arbitrator or arbitrators designated in an arbitration clause of the dispute; or 50

b. in default of such designation in the arbitration clause, from the time when one of the parties commences the procedure for the designation of arbitrators, provided for in the arbitration clause; or 51

c. in default of a procedure for the designation of arbitrators, provided for in the arbitration clause, from the time when one of the parties petitions the competent judicial authority; or 52

d. in default of an arbitration clause, on the signing of the compromise. 53

When the rules of arbitration accepted by the parties or the arbitration agreement provide for a conciliation procedure, the commencement of this procedure shall be assimilated to the commencement of the arbitral proceedings. 54

Article 14 - Acceptance by the Arbitrators 55

The arbitrators must confirm their acceptance of their office. 56

The arbitral tribunal shall be deemed to be properly constituted only when all the arbitrators have accepted their mandate with respect to the dispute submitted to them. 57

Article 15 - Secretary 58

The arbitral tribunal, with the agreement of the parties, may designate a secretary. 59

Articles 18 to 20 shall be applicable to objections raised in respect of a secretary. 60

Article 16 - Duration 61

The parties may, either in the arbitration agreement or in a later agreement, impose a time-limit on the authority of the arbitral tribunal. 62

In this case, the duration of the authority may be extended, each time for an ascertained period, either by agreement between the parties, or by a decision of the judicial authority provided for in Article 3, at the request of one of the parties or of the arbitral tribunal. 63

If the request is made by one of the parties, the other party shall be entitled to be heard. 64

Article 17 - Unjustifiable Delay 65

The parties may at any time petition the judicial authority provided for in Article 3 with respect to unjustifiable delay on the part of the arbitral tribunal. 66

Chapter IV: - Objection To, Revocation And Replacement of The Arbitrators 67

Article 18 - Objection to an Arbitrator 68

The parties may object to an arbitrator on any grounds which the Act on Federal Judicial Administration provides for the obligatory or facultative withdrawal of the federal judges, and on any grounds set out in rules of arbitration to which the parties have submitted. 69

Objection may also be raised in respect of any arbitrator who has been deprived of the exercise of civil rights or who has been sentenced to deprivation of liberty for a crime or delict damaging his reputation. 70

A party may not object to an arbitrator designated by him unless the ground for such objection arises after such designation, or he establishes that he was not aware of it at the time of designation. 71

Article 19 - Objection to the Arbitral Tribunal 72

Objection may be raised in respect of the arbitral tribunal as such, if one of the parties has exercised an overriding influence in respect of the designation of the members. 73

A new arbitral tribunal shall be established according to the method provided for in Article 11. 74

The parties shall retain the power to designate as an arbitrator any member of the tribunal, to which objection has been raised. 75

Article 20 - Time Limits 76

The objection must be made before any issue is raised on the merits, or as soon as the requesting party has knowledge of the grounds for objection. 77

Article 21 - Dispute 78

In case of dispute, the judicial authority provided for in Article 3 shall determine the objection. 79

The parties shall be entitled to adduce evidence. 80

Article 22 - Revocation 81

The authority of any arbitrator may be revoked by written agreement of the parties. 82

If there is a valid ground, the judicial authority provided for in Article 3, at the request of one of the parties may also terminate the authority of an arbitrator. 83

Article 23 - Replacement

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If an arbitrator dies, is objected to, resigns, or his authority is revoked, he shall be replaced according to the method adopted for his designation or appointment.

85

If such replacement cannot take place, the new arbitrator shall be appointed by the judicial authority provided for in Article 3, unless it follows from the arbitration agreement that that agreement should lapse.

86

In default of agreement between the parties, the judicial authority provided for in Article 3, after consultation with the arbitral tribunal shall determine the extent to which the proceedings in which the replaced arbitrator took part shall remain valid.

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The replacement of one or several arbitrators shall not postpone the running of the time-limit in which the arbitral tribunal may be required to make its award.

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Chapter V: - Arbitral Procedure

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Article 24 - Determination

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The arbitral rules of procedure shall be determined by agreement between the parties, or in default of such agreement, by decision of the arbitral tribunal.

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If the rules of procedure have not been determined either by agreement between the parties or by a decision of the arbitral tribunal, the Federal Act on Federal Civil Procedure shall be applied by analogy.

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Article 25 - Right to be Heard

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The selected rules of procedure must in any case accord due respect to the principle of equality of the parties and the rules must permit both parties:

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a. to exercise their right to be heard and in particular to expound their factual and legal arguments

95

b. to have sufficient time to become acquainted with the documents on the file

96

c. to attend any sittings for the taking of evidence or oral hearings which the arbitral tribunal may order

97

d. to be represented or assisted by a representative of their choice.

