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TABLE OF CONTENTS

ARBITRATION RULES 2024 OF THE FINLAND CHAMBER OF COMMERCE 4

FAI MEDIATION RULES OF THE FINLAND CHAMBER OF COMMERCE 85

UNCITRAL MODEL LAW ON INTERNATIONAL COMMERCIAL ARBITRATION 118

CONVENTION ON THE RECOGNITION AND ENFORCEMENT OF FOREIGN ARBITRAL AWARDS 178

UNITED NATIONS CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS 203

UNIDROIT PRINCIPLES OF INTERNATIONAL COMMERCIAL CONTRACTS 2016 258

ARBITRATION RULES 2024 OF THE FINLAND CHAMBER OF COMMERCE

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THE FINLAND ARBITRATION INSTITUTE

Arbitration Rules 2024

of the Finland Chamber of Commerce

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The English text prevails
over other language versions.

CHAPTER I
INTRODUCTORY PROVISIONS **6**
1. THE ARBITRATION INSTITUTE 6
2. DEFINITIONS 6
3. SCOPE OF APPLICATION 7
4. NOTICES 8
5. CALCULATION OF TIME PERIODS 9

CHAPTER II
COMMENCEMENT OF PROCEEDINGS **10**
6. REQUEST FOR ARBITRATION 10
7. FILING FEE TO BE PAID BY THE CLAIMANT 11
8. ANSWER TO THE REQUEST FOR ARBITRATION 12
9. FILING FEE TO BE PAID BY THE RESPONDENT 14
10. REFERRING THE ARBITRATION TO BE CONDUCTED UNDER THE EXPEDITED RULES 14
11. JOINDER OF ADDITIONAL PARTIES 15
12. CLAIMS BETWEEN MULTIPLE PARTIES 18
13. CLAIMS UNDER MULTIPLE CONTRACTS 19
14. CONSOLIDATION OF ARBITRATIONS 19
15. DETERMINATION OF JURISDICTION 20

CHAPTER III
ARBITRAL TRIBUNAL **22**
16. PARTY AUTONOMY IN THE CONSTITUTION OF THE ARBITRAL TRIBUNAL 22
17. NUMBER OF ARBITRATORS 22
18. APPOINTMENT OF A SOLE ARBITRATOR IN BI-PARTY PROCEEDINGS 22
19. APPOINTMENT OF AN ARBITRAL TRIBUNAL COMPOSED OF THREE ARBITRATORS IN BI-PARTY PROCEEDINGS 23
20. APPOINTMENT OF AN ARBITRAL TRIBUNAL IN MULTI-PARTY PROCEEDINGS 24
21. IMPARTIALITY AND INDEPENDENCE OF ARBITRATORS 25
22. CONFIRMATION AND APPOINTMENT OF ARBITRATORS 26
23. CHALLENGE OF ARBITRATORS 28
24. RELEASE AND REPLACEMENT OF AN ARBITRATOR 29

CHAPTER IV
PROCEEDINGS BEFORE THE ARBITRAL TRIBUNAL **31**
25. TRANSMISSION OF THE CASE FILE TO THE ARBITRAL TRIBUNAL 31
26. CONDUCT OF THE ARBITRATION 31
27. SEAT OF ARBITRATION 32
28. LANGUAGE OF THE ARBITRATION 32
29. LAW OR RULES OF LAW APPLICABLE TO THE SUBSTANCE OF THE DISPUTE 33
30. CASE MANAGEMENT CONFERENCES 33
31. PROCEDURAL TIMETABLE 34
32. WRITTEN SUBMISSIONS 34
33. PLEAS AS TO THE JURISDICTION OF THE ARBITRAL TRIBUNAL 35
34. EVIDENCE 36
35. CUT-OFF DATE 36
36. HEARINGS 36
37. EXPERTS APPOINTED BY THE ARBITRAL TRIBUNAL 37
38. INTERIM MEASURES OF PROTECTION 38
39. DEFAULT 39
40. WAIVER 39
41. CLOSING OF PROCEEDINGS 40

CHAPTER V
AWARDS AND DECISIONS 41
42. MAKING OF AWARDS AND DECISIONS 41
43. FORM AND EFFECT OF AN AWARD 41
44. TIME LIMIT FOR THE FINAL AWARD 42
45. SEPARATE AWARDS 42
46. SETTLEMENT OR OTHER GROUNDS FOR TERMINATION OF THE ARBITRATION 42
47. CORRECTION AND INTERPRETATION OF AN AWARD 43
48. ADDITIONAL AWARD 44

CHAPTER VI
COSTS OF ARBITRATION 45
49. DETERMINATION OF THE COSTS OF THE ARBITRATION 45
50. ADVANCE ON COSTS 46

CHAPTER VII
OTHER PROVISIONS 47
51. CONFIDENTIALITY 47
52. GENERAL RULE 48
53. LIMITATION OF LIABILITY 48
54. ENTRY INTO FORCE 48

APPENDIX I
ORGANISATION OF THE ARBITRATION INSTITUTE 53
1. GENERAL PROVISIONS 53
2. THE BOARD 53
3. THE SECRETARIAT 55
4. OTHER PROVISIONS 55

APPENDIX II
SCHEDULE OF ARBITRATION FEES AND COSTS 57
1. FILING FEE 57
2. ADVANCE ON COSTS FIXED BY THE INSTITUTE 57
3. ADMINISTRATIVE FEE AND EXPENSES OF THE INSTITUTE 60
4. FEES AND EXPENSES OF THE ARBITRAL TRIBUNAL 60
5. OTHER PROVISIONS 61

ADMINISTRATIVE FEE 63

ARBITRATOR'S FEE 64

APPENDIX III
EMERGENCY ARBITRATOR RULES 65
1. GENERAL PROVISIONS 65
2. APPLICATION FOR THE APPOINTMENT OF AN EMERGENCY ARBITRATOR 65
3. APPOINTMENT OF AN EMERGENCY ARBITRATOR 67
4. APPLICATION DEPOSIT FOR THE COSTS OF THE EMERGENCY ARBITRATOR PROCEEDINGS 68
5. SEAT OF EMERGENCY ARBITRATOR PROCEEDINGS 68
6. PROCEEDINGS BEFORE AN EMERGENCY ARBITRATOR 69
7. CHALLENGE OF AN EMERGENCY ARBITRATOR 70
8. EMERGENCY ARBITRATOR DECISION 70
9. ALLOCATION OF THE COSTS OF THE EMERGENCY ARBITRATOR PROCEEDINGS 72
10. OTHER PROVISIONS 72

MODEL ARBITRATION CLAUSES 77

CHAPTER I
INTRODUCTORY PROVISIONS

1. THE ARBITRATION INSTITUTE

1.1 The Arbitration Institute of the Finland Chamber of Commerce (the "Institute") is an impartial body responsible for the administration of the settlement of disputes in domestic and international arbitrations pursuant to these rules (the "Rules") and the Rules for Expedited Arbitration of the Finland Chamber of Commerce (the "Expedited Rules") in cases where:

(a) their application is provided for in an arbitration clause, a separate arbitration agreement, articles of association, or otherwise (hereinafter collectively referred to as the "arbitration agreement"); or

(b) an arbitration agreement provides for arbitration administered by the Institute.

1.2 Nothing in these Rules shall prevent the designation of the Institute as appointing authority without subjecting the arbitration to the provisions contained in these Rules.

1.3 The Institute is composed of a board of directors (the "Board") and a secretariat (the "Secretariat"). Detailed provisions on the organisation of the Institute are contained in Appendix I.

2. DEFINITIONS

In these Rules:

(i) "arbitral tribunal" includes one or more arbitrators;

(ii) "claimant" includes one or more claimants;

(iii) "respondent" includes one or more respondents;

(iv) "additional party" includes one or more additional parties;

(v) "party" or "parties" include claimants, respondents and additional parties;

(vi) "claim" or "claims" include any claim by any party against any other party;

(vii) "award" includes, inter alia, any interim, partial or final award made by the arbitral tribunal;

(viii) "nomination" means a proposal by one or more parties or party-nominated arbitrators that a certain candidate be confirmed as party-nominated, sole or presiding arbitrator by the Institute;

(ix) "confirmation" means an act whereby the Institute confirms that a candidate nominated by one or more parties or by party-nominated arbitrators or a candidate appointed by the Institute may serve as arbitrator in an arbitration under the Rules;

(x) "joinder" means joining one or more additional parties as parties to a pending arbitration under the Rules;

(xi) "consolidation" means combining two or more arbitrations under the Rules into a single arbitration;

(xii) "separation" means separating claims made under an arbitration agreement to be determined in a separate arbitration;

(xiii) "bi-party proceedings" means an arbitration with two parties;

(xiv) "multi-party proceedings" means an arbitration with more than two parties.

3. SCOPE OF APPLICATION

3.1 Where the parties have agreed to submit to arbitration under the Arbitration Rules of the Finland Chamber of Commerce, they shall be deemed to have agreed that the arbitration shall be governed by these Rules and administered by the Institute.

3.2 The Rules include Appendices I to III. The

Appendices may be separately amended from time to time by the Institute or the Finland Chamber of Commerce.

3.3 The Rules in effect on the date of commencement of an arbitration shall apply to that arbitration, unless otherwise agreed by the parties and subject to Article 54.2.

3.4 The Appendices in effect on the date of commencement of an arbitration shall apply to that arbitration, subject to the provisions of Article 54.2 regarding the entry into force of Appendix III and the parties' right to opt out of the application of the provisions contained in Appendix III.

4. NOTICES

4.1 The Institute, the arbitral tribunal and the parties shall transmit any written statement, notice or other communication in hard copy or by electronic means in a manner that provides a record of the transmission.

4.2 If a party is represented by counsel or other representative, any written statement, notice or other communication shall be made to the latter, unless that party requests otherwise. The Request for Arbitration referred to in Article 6 shall nevertheless be transmitted to the respondent itself, unless the respondent instructs the Institute in writing that the Request for Arbitration shall be transmitted only to its counsel or other representative. Correspondingly, the Request for Joinder referred to in Article 11 shall be transmitted to the additional party itself, unless the additional party instructs the Institute in writing that the Request for Joinder shall be transmitted only to its counsel or other representative.

4.3 Any notice or other communication from the Institute or the arbitral tribunal shall be delivered to the last known address of the party or its counsel or other representative, as notified either by the party in question or by the other party.

4.4 Once the case file has been transmitted to the arbitral tribunal, a party shall submit any written statement or other communication directly to the tribunal, with a simultaneous copy to the other parties.

4.5 The Institute or the arbitral tribunal may, if deemed necessary, separately request that a party provide a hard copy of an electronically transmitted document or other communication or that a party provide additional copies of any hard copy. The arbitral tribunal may also otherwise issue more detailed orders regarding the transmission of written statements, notices and other communications to the tribunal and the parties.

4.6 At any time after the commencement of the arbitration, the Institute or the arbitral tribunal may require proof of authority from counsel or any party representative in such form as the Institute or the arbitral tribunal may determine.

5. CALCULATION OF TIME PERIODS

5.1 Any written statement, notice or other communication transmitted in accordance with Articles 4.1, 4.2 and 4.3 shall be deemed to have been made on the day it was received by the party itself or by its counsel or other representative, or on the day it would normally have been received given the means of transmission.

5.2 A period of time under the Rules shall begin to run on the day following the day when a notice or other communication is made under Article 5.1. If the last day of such a period is an official holiday or a non-business day at the place of business or habitual residence of the addressee, the period is extended until the first business day which follows. Official holidays or non-business days are included in the calculation of a period of time.

5.3 The Institute may, at the request of a party or on its own motion, extend or shorten any time period it has set or has the authority to set or amend.

CHAPTER II
COMMENCEMENT OF PROCEEDINGS

6. REQUEST FOR ARBITRATION

6.1 The party initiating arbitration (the "claimant") shall submit a Request for Arbitration to the Institute in accordance with Article 4.1.

6.2 The arbitration shall be deemed to have commenced on the date on which the Request for Arbitration is received by the Institute.

6.3 The Request for Arbitration shall contain the following information:

(a) the names and contact details of the parties and of their counsel or other representatives;

(b) identification of and, where possible, a copy of the arbitration agreement under which the dispute is to be settled;

(c) identification of any contract, other legal instrument or relationship out of or in relation to which the dispute arises;

(d) a brief description of the nature and circumstances of the dispute giving rise to the claims;

(e) where claims are made under more than one arbitration agreement, identification of the arbitration agreement under which each claim is made;

(f) a preliminary statement of the relief sought, together with the amounts of any quantified claims and, to the extent possible, an estimate of the monetary value of any other claims;

(g) the claimant's observations or proposals as to the number of arbitrators, the language, the seat of arbitration and the law or rules of law applicable to the substance of the dispute;

(h) if the arbitration agreement provides for three arbitrators, and the parties have not agreed otherwise, the name and contact details of the

arbitrator nominated by the claimant;

(i) the claimant's possible observations to the effect that the Expedited Rules would be more appropriate for the conduct of the arbitration than the Rules; and

(j) proof of payment of the Filing Fee referred to in Article 7.

6.4 The Request for Arbitration shall be submitted in the language of the arbitration as agreed by the parties. Failing such agreement, the Request for Arbitration shall be submitted in the language of the arbitration agreement.

6.5 Where the Request for Arbitration fails to fulfill the requirements set forth in Articles 6.3 and 6.4, the Institute may direct the claimant to remedy the defect within the time limit set by the Institute. If the claimant fails to comply, the Board may dismiss the Request for Arbitration and terminate the proceedings.

6.6 The Institute shall transmit the Request for Arbitration and the attached documents to the respondent once the claimant has paid the Filing Fee referred to in Article 7 and provided any copies that may have been requested in accordance with Article 4.5.

7. FILING FEE TO BE PAID BY THE CLAIMANT

7.1 Upon filing the Request for Arbitration, the claimant shall pay the Filing Fee prescribed in Article 1 of Appendix II.

7.2 If the claimant fails to pay the Filing Fee upon filing the Request for Arbitration, the Institute shall direct the claimant to make the payment within the time limit set by the Institute. If the claimant fails to comply, the Board may dismiss the Request for Arbitration and terminate the proceedings.

8. ANSWER TO THE REQUEST FOR ARBITRATION

8.1 Within 21 days of the receipt of the Request for Arbitration, the respondent shall submit to the Institute an Answer to the Request for Arbitration (the "Answer") in accordance with Article 4.1.

8.2 The Answer shall contain the following information:

(a) the names and contact details of each respondent and of their counsel or other representatives;

(b) to the extent possible, any plea that an arbitral tribunal to be constituted under the Rules lacks jurisdiction;

(c) the respondent's comments on the claimant's description of the nature and circumstances of the dispute giving rise to the claims;

(d) the respondent's preliminary response to the relief sought by the claimant;

(e) the respondent's observations or proposals as to the number of arbitrators, the language, the seat of arbitration and the law or rules of law applicable to the substance of the dispute in light of the observations or proposals made by the claimant in the Request for Arbitration;

(f) if the arbitration agreement provides for three arbitrators, and the parties have not agreed otherwise, the name and contact details of the arbitrator nominated by the respondent; and

(g) the respondent's possible observations to the effect that the Expedited Rules would be more appropriate for the conduct of the arbitration than the Rules and/or comments on the claimant's observations to this effect in the Request for Arbitration.

8.3 The Answer shall be submitted in the language required by Article 6.4.

8.4 Any counterclaim or set-off claim shall, to the extent possible, be raised in the respondent's

Answer and shall contain the following information:

(a) identification of and, where possible and unless already produced by the claimant, a copy of the arbitration agreement under which the counterclaim or set-off claim is made;

(b) identification of any contract, other legal instrument or relationship out of or in relation to which the counterclaim or set-off claim arises;

(c) a brief description of the nature and circumstances of the dispute giving rise to the counterclaim or set-off claim;

(d) where counterclaims or set-off claims are made under more than one arbitration agreement, identification of the arbitration agreement under which each counterclaim or set-off claim is made;

(e) a preliminary statement of the relief sought, together with the amounts of any quantified counterclaims or set-off claims and, to the extent possible, an estimate of the monetary value of any other claims; and

(f) proof of payment of the Filing Fee referred to in Article 9.

8.5 If the Answer fails to fulfill the requirements set forth in Articles 8.2 and 8.3, or if the respondent fails to provide any copies that may have been requested in accordance with Article 4.5, the Institute may direct the respondent to remedy the defect within the time limit set by the Institute. Failure by the respondent to comply shall not prevent the arbitration from proceeding.

8.6 If the respondent's counterclaim or set-off claim fails to fulfill the requirements set forth in Article 8.4, the Institute may direct the respondent to remedy the defect within the time limit set by the Institute. If the respondent fails to comply, the Board may dismiss the counterclaim or set-off claim.

8.7 The Institute shall transmit the Answer and the attached documents to the claimant. If the respondent has raised a counterclaim or set-off claim, the claimant shall submit to the Institute a reply to such counterclaim or set-off claim (the "Reply") within the time limit set by the Institute.

9. FILING FEE TO BE PAID BY THE RESPONDENT

9.1 Upon filing a counterclaim or set-off claim, the respondent shall pay the Filing Fee prescribed in Article 1 of Appendix II.

9.2 Where the respondent raises a counterclaim or set-off claim only after the transmission of the case file to the arbitral tribunal, the tribunal shall promptly inform the Institute of such counterclaim or set-off claim.

9.3 If the respondent fails to pay the Filing Fee upon filing the counterclaim or set-off claim, the Institute shall direct the respondent to make the payment within the time limit set by the Institute. If the respondent fails to comply, the Board may dismiss the counterclaim or set-off claim or, once the case file has been transmitted to the arbitral tribunal, direct the tribunal to treat the counterclaim or set-off claim as having been withdrawn.

10. REFERRING THE ARBITRATION TO BE CONDUCTED UNDER THE EXPEDITED RULES

10.1 In addition to the provisions of Articles 6.3(i) and 8.2(g), the Institute may on its own motion request that the parties comment on whether the Expedited Rules might be more appropriate for the conduct of the arbitration than the Rules.

10.2 Where the parties agree on the application of the Expedited Rules, the arbitration may be referred to be conducted under the Expedited Rules prior to the confirmation of any arbitrator.

10.3 By agreeing to refer the arbitration to be

conducted under the Expedited Rules, the parties agree that the Expedited Rules shall take precedence over any contrary terms of the arbitration agreement.

11. JOINDER OF ADDITIONAL PARTIES

11.1 Where a party to a pending arbitration under the Rules (the "applicant") wishes to join an additional party to the arbitration, it shall submit its request for arbitration against the additional party (the "Request for Joinder") to the Institute in accordance with Article 4.1.

11.2 The Request for Joinder shall be submitted to the Institute prior to the transmission of the case file to the arbitral tribunal. Failure to comply with this time limit shall result in the dismissal of the Request for Joinder by the Institute, unless all parties to the arbitration, including the additional party, agree to the joinder.

11.3 The arbitration against the additional party shall be deemed to have commenced on the date on which the Request for Joinder is received by the Institute.

11.4 The Request for Joinder shall contain the following information:

(a) the case number of the existing arbitration;

(b) the names and contact details of each of the parties, including the additional party, and of their counsel or other representatives;

(c) identification of and, where possible, a copy of the arbitration agreement under which the dispute is to be settled;

(d) identification of any contract, other legal instrument or relationship out of or in relation to which the dispute against the additional party arises;

(e) a brief description of the nature and circumstances of the dispute giving rise to the claims against the additional party;

(f) where claims are made under more than one arbitration agreement, identification of the arbitration agreement under which each claim is made;

(g) a preliminary statement of the relief sought against the additional party, together with the amounts of any quantified claims and, to the extent possible, an estimate of the monetary value of any other claims; and

(h) proof of payment of the Filing Fee referred to in Article 11.7.

11.5 The Request for Joinder shall be submitted in the language required by Article 6.4.

11.6 Where the Request for Joinder fails to fulfill the requirements set forth in Articles 11.4 and 11.5, the Institute may direct the applicant to remedy the defect within the time limit set by the Institute. If the applicant fails to comply, the Board may dismiss the Request for Joinder.

11.7 Upon filing the Request for Joinder, the applicant shall pay the Filing Fee prescribed in Article 1 of Appendix II.

11.8 If the applicant fails to pay the Filing Fee upon filing the Request for Joinder, the Institute shall direct the applicant to make the payment within the time limit set by the Institute. If the applicant fails to comply, the Board may dismiss the Request for Joinder.

11.9 The Institute shall transmit the Request for Joinder and the attached documents to the additional party and to all other existing parties to the arbitration once the applicant has paid the required Filing Fee and provided any copies that may have been requested in accordance with Article 4.5.

11.10 Within 21 days of the receipt of the Request for Joinder, the additional party shall submit to the Institute an Answer to the Request for Joinder.

11.11 The Answer to the Request for Joinder shall contain the following information:

(a) the names and contact details of the additional

party and of its counsel or other representative;

(b) to the extent possible, any plea that an arbitral tribunal already constituted, or to be constituted under the Rules, lacks jurisdiction;

(c) the additional party's comments on the applicant's description of the nature and circumstances of the dispute giving rise to the claims against the additional party; and

(d) the additional party's preliminary response to the relief sought by the applicant against the additional party.

11.12 In addition to the additional party, the Institute shall give the other existing parties to the arbitration an opportunity to submit comments on the Request for Joinder within the time limit set by the Institute.

11.13 If the additional party wishes to submit a Request for Joinder, it shall do so within a time limit to be set by the Institute.

11.14 The additional party may make claims against any other party in accordance with the provisions of Article 12.

11.15 The Institute shall transmit the Answer to the Request for Joinder and the attached documents to the applicant and all other parties to the arbitration. The Institute may give the applicant and the other parties an opportunity to submit comments on the Answer to the Request for Joinder within the time limit set by the Institute.

11.16 Any joinder shall be subject to the provisions of Articles 13 and 15. Before the Board decides whether to accept a Request for Joinder, it shall consult with any confirmed arbitrator.

11.17 Where the Board decides to accept the Request for Joinder, all parties will be deemed to have waived their right to nominate an arbitrator, and the Board may revoke the confirmation or appointment of arbitrators and apply the provisions of Article 20 in the appointment of the arbitral tribunal.

12. CLAIMS BETWEEN MULTIPLE PARTIES

12.1 Where there are multiple parties in the arbitration, claims may be made by any party against any other party prior to the transmission of the case file to the arbitral tribunal, subject to the provisions of Articles 13 and 15.

12.2 Any party making a claim under Article 12.1 shall provide the following information:

(a) identification of and, where possible and unless already produced to the Institute, a copy of the arbitration agreement under which a claim is made;

(b) identification of any contract, other legal instrument or relationship out of or in relation to which the claim arises;

(c) a brief description of the nature and circumstances of the dispute giving rise to the claim;

(d) where claims are made under more than one arbitration agreement, identification of the arbitration agreement under which each claim is made; and

(e) a preliminary statement of the relief sought, together with the amounts of any quantified claims and, to the extent possible, an estimate of the monetary value of any other claims.

12.3 The Institute shall notify a party of any claims made against it under Article 12.1 and set a time limit within which that party shall respond to such claims. The Institute may also notify the other existing parties to the arbitration of such claims and give them an opportunity to submit comments.

12.4 The party submitting a response to claims made against it under Article 12.1 shall provide the following information:

(a) its comments on the nature and circumstances of the dispute giving rise to the claims; and

(b) its preliminary response to the relief sought.

12.5 Once the case file has been transmitted to the arbitral tribunal, the tribunal shall decide if and to what extent new claims may be made between different parties to the arbitration.

13. CLAIMS UNDER MULTIPLE CONTRACTS

Claims arising out of or in connection with different contracts or different arbitration agreements under the Rules may be made in a single arbitration, subject to the provisions of Article 15.

14. CONSOLIDATION OF ARBITRATIONS

14.1 At the request of a party, the Board may consolidate two or more arbitrations pending under the Rules into a single arbitration if:

(a) all parties have agreed to consolidation; or

(b) all claims in the arbitrations are made under the same arbitration agreement; or

(c) where the claims in the arbitrations are made under different arbitration agreements, the disputes in the arbitrations arise in connection with the same legal relationship and the arbitration agreements do not contain contradictory provisions that would render the consolidation impossible.

14.2 When deciding whether to consolidate two or more arbitrations in the situations referred to in Article 14.1(b)–(c), the Board shall take into account:

(a) the identity of the parties in the different arbitrations;

(b) the connections between the claims made in the different arbitrations;

(c) whether any arbitrator has been confirmed in any of the arbitrations and, if so, whether the same or different persons have been confirmed; and

(d) any other relevant circumstances.

14.3 Before the Board decides whether to consolidate the arbitrations, it shall consult with all parties and any confirmed arbitrator in all the arbitrations.

14.4 Where the Board decides to consolidate the arbitrations, all parties to all the arbitrations will be deemed to have waived their right to nominate an arbitrator, and the Board may revoke the confirmation and appointment of arbitrators and apply the provisions of Article 20 in the appointment of the arbitral tribunal.

14.5 When arbitrations are consolidated, they shall be consolidated into the arbitration that commenced first, unless otherwise agreed by all parties.

15. DETERMINATION OF JURISDICTION

15.1 Where any party against which a claim has been made:

(a) fails to submit a response to any claim made against it; or

(b) raises any plea concerning the existence, validity or applicability of the arbitration agreement; or

(c) objects to the determination of all of the claims made in the arbitration together in a single arbitration,

the Board shall allow the arbitration to proceed if it is *prima facie* satisfied that an arbitration agreement under the Rules that binds the parties may exist.

15.2 In addition, where claims are made pursuant to Article 13 under more than one arbitration agreement, the Board shall allow the arbitration to proceed as to those claims concerning which the Board is *prima facie* satisfied that:

(a) the arbitration agreements under which those claims are made do not contain contradictory provisions; and

(b) all parties to the arbitration may have agreed

that those claims can be determined together in a single arbitration.

(c) If the Board does not allow the arbitration to proceed regarding claims made under one or several of the arbitration agreements, the Board shall separate the claims made under the arbitration agreement or each of the arbitration agreements in question to be determined in a separate arbitration or arbitrations. The separated arbitration(s) shall be deemed to have commenced on the same date as the original arbitration from which the arbitration(s) is/are separated.

(d) If a party wishes to continue a separated arbitration, a party making claims in the separated arbitration shall pay the Filing Fee prescribed in Article 1 of Appendix II upon the separation of the arbitration(s). If a party fails to pay the Filing Fee upon the separation of the arbitration(s), the Institute shall direct the party to make the payment within the time limit set by the Institute. If the party fails to comply, the Board may dismiss the claims made by the party in the separated arbitration.

(e) The Institute may direct the parties to the original arbitration and/or any separated arbitration(s) to update their Request for Arbitration, Answer and/or any other statement(s) before the proceedings shall continue.

15.3 The Board's decision to allow the arbitration to proceed shall not be binding on the arbitral tribunal, which shall decide on its own jurisdiction.

CHAPTER III
ARBITRAL TRIBUNAL

16. PARTY AUTONOMY IN THE CONSTITUTION OF THE ARBITRAL TRIBUNAL

16.1 The parties may agree on the number of arbitrators and the procedure for appointment of the arbitral tribunal.

16.2 To the extent that the parties have not agreed otherwise on the number of arbitrators or the procedure for appointment of the arbitral tribunal, the provisions of Articles 17 to 20 shall apply.

16.3 The provisions of Articles 17 to 20 shall also apply if the parties have been unable to constitute the arbitral tribunal within the time period set by the parties' agreement or, in the absence of such time period, within the time limit set by the Institute at the request of a party.

16.4 In all cases, the provisions of Articles 21 to 24 regarding impartiality, independence, confirmation, challenge, release and replacement of arbitrators shall apply.

17. NUMBER OF ARBITRATORS

Where the parties have not agreed on the number of arbitrators, the arbitral tribunal shall be composed of a sole arbitrator, unless the Board determines that an arbitral tribunal composed of three arbitrators is appropriate taking into account the amount in dispute, the complexity of the case, any proposals made by the parties, and any other relevant circumstances.

18. APPOINTMENT OF A SOLE ARBITRATOR IN BI-PARTY PROCEEDINGS

18.1 Where the parties have agreed that the dispute shall be referred to a sole arbitrator,

the claimant and the respondent may jointly nominate the sole arbitrator for confirmation within 10 days from the date on which the Answer was received by the claimant. Failing such joint nomination within the applicable time limit, the Board shall appoint the sole arbitrator.

18.2 Where the parties have not agreed on the number of arbitrators, and the Board has decided that the dispute shall be referred to an arbitral tribunal composed of a sole arbitrator, the parties may jointly nominate the sole arbitrator for confirmation within 10 days from the date on which the parties received the notification from the Board of its decision. Failing such joint nomination within the applicable time limit, the Board shall appoint the sole arbitrator.

19. APPOINTMENT OF AN ARBITRAL TRIBUNAL COMPOSED OF THREE ARBITRATORS IN BI-PARTY PROCEEDINGS

19.1 Where the parties have agreed that the dispute shall be referred to an arbitral tribunal composed of three arbitrators, the arbitral tribunal shall be appointed as follows:

(a) the claimant shall nominate one arbitrator for confirmation in the Request for Arbitration;

(b) the respondent shall nominate one arbitrator for confirmation in the Answer to the Request for Arbitration;

(c) if either party fails to nominate an arbitrator for confirmation in accordance with Article 19.1(a)–(b), or within the time limit set by the Institute pursuant to Article 6.5 or 8.5, the Board shall appoint the arbitrator on behalf of the defaulting party;

(d) the claimant and the respondent may jointly nominate the third arbitrator, who shall act as the presiding arbitrator of the arbitral tribunal, for confirmation. Failing such joint nomination within 10 days from the date on which the parties received the notification from the Board of the confirmation of the second arbitrator, the

Board shall appoint the presiding arbitrator.

19.2 Where the parties have not agreed on the number of arbitrators, and the Board has decided that the dispute shall be referred to an arbitral tribunal composed of three arbitrators, the arbitral tribunal shall be appointed as follows:

(a) the claimant shall nominate one arbitrator for confirmation within 10 days from the date on which the claimant received the notification from the Institute of the number of arbitrators;

(b) the respondent shall nominate one arbitrator for confirmation within 10 days from the date on which the respondent received the notification from the Institute of the arbitrator nominated by the claimant;

(c) if either party fails to nominate an arbitrator for confirmation in accordance with Article 19.2(a)–(b), or within such other time limit as the Institute may have set, the Board shall appoint the arbitrator on behalf of the defaulting party;

(d) the provisions of Article 19.1(d) shall apply to the appointment of the presiding arbitrator.

20. APPOINTMENT OF AN ARBITRAL TRIBUNAL IN MULTI-PARTY PROCEEDINGS

20.1 Where there are more than two parties in the arbitration, the arbitral tribunal shall be appointed in accordance with the provisions of Articles 20.2 and 20.3.

