

Assembly of the Republic
Law nr. 63/2011 of 14th December

Approves the Law on Voluntary Arbitration

Pursuant to the terms of sub-paragraph c) of article 161 of the Constitution,
the Assembly of the Republic decrees as follows:

Article 1

Object

- 1 -The Law on Voluntary Arbitration, published as an annex to this Law and of which it forms an integral part, is hereby approved.
- 2 - The Civil Procedure Code is altered in conformity with the new Law on Voluntary Arbitration.

Article 2

Alteration to the Civil Procedure Code

Articles 812-D, 815, 1094 and 1527 of the Civil Procedure Code shall read as follows:

“Article 812-D

[...]

-;
- a)
 - b)

- c)
- d)
- e)
- f)
- g) If, upon request of enforcement of an arbitration award, the enforcement officer doubts that the dispute could have been submitted to arbitration, either because is subject exclusively, by special law, to a judicial tribunal or to compulsory arbitration, either because the legal matter at issue does not have a pecuniary character and cannot be the object of of settlement.

Article 815

[...]

The grounds for opposition to an enforcement of an arbitration award are not merely the provisions in the previous article, but furthermore those on which the setting aside of the same award can be based, without prejudice to the terms of paragraphs 1 and 2 of article 48 of the Law on Voluntary Arbitration.

Article 1094

[...]

1 -Without prejudice to what is established by treaties, conventions, European Union regulations and special acts, no decision on private rights, rendered by a foreign court, shall be recognised in Portugal, regardless of the parties' nationalities, without being reviewed and confirmed.

2 -.....

Article 1527

[...]

1 -If any of the circumstances foreseen in articles 13 and 15 of the Law on Voluntary Arbitration should occur in respect of the arbitrator, another arbitrator shall be appointed, under the terms of article 16 of the same Law, such appointment being made by whoever had appointed the previous arbitrator, if possible.

2 -.....”

Article 3

References

All references made in laws or regulations to the provisions of Law no. 31/86, of August 29th 1986, amended by Decree-Law no. 38/2003, of March 8th 2003, shall be considered as made to the corresponding provisions in the new Law on Voluntary Arbitration.

Article 4

Transitional provision

1 -Unless otherwise stipulated in the following paragraphs, the new regime of the Law of Voluntary Arbitration shall apply to the arbitral proceedings that, under the terms of paragraph 1 of article 33 of the referred Law, commenced after its entry into force.

2 -The new regime is applicable to the arbitral proceedings that commenced before its entry into force, provided that both parties agree thereto, or if one of the parties formulates a proposal to this effect, to which the other party does not object within 15 days of its receipt.

- 3 -The parties that entered into arbitration agreements before the entry into force of the new regime, maintain the right to the appeals against the arbitration award that would be available, under the terms of article 29 of Law no. 31/86, of August 29th 1986, amended by Decree-Law no. 38/2003, of March 8th 2003, in case the arbitral proceedings were conducted under the terms of this Law.
- 4 - The submission to arbitration of disputes emerging from or related to labour contracts is regulated by special law, but, until the entry into force thereof, the new regime approved by this Law shall be applicable, as well as, with the needed adaptation, paragraph 1 of article 1 of Law no. 31/86, of August 29th 1986, amended by Decree-Law no. 38/2003, of March 8th 2003.

Article 5

Revocation

- 1 -Law no. 31/86, of August 29th 1986, amended by Decree-Law no. 38/2003, of March 8th 2003, is hereby revoked with the exception of the provisions of paragraph 1 of article 1, that is maintained in force for arbitration of disputes emerging from or related to labour contracts.
- 2 -Paragraph 2 of article 181 and article 186 of the Administrative Courts Procedure Code are hereby revoked.
- 3 -Article 1097 of the Civil Procedure Code is hereby revoked.

Article 6
Entry into force

This Law shall enter into force 3 months after its publication date.

Passed on November 4th 2011

THE PRESIDENT OF THE ASSEMBLY OF THE REPUBLIC

(Maria da Assunção A. Esteves)

Promulgated on 29th November 2011

It should be published

The President of the Republic

Aníbal Cavaco Silva

Confirmed ("referendada") on 30th November 2011

The Prime Minister

Pedro Passos Coelho

ANNEX
Law on Voluntary Arbitration

Chapter I
The Arbitration agreement

Article 1
Arbitration agreement

- 1 -Unless exclusively submitted by special law to State court jurisdiction or to compulsory arbitration, the parties may, by means of an arbitration agreement, submit any dispute regarding economic interests to arbitration.
- 2 -An arbitration agreement regarding disputes that do not involve economic interests of a pecuniary nature is also valid, provided that the parties are entitled to conclude a settlement on the legal matter at issue.
- 3 -The arbitration agreement may concern an existing dispute, even if it has been brought before a State court (submission agreement), or possible disputes which may arise in respect of a defined legal relationship, contractual or not (arbitration clause).
- 4 - In addition to matters of a contentious nature in the strict sense, the parties may furthermore agree to submit to arbitration any other issues that require the intervention of impartial decision maker, notably those related to the need to specify, complete and adapt contracts of long-lasting obligations to new circumstances.
- 5 - The State and other legal entities governed by public law may enter into arbitration agreements insofar as they are authorised to do so by law, or if such agreements concern private law disputes.

Article 2

Arbitration agreement requirements; its termination

- 1 -The arbitration agreement shall be in writing.
- 2 -The written form requirement shall be met if the agreement consists of a written document signed by the parties, an exchange of letters, telegrams, faxes or other means of telecommunications that provide written proof, including electronic means of communication.
- 3 - The requirement that the arbitration agreement be in writing is met if it consists of an electronic, magnetic, optical or any other type of support, that offers the same guarantees of reliability, comprehensiveness and preservation.
- 4 -Without prejudice to the legal regime on general contract clauses, the reference made in a contract to a document containing an arbitration clause constitutes an arbitration agreement, provided that such contract is made in the written form and that the reference is such as to make that clause an integral part of the contract.
- 5 -The requirement that the arbitration agreement be in writing is also met if it is contained in an exchange of statements of claim and defence in arbitral proceedings, in which the existence of such an agreement is alleged by one party and not denied by the other.
- 6 -The submission agreement shall determine the subject matter of the dispute; the arbitration clause shall specify the legal relationship to which the disputes relate to.

Article 3
Invalidity of the arbitration agreement

The arbitration agreement entered into in breach of the provisions of articles 1 and 2 is null and void.

Article 4
Modification, termination and expiry of the agreement

- 1 -The arbitration agreement may be modified by the parties until acceptance by the first arbitrator or, if all arbitrators agree thereto, until to the issuance of the arbitral award.
- 2 - The arbitration agreement may be terminated by the parties, until the issuance of the arbitral award.
- 3 -The agreement of the parties as set out in the abovementioned paragraphs must be written, complying with the provisions of article 2.
- 4 -Unless otherwise agreed, the death or the extinction of the parties shall neither terminate the arbitration agreement nor the arbitral proceedings.

Article 5
Negative effect of the arbitration agreement

- 1 -The state court before which an action is brought in a matter which is the subject of an arbitration agreement shall, upon request of the respondent not later than when submitting his first statement on the merits of the dispute, refer the parties to arbitration, unless it finds that the arbitration agreement is clearly null and void, is or became inoperative or is incapable of being performed.