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Article 26 - Provisional Orders

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The public judicial authorities alone have jurisdiction to make provisional orders.

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However, the parties may voluntarily submit to provisional orders proposed by the arbitral tribunal.

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Article 27 - Assistance of the Judicial Authorities

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The arbitral tribunal shall itself carry out the taking of evidence.

103

If necessity dictates, the arbitral tribunal may request the assistance of the judicial authority provided for in Article 3. That authority shall act in accordance with its cantonal law.

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Article 28 - Third Party Intervention and Proceedings

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The intervention of a third party or third party proceedings may be authorised only by virtue of an arbitration agreement between the third party and the parties in dispute.

106

Furthermore such matters are subject to the consent of the arbitral tribunal.

107

Article 29 - Set-Off

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Where one of the parties pleads a set-off on the basis of a legal relationship in respect of which the arbitral tribunal does not have jurisdiction under the terms of the arbitration agreement, and the parties do not agree to extend the arbitration to cover that legal relationship, the proceedings shall be stayed and a reasonable time shall be allowed to the party making the claim to establish it before the court with jurisdiction.

109

When the court with jurisdiction has made a determination, the proceedings shall, at the request of one of the parties, be resumed.

110

If the arbitral tribunal has been given a time-limit in which to make its award, such period shall not continue to run during the stay of proceedings.

111

Article 30 - Advance of Costs

112

The arbitral tribunal may order an advance of foreseeable costs and may make the procedural processes dependent thereon. It shall determine the apportionment of such advance.

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If one of the parties does not advance the sums required of him, the other party may elect to make an advance of all the costs or to forego the arbitration. If he chooses the latter course, the parties shall no longer be bound by the arbitration agreement in respect of the dispute in question.

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Chapter VI: - Arbitral Award

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Article 31 - Deliberation and Award

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All the arbitrators must participate in all the deliberations and decisions of the arbitral

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tribunal.

Subject to Article 11 (4), the award shall be made on the basis of a simple majority of votes, unless the arbitration agreement requires unanimity or a qualified majority. 118

The arbitral tribunal shall make its determination according to the rules of the applicable law, unless the parties have, in the arbitration agreement, authorised it to make its determination according to equity. * 119

The arbitral tribunal may not make an award in favour of a party, which is more or other than that party claimed, unless a particular provision of the law authorises it to do so. 120

Article 32 - Partial Awards 121

Unless the parties otherwise agree, the arbitral tribunal may make several awards. 122

Article 33 - Content of the Award 123

The arbitral award shall contain: 124

a. the names of the arbitrators 125

b. the designation of the parties 126

c. a statement of the seat of the arbitration 127

d. the relief prayed for by the parties or, in default of such, the question to be determined 128

e. the factual, legal and, as the case may be, equitable, 1 reasons for the decision, unless the parties expressly waive this requirement 129

f. the decision on the substance 130

g. the decision as to the amount and burden of costs. 131

The award shall be dated and signed by the arbitrators. The signature of the majority of the arbitrators shall suffice if there is a statement in the award that the minority refuses to sign. 132

If the mandate of the arbitral tribunal is to designate one or more arbitrators, paragraph 1 (e) of this Article shall not apply. 133

Article 34 - Agreement of the Parties 134

Should the parties settle their dispute during the course of the arbitration, and thus bring the arbitration to an end, the arbitral tribunal shall register this settlement in the form of an award. 135

Article 35 - Deposit and Notification

136

The arbitral tribunal shall attend to the deposit of the award with the judicial authority provided for in Article 3.

137

The award shall be deposited together with as many copies of it as there are parties in cases where paragraph 4 of this Article applies.

138

If the award is not drafted in one of the official languages of the Swiss Confederation, the authority with whom it is deposited may require an authenticated translation of the award.

139

Such authority shall notify the parties of the award, and shall inform them of the date of deposit.

140

The parties may waive the deposit. They may likewise waive notification of the award by the judicial authority; in this case, the notification shall be attended to by the arbitral tribunal.