20.2 Where the dispute shall be referred to a sole arbitrator:

(a) the claimant(s) and the respondent(s) may jointly nominate the sole arbitrator for confirmation within 10 days from the date on which the Answer was received by the claimant(s);

(b) where an additional party has been joined pursuant to Article 11, it may nominate the sole arbitrator for confirmation jointly with the

claimant(s) and the respondent(s);

(c) if the claimant(s) and the respondent(s) fail to nominate the sole arbitrator for confirmation in accordance with Article 20.2(a)–(b), or within such other time limit as the Institute may have set, the Board shall appoint the sole arbitrator.

20.3 Where the dispute shall be referred to an arbitral tribunal composed of three arbitrators:

(a) the claimant or multiple claimants, jointly, shall nominate one arbitrator for confirmation in the Request for Arbitration;

(b) the respondent or multiple respondents, jointly, shall nominate one arbitrator for confirmation in the Answer to the Request for Arbitration;

(c) where an additional party has been joined pursuant to Article 11, it may nominate an arbitrator for confirmation jointly with the claimant(s) or with the respondent(s);

(d) if the claimant(s) and the respondent(s) have each nominated an arbitrator for confirmation in accordance with Article 20.3(a)–(c), or within such other time limit as the Institute may have set, the provisions of Article 19.1(d) shall apply to the appointment of the presiding arbitrator;

(e) if the claimant(s) or the respondent(s) fail to nominate an arbitrator for confirmation within the applicable time limit, the Board may in its discretion:

(i) appoint the arbitrator on behalf of the defaulting claimant(s) or respondent(s), and appoint the presiding arbitrator; or

(ii) revoke any confirmation or appointment made, appoint all three arbitrators and designate one of them as the presiding arbitrator.

21. IMPARTIALITY AND INDEPENDENCE OF ARBITRATORS

21.1 Each arbitrator shall be and remain impartial and independent of the parties.

21.2 Before confirmation, a prospective arbitrator shall sign and submit to the Institute a statement of acceptance, availability, impartiality and independence (the "Statement"). The prospective arbitrator shall disclose in the Statement any circumstances likely to give rise to justifiable doubts as to their impartiality or independence.

21.3 The Institute shall transmit a copy of the Statement to all parties and set a time limit within which they may submit comments on the Statement or object to the confirmation of the arbitrator.

21.4 An arbitrator shall promptly disclose in writing to the Institute, the parties and the other arbitrators any circumstances referred to in Article 21.2 which may arise during the course of the arbitration.

21.5 Each party shall promptly inform in writing the Institute, the arbitral tribunal and the other parties of the existence and identity of any third party, which has entered into an arrangement for the funding of claims or defences in the arbitration, and under which it has an economic interest in the outcome of the arbitration.

21.6 Each party shall promptly inform in writing the Institute, the arbitral tribunal and the other parties of any changes or additions regarding its representation in the arbitration. If justifiable doubts as to an arbitrator's impartiality and independence arise from a change or addition in the parties' representation, the Board may, after consulting with the arbitrator concerned, the other arbitrators and the parties, exclude the new or additional representation from participating in the arbitration, unless the change is based on justified grounds.

22. CONFIRMATION AND APPOINTMENT OF ARBITRATORS

22.1 All arbitrators are subject to confirmation by the Institute. The mandate of an arbitrator shall begin upon such confirmation.

22.2 The Secretariat may confirm an arbitrator if:

(a) the prospective arbitrator's Statement contains no qualifications regarding their impartiality or independence; and

(b) no party has objected to the confirmation within the time limit set under Article 21.3.

22.3 In all other cases, the Secretariat shall refer the matter to the Board for its decision. The Board may decline the confirmation only if the prospective arbitrator fails to fulfil the requirements of impartiality and independence set forth in Article 21.1, or if the prospective arbitrator is otherwise unsuitable to serve as arbitrator. The Board has no obligation to give reasons for its decision.

22.4 Where the Board declines the confirmation of an arbitrator nominated by a party or by arbitrators, it may:

(a) give the nominating party, or the nominating arbitrators as the case may be, an opportunity to make a new nomination within the time limit set by the Institute; or

(b) in exceptional circumstances, proceed directly with the appointment of an arbitrator chosen by the Board in accordance with Article 22.5.

22.5 When appointing arbitrators, the Board shall consider:

(a) any qualifications required of the arbitrator by the agreement of the parties;

(b) the nature and circumstances of the dispute;

(c) the nationality of the parties and of the prospective arbitrator;

(d) the language of the arbitration, the seat of arbitration, and the law or rules of law applicable to the substance of the dispute; and

(e) any other relevant circumstances.

22.6 If the parties are of different nationalities:

(a) the sole arbitrator shall be of a nationality other than those of the parties; and

(b) the presiding arbitrator shall be of a nationality other than those of the parties and party-nominated arbitrators,

unless otherwise agreed by the parties, or unless the Board in special circumstances determines that it is appropriate to appoint a sole or presiding arbitrator with the same nationality as any of the parties or party-nominated arbitrators.

22.7 In the event of any failure in the constitution of the arbitral tribunal under the Rules, the Board shall have all powers to address such failure and may, in particular, revoke any confirmation or appointment already made, appoint or reappoint any of the arbitrators and designate one of them as the presiding arbitrator.

23. CHALLENGE OF ARBITRATORS

23.1 Any arbitrator may be challenged:

(a) if circumstances exist that give rise to justifiable doubts as to the arbitrator's impartiality or independence; or

(b) if the arbitrator does not possess any requisite qualification on which the parties have agreed.

23.2 A party may challenge an arbitrator whom it has nominated only for reasons of which it became aware after the nomination was made.

23.3 A party intending to challenge an arbitrator shall submit a written notice of challenge (the "Notice of Challenge") to the Institute. The Notice of Challenge shall state the reasons for the challenge and specify the date on which the party became aware of the circumstances on which the challenge is based.

23.4 The Notice of Challenge shall be submitted to the Institute either within 15 days from the date of receipt by the challenging party of the notification of the confirmation of the arbitrator, or within 15 days from the date when the circumstances giving rise to the challenge became known to that party if such date is subsequent to the receipt of such notification.

Failure by a party to comply with this time limit shall constitute a waiver of the right to make the challenge.

23.5 The Institute shall transmit the Notice of Challenge to the arbitrator being challenged, the other arbitrators and the other parties and set a time limit within which they may submit comments on the Notice of Challenge.

23.6 The other parties may agree to the challenge or the challenged arbitrator may voluntarily withdraw. In either case, the arbitrator shall be replaced in accordance with Article 24. A withdrawal of the arbitrator or the agreement of the other parties to the challenge shall not imply acceptance of the validity of the reason for the challenge.

23.7 If the other parties do not agree to the challenge or the challenged arbitrator does not voluntarily withdraw within the time limit set by the Institute, the Board shall decide on the challenge. The Board has no obligation to give reasons for its decision.

24. RELEASE AND REPLACEMENT OF AN ARBITRATOR

24.1 The Board shall release an arbitrator from appointment where:

(a) the Board accepts the withdrawal of the arbitrator;

(b) all parties jointly agree to release the arbitrator from appointment;

(c) the Board sustains a challenge of the arbitrator under Article 23; or

(d) the arbitrator is prevented *de jure* or *de facto* from fulfilling the arbitrator's duties, or fails to perform them in accordance with the Rules.

24.2 Before the Board makes a decision under Article 24.1(d), it shall give the arbitrator concerned, the parties and any other arbitrators an opportunity to submit comments within the time limit set by the Institute.

24.3 Where an arbitrator has been released from appointment, or where an arbitrator has died, a substitute arbitrator shall be nominated or appointed pursuant to the procedure provided for in Articles 18 to 20, subject to Article 24.4.

24.4 In special circumstances the Board may, after consulting with the parties and any remaining arbitrators:

(a) directly appoint the substitute arbitrator; or

(b) after the closing of the proceedings pursuant to Article 41, authorise the remaining arbitrators to proceed with the arbitration and make any decision or award.

24.5 Where an arbitrator has been replaced, the reconstituted arbitral tribunal shall, after consulting with the parties, decide if and to what extent prior proceedings will be repeated before the reconstituted arbitral tribunal.

CHAPTER IV
PROCEEDINGS BEFORE THE ARBITRAL TRIBUNAL

25. TRANSMISSION OF THE CASE FILE TO THE ARBITRAL TRIBUNAL

The Institute shall transmit the case file to the arbitral tribunal as soon as it has been constituted and the Filing Fee referred to in Articles 7, 9, 11.7 and 15.2(d) and the advance on costs referred to in Article 50 have been paid.

26. CONDUCT OF THE ARBITRATION

26.1 Subject to these Rules and any agreement by the parties, the arbitral tribunal shall conduct the arbitration in such manner as it considers appropriate.

26.2 In all cases, the arbitral tribunal shall ensure that the parties are treated with equality and that each party is given a reasonable opportunity to present its case.

26.3 All participants in the arbitral proceedings shall act in good faith and make every effort to contribute to the efficient conduct of the proceedings in order to avoid unnecessary costs and delays.

26.4 By agreeing to arbitration under the Rules, the parties undertake to comply with any order or other direction of the arbitral tribunal without delay.

26.5 The arbitral tribunal may, after consulting with the parties, appoint a secretary when deemed appropriate. A secretary shall meet the same requirements of impartiality and independence as any arbitrator under Article 21.1. The Institute may separately issue further instructions on the appointment, duties and remuneration of a tribunal-appointed secretary.

26.6 With the agreement of all parties, the arbitral tribunal may take steps to facilitate the

settlement of the dispute. Any such agreement by a party shall constitute a waiver of its right to challenge an arbitrator's impartiality based on the arbitrator's participation and knowledge acquired in taking the agreed steps.

26.7 All communications to the arbitral tribunal by one party shall be communicated by that party to all other parties. Such communications shall be made simultaneously, except as otherwise permitted by the arbitral tribunal.

27. SEAT OF ARBITRATION

27.1 If the parties have not agreed on the seat of arbitration, or if the designation of the seat is unclear, the Board shall determine the seat of arbitration, unless the Board finds it appropriate to leave the determination of the seat to the arbitral tribunal.

27.2 The arbitral tribunal may, after consulting with the parties, conduct hearings at any location it considers appropriate.

27.3 The arbitral tribunal may meet at any location it considers appropriate for the inspection of any site, property or documents.

27.4 The arbitral tribunal may deliberate at any location it considers appropriate.

27.5 The award shall be deemed to have been made and the arbitration to have taken place at the seat of arbitration, regardless of whether any hearing, meeting or deliberation is held elsewhere.

28. LANGUAGE OF THE ARBITRATION

28.1 If the parties have not agreed on the language of the arbitration, the arbitral tribunal shall determine it after consulting with the parties.

28.2 If any documents are to be submitted in a language other than that agreed by the parties or determined by the arbitral tribunal, the tribunal may order that such documents be accompanied by a translation into the language of the arbitration.

29. LAW OR RULES OF LAW APPLICABLE TO THE SUBSTANCE OF THE DISPUTE

29.1 The parties may agree upon the law or rules of law to be applied by the arbitral tribunal to the substance of the dispute.

29.2 In the absence of any agreement by the parties, the arbitral tribunal shall apply the law or rules of law which it determines to be appropriate.

29.3 The arbitral tribunal shall decide the dispute *ex aequo et bono* or as *amiable compositeur* only if the parties have expressly authorised it to do so.

30. CASE MANAGEMENT CONFERENCES

30.1 The arbitral tribunal shall arrange a case management conference with the parties as soon as possible, in principle within 21 days from the date on which the arbitral tribunal received the case file from the Institute. The purpose of the case management conference is to agree on the conduct and timetable of the proceedings so as to ensure the fairness, expeditiousness and cost-efficiency of the arbitration. The arbitral tribunal may refrain from arranging a case management conference only in exceptional circumstances if it determines that a case management conference is unnecessary.

30.2 The arbitral tribunal may, after consulting with the parties, arrange one or more additional case management conferences in the course of the proceedings when deemed appropriate.

30.3 Any case management conference may be conducted through a meeting in person, by video conference, telephone or similar means of communication. The arbitral tribunal shall determine the means by which the conference will be conducted after consulting with the parties.

31. PROCEDURAL TIMETABLE

31.1 During or following the case management conference referred to in Article 30.1, the arbitral tribunal shall establish the procedural timetable for the conduct of the arbitration. Where no case management conference has been arranged, the arbitral tribunal shall establish the procedural timetable as soon as practicable after having received the case file and consulted with the parties.

31.2 When establishing the procedural timetable, the arbitral tribunal shall take into account any views expressed by the parties, fair and equal treatment of the parties and the requirement that the arbitration shall be conducted in an expeditious and cost-effective manner.

31.3 The arbitral tribunal may, at the request of a party or on its own motion, extend, shorten or otherwise amend any time limit it has previously set if it considers that the circumstances so require for the proper conduct of the proceedings.

31.4 The arbitral tribunal shall communicate the procedural timetable to each of the parties and the Institute without delay.

32. WRITTEN SUBMISSIONS

32.1 Within the time limit set by the arbitral tribunal, the claimant shall submit a Statement of Claim to the respondent and each of the arbitrators. The Statement of Claim shall include:

(a) a statement of the facts and the legal arguments supporting the claim;

(b) the relief or remedy sought by the claimant; and

(c) to the extent possible, the documentary evidence the claimant intends to rely on.

32.2 Within the time limit set by the arbitral tribunal, the respondent shall submit a Statement of Defence to the claimant and each of the arbitrators. The Statement of Defence shall include:

(a) any objections concerning the existence, validity or applicability of the arbitration agreement;

(b) a statement whether, and to what extent, the respondent admits or denies the relief or remedy sought by the claimant;

(c) a statement of the facts and the legal arguments supporting the respondent's defence; and

(d) to the extent possible, the documentary evidence the respondent intends to rely on.

32.3 Any counterclaim or set-off claim by the respondent shall be raised no later than in the Statement of Defence, unless the arbitral tribunal in exceptional circumstances determines that the respondent has a justified reason to raise a counterclaim or set-off claim at a later stage of the proceedings. Any such counterclaim or set-off claim shall comply with the requirements of Article 32.1(a)–(c).

32.4 The arbitral tribunal shall, after consulting with the parties, decide the number, sequence and schedule of further written submissions (if any) by the parties following the filing of the Statement of Claim and the Statement of Defence.

32.5 Subject to any contrary agreement by the parties, a party may amend its claims during the course of the proceedings, unless the arbitral tribunal considers it inappropriate having regard to the delay in making the amendment or any other relevant circumstances.

33. PLEAS AS TO THE JURISDICTION OF THE ARBITRAL TRIBUNAL

33.1 The arbitral tribunal shall have the power to rule on its own jurisdiction, including any objections concerning the existence, validity or applicability of the arbitration agreement.

33.2 As a rule, a plea that the arbitral tribunal lacks jurisdiction shall be raised no later than in the Statement of Defence or, with respect to a counterclaim or set-off claim, in the reply to the counterclaim or set-off claim. The arbitral

tribunal may admit a later jurisdictional plea only in exceptional circumstances, if it considers the delay in making the plea justified.

34. EVIDENCE

34.1 The arbitral tribunal shall determine the admissibility, relevance, materiality, and weight of the evidence.

34.2 At any time during the proceedings, the arbitral tribunal may order any party:

(a) to identify the documentary evidence the party intends to rely on and specify the circumstances the party intends to prove by such evidence; and

(b) to produce any documents or other evidence that the arbitral tribunal may consider relevant to the outcome of the case.

35. CUT-OFF DATE

The arbitral tribunal may, after consulting with the parties, set a cut-off date prior to the commencement of any hearing referred to in Article 36 and order that after the cut-off date, the parties will not be allowed to present any new claims, arguments or documentary evidence on the merits of the dispute, or to invoke any new witnesses not previously nominated, unless the arbitral tribunal in exceptional circumstances decides otherwise.

36. HEARINGS

36.1 At any stage of the proceedings, the arbitral tribunal may hold hearings for the presentation of evidence by fact or expert witnesses, or for oral argument by the parties. The arbitral tribunal shall fix the date, time and place of any hearing, as well as decide on the possible use of a remote connection to conduct the hearing, after consulting with the parties.

36.2 In advance of any hearing, the arbitral tribunal may order the parties to identify each

witness they intend to call and specify the circumstances the parties intend to prove by each witness's testimony.

36.3 The arbitral tribunal may, after consulting with the parties, direct that witnesses may be examined through a remote connection.

36.4 The arbitral tribunal may, after consulting with the parties, order that the evidence of fact and expert witnesses shall be presented in the form of written witness statements or reports. Such written statements or reports shall be signed by the witness and submitted within the time limit set by the arbitral tribunal.

36.5 The arbitral tribunal shall establish the sequence and schedule of the hearing after consulting with the parties. Any witness who gives oral evidence may be questioned by the parties in such manner as the arbitral tribunal shall determine.

36.6 Hearings shall be held *in camera*, unless otherwise agreed by the parties.

37. EXPERTS APPOINTED BY THE ARBITRAL TRIBUNAL

37.1 After consulting with the parties, the arbitral tribunal may appoint one or more experts to report to it in writing on specific issues to be determined by the tribunal. Any tribunal-appointed expert shall be impartial and independent of the parties, their counsel and members of the arbitral tribunal.

37.2 Upon receipt of the expert's report, the arbitral tribunal shall transmit the report to the parties and give them an opportunity to submit comments. A party may examine any document on which the expert has relied in the report.

37.3 At the request of any party, the arbitral tribunal shall give the parties an opportunity to question the expert at a hearing, where the parties may also present party-appointed expert witnesses to testify on the points at issue. The provisions of Article 36 apply to such proceedings.

38. INTERIM MEASURES OF PROTECTION

38.1 The arbitral tribunal may, at the request of a party, grant any interim measures of protection it deems appropriate.

38.2 Before deciding whether to grant any interim measure of protection, the arbitral tribunal shall give the party against which the request is directed an opportunity to submit comments within the time limit set by the tribunal.

38.3 The arbitral tribunal may make the granting of any interim measure of protection subject to appropriate security being furnished by the requesting party for any costs or damage that such measure may cause to the party against which it is directed. The arbitral tribunal shall establish the terms of any security arrangement.

38.4 The arbitral tribunal's decision shall take the form of an order. The arbitral tribunal may amend or revoke an interim measure of protection it has granted at the request of a party or, in exceptional circumstances and upon prior notice to the parties, on the arbitral tribunal's own initiative.

38.5 A party in need of urgent interim measures of protection that cannot await the constitution of an arbitral tribunal may apply for the appointment of an Emergency Arbitrator in accordance with Appendix III, unless the parties have exercised their right to opt out of the application of the provisions contained in Appendix III.

38.6 Before the case file is transmitted to the arbitral tribunal, and in appropriate circumstances even thereafter, the parties may apply to any competent judicial authority for interim measures of protection. The application of a party to a judicial authority for such measures shall not be considered an infringement or a waiver of the arbitration agreement.

39. DEFAULT

39.1 If the claimant fails to submit a Statement of Claim, the arbitral tribunal shall order the termination of the proceedings, unless there are remaining matters that may require a decision and the arbitral tribunal considers it appropriate to do so.

39.2 If the respondent fails to submit an Answer to the Request for Arbitration, or a Statement of Defence, the arbitral tribunal shall continue the proceedings without treating such failure in itself as an admission of the claimant's allegations. The provisions of this Article also apply to the claimant's failure to submit a defence to a counterclaim or set-off claim raised by the respondent.

39.3 If any party fails to appear at a hearing without good cause, the arbitral tribunal may proceed with the hearing.

39.4 If any party otherwise fails to avail itself of the opportunity to present its case, the arbitral tribunal may proceed with the arbitration and make an award based on the submissions and evidence before it.

39.5 If a party, without good cause, fails to comply with any provision of the Rules or any order or direction issued by the arbitral tribunal, the tribunal may draw such inferences from the party's non-compliance as it considers appropriate.

40. WAIVER

A party shall without undue delay object to any failure to comply with any provision of the Rules, the arbitration agreement, or any order or direction issued by the arbitral tribunal. Failure by a party to raise an objection accordingly shall constitute a waiver of the right to make such objection, unless the party can show that, under the circumstances, its failure to object was justified.

41. CLOSING OF PROCEEDINGS

41.1 As soon as possible after the last hearing date, or the date on which the arbitral tribunal received the parties' last authorised written submissions, the tribunal shall:

(a) declare the proceedings closed with respect to the matters to be decided in the award; and

(b) inform the parties and the Institute of the date by which it expects to issue the final award.

41.2 After the closing of the proceedings, no further claims, arguments or evidence may be presented with respect to the matters to be decided in the award, unless in exceptional circumstances requested or authorised by the arbitral tribunal. If the arbitral tribunal has set a prior cut-off date pursuant to Article 35, the prior cut-off date shall apply.

CHAPTER V
AWARDS AND DECISIONS

42. MAKING OF AWARDS AND DECISIONS

42.1 When the arbitral tribunal is composed of more than one arbitrator, any award or other decision shall be made by a majority of the arbitrators. If there is no majority, the award or decision shall be made by the presiding arbitrator alone.

42.2 If authorised by the arbitral tribunal, the presiding arbitrator may decide any questions of procedure, subject to revision by the arbitral tribunal.

42.3 If any arbitrator fails to cooperate in the making of the award or other decision, having been given a reasonable opportunity to do so, the remaining arbitrators shall proceed in their absence.

43. FORM AND EFFECT OF AN AWARD

43.1 An award shall be made in writing. The arbitral tribunal shall state the reasons upon which the award is based, unless the parties have agreed that no reasons are to be given.

43.2 An award shall be signed by the arbitrators, and it shall specify the seat of arbitration and the date on which the award was made. Where there is more than one arbitrator and any of them fails to sign, the award shall state the reason for the absence of the signature.

43.3 The arbitral tribunal shall communicate an original copy of the award to each of the parties and the Institute without delay.

43.4 An award shall be final and binding on the parties. By agreeing to arbitration under the Rules, the parties undertake to carry out all awards without delay.

44. TIME LIMIT FOR THE FINAL AWARD

The final award shall be made no later than nine months from the date on which the arbitral tribunal received the case file from the Institute. The Institute may extend this time limit upon a reasoned request of the arbitral tribunal or, if deemed necessary, on its own motion.

45. SEPARATE AWARDS

The arbitral tribunal may, after consulting with the parties, make separate awards on different issues at different times of the proceedings, unless all parties object to the issuance of a separate award. For example and without limitation, the arbitral tribunal may decide by a separate award:

(a) an independent claim where several claims have been made in the arbitration;

(b) a specific part of the claim that has been admitted by the respondent; or

(c) a separate issue in dispute where the determination of that issue is decisive for the resolution of the other matters in dispute.

46. SETTLEMENT OR OTHER GROUNDS FOR TERMINATION OF THE ARBITRATION

46.1 The arbitral tribunal shall issue an order for the termination of the proceedings if:

(a) the claimant withdraws its claim, unless the respondent objects to the termination of the proceedings and the arbitral tribunal determines that the respondent has a legitimate interest in obtaining a final settlement of the dispute;

(b) the parties agree on the termination of the proceedings; or

(c) the continuation of the proceedings becomes unnecessary or impossible for any other reason.

46.2 If the parties reach a settlement before the final award is made, the arbitral tribunal may record

the settlement in the form of a consent award if so requested by all parties. The provisions of Articles 42 to 44 shall apply to any consent award.

46.3 The arbitral tribunal shall communicate an original copy of the order for the termination of the proceedings, or of the consent award, to each of the parties and the Institute without delay.

47. CORRECTION AND INTERPRETATION OF AN AWARD

47.1 Within 30 days from the date of receipt of the award, a party may, with notice to the other parties and the Institute, request that the arbitral tribunal:

(a) correct any clerical, typographical or computational error in the award;

(b) correct an omission to state in the award the seat of arbitration or the date on which the award was made, or an omission of an arbitrator to sign the award; or

(c) provide an interpretation of a specific point or part of the award.

47.2 The arbitral tribunal shall give the other parties an opportunity to submit comments on the request within the time limit set by the tribunal.

47.3 If the arbitral tribunal considers the request justified, it shall make the correction or provide the interpretation within 30 days from the date of receipt of the request. The Institute may extend this time limit upon a reasoned request of the arbitral tribunal or, if deemed necessary, on its own motion.

47.4 The arbitral tribunal may correct any error of the type referred to in Article 47.1(a)–(b) on its own motion within 30 days of the date of an award.

47.5 The provisions of Articles 42 and 43 shall apply to any correction or interpretation of an award.

47.6 The provisions on correction and interpretation of an award shall also apply to an order for the termination of the proceedings.

48. ADDITIONAL AWARD

48.1 Within 30 days from the date of receipt of the award, a party may, with notice to the other parties and the Institute, request that the arbitral tribunal make an additional award as to claims presented in the arbitration but not determined in the award. The arbitral tribunal shall give the other parties an opportunity to submit comments on the request within the time limit set by the tribunal.

48.2 If the arbitral tribunal considers the request justified, it shall make the additional award within 60 days from the date of receipt of the request. The Institute may extend this time limit upon a reasoned request of the arbitral tribunal or, if deemed necessary, on its own motion.

48.3 The provisions of Articles 42 and 43 shall apply to any additional award.

CHAPTER VI
COSTS OF ARBITRATION

49. DETERMINATION OF THE COSTS OF THE ARBITRATION

49.1 The costs of the arbitration shall be fixed in the final award or, if the arbitration is terminated before the rendering of a final award, in a consent award or in an order for the termination of the arbitration.

49.2 The costs of the arbitration include:

(a) the fees of the arbitral tribunal;

(b) the travel and other expenses incurred by the arbitrators;

(c) the costs of expert advice and of other assistance required by the arbitral tribunal;

(d) the Administrative Fee and expenses of the Institute; and

(e) the legal and other costs incurred by the parties in relation to the arbitration, if such costs have been claimed and to the extent that the arbitral tribunal considers that the amount of such costs is reasonable.

49.3 Before rendering the final award, consent award or order for the termination of the arbitration, the arbitral tribunal shall request that the Institute determine the costs referred to in Article 49.2(a)–(d) in accordance with Appendix II. The arbitral tribunal shall include in the final award, consent award or order for the termination of the arbitration the costs of the arbitration as finally determined by the Institute and specify the individual fees and expenses payable to each arbitrator and the Institute.

49.4 Unless otherwise agreed by the parties, the costs of the arbitration shall in principle be borne by the unsuccessful party. However, the arbitral tribunal may allocate any of the costs of the arbitration between the parties in such manner as it considers appropriate having

regard to the circumstances of the case. The arbitral tribunal may order the payment of any amount that a party may have to compensate to another party as a result of the arbitral tribunal's decision on the allocation of costs. If the arbitral tribunal determines that a party has failed to comply with its duties under Articles 26.3 and 26.4, the tribunal may, in addition to any other measures available under the Rules or otherwise, take such failure into account in its allocation of the costs of the arbitration.

49.5 Irrespective of any allocation of the costs of the arbitration between the parties, all parties remain jointly and severally liable for the payment of the Institute's Administrative Fee and expenses towards the Institute.

50. ADVANCE ON COSTS

50.1 The parties shall pay an advance on costs fixed by the Institute. The Institute shall transmit the case file to the arbitral tribunal once the advance on costs has been paid.

50.2 The amount of the advance on costs shall correspond to the expected costs of the arbitration pursuant to Article 49.2(a)–(d). Detailed provisions on the advance on costs fixed by the Institute are contained in Article 2 of Appendix II.

50.3 The Institute shall cover the costs of the arbitration referred to in Article 49.2(a)–(d) from the advance on costs after the rendering of the final award, consent award or order for the termination of the arbitration. Any amount paid by the parties as an advance on costs that exceeds the costs of the arbitration determined by the Institute shall be reimbursed to the parties.

50.4 The Institute may draw on the advance on costs to cover the costs of the arbitration referred to in Article 49.2(b)–(c) during the arbitration upon a reasoned request of the arbitral tribunal.

CHAPTER VII
OTHER PROVISIONS

51. CONFIDENTIALITY

51.1 Unless otherwise agreed by the parties, the Institute and the arbitral tribunal shall maintain the confidentiality of the arbitration and the award. This obligation also applies to any expert or secretary appointed by the arbitral tribunal, the members of the Board and the representatives of the Secretariat.

51.2 Unless otherwise agreed by the parties, each party undertakes to keep confidential all awards, orders and other decisions of the arbitral tribunal, correspondence from the arbitral tribunal to the parties, any recordings or transcripts made of the arbitration, as well as documents and other materials submitted by another party in connection with the arbitration, except where and to the extent that:

(a) such information (i) is publicly known or available, or subsequently becomes publicly known or available without any breach of confidentiality obligation by the receiving party, (ii) was in the lawful possession of the receiving party, without being subjected to confidentiality obligation, prior to its receipt from the disclosing party, (iii) is independently developed by the receiving party, or (iv) is received from a third party without any breach of confidentiality obligation; or

(b) disclosure may be required of a party by a legal duty, to protect or pursue a legal right, or to enforce or challenge an award in legal proceedings before a judicial authority; or

(c) there is otherwise a demonstrated need for disclosure that outweighs any party's legitimate interest in preserving confidentiality.

51.3 In addition to the provisions of Article 51.2 above, upon the request of any party, the arbitral tribunal may issue orders concerning the confidentiality of the arbitration proceedings or any other matters in connection with the

arbitration.

51.4 The deliberations of the arbitral tribunal shall be confidential.

51.5 Unless otherwise agreed by the parties, the Institute may publish excerpts or summaries of selected awards, orders and other decisions, provided that all references to the parties' names and other identifying details are deleted.

52. GENERAL RULE

In all matters not expressly provided for in these Rules, the Institute, the arbitral tribunal and the parties shall act in the spirit of these Rules and shall make every effort to ensure that all awards are legally enforceable.

53. LIMITATION OF LIABILITY

Any arbitrator, Emergency Arbitrator, secretary appointed by the arbitral tribunal, the Finland Chamber of Commerce and its employees, the Institute, the members of the Board and the representatives of the Secretariat shall not be liable to any person for any act or omission in connection with the arbitration, or the Emergency Arbitrator proceedings as the case may be, except to the extent such limitation of liability is prohibited by applicable law.

54. ENTRY INTO FORCE

54.1 Subject to Article 54.2, these Rules shall come into force on 1 January 2024 and shall apply to all arbitrations commenced on or after that date, unless otherwise agreed by the parties.

54.2 If the arbitration agreement was concluded before 1 June 2013:

(a) Articles 11, 12, 14.4 and 38.5, and Appendix III do not apply, unless otherwise agreed by the parties;

(b) the Institute may publish anonymous excerpts or summaries of awards, orders and other decisions under Article 51.5 only with the prior written consent of all parties to the arbitration.