- 2 -In the case referred to in the previous paragraph, arbitral proceedings may nevertheless be commenced or continued, and an award may be made in it, while the issue is pending before the state court.
- 3 -The arbitral proceedings shall cease and the award made therein shall cease to produce effects, as soon as a state court considers, by means of a final decision, that the arbitral tribunal is incompetent to resolve the dispute that was brought before it, whether such decision shall be rendered in the action as referred to in paragraph 1 of the present article, or whether it is rendered under the terms of paragraph 9 of article 18, and under points i) and iii) of sub-paragraph a) of paragraph 3 of article 46.
- 4 -The issues of invalidity, incompatibility or unenforceability of an arbitration agreement cannot be discussed autonomously in an action brought before a state court for mere interpretation nor in an interim measure procedure brought before the same court, with the objective to hinder the constitution or the operation of an arbitral tribunal.

Article 6

Reference to arbitration regulations

All references made in the present Law to provisions of the arbitration agreement or to the agreement between the parties shall not include, not only parties have directly regulated therein, but also the provisions of arbitration regulations to which the parties have referred to.

Article 7

Arbitration agreement and interim measures by a state court

The application to a state court for interim measures, before or during arbitral proceedings, is not incompatible with an arbitration agreement, nor is it incompatible the granting by that court of such measures.

Chapter II

Arbitrators and the arbitral tribunal

Article 8

Number of arbitrators

- 1 -The arbitral tribunal can consist of a sole arbitrator or of many, in an uneven number
- 2 -Should the parties fail to agree the number of members of the arbitral tribunal, the number of arbitrators of the arbitral tribunal shall be three.

Article 9

Arbitrators' requirements

- 1 -The arbitrators must be individuals and have full legal capacity.
- 2 -No person shall be precluded, by reason of his nationality, from being appointed as an arbitrator, without prejudice to the provisions of paragraph 6 of article 10 and the freedom of choice of the parties.
- 3 -Arbitrators must be independent and impartial.

- 4 -The arbitrators may not be held liable for damages resulting from their decisions, save for those situations in which state judges may be held liable therefor.
- 5 -The liability of the arbitrators as mentioned in the preceding paragraph only exists towards the parties.

Article 10

Appointment of arbitrators

- 1 -The parties are free to appoint the arbitrator or arbitrators that form the arbitral tribunal in the arbitration agreement or in a later document signed by the parties, or to agree on a procedure of appointing them, namely by assigning the appointment of all or some of the arbitrators to a third party.
- 2 -In case of an arbitral tribunal composed of a sole arbitrator and if the parties are unable to agree on this appointment, such arbitrator shall be appointed, upon request of any of the parties, by the state court.
- 3 -In case of an arbitral tribunal composed of three or more arbitrators, each party shall appoint an equal number of arbitrators and the arbitrators thus appointed shall appoint a further arbitrator, who shall act as chairman of the arbitral tribunal.
- 4 -Unless agreed otherwise, if a party fails to appoint the arbitrator or arbitrators for him to choose within 30 days of receipt of the other party's request to do so, or if the arbitrators appointed by the parties fail to agree on the choice of the presiding arbitrator within 30 days of the last arbitrator's appointment, the appointment of the remaining arbitrator or arbitrators shall be made, upon request by any of the parties, by the competent state court.
- 5 -Unless agreed otherwise, the provisions of the preceding paragraph shall apply if the parties have assigned the appointment of all or some of the arbitrators to a third party and the appointment does not occur within 30 days of the request made to do so.

- 6 -When appointing an arbitrator, the competent state court shall have due regard to any qualifications required of the arbitrator or the arbitrators by the agreement of the parties and to such considerations as are relevant to secure the appointment of an independent and impartial arbitrator; in case of international arbitration, while nominating a sole or third arbitrator, the court shall furthermore take into account the advisability of appointing an arbitrator of a nationality other than those of the parties.
- 7 - The decisions taken by to the competent state court under the provisions of the preceding paragraphs of this article are not subject to appeal.

Article 11

Multiple claimants or respondents

- 1 -In case of multiple claimants or respondents, and if the arbitral tribunal should be composed by three arbitrators, the claimants shall jointly appoint an arbitrator and the respondents shall jointly appoint another.
- 2 -Should the claimants or the respondents fail to reach an agreement on the arbitrator to be appointed by them, the appointment of the missing arbitrator shall be made, upon request by any of the parties, by the competent state court.
- 3 -In the case as set out in the previous paragraph, the state court may appoint all arbitrators and indicate which one of them shall be chairman, if it becomes clear that the parties that failed to jointly appoint an arbitrator have conflicting interests regarding the merits of the dispute, and in such event the appointment of the arbitrator meanwhile made by one of the parties shall become void.
- 4 -The provisions of this article shall entail no prejudice to what may have been stipulated in the arbitration agreement for multi party arbitration.

Article 12

Acceptance of mandate

- 1 -No person may be compelled to act as an arbitrator; but if the mandate has been accepted, a withdrawal shall only be admissible if it is based on a supervening impossibility for the appointee to perform his functions, or in case of non-achievement of the agreement referred to in paragraph 1 of article 17.
- 2 -Unless agreed otherwise by the parties, each appointed arbitrator shall, within 15 days of the notice of his appointment, declare in writing the acceptance of the mandate to whom appointed him; if he neither declares his acceptance within such period, nor in any other way reveals his intent to act as an arbitrator, he shall be deemed as not accepting appointment.
- 3 -The arbitrator who, having accepted his mandate, unjustifiably withdraws from exercising his function shall be liable for the damages caused.

Article 13

Grounds for challenge

- 1 -He who has been invited to exercise functions as an arbitrator shall disclose any circumstances likely to give rise to justifiable doubts as to his impartiality and independence.
- 2 -The arbitrator shall, throughout the whole arbitral proceedings, disclose, without delay, to the parties and the remaining arbitrators, any such circumstances referred to in the preceding paragraph that arose, or of which he only became aware after accepting the mandate.

- 3 -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. A party may only 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.

Article 14

Challenge procedure

- 1 -. The parties are free to agree on a procedure for challenging an arbitrator, without prejudice to the provisions of paragraph 3 of this article.
- 2 -Failing such agreement, the 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 the circumstances referred to in article 13, send a written statement of the reasons for the challenge to the arbitral tribunal. If the challenged arbitrator does not withdraw from his office and the party that appointed him insists in his continuance in office, the arbitral tribunal, including the challenged arbitrator, shall decide on the challenge.
- 3 -If the withdrawal from office of the challenged arbitrator may not be obtained through the procedure as agreed upon by the parties or under the terms of the provisions of paragraph 2 of this article, the challenging party may request, within 15 days after having received notice of the decision rejecting the challenge, the competent state 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.

