

**Note on the translation:** The following text translates into English the new Portuguese Arbitration Law, published as an attachment to Law no. 63/2011, dated 14 December 2011, date on which it was published in the *Diário da República*, the official gazette in Portugal. It shall become effective, according to article 6 of said Law, 3 months after its publication date.

The Voluntary Arbitration Law shall apply, under article 4 of Law no. 63/2011 (i) to the arbitral proceedings that, under article 33(1) of the Law, commence after its entry into force and (ii) 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.

Furthermore, and still according to article 4, the parties that entered into arbitration agreements before the entry into force of the new regime maintain the right to the appeals against the arbitral award that would be available, under article 29 of Law no. 31/86, dated 29<sup>th</sup> August 1986, as amended by Decree-Law no. 38/2003, dated 8<sup>th</sup> March 2003, in case the arbitral proceedings were conducted under the terms of such Law.

Finally, article 4 sets forth that 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 necessary adjustments, article 1(1) of Law no. 31/86, dated 29<sup>th</sup> August 1986, as amended by Decree-Law no. 38/2003, dated 8<sup>th</sup> March 2003.

**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) .....
- 2
- c) .....
- d) .....
- e) .....
- f) .....

g) If, upon request of enforcement of an arbitral award, the enforcement officer has doubts that the dispute could have been submitted to arbitration, either because is subject exclusively, by special law, to a judicial court or to compulsory arbitration, or because the claim under discussion does not have a pecuniary nature and cannot be the object of settlement.

Article 815

[...]

The grounds for opposition to the enforcement of an arbitral award are not merely the ones foreseen in the previous article, but also 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 effective in Portugal, regardless of the parties' nationalities, without being reviewed and confirmed.

2 - .....

3

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 any of the arbitrators, another arbitrator shall be appointed, under the terms of article 16 of the same Law, such appointment to be made by whoever had appointed the previous arbitrator, whenever possible.

2 - .....”

**Article 3  
References**

All references made in laws or regulations to the provisions of Law no. 31/86, dated 29<sup>th</sup> August 1986, as amended by Decree-Law no. 38/2003, dated 8<sup>th</sup> March 2003, shall be considered as being 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 arising from the Law of Voluntary Arbitration shall apply to the arbitral proceedings that, under the terms of article 33(1) of the referred Law, commence 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 arbitral award that would be available, under the article 29 of Law no. 31/86, dated 29<sup>th</sup> August 1986, as amended by Decree-Law no. 38/2003, dated 8<sup>th</sup> March 2003, in case the arbitral proceedings were conducted under the terms of such 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 necessary adjustments, article 1(1) of Law no. 31/86, dated 29<sup>th</sup> August 1986, as amended by Decree-Law no. 38/2003, dated 8<sup>th</sup> March 2003.

**Article 5**  
**Revocation**

1 - Law no. 31/86, dated 29<sup>th</sup> August 1986, as amended by Decree-Law no. 38/2003, dated 8<sup>th</sup> March 2003, is hereby revoked with the exception of the provisions of article 1(1), that remain in force for arbitration of disputes emerging from or related to labour contracts.

2 - Article 181(2) 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 become effective 3 months after its publication date.

## **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 involving economic interests to arbitration.
- 2 - An arbitration agreement regarding disputes that do not involve economic interests is also valid provided that the parties are entitled to conclude a settlement on the issue under dispute.
- 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 further agree to submit to arbitration any other issues that require the intervention of an impartial decision maker, namely those related to the need to specify, complete and adapt contracts with 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 requirement that the arbitration agreement be in writing is met if the agreement is recorded in a written document signed by the parties, in an exchange of letters, telegrams, faxes or other means of telecommunications which provide a written record of the agreement, including electronic means of communication.
- 3 - The requirement that the arbitration agreement be in writing is met if it is recorded on 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 in writing and that the reference is such as to make that clause part of the contract.
- 5 - The requirement that the arbitration agreement be in writing is also met when there is 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 - A submission agreement shall determine the subject-matter of the dispute; an 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, revocation and expiry of the agreement**

- 1 - The arbitration agreement may be altered by the parties until acceptance by the first arbitrator or, if all arbitrators agree thereto, until the arbitral award is issued.

2 - The arbitration agreement may be revoked by the parties, until the arbitral award is issued.

3 - The agreement of the parties foreseen in the preceding paragraphs must be in writing, complying with the provisions of article 2.