Appendices

APPENDIX I
ORGANISATION OF THE ARBITRATION INSTITUTE

1. GENERAL PROVISIONS

1.1 The Arbitration Institute of the Finland Chamber of Commerce (the "Institute") is an autonomous arbitration body of the Finland Chamber of Commerce. Although part of the organisation of the Finland Chamber of Commerce, the Institute carries out its functions in complete independence from the Finland Chamber of Commerce and its organs.

1.2 The Institute does not itself resolve disputes. Instead, it administers the settlement of disputes in domestic and international arbitrations under the Arbitration Rules of the Finland Chamber of Commerce (the "Rules") and the Rules for Expedited Arbitration of the Finland Chamber of Commerce (the "Expedited Rules"). In addition, the Institute may be designated as appointing authority without subjecting the arbitration to the provisions of the Rules or the Expedited Rules.

1.3 The Institute is composed of a board of directors (the "Board") and a secretariat (the "Secretariat"). The Board may set up one or more committees and delegate to such committees the power to take certain decisions on behalf of the Board, provided that any such decision is reported to the Board.

2. THE BOARD

2.1 The Board shall consist of a Chair, a maximum of three Vice-Chairs and a maximum of twelve additional members (collectively referred to as "Members"). The Board shall include both Finnish and non-Finnish nationals.

2.2 The Members shall be appointed by the Finland Chamber of Commerce. The term of office for the Members shall be three years and may be renewed once. In exceptional circumstances,

upon the request of the Finland Chamber of Commerce, a member of the Board may be appointed for a third term. If a member of the Board is no longer in a position to exercise the member's functions, the Finland Chamber of Commerce may appoint a substitute member.

2.3 The Board renders decisions as provided for under the Rules. The Board exercises its decision-making power in plenary sessions which are presided over by the Chair or, where the Chair is prevented, by one of the Vice-Chairs (the "Chairperson"). If both the Chair and each of the Vice-Chairs are prevented, the other Members shall appoint one of themselves to serve as the Chairperson of the plenary session. Three Members form a quorum, and decisions are taken by a majority vote. Failing majority, the Chairperson holds the casting vote.

2.4 The Board may make decisions electronically and via remote connection.

2.5 The Board shall not appoint any of the Members as arbitrators in proceedings conducted under the Rules. The Members may, however, be proposed for such duties by one or more of the parties or by party-nominated arbitrators, subject to confirmation by the Institute. In special circumstances, a member of the Board may be appointed as Emergency Arbitrator pursuant to Article 38.5 and Appendix III of the Rules.

2.6 The Members involved in any capacity whatsoever in proceedings conducted under the Rules must inform the Secretariat upon becoming aware of such involvement. Such Members must refrain from participating in the discussions and in the decisions of the Board, or any of its committees, concerning the proceedings in question. Such Members must also be absent from the session whenever the proceedings are being considered either by the Board or by any of its committees. Such Members shall not receive any documentation or information pertaining to such proceedings.

3. THE SECRETARIAT

3.1 The Board is assisted in its work by the Secretariat, which is responsible for the administrative tasks relating to the arbitration proceedings conducted under the Rules. The Secretariat may also take decisions on matters delegated to it by the Board.

3.2 The Secretariat acts under the direction of a secretary general (the "Secretary General"). The Secretary General shall be appointed by the Finland Chamber of Commerce.

3.3 The Secretary General or any other member of the Secretariat may not be appointed, or otherwise act, as arbitrator in proceedings conducted under the Rules.

3.4 All communications from the Board or any of its committees to the parties or arbitrators concerning the administration of arbitration proceedings under the Rules shall take place exclusively through the Secretariat. All decisions of the Board and any of its committees shall be communicated by the Secretariat on behalf of the Board and its committees.

3.5 In each case submitted to arbitration under the Rules, the Secretariat shall retain in its archives all awards and orders for the termination of the arbitration made by the arbitral tribunal, all decisions of the Institute and copies of the relevant correspondence with the Institute. Any such documents and correspondence may be destroyed after three years from the rendering of a final award or an order for the termination of the arbitration, unless a party or an arbitrator requests within the said time limit the return of such documents or correspondence. All related costs for the return of the documents or correspondence shall be paid by the requesting party or arbitrator.

4. OTHER PROVISIONS

4.1 The Chair or, where the Chair is prevented, one of the Vice-Chairs shall have the power to take urgent decisions on behalf of the Board, provided that any such decision is reported to

the Board at its next session.

4.2 The work of the Board, any of its committees and the Secretariat is of a confidential nature. The Board decides who can attend the sessions of the Board and any of its committees and who are entitled to have access to materials related to the work of the Board, its committees and the Secretariat.

APPENDIX II
SCHEDULE OF ARBITRATION FEES AND COSTS

(All amounts in this Appendix are in euros, hereinafter "EUR")

1. FILING FEE

1.1 A Filing Fee of EUR 3,000 must be paid upon filing a Request for Arbitration pursuant to Article 6 of the Rules, any counterclaim or set-off claim pursuant to Article 8 of the Rules, any Request for Joinder pursuant to Article 11 of the Rules, and any claim made pursuant to Article 15.2(d) of the Rules.

1.2 The Filing Fee is non-refundable and constitutes a part of the Administrative Fee referred to in Article 3 below. The Filing Fee shall be credited to the respective party's share of the advance on costs referred to in Article 2 below. If the Board dismisses a Request for Joinder made under Article 11 of the Rules, the Filing Fee paid upon filing the Request for Joinder shall not be credited as a part of the Administrative Fee nor shall it be taken into account in the advance on costs.

1.3 The payment of the Filing Fee shall be made by transfer to the bank account of the Finland Chamber of Commerce.

2. ADVANCE ON COSTS FIXED BY THE INSTITUTE

2.1 The advance on costs fixed by the Institute is intended to cover the fees and expenses referred to in Article 49.2(a)–(d).

2.2 In fixing the advance on costs, the Institute shall take into consideration Tables A and B below. The amount in dispute referred to in the Tables shall be determined in accordance with the following:

(a) The amount in dispute is calculated as the

aggregate value of all claims. If secondary or alternative claims have been made in respect to a certain claim, the value of the highest monetary claim shall be taken into account in determining the amount in dispute.

(b) Interest claims shall not be taken into account for the calculation of the amount in dispute. However, when the interest claims exceed the amount claimed as principal, the interest claims alone, instead of the principal amount, shall be taken into account for the calculation of the amount in dispute.

(c) Amounts in currencies other than euro shall be converted into euros at the rate of exchange applicable at the time the Request for Arbitration is filed with the Institute or at the time any new claim, counterclaim, set-off claim or amendment to a claim is filed.

(d) Where the amount in dispute cannot be ascertained, the Institute shall determine the amount in dispute taking into account all relevant circumstances. The Institute may also determine the amount in dispute in other exceptional circumstances.

2.3 Subject to Articles 2.4 and 2.5 below, each party shall pay half of the advance on costs within the time limit set by the Institute.

2.4 Where counterclaims or set-off claims are raised by the respondent, the Institute may fix separate advances on costs for the claims, counterclaims and set-off claims and order each of the parties to pay the advance on costs corresponding to its claims.

2.5 Where claims are made under Articles 11 and 12 of the Rules, the Institute shall fix one or more advances on costs that shall be payable by the parties as decided by the Institute. Where the Institute has previously fixed any advance on costs, any such advance shall be replaced by the advance(s) fixed pursuant to this Article 2.5, and the amount of any advance previously paid by any party will be considered as a partial payment by such party of its share of the advance(s) on costs as fixed by the Institute pursuant to this Article 2.5.

2.6 The Institute may adjust the advance on costs, and order any party to pay further advances on costs, at any time during the proceedings to take into account fluctuations in the amount in dispute, changes in the amount of the estimated expenses of the arbitral tribunal, the evolving complexity of the arbitration, or other relevant circumstances. The arbitral tribunal shall promptly inform the Institute of any changes that may affect the amount of the advance on costs.

2.7 If a party fails to pay its share of the advance on costs, the Institute shall give the other party an opportunity to pay the unpaid share on behalf of the defaulting party within the time limit set by the Institute. If the other party makes such payment, the arbitral tribunal may, at the request of that party, issue a separate award for reimbursement of the payment in accordance with Article 45(a) of the Rules. In the event that any part of the advance on costs remains unpaid, the Institute may terminate the proceedings, treat the claim for which the advance on costs has remained unpaid as withdrawn or, once the case file has been transmitted to the arbitral tribunal, the Institute may direct the tribunal to order the termination of the arbitration or to treat the claim for which the advance on costs has remained unpaid as having been withdrawn.

2.8 Subject to Articles 2.9 and 2.10 below, each party shall pay its share of the advance on costs in cash. The payment shall be made by transfer to the bank account of the Finland Chamber of Commerce.

2.9 If a party's share of the advance on costs is greater than EUR 250,000, such party may post a bank guarantee for any amount above this sum.

2.10 A party that has already paid in full its share of the advance on costs may pay the unpaid share owed by the defaulting party by posting a bank guarantee.

2.11 The Institute shall establish the terms of the bank guarantees referred to in Articles 2.9 and 2.10.

2.12 The amounts paid as advances on costs do not yield interest for the parties or the arbitrators.

3. ADMINISTRATIVE FEE AND EXPENSES OF THE INSTITUTE

3.1 The Institute shall determine the Administrative Fee referred to in Article 49.2(d) of the Rules in accordance with Table A below. The amount in dispute referred to in Table A shall be determined in accordance with Article 2.2 of this Appendix.

3.2 In exceptional circumstances, the Institute may deviate from the fee amounts set out in Table A or require payment of administrative expenses in addition to the Administrative Fee provided in Table A.

3.3 The payment of the Administrative Fee shall be made by transfer to the bank account of the Finland Chamber of Commerce.

4. FEES AND EXPENSES OF THE ARBITRAL TRIBUNAL

4.1 The arbitral tribunal's fees shall be determined exclusively by the Institute. Separate fee arrangements between the parties and the arbitral tribunal are contrary to the Rules.

4.2 The Institute shall determine the fee of a sole or presiding arbitrator in accordance with Table B below. The amount in dispute referred to in Table B shall be determined in accordance with Article 2.2 of this Appendix. The Institute may deviate from the fee amounts stated in Table B only in exceptional circumstances.

4.3 When fixing the arbitrator's fee, in addition to the monetary value of the dispute, the Institute shall consider the complexity of the dispute, the time spent on the case, and the diligence and efficiency of the arbitrator.

4.4 When a case is referred to an arbitral tribunal composed of three arbitrators, the total fees of the tribunal to be determined by the Institute shall normally not exceed two and a half times the fee of the presiding arbitrator.

4.5 As a rule, when a case is referred to an arbitral tribunal composed of three arbitrators, the Institute shall allocate 40–50 per cent of the tribunal's total fees to the presiding arbitrator and 25–30 per cent to each co-arbitrator. The Institute may, however, apply a different allocation of fees after consulting with the arbitral tribunal.

4.6 Pursuant to Article 49.2(b)–(c) of the Rules, the arbitrators shall receive reimbursement for their reasonable travel, accommodation and other expenses, as well as for costs of expert advice and of other assistance required in connection with the arbitration. The Institute shall determine the reasonableness of such expenses and decide to which extent they will be reimbursed.

5. OTHER PROVISIONS

5.1 If an arbitration is terminated before the rendering of a final award, the Institute shall determine the fees and expenses of the arbitrators and the Administrative Fee and expenses of the Institute at its discretion, taking into account the stage of the proceedings at which the arbitration was terminated, the amount of work done by the arbitrators and the Institute, and other relevant circumstances.

5.2 Where an arbitrator is replaced pursuant to Article 24 of the Rules, the Institute shall determine the fee and expenses due to the arbitrator who has been replaced, taking into account the amount of work done, the reason for the replacement, and other relevant circumstances.

5.3 In case of a request for the correction or interpretation of an award under Article 47 of the Rules, or for the making of an additional award under Article 48, the Institute shall decide whether any costs referred to in Article 49.2(a)–(d) will be charged to the parties. The Institute may fix a supplementary advance on costs, to be paid by the parties, to cover any additional fees and expenses of the arbitral tribunal and any additional administrative expenses of the Institute.

5.4 The provisions of Article 5.3 above also apply if a competent judicial authority seised with an action to set aside an arbitral award has remitted the award to an arbitral tribunal to eliminate the ground for setting it aside.

5.5 The Institute may set a fee payable for the appointment of an arbitrator or arbitrators to arbitrations not subject to the Rules or the Expedited Rules. The fee is non-refundable.

5.6 A party making or receiving any payments concerning the costs of the arbitration shall be liable for all bank charges and other fees incurred in connection with these payments.

5.7 The Institute may issue guidelines to supplement the provisions of this Appendix with regard to the payment of the arbitrators' fees and expenses as well as the Administrative Fee and expenses of the Institute.

5.8 This Appendix shall not apply to the appointment of an Emergency Arbitrator pursuant to Article 38.5 and Appendix III of the Rules.

ADMINISTRATIVE FEE

Amount in dispute (EUR)	Administrative Fee (EUR)
0 – 200,000	3,000 + 1.74% of amount over 25,000 with a maximum Administrative Fee of 6,000
200,001 – 500,000	6,000 + 2.17% of amount over 200,000 with a maximum Administrative Fee of 12,500
500,001 – 1,000,000	12,500 + 1.30% of amount over 500,000 with a maximum Administrative Fee of 19,000
1,000,001 – 2,000,000	19,000 + 0.50% of amount over 1,000,000 with a maximum Administrative Fee of 24,000
2,000,001 – 5,000,000	24,000 + 0.20% of amount over 2,000,000 with a maximum Administrative Fee of 30,000
5,000,001 – 10,000,000	30,000 + 0.16% of amount over 5,000,000 with a maximum Administrative Fee of 38,000
10,000,001 – 30,000,000	38,000 + 0.04% of amount over 10,000,000 with a maximum Administrative Fee of 45,000
30,000,001 – 50,000,000	45,000 + 0.04% of amount over 30,000,000 with a maximum Administrative Fee of 52,000
50,000,001 – 75,000,000	52,000 + 0.03% of amount over 50,000,000 with a maximum Administrative Fee of 58,000
75,000,001 – 100,000,000	58,000 + 0.02% of amount over 75,000,000 with a maximum Administrative Fee of 63,000
Over 100,000,000	63,000 + 0.01% of amount over 100,000,000 with a maximum Administrative Fee of 70,000

The Administrative Fee is not subject to VAT.

ARBITRATOR'S FEE

Fee of the sole or presiding arbitrator (EUR)		
Amount in dispute (EUR)	Minimum	Maximum
0 – 200,000	6,000	25,000
200,001 – 500,000	10,000 + 2.00% of amount over 200,000	25,000 + 5.00% of amount over 200,000
500,001 – 1,000,000	16,000 + 1.80% of amount over 500,000	40,000 + 3.00% of amount over 500,000
1,000,001 – 2,000,000	25,000 + 0.50% of amount over 1,000,000	55,000 + 2.90% of amount over 1,000,000
2,000,001 – 5,000,000	30,000 + 0.33% of amount over 2,000,000	84,000 + 1.60% of amount over 2,000,000
5,000,001 – 10,000,000	40,000 + 0.30% of amount over 5,000,000	132,000 + 0.60% of amount over 5,000,000
10,000,001 – 30,000,000	55,000 + 0.05% of amount over 10,000,000	162,000 + 0.22% of amount over 10,000,000
30,000,001 – 50,000,000	65,000 + 0.05% of amount over 30,000,000	205,000 + 0.23% of amount over 30,000,000
50,000,001 – 75,000,000	75,000 + 0.06% of amount over 50,000,000	250,000 + 0.16% of amount over 50,000,000
75,000,001 – 100,000,000	90,000 + 0.04% of amount over 75,000,000	290,000 + 0.04% of amount over 75,000,000
Over 100,000,000	To be determined by the Board	To be determined by the Board

The fee amounts mentioned in the table do not include VAT to be added to the fee of an arbitrator.

APPENDIX III
EMERGENCY ARBITRATOR RULES

1. GENERAL PROVISIONS

1.1 As provided in Article 38.5 of the Rules, a party in need of urgent interim measures of protection that cannot await the constitution of an arbitral tribunal (the "Applicant") may apply for the appointment of an Emergency Arbitrator in accordance with the provisions of this Appendix.

1.2 The Emergency Arbitrator shall have the same power to grant any interim measures of protection as the arbitral tribunal under Article 38.1 of the Rules. However, the Emergency Arbitrator may exercise such power only if the Emergency Arbitrator is satisfied that the Applicant's need for interim relief is so urgent that it is necessary to grant interim measures of protection prior to the constitution of the arbitral tribunal. Where the urgency requirement is not fulfilled, the Emergency Arbitrator shall dismiss the Applicant's request for interim measures of protection.

1.3 The provisions of this Appendix are not intended to prevent any party from seeking urgent interim measures of protection from a competent judicial authority at any time prior to making an application for the appointment of an Emergency Arbitrator pursuant to Article 38.5 of the Rules and this Appendix, and in appropriate circumstances even thereafter. Any application for such measures from a judicial authority shall not be considered an infringement or a waiver of the arbitration agreement.

2. APPLICATION FOR THE APPOINTMENT OF AN EMERGENCY ARBITRATOR

2.1 An application for the appointment of an Emergency Arbitrator (the "Application") shall be submitted to the Institute in hard copy or by electronic means in a manner that provides a record of the transmission. The Institute may, if deemed necessary, separately request

that the Applicant provide a hard copy of an electronically transmitted document or other communication or that the Applicant provide additional copies of any hard copy.

2.2 The Application shall contain the following information:

(a) the name and contact details of the parties and of their counsel or other representatives;

(b) identification of and, where possible, a copy of the arbitration agreement under which the dispute is to be settled;

(c) identification of any contract, other legal instrument or relationship out of or in relation to which the dispute arises;

(d) a brief description of the circumstances giving rise to the Application and of the underlying dispute referred or to be referred to arbitration;

(e) a statement of the relief sought from the Emergency Arbitrator;

(f) the reasons why the Applicant needs urgent interim measures of protection that cannot await the constitution of an arbitral tribunal;

(g) any agreement as to the seat of arbitration, the law or rules of law applicable to the substance of the dispute, or the language of the arbitration; and

(h) proof of payment of the Application Deposit referred to in Article 4 below.

2.3 The Application may contain such other information or documents as the Applicant considers appropriate to contribute to the efficient examination of the Application.

2.4 The Application shall be submitted in the language of the arbitration as agreed by the parties. Failing such agreement, the Application shall be submitted in the language of the arbitration agreement.

2.5 The Application may be made either before or after the commencement of the arbitration.

However, the Application shall be submitted to the Institute prior to the transmission of the case file to the arbitral tribunal pursuant to Article 25 of the Rules. Failure to comply with this time limit shall result in the dismissal of the Application by the Institute.

2.6 Where the Application is submitted to the Institute before the Request for Arbitration, the Institute shall terminate the Emergency Arbitrator proceedings if the Request for Arbitration is not submitted within 10 days from the date of receipt of the Application by the Institute. In exceptional circumstances, the Institute may extend this time limit upon a reasoned request of a party or the Emergency Arbitrator.

3. APPOINTMENT OF AN EMERGENCY ARBITRATOR

3.1 If it is manifest that no agreement to arbitrate under the Rules exists, the Institute shall dismiss the Application.

3.2 If the Institute determines that it should accept the Application, it shall transmit the Application and the attached documents to the respondent once the Applicant has paid the Application Deposit referred to in Article 4 below and provided any copies that may have been requested in accordance with Article 2.1.

3.3 The Institute shall seek to appoint an Emergency Arbitrator within two days after receipt of both the Application and the Application Deposit.

3.4 Once the Emergency Arbitrator has been appointed, the Institute shall notify the parties of the appointment and transmit the Application, together with any other documents that the Institute may have received from the parties (the "File"), to the Emergency Arbitrator. After that, all written communications from the parties shall be submitted directly to the Emergency Arbitrator, with a simultaneous copy to the other party.

4. APPLICATION DEPOSIT FOR THE COSTS OF THE EMERGENCY ARBITRATOR PROCEEDINGS

4.1 The Application Deposit is EUR 25,000, consisting of EUR 5,000 for the administrative fee and expenses of the Institute and EUR 20,000 for the fee and expenses of an Emergency Arbitrator.

4.2 In exceptional circumstances, the Institute may decide that the fee and expenses of the Emergency Arbitrator shall be more than EUR 20,000, or that the administrative fee and expenses of the Institute shall be more than EUR 5,000, taking into account the nature of the case, the amount of work done by the Emergency Arbitrator and the Institute, and other relevant circumstances. In that event, the Institute may increase the Application Deposit at any time during the Emergency Arbitrator proceedings.

4.3 If the Applicant fails to pay the increased Application Deposit within the time limit set by the Institute, the Emergency Arbitrator proceedings will be terminated.

4.4 If the Emergency Arbitrator proceedings are terminated prior to the rendering of the Emergency Arbitrator's decision (the "Emergency Arbitrator Decision"), the Institute shall determine the fees and expenses due to the Emergency Arbitrator and the Institute, taking into account the amount of work done by the Emergency Arbitrator and the Institute, the reason for the termination of the proceedings, and other relevant circumstances. Any amount paid by the Applicant which exceeds the fees and expenses as determined by the Institute shall be reimbursed to the Applicant.

5. SEAT OF EMERGENCY ARBITRATOR PROCEEDINGS

5.1 The seat of Emergency Arbitrator proceedings shall be the seat of arbitration as agreed by the parties.

5.2 If the parties have not agreed on the seat of

arbitration, or if the designation of the seat is unclear, the Institute shall determine the seat of Emergency Arbitrator proceedings.

6. PROCEEDINGS BEFORE AN EMERGENCY ARBITRATOR

6.1 The Emergency Arbitrator shall establish a procedural timetable for the Emergency Arbitrator proceedings as soon as possible, and normally not later than within two days, after having received the File from the Institute. The Emergency Arbitrator shall communicate the procedural timetable to the parties and the Institute without delay.

6.2 The Emergency Arbitrator shall conduct the Emergency Arbitrator proceedings in such manner as the Emergency Arbitrator considers appropriate, taking into account the nature of the case and urgency inherent in the proceedings. In all cases, the Emergency Arbitrator shall ensure that the parties are treated with equality and that each party is given a reasonable opportunity to present its case.

6.3 The Emergency Arbitrator shall have the power to rule on its jurisdiction, including any objections concerning the existence, validity or applicability of the arbitration agreement. The Emergency Arbitrator shall resolve any disputes over the applicability of this Appendix.

6.4 The Emergency Arbitrator shall decide the Application within 15 days from the date of receipt of the File from the Institute. The Institute may extend this time limit upon a reasoned request of the Emergency Arbitrator or, if deemed necessary, on its own motion.

6.5 The Emergency Arbitrator Decision may be made even if in the meantime the Institute has transmitted the case file to the arbitral tribunal.

6.6 The Emergency Arbitrator may make the granting of any interim measure of protection subject to appropriate security being furnished by the Applicant for any costs or damage that such measure may cause to the party against

which it is directed. The Emergency Arbitrator shall establish the terms of any security arrangement.

7. CHALLENGE OF AN EMERGENCY ARBITRATOR

7.1 An Emergency Arbitrator shall be impartial and independent of the parties.

7.2 Before accepting the appointment, a prospective Emergency Arbitrator shall disclose to the Institute in writing any circumstances likely to give rise to justifiable doubts as to their impartiality or independence. The Emergency Arbitrator shall also immediately disclose to the Institute and the parties in writing similar circumstances which may arise during the course of the Emergency Arbitrator proceedings.

7.3 A party intending to challenge an Emergency Arbitrator shall submit a written notice of challenge (the "Notice of Challenge") to the Institute. The Notice of Challenge shall state the reasons for the challenge and specify the date on which the party became aware of the circumstances on which the challenge is based.

7.4 The Notice of Challenge shall be submitted to the Institute within two days from the date when the circumstances giving rise to the challenge became known to the challenging party. Failure by a party to comply with this time limit shall constitute a waiver of the right to make the challenge.

7.5 The Institute shall decide the challenge as soon as possible after having afforded an opportunity for the Emergency Arbitrator and the other party to submit comments on the Notice of Challenge within the time limit set by the Institute. The Institute has no obligation to give reasons for its decision.

8. EMERGENCY ARBITRATOR DECISION

8.1 The Emergency Arbitrator Decision shall be made in writing and shall state the reasons

upon which it is based. It shall be dated and signed by the Emergency Arbitrator.

8.2 The Emergency Arbitrator shall communicate a copy of the Emergency Arbitrator Decision to each of the parties and the Institute without delay.

8.3 The Emergency Arbitrator Decision shall be binding on the parties when rendered. By agreeing to arbitration under the Rules, the parties undertake to comply with any Emergency Arbitrator Decision without delay.

8.4 The Emergency Arbitrator may amend or revoke the Emergency Arbitrator Decision at the request of a party or, in exceptional circumstances and upon prior notice to the parties, on the Emergency Arbitrator's own initiative.

8.5 An arbitral tribunal shall not be bound by the Emergency Arbitrator Decision or the reasoning of such Decision.

8.6 The Emergency Arbitrator Decision shall cease to be binding on the parties:

(a) if the Institute terminates the Emergency Arbitrator proceedings for failure to commence the arbitration within the time limit prescribed in Article 2.6 above;

(b) upon the acceptance by the Institute of a challenge against the Emergency Arbitrator pursuant to Article 7 above;

(c) if the case file is not transmitted to the arbitral tribunal within 90 days from the date of the Emergency Arbitrator Decision;

(d) if the Emergency Arbitrator or an arbitral tribunal so decides;

(e) upon the arbitral tribunal rendering a final award, unless the arbitral tribunal expressly decides otherwise; or

(f) upon the termination of the arbitration before the rendering of a final award.

8.7 Subject to the provisions of Article 6.5 above, the Emergency Arbitrator shall have no further powers to act once the case file has been transmitted to the arbitral tribunal.

9. ALLOCATION OF THE COSTS OF THE EMERGENCY ARBITRATOR PROCEEDINGS

9.1 The Emergency Arbitrator Decision shall fix the costs of the Emergency Arbitrator proceedings and state which of the parties shall bear those costs or in what proportion the costs shall be borne by the parties.

9.2 The costs of the Emergency Arbitrator proceedings include:

(a) the fee and expenses of the Emergency Arbitrator;

(b) the administrative fee and expenses of the Institute; and

(c) the legal and other costs incurred by the parties in relation to the Emergency Arbitrator proceedings, if such costs have been claimed and to the extent that the Emergency Arbitrator considers that the amount of such costs is reasonable.

10. OTHER PROVISIONS

10.1 Unless otherwise agreed by the parties:

(a) the Institute and the Emergency Arbitrator shall maintain the confidentiality of the Emergency Arbitrator proceedings and the Emergency Arbitrator Decision;

(b) each party undertakes to keep confidential the Emergency Arbitrator Decision and all other orders and decisions made by the Emergency Arbitrator, correspondence from the Emergency Arbitrator to the parties, any recordings or transcripts made of the Emergency Arbitrator proceedings as well as documents and other materials submitted by another party in connection with the Emergency Arbitrator

proceedings, subject to the exceptions set forth in Article 51.2(a)–(c) of the Rules;

(c) the Institute may publish excerpts or summaries of selected Emergency Arbitrator Decisions and other orders and decisions issued by an Emergency Arbitrator, provided that all references to the parties' names and other identifying details are deleted.

10.2 At the request of a party, the arbitral tribunal shall finally decide any party's claims related to the Emergency Arbitrator proceedings, including the reallocation of the costs of such proceedings and any claims arising out of or in connection with the compliance or non-compliance with the Emergency Arbitrator Decision.

10.3 Unless otherwise agreed by the parties, an Emergency Arbitrator may not serve as arbitrator in any arbitration relating to the dispute in respect of which the Emergency Arbitrator has acted.

10.4 Unless otherwise agreed by the parties, the provisions of this Appendix apply to Emergency Arbitrator proceedings initiated under arbitration agreements concluded on or after 1 June 2013.

Model Arbitration Clauses

MODEL ARBITRATION CLAUSES

Below are model arbitration clauses for parties who wish to submit to arbitration under the Arbitration Rules of the Finland Chamber of Commerce.

Standard arbitration clause:

Any dispute, controversy or claim arising out of or relating to this contract, or the breach, termination or validity thereof, shall be finally settled by arbitration in accordance with the Arbitration Rules of the Finland Chamber of Commerce.

Note: Parties may wish to consider adding:

(a) The number of arbitrators shall be [one / three].
(b) The seat of arbitration shall be [town and country].
(c) The language of the arbitration shall be [language].

Arbitration clause without Emergency Arbitrator:

Any dispute, controversy or claim arising out of or relating to this contract, or the breach, termination or validity thereof, shall be finally settled by arbitration in accordance with the Arbitration Rules of the Finland Chamber of Commerce. The Emergency Arbitrator provisions shall not apply.

Note: Parties may wish to consider adding:

(a) The number of arbitrators shall be [one / three].
(b) The seat of arbitration shall be [town and country].
(c) The language of the arbitration shall be [language].

Adopted by the Finland Chamber of Commerce
on 8 December 2023.

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MEDIATION RULES

of the Finland Chamber of Commerce

THE FINLAND ARBITRATION INSTITUTE

PART OF THE FINLAND CHAMBER OF COMMERCE

MEDIATION RULES

of the Finland Chamber of Commerce

The English text prevails over other language versions

TABLE OF CONTENTS

MODEL MEDIATION CLAUSE 5

PREAMBLE 9

CHAPTER I
INTRODUCTORY PROVISIONS 11
1. SCOPE OF APPLICATION 11

CHAPTER II
COMMENCEMENT OF FAI MEDIATION 11
2. REQUEST FOR MEDIATION 11
3. DATE OF COMMENCEMENT OF MEDIATION 12
4. ANSWER 12

CHAPTER III
MEDIATOR 13
5. APPOINTMENT AND CONFIRMATION OF THE MEDIATOR 13
6. IMPARTIALITY AND INDEPENDENCE OF THE MEDIATOR 14

CHAPTER IV
FRAMEWORK OF FAI MEDIATION 14
7. REFERRAL OF THE MATTER TO THE MEDIATOR 14
8. CONDUCT OF MEDIATION 15
9. PLACE OF MEDIATION AND LANGUAGE 15
10. TERMINATION OF FAI MEDIATION 16

CHAPTER V
RELATIONSHIP BETWEEN
FAI MEDIATION AND OTHER JUDICIAL, ARBITRAL
OR SIMILAR PROCEEDINGS 16
11. EFFECT OF AGREEMENT TO MEDIATE 16
12. CONFIRMING SETTLEMENT IN AN ARBITRAL AWARD 17

CHAPTER VI
COSTS OF FAI MEDIATION 17
13. DETERMINATION OF COSTS OF MEDIATION 17
14. ADVANCE ON COSTS 18

CHAPTER VII
OTHER PROVISIONS 19
15. CONFIDENTIALITY 19
16. LIMITATION OF LIABILITY 19
17. ENTRY INTO FORCE 19

APPENDIX I
SCHEDULE OF MEDIATION FEES AND COSTS 23
1. FILING FEE 23
2. ADVANCE ON COSTS 24
3. FEE AND EXPENSES OF THE MEDIATOR 24
4. ADMINISTRATIVE FEE 25
5. OTHER PROVISIONS 25
TABLE A ADMINISTRATIVE FEE 26

MODEL MEDIATION CLAUSE

MODEL MEDIATION CLAUSE

The parties may agree on mediation by including a mediation clause in their contract. The parties may also agree on mediation after a dispute has arisen between them.