Article 15

Impossibility or failure to act by arbitrator

- 1 -If an arbitrator becomes, *de jure* or *de facto*, unable to perform his functions, his mandate terminates, if he withdraws from his office or if the parties, by mutual agreement, put an end to the mandate on that ground.
- 2 -If an arbitrator, for any other reason, fails to perform his functions without undue delay, then the parties may, by mutual agreement, end the mandate, without any prejudice to any possible liability of the arbitrator concerned.
- 3 -If the parties do not reach an agreement as to the termination of the mandate of the arbitrator concerned, for any of the situations referred to in the previous paragraph of this article, any of the parties may request the competent state court the removal of office of such arbitrator, motivated by the situation concerned, and such decision by the state court shall not be subject to appeal.
- 4 -If, under the terms of the preceding paragraphs of this article or under paragraph 2 of article 14, an arbitrator withdraws from his office or if the parties agree to the termination of the mandate of an arbitrator, who allegedly finds himself in one of the circumstances therein referred, such facts do not imply acceptance of the validity of the motives for the removal of office as mentioned in the aforementioned provisions.

Article 16

Appointment of a substitute arbitrator

- 1 -In all cases where, for whatever reason, the mandate of an arbitrator terminates, a substitute arbitrator shall be appointed, according to the rules applicable to the appointment of the arbitrator being replaced, without any prejudice to the parties being allowed to agree that the substitution shall be done otherwise, or to waive such substitution.
- 2 -The arbitral tribunal shall decide, taking into consideration the stage of the proceedings, whether any procedural act should be repeated in view of the new composition of the tribunal.

Article 17

Arbitrators' fees and costs

- 1 -If the parties fail to regulate such matters in the arbitration agreement, the arbitrators' fees, the method of reimbursement of their expenses and the payment by the parties of advances on these fees and expenses, shall be the subject of a written agreement between the parties and the arbitrators, entered into before the acceptance by the last of the arbitrators to be appointed.
- 2 -If the matters have not been regulated in the arbitration agreement, nor an agreement thereon has been made between the parties and the arbitrators, the arbitrators shall, taking into consideration the complexity of the issues decided, the value of the dispute and the time spent or to be spent with the arbitral proceedings until its conclusion, fix the amount of their fees and expenses, and furthermore determine the payment by the parties of their advance payments, by means of one or various decisions separate from those in which procedural issues or the merits of the dispute are decided.

- 3 -In the situation as set out in the previous paragraph of the present article, any of the parties may request the competent state court to reduce the amounts of the fees or the expenses and respective advance payments fixed by the arbitrators, whereby that statecourt may define the amounts it deems adequate, after hearing the members of the arbitral tribunal on the matter.
- 4 -The arbitrators may suspend or end the arbitral proceedings, in case of failure of payment of the advance payments for fees and expenses as previously agreed or fixed by the arbitral tribunal or state court, after a reasonable additional period, conceded to that effect to a party or parties at fault, has elapsed, without prejudice to the provisions of the following paragraph of this article.
- 5 - If any of the parties has not paid its advance payment within the period determined in accordance with the previous paragraph, the arbitrators, before deciding to suspend or end the arbitral proceedings, shall give notice thereof to the remaining parties, in order that these may,, if they wish, remedy the failure of payment of the said advance payment within the period set to that effect.

Chapter III

Jurisdiction of arbitral tribunal

Article 18

Competence of arbitral tribunal to rule on its jurisdiction

- 1 -The arbitral tribunal may rule on its own jurisdiction, even if for that purpose it is necessary to assess the existence, the validity or the effectiveness of the arbitration agreement or of the contract of which it forms part, or the applicability of the said agreement.
- 2 -For the purpose as set out in the previous paragraph, an arbitration clause that forms part of a contract shall be treated as an agreement, independent of the other terms of the contract.

- 3 -The decision by the arbitral tribunal that the contract is null and void shall not entail *ipso jure* the invalidity of the arbitration clause.
- 4 -The plea that the arbitral tribunal does not have jurisdiction to hear whole or part of the dispute submitted to it, shall be raised not later than the submission of the defence, or jointly with it.
- 5 - A party is not precluded from raising a plea that the arbitral tribunal does not have jurisdiction to hear the dispute brought before it, by the fact that he has appointed, or participated in the appointment of, an arbitrator.
- 6 -The plea that the arbitral tribunal, in the course of the arbitral proceedings, has exceeded or may exceed the scope of its authority, shall be raised immediately after the matter alleged to be beyond the scope of its authority has been raised in the procedure
- 7 -The arbitral tribunal may, in the situations as set out in paragraphs 4 and 6 of the present article, admit exceptional pleas, based on the arguments mentioned in the said paragraphs, presented after the time limits therein established, if it considers the delay justified.
- 8 -The arbitral tribunal may rule on its competence either as a preliminary decision or in the award on the merits.
- 9 -The arbitral tribunal ruling as a preliminary decision that it has jurisdiction, may, within 30 days after notification of that ruling to the parties, be challenged by any of the parties in the competent state court, under points i) and ii) of sub-paragraph a) of paragraph 3 of article 46, and under sub-paragraph f) of paragraph 1 of article 59.
- 10 -While such a request as referred to in the previous paragraph is pending in the competent state court, the arbitral tribunal may continue the arbitral proceedings and make an award on the merits of the dispute, without prejudice to the provisions of paragraph 3 of article 5.

Article 19

Scope of state court intervention

Regarding the matters governed by this Law, the state courts may only intervene in the cases foreseen in this Law.

Chapter IV

Interim measures and preliminary orders

Section I

Interim measures

Article 20

Power of arbitral tribunal to order interim measures

- 1 - Unless otherwise agreed, the arbitral tribunal may, at the request of a party and after hearing the opposing party, grant the interim measures it deems necessary in relation to the subject matter of the dispute.
- 2 - For the effects of this Law, an interim measure is a temporary measure, granted in the form of an award or in another form, by which, at any time prior to the issuance of the award by which the dispute is finally decided, the arbitral tribunal orders a party to:
 - a) Maintain or restore the situation previously existent pending determination of the dispute;
 - b) Take action that would prevent, or refrain from taking action that is likely to cause, harm or prejudice to the arbitral process itself;

- c) Provide a means of preserving assets out of which a subsequent award may be satisfied;
- d) Preserve evidence that may be relevant and material to the resolution of the dispute.

Article 21

Conditions for granting interim measures

- 1 -Interim measures requested under sub-paragraph a), b) and c) of paragraph 2 of article 20 is granted by the arbitral tribunal on the condition that:
 - a) There is a serious probability that the requesting party will succeed on the merits of his claim and the fear that his rights will be harmed is sufficiently demonstrated; and
 - b) The harm resulting from the interim measure to the party against whom the measure is directed, does not substantially outweigh the damage the requesting party wishes to avoid by the measure.
- 2 -The determination of the arbitral tribunal on the possibility as referred to in sub-paragraph a) of paragraph 1 of this article shall not affect the freedom of decision of the arbitral tribunal in making any subsequent determination on any matter.
- 3 -With regard to the interim measure request as made under sub-paragraph d) of paragraph 2 of article 20, the conditions set out in sub-paragraph a) and b) of paragraph 1 of this article shall apply only to the extent the arbitral tribunal considers appropriate.

Section II
Preliminary Orders

Article 22

Applications for preliminary orders; conditions

- 1 -Unless otherwise agreed, any of the parties may make a request for an interim measure and, simultaneously, make an application for a preliminary order directing the other party, without prior hearing of the other party, not to frustrate the purpose of the interim measure requested.
- 2 -The arbitral tribunal may grant a preliminary order, provided that it considers that prior disclosure of the request for the interim measure, to the party against whom it is directed, risks frustrating the purpose of that measure.
- 3 -The conditions set out in article 21 apply to any preliminary order, provided that the harm to be assessed under sub-paragraph b) of paragraph 1 of article 21 is, in such case, the harm which may result from the order being granted or not.