4 - Unless otherwise agreed, the death or the extinction of the parties shall neither render the arbitration agreement forfeit nor lead to the termination of 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, if the respondent so requests not later than when submitting its first statement on the substance of the dispute, dismiss the case, 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 foreseen in the previous paragraph, arbitral proceedings may be commenced or continued, and an award may be made, 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, when a state court considers, by means of a final and binding decision, that the arbitral tribunal is incompetent to resolve the dispute that was brought before it, whether such decision is rendered in the action referred to in paragraph 1 of the present article, or whether it is rendered under article 18, paragraph 9, and under article 46, paragraph 3, sub-paragraph a), points i) and iii).

4 - The issues of invalidity, inoperativeness or incapability of performance of an arbitration agreement cannot be discussed autonomously in an action brought before a state court for that effect or in an interim measure procedure brought before the same court, aiming to hinder the constitution or the operation of an arbitral tribunal.

#### **Article 6**

##### **Reference to arbitration regulations**

All references made in this Law to provisions of the arbitration agreement or to the agreement between the parties include not only what the 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 granted by a state court**

It is not incompatible with an arbitration agreement for a party to request, before or during arbitral proceedings, from a state court an interim measure of protection and for a state court to grant such measure.

### **Chapter II**

#### **Arbitrators and the arbitral tribunal**

#### **Article 8**

##### **Number of arbitrators**

1 - The arbitral tribunal can consist of a sole arbitrator or of several, in an uneven number.

2 - Should the parties fail to agree on the number of members of the arbitral tribunal, the arbitral tribunal shall consist of three arbitrators.

#### **Article 9**

##### **Arbitrators' requirements**

1 - The arbitrators must be individuals and have full legal capacity.

2 - No person shall be precluded, by reason of that person's nationality, from being appointed as an arbitrator, without prejudice to the provisions of article 10, paragraph 6, and the discretion of the parties.

- 3 - Arbitrators must be independent and impartial.
- 4 - Arbitrators may not be held liable for damages resulting from their decisions, save for those situations in which state judges may be.
- 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 shall form the arbitral tribunal in the arbitration agreement or in a later document signed by the parties, or to agree on a procedure for appointing them, namely by assigning the appointment of all or some of the arbitrators to a third party.
- 2 - In an arbitration with a sole arbitrator, if the parties are unable to agree on the arbitrator's appointment, such arbitrator shall be appointed, upon request of any party, by the state court.
- 3 - In an arbitration with 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 otherwise agreed, if a party is to appoint an arbitrator or arbitrators and fails to do so 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 chairman within 30 days of the appointment of the last arbitrator to be appointed, the appointment of the remaining arbitrator or arbitrators shall be made, upon request of any party, by the competent state court.
- 5 - Unless otherwise agreed, 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 to do so.
- 6 - In appointing an arbitrator, the competent state court shall have due regard to any qualifications required of the arbitrator or arbitrators by the agreement of the parties and to such considerations as are likely to secure the appointment of an independent and impartial arbitrator; in case of international arbitration, while appointing 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 made by 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 is to consist of 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 such arbitrator shall be made, upon request of any party, by the competent state court.
- 3 - In the case foreseen in the previous paragraph, the state court may appoint all arbitrators and indicate which one of them shall be the chairman, if it becomes clear that the parties that failed to jointly appoint an arbitrator have conflicting interests regarding the substance 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 are without prejudice to what may have been stipulated in the arbitration agreement for multi party arbitrations.

#### **Article 12**

##### **Acceptance of mandate**

- 1 - No person may be compelled to act as an arbitrator; but if the mandate has been accepted, withdrawal shall only be legitimate if it is based on a supervening impossibility of the appointee

to perform said appointee's functions, or in case of non conclusion of the agreement referred to in article 17, paragraph 1.

2 - Unless otherwise agreed by the parties, each appointed arbitrator shall, within 15 days from that following the notice of appointment, declare in writing the acceptance of the mandate to whomever appointed him or her; if the arbitrator neither declares his or hers acceptance within such period, nor in any other way reveals his or hers intent to act as an arbitrator, such arbitrator shall be deemed as not accepting the appointment.

3 - The arbitrator who, having accepted the mandate, unjustifiably withdraws from exercising his or hers office shall be liable for the damages caused.

### **Article 13**

#### **Grounds for challenge**

1 - When a person is approached in connection with his or hers possible appointment as an arbitrator, he or she shall disclose any circumstances likely to give rise to justifiable doubts as to his or hers impartiality and independence.

2 - The arbitrator shall, throughout the 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 the arbitrator 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 the arbitrator's impartiality or independence, or if the arbitrator does not possess the qualifications agreed to by the parties. A party may challenge an arbitrator appointed by it, or in whose appointment it has participated, only for reasons of which it 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, subject 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 office and the party that appointed such arbitrator insists that the arbitrator continues in office, the arbitral tribunal, including the challenged arbitrator, shall decide on the challenge.