Recommended model mediation clause:

Any dispute, controversy or claim arising out of or relating to this contract, or the breach, termination or validity thereof, shall first be submitted to mediation in accordance with the Mediation Rules of the Finland Chamber of Commerce.

Note: Parties may wish to consider adding:

(a) The place of mediation shall be [town and country].

(b) The language of the mediation shall be [language].

The commencement of proceedings under the Mediation Rules shall not prevent any party from commencing arbitration in accordance with the clause below.

Any dispute, controversy or claim arising out of or relating to this contract, or the breach, termination or validity thereof, shall be finally settled by arbitration in accordance with the Arbitration Rules of the Finland Chamber of Commerce.

Note: Parties may wish to consider adding:

(a) The number of arbitrators shall be [one / three].

(b) The seat of arbitration shall be [town and country].

(c) The language of the arbitration shall be [language].

MEDIATION RULES

PREAMBLE

The purpose of this Preamble is to give a brief overview of the characteristics of mediation under the Mediation Rules of the Finland Chamber of Commerce ("Mediation Rules") that the Arbitration Institute of the Finland Chamber of Commerce ("FAI") administers ("FAI Mediation"). More information about mediation and practical guidance on the application of the Mediation Rules is contained in the FAI Mediation Guidelines, which are available on the FAI website.

* * *

Mediation is a voluntary and confidential process in which a neutral third party (a mediator[1]) assists the parties (two or several) in settling their disputes amicably. Mediation also helps to maintain business and personal relationships.

These Mediation Rules have been prepared to provide a flexible, straightforward and user-friendly framework for facilitative mediation. In facilitative mediation, the mediator assists the parties in finding an amicable solution and a negotiated agreement that is acceptable to all parties. The Mediator does not make decisions or rulings as to the merits of the case.

The mediation process is regulated only lightly in the Mediation Rules in order to provide the parties and the mediator with the flexibility to tailor the process to the needs of each particular situation.

As a starting point, a successful mediation requires the participation of party representatives that have the authority to negotiate and agree on a settlement. However, the flexibility of mediation allows the parties and the mediator to, e.g., agree on a process in which the settlement agreement is subject to separate approvals by the decision-making bodies of each party.

The party representatives may, but are not required to, be assisted by counsel. Any other persons, including experts, may be retained to attend the mediation sessions if needed, however always subject to the consent of all parties and the mediator.

[1] Although mediations are usually carried out by one mediator, the parties may also agree on the appointment of several mediators.

The outcome of a mediation, when successful, is a settlement agreement, which is binding on the parties as an agreement. However, in accordance with Article 12 of the Mediation Rules, the parties may, subject to the mediator's consent, agree to appoint the mediator as an arbitrator and request him or her to confirm the settlement agreement in an arbitral award for enforcement purposes. Alternatively, at the request of a party the settlement agreement may also be declared enforceable by a competent court.

Unless so agreed by the parties, an agreement on FAI Mediation does not constitute a bar to any judicial, arbitral or similar proceedings. However, as a practical matter, initiating such parallel proceedings at the outset may impair the parties' chances to benefit from mediation.

CHAPTER I
INTRODUCTORY PROVISIONS

1. SCOPE OF APPLICATION

1.1 When the parties agree to settle any dispute by mediation under these Mediation Rules, this will be deemed to mean that the parties wish the FAI to administer the mediation and the Mediation Rules are part of the agreement to mediate. The parties may agree to deviate from the Mediation Rules for their particular case. However, the FAI may decline to administer the mediation if it considers that these deviations to the Mediation Rules are not compatible with the characteristics of FAI Mediation and the Mediation Rules.

1.2 Unless the parties have agreed otherwise, the Mediation Rules as in effect on the date of the commencement of the mediation as defined in Article 3 shall apply.

CHAPTER II
COMMENCEMENT OF FAI MEDIATION

2. REQUEST FOR MEDIATION

2.1 The party or the parties wishing to initiate mediation under the Mediation Rules shall submit a Request for Mediation to the FAI.

2.2 The Request for Mediation shall contain the following information:

(a) the names and contact details of the parties and of their counsel, if any;

(b) a copy of the mediation agreement under which the dispute is to be settled, if there is a written agreement of the parties to refer the dispute to mediation under the Mediation Rules, or a description of any other type of understanding between the parties to resort to FAI Mediation;

(c) a brief description of the matter including, if possible, an assessment of the monetary value at stake;

(d) any joint nomination by all of the parties of a mediator or, in the absence of a joint nomination, any agreement or proposal as to the qualifications of the mediator to be appointed by the FAI;

(e) description of any time limits for conducting the mediation; and

(f) proof of payment of the Filing Fee prescribed in Article 1 of Appendix I.

2.3 If the parties have agreed on the language of the mediation, the Request for Mediation shall be submitted in that language. In the absence of such agreement, the Request for Mediation shall be submitted in the language of the parties' contract that is subject to dispute.

3. DATE OF COMMENCEMENT OF MEDIATION

FAI Mediation shall be deemed to have commenced on the date on which the Request for Mediation is received by the FAI, regardless of whether it is received in a hard copy or in electronic format.

4. ANSWER

4.1 Where the Request for Mediation is not submitted to the FAI on behalf of all the parties to the matter, the FAI shall transmit a copy of the Request for Mediation to the other party or parties not having requested mediation for an answer (the "Answer").

4.2 The Answer shall state whether the party consents to FAI Mediation and may contain other comments concerning the Request for Mediation, including any comments as to the proposal for a mediator or qualifications of the mediator to be appointed.

4.3 If any of the parties objects to FAI Mediation or does not submit a response within 15 days from the date on which it received the Request for Mediation, or within such additional time as may be reasonably determined by the FAI, the FAI may declare that the mediation has terminated.

CHAPTER III
MEDIATOR

5. APPOINTMENT AND CONFIRMATION OF THE MEDIATOR

5.1 FAI Mediation shall be conducted by one mediator, unless otherwise agreed by the parties.

5.2 The parties may jointly nominate the mediator for confirmation by the FAI within 15 days from the date on which the Request for Mediation was received by the other party or all parties or within such additional time as may be agreed by the parties, or failing such agreement, as may be reasonably determined by the FAI.

5.3 If the parties' agreement provides that several mediators are to be appointed, the parties may jointly nominate any or all of the mediators for confirmation by the FAI within the said time.

5.4 At the request of the parties, the FAI may propose prospective mediators for the parties to consider.

5.5 Where the parties do not jointly nominate a mediator or the mediators, the FAI shall make the appointment. The FAI will make all reasonable efforts to appoint a mediator or mediators that meet the qualifications agreed or proposed by the parties.

5.6 All nominations of mediators are subject to confirmation by the FAI. The appointment of any mediator shall become effective only upon such confirmation.

5.7 The FAI may decline confirmation of a nomination only if the prospective mediator fails to fulfill the requirements of impartiality and independence set forth in Article 6.1, or if he or she is otherwise unsuitable to serve as mediator. The FAI has no obligation to give reasons for its decisions.

5.8 Where the FAI declines confirmation, it may appoint or confirm another mediator if requested to do so by the parties.

5.9 If a party objects to a mediator appointed by the FAI, the FAI may, upon the request of the parties, appoint another mediator or propose other prospective mediators to the parties.

6. IMPARTIALITY AND INDEPENDENCE OF THE MEDIATOR

6.1 Each mediator shall be and must remain impartial and independent of the parties throughout the entire duration of the mediation proceedings.

6.2 Before appointment or confirmation, a prospective mediator shall sign and submit to the FAI a statement of acceptance, availability, impartiality and independence (the "Statement"). The prospective mediator shall disclose in the Statement any circumstances likely to affect his or her availability or to give rise to justifiable doubts as to his or her impartiality or independence.

6.3 The FAI shall transmit a copy of the Statement to all parties and set a time limit within which they may submit comments on the Statement or object to the appointment of the mediator.

6.4 A mediator shall promptly disclose in writing to the FAI, the parties and the other mediators any circumstances referred to in Article 6.2 that may arise during the course of the mediation.

CHAPTER IV
FRAMEWORK OF FAI MEDIATION

7. REFERRAL OF THE MATTER TO THE MEDIATOR

7.1 The FAI shall transmit the case file to the mediator as soon as the mediator has been confirmed in accordance with Article 5.6 and the Filing Fee referred to in Article 1 of Appendix 1 and the advance on costs referred to in Article 14 have been paid.

7.2 The FAI will invite the mediator to promptly contact the parties to agree on the conduct of the mediation, as described in Article 8.

8. CONDUCT OF MEDIATION

8.1 Subject to these Mediation Rules and any agreement by the parties, the mediator shall conduct the mediation expediently and in such a manner as he or she considers appropriate, having regard to the preferences of the parties.

8.2 After consulting with the parties, the mediator shall record in a written note the general manner in which the mediation shall be conducted and communicate the note to the parties.

8.3 The mediator shall keep the FAI informed about the timetable of the mediation.

8.4 The mediator shall treat all parties fairly and equally.

8.5 All participants in FAI Mediation shall act in good faith and make their sincere efforts to reach an amicable settlement in the matter.

8.6 By agreeing to mediate under the Mediation Rules, the parties undertake to be represented by party representatives who have sufficient authority to settle the matter. The party representatives may, but are not required to, be assisted by counsel. Any other persons may participate in the mediation sessions subject to the consent of all parties and the mediator.

8.7 Unless the parties have agreed otherwise, the mediator may arrange confidential private meetings and/or discussions (caucus) with one or more parties without other parties being present. The parties may also request a caucus session with the mediator. The mediator shall not disclose to the other parties information that he or she has obtained in such private meetings and/or discussions, unless the disclosing party has given its consent authorizing such disclosure.

9. PLACE OF MEDIATION AND LANGUAGE

9.1 The mediation may be conducted at any place, in person or through any means of communication, as deemed appropriate by the parties and the mediator. If the parties cannot agree on the place of mediation, the mediator shall decide the place.

9.2 If the parties have not agreed on the language(s) of the mediation, the mediator shall determine the language(s) in which the mediation will be conducted after soliciting the views of the parties.

10. TERMINATION OF FAI MEDIATION

10.1 The mediator shall terminate the FAI Mediation in the event that:

(a) the parties have reached and recorded a settlement;

(b) a party has requested in writing that the mediation be terminated; or

(c) the mediator has concluded in writing that continuation of the mediation is not purposeful.

10.2 The parties' settlement agreement may be confirmed in an arbitral award in accordance with Article 12.

10.3 Before terminating the FAI Mediation, the mediator shall request that the FAI determine the costs of the mediation in accordance with Article 13 and Appendix I.

10.4 The mediator shall notify the parties and the FAI in writing of the termination of the proceedings.

CHAPTER V
RELATIONSHIP BETWEEN FAI MEDIATION AND OTHER JUDICIAL, ARBITRAL OR SIMILAR PROCEEDINGS

11. EFFECT OF AGREEMENT TO MEDIATE

11.1 Unless otherwise agreed by the parties, an agreement on FAI Mediation does not constitute a bar to any judicial, arbitral or similar proceedings.

11.2 Subject to applicable laws, orders, regulations, and rules by the competent judicial authorities, arbitral tribunals, arbitral institutions or similar authorities, the parties may agree to stay any judicial, arbitral or similar proceedings, and to initiate FAI Mediation.

12. CONFIRMING SETTLEMENT IN AN ARBITRAL AWARD

12.1 In case of settlement, the parties may, subject to the consent of the mediator, agree to appoint the mediator as an arbitrator and request him or her to confirm the settlement agreement in an arbitral award in accordance with Section 44.2 of the Arbitration Rules of the Finland Chamber of Commerce ("Arbitration Rules") or Section 42.2 of the Rules for Expedited Arbitration of the Finland Chamber of Commerce ("Expedited Rules"), when applicable.

12.2 Before the acceptance of such appointment as an arbitrator, the mediator shall inform the FAI.

12.3 Before confirming the settlement agreement in an arbitral award, the mediator shall request the FAI to determine the costs of the mediation, including the fee for the work performed as arbitrator, referred to in Article 14 and in Appendix I.

12.4 The provisions of Articles 26, 27, 40, 41, 45, 46 and 49–52 of the Arbitration Rules or Articles 25, 26, 39, 43, 44 and 47–50 of the Expedited Rules, when applicable, shall apply to such proceedings and awards in which a settlement reached in FAI Mediation is confirmed.

12.5 The appointed arbitrator shall transmit an original copy of the award to each of the parties and the FAI without delay.

CHAPTER VI
COSTS OF FAI MEDIATION

13. DETERMINATION OF COSTS OF MEDIATION

13.1 The costs of FAI Mediation include:

(a) the fee of the mediator;

(b) the travel and other expenses incurred by the mediator; and

(c) the Administrative Fee and expenses of the FAI.

13.2 Before terminating the FAI Mediation in accordance with Article 10, the mediator shall request the FAI to determine the costs in accordance with Appendix I.

13.3 Unless otherwise agreed by the parties, the parties shall bear the costs of FAI Mediation in equal shares.

13.4 A party's other expenses in relation to the mediation, such as the fees of its counsel, remain the responsibility of that party, unless otherwise agreed by the parties.

14. ADVANCE ON COSTS

14.1 The FAI shall fix an advance on costs that the parties must pay before the case file is transmitted from the FAI to the mediator. The amount of the advance on costs shall correspond to the expected costs of the mediation pursuant to Article 13.

14.2 Upon request of the mediator, or at its own discretion, the FAI may adjust the advance on costs and either request the parties to pay further advances on costs or reduce the advance on costs. Detailed provisions on the advance on costs fixed by the FAI are set forth in Article 2 of Appendix I.

14.3 After the termination of FAI Mediation in accordance with Article 10, the FAI shall cover the total costs of the mediation, as determined by the FAI, from the advance on costs.

14.4 The FAI shall reimburse the parties for any amount the parties have paid as an advance on costs that exceeds the total costs of the mediation.

14.5 If the advance on costs does not cover the total costs of the mediation determined by the FAI, the parties shall be liable for the payment of the remaining part of the total costs of the mediation (i.e., for the payment of any unpaid part of the mediator's fee and expenses or the FAI's Administrative Fee and expenses).

CHAPTER VII
OTHER PROVISIONS

15. CONFIDENTIALITY

15.1 Unless otherwise agreed by the parties or required by applicable law, the parties, the mediator, the FAI and any other person participating in the proceedings shall keep the existence and outcome of any FAI Mediation confidential, as well as any statement or information made or obtained during the mediation. Any settlement reached through FAI Mediation shall be confidential, except for the purposes of its enforcement or implementation in conformity with the applicable law.

15.2 The parties, the mediator and any other person participating in the proceedings shall not invoke or produce as evidence any information (including, but not limited to, any statements made regarding the possibility to settle the dispute) obtained in the context of FAI Mediation in any subsequent legal proceedings.

15.3 Unless required by applicable law, or unless all of the parties and the mediator agree otherwise, the mediator shall not give testimony in any judicial, arbitral or similar proceedings concerning any aspect of the mediation under the Mediation Rules.

16. LIMITATION OF LIABILITY

Any mediators appointed under the Mediation Rules, the Finland Chamber of Commerce and its employees, the FAI, the members of the FAI Board and the representatives of the FAI Secretariat shall not be liable to any person for any act or omission in connection with the mediation, except to the extent such limitation of liability is prohibited by applicable law.

17. ENTRY INTO FORCE

These Mediation Rules enter into force on 1 June 2016 and apply to all FAI Mediations commenced on or after that date, unless otherwise agreed by the parties.

APPENDIX I

APPENDIX I
SCHEDULE OF MEDIATION FEES AND COSTS

(All amounts in this Appendix are in Euros, hereinafter "EUR")

1. FILING FEE

1.1 The Filing Fee amounts to EUR 1,500.

1.2 The Filing Fee constitutes part of the Administrative Fee referred to in Article 4 below. The Filing Fee shall be credited to the respective party's share on the advance on costs referred to in Article 2 below.

1.3 In case of a joint Request for Mediation, the Filing Fee shall be shared in equal proportions by the parties, unless otherwise agreed by the parties.

1.4 The payment of the Filing Fee shall be made by transfer to the bank account of the Finland Chamber of Commerce.

1.5 The Filing Fee is non-refundable, except if one of the parties objects to FAI Mediation or does not submit a response within the time limit set by the FAI and the FAI declares that the mediation has terminated in accordance with Article 4.3 of the Mediation Rules.

1.6 When the mediation is preceded by the submission of a request for arbitration pursuant to the Arbitration Rules or the Expedited Rules concerning the same parties and the same or parts of the same matter, no Filing Fee shall be charged for the mediation.

1.7 When the mediation is followed by a request for arbitration pursuant to the Arbitration Rules or the Expedited Rules concerning the same parties and the same or parts of the same matter, the Filing Fee paid in the mediation shall be deducted from the filing fee payable in the arbitration proceedings.

2. ADVANCE ON COSTS

2.1 As provided in Article 14 of the Mediation Rules, the advance on costs fixed by the FAI shall correspond to the expected costs of FAI Mediation pursuant to Article 13.1 of the Mediation Rules.

2.2 Unless otherwise agreed by the parties, each party shall pay an equal share of the advance on costs within the time limit set by the FAI.

2.3 Upon request of the mediator, or at its own discretion, the FAI may adjust the advance on costs, and request the parties to pay further advances on costs, at any time during the proceedings to take into account any changes in the amount of the expected costs of FAI Mediation.

2.4 In the event that any part of the advance on costs remains unpaid, the FAI may declare that the mediation has been terminated.

2.5 Each party shall pay its share of the advance on costs in cash. The payment shall be made by transfer to the bank account of the Finland Chamber of Commerce.

2.6 The amounts paid as advances on costs do not yield interest for the parties or the mediator.

3. FEE AND EXPENSES OF THE MEDIATOR

3.1 The mediator's fee shall be determined exclusively by the FAI. Separate fee arrangements between the parties and the mediator are contrary to the Mediation Rules.

3.2 The mediator's fee shall be based on an hourly or daily rate (excluding VAT, if any) fixed by the FAI when appointing or confirming the mediator and after having solicited views of the mediator and the parties. The hourly or daily rate shall be reasonable in amount and shall be determined in light of the nature of the matter and other relevant circumstances.

3.3 When determining the mediator's fee at the end of FAI Mediation, the FAI shall consider the time reasonably spent on the proceedings and any other relevant circumstances.

3.4 Pursuant to Article 13 of the Mediation Rules, the parties shall reimburse the mediator for his or her reasonable travel, accommodation and other expenses incurred during the mediation. The FAI shall determine the reasonableness of such expenses and the extent to which they will be reimbursed.

4. ADMINISTRATIVE FEE

4.1 The Administrative Fee referred to in Article 13 of the Mediation Rules shall be determined taking into account the monetary value of the dispute at stake in accordance with Table A below.

4.2 The monetary value at stake is calculated as the aggregate value of all claims. Where the monetary value cannot be ascertained, the FAI shall determine the Administrative Fee taking into account all relevant circumstances.

4.3 In exceptional circumstances, the FAI may deviate from the fee amounts set out in Table A or require payment of administrative expenses in addition to the Administrative Fee provided in Table A.

4.4 The payment of the Administrative Fee, if not covered in full by the advance on costs fixed by the FAI in accordance with Article 2.1, shall be payable immediately upon request by the FAI and shall be made by transfer to the bank account of the Finland Chamber of Commerce.

5. OTHER PROVISIONS

5.1 The FAI may issue guidelines to supplement the provisions of this Appendix with regard to the payment of the Filing Fee, advance on costs, mediator's fee and expenses, as well as the Administrative Fee and expenses of the FAI.

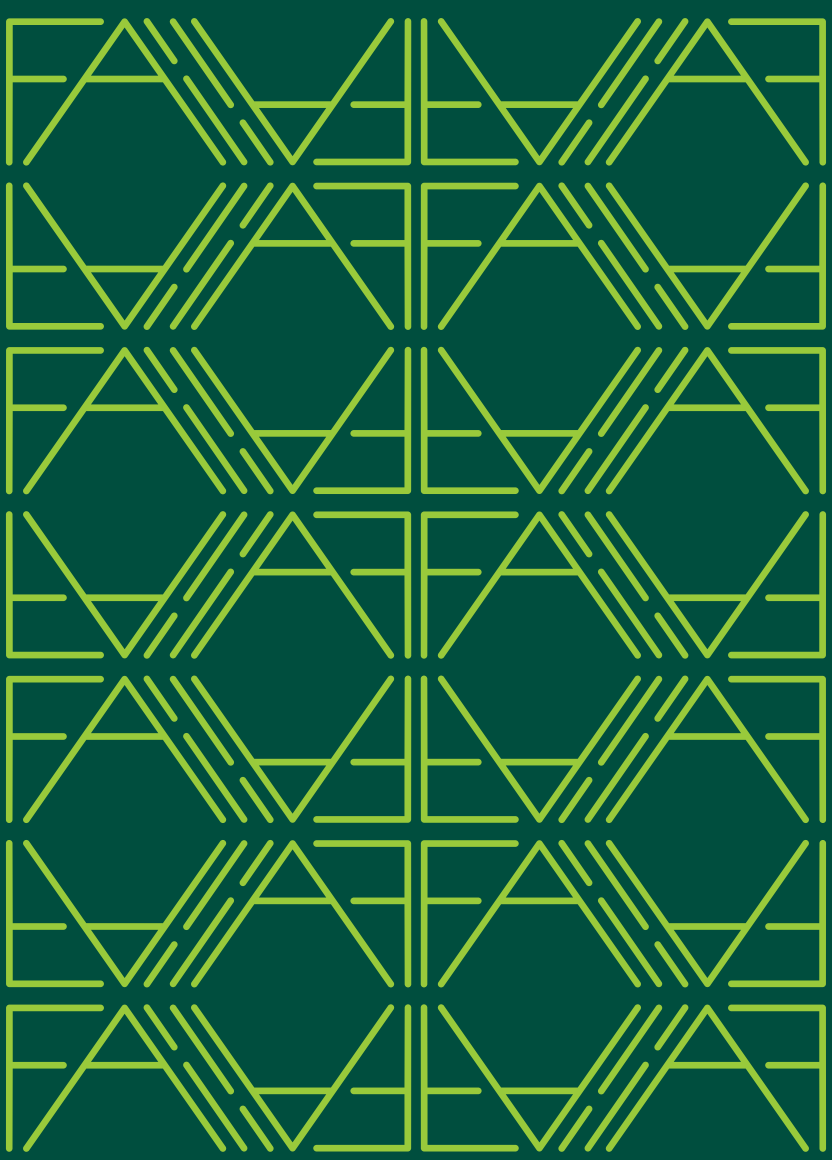
5.2 This Appendix may be separately amended from time to time by the FAI or the Finland Chamber of Commerce.

TABLE A
ADMINISTRATIVE FEE

Monetary value at stake (EUR)	Administrative Fee (EUR)
to 100 000	1 500
from 100 001 to 200 000	2 000
from 200 001 to 300 000	2 500
from 300 001 to 500 000	3 500
from 500 001 to 1 000 000	4 500
from 1 000 001 to 2 000 000	7 000
from 2 000 001 to 5 000 000	9 500
from 5 000 001 to 10 000 000	13 000
from 10 000 001 to 50 000 000	17 000
from 50 000 001 to 100 000 000	21 000
Over 100 000 000	25 000

The Administrative Fee is not subject to VAT.

Adopted by the Finland Chamber of Commerce on 18 May 2016. Some minor corrections have been adopted on 24 November 2016.



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UNCITRAL Model Law on International Commercial Arbitration

1985

With amendments as adopted in 2006

UNITED NATIONS

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UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW

UNCITRAL Model Law on International Commercial Arbitration

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NOTE

Symbols of United Nations documents are composed of capital letters combined with figures. Mention of such a symbol indicates a reference to a United Nations document.

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Contents

Page

Resolutions adopted by the General Assembly . . . . . *vii*

General Assembly Resolution 40/72 (11 December 1985) . . . . . *vii*
General Assembly Resolution 61/33 (4 December 2006) . . . . . *viii*

Part One

UNCITRAL MODEL LAW ON INTERNATIONAL COMMERCIAL ARBITRATION 1

Chapter I. General provisions. 1

Article 1. Scope of application 1
Article 2. Definitions and rules of interpretation 2
Article 2A. International origin and general principles 3
Article 3. Receipt of written communications 3
Article 4. Waiver of right to object 3
Article 5. Extent of court intervention 4
Article 6. Court or other authority for certain functions of arbitration assistance and supervision 4

Chapter II. Arbitration agreement 4

Article 7. *Option I* Definition and form of arbitration agreement 4
Option II Definition of arbitration agreement 5
Article 8. Arbitration agreement and substantive claim before court . . . 5
Article 9. Arbitration agreement and interim measures by court 5

Chapter III. Composition of arbitral tribunal 6

Article 10. Number of arbitrators 6
Article 11. Appointment of arbitrators 6
Article 12. Grounds for challenge 7
Article 13. Challenge procedure 7
Article 14. Failure or impossibility to act 8
Article 15. Appointment of substitute arbitrator 8

Chapter IV. Jurisdiction of arbitral tribunal 8

Article 16. Competence of arbitral tribunal to rule on its jurisdiction . . . 8

Page

Chapter IV A. Interim measures and preliminary orders 9

Section 1. Interim measures 9
Article 17. Power of arbitral tribunal to order interim measures . . . 9
Article 17 A. Conditions for granting interim measures 10

Section 2. Preliminary orders 10
Article 17 B. Applications for preliminary orders and conditions for granting preliminary orders 10
Article 17 C. Specific regime for preliminary orders 10

Section 3. Provisions applicable to interim measures and preliminary orders 11
Article 17 D. Modification, suspension, termination 11
Article 17 E. Provision of security 11
Article 17 F. Disclosure 12
Article 17 G. Costs and damages 12

Section 4. Recognition and enforcement of interim measures 12
Article 17 H. Recognition and enforcement 12
Article 17 I. Grounds for refusing recognition or enforcement 13

Section 5. Court-ordered interim measures 13
Article 17 J. Court-ordered interim measures 13

Chapter V. Conduct of arbitral proceedings 14

Article 18. Equal treatment of parties 14
Article 19. Determination of rules of procedure 14
Article 20. Place of arbitration 14
Article 21. Commencement of arbitral proceedings 14
Article 22. Language 15
Article 23. Statements of claim and defence 15
Article 24. Hearings and written proceedings 15
Article 25. Default of a party 16
Article 26. Expert appointed by arbitral tribunal 16
Article 27. Court assistance in taking evidence 16

Chapter VI. Making of award and termination of proceedings 17

Article 28. Rules applicable to substance of dispute 17
Article 29. Decision-making by panel of arbitrators 17
Article 30. Settlement 17
Article 31. Form and contents of award 18
Article 32. Termination of proceedings 18
Article 33. Correction and interpretation of award; additional award . . . 18

Page

Chapter VII. Recourse against award 19

Article 34. Application for setting aside as exclusive recourse against arbitral award 19

Chapter VIII. Recognition and enforcement of awards 20

Article 35. Recognition and enforcement 20
Article 36. Grounds for refusing recognition or enforcement 21

Part Two

EXPLANATORY NOTE BY THE UNCITRAL SECRETARIAT ON THE MODEL LAW ON INTERNATIONAL COMMERCIAL ARBITRATION 23

A. Background to the Model Law 24
1. Inadequacy of domestic laws 24
2. Disparity between national laws 25

B. Salient features of the Model Law 25
1. Special procedural regime for international commercial arbitration 25
2. Arbitration agreement 27
3. Composition of arbitral tribunal 29
4. Jurisdiction of arbitral tribunal 30
5. Conduct of arbitral proceedings 31
6. Making of award and termination of proceedings 33
7. Recourse against award 34
8. Recognition and enforcement of awards 36

Part Three

"Recommendation regarding the interpretation of article II, paragraph 2, and article VII, paragraph 1, of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, done in New York, 10 June 1958", adopted by the United Nations Commission on International Trade Law on 7 July 2006 at its thirty-ninth session 39

Resolutions adopted by the General Assembly

40/72. Model Law on International Commercial Arbitration of the United Nations Commission on International Trade Law

The General Assembly,

Recognizing the value of arbitration as a method of settling disputes arising in international commercial relations,

Convinced that the establishment of a model law on arbitration that is acceptable to States with different legal, social and economic systems contributes to the development of harmonious international economic relations,

Noting that the Model Law on International Commercial Arbitration[1] was adopted by the United Nations Commission on International Trade Law at its eighteenth session, after due deliberation and extensive consultation with arbitral institutions and individual experts on international commercial arbitration,

Convinced that the Model Law, together with the Convention on the Recognition and Enforcement of Foreign Arbitral Awards[2] and the Arbitration Rules of the United Nations Commission on International Trade Law[3] recommended by the General Assembly in its resolution 31/98 of 15 December 1976, significantly contributes to the establishment of a unified legal framework for the fair and efficient settlement of disputes arising in international commercial relations,

1. *Requests* the Secretary-General to transmit the text of the Model Law on International Commercial Arbitration of the United Nations Commission on International Trade Law, together with the *travaux préparatoires* from the eighteenth session of the Commission, to Governments and to arbitral institutions and other interested bodies, such as chambers of commerce;

2. *Recommends* that all States give due consideration to the Model Law on International Commercial Arbitration, in view of the desirability of uniformity of the law of arbitral procedures and the specific needs of international commercial arbitration practice.

112th plenary meeting
11 December 1985

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[1] *Official Records of the General Assembly, Fortieth Session, Supplement No. 17* (A/40/17), annex I.

[2] United Nations, *Treaty Series*, vol. 330, No. 4739, p. 38.

[3] United Nations publication, Sales No. E.77.V.6.