Article 23

Specific regime for preliminary orders

- 1 - Immediately after the arbitral tribunal has made a determination in respect of an application for a preliminary order, the arbitral tribunal shall give notice to all parties of the request for the interim measure, the application for the preliminary order, the preliminary order, if it has been issued, and all other communications, including oral communications, between any party and the arbitral tribunal in relation thereto.

- 2 -Simultaneously, the arbitral tribunal shall give an opportunity, to the party against whom the preliminary order is directed, to present its position about it, at the earliest practicable time to be set by the arbitral tribunal.
- 3 -The arbitral tribunal shall decide promptly on any objection to the preliminary order.
- 4 -The preliminary order shall expire 20 days after the date on which it was issued by the arbitral tribunal. The arbitral tribunal may however issue an interim measure adopting or modifying the preliminary order, after the party, against whom the preliminary order is directed, has been given notice and an opportunity to present its case.
- 5 -The preliminary order shall be binding on the parties but shall not be subject to enforcement by a state court.

Section III

Provisions applicable to interim measures and preliminary orders

Article 24

Modification, suspension and termination; security

- 1 -The arbitral tribunal may modify, suspend or terminate an interim measure or a preliminary order it has granted or issued, upon application of any of the parties or, in exceptional circumstances and after hearing the parties, on the arbitral tribunal's own initiative.
- 2 -The arbitral tribunal may demand from the party requesting an interim measure to provide appropriate security.
- 3 -The arbitral tribunal shall demand the party requesting the application of a preliminary order to provide appropriate security, unless it considers it inappropriate or unnecessary to do so.

Article 25

Disclosure

- 1- The parties shall disclose promptly any material change in the circumstances on the basis of which the measure was requested or granted.
- 2- The party applying for a preliminary order shall disclose to the arbitral tribunal all circumstances that may be relevant to the determination whether to grant or maintain the order, and such obligation shall continue until the party against whom the order has been requested has had an opportunity to present its position, after which the provisions of paragraph 1 of this article shall apply.

Article 26

Responsibility of the requesting party

The party requesting an interim measure or applying for a preliminary order shall be liable for any costs or damages caused by such measure or order to the other party, if the arbitral tribunal later determines that, in the circumstances previously existent, the measure or the order should not have been granted or issued. The arbitral tribunal may, in the latter situation, order the requesting party to pay the corresponding indemnification at any point during the proceedings.

Section IV

Recognition or enforcement of interim measures

Article 27

Recognition or enforcement

- 1 -An interim measure issued by an arbitral tribunal shall be binding on the parties and, unless otherwise provided by the arbitral tribunal, shall be enforced upon application to the competent state court, irrespective of the circumstance of the arbitration in which it was issued taking place abroad, without prejudice to the provisions of article 28.
- 2 -The party who is seeking or has obtained recognition or enforcement of an interim measure shall promptly inform the state court of any termination, suspension or modification of that interim measure by the arbitral tribunal that has granted it.
- 3 -The state court where recognition or enforcement of the measure is sought may, if it considers it proper, order the requesting party to provide appropriate security, if the arbitral tribunal has not already made a determination with respect to security or if such a decision is necessary to protect the rights of third parties.
- 4 -The decision of the arbitral tribunal on the granting of a preliminary order or interim measure, and the judgment of the state court deciding on the recognition or enforcement of an interim measure of an arbitral tribunal, are not subject to appeal.

Article 28
Grounds for refusing recognition or enforcement

1. Recognition or enforcement of an interim measure may be refused by a state court only:

- a) At the request of the party against whom it is invoked if the court is satisfied that:
 - i) Such refusal is warranted on the grounds set forth in points i), ii), iii) or iv) of sub-paragraph a) of paragraph 1 of article 56; or
 - ii) The arbitral tribunal's decision with respect to the provision of security in connection with the interim measure issued by the arbitral tribunal has not been complied with; or
 - iii) The interim measure has been terminated or suspended by the arbitral tribunal or, where so empowered, by a state court of the foreign country in which the arbitration takes place or under the law of which that interim measure was granted; or
- b) If the state court finds that:
 - i) The interim measure is incompatible with the powers conferred upon the state court by the law that governs it, unless the court decides to reformulate the interim measure to the extent necessary to adapt it to its own powers and procedures, for the purposes of enforcing that interim measure and without modifying its substance; or
 - ii) Any of the grounds for refusal of recognition set forth in points i) or ii) of sub-paragraph b) of paragraph 1 of article 56, apply to the recognition or enforcement of the interim measure.

- 1 -2 - Any determination by the state court under paragraph 1 of this article shall only be relevant for the purposes of deciding the application for recognition or enforcement of the interim measure granted by the arbitral tribunal. The state court where recognition or enforcement of the interim measure is sought, shall not, in making that determination, undertake a review of the substance of the interim measure.

Article 29

State court-ordered interim measures

- 1 -State courts shall have the power to issue interim measures in relation to the arbitration proceedings, irrespective of the place where they occur, under the same terms as they have the power in relation to proceedings in state courts.
- 2 -State courts shall exercise these powers in accordance with the procedures applicable to them, taking into consideration, should that be the case, the specific features of international arbitration.

Chapter V

Conduct of arbitral proceedings

Article 30

Principles and rules of arbitral proceedings

- 1 -The arbitral proceedings shall always obey the following fundamental principles:
- a) The respondent shall be summoned to defend himself;
 - b) The parties are treated equally and shall be given a reasonable opportunity to present their case, in writing or orally, before the issuance of the final award;

- c) In all phases of the proceedings the principle of a fair hearing shall be guaranteed, with the exceptions as set out in this Law.
- 2 -The parties may, until the acceptance by the first arbitrator, agree on the procedure to be followed by the arbitral tribunal in conducting the proceedings, respecting the fundamental principles as set out in the preceding paragraph of this article and the overriding rules as set out in this Law.
- 3 -Failing such agreement by the parties and in the absence of applicable provisions in this Law, the arbitral tribunal may conduct the arbitration in such manner as it considers appropriate, defining the procedural rules it deems adequate, with the duty, if this is the case, to explicitly indicate if it considers subsidiarily applicable the provisions of the law that govern the proceedings of the competent state court.
- 4 -The powers conferred upon the arbitral tribunal include the power to determine the admissibility, relevance, materiality and weight of any evidence given or to be given.
- 5 -The arbitrators, the parties and, if this is the case, the entities that promote institutionalised voluntary arbitration, have the duty to preserve confidentiality regarding all information they obtain and documents brought to their attention in the course of the arbitration proceedings, without prejudice to the right of the parties to turn public the procedural acts necessary for the defence of their rights and to the duty to communicate or disclose the procedural acts to the competent authorities, if obliged so by law.
- 6 -The provisions of the preceding paragraph do not impede the publication of awards and other decisions of the arbitral tribunal, excluding the identification details of the parties, unless any of these opposes thereto.

Article 31

Place of arbitration

- 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.
- 2 -Notwithstanding the provisions of paragraph 1 of this article, the arbitral tribunal may, unless otherwise agreed by the parties, meet at any place it considers appropriate to hold one or more hearings, to allow the production of any evidence, or to take any decisions.