3 - If a challenge under any procedure agreed upon by the parties or under the procedure of paragraph 2 of this article is not successful, 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 or hers functions, the mandate terminates if he or she withdraws from office or if the parties agree on the termination on such grounds.

2 - If an arbitrator, for any other reason, fails to perform his or hers functions without undue delay, the parties may, by mutual agreement, end the mandate, without prejudice to any eventual liability of the arbitrator in question.

3 - If the parties cannot agree on the termination in any of the situations referred to in the preceding paragraphs of this article, any party may request the competent state court to remove such arbitrator from office, on those grounds, which decision of the state court shall be subject to no appeal.

4 - If, under the preceding paragraphs of this article or under article 14, paragraph 2, an arbitrator withdraws from office or if the parties agree on the termination of the mandate of an arbitrator allegedly found to be in one of the circumstances referred therein, such does not imply acceptance of the validity of the grounds for the removal from office mentioned in those provisions.

#### **Article 16**

##### **Appointment of a substitute arbitrator**

1 - Where, for any 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 prejudice to the parties agreeing that the replacement shall be made otherwise or waiving such replacement.

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 such fees and expenses shall be agreed upon in writing by the parties and the arbitrators, said agreement to be entered into before the acceptance by the last of the arbitrators to be appointed.

2 - If such 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 amount 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 substance of the dispute are decided.

3 - In the situation foreseen in the previous paragraph of the present article, any party 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 state court may define the amounts it deems adequate, after giving the members of the arbitral tribunal the opportunity to present their views on the matter.

4 - In case of failure on advance payments for fees and expenses previously agreed or fixed by the arbitral tribunal or state court, the arbitrators may suspend or end the arbitral proceedings after a reasonable additional time-limit granted 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 party has not made its advance payment within the time-limit 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 so that these may, if they wish, remedy the failure to make said advance payment within the time-limit granted 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 said arbitration agreement.

2 - For the purpose of 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 automatically entail the invalidity of the arbitration clause.

4 - A plea that the arbitral tribunal does not have jurisdiction to hear the whole or part of the dispute submitted to it shall be raised not later than the submission of the statement of defence as to the substance of the dispute, 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 it has appointed, or participated in the appointment of, an arbitrator.

6 - A 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 as soon as the matter alleged to be beyond the scope of its authority is raised during the proceedings.

7 - The arbitral tribunal may, in the situations set out in paragraphs 4 and 6 of the present article, admit a later plea, based on the arguments mentioned in said paragraphs, presented after the time-limits established therein, if it considers the delay justified.

8 - The arbitral tribunal may rule on its jurisdiction either as a preliminary question or in the award on the merits.

9 - The preliminary award according to which the arbitral tribunal rules that it has jurisdiction may, within 30 days after its notice to the parties, be challenged by any party before the competent state court, under article 46, paragraph 3, sub-paragraph a), points i) and iii) and under article 59, paragraph 1, sub-paragraph f).

10 - While such a challenge 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 article 5, paragraph 3.

## **Article 19**

### **Scope of state court intervention**

In matters governed by this Law, state courts may only intervene where so provided in this Law.

## **Chapter IV**

### **Interim measures and preliminary orders**

#### **Section I**

#### **Interim measures**

## **Article 20**

### **Power of arbitral tribunal to grant 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 purpose of this Law, an interim measure is a temporary measure, whether 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 status quo 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 article 20, paragraph 2, sub-paragraphs a), b) and c) shall be granted by the arbitral tribunal as long as:

- a) There is a serious probability that the right invoked by the requesting party exists and the fear that such right will be harmed is sufficiently evidenced; 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 with the measure.

2 - The determination of the arbitral tribunal on the possibility referred to in paragraph 1, subparagraph a), of this article shall not affect the discretion of the arbitral tribunal in making any subsequent determination on any matter.

3 - With regard to the interim measure request presented under article 20, paragraph 2, sub-paragraph d), the requirements foreseen in paragraph 1, sub-paragraphs a) and b), of this article shall apply only to the extent the arbitral tribunal considers appropriate.

## **Section II Preliminary Orders**

### **Article 22**

#### **Application for preliminary orders; conditions**

1 - Unless otherwise agreed by the parties, a party may, without notice to any other party, make a request for an interim measure together with an application for a preliminary order directing a party not to frustrate the purpose of the interim measure requested.

2 - The arbitral tribunal may grant a preliminary order provided 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 the measure.