[*on the report of the Sixth Committee (A/61/453)*]

61/33. Revised articles of the Model Law on International Commercial Arbitration of the United Nations Commission on International Trade Law, and the recommendation regarding the interpretation of article II, paragraph 2, and article VII, paragraph 1, of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, done at New York, 10 June 1958

The General Assembly,

Recognizing the value of arbitration as a method of settling disputes arising in the context of international commercial relations,

Recalling its resolution 40/72 of 11 December 1985 regarding the Model Law on International Commercial Arbitration,[1]

Recognizing the need for provisions in the Model Law to conform to current practices in international trade and modern means of contracting with regard to the form of the arbitration agreement and the granting of interim measures,

Believing that revised articles of the Model Law on the form of the arbitration agreement and interim measures reflecting those current practices will significantly enhance the operation of the Model Law,

Noting that the preparation of the revised articles of the Model Law on the form of the arbitration agreement and interim measures was the subject of due deliberation and extensive consultations with Governments and interested circles and would contribute significantly to the establishment of a harmonized legal framework for a fair and efficient settlement of international commercial disputes,

Believing that, in connection with the modernization of articles of the Model Law, the promotion of a uniform interpretation and application of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, done at New York, 10 June 1958,[2] is particularly timely,

1. *Expresses its appreciation* to the United Nations Commission on International Trade Law for formulating and adopting the revised articles of its Model Law on International Commercial Arbitration on the form of the arbitration agreement and interim measures, the text of which is contained in annex I to the report of the United Nations Commission on International Trade Law on the work of its thirty-ninth session,[3] and recommends that all States give favourable consideration to the enactment of the revised articles of the Model Law, or the revised Model Law on International Commercial Arbitration of the United Nations Commission on

[1] *Official Records of the General Assembly, Fortieth Session, Supplement No. 17* (A/40/17), annex I.

[2] United Nations, *Treaty Series*, vol. 330, No. 4739.

[3] *Official Records of the General Assembly, Sixty-first Session, Supplement No. 17* (A/61/17).

International Trade Law, when they enact or revise their laws, in view of the desirability of uniformity of the law of arbitral procedures and the specific needs of international commercial arbitration practice;

2. *Also expresses its appreciation* to the United Nations Commission on International Trade Law for formulating and adopting the recommendation regarding the interpretation of article II, paragraph 2, and article VII, paragraph 1, of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, done at New York, 10 June 1958,[2] the text of which is contained in annex II to the report of the United Nations Commission on International Trade Law on the work of its thirty-ninth session;[3]

3. *Requests* the Secretary-General to make all efforts to ensure that the revised articles of the Model Law and the recommendation become generally known and available.

64th plenary meeting
4 December 2006

Part One

UNCITRAL Model Law on International Commercial Arbitration

(United Nations documents A/40/17, annex I and A/61/17, annex I)

(As adopted by the United Nations Commission on International Trade Law on 21 June 1985, and as amended by the United Nations Commission on International Trade Law on 7 July 2006)

CHAPTER I. GENERAL PROVISIONS

Article 1. Scope of application[1]

(1) This Law applies to international commercial[2] arbitration, subject to any agreement in force between this State and any other State or States.

(2) The provisions of this Law, except articles 8, 9, 17 H, 17 I, 17 J, 35 and 36, apply only if the place of arbitration is in the territory of this State.

(Article 1(2) has been amended by the Commission at its thirty-ninth session, in 2006)

(3) An arbitration is international if:

(a) the parties to an arbitration agreement have, at the time of the conclusion of that agreement, their places of business in different States; or

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[1]Article headings are for reference purposes only and are not to be used for purposes of interpretation.

[2]The term "commercial" should be given a wide interpretation so as to cover matters arising from all relationships of a commercial nature, whether contractual or not. Relationships of a commercial nature include, but are not limited to, the following transactions: any trade transaction for the supply or exchange of goods or services; distribution agreement; commercial representation or agency; factoring; leasing; construction of works; consulting; engineering; licensing; investment; financing; banking; insurance; exploitation agreement or concession; joint venture and other forms of industrial or business cooperation; carriage of goods or passengers by air, sea, rail or road.

(b) one of the following places is situated outside the State in which the parties have their places of business:

(i) the place of arbitration if determined in, or pursuant to, the arbitration agreement;

(ii) any place where a substantial part of the obligations of the commercial relationship is to be performed or the place with which the subject-matter of the dispute is most closely connected; or

(c) the parties have expressly agreed that the subject matter of the arbitration agreement relates to more than one country.

(4) For the purposes of paragraph (3) of this article:

(a) if a party has more than one place of business, the place of business is that which has the closest relationship to the arbitration agreement;

(b) if a party does not have a place of business, reference is to be made to his habitual residence.

(5) This Law shall not affect any other law of this State by virtue of which certain disputes may not be submitted to arbitration or may be submitted to arbitration only according to provisions other than those of this Law.

Article 2. Definitions and rules of interpretation

For the purposes of this Law:

(a) "arbitration" means any arbitration whether or not administered by a permanent arbitral institution;

(b) "arbitral tribunal" means a sole arbitrator or a panel of arbitrators;

(c) "court" means a body or organ of the judicial system of a State;

(d) where a provision of this Law, except article 28, leaves the parties free to determine a certain issue, such freedom includes the right of the parties to authorize a third party, including an institution, to make that determination;

(e) where a provision of this Law refers to the fact that the parties have agreed or that they may agree or in any other way refers to an agreement of the parties, such agreement includes any arbitration rules referred to in that agreement;

(f) where a provision of this Law, other than in articles 25*(a)* and 32(2) *(a)*, refers to a claim, it also applies to a counter-claim, and where it refers to a defence, it also applies to a defence to such counter-claim.

Article 2 A. International origin and general principles

(As adopted by the Commission at its thirty-ninth session, in 2006)

(1) In the interpretation of this Law, regard is to be had to its international origin and to the need to promote uniformity in its application and the observance of good faith.

(2) Questions concerning matters governed by this Law which are not expressly settled in it are to be settled in conformity with the general principles on which this Law is based.

Article 3. Receipt of written communications

(1) Unless otherwise agreed by the parties:

(a) any written communication is deemed to have been received if it is delivered to the addressee personally or if it is delivered at his place of business, habitual residence or mailing address; if none of these can be found after making a reasonable inquiry, a written communication is deemed to have been received if it is sent to the addressee's last-known place of business, habitual residence or mailing address by registered letter or any other means which provides a record of the attempt to deliver it;

(b) the communication is deemed to have been received on the day it is so delivered.

(2) The provisions of this article do not apply to communications in court proceedings.

Article 4. Waiver of right to object

A party who knows that any provision of this Law from which the parties may derogate or any requirement under the arbitration agreement has not been complied with and yet proceeds with the arbitration without stating his objection to such non-compliance without undue delay or, if a time-limit is provided therefor, within such period of time, shall be deemed to have waived his right to object.

Article 5. Extent of court intervention

In matters governed by this Law, no court shall intervene except where so provided in this Law.

Article 6. Court or other authority for certain functions of arbitration assistance and supervision

The functions referred to in articles 11(3), 11(4), 13(3), 14, 16(3) and 34(2) shall be performed by ... [Each State enacting this model law specifies the court, courts or, where referred to therein, other authority competent to perform these functions.]

CHAPTER II. ARBITRATION AGREEMENT

Option I

Article 7. Definition and form of arbitration agreement

(As adopted by the Commission at its thirty-ninth session, in 2006)

(1) "Arbitration agreement" is an agreement by the parties to submit to arbitration all or certain disputes which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not. An arbitration agreement may be in the form of an arbitration clause in a contract or in the form of a separate agreement.

(2) The arbitration agreement shall be in writing.

(3) An arbitration agreement is in writing if its content is recorded in any form, whether or not the arbitration agreement or contract has been concluded orally, by conduct, or by other means.

(4) The requirement that an arbitration agreement be in writing is met by an electronic communication if the information contained therein is accessible so as to be useable for subsequent reference; "electronic communication" means any communication that the parties make by means of data messages; "data message" means information generated, sent, received or stored by electronic, magnetic, optical or similar means, including, but not

limited to, electronic data interchange (EDI), electronic mail, telegram, telex or telecopy.

(5) Furthermore, an arbitration agreement is in writing if it is contained in an exchange of statements of claim and defence in which the existence of an agreement is alleged by one party and not denied by the other.

(6) The reference in a contract to any document containing an arbitration clause constitutes an arbitration agreement in writing, provided that the reference is such as to make that clause part of the contract.

Option II

Article 7. Definition of arbitration agreement

(As adopted by the Commission at its thirty-ninth session, in 2006)

"Arbitration agreement" is an agreement by the parties to submit to arbitration all or certain disputes which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not.

Article 8. Arbitration agreement and substantive claim before court

(1) A court before which an action is brought in a matter which is the subject of an arbitration agreement shall, if a party so requests not later than when submitting his first statement on the substance of the dispute, refer the parties to arbitration unless it finds that the agreement is null and void, inoperative or incapable of being performed.

(2) Where an action referred to in paragraph (1) of this article has been brought, arbitral proceedings may nevertheless be commenced or continued, and an award may be made, while the issue is pending before the court.

Article 9. Arbitration agreement and interim measures by court

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

CHAPTER III. COMPOSITION OF ARBITRAL TRIBUNAL

Article 10. Number of arbitrators

(1) The parties are free to determine the number of arbitrators.

(2) Failing such determination, the number of arbitrators shall be three.

Article 11. Appointment of arbitrators

(1) No person shall be precluded by reason of his nationality from acting as an arbitrator, unless otherwise agreed by the parties.

(2) The parties are free to agree on a procedure of appointing the arbitrator or arbitrators, subject to the provisions of paragraphs (4) and (5) of this article.

(3) Failing such agreement,

(a) in an arbitration with three arbitrators, each party shall appoint one arbitrator, and the two arbitrators thus appointed shall appoint the third arbitrator; if a party fails to appoint the arbitrator within thirty days of receipt of a request to do so from the other party, or if the two arbitrators fail to agree on the third arbitrator within thirty days of their appointment, the appointment shall be made, upon request of a party, by the court or other authority specified in article 6;

(b) in an arbitration with a sole arbitrator, if the parties are unable to agree on the arbitrator, he shall be appointed, upon request of a party, by the court or other authority specified in article 6.

(4) Where, under an appointment procedure agreed upon by the parties,

(a) a party fails to act as required under such procedure, or

(b) the parties, or two arbitrators, are unable to reach an agreement expected of them under such procedure, or

(c) a third party, including an institution, fails to perform any function entrusted to it under such procedure,

any party may request the court or other authority specified in article 6 to take the necessary measure, unless the agreement on the appointment procedure provides other means for securing the appointment.

(5) A decision on a matter entrusted by paragraph (3) or (4) of this article to the court or other authority specified in article 6 shall be subject to no

appeal. The court or other authority, in appointing an arbitrator, shall have due regard to any qualifications required of the arbitrator by the agreement of the parties and to such considerations as are likely to secure the appointment of an independent and impartial arbitrator and, in the case of a sole or third arbitrator, shall take into account as well the advisability of appointing an arbitrator of a nationality other than those of the parties.

Article 12. Grounds for challenge

(1) When a person is approached in connection with his possible appointment as an arbitrator, he shall disclose any circumstances likely to give rise to justifiable doubts as to his impartiality or independence. An arbitrator, from the time of his appointment and throughout the arbitral proceedings, shall without delay disclose any such circumstances to the parties unless they have already been informed of them by him.

(2) 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 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 13. 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, a 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 any circumstance referred to in article 12(2), send a written statement of the reasons for the challenge to the arbitral tribunal. Unless the challenged arbitrator withdraws from his office or the other party agrees to the challenge, the arbitral tribunal 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 thirty days after having received notice of the decision rejecting the challenge, the court or other authority specified in article 6 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 14. Failure or impossibility to act

(1) If an arbitrator becomes *de jure* or *de facto* unable to perform his functions or for other reasons fails to act without undue delay, his mandate terminates if he withdraws from his office or if the parties agree on the termination. Otherwise, if a controversy remains concerning any of these grounds, any party may request the court or other authority specified in article 6 to decide on the termination of the mandate, which decision shall be subject to no appeal.

(2) If, under this article or article 13(2), an arbitrator withdraws from his office or a party agrees to the termination of the mandate of an arbitrator, this does not imply acceptance of the validity of any ground referred to in this article or article 12(2).

Article 15. Appointment of substitute arbitrator

Where the mandate of an arbitrator terminates under article 13 or 14 or because of his withdrawal from office for any other reason or because of the revocation of his mandate by agreement of the parties or in any other case of termination of his mandate, a substitute arbitrator shall be appointed according to the rules that were applicable to the appointment of the arbitrator being replaced.

CHAPTER IV. JURISDICTION OF ARBITRAL TRIBUNAL

Article 16. Competence of arbitral tribunal to rule on its jurisdiction

(1) The arbitral tribunal may rule on its own jurisdiction, including any objections with respect to the existence or validity of the arbitration agreement. For that purpose, an arbitration clause which forms part of a contract shall be treated as an agreement independent of the other terms of the contract. A decision by the arbitral tribunal that the contract is null and void shall not entail *ipso jure* the invalidity of the arbitration clause.

(2) A plea that the arbitral tribunal does not have jurisdiction shall be raised not later than the submission of the statement of defence. A party is not precluded from raising such a plea by the fact that he has appointed, or participated in the appointment of, an arbitrator. A plea that the arbitral tribunal is exceeding 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 arbitral proceedings. The arbitral tribunal may, in either case, admit a later plea if it considers the delay justified.

(3) The arbitral tribunal may rule on a plea referred to in paragraph (2) of this article either as a preliminary question or in an award on the merits. If the arbitral tribunal rules as a preliminary question that it has jurisdiction, any party may request, within thirty days after having received notice of that ruling, the court specified in article 6 to decide the matter, which decision shall be subject to no appeal; while such a request is pending, the arbitral tribunal may continue the arbitral proceedings and make an award.

CHAPTER IV A. INTERIM MEASURES AND PRELIMINARY ORDERS

(As adopted by the Commission at its thirty-ninth session, in 2006)

Section 1. Interim measures

Article 17. Power of arbitral tribunal to order interim measures

(1) Unless otherwise agreed by the parties, the arbitral tribunal may, at the request of a party, grant interim measures.

(2) An interim measure is any 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, current or imminent harm or prejudice to the arbitral process itself;

(c) Provide a means of preserving assets out of which a subsequent award may be satisfied; or

(d) Preserve evidence that may be relevant and material to the resolution of the dispute.

Article 17 A. Conditions for granting interim measures

(1) The party requesting an interim measure under article 17(2)*(a)*, *(b)* and *(c)* shall satisfy the arbitral tribunal that:

(a) Harm not adequately reparable by an award of damages is likely to result if the measure is not ordered, and such harm substantially outweighs the harm that is likely to result to the party against whom the measure is directed if the measure is granted; and

(b) There is a reasonable possibility that the requesting party will succeed on the merits of the claim. The determination on this possibility shall not affect the discretion of the arbitral tribunal in making any subsequent determination.

(2) With regard to a request for an interim measure under article 17(2)*(d)*, the requirements in paragraphs (1)*(a)* and *(b)* of this article shall apply only to the extent the arbitral tribunal considers appropriate.

Section 2. Preliminary orders

Article 17 B. Applications for preliminary orders and conditions for granting preliminary orders

(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 17A apply to any preliminary order, provided that the harm to be assessed under article 17A(1)*(a)*, is the harm likely to result from the order being granted or not.

Article 17 C. 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 communication, between any party and the arbitral tribunal in relation thereto.

(2) At the same time, the arbitral tribunal shall give an opportunity to any party against whom a preliminary order is directed to present its case at the earliest practicable time.

(3) The arbitral tribunal shall decide promptly on any objection to the preliminary order.

(4) A preliminary order shall expire after twenty 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 court. Such a preliminary order does not constitute an award.

Section 3. Provisions applicable to interim measures and preliminary orders

Article 17 D. Modification, suspension, termination

The arbitral tribunal may modify, suspend or terminate an interim measure or a preliminary order it has granted, upon application of any party or, in exceptional circumstances and upon prior notice to the parties, on the arbitral tribunal's own initiative.

Article 17 E. Provision of security

(1) The arbitral tribunal may require the party requesting an interim measure to provide appropriate security in connection with the measure.

(2) The arbitral tribunal shall require the party applying for a preliminary order to provide security in connection with the order unless the arbitral tribunal considers it inappropriate or unnecessary to do so.

Article 17 F. Disclosure

(1) The arbitral tribunal may require any party promptly to disclose 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 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 17 G. Costs and damages

The party requesting an interim measure or applying for a preliminary order shall be liable for any costs and damages caused by the measure or the order to any party if the arbitral tribunal later determines that, in the circumstances, the measure or the order should not have been granted. The arbitral tribunal may award such costs and damages at any point during the proceedings.

Section 4. Recognition and enforcement of interim measures

Article 17 H. Recognition and enforcement

(1) An interim measure issued by an arbitral tribunal shall be recognized as binding and, unless otherwise provided by the arbitral tribunal, enforced upon application to the competent court, irrespective of the country in which it was issued, subject to the provisions of article 17 I.

(2) The party who is seeking or has obtained recognition or enforcement of an interim measure shall promptly inform the court of any termination, suspension or modification of that interim measure.

(3) The court of the State where recognition or enforcement 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.

Article 17 I. Grounds for refusing recognition or enforcement[3]

(1) Recognition or enforcement of an interim measure may be refused 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 36(1)*(a)*(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 court finds that:

(i) The interim measure is incompatible with the powers conferred upon the court 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 set forth in article 36(1)*(b)*(i) or (ii), apply to the recognition and enforcement of the interim measure.

(2) Any determination made by the court on any ground in paragraph (1) of this article shall be effective only for the purposes of the application to recognize and enforce the interim measure. The court where recognition or enforcement is sought shall not, in making that determination, undertake a review of the substance of the interim measure.

Section 5. Court-ordered interim measures

Article 17 J. Court-ordered interim measures

A court shall have the same power of issuing an interim measure in relation to arbitration proceedings, irrespective of whether their place is in

[3]The conditions set forth in article 17 I are intended to limit the number of circumstances in which the court may refuse to enforce an interim measure. It would not be contrary to the level of harmonization sought to be achieved by these model provisions if a State were to adopt fewer circumstances in which enforcement may be refused.

the territory of this State, as it has in relation to proceedings in courts. The court shall exercise such power in accordance with its own procedures in consideration of the specific features of international arbitration.

CHAPTER V. CONDUCT OF ARBITRAL PROCEEDINGS

Article 18. Equal treatment of parties

The parties shall be treated with equality and each party shall be given a full opportunity of presenting his case.

Article 19. Determination of rules of procedure

(1) Subject to the provisions of this Law, the parties are free to agree on the procedure to be followed by the arbitral tribunal in conducting the proceedings.

(2) Failing such agreement, the arbitral tribunal may, subject to the provisions of this Law, conduct the arbitration in such manner as it considers appropriate. The power conferred upon the arbitral tribunal includes the power to determine the admissibility, relevance, materiality and weight of any evidence.

Article 20. 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 for consultation among its members, for hearing witnesses, experts or the parties, or for inspection of goods, other property or documents.

Article 21. Commencement of arbitral proceedings

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.

Article 22. Language

(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. This agreement or determination, unless otherwise specified therein, shall apply to any written statement by a party, any hearing and any award, decision or other communication by the arbitral tribunal.

(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 23. Statements of claim and defence

(1) Within the period of time agreed by the parties or determined by the arbitral tribunal, the claimant shall state the facts supporting his claim, the points at issue and the relief or remedy sought, and the respondent shall state 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 their statements all documents they consider to be relevant or may add a reference to the documents or other evidence they will submit.

(2) Unless otherwise agreed by the parties, either party may amend or supplement his claim or defence during the course of the arbitral proceedings, unless the arbitral tribunal considers it inappropriate to allow such amendment having regard to the delay in making it.

Article 24. Hearings and written proceedings

(1) Subject to any contrary agreement by the parties, the arbitral tribunal shall decide whether to hold oral hearings for the presentation of evidence or for oral argument, or whether the proceedings shall be conducted on the basis of documents and other materials. However, unless the parties have agreed that no hearings shall be held, the arbitral tribunal shall hold such hearings at an appropriate stage of the proceedings, if so requested by a party.

(2) The parties shall be given sufficient advance notice of any hearing and of any meeting of the arbitral tribunal for the purposes of inspection of goods, other property or documents.

(3) All 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 25. Default of a party

Unless otherwise agreed by the parties, if, without showing sufficient cause,

(a) the claimant fails to communicate his statement of claim in accordance with article 23(1), the arbitral tribunal shall terminate the proceedings;

(b) the respondent fails to communicate his statement of defence in accordance with article 23(1), the arbitral tribunal shall continue the proceedings without treating such failure in itself as an admission of the claimant's allegations;

(c) any party fails to appear at a hearing or to produce documentary evidence, the arbitral tribunal may continue the proceedings and make the award on the evidence before it.

Article 26. Expert appointed by arbitral tribunal

(1) Unless otherwise agreed by the parties, the arbitral tribunal

(a) may appoint one or more experts to report to it on specific issues to be determined by the arbitral tribunal;

(b) may require a party to give the expert any relevant information or to produce, or to provide access to, any relevant documents, goods or other property for his inspection.

(2) 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 written or oral report, participate in a hearing where the parties have the opportunity to put questions to him and to present expert witnesses in order to testify on the points at issue.

Article 27. Court assistance in taking evidence

The arbitral tribunal or a party with the approval of the arbitral tribunal may request from a competent court of this State assistance in taking evidence.

The court may execute the request within its competence and according to its rules on taking evidence.

CHAPTER VI. MAKING OF AWARD AND TERMINATION OF PROCEEDINGS

Article 28. Rules applicable to substance of dispute

(1) The arbitral tribunal shall decide the dispute in accordance with such rules of law as are chosen by the parties as applicable to the substance of the dispute. Any designation of the law or legal system of a given State shall be construed, unless otherwise expressed, 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 determined by the conflict of laws rules which it considers applicable.

(3) The arbitral tribunal shall decide *ex aequo et bono* or as *amiable compositeur* only if the parties have expressly authorized it to do so.

(4) In all cases, the arbitral tribunal shall decide in accordance with the terms of the contract and shall take into account the usages of the trade applicable to the transaction.

Article 29. Decision-making by panel of arbitrators

In arbitral proceedings with more than one arbitrator, any decision of the arbitral tribunal shall be made, unless otherwise agreed by the parties, by a majority of all its members. However, questions of procedure may be decided by a presiding arbitrator, if so authorized by the parties or all members of the arbitral tribunal.

Article 30. Settlement

(1) If, during arbitral proceedings, the parties settle the dispute, the arbitral tribunal shall terminate the proceedings and, if requested by the parties and not objected to by the arbitral tribunal, record the settlement in the form of an arbitral award on agreed terms.

(2) An award on agreed terms shall be made in accordance with the provisions of article 31 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 31. Form and contents 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, provided that the reason for any omitted signature is stated.

(2) 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 30.

(3) The award shall state its date and the place of arbitration as determined in accordance with article 20(1). The award shall be deemed to have been made at that place.

(4) After the award is made, a copy signed by the arbitrators in accordance with paragraph (1) of this article shall be delivered to each party.

Article 32. 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 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 other 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 articles 33 and 34(4).

Article 33. Correction and interpretation of award; additional award

(1) Within thirty days of receipt of the award, unless another period of time has been agreed upon by the parties:

(a) a party, with notice to the other party, may request the arbitral

tribunal to correct in the award any errors in computation, any clerical or typographical errors or any errors of similar nature;

(b) if so agreed by the parties, a party, with notice to the other party, may request the arbitral tribunal to give an interpretation of a specific point or part of the award.

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

(2) The arbitral tribunal may correct any error of the type referred to in paragraph (1)*(a)* of this article on its own initiative within thirty days of the date of the award.

(3) Unless otherwise agreed by the parties, a party, with notice to the other party, may request, within thirty days of receipt of the award, the arbitral tribunal to make an additional award as to 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 sixty days.

(4) 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) or (3) of this article.

(5) The provisions of article 31 shall apply to a correction or interpretation of the award or to an additional award.

CHAPTER VII. RECOURSE AGAINST AWARD

Article 34. Application for setting aside as exclusive recourse against arbitral award

(1) Recourse to a court against an arbitral award may be made only by an application for setting aside in accordance with paragraphs (2) and (3) of this article.

(2) An arbitral award may be set aside by the court specified in article 6 only if:

(a) the party making the application furnishes proof that:

(i) a party to the arbitration agreement referred to in article 7 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 this State; or

(ii) the party making the application 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 or not falling within the terms of the submission to arbitration, or contains decisions on matters beyond the scope of the submission to arbitration, provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, only that part of the award which contains decisions on matters not submitted to arbitration may be set aside; 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; or

(b) the court finds that:

(i) the subject-matter of the dispute is not capable of settlement by arbitration under the law of this State; or

(ii) the award is in conflict with the public policy of this State.

(3) An application for setting aside may not be made after three months have elapsed from the date on which the party making that application had received the award or, if a request had been made under article 33, from the date on which that request had been disposed of by the arbitral tribunal.

(4) The court, when asked to set aside an award, may, where appropriate and 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 an 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.

CHAPTER VIII. RECOGNITION AND ENFORCEMENT OF AWARDS

Article 35. Recognition and enforcement

(1) An arbitral award, irrespective of the country in which it was made, shall be recognized as binding and, upon application in writing to the

competent court, shall be enforced subject to the provisions of this article and of article 36.

(2) The party relying on an award or applying for its enforcement shall supply the original award or a copy thereof. If the award is not made in an official language of this State, the court may request the party to supply a translation thereof into such language.[4]

(Article 35(2) has been amended by the Commission at its thirty-ninth session, in 2006)

Article 36. Grounds for refusing recognition or enforcement

(1) Recognition or enforcement of an arbitral award, irrespective of the country in which it was made, may be refused only:

(a) at the request of the party against whom it 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 referred to in article 7 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 his case; or

(iii) the award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration, 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

[4]The conditions set forth in this paragraph are intended to set maximum standards. It would, thus, not be contrary to the harmonization to be achieved by the model law if a State retained even less onerous conditions.

(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 the law of this State; or

(ii) the recognition or enforcement of the award would be contrary to the public policy of this State.

(2) If an application for setting aside or suspension of an award has been made to a court referred to in paragraph (1)*(a)*(v) of this article, the 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 or enforcement of the award, order the other party to provide appropriate security.

Part Two

Explanatory Note by the UNCITRAL secretariat on the 1985 Model Law on International Commercial Arbitration as amended in 2006[1]

1. The UNCITRAL Model Law on International Commercial Arbitration ("the Model Law") was adopted by the United Nations Commission on International Trade Law (UNCITRAL) on 21 June 1985, at the end of the eighteenth session of the Commission. The General Assembly, in its resolution 40/72 of 11 December 1985, recommended "that all States give due consideration to the Model Law on International Commercial Arbitration, in view of the desirability of uniformity of the law of arbitral procedures and the specific needs of international commercial arbitration practice". The Model Law was amended by UNCITRAL on 7 July 2006, at the thirty-ninth session of the Commission (see below, paragraphs 4, 19, 20, 27, 29 and 53). The General Assembly, in its resolution 61/33 of 4 December 2006, recommended "that all States give favourable consideration to the enactment of the revised articles of the UNCITRAL Model Law on International Commercial Arbitration, or the revised UNCITRAL Model Law on International Commercial Arbitration, when they enact or revise their laws (…)".

2. The Model Law constitutes a sound basis for the desired harmonization and improvement of national laws. It covers all stages of the arbitral process from the arbitration agreement to the recognition and enforcement of the arbitral award and reflects a worldwide consensus on the principles and important issues of international arbitration practice. It is acceptable to States of all regions and the different legal or economic systems of the world. Since its adoption by UNCITRAL, the Model Law has come to represent the accepted international legislative standard for a modern arbitration law and a significant number of jurisdictions have enacted arbitration legislation based on the Model Law.

3. The form of a model law was chosen as the vehicle for harmonization and modernization in view of the flexibility it gives to States in preparing new arbitration laws. Notwithstanding that flexibility, and in order to increase the likelihood of achieving a satisfactory degree of harmonization, States are encouraged to make

[1]This note was prepared by the secretariat of the United Nations Commission on International Trade Law (UNCITRAL) for informational purposes only; it is not an official commentary on the Model Law. A commentary prepared by the Secretariat on an early draft of the Model Law appears in document A/CN.9/264 (reproduced in UNCITRAL Yearbook, vol. XVI — 1985, United Nations publication, Sales No. E.87.V.4).

as few changes as possible when incorporating the Model Law into their legal systems. Efforts to minimize variation from the text adopted by UNCITRAL are also expected to increase the visibility of harmonization, thus enhancing the confidence of foreign parties, as the primary users of international arbitration, in the reliability of arbitration law in the enacting State.

4. The revision of the Model Law adopted in 2006 includes article 2 A, which is designed to facilitate interpretation by reference to internationally accepted principles and is aimed at promoting a uniform understanding of the Model Law. Other substantive amendments to the Model Law relate to the form of the arbitration agreement and to interim measures. The original 1985 version of the provision on the form of the arbitration agreement (article 7) was modelled on the language used in article II (2) of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 1958) ("the New York Convention"). The revision of article 7 is intended to address evolving practice in international trade and technological developments. The extensive revision of article 17 on interim measures was considered necessary in light of the fact that such measures are increasingly relied upon in the practice of international commercial arbitration. The revision also includes an enforcement regime for such measures in recognition of the fact that the effectiveness of arbitration frequently depends upon the possibility of enforcing interim measures. The new provisions are contained in a new chapter of the Model Law on interim measures and preliminary orders (chapter IV A).

A. Background to the Model Law

5. The Model Law was developed to address considerable disparities in national laws on arbitration. The need for improvement and harmonization was based on findings that national laws were often particularly inappropriate for international cases.

1. Inadequacy of domestic laws

6. Recurrent inadequacies to be found in outdated national laws include provisions that equate the arbitral process with court litigation and fragmentary provisions that fail to address all relevant substantive law issues. Even most of those laws that appear to be up-to-date and comprehensive were drafted with domestic arbitration primarily, if not exclusively, in mind. While this approach is understandable in view of the fact that even today the bulk of cases governed by arbitration law would be of a purely domestic nature, the unfortunate consequence is that traditional local concepts are imposed on international cases and the needs of modern practice are often not met.

7. The expectations of the parties as expressed in a chosen set of arbitration rules or a "one-off" arbitration agreement may be frustrated, especially by mandatory provisions of applicable law. Unexpected and undesired restrictions found in national

laws may prevent the parties, for example, from submitting future disputes to arbitration, from selecting the arbitrator freely, or from having the arbitral proceedings conducted according to agreed rules of procedure and with no more court involvement than appropriate. Frustration may also ensue from non-mandatory provisions that may impose undesired requirements on unwary parties who may not think about the need to provide otherwise when drafting the arbitration agreement. Even the absence of any legislative provision may cause difficulties simply by leaving unanswered some of the many procedural issues relevant in arbitration and not always settled in the arbitration agreement. The Model Law is intended to reduce the risk of such possible frustration, difficulties or surprise.