Article 32

Language of the proceedings

- 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.
- 2 -The arbitral tribunal may order that any document shall be accompanied by a translation into the language or languages agreed upon by the parties or determined by the arbitral tribunal:

Article 33

Commencement of proceedings; statements of claim and defence

- 1 -Unless agreed otherwise by the parties, the arbitral proceedings regarding a particular dispute shall commence on the date on which the petition of submission of this dispute to arbitration is received by the respondent.

- 2 - Within the time periods agreed by the parties or determined by the arbitral tribunal, the claimant shall submit his statement of claim, in which he sets out the remedy sought and the facts supporting his claim, and the respondent shall present his statement of defence in which he states his defence in respect of these particulars, unless the parties have otherwise agreed as to the required elements of such statements. The parties may submit with the referred written statements all documents they consider to be relevant and may add a reference therein to the documents or other means of evidence they will submit.
- 3 - Unless otherwise agreed to by the parties, any of the parties may, in the course of the arbitral proceedings, modify or supplement his statement of claim or defence, unless the arbitral tribunal shall consider it inappropriate to allow such amendment having regard to the delay in making it without sufficient justification.
- 4 - The respondent may present a counter claim, provided that its matter is included in the arbitration agreement.

Article 34

Hearings and written proceedings

- 1 - Subject to any agreement to the contrary by the parties, the tribunal shall decide whether to hold hearings for the presentation of evidence, or whether the proceedings shall be merely conducted on the basis of documents and other elements of proof. The arbitral tribunal shall however hold one or more hearings for the presentation of evidence whenever so requested by a party, unless the parties previously agreed that no hearings shall be held.
- 2 - The parties shall be given sufficient advance notice of any hearing and of any meetings of the arbitral tribunal for the purposes of producing evidence.

- 3 -All written statements, documents or other information supplied to the arbitral tribunal by one of the parties 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.

Article 35

Omissions and absence of a party

- 1 -If the claimant fails to present his statement of claim in accordance with paragraph 2 of article 33, the arbitral tribunal shall terminate the arbitral proceedings.
- 2 -If the respondent fails to present his statement of defence in accordance with paragraph 2 of article 33, the arbitral tribunal shall continue the proceedings without treating such failure in itself as an admission of the claimant's allegations.
- 3 -If one of the parties fails to appear at a hearing or to produce documentary evidence within the determined time period, the arbitral tribunal may continue the proceedings and make the award based on the evidence before it.
- 4 -The arbitral tribunal may however, in case it deems the omission justified, allow a party to perform the omitted act.
- 5 -The provisions of the previous paragraphs of this article will entail no prejudice to what the parties may have agreed on the consequences of their omissions.

Article 36

Third party participation

- 1 -Only third parties bound by the arbitration agreement are allowed to join in ongoing arbitral proceedings based on that arbitration agreement, either when they are bound by it at the date of such agreement, either when they subsequently adhered to it. This adherence requires the consent of all the parties of the arbitration agreement and may be done merely for the arbitration in question.

- 2 -If the arbitral tribunal is already constituted, the participation of a third party is only admitted or requested if such party declares to accept the current composition of the tribunal; in case of a spontaneous participation by the third party this acceptance is presumed.
- 3 -The admission of participation always depends on the decision of the arbitral tribunal, after hearing the initial parties of the arbitration and the third party in question. The arbitral tribunal may only allow a participation if it does not unduly disrupt the normal course of the arbitral proceedings and if there are serious reasons that justify it, considering as such, in particular, those situations in which, provided that the petition is not obviously infeasible:
- a) The third party has an interest to the subject matter equal to that of the claimant or respondent, that initially would have permitted the voluntary joint litigation or imposed the necessary joint litigation by one of the arbitration parties and the third party, or
 - b) The third party wishes to present a petition against the respondent with an equal object as the claimant, but incompatible with the claimant's petition; or
 - c) The respondent against whom a credit is invoked that may, *prima facie*, be characterized as a joint credit, wishes that the other possible joint creditors are bound by the final arbitration award; or
 - d) The respondent wishes that third parties against whom the respondent may have a right of indemnification in case of, complete or partial, granting of the petition of the claimant, shall be involved.
- 4 -The provisions of the preceding paragraphs applicable to claimant and respondent are equally applicable, with the necessary adaptations, respectively to respondent and claimant in case of a counter claim.
- 5 -In case of an admitted participation, the provisions of article 33 apply, with the necessary adaptations.

- 6 -Without prejudice to the provisions of the paragraph hereunder, the participation of third parties previously to the constitution of the arbitral tribunal, can only take place in institutionalised arbitration, and provided that the applicable arbitration regulation assures the upholding of the principle of equal participation of all parties, including the members of multiple parties, in the choice of the arbitrators.
- 7 -The arbitration agreement may regulate the third party participation in ongoing arbitrations differently from the provisions in the preceding paragraphs, either directly, upholding the principle of equal participation of all parties in the choice of the arbitrators, either by referral to an institutionalised arbitration regulation that allows such participation.

Article 37

Expert appointed by arbitral tribunal

- 1 -Unless otherwise agreed by the parties, the arbitral tribunal may, on its own initiative or upon request of the parties, appoint one or more experts to give advise to it, in written or oral form, on specific issues to be determined by the arbitral tribunal.
- 2 -In the case as set out in the previous paragraph, the arbitral tribunal may require any of the parties to give the expert any relevant information or to produce, or to provide access to, any documents or other goods deemed relevant for his inspection.
- 3 -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 report, participate in a hearing where the arbitral tribunal and the parties shall have the opportunity to put questions to him.
- 4 -The provisions of article 13 and of paragraph 2 and 3 of article 14 are applicable, with the necessary adaptations, to the experts appointed by the arbitral tribunal.

Article 38

State court assistance in taking evidence

- 1 -When the evidence to be taken depends on the will of one of the parties or of third parties and these refuse their collaboration, a party may, with the previous authorization of the arbitral tribunal, request the competent state court that the evidence shall be taken before it, sending the results thereof to the arbitral tribunal.
- 2 -The provisions of the preceding paragraph are applicable to the requests to take evidence addressed to a Portuguese state court, on case of arbitrations located abroad.

Chapter VI

Making of award and termination of proceedings

Article 39

Rules applicable to substance of dispute, resort to equity; legal force of the award

- 1 -The arbitrators shall decide in accordance with the law, unless the parties determine, in an agreement, that the arbitrators shall decide *ex aequo et bono*.
- 2 -If the agreement by the parties as to the judgement *ex aequo et bono* was entered into after the acceptance by the first arbitrator, its efficiency shall depend on the acceptance by the arbitral tribunal.
- 3 -If the parties have vested such powers to the arbitrator, the tribunal may decide the dispute by appeal to the composition of the parties on the basis of the balance of interests at hand.

- 4 -The award which decides on the merits of the dispute, or which terminates the arbitral proceedings without a decision on the merits, is only subject to appeal to the competent state court if the parties have expressly contemplated such possibility in the arbitration agreement, and provided that the dispute has not been decided *ex aequo et bono* or by *amiable compositeur*.