3 - The conditions defined under article 21 apply to any preliminary order, provided that the harm to be assessed under article 21, paragraph 1, sub-paragraph b), is, in such case, the harm likely to 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 any, and all other communications, including by indicating the content of any oral communications between any party and the arbitral tribunal in relation thereto.

2 - At the same time, the arbitral tribunal shall give an opportunity to the party against whom the preliminary order is directed to present its case, 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 - A preliminary order shall expire after 20 days from the date on which it was issued by the arbitral tribunal. However, the arbitral tribunal may 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 - A 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 party or, in exceptional circumstances and after hearing the parties, on the arbitral tribunal's own initiative.

2 - The arbitral tribunal may require the party requesting an interim measure to provide appropriate security.

3 - The arbitral tribunal shall require the party applying for a preliminary order to provide appropriate security, unless the arbitral tribunal considers it inappropriate or unnecessary to do so.

**Article 25**  
**Disclosure**

1- The parties shall promptly disclose any material change in the circumstances on the basis of which the interim measure was requested or granted.

2- The party applying for a preliminary order shall disclose to the arbitral tribunal all circumstances that are likely to be relevant to the arbitral tribunal's 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 case. Thereafter, 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, 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 arbitration in which it was issued being seated abroad, subject 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 where such a decision is necessary to protect the rights of third parties.

4 - The decision of an arbitral tribunal granting a preliminary order or interim measure and the judgment of a state court deciding on the recognition or enforcement of an interim measure issued by 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 article 56, paragraph 1, sub-paragraph a), points i), ii), iii) or iv); 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 the court of the state 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 unless the state 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 article 56, paragraph 1, subparagraph b), points i) or ii) apply to the recognition or enforcement of the interim measure.

2 - Any determination made by the state court on any ground in paragraph 1 of this article shall be effective only for the purposes of the application to recognize or enforce 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 arbitration proceedings, irrespective of whether their place is, as they have in relation to proceedings in state courts.

2 - State courts shall exercise such power in accordance with their own procedures, in consideration of the specific features of international arbitration, should that be the case.

## **Chapter V**

### **Conduct of arbitral proceedings**

## **Article 30**

### **Principles and rules of arbitral proceedings**

1 - The arbitral proceedings shall always comply with the following fundamental principles:

a) The respondent shall be summoned to present its defence;

b) The parties shall be treated with equality and shall be given a reasonable opportunity of presenting their case, in writing or orally, before the final award is issued;

c) In all phases of the proceedings the principle of adversarial process shall be guaranteed, with the exceptions 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 referred to in the preceding paragraph of this article and the mandatory provisions of this Law.

3 - Failing such agreement 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 that it considers the provisions of the law that governs the proceedings before the competent state court to be subsidiary applicable.

4 - The power conferred upon the arbitral tribunal includes the power to determine the admissibility, relevance, materiality and weight of any evidence presented or to be presented.

5 - The arbitrators, the parties and the arbitral institutions, if applicable, are obliged to maintain 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 make public procedural acts necessary to the defence of their rights and to the duty to communicate or disclose procedural acts to the competent authorities, if so imposed by law.

6 - The provisions of the preceding paragraph do not prevent 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 deliberate.

### **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 documentary evidence 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 otherwise agreed by the parties, the arbitral proceedings in respect of a particular dispute commence on the date on which a request for that dispute to be referred to arbitration is received by the respondent.

2 - Within the period of time agreed by the parties or determined by the arbitral tribunal, the claimant shall submit its statement of claim, in which the remedy sought and the facts supporting the claim shall be stated, and the respondent shall present its statement of defence in which its defence in respect of these particulars shall be stated, unless the parties have otherwise agreed as to the required elements of such statements. The parties may submit with their 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 by the parties, either party may, during the course of the arbitral proceedings, amend or supplement its statement of claim or defence, unless the arbitral tribunal considers 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 subject-matter is covered by the arbitration agreement.

### **Article 34**

#### **Hearings and written proceedings**

1 - Subject to any contrary agreement by the parties, the tribunal shall decide whether to hold hearings for the presentation of evidence, or whether the proceedings shall be conducted merely on the basis of documents and other means 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 meeting 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 party 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**

#### **Default and absence of a party**

1 - If the claimant fails to present its statement of claim in accordance with article 33, paragraph 2, the arbitral tribunal shall terminate the arbitral proceedings.

2 - If the respondent fails to present its statement of defence in accordance with article 33, paragraph 2, 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 period of time, the arbitral tribunal may continue the proceedings and make the award on the evidence before it.

4 - The arbitral tribunal may however, in case it deems the default justified, allow a party to perform the omitted act.