2. Disparity between national laws

8. Problems stemming from inadequate arbitration laws or from the absence of specific legislation governing arbitration are aggravated by the fact that national laws differ widely. Such differences are a frequent source of concern in international arbitration, where at least one of the parties is, and often both parties are, confronted with foreign and unfamiliar provisions and procedures. Obtaining a full and precise account of the law applicable to the arbitration is, in such circumstances often expensive, impractical or impossible.

9. Uncertainty about the local law with the inherent risk of frustration may adversely affect the functioning of the arbitral process and also impact on the selection of the place of arbitration. Due to such uncertainty, a party may hesitate or refuse to agree to a place, which for practical reasons would otherwise be appropriate. The range of places of arbitration acceptable to parties is thus widened and the smooth functioning of the arbitral proceedings is enhanced where States adopt the Model Law, which is easily recognizable, meets the specific needs of international commercial arbitration and provides an international standard based on solutions acceptable to parties from different legal systems.

B. Salient features of the Model Law

1. Special procedural regime for international commercial arbitration

10. The principles and solutions adopted in the Model Law aim at reducing or eliminating the above-mentioned concerns and difficulties. As a response to the inadequacies and disparities of national laws, the Model Law presents a special legal regime tailored to international commercial arbitration, without affecting any relevant treaty in force in the State adopting the Model Law. While the Model Law was designed with international commercial arbitration in mind, it offers a set of basic rules that are not, in and of themselves, unsuitable to any other type of arbitration. States may thus consider extending their enactment of the Model Law to cover also domestic disputes, as a number of enacting States already have.

(a) Substantive and territorial scope of application

11. Article 1 defines the scope of application of the Model Law by reference to the notion of "international commercial arbitration". The Model Law defines an arbitration as international if "the parties to an arbitration agreement have, at the time of the conclusion of that agreement, their places of business in different States" (article 1 (3)). The vast majority of situations commonly regarded as international will meet this criterion. In addition, article 1 (3) broadens the notion of internationality so that the Model Law also covers cases where the place of arbitration, the place of contract performance, or the place of the subject-matter of the dispute is situated outside the State where the parties have their place of business, or cases where the parties have expressly agreed that the subject-matter of the arbitration agreement relates to more than one country. Article 1 thus recognizes extensively the freedom of the parties to submit a dispute to the legal regime established pursuant to the Model Law.

12. In respect of the term "commercial", the Model Law provides no strict definition. The footnote to article 1 (1) calls for "a wide interpretation" and offers an illustrative and open-ended list of relationships that might be described as commercial in nature, "whether contractual or not". The purpose of the footnote is to circumvent any technical difficulty that may arise, for example, in determining which transactions should be governed by a specific body of "commercial law" that may exist in some legal systems.

13. Another aspect of applicability is the territorial scope of application. The principle embodied in article 1 (2) is that the Model Law as enacted in a given State applies only if the place of arbitration is in the territory of that State. However, article 1 (2) also contains important exceptions to that principle, to the effect that certain articles apply, irrespective of whether the place of arbitration is in the enacting State or elsewhere (or, as the case may be, even before the place of arbitration is determined). These articles are the following: articles 8 (1) and 9, which deal with the recognition of arbitration agreements, including their compatibility with interim measures ordered by a court, article 17 J on court-ordered interim measures, articles 17 H and 17 I on the recognition and enforcement of interim measures ordered by an arbitral tribunal, and articles 35 and 36 on the recognition and enforcement of arbitral awards.

14. The territorial criterion governing most of the provisions of the Model Law was adopted for the sake of certainty and in view of the following facts. In most legal systems, the place of arbitration is the exclusive criterion for determining the applicability of national law and, where the national law allows parties to choose the procedural law of a State other than that where the arbitration takes place, experience shows that parties rarely make use of that possibility. Incidentally, enactment of the Model Law reduces any need for the parties to choose a "foreign" law, since the Model Law grants the parties wide freedom in shaping the rules of the arbitral proceedings. In addition to designating the law governing the arbitral procedure, the territorial criterion is of considerable practical importance in respect of articles 11, 13, 14, 16, 27 and 34, which entrust State courts at the place of

arbitration with functions of supervision and assistance to arbitration. It should be noted that the territorial criterion legally triggered by the parties' choice regarding the place of arbitration does not limit the arbitral tribunal's ability to meet at any place it considers appropriate for the conduct of the proceedings, as provided by article 20 (2).

(b) Delimitation of court assistance and supervision

15. Recent amendments to arbitration laws reveal a trend in favour of limiting and clearly defining court involvement in international commercial arbitration. This is justified in view of the fact that the parties to an arbitration agreement make a conscious decision to exclude court jurisdiction and prefer the finality and expediency of the arbitral process.

16. In this spirit, the Model Law envisages court involvement in the following instances. A first group comprises issues of appointment, challenge and termination of the mandate of an arbitrator (articles 11, 13 and 14), jurisdiction of the arbitral tribunal (article 16) and setting aside of the arbitral award (article 34). These instances are listed in article 6 as functions that should be entrusted, for the sake of centralization, specialization and efficiency, to a specially designated court or, with respect to articles 11, 13 and 14, possibly to another authority (for example, an arbitral institution or a chamber of commerce). A second group comprises issues of court assistance in taking evidence (article 27), recognition of the arbitration agreement, including its compatibility with court-ordered interim measures (articles 8 and 9), court-ordered interim measures (article 17 J), and recognition and enforcement of interim measures (articles 17 H and 17 I) and of arbitral awards (articles 35 and 36).

17. Beyond the instances in these two groups, "no court shall intervene, in matters governed by this Law". Article 5 thus guarantees that all instances of possible court intervention are found in the piece of legislation enacting the Model Law, except for matters not regulated by it (for example, consolidation of arbitral proceedings, contractual relationship between arbitrators and parties or arbitral institutions, or fixing of costs and fees, including deposits). Protecting the arbitral process from unpredictable or disruptive court interference is essential to parties who choose arbitration (in particular foreign parties).

2. Arbitration agreement

18. Chapter II of the Model Law deals with the arbitration agreement, including its recognition by courts.

(a) Definition and form of arbitration agreement

19. The original 1985 version of the provision on the definition and form of arbitration agreement (article 7) closely followed article II (2) of the New York

Convention, which requires that an arbitration agreement be in writing. If the parties have agreed to arbitrate, but they entered into the arbitration agreement in a manner that does not meet the form requirement, any party may have grounds to object to the jurisdiction of the arbitral tribunal. It was pointed out by practitioners that, in a number of situations, the drafting of a written document was impossible or impractical. In such cases, where the willingness of the parties to arbitrate was not in question, the validity of the arbitration agreement should be recognized. For that reason, article 7 was amended in 2006 to better conform to international contract practices. In amending article 7, the Commission adopted two options, which reflect two different approaches on the question of definition and form of arbitration agreement. The first approach follows the detailed structure of the original 1985 text. It confirms the validity and effect of a commitment by the parties to submit to arbitration an existing dispute ("*compromis*") or a future dispute ("*clause compromissoire*"). It follows the New York Convention in requiring the written form of the arbitration agreement but recognizes a record of the "contents" of the agreement "in any form" as equivalent to traditional "writing". The agreement to arbitrate may be entered into in any form (e.g. including orally) as long as the content of the agreement is recorded. This new rule is significant in that it no longer requires signatures of the parties or an exchange of messages between the parties. It modernizes the language referring to the use of electronic commerce by adopting wording inspired from the 1996 UNCITRAL Model Law on Electronic Commerce and the 2005 United Nations Convention on the Use of Electronic Communications in International Contracts. It covers the situation of "an exchange of statements of claim and defence in which the existence of an agreement is alleged by one party and not denied by another". It also states that "the reference in a contract to any document" (for example, general conditions) "containing an arbitration clause constitutes an arbitration agreement in writing provided that the reference is such as to make that clause part of the contract". It thus clarifies that applicable contract law remains available to determine the level of consent necessary for a party to become bound by an arbitration agreement allegedly made "by reference". The second approach defines the arbitration agreement in a manner that omits any form requirement. No preference was expressed by the Commission in favour of either option I or II, both of which are offered for enacting States to consider, depending on their particular needs, and by reference to the legal context in which the Model Law is enacted, including the general contract law of the enacting State. Both options are intended to preserve the enforceability of arbitration agreements under the New York Convention.

20. In that respect, the Commission also adopted, at its thirty-ninth session in 2006, a "Recommendation regarding the interpretation of article II, paragraph 2, and article VII, paragraph 1, of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, done in New York, 10 June 1958" (A/61/17, Annex 2).[2] The General Assembly, in its resolution 61/33 of 4 December 2006 noted that "in connection with the modernization of articles of the Model Law, the promotion of a uniform interpretation and application of the Convention on the Recognition and

[2]Reproduced in Part Three hereafter.

Enforcement of Foreign Arbitral Awards, done in New York, 10 June 1958, is particularly timely". The Recommendation was drafted in recognition of the widening use of electronic commerce and enactments of domestic legislation as well as case law, which are more favourable than the New York Convention in respect of the form requirement governing arbitration agreements, arbitration proceedings, and the enforcement of arbitral awards. The Recommendation encourages States to apply article II (2) of the New York Convention "recognizing that the circumstances described therein are not exhaustive". In addition, the Recommendation encourages States to adopt the revised article 7 of the Model Law. Both options of the revised article 7 establish a more favourable regime for the recognition and enforcement of arbitral awards than that provided under the New York Convention. By virtue of the "more favourable law provision" contained in article VII (1) of the New York Convention, the Recommendation clarifies that "any interested party" should be allowed "to avail itself of rights it may have, under the law or treaties of the country where an arbitration agreement is sought to be relied upon, to seek recognition of the validity of such an arbitration agreement".

(b) Arbitration agreement and the courts

21. Articles 8 and 9 deal with two important aspects of the complex relationship between the arbitration agreement and the resort to courts. Modelled on article II (3) of the New York Convention, article 8 (1) of the Model Law places any court under an obligation to refer the parties to arbitration if the court is seized with a claim on the same subject-matter unless it finds that the arbitration agreement is null and void, inoperative or incapable of being performed. The referral is dependent on a request, which a party may make not later than when submitting its first statement on the substance of the dispute. This provision, where adopted by a State enacting the Model Law, is by its nature binding only on the courts of that State. However, since article 8 is not limited in scope to agreements providing for arbitration to take place in the enacting State, it promotes the universal recognition and effect of international commercial arbitration agreements.

22. Article 9 expresses the principle that any interim measures of protection that may be obtained from courts under their procedural law (for example, pre-award attachments) are compatible with an arbitration agreement. That provision is ultimately addressed to the courts of any State, insofar as it establishes the compatibility between interim measures possibly issued by any court and an arbitration agreement, irrespective of the place of arbitration. Wherever a request for interim measures may be made to a court, it may not be relied upon, under the Model Law, as a waiver or an objection against the existence or effect of the arbitration agreement.

3. Composition of arbitral tribunal

23. Chapter III contains a number of detailed provisions on appointment, challenge, termination of mandate and replacement of an arbitrator. The chapter illustrates the

general approach taken by the Model Law in eliminating difficulties that arise from inappropriate or fragmentary laws or rules. First, the approach recognizes the freedom of the parties to determine, by reference to an existing set of arbitration rules or by an ad hoc agreement, the procedure to be followed, subject to the fundamental requirements of fairness and justice. Secondly, where the parties have not exercised their freedom to lay down the rules of procedure or they have failed to cover a particular issue, the Model Law ensures, by providing a set of suppletive rules, that the arbitration may commence and proceed effectively until the dispute is resolved.

24. Where under any procedure, agreed upon by the parties or based upon the suppletive rules of the Model Law, difficulties arise in the process of appointment, challenge or termination of the mandate of an arbitrator, articles 11, 13 and 14 provide for assistance by courts or other competent authorities designated by the enacting State. In view of the urgency of matters relating to the composition of the arbitral tribunal or its ability to function, and in order to reduce the risk and effect of any dilatory tactics, short time-periods are set and decisions rendered by courts or other authorities on such matters are not appealable.

4. Jurisdiction of arbitral tribunal

(a) Competence to rule on own jurisdiction

25. Article 16 (1) adopts the two important (not yet generally recognized) principles of "*Kompetenz-Kompetenz*" and of separability or autonomy of the arbitration clause. "*Kompetenz-Kompetenz*" means that the arbitral tribunal may independently rule on the question of whether it has jurisdiction, including any objections with respect to the existence or validity of the arbitration agreement, without having to resort to a court. Separability means that an arbitration clause shall be treated as an agreement independent of the other terms of the contract. As a consequence, a decision by the arbitral tribunal that the contract is null and void shall not entail *ipso jure* the invalidity of the arbitration clause. Detailed provisions in paragraph (2) require that any objections relating to the arbitrators' jurisdiction be made at the earliest possible time.

26. The competence of the arbitral tribunal to rule on its own jurisdiction (i.e. on the foundation, content and extent of its mandate and power) is, of course, subject to court control. Where the arbitral tribunal rules as a preliminary question that it has jurisdiction, article 16 (3) allows for immediate court control in order to avoid waste of time and money. However, three procedural safeguards are added to reduce the risk and effect of dilatory tactics: short time-period for resort to court (30 days), court decision not appealable, and discretion of the arbitral tribunal to continue the proceedings and make an award while the matter is pending before the court. In those cases where the arbitral tribunal decides to combine its decision on jurisdiction with an award on the merits, judicial review on the question of jurisdiction is available in setting aside proceedings under article 34 or in enforcement proceedings under article 36.

(b) Power to order interim measures and preliminary orders

27. Chapter IV A on interim measures and preliminary orders was adopted by the Commission in 2006. It replaces article 17 of the original 1985 version of the Model Law. Section 1 provides a generic definition of interim measures and sets out the conditions for granting such measures. An important innovation of the revision lies in the establishment (in section 4) of a regime for the recognition and enforcement of interim measures, which was modelled, as appropriate, on the regime for the recognition and enforcement of arbitral awards under articles 35 and 36 of the Model Law.

28. Section 2 of chapter IV A deals with the application for, and conditions for the granting of, preliminary orders. Preliminary orders provide a means for preserving the status quo until the arbitral tribunal issues an interim measure adopting or modifying the preliminary order. Article 17 B (1) provides that "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". Article 17 B (2) permits an arbitral tribunal to grant a preliminary order if "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". Article 17 C contains carefully drafted safeguards for the party against whom the preliminary order is directed, such as prompt notification of the application for the preliminary order and of the preliminary order itself (if any), and an opportunity for that party to present its case "at the earliest practicable time". In any event, a preliminary order has a maximum duration of twenty days and, while binding on the parties, is not subject to court enforcement and does not constitute an award. The term "preliminary order" is used to emphasize its limited nature.

29. Section 3 sets out rules applicable to both preliminary orders and interim measures.

30. Section 5 includes article 17 J on interim measures ordered by courts in support of arbitration, and provides that "a court shall have the same power of issuing an interim measure in relation to arbitration proceedings irrespective of whether their place is in the territory of the enacting State, as it has in relation to proceedings in courts". That article has been added in 2006 to put it beyond any doubt that the existence of an arbitration agreement does not infringe on the powers of the competent court to issue interim measures and that the party to such an arbitration agreement is free to approach the court with a request to order interim measures.

5. Conduct of arbitral proceedings

31. Chapter V provides the legal framework for a fair and effective conduct of the arbitral proceedings. Article 18, which sets out fundamental requirements of procedural justice, and article 19 on the rights and powers to determine the rules of procedure, express principles that are central to the Model Law.

(a) Fundamental procedural rights of a party

32. Article 18 embodies the principles that the parties shall be treated with equality and given a full opportunity of presenting their case. A number of provisions illustrate those principles. For example, article 24 (1) provides that, unless the parties have agreed that no oral hearings be held for the presentation of evidence or for oral argument, the arbitral tribunal shall hold such hearings at an appropriate stage of the proceedings, if so requested by a party. It should be noted that article 24 (1) deals only with the general entitlement of a party to oral hearings (as an alternative to proceedings conducted on the basis of documents and other materials) and not with the procedural aspects, such as the length, number or timing of hearings.

33. Another illustration of those principles relates to evidence by an expert appointed by the arbitral tribunal. Article 26 (2) requires the expert, after delivering his or her written or oral report, to participate in a hearing where the parties may put questions to the expert and present expert witnesses to testify on the points at issue, if such a hearing is requested by a party or deemed necessary by the arbitral tribunal. As another provision aimed at ensuring fairness, objectivity and impartiality, article 24 (3) provides that all statements, documents and other information supplied to the arbitral tribunal by one party shall be communicated to the other party, and that any expert report or evidentiary document on which the arbitral tribunal may rely in making its decision shall be communicated to the parties. In order to enable the parties to be present at any hearing and at any meeting of the arbitral tribunal for inspection purposes, they shall be given sufficient notice in advance (article 24 (2)).

(b) Determination of rules of procedure

34. Article 19 guarantees the parties' freedom to agree on the procedure to be followed by the arbitral tribunal in conducting the proceedings, subject to a few mandatory provisions on procedure, and empowers the arbitral tribunal, failing agreement by the parties, to conduct the arbitration in such a manner as it considers appropriate. The power conferred upon the arbitral tribunal includes the power to determine the admissibility, relevance, materiality and weight of any evidence.

35. Autonomy of the parties in determining the rules of procedure is of special importance in international cases since it allows the parties to select or tailor the rules according to their specific wishes and needs, unimpeded by traditional and possibly conflicting domestic concepts, thus obviating the earlier mentioned risk of frustration or surprise (see above, paras. 7 and 9). The supplementary discretion of the arbitral tribunal is equally important in that it allows the tribunal to tailor the conduct of the proceedings to the specific features of the case without being hindered by any restraint that may stem from traditional local law, including any domestic rule on evidence. Moreover, it provides grounds for displaying initiative in solving any procedural question not regulated in the arbitration agreement or the Model Law.

36. In addition to the general provisions of article 19, other provisions in the Model Law recognize party autonomy and, failing agreement, empower the arbitral tribunal to decide on certain matters. Examples of particular practical importance in international cases are article 20 on the place of arbitration and article 22 on the language to be used in the proceedings.

(c) Default of a party

37. The arbitral proceedings may be continued in the absence of a party, provided that due notice has been given. This applies, in particular, to the failure of the respondent to communicate its statement of defence (article 25 *(b)*). The arbitral tribunal may also continue the proceedings where a party fails to appear at a hearing or to produce documentary evidence without showing sufficient cause for the failure (article 25 *(c)*). However, if the claimant fails to submit its statement of claim, the arbitral tribunal is obliged to terminate the proceedings (article 25 *(a)*).

38. Provisions that empower the arbitral tribunal to carry out its task even if one of the parties does not participate are of considerable practical importance. As experience shows, it is not uncommon for one of the parties to have little interest in cooperating or expediting matters. Such provisions therefore provide international commercial arbitration its necessary effectiveness, within the limits of fundamental requirements of procedural justice.

6. Making of award and termination of proceedings

(a) Rules applicable to substance of dispute

39. Article 28 deals with the determination of the rules of law governing the substance of the dispute. Under paragraph (1), the arbitral tribunal decides the dispute in accordance with the rules of law chosen by the parties. This provision is significant in two respects. It grants the parties the freedom to choose the applicable substantive law, which is important where the national law does not clearly or fully recognize that right. In addition, by referring to the choice of "rules of law" instead of "law", the Model Law broadens the range of options available to the parties as regards the designation of the law applicable to the substance of the dispute. For example, parties may agree on rules of law that have been elaborated by an international forum but have not yet been incorporated into any national legal system. Parties could also choose directly an instrument such as the United Nations Convention on Contracts for the International Sale of Goods as the body of substantive law governing the arbitration, without having to refer to the national law of any State party to that Convention. The power of the arbitral tribunal, on the other hand, follows more traditional lines. When the parties have not chosen the applicable law, the arbitral tribunal shall apply the law (i.e., the national law) determined by the conflict-of-laws rules that it considers applicable.

40. Article 28 (3) recognizes that the parties may authorize the arbitral tribunal to decide the dispute *ex aequo et bono* or as *amiables compositeur*. This type of arbitration (where the arbitral tribunal may decide the dispute on the basis of principles it believes to be just, without having to refer to any particular body of law) is currently not known or used in all legal systems. The Model Law does not intend to regulate this area. It simply calls the attention of the parties on the need to provide clarification in the arbitration agreement and specifically to empower the arbitral tribunal. However, paragraph (4) makes it clear that in all cases where the dispute relates to a contract (including arbitration *ex aequo et bono*) the arbitral tribunal must decide in accordance with the terms of the contract and shall take into account the usages of the trade applicable to the transaction.

(b) Making of award and other decisions

41. In its rules on the making of the award (articles 29-31), the Model Law focuses on the situation where the arbitral tribunal consists of more than one arbitrator. In such a situation, any award and other decision shall be made by a majority of the arbitrators, except on questions of procedure, which may be left to a presiding arbitrator. The majority principle applies also to the signing of the award, provided that the reason for any omitted signature is stated.

42. Article 31 (3) provides that the award shall state the place of arbitration and shall be deemed to have been made at that place. The effect of the deeming provision is to emphasize that the final making of the award constitutes a legal act, which in practice does not necessarily coincide with one factual event. For the same reason that the arbitral proceedings need not be carried out at the place designated as the legal "place of arbitration", the making of the award may be completed through deliberations held at various places, by telephone or correspondence. In addition, the award does not have to be signed by the arbitrators physically gathering at the same place.

43. The arbitral award must be in writing and state its date. It must also state the reasons on which it is based, unless the parties have agreed otherwise or the award is "on agreed terms" (i.e., an award that records the terms of an amicable settlement by the parties). It may be added that the Model Law neither requires nor prohibits "dissenting opinions".

7. Recourse against award

44. The disparity found in national laws as regards the types of recourse against an arbitral award available to the parties presents a major difficulty in harmonizing international arbitration legislation. Some outdated laws on arbitration, by establishing parallel regimes for recourse against arbitral awards or against court decisions, provide various types of recourse, various (and often long) time periods for exercising the recourse, and extensive lists of grounds on which recourse may be based.

That situation (of considerable concern to those involved in international commercial arbitration) is greatly improved by the Model Law, which provides uniform grounds upon which (and clear time periods within which) recourse against an arbitral award may be made.

(a) Application for setting aside as exclusive recourse

45. The first measure of improvement is to allow only one type of recourse, to the exclusion of any other recourse regulated in any procedural law of the State in question. Article 34 (1) provides that the sole recourse against an arbitral award is by application for setting aside, which must be made within three months of receipt of the award (article 34 (3)). In regulating "recourse" (i.e., the means through which a party may actively "attack" the award), article 34 does not preclude a party from seeking court control by way of defence in enforcement proceedings (articles 35 and 36). Article 34 is limited to action before a court (i.e., an organ of the judicial system of a State). However, a party is not precluded from appealing to an arbitral tribunal of second instance if the parties have agreed on such a possibility (as is common in certain commodity trades).

(b) Grounds for setting aside

46. As a further measure of improvement, the Model Law lists exhaustively the grounds on which an award may be set aside. This list essentially mirrors that contained in article 36 (1), which is taken from article V of the New York Convention. The grounds provided in article 34 (2) are set out in two categories. Grounds which are to be proven by one party are as follows: lack of capacity of the parties to conclude an arbitration agreement; lack of a valid arbitration agreement; lack of notice of appointment of an arbitrator or of the arbitral proceedings or inability of a party to present its case; the award deals with matters not covered by the submission to arbitration; the composition of the arbitral tribunal or the conduct of arbitral proceedings are contrary to the effective agreement of the parties or, failing such agreement, to the Model Law. Grounds that a court may consider of its own initiative are as follows: non-arbitrability of the subject-matter of the dispute or violation of public policy (which is to be understood as serious departures from fundamental notions of procedural justice).

47. The approach under which the grounds for setting aside an award under the Model Law parallel the grounds for refusing recognition and enforcement of the award under article V of the New York Convention is reminiscent of the approach taken in the European Convention on International Commercial Arbitration (Geneva, 1961). Under article IX of the latter Convention, the decision of a foreign court to set aside an award for a reason other than the ones listed in article V of the New York Convention does not constitute a ground for refusing enforcement. The Model Law takes this philosophy one step further by directly limiting the reasons for setting aside.

48. Although the grounds for setting aside as set out in article 34 (2) are almost identical to those for refusing recognition or enforcement as set out in article 36 (1), a practical difference should be noted. An application for setting aside under article 34 (2) may only be made to a court in the State where the award was rendered whereas an application for enforcement might be made in a court in any State. For that reason, the grounds relating to public policy and non-arbitrability may vary in substance with the law applied by the court (in the State of setting aside or in the State of enforcement).

8. Recognition and enforcement of awards

49. The eighth and last chapter of the Model Law deals with the recognition and enforcement of awards. Its provisions reflect the significant policy decision that the same rules should apply to arbitral awards whether made in the country of enforcement or abroad, and that those rules should follow closely the New York Convention.

(a) Towards uniform treatment of all awards irrespective of country of origin

50. By treating awards rendered in international commercial arbitration in a uniform manner irrespective of where they were made, the Model Law distinguishes between "international" and "non-international" awards instead of relying on the traditional distinction between "foreign" and "domestic" awards. This new line is based on substantive grounds rather than territorial borders, which are inappropriate in view of the limited importance of the place of arbitration in international cases. The place of arbitration is often chosen for reasons of convenience of the parties and the dispute may have little or no connection with the State where the arbitration legally takes place. Consequently, the recognition and enforcement of "international" awards, whether "foreign" or "domestic", should be governed by the same provisions.

51. By modelling the recognition and enforcement rules on the relevant provisions of the New York Convention, the Model Law supplements, without conflicting with, the regime of recognition and enforcement created by that successful Convention.

(b) Procedural conditions of recognition and enforcement

52. Under article 35 (1) any arbitral award, irrespective of the country in which it was made, shall be recognized as binding and enforceable, subject to the provisions of article 35 (2) and of article 36 (the latter of which sets forth the grounds on which recognition or enforcement may be refused). Based on the above consideration of the limited importance of the place of arbitration in international cases and the desire of overcoming territorial restrictions, reciprocity is not included as a condition for recognition and enforcement.

53. The Model Law does not lay down procedural details of recognition and enforcement, which are left to national procedural laws and practices. The Model Law merely sets certain conditions for obtaining enforcement under article 35 (2). It was amended in 2006 to liberalize formal requirements and reflect the amendment made to article 7 on the form of the arbitration agreement. Presentation of a copy of the arbitration agreement is no longer required under article 35 (2).

(c) Grounds for refusing recognition or enforcement

54. Although the grounds on which recognition or enforcement may be refused under the Model Law are identical to those listed in article V of the New York Convention, the grounds listed in the Model Law are relevant not only to foreign awards but to all awards rendered in the sphere of application of the piece of legislation enacting the Model Law. Generally, it was deemed desirable to adopt, for the sake of harmony, the same approach and wording as this important Convention. However, the first ground on the list as contained in the New York Convention (which provides that recognition and enforcement may be refused if "the parties to the arbitration agreement were, under the law applicable to them, under some incapacity") was modified since it was viewed as containing an incomplete and potentially misleading conflict-of-laws rule.

Further information on the Model Law may be obtained from:

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Part Three

Recommendation regarding the interpretation of article II, paragraph 2, and article VII, paragraph 1, of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, done in New York, 10 June 1958, adopted by the United Nations Commission on International Trade Law on 7 July 2006 at its thirty-ninth session

The United Nations Commission on International Trade Law,

Recalling General Assembly resolution 2205 (XXI) of 17 December 1966, which established the United Nations Commission on International Trade Law with the object of promoting the progressive harmonization and unification of the law of international trade by, inter alia, promoting ways and means of ensuring a uniform interpretation and application of international conventions and uniform laws in the field of the law of international trade,

Conscious of the fact that the different legal, social and economic systems of the world, together with different levels of development, are represented in the Commission,

Recalling successive resolutions of the General Assembly reaffirming the mandate of the Commission as the core legal body within the United Nations system in the field of international trade law to coordinate legal activities in this field,

Convinced that the wide adoption of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, done in New York on 10 June 1958,[1] has been a significant achievement in the promotion of the rule of law, particularly in the field of international trade,

Recalling that the Conference of Plenipotentiaries which prepared and opened the Convention for signature adopted a resolution, which states, inter alia, that the Conference "considers that greater uniformity of national laws on arbitration would further the effectiveness of arbitration in the settlement of private law disputes",

Bearing in mind differing interpretations of the form requirements under the Convention that result in part from differences of expression as between the five equally authentic texts of the Convention,

---

[1]United Nations, *Treaty Series*, vol. 330, No. 4739.

Taking into account article VII, paragraph 1, of the Convention, a purpose of which is to enable the enforcement of foreign arbitral awards to the greatest extent, in particular by recognizing the right of any interested party to avail itself of law or treaties of the country where the award is sought to be relied upon, including where such law or treaties offer a regime more favourable than the Convention,

Considering the wide use of electronic commerce,

Taking into account international legal instruments, such as the 1985 UNCITRAL Model Law on International Commercial Arbitration,[2] as subsequently revised, particularly with respect to article 7,[3] the UNCITRAL Model Law on Electronic Commerce,[4] the UNCITRAL Model Law on Electronic Signatures[5] and the United Nations Convention on the Use of Electronic Communications in International Contracts,[6]

Taking into account also enactments of domestic legislation, as well as case law, more favourable than the Convention in respect of form requirement governing arbitration agreements, arbitration proceedings and the enforcement of arbitral awards,

Considering that, in interpreting the Convention, regard is to be had to the need to promote recognition and enforcement of arbitral awards,

1. *Recommends* that article II, paragraph 2, of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, done in New York, 10 June 1958, be applied recognizing that the circumstances described therein are not exhaustive;

2. *Recommends also* that article VII, paragraph 1, of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, done in New York, 10 June 1958, should be applied to allow any interested party to avail itself of rights it may have, under the law or treaties of the country where an arbitration agreement is sought to be relied upon, to seek recognition of the validity of such an arbitration agreement.

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[2]*Official Records of the General Assembly, Fortieth Session, Supplement No. 17* (A/40/17), annex I, and United Nations publication, Sales No. E.95.V.18.

[3]Ibid., *Sixty-first Session, Supplement No. 17* (A/61/17), annex I.

[4]Ibid., *Fifty-first Session, Supplement No. 17* (A/51/17), annex I, and United Nations publication, Sales No. E.99.V.4, which contains also an additional article 5 bis, adopted in 1998, and the accompanying Guide to Enactment.

[5]Ibid., *Fifty-sixth Session, Supplement No. 17* and corrigendum (A/56/17 and Corr.3), annex II, and United Nations publication, Sales No. E.02.V.8, which contains also the accompanying Guide to Enactment.

[6]General Assembly resolution 60/21, annex.

