

Chapter 12: International Arbitration

Article 176

I. Field of application; seat of the arbitral tribunal

¹ The provisions of this chapter shall apply to all arbitrations if the seat of the arbitral tribunal is in Switzerland and if, at the time of the conclusion of the arbitration agreement, at least one of the parties had neither its domicile nor its habitual residence in Switzerland.

² The parties may exclude the application of this chapter by an explicit declaration in the arbitration agreement or by an agreement at a later date and agree on the application of the third part of the CPC.

³ The seat of the arbitral tribunal shall be determined by the parties, or the arbitral institution designated by them, or, failing both, by the arbitrators.

Article 177

II. Arbitrability

¹ Any dispute of financial interest may be the subject of an arbitration.

² A state, or an enterprise held by, or an organization controlled by a state, which is party to an arbitration agreement, cannot invoke its own law in order to contest its capacity to arbitrate or the arbitrability of a dispute covered by the arbitration agreement.

Article 178

III. Arbitration agreement

¹ The arbitration agreement must be made in writing, by telegram, telex, telecopier or any other means of communication which permits it to be evidenced by a text.

² Furthermore, an arbitration agreement is valid if it conforms either to the law chosen by the parties, or to the law governing the subject-matter of the dispute, in particular the main contract, or to Swiss law.

³ The arbitration agreement cannot be contested on the grounds that the main contract is not valid or that the arbitration agreement concerns a dispute which had not as yet arisen.

Article 179

IV. Arbitrators

1. Constitution of the arbitral tribunal

¹ The arbitrators shall be appointed, removed or replaced in accordance with the agreement of the parties.

² In the absence of such agreement, the judge where the arbitral tribunal has its seat may be seized with the question; he shall apply, by analogy, the provisions of the CPC on appointment, removal or replacement of arbitrators.

³ If a judge has been designated as the authority for appointing an arbitrator, he shall make the appointment unless a summary examination shows that no arbitration agreement exists between the parties.

Article 180

2. Challenge of an arbitrator

¹ An arbitrator may be challenged:

- a) if he does not meet the qualifications agreed upon by the parties;
- b) if a ground for challenge exists under the rules of arbitration agreed upon by the parties;

c) if circumstances exist that give rise to justifiable doubts as to his independence.

² No party may challenge an arbitrator nominated by it, or whom it was instrumental in appointing, except on a ground which came to that party's attention after such appointment. The ground for challenge must be notified to the arbitral tribunal and the other party without delay.

³ To the extent that the parties have not made provisions for this challenge procedure, the judge at the seat of the arbitral tribunal shall make the final decision.

Article 181

V. Lis Pendens

¹ The arbitral proceedings shall be pending from the time when one of the parties seizes with a claim either the arbitrator or arbitrators designated in the arbitration agreement or, in the absence of such designation in the arbitration agreement, from the time when one of the parties initiates the procedure for the appointment of the arbitral tribunal.

Article 182

VI. Procedure

1. Principle

¹ The parties may, directly or by reference to rules of arbitration, determine the arbitral procedure; they may also submit the arbitral procedure to a procedural law of their choice.

² If the parties have not determined the procedure, the arbitral tribunal shall determine it to the extent necessary, either directly or by reference to a statute or to rules of arbitration.

³ Regardless of the procedure chosen, the arbitral tribunal shall ensure equal treatment of the parties and the right of both parties to be heard in adversarial proceedings.

Article 183

2. Provisional and conservatory measures

¹ Unless the parties have otherwise agreed, the arbitral tribunal may, on motion of one party, order provisional or conservatory measures.

² If the party concerned does not voluntarily comply with these measures, the arbitral tribunal may request the assistance of the state judge; the judge shall apply his own law.

³ The arbitral tribunal or the state judge may make the granting of provisional or conservatory measures subject to appropriate sureties.

Article 184

3. Taking of evidence

¹ The arbitral tribunal shall itself conduct the taking of evidence.

² If the assistance of state judiciary authorities is necessary for the taking of evidence, the arbitral tribunal or a party with the consent of the arbitral tribunal may request the assistance of the state judge at the seat of the arbitral tribunal; the judge shall apply his own law.

Article 185

4. Other judicial assistance

For any further judicial assistance the state judge at the seat of the arbitral tribunal shall have jurisdiction.

Article 186

VII. Jurisdiction

¹ The arbitral tribunal shall itself decide on its jurisdiction.

^{1bis} It shall decide on its jurisdiction notwithstanding an action on the same matter between the same parties already pending before a state court or another arbitral tribunal, unless there are serious reasons to stay the proceedings.

² A plea of lack of jurisdiction must be raised prior to any defence on the merits.

³ The arbitral tribunal shall, as a rule, decide on its jurisdiction by preliminary award.

Article 187

VIII. Decision on the merits

1. Applicable law

¹ The arbitral tribunal shall decide the case according to the rules of law chosen by the parties or, in the absence thereof, according to the rules of law with which the case has the closest connection.

² The parties may authorize the arbitral tribunal to decide *ex aequo et bono*.

Article 188

2. Partial award

Unless the parties otherwise agree, the arbitral tribunal may render partial awards.

Article 189

3. Arbitral award

¹ The arbitral award shall be rendered in conformity with the rules of procedure and in the form agreed upon by the parties.

² In the absence of such an agreement, the arbitral award shall be made by a majority, or, in the absence of a majority, by the chairman alone. The award shall be in writing, supported by reasons, dated and signed. The signature of the chairman is sufficient.

Article 190

IX. Finality; Action for annulment

1. Principle

¹ The award is final from its notification.

² The award may only be annulled:

- a) if the sole arbitrator was not properly appointed or if the arbitral tribunal was not properly constituted;
- b) if the arbitral tribunal wrongly accepted or declined jurisdiction;
- c) if the arbitral tribunal's decision went beyond the claims submitted to it, or failed to decide one of the items of the claim;
- d) if the principle of equal treatment of the parties or the right of the parties to be heard was violated;
- e) if the award is incompatible with public policy.

³ Preliminary awards can be annulled on the grounds of the above paras. 2(a) and 2(b) only; the time limit runs from the notification of the preliminary award.

Article 191

2. Judicial authority to set aside

The sole judicial authority to set aside is the Swiss Federal Supreme Court. The procedure follows Art. 77 of the Swiss Federal Statute on the Swiss Federal Supreme Court of June 17, 2005.

Article 192

X. Waiver of annulment

¹ If none of the parties have their domicile, their habitual residence, or a business establishment in Switzerland, they may, by an express statement in the arbitration agreement or by a subsequent written agreement, waive fully the action for annulment or they may limit it to one or several of the grounds listed in Art. 190(2).

² If the parties have waived fully the action for annulment against the awards and if the awards are to be enforced in Switzerland, the New York Convention of June 10, 1958 on the Recognition and Enforcement of Foreign Arbitral Awards applies by analogy.

Article 193

XI. Deposit and certificate of enforceability

¹ Each party may at its own expense deposit a copy of the award with the Swiss court at the seat of the arbitral tribunal.

² On request of a party, the court shall certify the enforceability of the award.

³ On request of a party, the arbitral tribunal shall certify that the award has been rendered pursuant to the provisions of this statute; such certificate has the same effect as the deposit of the award.

Article 194

XII. Foreign arbitral awards

The recognition and enforcement of a foreign arbitral award is governed by the New York Convention of June 10, 1958 on the Recognition and Enforcement of Foreign Arbitral Awards.