5 - The provisions of the preceding paragraphs of this article are without prejudice to what the parties may have agreed on the consequences of default.

### **Article 36**

#### **Third party joinder**

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

2 - If the arbitral tribunal has already been constituted, the joinder of a third party can only be allowed or requested if such party declares to accept the current composition of the tribunal; when joinder is requested by the third party such acceptance is presumed.

3 - Joinder must always be decided by the arbitral tribunal, after giving the initial parties to the arbitration and the third party in question the opportunity to state their views. The arbitral tribunal shall only allow joinder if this does not unduly disrupt the normal course of the arbitral proceedings and if there are relevant reasons that justify the joinder, such as, in particular, those situations in which, provided that the request is not clearly unviable:

a) The third party has an interest in relation to the subject-matter of the dispute equal to that of the claimant or respondent, that initially would have permitted the voluntary joinder or imposed the compulsory joinder between one of the parties to the arbitration and the third party, or

b) The third party wishes to present a claim against the respondent with the same object as the claimant, but incompatible with the latter's claim; or

c) The respondent against whom a credit is invoked that may, *prima facie*, be characterized as a joint and several credit, wishes that the other possible joint and several creditors are bound by the final award; or

d) The respondent wishes that third parties against whom the respondent may have a right of subrogation in case the claimant's pleading is completely or partially granted to be joined.

4 - The provisions of the preceding paragraphs referring to claimant and respondent are equally applicable, with the necessary adjustments, respectively to respondent and claimant, in case of a counter claim.

5 - In case joinder is allowed, the provisions of article 33 shall apply, with the necessary adjustments.

6 - Without prejudice to the provisions of the following paragraph, joinder before the arbitral tribunal has been constituted can only take place in institutionalised arbitration, and provided that the applicable arbitration regulation assures that the principle of equal participation of all parties is upheld, including members of multiple parties, in the choice of the arbitrators.

7 - The arbitration agreement may regulate third party joinder in ongoing arbitrations differently from the provisions of the preceding paragraphs, either directly, upholding the principle of equal participation of all parties in the choice of the arbitrators, or by reference to an institutionalised arbitration regulation that allows such joinder.

### **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 prepare a written or oral report on specific issues to be determined by the arbitral tribunal.

2 - In the case foreseen in the previous paragraph, the arbitral tribunal may require any party to give the expert any relevant information or to produce, or to provide access to, any relevant documents or other goods for the expert's 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 or hers report, participate in a hearing where the arbitral tribunal and the parties shall have the opportunity to put questions to the expert.

4 - The provisions of article 13 and of article 14, paragraphs 2 and 3, apply, with the necessary adjustments, 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 cooperation, a party may, with the approval of the arbitral tribunal, request from the competent state court that the evidence be taken before it, the results thereof being forwarded 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, in case of arbitrations seated abroad.

#### **Chapter VI**

##### **Making of award and termination of proceedings**

#### **Article 39**

##### **Rules applicable to substance of dispute, resort to equity; impossibility of appeal of the award**

1 - The arbitrators shall decide the dispute in accordance with the law, unless the parties agree that they shall decide *ex aequo et bono*.

2 - If the parties' agreement to decide *ex aequo et bono* was entered into after the acceptance by the first arbitrator, its effectiveness shall depend on the acceptance by the arbitral tribunal.

3 - If the parties have empowered the tribunal to do so, the latter may decide the dispute as *amiable compositeur*.

4 - The award 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 expressly contemplated such possibility in the arbitration agreement, and provided that the dispute has not been decided *ex aequo et bono* or as *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 its members. Failing a majority decision, the award shall be 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 such arbitrator, unless otherwise agreed by the parties. The parties shall subsequent to the decision be informed of the refusal to participate in the vote by such arbitrator.

3 - Issues related to procedural matters, procedural sequence or procedural initiative, may be decided by the chairman alone, if so authorized by the parties or all other members of the arbitral tribunal.

#### **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 is in violation of public policy.

2 - An award on agreed terms 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 or merely the signature of the chairman, in case the award is to be made by the latter, shall suffice provided that the reason for the omitted signatures is stated in the award.

2 - Unless otherwise agreed by the parties, the arbitrators may decide the merits of the dispute in a 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 its date and the place of arbitration as determined in accordance with article 31, paragraph 1. The award shall be deemed to have been made at that place.

5 - Unless otherwise agreed by the parties, the award shall determine the proportions in which the parties shall bear the costs directly resulting from the arbitration. The arbitrators may furthermore decide in the award, if they so deem fair 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 due to their participation in the arbitration.