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CONVENTION ON THE RECOGNITION AND ENFORCEMENT OF FOREIGN ARBITRAL AWARDS

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Convention on the Recognition and Enforcement of Foreign Arbitral Awards

(New York, 1958)

UNITED NATIONS

The United Nations Commission on International Trade Law (UNCITRAL) is a subsidiary body of the General Assembly. It plays an important role in improving the legal framework for international trade by preparing international legislative texts for use by States in modernizing the law of international trade and non-legislative texts for use by commercial parties in negotiating transactions. UNCITRAL legislative texts address international sale of goods; international commercial dispute resolution, including both arbitration and conciliation; electronic commerce; insolvency, including cross-border insolvency; international transport of goods; international payments; procurement and infrastructure development; and security interests. Non-legislative texts include rules for conduct of arbitration and conciliation proceedings; notes on organizing and conducting arbitral proceedings; and legal guides on industrial construction contracts and countertrade.

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UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW

Convention on the Recognition and Enforcement of Foreign Arbitral Awards

(New York, 1958)

UNITED NATIONS
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NOTE

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Contents

Page

Introduction 1

Part one. United Nations Conference on International Commercial Arbitration, New York, 20 May–10 June 1958 5

Excerpts from the Final Act of the United Nations Conference on International Commercial Arbitration 5

Convention on the Recognition and Enforcement of Foreign Arbitral Awards 8

Part two. Recommendation regarding the interpretation of article II, paragraph 2, and article VII, paragraph 1, of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards 15

General Assembly resolution 61/33 of 4 December 2006 15

Recommendation regarding the interpretation of article II, paragraph 2, and article VII, paragraph 1, of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, done in New York, 10 June 1958, adopted by the United Nations Commission on International Trade Law on 7 July 2006 at its thirty-ninth session 17

Introduction

Objectives

Recognizing the growing importance of international arbitration as a means of settling international commercial disputes, the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the Convention) seeks to provide common legislative standards for the recognition of arbitration agreements and court recognition and enforcement of foreign and non-domestic arbitral awards. The term "non-domestic" appears to embrace awards which, although made in the state of enforcement, are treated as "foreign" under its law because of some foreign element in the proceedings, e.g. another State's procedural laws are applied.

The Convention's principal aim is that foreign and non-domestic arbitral awards will not be discriminated against and it obliges Parties to ensure such awards are recognized and generally capable of enforcement in their jurisdiction in the same way as domestic awards. An ancillary aim of the Convention is to require courts of Parties to give full effect to arbitration agreements by requiring courts to deny the parties access to court in contravention of their agreement to refer the matter to an arbitral tribunal.

Key provisions

The Convention applies to awards made in any State other than the State in which recognition and enforcement is sought. It also applies to awards "not considered as domestic awards". When consenting to be bound by the Convention, a State may declare that it will apply the Convention *(a)* in respect to awards made only in the territory of another Party and *(b)* only to legal relationships that are considered "commercial" under its domestic law.

The Convention contains provisions on arbitration agreements. This aspect was covered in recognition of the fact that an award could be refused enforcement on the grounds that the agreement upon which it was based might not be recognized. Article II (1) provides that Parties shall recognize

written arbitration agreements. In that respect, UNCITRAL adopted, at its thirty-ninth session in 2006, a Recommendation that seeks to provide guidance to Parties on the interpretation of the requirement in article II (2) that an arbitration agreement be in writing and to encourage application of article VII (1) to allow any interested party to avail itself of rights it may have, under the law or treaties of the country where an arbitration agreement is sought to be relied upon, to seek recognition of the validity of such an arbitration agreement.

The central obligation imposed upon Parties is to recognize all arbitral awards within the scheme as binding and enforce them, if requested to do so, under the lex fori. Each Party may determine the procedural mechanisms that may be followed where the Convention does not prescribe any requirement.

The Convention defines five grounds upon which recognition and enforcement may be refused at the request of the party against whom it is invoked. The grounds include incapacity of the parties, invalidity of the arbitration agreement, due process, scope of the arbitration agreement, jurisdiction of the arbitral tribunal, setting aside or suspension of an award in the country in which, or under the law of which, that award was made. The Convention defines two additional grounds upon which the court may, on its own motion, refuse recognition and enforcement of an award. Those grounds relate to arbitrability and public policy.

The Convention seeks to encourage recognition and enforcement of awards in the greatest number of cases as possible. That purpose is achieved through article VII (1) of the Convention by removing conditions for recognition and enforcement in national laws that are more stringent than the conditions in the Convention, while allowing the continued application of any national provisions that give special or more favourable rights to a party seeking to enforce an award. That article recognizes the right of any interested party to avail itself of law or treaties of the country where the award is sought to be relied upon, including where such law or treaties offer a regime more favourable than the Convention.

Entry into force

The Convention entered into force on 7 June 1959 (article XII).

How to become a party

The Convention is closed for signature. It is subject to ratification, and is open to accession by any Member State of the United Nations, any other

State which is a member of any specialized agency of the United Nations, or is a Party to the Statute of the International Court of Justice (articles VIII and IX).

Optional and/or mandatory declarations and notifications

When signing, ratifying or acceding to the Convention, or notifying a territorial extension under article X, any State may on the basis of reciprocity declare that it will apply the Convention to the recognition and enforcement of awards made only in the territory of another Party to the Convention. It may also declare that it will apply the Convention only to differences arising out of legal relationships, whether contractual or not, which are considered as commercial under the national law of the State making such declaration (article I).

Denunciation/Withdrawal

Any Party may denounce this Convention by a written notification to the Secretary-General of the United Nations. Denunciation shall take effect one year after the date of the receipt of the notification by the Secretary-General (article XIII).

Part one

UNITED NATIONS CONFERENCE ON INTERNATIONAL COMMERCIAL ARBITRATION, NEW YORK, 20 MAY–10 JUNE 1958

Excerpts from the Final Act of the United Nations Conference on International Commercial Arbitration[1]

"1. The Economic and Social Council of the United Nations, by resolution 604 (XXI) adopted on 3 May 1956, decided to convene a Conference of Plenipotentiaries for the purpose of concluding a convention on the recognition and enforcement of foreign arbitral awards, and to consider other possible measures for increasing the effectiveness of arbitration in the settlement of private law disputes.

[…]

"12. The Economic and Social Council, by its resolution convening the Conference, requested it to conclude a convention on the basis of the draft convention prepared by the Committee on the Enforcement of International Arbitral Awards, taking into account the comments and suggestions made by Governments and non-governmental organizations, as well as the discussion at the twenty-first session of the Council.

"13. On the basis of the deliberations, as recorded in the reports of the working parties and in the records of the plenary meetings, the Conference prepared and opened for signature the Convention on the Recognition and Enforcement of Foreign Arbitral Awards which is annexed to this Final Act.

[…]

"16. In addition the Conference adopted, on the basis of proposals made by the Committee on Other Measures as recorded in its report, the following resolution:

[1]The full text of the Final Act of the United Nations Conference on International Commercial Arbitration (E/CONF.26/8Rev.1) is available at http://www.uncitral.org

"*The Conference*,

"*Believing* that, in addition to the convention on the recognition and enforcement of foreign arbitral awards just concluded, which would contribute to increasing the effectiveness of arbitration in the settlement of private law disputes, additional measures should be taken in this field,

"*Having considered* the able survey and analysis of possible measures for increasing the effectiveness of arbitration in the settlement of private law disputes prepared by the Secretary-General (document E/CONF.26/6),

"*Having given particular attention* to the suggestions made therein for possible ways in which interested governmental and other organizations may make practical contributions to the more effective use of arbitration,

"*Expresses the following views* with respect to the principal matters dealt with in the note of the Secretary-General:

"1. It considers that wider diffusion of information on arbitration laws, practices and facilities contributes materially to progress in commercial arbitration; recognizes that work has already been done in this field by interested organizations,[2] and expresses the wish that such organizations, so far as they have not concluded them, continue their activities in this regard, with particular attention to coordinating their respective efforts;

"2. It recognizes the desirability of encouraging where necessary the establishment of new arbitration facilities and the improvement of existing facilities, particularly in some geographic regions and branches of trade; and believes that useful work may be done in this field by appropriate governmental and other organizations, which may be active in arbitration matters, due regard being given to the need to avoid duplication of effort and to concentrate upon those measures of greatest practical benefit to the regions and branches of trade concerned;

"3. It recognizes the value of technical assistance in the development of effective arbitral legislation and institutions; and suggests that interested Governments and other organizations endeavour to furnish such assistance, within the means available, to those seeking it;

"4. It recognizes that regional study groups, seminars or working parties may in appropriate circumstances have productive results; believes that consideration should be given to the advisability of the convening of

[2]For example, the Economic Commission for Europe and the Inter-American Council of Jurists.

such meetings by the appropriate regional commissions of the United Nations and other bodies, but regards it as important that any such action be taken with careful regard to avoiding duplication and assuring economy of effort and of resources;

"5. It considers that greater uniformity of national laws on arbitration would further the effectiveness of arbitration in the settlement of private law disputes, notes the work already done in this field by various existing organizations,[3] and suggests that by way of supplementing the efforts of these bodies appropriate attention be given to defining suitable subject matter for model arbitration statutes and other appropriate measures for encouraging the development of such legislation;

"*Expresses the wish* that the United Nations, through its appropriate organs, take such steps as it deems feasible to encourage further study of measures for increasing the effectiveness of arbitration in the settlement of private law disputes through the facilities of existing regional bodies and non-governmental organizations and through such other institutions as may be established in the future;

"*Suggests* that any such steps be taken in a manner that will assure proper coordination of effort, avoidance of duplication and due observance of budgetary considerations;

"*Requests* that the Secretary-General submit this resolution to the appropriate organs of the United Nations."

[3]For example, the International Institute for the Unification of Private Law and the Inter-American Council of Jurists.

CONVENTION ON THE RECOGNITION AND ENFORCEMENT OF FOREIGN ARBITRAL AWARDS

Article I

1. This Convention shall apply to the recognition and enforcement of arbitral awards made in the territory of a State other than the State where the recognition and enforcement of such awards are sought, and arising out of differences between persons, whether physical or legal. It shall also apply to arbitral awards not considered as domestic awards in the State where their recognition and enforcement are sought.

2. The term "arbitral awards" shall include not only awards made by arbitrators appointed for each case but also those made by permanent arbitral bodies to which the parties have submitted.

3. When signing, ratifying or acceding to this Convention, or notifying extension under article X hereof, any State may on the basis of reciprocity declare that it will apply the Convention to the recognition and enforcement of awards made only in the territory of another Contracting State. It may also declare that it will apply the Convention only to differences arising out of legal relationships, whether contractual or not, which are considered as commercial under the national law of the State making such declaration.

Article II

1. Each Contracting State shall recognize an agreement in writing under which the parties undertake to submit to arbitration all or any differences which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not, concerning a subject matter capable of settlement by arbitration.

2. The term "agreement in writing" shall include an arbitral clause in a contract or an arbitration agreement, signed by the parties or contained in an exchange of letters or telegrams.

3. The court of a Contracting State, when seized of an action in a matter in respect of which the parties have made an agreement within the meaning of this article, shall, at the request of one of the parties, refer the parties to arbitration, unless it finds that the said agreement is null and void, inoperative or incapable of being performed.

Article III

Each Contracting State shall recognize arbitral awards as binding and enforce them in accordance with the rules of procedure of the territory where the award is relied upon, under the conditions laid down in the following articles. There shall not be imposed substantially more onerous conditions or higher fees or charges on the recognition or enforcement of arbitral awards to which this Convention applies than are imposed on the recognition or enforcement of domestic arbitral awards.

Article IV

1. To obtain the recognition and enforcement mentioned in the preceding article, the party applying for recognition and enforcement shall, at the time of the application, supply:

(a) The duly authenticated original award or a duly certified copy thereof;

(b) The original agreement referred to in article II or a duly certified copy thereof.

2. If the said award or agreement is not made in an official language of the country in which the award is relied upon, the party applying for recognition and enforcement of the award shall produce a translation of these documents into such language. The translation shall be certified by an official or sworn translator or by a diplomatic or consular agent.

Article V

1. Recognition and enforcement of the award may be refused, at the request of the party against whom it is invoked, only if that party furnishes to the competent authority where the recognition and enforcement is sought, proof that:

(a) The parties to the agreement referred to in article II were, under the law applicable to them, 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

(b) The party against whom the award is invoked was not given proper notice of the appointment of the arbitrator or of the arbitration proceedings or was otherwise unable to present his case; or

(c) The award deals with a difference not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration, 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

(d) The composition of the arbitral authority 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

(e) The award has not yet become binding on the parties, or has been set aside or suspended by a competent authority of the country in which, or under the law of which, that award was made.

2. Recognition and enforcement of an arbitral award may also be refused if the competent authority in the country where recognition and enforcement is sought finds that:

(a) The subject matter of the difference is not capable of settlement by arbitration under the law of that country; or

(b) The recognition or enforcement of the award would be contrary to the public policy of that country.

Article VI

If an application for the setting aside or suspension of the award has been made to a competent authority referred to in article V (1) *(e)*, the authority before which the award is sought to be relied upon may, if it considers it proper, adjourn the decision on the enforcement of the award and may also, on the application of the party claiming enforcement of the award, order the other party to give suitable security.

Article VII

1. The provisions of the present Convention shall not affect the validity of multilateral or bilateral agreements concerning the recognition and enforcement of arbitral awards entered into by the Contracting States nor deprive any interested party of any right he may have to avail himself of an arbitral award in the manner and to the extent allowed by the law or the treaties of the country where such award is sought to be relied upon.

2. The Geneva Protocol on Arbitration Clauses of 1923 and the Geneva Convention on the Execution of Foreign Arbitral Awards of 1927 shall cease to have effect between Contracting States on their becoming bound and to the extent that they become bound, by this Convention.

Article VIII

1. This Convention shall be open until 31 December 1958 for signature on behalf of any Member of the United Nations and also on behalf of any other State which is or hereafter becomes a member of any specialized agency of the United Nations, or which is or hereafter becomes a party to the Statute of the International Court of Justice, or any other State to which an invitation has been addressed by the General Assembly of the United Nations.

2. This Convention shall be ratified and the instrument of ratification shall be deposited with the Secretary-General of the United Nations.

Article IX

1. This Convention shall be open for accession to all States referred to in article VIII.

2. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

Article X

1. Any State may, at the time of signature, ratification or accession, declare that this Convention shall extend to all or any of the territories for the international relations of which it is responsible. Such a declaration shall take effect when the Convention enters into force for the State concerned.

2. At any time thereafter any such extension shall be made by notification addressed to the Secretary-General of the United Nations and shall take effect as from the ninetieth day after the day of receipt by the Secretary-General of the United Nations of this notification, or as from the date of entry into force of the Convention for the State concerned, whichever is the later.

3. With respect to those territories to which this Convention is not extended at the time of signature, ratification or accession, each State concerned shall consider the possibility of taking the necessary steps in order

to extend the application of this Convention to such territories, subject, where necessary for constitutional reasons, to the consent of the Governments of such territories.

Article XI

In the case of a federal or non-unitary State, the following provisions shall apply:

(a) With respect to those articles of this Convention that come within the legislative jurisdiction of the federal authority, the obligations of the federal Government shall to this extent be the same as those of Contracting States which are not federal States;

(b) With respect to those articles of this Convention that come within the legislative jurisdiction of constituent states or provinces which are not, under the constitutional system of the federation, bound to take legislative action, the federal Government shall bring such articles with a favourable recommendation to the notice of the appropriate authorities of constituent states or provinces at the earliest possible moment;

(c) A federal State Party to this Convention shall, at the request of any other Contracting State transmitted through the Secretary-General of the United Nations, supply a statement of the law and practice of the federation and its constituent units in regard to any particular provision of this Convention, showing the extent to which effect has been given to that provision by legislative or other action.

Article XII

1. This Convention shall come into force on the ninetieth day following the date of deposit of the third instrument of ratification or accession.

2. For each State ratifying or acceding to this Convention after the deposit of the third instrument of ratification or accession, this Convention shall enter into force on the ninetieth day after deposit by such State of its instrument of ratification or accession.

Article XIII

1. Any Contracting State may denounce this Convention by a written notification to the Secretary-General of the United Nations. Denunciation

shall take effect one year after the date of receipt of the notification by the Secretary-General.

2. Any State which has made a declaration or notification under article X may, at any time thereafter, by notification to the Secretary-General of the United Nations, declare that this Convention shall cease to extend to the territory concerned one year after the date of the receipt of the notification by the Secretary-General.

3. This Convention shall continue to be applicable to arbitral awards in respect of which recognition or enforcement proceedings have been instituted before the denunciation takes effect.

Article XIV

A Contracting State shall not be entitled to avail itself of the present Convention against other Contracting States except to the extent that it is itself bound to apply the Convention.

Article XV

The Secretary-General of the United Nations shall notify the States contemplated in article VIII of the following:

(a) Signatures and ratifications in accordance with article VIII;

(b) Accessions in accordance with article IX;

(c) Declarations and notifications under articles I, X and XI;

(d) The date upon which this Convention enters into force in accordance with article XII;

(e) Denunciations and notifications in accordance with article XIII.

Article XVI

1. This Convention, of which the Chinese, English, French, Russian and Spanish texts shall be equally authentic, shall be deposited in the archives of the United Nations.

2. The Secretary-General of the United Nations shall transmit a certified copy of this Convention to the States contemplated in article VIII.

Part two

RECOMMENDATION REGARDING THE INTERPRETATION OF ARTICLE II, PARAGRAPH 2, AND ARTICLE VII, PARAGRAPH 1, OF THE CONVENTION ON THE RECOGNITION AND ENFORCEMENT OF FOREIGN ARBITRAL AWARDS

General Assembly resolution 61/33 of 4 December 2006

The General Assembly,

Recognizing the value of arbitration as a method of settling disputes arising in the context of international commercial relations,

Recalling its resolution 40/72 of 11 December 1985 regarding the Model Law on International Commercial Arbitration,[1]

Recognizing the need for provisions in the Model Law to conform to current practices in international trade and modern means of contracting with regard to the form of the arbitration agreement and the granting of interim measures,

Believing that revised articles of the Model Law on the form of the arbitration agreement and interim measures reflecting those current practices will significantly enhance the operation of the Model Law,

Noting that the preparation of the revised articles of the Model Law on the form of the arbitration agreement and interim measures was the subject of due deliberation and extensive consultations with Governments and interested circles and would contribute significantly to the establishment of a harmonized legal framework for a fair and efficient settlement of international commercial disputes,

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[1] *Official Records of the General Assembly, Fortieth Session, Supplement No. 17* (A/40/17), annex I.

Believing that, in connection with the modernization of articles of the Model Law, the promotion of a uniform interpretation and application of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, done at New York, 10 June 1958,[2] is particularly timely,

1. *Expresses its appreciation* to the United Nations Commission on International Trade Law for formulating and adopting the revised articles of its Model Law on International Commercial Arbitration on the form of the arbitration agreement and interim measures, the text of which is contained in annex I to the report of the United Nations Commission on International Trade Law on the work of its thirty-ninth session,[3] and recommends that all States give favourable consideration to the enactment of the revised articles of the Model Law, or the revised Model Law on International Commercial Arbitration of the United Nations Commission on International Trade Law, when they enact or revise their laws, in view of the desirability of uniformity of the law of arbitral procedures and the specific needs of international commercial arbitration practice;

2. *Also expresses its appreciation* to the United Nations Commission on International Trade Law for formulating and adopting the recommendation regarding the interpretation of article II, paragraph 2, and article VII, paragraph 1, of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, done at New York, 10 June 1958,[2] the text of which is contained in annex II to the report of the United Nations Commission on International Trade Law on the work of its thirty-ninth session;[3]

3. *Requests* the Secretary-General to make all efforts to ensure that the revised articles of the Model Law and the recommendation become generally known and available.

64th plenary meeting
4 December 2006

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[2]United Nations, *Treaty Series*, vol. 330, No. 4739.

[3]*Official Records of the General Assembly, Sixty-first Session, Supplement No. 17* (A/61/17).

RECOMMENDATION REGARDING THE INTERPRETATION OF ARTICLE II, PARAGRAPH 2, AND ARTICLE VII, PARAGRAPH 1, OF THE CONVENTION ON THE RECOGNITION AND ENFORCEMENT OF FOREIGN ARBITRAL AWARDS, DONE IN NEW YORK, 10 JUNE 1958, ADOPTED BY THE UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW ON 7 JULY 2006 AT ITS THIRTY-NINTH SESSION

The United Nations Commission on International Trade Law,

Recalling General Assembly resolution 2205 (XXI) of 17 December 1966, which established the United Nations Commission on International Trade Law with the object of promoting the progressive harmonization and unification of the law of international trade by, inter alia, promoting ways and means of ensuring a uniform interpretation and application of international conventions and uniform laws in the field of the law of international trade,

Conscious of the fact that the different legal, social and economic systems of the world, together with different levels of development, are represented in the Commission,

Recalling successive resolutions of the General Assembly reaffirming the mandate of the Commission as the core legal body within the United Nations system in the field of international trade law to coordinate legal activities in this field,

Convinced that the wide adoption of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, done in New York on 10 June 1958,[4] has been a significant achievement in the promotion of the rule of law, particularly in the field of international trade,

Recalling that the Conference of Plenipotentiaries which prepared and opened the Convention for signature adopted a resolution, which states, inter alia, that the Conference "considers that greater uniformity of national laws on arbitration would further the effectiveness of arbitration in the settlement of private law disputes",

Bearing in mind differing interpretations of the form requirements under the Convention that result in part from differences of expression as between the five equally authentic texts of the Convention,

Taking into account article VII, paragraph 1, of the Convention, a purpose of which is to enable the enforcement of foreign arbitral awards to

[4]United Nations, *Treaty Series*, vol. 330, No. 4739.

the greatest extent, in particular by recognizing the right of any interested party to avail itself of law or treaties of the country where the award is sought to be relied upon, including where such law or treaties offer a regime more favourable than the Convention,

Considering the wide use of electronic commerce,

Taking into account international legal instruments, such as the 1985 UNCITRAL Model Law on International Commercial Arbitration,[5] as subsequently revised, particularly with respect to article 7,[6] the UNCITRAL Model Law on Electronic Commerce,[7] the UNCITRAL Model Law on Electronic Signatures[8] and the United Nations Convention on the Use of Electronic Communications in International Contracts,[9]

Taking into account also enactments of domestic legislation, as well as case law, more favourable than the Convention in respect of form requirement governing arbitration agreements, arbitration proceedings and the enforcement of arbitral awards,

Considering that, in interpreting the Convention, regard is to be had to the need to promote recognition and enforcement of arbitral awards,

1. *Recommends* that article II, paragraph 2, of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, done in New York, 10 June 1958, be applied recognizing that the circumstances described therein are not exhaustive;

2. *Recommends also* that article VII, paragraph 1, of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, done in New York, 10 June 1958, should be applied to allow any interested party to avail itself of rights it may have, under the law or treaties of the country where an arbitration agreement is sought to be relied upon, to seek recognition of the validity of such an arbitration agreement.

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[5] *Official Records of the General Assembly, Fortieth Session, Supplement No. 17* (A/40/17), annex I, and United Nations publication, Sales No. E.95.V.18.

[6] Ibid., *Sixty-first Session, Supplement No. 17* (A/61/17), annex I.

[7] Ibid., *Fifty-first Session, Supplement No. 17* (A/51/17), annex I, and United Nations publication, Sales No. E.99.V.4, which contains also an additional article 5 bis, adopted in 1998, and the accompanying Guide to Enactment.

[8] Ibid., *Fifty-sixth Session, Supplement No. 17* and corrigendum (A/56/17 and Corr.3), annex II, and United Nations publication, Sales No. E.02.V.8, which contains also the accompanying Guide to Enactment.

[9] General Assembly resolution 60/21, annex.

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UNITED NATIONS CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS

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United Nations Convention on Contracts for the International Sale of Goods

UNITED NATIONS

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UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW

United Nations Convention on Contracts for the International Sale of Goods

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Contents

Page

I. United Nations Convention on Contracts for the International Sale of Goods 1

PREAMBLE 1

Part I. Sphere of application and general provisions 1

CHAPTER I. Sphere of application 1
Article 1 1
Article 2 2
Article 3 2
Article 4 2
Article 5 3
Article 6 3

CHAPTER II. General provisions 3
Article 7 3
Article 8 3
Article 9 4
Article 10 4
Article 11 4
Article 12 4
Article 13 5

Part II. Formation of the contract 5

Article 14 5
Article 15 5
Article 16 5
Article 17 6
Article 18 6
Article 19 6
Article 20 7
Article 21 7
Article 22 7
Article 23 7
Article 24 7

Page

Part III. Sale of goods 8

CHAPTER I. General provisions 8
Article 25 8
Article 26 8
Article 27 8
Article 28 8
Article 29 8

CHAPTER II. Obligations of the seller 9
Article 30 9

Section I. Delivery of the goods and handing over of documents 9
Article 31 9
Article 32 9
Article 33 10
Article 34 10

Section II. Conformity of the goods and third-party claims 10
Article 35 10
Article 36 11
Article 37 11
Article 38 11
Article 39 12
Article 40 12
Article 41 12
Article 42 12
Article 43 13
Article 44 13

Section III. Remedies for breach of contract by the seller 13
Article 45 13
Article 46 14
Article 47 14
Article 48 14
Article 49 15
Article 50 16
Article 51 16
Article 52 16

CHAPTER III. Obligations of the buyer 16
Article 53 16

Section I. Payment of the price 17
Article 54 17
Article 55 17
Article 56 17
Article 57 17
Article 58 17
Article 59 18

Section II. Taking delivery 18
Article 60 18

Section III. Remedies for breach of contract by the buyer 18
Article 61 18
Article 62 19
Article 63 19
Article 64 19
Article 65 20

CHAPTER IV. Passing of risk 20
Article 66 20
Article 67 20
Article 68 21
Article 69 21
Article 70 21

CHAPTER V. Provisions common to the obligations of the seller and of the buyer 21

Section I. Anticipatory breach and instalment contracts 21
Article 71 21
Article 72 22
Article 73 22

Section II. Damages 23
Article 74 23
Article 75 23
Article 76 23
Article 77 24

Section III. Interest 24
Article 78 24

Section IV. Exemptions 24
Article 79 24
Article 80 25

Page

Section V. Effects of avoidance ... 25
Article 81 ... 25
Article 82 ... 25
Article 83 ... 26
Article 84 ... 26

Section VI. Preservation of the goods ... 26
Article 85 ... 26
Article 86 ... 26
Article 87 ... 27
Article 88 ... 27

Part IV. Final provisions ... 27

Article 89 ... 27
Article 90 ... 27
Article 91 ... 28
Article 92 ... 28
Article 93 ... 28
Article 94 ... 29
Article 95 ... 29
Article 96 ... 30
Article 97 ... 30
Article 98 ... 30
Article 99 ... 31
Article 100 ... 32
Article 101 ... 32

II. Explanatory note by the UNCITRAL Secretariat on the United Nations Convention on Contracts for the International Sale of Goods ... 33

Introduction ... 33

Part One. Scope of application and general provisions ... 34

A. Scope of application ... 34
B. Party autonomy ... 35
C. Interpretation of the Convention ... 36
D. Interpretation of the contract; usages ... 36
E. Form of the contract ... 36

Part Two. Formation of the contract ... 37

Page

Part Three. Sale of goods 38

A. Obligations of the seller 38
B. Obligations of the buyer 38
C. Remedies for breach of contract 39
D. Passing of risk 39
E. Suspension of performance and anticipatory breach 40
F. Exemption from liability to pay damages 40
G. Preservation of the goods 40

Part Four. Final clauses 41

Complementary texts 41

1. United Nations Convention on Contracts for the International Sale of Goods

PREAMBLE

The States Parties to this Convention,

Bearing in mind the broad objectives in the resolutions adopted by the sixth special session of the General Assembly of the United Nations on the establishment of a New International Economic Order,

Considering that the development of international trade on the basis of equality and mutual benefit is an important element in promoting friendly relations among States,

Being of the opinion that the adoption of uniform rules which govern contracts for the international sale of goods and take into account the different social, economic and legal systems would contribute to the removal of legal barriers in international trade and promote the development of international trade,

Have agreed as follows:

Part I. Sphere of application and general provisions

CHAPTER I. SPHERE OF APPLICATION

Article 1

(1) This Convention applies to contracts of sale of goods between parties whose places of business are in different States:

(a) when the States are Contracting States; or

(b) when the rules of private international law lead to the application of the law of a Contracting State.

(2) The fact that the parties have their places of business in different States is to be disregarded whenever this fact does not appear either from the contract or from any dealings between, or from information disclosed by, the parties at any time before or at the conclusion of the contract.

(3) Neither the nationality of the parties nor the civil or commercial character of the parties or of the contract is to be taken into consideration in determining the application of this Convention.

Article 2

This Convention does not apply to sales:

(a) of goods bought for personal, family or household use, unless the seller, at any time before or at the conclusion of the contract, neither knew nor ought to have known that the goods were bought for any such use;

(b) by auction;

(c) on execution or otherwise by authority of law;

(d) of stocks, shares, investment securities, negotiable instruments or money;

(e) of ships, vessels, hovercraft or aircraft;

(f) of electricity.

Article 3

(1) Contracts for the supply of goods to be manufactured or produced are to be considered sales unless the party who orders the goods undertakes to supply a substantial part of the materials necessary for such manufacture or production.

(2) This Convention does not apply to contracts in which the preponderant part of the obligations of the party who furnishes the goods consists in the supply of labour or other services.

Article 4

This Convention governs only the formation of the contract of sale and the rights and obligations of the seller and the buyer arising from such a contract. In particular, except as otherwise expressly provided in this Convention, it is not concerned with:

(a) the validity of the contract or of any of its provisions or of any usage;

(b) the effect which the contract may have on the property in the goods sold.

Article 5

This Convention does not apply to the liability of the seller for death or personal injury caused by the goods to any person.

Article 6

The parties may exclude the application of this Convention or, subject to article 12, derogate from or vary the effect of any of its provisions.

CHAPTER II. GENERAL PROVISIONS

Article 7

(1) In the interpretation of this Convention, regard is to be had to its international character and to the need to promote uniformity in its application and the observance of good faith in international trade.

(2) Questions concerning matters governed by this Convention which are not expressly settled in it are to be settled in conformity with the general principles on which it is based or, in the absence of such principles, in conformity with the law applicable by virtue of the rules of private international law.

Article 8

(1) For the purposes of this Convention statements made by and other conduct of a party are to be interpreted according to his intent where the other party knew or could not have been unaware what that intent was.

(2) If the preceding paragraph is not applicable, statements made by and other conduct of a party are to be interpreted according to the understanding that a reasonable person of the same kind as the other party would have had in the same circumstances.

(3) In determining the intent of a party or the understanding a reasonable person would have had, due consideration is to be given to all relevant circumstances of the case including the negotiations, any practices which the parties have established between themselves, usages and any subsequent conduct of the parties.