Article 40

Decision-making by panel of arbitrators

- 1 -In arbitral proceedings with more than one arbitrator, any decision of the arbitral tribunal shall be made by a majority of all its members. If a majority cannot be achieved, the award is made by the chairman of the tribunal.
- 2 - If an arbitrator refuses to take part in the vote on the decision, the other arbitrators may make the award without him, unless the parties have agreed otherwise. The parties are subsequently informed of the refusal to participate by this arbitrator in the vote.
- 3 -Issues related to procedural matters, procedural sequence or procedural initiative, may only be decided by the chairman, if the parties or the other members of the arbitral tribunal have authorised him to do so.

Article 41

Settlement

- 1 -If, during arbitral proceedings, the parties settle the dispute, the arbitral tribunal shall terminate the proceedings and, if requested by the parties, record the settlement in the form of an arbitral award on agreed terms, unless the contents of such settlement are in violation of any principle of public policy.

- 2 -An award on agreed terms of the parties shall be made in accordance with the provisions of article 42 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.

Article 42

Form, contents and effectiveness of award

- 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 or merely the signature of the chairman, in case the award has to be made by him, provided that the reason for the omission of the remaining signatures is stated in the award.
- 2 -Unless otherwise agreed by the parties, the arbitrators may decide the merits of the case in one single award or in as many partial awards as they deem necessary.
- 3 -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 article 41.
- 4 -The award shall state the date it was made and the place of arbitration as determined in accordance with paragraph 1 of article 31, whereby for all due effects the award shall be deemed to have been made at that place.
- 5 -Unless otherwise agreed by the parties, the award shall determine the distribution between the parties of the costs directly resultant of the arbitral proceedings. The arbitrators may furthermore decide in the award, if they deem so just and appropriate, that one or some of the parties shall compensate the other party or parties for the whole or part of the reasonable costs and expenses that they can prove to have incurred with its the participation in the arbitration.

- 6 -After the award is made, immediate notification shall take place by sending a copy signed by the arbitrator or arbitrators to each of the parties, in accordance with paragraph 1 of this article, and the award shall produce its effects as of the date of notification, without prejudice to the provisions of paragraph 7.
- 7 -The arbitral award that is not subject to appeal and that is no longer subject to amendments under the terms of article 45, has the same binding effect on the parties as the final and binding judgment of a state court, and may be enforced as a state court judgement.

Article 43

Time limit to make the award

- 1 -Unless the parties have agreed, up to the acceptance by the first arbitrator, a different time period, the arbitrators shall notify the parties of the final award made on the dispute brought before them within 12 months as of the date of acceptance of the last arbitrator.
- 2 -The time periods set in accordance with paragraph 1 may be freely extended upon agreement by the parties or, alternatively, by decision of the arbitral tribunal, one or more times, with successive periods of 12 months, with the duty to duly motivate such extensions. Subject however to the possibility that the parties, by mutual agreement, oppose to the extension.
- 3 -Failure to notify the final award within the maximum time limit set in accordance with the preceding paragraphs of this article, shall automatically terminate the arbitral proceedings and end the arbitrators competence to decide on the dispute submitted to them, without prejudice to the arbitration agreement keeping its effectiveness, namely for the purpose of forming the base for a new arbitral tribunal to be constituted and a new arbitration to be initiated.
- 4 -The arbitrators that unjustifiably hinder the award being made within the set time limit shall be liable for damages caused.

Article 44

Termination of proceedings

- 1 -The arbitral proceedings are terminated with the final award or with an order of termination of the arbitral tribunal in accordance with paragraph 2 of this article.
- 2 -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 recognizes 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 reason become unnecessary or impossible.
- 3 -The mandate of the arbitral tribunal terminates with the termination of the arbitral proceedings, subject to the provisions of article 45 and paragraph 8 of article 46.
- 4 -Unless otherwise agreed by the parties, the chairman of the arbitral tribunal shall keep the original of the arbitral proceedings for a minimum period of two years and the original of the arbitral award for a minimum period of five years.

Article 45

Correction and clarification of award; additional award

- 1 -Within thirty days of receipt of notification of the award, unless the parties agreed to a different time period, any of the parties may, with notice to the other party, request the arbitral tribunal to correct in the text of the award any calculation error, material or typographical error or any error of a similar nature.

- 2 -In the time period as set in the previous paragraph any of the parties may, with notice to the other party, request the arbitral tribunal to clarify any obscurity or ambiguity of the award or of the reasons of the award.
- 3 -If the arbitral tribunal considers the request to be justified, it shall make the correction or give the clarification within 30 days of receipt of the request. The clarification shall form an integral part of the award.
- 4 -The arbitral tribunal may also, on its own initiative, correct any error of the type referred to in paragraph 1 of this article within thirty days of the date of notification of the award.
- 5 -Unless otherwise agreed by the parties, any of the parties may, with notice to the other party, request the arbitral tribunal, within 30 days of receipt of the notification of the award, to make an additional award as to part of the claim or 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 60 days as of its request.
- 6 -The arbitral tribunal may extend, if necessary, the period of time within which it shall make a correction, clarification or an additional award under paragraph 1, 2 or 5 of this article, without prejudice to compliance of the set maximum time period in accordance with article 43.
- 7 -The provisions of article 42 apply to the rectification and clarification of the award as well as to the additional award.

Chapter VII
Recourse against award

Article 46
Request for setting aside

- 1 -Unless otherwise agreed by the parties, under paragraph 4 of article 39, recourse to a state court against an arbitral award may be made only through an application for setting aside in accordance with the provisions of this article.
- 2 -The application for setting aside the arbitral award, which must be accompanied by a certified copy thereof, and, if drafted in a foreign language, by a translation into Portuguese, is presented to the competent state court, observing the following rules, without prejudice to the provisions of the further paragraphs of this article:
 - a) The proof is presented with the application;
 - b) The opposing party is summoned to present its opposition to the request and present evidence;
 - c) A reply by the claimant party is regarding new facts raised by opposing party ("exceptio;
 - d) Subsequently the offered evidence shall be;
 - e) The following process shall follow the rules of the appeal, under the Civil Procedure Code ("apelação"), with the necessary adaptation;
 - f) The action of setting aside enters, for effects of distribution, in the type 5 class of action.
- 3 -An arbitral award may be set aside by the competent state court only if:
 - a) The party making the application furnishes proof that:
 - i) One of the parties of the arbitration agreement was under some incapacity; or that this agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the terms of this Law; or

- ii) There has been a violation in the proceedings of some of the fundamental principles as referred in paragraph 1 of article 30 with a decisive influence on the dispute resolution; or
 - iii) The award was made on a dispute that is not contemplated by the arbitration agreement, or contains decisions that surpass the scope thereof; or
 - iv) The composition of the arbitral tribunal or the arbitral proceedings was not in accordance with the agreement of the parties, unless such agreement was in conflict with a provision of this Law which can not be derogated by the parties, or, failing such agreement, was not in accordance with this Law, and in any case, this inconformity had a decisive influence on the dispute resolution; or
 - v) The arbitral tribunal has condemned in an amount in excess of what was requested or in terms an object different from what was requested, or has, dealt with issues that it should not have dealt with, or has failed to decide issues that it should have decided; or
 - vi) The award was made in violation of the conditions established by paragraph 1 and 3 of article 42; or
 - vii) The award was notified to the parties after the maximum time limit set for the effect in accordance with article 43 has lapsed; or
- b) The court finds that:
- i) The subject matter of the dispute cannot be decided by arbitration under the terms of Portuguese law;
 - ii) The content of the award is in breach of the principles of international public policy of the Portuguese State.