6 - After the award is made, a copy signed by the arbitrator or arbitrators, in accordance with paragraph 1 of this article, shall be delivered to each party. 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 subject to no appeal and that is no longer subject to amendments under 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, on a different time-limit, the arbitrators shall deliver the final award on the dispute brought before them to the parties within 12 months from the date of acceptance of the last arbitrator.

2 - The time-limit 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, for successive periods of 12 months, such extensions to be duly motivated. The parties may, however, by mutual agreement, oppose to the extension.

3 - Failure to deliver 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 the arbitrators' competence to decide on the dispute. The arbitration agreement will, however, remain effective, namely for the purpose of constituting a new arbitral tribunal and for a new arbitration to be commenced.

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 by the final award or by an order 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 its claim, unless the respondent objects thereto and the arbitral tribunal recognizes a legitimate interest on its 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 article 46, paragraph.

4 - Unless otherwise agreed by the parties, the chairman of the arbitral tribunal shall keep the original file of the arbitral proceedings for a minimum period of two years and the original arbitral award for a minimum period of five years.

#### **Article 45**

##### **Correction and interpretation of award; additional award**

1 - Within thirty days of receipt of notification of the award, unless another period of time has been agreed upon by the parties, any party may, with notice to the other party, request the arbitral tribunal to correct in the award any errors in computation, any clerical or typographical error or any error of a similar nature.

2 - In the time period foreseen in the previous paragraph any party may, with notice to the other party, request the arbitral tribunal to interpret any obscurity or ambiguity of the award or of the reasons on which it is based.

3 - If the arbitral tribunal considers the request to be justified, it shall make the correction or give the interpretation within 30 days of receipt of the request. The interpretation shall form part of the award.

4 - The arbitral tribunal may also correct any error of the type referred to in paragraph 1 of this article on its own initiative within thirty days of the date of notice of the award.

5 - Unless otherwise agreed by the parties, any party, with notice to the other party, may request, within 30 days of receipt of notice of the award, the arbitral tribunal to make an additional award as to parts 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 the request.

6 - The arbitral tribunal may extend, if necessary, the period of time within which it shall make a correction, interpretation or an additional award under paragraph 1, 2 or 5 of this article, without prejudice to compliance with the time-limit set in accordance with article 43.

7 - The provisions of article 42 shall apply to the correction and interpretation of the award as well as to the additional award.

### **Chapter VII**

#### **Recourse against award**

##### **Article 46**

##### **Application for setting aside**

1 - Unless otherwise agreed by the parties, under article 39, paragraph 4, recourse to a state court against an arbitral award may be made only by 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, shall be presented to the competent state court, observing the following rules, without prejudice to the provisions of the further paragraphs of this article:

a) Evidence shall be presented with the application;

b) The opposing party shall be summoned to present its opposition to the request and to present evidence;

c) The requesting party may present a statement in reply to eventual exceptions ("*exceptio*") raised by the opposing party;

d) Taking of evidence shall follow;

e) The procedure shall follow, with the necessary adjustments, the rules of the appellate appeal ["*Recurso de Apelação*"] under the Civil Procedure Code];

f) The action for setting aside is considered, for effects of distribution, a 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 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 this Law; or

ii) There has been a violation within the proceedings of some of the fundamental principles referred in article 30, paragraph 1, with a decisive influence on the decision of the dispute; or

iii) The award dealt with a dispute not contemplated by the arbitration agreement, or contains decisions beyond the scope of the latter; or

iv) The composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless such agreement was in conflict with a provision of this Law from which the parties cannot derogate, or, failing such agreement, was not in accordance with this Law, and in any case, this inconformity had a decisive influence on the decision of the dispute; or

v) The arbitral tribunal has condemned in an amount in excess of what was claimed or on a different claim from that that was presented, 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 requirements set out in article 42, paragraphs 1 and 3; or

vii) The award was notified to the parties after the maximum time-limit set in accordance with article 43 had lapsed; or

b) The court finds that:

i) The subject-matter of the dispute cannot be decided by arbitration under Portuguese law;

ii) The content of the award is in conflict with the principles of international public policy of the State of Portugal.

4 - If a party, knowing that one of the provisions of this Law that parties can derogate, or any condition set out in the arbitration agreement, was not respected, and nonetheless continues the arbitration without immediate opposition or, if there is a defined time-limit therefore, does not object within said time-limit, it is deemed that the party waived the right to set aside the arbitral award on such grounds.

5 - Without prejudice to the provisions of the preceding paragraph, the right to apply for the setting aside of an arbitral award cannot be waived.

6 - An 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 article 45, from the date on which such request had been disposed of 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 considered to have occurred can be separated from the rest of the award, only that part of the award shall be set aside.