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Chapter VII: - Actions for Annulment or Review

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I. Action for Annulment

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Article 36 - Grounds

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An action for annulment of the arbitral award may be brought before the judicial authority provided for in Article 3, where it is alleged that:

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a. the arbitral tribunal was not properly constituted

146

b. that the arbitral tribunal erroneously declared itself to have or not to have jurisdiction

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c. that it pronounced on points not submitted to it or, subject to Article 32, failed to make a determination on one of the items in the claim

148

d. that there was a breach of one of the mandatory procedural rules referred to in Article 25

149

e. that the arbitral tribunal awarded to one of the parties something more or other than claimed, without being authorised to do so by a provision of the law

150

f. that the award is arbitrary in that it was based on findings which were manifestly contrary to the facts appearing on the file, or in that it constitutes a clear violation of law or equity

151

g. that the arbitral tribunal made its award after the expiration of the time-limit imposed on it in which to accomplish its mission

152

h. that the conditions of Article 33 were not complied with or that the order is unintelligible or contradictory

153

i. that the fees of the arbitrators fixed by the arbitral tribunal are manifestly excessive. 154

Article 37 - Period of Limitation 155

The action for annulment must be brought within 30 days of the notification of the award. 156

The action shall be admissible only if arbitral remedies provided in the agreement of the parties have been exhausted. 157

Article 38 - Suspensive Effect of Action 158

The action shall not have the effect of suspending the award. However the judicial authority provided for in Article 3 may grant it such effect if one of the parties so requests. 159

Article 39 - Remittal to the Arbitral Tribunal 160

The judicial authority seised of the action may, having heard the parties and if it sees fit, remit the award to the arbitral tribunal and impose a period of limitation for the amendment or supplementation of the award. 161

Article 40 - Decision 162

If the judicial authority does not remit the award to the arbitral tribunal or if the award is not amended or supplemented within the stated period, the judicial authority shall give judgment on the action for annulment, and if it finds such action well-founded may annul the award. 163

The annulment may relate to certain items only in the award, unless the other items are dependent on them. 164

Where the action is based on Article 36 (1) the award shall be annulled only in respect of the fees, and the judicial authority shall itself determine the amount of such fees. 165

Where the award is annulled, the arbitrators shall rehear the case, unless objection is made on the ground that they participated in the previous proceedings or on some other ground. 166

II. Review 167

Article 41 - Grounds 168

The award may be reviewed: 169

a. Where it was affected by deeds which are punishable according to Swiss law. Such deeds must be established in a penal sentence unless the criminal proceedings could not result in sentence for reasons other than lack of evidence. 170

b. Where it was given in ignorance of important facts in existence prior to the award or of evidence of decisive importance, and it was impossible for the claimant to present such facts or evidence during the proceedings. 171

Article 42 - Period of Limitation 172

The action for review must be brought before the judicial authority provided for in Article 3 within 60 days of the date on which the claimant was aware of the grounds for review. However it may not be brought later than 5 years after the notification of the award. 173

Article 43 - Remittal to the Arbitral Tribunal 174

If the action for review succeeds, the judicial authority shall remit the case to the arbitral tribunal for a rehearing. 175

The arbitrators prevented from rehearing the case shall be replaced in accordance with the provisions of Article 3. 176

If it is necessary to set up a new arbitral tribunal, the arbitrators shall be designated or appointed in accordance with Articles 10 to 12. 177

Where the case is remitted to the arbitral tribunal, Article 16 shall be applied by analogy. 178

Chapter VIII: - Enforcement of Arbitral Awards 179

Article 44 - Declaration of Enforceability 180

At the request of one of the parties, the judicial authority provided for in Article 3 shall declare enforceable, to the same extent as a judgment, any arbitral award: 181

a. which the parties have formally accepted; or 182

b. in respect of which no action for annulment has been brought within the period of limitation stipulated in Article 37 (1); or 183

c. in respect of which an action for annulment has been brought in due time, in the absence of an order causing that action to suspend the award; or 184

d. in respect of which an action for annulment has been dismissed or is statutebarred. The declaration of enforceability may not be made if the award is contrary to Article 5. 185

The certificate of the enforceable character of the arbitral award shall be affixed at the foot of the award. 186

The arbitral award shall not be made subject to provisional enforcement. 187

Chapter IX: - Final Clauses 188

Article 45 - Procedure 189

The cantons shall determine matters of procedure before the judicial authority provided for in Article 3. Decisions as to the appointment of or objection to the arbitrators, revocation of their authority or their replacement shall be subject to summary procedure. 190

The cantons may vest jurisdiction in part or in whole, in accordance with Article 3 (a) to (e) and (g), in a judicial authority other than that provided for in that Article. In this case, the parties may, notwithstanding, submit their applications to the high court of common civil jurisdiction of the canton. 191

Article 46 - Consequences of Entry Into Force 192

On the entry into force of this Convention in a canton, subject to Article 45, all legal provisions of that canton concerning arbitration shall be repealed. 193

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