- 4 -If a party, knowing that one of the provisions of this Law that parties can derogate, or any condition as set out in the arbitration agreement, was not respected, and nonetheless continues the arbitration without immediate opposition or, if there was a time period therefor, has not objected within this period, it is deemed that the party waived the right to set aside, with such grounds, the arbitral award.
- 5 -Without prejudice to the provisions of the preceding paragraph, the right to request the setting aside of an arbitral award can not be waived.
- 6 -The application for setting aside may not be made after 60 days have elapsed from the date on which the party making that application had received the notification of the award or, if a request had been made under the terms of article 45, from the date on which such request had been decided by the arbitral tribunal.
- 7 -If the part of the award as to which any of the grounds for setting aside referred to in paragraph 3 of this article is proven, can be separated of the rest of the award, then only the part of the award affected by this ground for setting aside, shall be set aside.
- 8 -The competent state court, when asked to set aside an arbitral award, may, if it considers appropriate, and if it is so requested by one of the parties, suspend the setting aside proceedings for a period of time determined by it, in order to give the arbitral tribunal the 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.
- 9 -The state court that shall set aside the arbitral award cannot judge the merits of the dispute and the pending issues, if any of the parties so wishes, shall be submitted to another arbitral tribunal.
- 10 - Unless the parties have agreed otherwise, with the setting aside of the award, the arbitration agreement shall again produce effects as to the matter of the dispute.

Chapter VIII
Enforcement of the arbitral award

Article 47
Enforcement of the arbitral award

- 1 -The party applying for the enforcement of the award to the competent state court shall provide the original award or a certified copy thereof and, if the award is not drafted in Portuguese, a certified translation into Portuguese.
- 2 -In case the arbitral tribunal issues a generic award, its liquidation shall be made under the terms of paragraph 4 of article 805 of the Civil Procedure Code, unless the arbitral tribunal shall be required to make the liquidation under the terms of paragraph 5 of article 45, in which case the arbitral tribunal, after hearing the other party, and evidence given, renders a complementary decision, judging on equitable terms within the proven limits.
- 3 -The arbitral award may serve as the basis for enforcement even if recourse against it has been made through application for setting aside in accordance with article 46, but the contesting party may require that such recourse shall have a suspensive effect, provided that the party so requiring shall offer to provide security, whereas the attribution of such effect shall be conditional upon the effective materialization of such security within the time period set by the court. In this case the provisions of paragraph 3 of article 818 of the Civil Procedure Code shall apply.
- 4 -For the effect of the provisions of the previous paragraph, the provisions of articles 692-A and 693-A of the Civil Procedure Code shall apply, with the necessary adaptations.

Article 48

Grounds for refusing enforcement

- 1 -The party against whom enforcement of the arbitral award is invoked, may oppose to the enforcement, on any ground which may be used for setting the award aside, as set out in paragraph 3 of article 46, provided that, on the date on which the opposition was presented, an application for setting aside on the same ground has not already been rejected by a final and binding judgement.
- 2 -In the opposition against enforcement, the party against whom enforcement is invoked cannot call on any of the grounds set out in sub-paragraph a) of paragraph 3 of article 46, if the time period as provided in paragraph 6 of the same article for presenting the application for setting aside has lapsed, without any of the parties having made such application.
- 3 -Notwithstanding the expiry of the time period as provided in paragraph 6 of article 46, the judge may *ex officio*, under the terms of the provisions of article 820 of the Civil Procedure Code, examine the merits of the ground of setting aside foreseen in sub-paragraph b) of paragraph 3 of article 46 of this Law, whereby it shall, after verifying that the award to be enforced is invalid for that reason, reject enforcement on such grounds.
- 4 - The provisions of paragraph 2 of the present article do not affect the possibility of invoking in the opposition to the enforcement of the arbitral award, any of the other grounds provided to this effect in the applicable procedural law, under the terms and within the time periods therein provided.

Chapter IX
International arbitration

Article 49
International arbitration concept and regime

- 1 -Arbitration is considered international if it involves interests of the international trade.
- 2 -Subject to the provisions of the present Chapter, the provisions of this Law on domestic arbitration shall be applicable to international arbitration, with the necessary adaptations.

Article 50
Inadmissibility of pleas based on domestic law of a party

When the arbitration is international and one of the parties to the arbitration agreement is a State, a State-controlled organisation or a State-controlled company, this party may not invoke its domestic law to either contest the arbitrability of the dispute or its capacity to be a party to the arbitration, neither to evade in any other way its obligations arising from such agreement.

Article 51

Substantial validity of the arbitration agreement

- 1 - In an international arbitration, the arbitration agreement is deemed valid as to its substance and the dispute it governs is able to be submitted to arbitration if the requirements set out therefor are met, either by the law chosen by the parties to govern the arbitration agreement, either by the law applicable to the merits of the dispute either by Portuguese law.
- 2 -The state court to which an application is made, to set aside an award in an international arbitration located in Portugal, on the ground foreseen in subparagraph b) of paragraph 3 of article 46 of this Law, shall consider the provisions of the preceding paragraph of this article.

Article 52

Rules of law applicable to the merits of the dispute

- 1 -The parties may choose the rules of law to be applied by the arbitrators, if they have not authorised the arbitrators to rule *ex aequo et bono*. Any designation of the law or legal system of a given State shall be construed, unless otherwise expressly agreed, as directly referring to the substantive law of that State and not to its rules on conflict of laws.
- 2 -Failing any determination by the parties, the arbitral tribunal shall apply the law of the State to which the subject matter of the dispute has the closest connection.
- 3 -In both cases as referred in the previous paragraphs, the arbitral tribunal shall take into consideration the contractual terms agreed by the parties and the relevant usages of the trade.

Article 53

Legal force of the award

In international arbitration the award of the arbitral tribunal is not subject to any recourse, unless the parties have expressly agreed the possibility of appeal to another arbitral tribunal and regulated its terms.

Article 54

International public policy

The award made in Portugal, in an international arbitration in which non-Portuguese law has been applied to the merits of the dispute, may be set aside on the grounds as provided in article 46, and furthermore, in case the award has to be enforced or produce other effects in national territory, if such enforcement shall lead to a result clearly incompatible with the principles of international public policy.

Chapter X

Recognition and enforcement of foreign arbitral awards

Article 55

Need for recognition

Without prejudice to the mandatory provisions of the 1958 New York Convention, on the Recognition and Enforcement of Foreign Arbitration Awards, as well as of other treaties or conventions which are binding on the Portuguese State, the awards made in arbitrations located abroad, are only effective in Portugal, independently of the nationality of the parties, if the awards have been recognised by the competent Portuguese state court, under the terms of the provisions of this chapter of the present Law.