8 - The competent state court, when asked to set aside an arbitral award, may, where appropriate, and if it is so requested by a party, 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 sets aside the arbitral award cannot go into the merits of the issue or issues decided by the award, such issues to be submitted, if any party so wishes, to another arbitral tribunal to be decided by the latter.

10 - Unless the parties have agreed otherwise, setting aside the award shall result in the arbitration agreement becoming operative again in respect of the subject-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 supply the original award or a certified copy thereof and, if the award is not made in Portuguese, a certified translation thereof into Portuguese.

2 - In case the arbitral tribunal issues an award without liquidating the damages, said liquidation shall be made under article 805, paragraph 4, of the Civil Procedure Code; however, the arbitral tribunal may be requested to liquidate the damages under article 45, paragraph 5, in which case the arbitral tribunal, after giving the other party the opportunity to state its views and after evidence has been taken, shall issue a supplementary decision, judging on equitable terms within the proven limits.

3 - The arbitral award may be enforced even if an application for setting aside in accordance with article 46 has been made; however, the party against whom enforcement is invoked may request that such application has a suspensive effect of the enforcement proceedings, provided that such party offers to provide security, whereas such effect shall only be granted if and when security is effectively provided within the time-limit set by the court. In this case the provisions of article 818, paragraph 3, 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 adjustments.

#### **Article 48**

##### **Grounds for refusing enforcement**

1 - The party against whom enforcement of the arbitral award is invoked may oppose the enforcement on any of the grounds which may be used for setting aside the award foreseen in article 46, paragraph 3, provided that, on the date on which the opposition is presented, an application for setting aside on the same grounds has not already been rejected by a final and binding judgement.

2 - The opposition against enforcement cannot be based by the party against whom enforcement is invoked on any of the grounds set out in article 46, number 3, sub-paragraph a), if the time-limit provided for in paragraph 6 of the same article for presenting the application for setting aside has expired, without any party having made such application.

3 - Notwithstanding the expiry of the time-limit provided for in article 46, paragraph 6, the judge may *ex officio*, under article 820 of the Civil Procedure Code, examine the merits of the ground for setting aside foreseen in article 46, paragraph 3, sub-paragraph b), of this Law, whereby it shall, if it considers that the award 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 foreseen in the applicable procedural law, under the terms and within the time limits provided therein.

#### **Chapter IX**

##### **International arbitration**

#### **Article 49**

##### **Concept and regime of international arbitration**

1 - An arbitration is considered international when international trade interests are at stake.

2 - Safe for what is provided in the present Chapter, the provisions of this Law on domestic arbitration shall apply to international arbitration, with the necessary adjustments.

#### **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 in any other way evade its obligations arising from such agreement.

## **Article 51**

### **Substantial validity of the arbitration agreement**

1 - In an international arbitration, the arbitration agreement is valid as to its substance and the dispute it governs may be submitted to arbitration if the requirements set out either by the law chosen by the parties to govern the arbitration agreement, by the law applicable to the subject-matter of the dispute or by Portuguese law are met.

2 - The state court to which an application is made to set aside an award in an international arbitration seated in Portugal, on the grounds foreseen in article 46, paragraph 3, subparagraph b), 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 decide *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 conflict of laws rules.

2 - Failing any designation 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 referred to in the preceding paragraphs, the arbitral tribunal shall take into consideration the contractual terms agreed by the parties and the relevant trade usages.

## **Article 53**

### **Impossibility of appeal of the award**

In international arbitration the award made by the arbitral tribunal is subject to no appeal, unless the parties have expressly agreed on the possibility of appeal to another arbitral tribunal and regulated its terms.

## **Article 54**

### **International public policy**

An award made in Portugal, in an international arbitration in which non-Portuguese law has been applied to the subject-matter of the dispute, may be set aside on the grounds provided for in article 46, and also if such award is to be enforced or produce other effects in national territory, whenever such enforcement leads to a result that is 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 Arbitral Awards, as well as to other treaties or conventions which are binding on the Portuguese State, the awards made in arbitrations seated abroad are only effective in Portugal, regardless of the nationality of the parties, if such awards have been recognised by the competent Portuguese state court, under the present chapter of this Law.

## **Article 56**

### **Grounds for refusal of recognition and enforcement**

1 - Recognition and enforcement of an arbitral award made in an arbitration taking place 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) A party 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; or
  - 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 its case; or
  - iii) The award deals with a dispute not contemplated by the arbitration agreement or contains decisions on matters beyond the scope of the arbitration agreement, provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, that 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 is not capable of settlement by arbitration under Portuguese law; or
  - ii) The recognition or enforcement of the award would lead to a result clearly 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 paragraph 1, sub-paragraph a), sub-sub-paragraph v), of the present article, the Portuguese state court where recognition or enforcement is sought may, if it considers it proper, adjourn its decision and may also, on the 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 duly authenticated original award 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 is not 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 to in the preceding paragraph, is made, the opposing party shall be summoned to present its opposition, within 15 days.

3 - After the written pleadings and the procedural steps deemed indispensable by the rapporteur are taken, access to the file is granted to the parties and to the Public Prosecutor, for 15 days, for the purpose of closing arguments.

4 - The trial is conducted pursuant to the rules applicable to the appellate appeal [*“Recurso de Apelação”* under the Civil Procedure Code].

#### **Article 58**

##### **Foreign awards on administrative law disputes**

In the recognition of an arbitral award made in an arbitration taking place 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 59, paragraph 2, of this Law shall apply, with the necessary adjustments 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 [*Tribunal da Relação*] 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, in which the domicile of the person against whom the decision to be invoked is located, is competent to decide on:

- a) The appointment of 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 article 10, paragraphs 3, 4 and 5, and article 11, paragraph 1 ;
- b) The challenge made under article 14, paragraph 2, against an arbitrator who has not accepted such challenge, in case the challenge is deemed to be justified;
- c) The removal of an arbitrator, requested under article 15, paragraph 1;
- d) The reduction of the amount of fees or expenses fixed by the arbitrators, under article 17, paragraph 3;
- e) The appeal of the arbitral award, when it has been agreed on under article 39, paragraph 4;
- f) The challenge of an interim award made by the arbitral tribunal on its jurisdiction, in accordance with article 18, paragraph 9;
- g) The recourse against the final award made by the arbitral tribunal, in accordance with article 46;
- h) The recognition of the arbitral award made in an arbitration taking place abroad.

2 - In respect of disputes that, according to Portuguese law, fall under the jurisdiction of administrative courts, the Central Administrative Court [*Tribunal Central Administrativo*] in whose circuit the place of arbitration is located, or in case of a decision referred to in paragraph 1, sub-paragraph h), of this article, in which the domicile of the person against whom the decision is to be invoked is located, is competent to decide on the matters referred to in some of the sub-paragraphs of paragraph 1 of this article.

3 - The President of the Court of Appeal [*Tribunal da Relação*] or the President of the Central Administrative Court [*Tribunal Central Administrativo*] that have territorial jurisdiction shall, depending on the nature of the dispute, be competent to appoint the arbitrators referred to in paragraph 1, sub-paragraph a), of this article.

4 - For any issues or matters not covered by paragraphs 1, 2 and 3 of the present article and regarding 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 the dispute falls respectively within the jurisdiction of the judicial courts or of the administrative courts.

5 - In respect of disputes falling under the jurisdiction of judicial courts, the judicial court of first instance in whose jurisdiction the interim measure should be granted in accordance with the rules on territorial jurisdiction provided for in article 83 of the Civil Procedure Code, or in whose jurisdiction the production of evidence requested under article 38, paragraph 2, of this Law should occur, are competent to render assistance to arbitrations located abroad under article 29 and article 38, paragraph 2, 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 with territorial jurisdiction in accordance with the provisions of paragraph 5 of this article, applied with the necessary adjustments to the regime of administrative courts.

7 - In the proceedings leading to the decisions 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 is 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 applicable procedural law.

10 - For the action seeking civil liability of an arbitrator, 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, are competent.

11 - If in an arbitral proceeding a judicial or an administrative court, or the respective President, consider the dispute as falling under their jurisdiction for the purpose of application of this article, such decision is not, in this part, subject to appeal and must be complied with by all others courts called upon in the same proceedings to exercise any of the powers provided herein.

#### **Article 60**

##### **Applicable procedure**

1 - Whenever it is intended that the competent state court renders a decision under any of sub-paragraphs a) to d) of article 59, paragraph 1, the interested party shall present in its application the facts that justify the request, including the information it considers relevant to this effect.

2 - Upon receipt of the application foreseen in the previous paragraph, the other parties in the arbitration and, if such is the case, the arbitral tribunal, are notified to state their views thereon within 10 days.

3 - Before rendering its 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 preceding 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 the recognition and enforcement in Portugal of awards made in arbitrations seated 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 for in special legislation.

2- The reference made in Decree-Law no. 425/86, dated 27<sup>th</sup> December 1986, to article 38 of Law no. 31/86, dated 29<sup>th</sup> August 1986, is considered to be made to the present article.