Article 56

Grounds for refusal of recognition and enforcement

1 -Recognition or enforcement of an arbitral award made in a foreign country may be refused only:

a) At the request of the party against whom the award is invoked, if that party furnishes to the competent court where recognition or enforcement is sought proof that:

- i) One of the parties to the arbitration agreement 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;
- 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 the arbitration agreement or contains decisions beyond the scope of the arbitration agreement; if however the decisions in the award on matters submitted to arbitration can be separated from those not so submitted, only the 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

- b) If the court finds that:
 - i) The subject matter of the dispute can not be subject to arbitration under Portuguese law; or
 - ii) The recognition or enforcement of the award would lead to a result incompatible with the international public policy of the Portuguese State.
- 2 -If an application for setting aside or suspension of an award has been made to a court in the country referred to in sub-paragraph v) of sub-paragraph a) of paragraph 1 of the present article, the Portuguese state court where recognition or enforcement is sought may, if this is considered it adequate, adjourn its decision and it may also, upon application of the party claiming recognition and enforcement of the award, order the other party to provide appropriate security.

Article 57

Recognition proceedings procedure

- 1 -The party that seeks recognition of a foreign arbitral award, namely if enforcement in Portugal is sought, shall supply the original award duly authenticated or a duly certified copy thereof, as well as the original of the arbitration agreement or a duly authenticated copy thereof. If the award or the agreement has not been made in Portuguese, the party that seeks recognition shall supply a duly certified translation thereof into such language.
- 2 -After the application for recognition, accompanied by the documents referred in the preceding paragraph, is made, the opposing party shall be summoned to present its opposition, within 15 days.

- 3 -After the pleadings and the procedural steps deemed indispensable by the rapporteur are made, access to the proceedings file shall be granted, for allegations, to the parties and to the Public Prosecutor, within 15 days.
- 4 -The judgement is made pursuant to the rules applicable to the appeal.

Article 58

Foreign awards on administrative law disputes

In the recognition of the arbitral award made in arbitration located abroad and related to a dispute that, according to Portuguese law, should fall under the jurisdiction of the administrative courts, the provisions of article 56, 57 and paragraph 2 of article 59 of this Law shall apply, with the necessary adaptations to the specific procedural regime of these courts.

Chapter XI

Competent state courts

Article 59

Competent state courts

- 1 -Regarding disputes that fall under the jurisdiction of judicial courts, the Court of Appeal in whose district the place of arbitration is located, or in case of a decision referred to in sub-paragraph h) of paragraph 1 of this article, the domicile of the person against whom the decision to be invoked is located, is competent to decide on:
- a) The appointment of the arbitrators who have not been appointed by the parties, or by third parties to whom this duty has been assigned, in accordance with the provisions of paragraph 3, 4 and 5 of article 10 and paragraph 1 of article 11;

- b) The challenge made under paragraph 2 of article 14 against an arbitrator who has not accepted it, in case the challenge is deemed to be justified;
 - c) The removal of an arbitrator, requested under paragraph 1 of article 15;
 - d) The reduction of the amount of fees or expenses fixed by the arbitrators, under paragraph 3 of article 17;
 - e) The challenge of the arbitral award, if this has been made under paragraph 4 of article 39;
 - f) The challenge of the interim award made by the arbitral tribunal on its competence, in accordance with paragraph 9 of article 18;
 - g) The challenge of the final award made by the arbitral tribunal, in accordance with article 46;
 - h) The recognition of the arbitral tribunal made in an arbitration located abroad.
- 2 -In what concerns disputes that, according to Portuguese law, shall fall under the jurisdiction of administrative courts, the Central Administrative Court in whose region the place of arbitration is located, or in case of a decision referred to in sub-paragraph h) of paragraph 1 of this article, the domicile of the person against whom the decision is to be invoked is located, shall be competent to decide on matters referred to in some of the sub-paragraphs of paragraph 1 of this article.
- 3 -The nomination of the arbitrators referred to in sub-paragraph a) of paragraph 1 of this article shall, depending on the nature of the dispute, fall under competence of the President of the Court of Appeal, or of the President of the Central Administrative Court, with the required territorial competence.

- 4 -For any issues or matters not covered by paragraph 1, 2 and 3 of the present article and for which this Law confers competence to a state court, the judicial court of first instance, or the administrative court, in whose jurisdiction the place of arbitration is located, shall be competent, depending on whether it concerns disputes falling respectively within the jurisdiction of the judicial courts or of the administrative courts.
- 5 -In what concerns disputes falling under the jurisdiction of judicial tribunals, the competence to render assistance to arbitrations located abroad, under article 29 and paragraph 2 of article 38 of this Law shall belong to the judicial court of first instance in whose jurisdiction the interim measure should be granted in accordance with the rules on territorial competence provided in article 83 of the Civil Procedure Code, or in whose jurisdiction should occur the production of evidence, as requested under paragraph 2 of article 38 of this Law.
- 6 -Regarding disputes falling under the jurisdiction of administrative courts, the assistance to arbitrations located abroad is rendered by the administrative court territorially competent in accordance with the provisions of paragraph 5 of this article, applied with the necessary changes to the regime of administrative courts.
- 7 -In the proceedings leading to the decisions as referred to in paragraph 1 of this article, the competent court shall observe the provisions of articles 46, 56, 57, 58 and 60 of this Law.
- 8 -Unless stated in this Law that the competent state court decision shall not be subject to appeal, the decisions rendered by the state courts referred to in the preceding paragraphs of this article, in accordance with what is provided therein, are subject to appeal to the court or courts superior in hierarchy, whenever such recourse shall be admissible pursuant to the rules that apply to the possibility of appeal of the decisions in question.

- 9 -The enforcement of an arbitral award made in Portugal shall take place in the competent state court of first instance, under the terms of the applicable procedural law.
- 10 -For the action seeking civil liability of an arbitrator, the competence shall belong to the judicial courts of first instance in whose jurisdiction the domicile of the defendant is located, or of the place of arbitration, upon choice of the claimant.
- 11 -If in an arbitral proceedings the dispute is recognised by a judicial or administrative court, or by the respective President, as the respective material competence, for the effects of application of this article, such decision is not, in this part, open to recourse and must be complied with by all others courts called upon in the same proceedings to exercise any of the competences here provided.

Article 60

Applicable procedure

- 1 -In cases in which it is intended that the competent state court renders a decision under any of the sub-paragraphs a) to d) of paragraph 1 of article 59, the interested party shall present in his application the facts that justify his request, including the information it considers relevant to this effect.
- 2 -Upon receipt of the application as set out in the previous paragraph, the other parties in the arbitration and, if such be the case, the arbitral tribunal, are notified to state their views thereon within 10 days.
- 3 -Before rendering decision, the court may, if it deems it necessary, gather or request all information deemed convenient for rendering its decision.
- 4 -The procedures set out in the previous paragraphs of this article are always deemed urgent, the respective actions having priority over any other non-urgent judicial service.

Chapter XII

Final dispositions

Article 61

Territorial scope of application

The present Law is applicable to all arbitrations that take place in Portuguese territory, as well as to recognitions and enforcement in Portugal of awards made in arbitrations located abroad.

Article 62

Institutionalised arbitration centres

- 1- The creation in Portugal of institutionalised arbitration centres is subject to authorisation of the Minister of Justice, under the terms provided in special legislation.
- 2- The reference made in Decree-Law no. 425/86, of December 27th 1986 to article 38 of Law no. 31/86, of August 29th 1986, is considered to be made to the present article.