Article 9

(1) The parties are bound by any usage to which they have agreed and by any practices which they have established between themselves.

(2) The parties are considered, unless otherwise agreed, to have impliedly made applicable to their contract or its formation a usage of which the parties knew or ought to have known and which in international trade is widely known to, and regularly observed by, parties to contracts of the type involved in the particular trade concerned.

Article 10

For the purposes of this Convention:

(a) if a party has more than one place of business, the place of business is that which has the closest relationship to the contract and its performance, having regard to the circumstances known to or contemplated by the parties at any time before or at the conclusion of the contract;

(b) if a party does not have a place of business, reference is to be made to his habitual residence.

Article 11

A contract of sale need not be concluded in or evidenced by writing and is not subject to any other requirement as to form. It may be proved by any means, including witnesses.

Article 12

Any provision of article 11, article 29 or Part II of this Convention that allows a contract of sale or its modification or termination by agreement or any offer, acceptance or other indication of intention to be made in any form other than in writing does not apply where any party has his place of business

in a Contracting State which has made a declaration under article 96 of this Convention. The parties may not derogate from or vary the effect of this article.

Article 13

For the purposes of this Convention "writing" includes telegram and telex.

Part II. Formation of the contract

Article 14

(1) A proposal for concluding a contract addressed to one or more specific persons constitutes an offer if it is sufficiently definite and indicates the intention of the offeror to be bound in case of acceptance. A proposal is sufficiently definite if it indicates the goods and expressly or implicitly fixes or makes provision for determining the quantity and the price.

(2) A proposal other than one addressed to one or more specific persons is to be considered merely as an invitation to make offers, unless the contrary is clearly indicated by the person making the proposal.

Article 15

(1) An offer becomes effective when it reaches the offeree.

(2) An offer, even if it is irrevocable, may be withdrawn if the withdrawal reaches the offeree before or at the same time as the offer.

Article 16

(1) Until a contract is concluded an offer may be revoked if the revocation reaches the offeree before he has dispatched an acceptance.

(2) However, an offer cannot be revoked:

(a) if it indicates, whether by stating a fixed time for acceptance or otherwise, that it is irrevocable; or

(b) if it was reasonable for the offeree to rely on the offer as being irrevocable and the offeree has acted in reliance on the offer.

Article 17

An offer, even if it is irrevocable, is terminated when a rejection reaches the offeror.

Article 18

(1) A statement made by or other conduct of the offeree indicating assent to an offer is an acceptance. Silence or inactivity does not in itself amount to acceptance.

(2) An acceptance of an offer becomes effective at the moment the indication of assent reaches the offeror. An acceptance is not effective if the indication of assent does not reach the offeror within the time he has fixed or, if no time is fixed, within a reasonable time, due account being taken of the circumstances of the transaction, including the rapidity of the means of communication employed by the offeror. An oral offer must be accepted immediately unless the circumstances indicate otherwise.

(3) However, if, by virtue of the offer or as a result of practices which the parties have established between themselves or of usage, the offeree may indicate assent by performing an act, such as one relating to the dispatch of the goods or payment of the price, without notice to the offeror, the acceptance is effective at the moment the act is performed, provided that the act is performed within the period of time laid down in the preceding paragraph.

Article 19

(1) A reply to an offer which purports to be an acceptance but contains additions, limitations or other modifications is a rejection of the offer and constitutes a counter-offer.

(2) However, a reply to an offer which purports to be an acceptance but contains additional or different terms which do not materially alter the terms of the offer constitutes an acceptance, unless the offeror, without undue delay, objects orally to the discrepancy or dispatches a notice to that effect. If he does not so object, the terms of the contract are the terms of the offer with the modifications contained in the acceptance.

(3) Additional or different terms relating, among other things, to the price, payment, quality and quantity of the goods, place and time of delivery, extent of one party's liability to the other or the settlement of disputes are considered to alter the terms of the offer materially.

Article 20

(1) A period of time for acceptance fixed by the offeror in a telegram or a letter begins to run from the moment the telegram is handed in for dispatch or from the date shown on the letter or, if no such date is shown, from the date shown on the envelope. A period of time for acceptance fixed by the offeror by telephone, telex or other means of instantaneous communication, begins to run from the moment that the offer reaches the offeree.

(2) Official holidays or non-business days occurring during the period for acceptance are included in calculating the period. However, if a notice of acceptance cannot be delivered at the address of the offeror on the last day of the period because that day falls on an official holiday or a non-business day at the place of business of the offeror, the period is extended until the first business day which follows.

Article 21

(1) A late acceptance is nevertheless effective as an acceptance if without delay the offeror orally so informs the offeree or dispatches a notice to that effect.

(2) If a letter or other writing containing a late acceptance shows that it has been sent in such circumstances that if its transmission had been normal it would have reached the offeror in due time, the late acceptance is effective as an acceptance unless, without delay, the offeror orally informs the offeree that he considers his offer as having lapsed or dispatches a notice to that effect.

Article 22

An acceptance may be withdrawn if the withdrawal reaches the offeror before or at the same time as the acceptance would have become effective.

Article 23

A contract is concluded at the moment when an acceptance of an offer becomes effective in accordance with the provisions of this Convention.

Article 24

For the purposes of this Part of the Convention, an offer, declaration of acceptance or any other indication of intention "reaches" the addressee

when it is made orally to him or delivered by any other means to him personally, to his place of business or mailing address or, if he does not have a place of business or mailing address, to his habitual residence.

Part III. Sale of goods

CHAPTER I. GENERAL PROVISIONS

Article 25

A breach of contract committed by one of the parties is fundamental if it results in such detriment to the other party as substantially to deprive him of what he is entitled to expect under the contract, unless the party in breach did not foresee and a reasonable person of the same kind in the same circumstances would not have foreseen such a result.

Article 26

A declaration of avoidance of the contract is effective only if made by notice to the other party.

Article 27

Unless otherwise expressly provided in this Part of the Convention, if any notice, request or other communication is given or made by a party in accordance with this Part and by means appropriate in the circumstances, a delay or error in the transmission of the communication or its failure to arrive does not deprive that party of the right to rely on the communication.

Article 28

If, in accordance with the provisions of this Convention, one party is entitled to require performance of any obligation by the other party, a court is not bound to enter a judgement for specific performance unless the court would do so under its own law in respect of similar contracts of sale not governed by this Convention.

Article 29

(1) A contract may be modified or terminated by the mere agreement of the parties.

(2) A contract in writing which contains a provision requiring any modification or termination by agreement to be in writing may not be otherwise modified or terminated by agreement. However, a party may be precluded by his conduct from asserting such a provision to the extent that the other party has relied on that conduct.

CHAPTER II. OBLIGATIONS OF THE SELLER

Article 30

The seller must deliver the goods, hand over any documents relating to them and transfer the property in the goods, as required by the contract and this Convention.

Section I. Delivery of the goods and handing over of documents

Article 31

If the seller is not bound to deliver the goods at any other particular place, his obligation to deliver consists:

(a) if the contract of sale involves carriage of the goods—in handing the goods over to the first carrier for transmission to the buyer;

(b) if, in cases not within the preceding subparagraph, the contract relates to specific goods, or unidentified goods to be drawn from a specific stock or to be manufactured or produced, and at the time of the conclusion of the contract the parties knew that the goods were at, or were to be manufactured or produced at, a particular place—in placing the goods at the buyer's disposal at that place;

(c) in other cases—in placing the goods at the buyer's disposal at the place where the seller had his place of business at the time of the conclusion of the contract.

Article 32

(1) If the seller, in accordance with the contract or this Convention, hands the goods over to a carrier and if the goods are not clearly identified to the contract by markings on the goods, by shipping documents or otherwise, the seller must give the buyer notice of the consignment specifying the goods.

(2) If the seller is bound to arrange for carriage of the goods, he must make such contracts as are necessary for carriage to the place fixed by means of transportation appropriate in the circumstances and according to the usual terms for such transportation.

(3) If the seller is not bound to effect insurance in respect of the carriage of the goods, he must, at the buyer's request, provide him with all available information necessary to enable him to effect such insurance.

Article 33

The seller must deliver the goods:

(a) if a date is fixed by or determinable from the contract, on that date;

(b) if a period of time is fixed by or determinable from the contract, at any time within that period unless circumstances indicate that the buyer is to choose a date; or

(c) in any other case, within a reasonable time after the conclusion of the contract.

Article 34

If the seller is bound to hand over documents relating to the goods, he must hand them over at the time and place and in the form required by the contract. If the seller has handed over documents before that time, he may, up to that time, cure any lack of conformity in the documents, if the exercise of this right does not cause the buyer unreasonable inconvenience or unreasonable expense. However, the buyer retains any right to claim damages as provided for in this Convention.

Section II. Conformity of the goods and third-party claims

Article 35

(1) The seller must deliver goods which are of the quantity, quality and description required by the contract and which are contained or packaged in the manner required by the contract.

(2) Except where the parties have agreed otherwise, the goods do not conform with the contract unless they:

(a) are fit for the purposes for which goods of the same description would ordinarily be used;

(b) are fit for any particular purpose expressly or impliedly made known to the seller at the time of the conclusion of the contract, except where the circumstances show that the buyer did not rely, or that it was unreasonable for him to rely, on the seller's skill and judgement;

(c) possess the qualities of goods which the seller has held out to the buyer as a sample or model;

(d) are contained or packaged in the manner usual for such goods or, where there is no such manner, in a manner adequate to preserve and protect the goods.

(3) The seller is not liable under subparagraphs *(a)* to *(d)* of the preceding paragraph for any lack of conformity of the goods if, at the time of the conclusion of the contract, the buyer knew or could not have been unaware of such lack of conformity.

Article 36

(1) The seller is liable in accordance with the contract and this Convention for any lack of conformity which exists at the time when the risk passes to the buyer, even though the lack of conformity becomes apparent only after that time.

(2) The seller is also liable for any lack of conformity which occurs after the time indicated in the preceding paragraph and which is due to a breach of any of his obligations, including a breach of any guarantee that for a period of time the goods will remain fit for their ordinary purpose or for some particular purpose or will retain specified qualities or characteristics.

Article 37

If the seller has delivered goods before the date for delivery, he may, up to that date, deliver any missing part or make up any deficiency in the quantity of the goods delivered, or deliver goods in replacement of any non-conforming goods delivered or remedy any lack of conformity in the goods delivered, provided that the exercise of this right does not cause the buyer unreasonable inconvenience or unreasonable expense. However, the buyer retains any right to claim damages as provided for in this Convention.

Article 38

(1) The buyer must examine the goods, or cause them to be examined, within as short a period as is practicable in the circumstances.

(2) If the contract involves carriage of the goods, examination may be deferred until after the goods have arrived at their destination.

(3) If the goods are redirected in transit or redispatched by the buyer without a reasonable opportunity for examination by him and at the time of the conclusion of the contract the seller knew or ought to have known of the possibility of such redirection or redispatch, examination may be deferred until after the goods have arrived at the new destination.

Article 39

(1) The buyer loses the right to rely on a lack of conformity of the goods if he does not give notice to the seller specifying the nature of the lack of conformity within a reasonable time after he has discovered it or ought to have discovered it.

(2) In any event, the buyer loses the right to rely on a lack of conformity of the goods if he does not give the seller notice thereof at the latest within a period of two years from the date on which the goods were actually handed over to the buyer, unless this time limit is inconsistent with a contractual period of guarantee.

Article 40

The seller is not entitled to rely on the provisions of articles 38 and 39 if the lack of conformity relates to facts of which he knew or could not have been unaware and which he did not disclose to the buyer.

Article 41

The seller must deliver goods which are free from any right or claim of a third party, unless the buyer agreed to take the goods subject to that right or claim. However, if such right or claim is based on industrial property or other intellectual property, the seller's obligation is governed by article 42.

Article 42

(1) The seller must deliver goods which are free from any right or claim of a third party based on industrial property or other intellectual property, of which at the time of the conclusion of the contract the seller knew or could not have been unaware, provided that the right or claim is based on industrial property or other intellectual property:

(a) under the law of the State where the goods will be resold or otherwise used, if it was contemplated by the parties at the time of the conclusion of the contract that the goods would be resold or otherwise used in that State; or

(b) in any other case, under the law of the State where the buyer has his place of business.

(2) The obligation of the seller under the preceding paragraph does not extend to cases where:

(a) at the time of the conclusion of the contract the buyer knew or could not have been unaware of the right or claim; or

(b) the right or claim results from the seller's compliance with technical drawings, designs, formulae or other such specifications furnished by the buyer.

Article 43

(1) The buyer loses the right to rely on the provisions of article 41 or article 42 if he does not give notice to the seller specifying the nature of the right or claim of the third party within a reasonable time after he has become aware or ought to have become aware of the right or claim.

(2) The seller is not entitled to rely on the provisions of the preceding paragraph if he knew of the right or claim of the third party and the nature of it.

Article 44

Notwithstanding the provisions of paragraph (1) of article 39 and paragraph (1) of article 43, the buyer may reduce the price in accordance with article 50 or claim damages, except for loss of profit, if he has a reasonable excuse for his failure to give the required notice.

Section III. Remedies for breach of contract by the seller

Article 45

(1) If the seller fails to perform any of his obligations under the contract or this Convention, the buyer may:

(a) exercise the rights provided in articles 46 to 52;

(b) claim damages as provided in articles 74 to 77.

(2) The buyer is not deprived of any right he may have to claim damages by exercising his right to other remedies.

(3) No period of grace may be granted to the seller by a court or arbitral tribunal when the buyer resorts to a remedy for breach of contract.

Article 46

(1) The buyer may require performance by the seller of his obligations unless the buyer has resorted to a remedy which is inconsistent with this requirement.

(2) If the goods do not conform with the contract, the buyer may require delivery of substitute goods only if the lack of conformity constitutes a fundamental breach of contract and a request for substitute goods is made either in conjunction with notice given under article 39 or within a reasonable time thereafter.

(3) If the goods do not conform with the contract, the buyer may require the seller to remedy the lack of conformity by repair, unless this is unreasonable having regard to all the circumstances. A request for repair must be made either in conjunction with notice given under article 39 or within a reasonable time thereafter.

Article 47

(1) The buyer may fix an additional period of time of reasonable length for performance by the seller of his obligations.

(2) Unless the buyer has received notice from the seller that he will not perform within the period so fixed, the buyer may not, during that period, resort to any remedy for breach of contract. However, the buyer is not deprived thereby of any right he may have to claim damages for delay in performance.

Article 48

(1) Subject to article 49, the seller may, even after the date for delivery, remedy at his own expense any failure to perform his obligations, if he can do so without unreasonable delay and without causing the buyer unreasonable inconvenience or uncertainty of reimbursement by the seller of expenses

advanced by the buyer. However, the buyer retains any right to claim damages as provided for in this Convention.

(2) If the seller requests the buyer to make known whether he will accept performance and the buyer does not comply with the request within a reasonable time, the seller may perform within the time indicated in his request. The buyer may not, during that period of time, resort to any remedy which is inconsistent with performance by the seller.

(3) A notice by the seller that he will perform within a specified period of time is assumed to include a request, under the preceding paragraph, that the buyer make known his decision.

(4) A request or notice by the seller under paragraph (2) or (3) of this article is not effective unless received by the buyer.

Article 49

(1) The buyer may declare the contract avoided:

(a) if the failure by the seller to perform any of his obligations under the contract or this Convention amounts to a fundamental breach of contract; or

(b) in case of non-delivery, if the seller does not deliver the goods within the additional period of time fixed by the buyer in accordance with paragraph (1) of article 47 or declares that he will not deliver within the period so fixed.

(2) However, in cases where the seller has delivered the goods, the buyer loses the right to declare the contract avoided unless he does so:

(a) in respect of late delivery, within a reasonable time after he has become aware that delivery has been made;

(b) in respect of any breach other than late delivery, within a reasonable time:

(i) after he knew or ought to have known of the breach;

(ii) after the expiration of any additional period of time fixed by the buyer in accordance with paragraph (1) of article 47, or after the seller has declared that he will not perform his obligations within such an additional period; or

(iii) after the expiration of any additional period of time indicated by the seller in accordance with paragraph (2) of article 48, or after the buyer has declared that he will not accept performance.

Article 50

If the goods do not conform with the contract and whether or not the price has already been paid, the buyer may reduce the price in the same proportion as the value that the goods actually delivered had at the time of the delivery bears to the value that conforming goods would have had at that time. However, if the seller remedies any failure to perform his obligations in accordance with article 37 or article 48 or if the buyer refuses to accept performance by the seller in accordance with those articles, the buyer may not reduce the price.

Article 51

(1) If the seller delivers only a part of the goods or if only a part of the goods delivered is in conformity with the contract, articles 46 to 50 apply in respect of the part which is missing or which does not conform.

(2) The buyer may declare the contract avoided in its entirety only if the failure to make delivery completely or in conformity with the contract amounts to a fundamental breach of the contract.

Article 52

(1) If the seller delivers the goods before the date fixed, the buyer may take delivery or refuse to take delivery.

(2) If the seller delivers a quantity of goods greater than that provided for in the contract, the buyer may take delivery or refuse to take delivery of the excess quantity. If the buyer takes delivery of all or part of the excess quantity, he must pay for it at the contract rate.

CHAPTER III. OBLIGATIONS OF THE BUYER

Article 53

The buyer must pay the price for the goods and take delivery of them as required by the contract and this Convention.

Section I. Payment of the price

Article 54

The buyer's obligation to pay the price includes taking such steps and complying with such formalities as may be required under the contract or any laws and regulations to enable payment to be made.

Article 55

Where a contract has been validly concluded but does not expressly or implicitly fix or make provision for determining the price, the parties are considered, in the absence of any indication to the contrary, to have impliedly made reference to the price generally charged at the time of the conclusion of the contract for such goods sold under comparable circumstances in the trade concerned.

Article 56

If the price is fixed according to the weight of the goods, in case of doubt it is to be determined by the net weight.

Article 57

(1) If the buyer is not bound to pay the price at any other particular place, he must pay it to the seller:

(a) at the seller's place of business; or

(b) if the payment is to be made against the handing over of the goods or of documents, at the place where the handing over takes place.

(2) The seller must bear any increase in the expenses incidental to payment which is caused by a change in his place of business subsequent to the conclusion of the contract.

Article 58

(1) If the buyer is not bound to pay the price at any other specific time, he must pay it when the seller places either the goods or documents controlling their disposition at the buyer's disposal in accordance with the

contract and this Convention. The seller may make such payment a condition for handing over the goods or documents.

(2) If the contract involves carriage of the goods, the seller may dispatch the goods on terms whereby the goods, or documents controlling their disposition, will not be handed over to the buyer except against payment of the price.

(3) The buyer is not bound to pay the price until he has had an opportunity to examine the goods, unless the procedures for delivery or payment agreed upon by the parties are inconsistent with his having such an opportunity.

Article 59

The buyer must pay the price on the date fixed by or determinable from the contract and this Convention without the need for any request or compliance with any formality on the part of the seller.

Section II. Taking delivery

Article 60

The buyer's obligation to take delivery consists:

(a) in doing all the acts which could reasonably be expected of him in order to enable the seller to make delivery; and

(b) in taking over the goods.

Section III. Remedies for breach of contract by the buyer

Article 61

(1) If the buyer fails to perform any of his obligations under the contract or this Convention, the seller may:

(a) exercise the rights provided in articles 62 to 65;

(b) claim damages as provided in articles 74 to 77.

(2) The seller is not deprived of any right he may have to claim damages by exercising his right to other remedies.

(3) No period of grace may be granted to the buyer by a court or arbitral tribunal when the seller resorts to a remedy for breach of contract.

Article 62

The seller may require the buyer to pay the price, take delivery or perform his other obligations, unless the seller has resorted to a remedy which is inconsistent with this requirement.

Article 63

(1) The seller may fix an additional period of time of reasonable length for performance by the buyer of his obligations.

(2) Unless the seller has received notice from the buyer that he will not perform within the period so fixed, the seller may not, during that period, resort to any remedy for breach of contract. However, the seller is not deprived thereby of any right he may have to claim damages for delay in performance.

Article 64

(1) The seller may declare the contract avoided:

(a) if the failure by the buyer to perform any of his obligations under the contract or this Convention amounts to a fundamental breach of contract; or

(b) if the buyer does not, within the additional period of time fixed by the seller in accordance with paragraph (1) of article 63, perform his obligation to pay the price or take delivery of the goods, or if he declares that he will not do so within the period so fixed.

(2) However, in cases where the buyer has paid the price, the seller loses the right to declare the contract avoided unless he does so:

(a) in respect of late performance by the buyer, before the seller has become aware that performance has been rendered; or

(b) in respect of any breach other than late performance by the buyer, within a reasonable time:

(i) after the seller knew or ought to have known of the breach; or

(ii) after the expiration of any additional period of time fixed by the seller in accordance with paragraph (1) of article 63, or after the buyer has declared that he will not perform his obligations within such an additional period.

Article 65

(1) If under the contract the buyer is to specify the form, measurement or other features of the goods and he fails to make such specification either on the date agreed upon or within a reasonable time after receipt of a request from the seller, the seller may, without prejudice to any other rights he may have, make the specification himself in accordance with the requirements of the buyer that may be known to him.

(2) If the seller makes the specification himself, he must inform the buyer of the details thereof and must fix a reasonable time within which the buyer may make a different specification. If, after receipt of such a communication, the buyer fails to do so within the time so fixed, the specification made by the seller is binding.

CHAPTER IV. PASSING OF RISK

Article 66

Loss of or damage to the goods after the risk has passed to the buyer does not discharge him from his obligation to pay the price, unless the loss or damage is due to an act or omission of the seller.

Article 67

(1) If the contract of sale involves carriage of the goods and the seller is not bound to hand them over at a particular place, the risk passes to the buyer when the goods are handed over to the first carrier for transmission to the buyer in accordance with the contract of sale. If the seller is bound to hand the goods over to a carrier at a particular place, the risk does not pass to the buyer until the goods are handed over to the carrier at that place. The fact that the seller is authorized to retain documents controlling the disposition of the goods does not affect the passage of the risk.

(2) Nevertheless, the risk does not pass to the buyer until the goods are clearly identified to the contract, whether by markings on the goods, by shipping documents, by notice given to the buyer or otherwise.

Article 68

The risk in respect of goods sold in transit passes to the buyer from the time of the conclusion of the contract. However, if the circumstances so indicate, the risk is assumed by the buyer from the time the goods were handed over to the carrier who issued the documents embodying the contract of carriage. Nevertheless, if at the time of the conclusion of the contract of sale the seller knew or ought to have known that the goods had been lost or damaged and did not disclose this to the buyer, the loss or damage is at the risk of the seller.

Article 69

(1) In cases not within articles 67 and 68, the risk passes to the buyer when he takes over the goods or, if he does not do so in due time, from the time when the goods are placed at his disposal and he commits a breach of contract by failing to take delivery.

(2) However, if the buyer is bound to take over the goods at a place other than a place of business of the seller, the risk passes when delivery is due and the buyer is aware of the fact that the goods are placed at his disposal at that place.

(3) If the contract relates to goods not then identified, the goods are considered not to be placed at the disposal of the buyer until they are clearly identified to the contract.

Article 70

If the seller has committed a fundamental breach of contract, articles 67, 68 and 69 do not impair the remedies available to the buyer on account of the breach.

CHAPTER V. PROVISIONS COMMON TO THE OBLIGATIONS OF THE SELLER AND OF THE BUYER

Section I. Anticipatory breach and instalment contracts

Article 71

(1) A party may suspend the performance of his obligations if, after the conclusion of the contract, it becomes apparent that the other party will not perform a substantial part of his obligations as a result of:

(a) a serious deficiency in his ability to perform or in his creditworthiness; or

(b) his conduct in preparing to perform or in performing the contract.

(2) If the seller has already dispatched the goods before the grounds described in the preceding paragraph become evident, he may prevent the handing over of the goods to the buyer even though the buyer holds a document which entitles him to obtain them. The present paragraph relates only to the rights in the goods as between the buyer and the seller.

(3) A party suspending performance, whether before or after dispatch of the goods, must immediately give notice of the suspension to the other party and must continue with performance if the other party provides adequate assurance of his performance.

Article 72

(1) If prior to the date for performance of the contract it is clear that one of the parties will commit a fundamental breach of contract, the other party may declare the contract avoided.

(2) If time allows, the party intending to declare the contract avoided must give reasonable notice to the other party in order to permit him to provide adequate assurance of his performance.

(3) The requirements of the preceding paragraph do not apply if the other party has declared that he will not perform his obligations.

Article 73

(1) In the case of a contract for delivery of goods by instalments, if the failure of one party to perform any of his obligations in respect of any instalment constitutes a fundamental breach of contract with respect to that instalment, the other party may declare the contract avoided with respect to that instalment.

(2) If one party's failure to perform any of his obligations in respect of any instalment gives the other party good grounds to conclude that a fundamental breach of contract will occur with respect to future instalments, he may declare the contract avoided for the future, provided that he does so within a reasonable time.

(3) A buyer who declares the contract avoided in respect of any delivery may, at the same time, declare it avoided in respect of deliveries already made or of future deliveries if, by reason of their interdependence, those deliveries could not be used for the purpose contemplated by the parties at the time of the conclusion of the contract.

Section II. Damages

Article 74

Damages for breach of contract by one party consist of a sum equal to the loss, including loss of profit, suffered by the other party as a consequence of the breach. Such damages may not exceed the loss which the party in breach foresaw or ought to have foreseen at the time of the conclusion of the contract, in the light of the facts and matters of which he then knew or ought to have known, as a possible consequence of the breach of contract.

Article 75

If the contract is avoided and if, in a reasonable manner and within a reasonable time after avoidance, the buyer has bought goods in replacement or the seller has resold the goods, the party claiming damages may recover the difference between the contract price and the price in the substitute transaction as well as any further damages recoverable under article 74.

Article 76

(1) If the contract is avoided and there is a current price for the goods, the party claiming damages may, if he has not made a purchase or resale under article 75, recover the difference between the price fixed by the contract and the current price at the time of avoidance as well as any further damages recoverable under article 74. If, however, the party claiming damages has avoided the contract after taking over the goods, the current price at the time of such taking over shall be applied instead of the current price at the time of avoidance.

(2) For the purposes of the preceding paragraph, the current price is the price prevailing at the place where delivery of the goods should have been made or, if there is no current price at that place, the price at such other place as serves as a reasonable substitute, making due allowance for differences in the cost of transporting the goods.

Article 77

A party who relies on a breach of contract must take such measures as are reasonable in the circumstances to mitigate the loss, including loss of profit, resulting from the breach. If he fails to take such measures, the party in breach may claim a reduction in the damages in the amount by which the loss should have been mitigated.

Section III. Interest

Article 78

If a party fails to pay the price or any other sum that is in arrears, the other party is entitled to interest on it, without prejudice to any claim for damages recoverable under article 74.

Section IV. Exemptions

Article 79

(1) A party is not liable for a failure to perform any of his obligations if he proves that the failure was due to an impediment beyond his control and that he could not reasonably be expected to have taken the impediment into account at the time of the conclusion of the contract or to have avoided or overcome it, or its consequences.

(2) If the party's failure is due to the failure by a third person whom he has engaged to perform the whole or a part of the contract, that party is exempt from liability only if:

(a) he is exempt under the preceding paragraph; and

(b) the person whom he has so engaged would be so exempt if the provisions of that paragraph were applied to him.

(3) The exemption provided by this article has effect for the period during which the impediment exists.

(4) The party who fails to perform must give notice to the other party of the impediment and its effect on his ability to perform. If the notice is not received by the other party within a reasonable time after the party who fails to perform knew or ought to have known of the impediment, he is liable for damages resulting from such non-receipt.

(5) Nothing in this article prevents either party from exercising any right other than to claim damages under this Convention.

Article 80

A party may not rely on a failure of the other party to perform, to the extent that such failure was caused by the first party's act or omission.

Section V. Effects of avoidance

Article 81

(1) Avoidance of the contract releases both parties from their obligations under it, subject to any damages which may be due. Avoidance does not affect any provision of the contract for the settlement of disputes or any other provision of the contract governing the rights and obligations of the parties consequent upon the avoidance of the contract.

(2) A party who has performed the contract either wholly or in part may claim restitution from the other party of whatever the first party has supplied or paid under the contract. If both parties are bound to make restitution, they must do so concurrently.

Article 82

(1) The buyer loses the right to declare the contract avoided or to require the seller to deliver substitute goods if it is impossible for him to make restitution of the goods substantially in the condition in which he received them.

(2) The preceding paragraph does not apply:

(a) if the impossibility of making restitution of the goods or of making restitution of the goods substantially in the condition in which the buyer received them is not due to his act or omission;

(b) if the goods or part of the goods have perished or deteriorated as a result of the examination provided for in article 38; or

(c) if the goods or part of the goods have been sold in the normal course of business or have been consumed or transformed by the buyer in the course of normal use before he discovered or ought to have discovered the lack of conformity.

Article 83

A buyer who has lost the right to declare the contract avoided or to require the seller to deliver substitute goods in accordance with article 82 retains all other remedies under the contract and this Convention.

Article 84

(1) If the seller is bound to refund the price, he must also pay interest on it, from the date on which the price was paid.

(2) The buyer must account to the seller for all benefits which he has derived from the goods or part of them:

(a) if he must make restitution of the goods or part of them; or

(b) if it is impossible for him to make restitution of all or part of the goods or to make restitution of all or part of the goods substantially in the condition in which he received them, but he has nevertheless declared the contract avoided or required the seller to deliver substitute goods.

Section VI. Preservation of the goods

Article 85

If the buyer is in delay in taking delivery of the goods or, where payment of the price and delivery of the goods are to be made concurrently, if he fails to pay the price, and the seller is either in possession of the goods or otherwise able to control their disposition, the seller must take such steps as are reasonable in the circumstances to preserve them. He is entitled to retain them until he has been reimbursed his reasonable expenses by the buyer.

Article 86

(1) If the buyer has received the goods and intends to exercise any right under the contract or this Convention to reject them, he must take such steps to preserve them as are reasonable in the circumstances. He is entitled to retain them until he has been reimbursed his reasonable expenses by the seller.

(2) If goods dispatched to the buyer have been placed at his disposal at their destination and he exercises the right to reject them, he must take

possession of them on behalf of the seller, provided that this can be done without payment of the price and without unreasonable inconvenience or unreasonable expense. This provision does not apply if the seller or a person authorized to take charge of the goods on his behalf is present at the destination. If the buyer takes possession of the goods under this paragraph, his rights and obligations are governed by the preceding paragraph.

Article 87

A party who is bound to take steps to preserve the goods may deposit them in a warehouse of a third person at the expense of the other party provided that the expense incurred is not unreasonable.

Article 88

(1) A party who is bound to preserve the goods in accordance with article 85 or 86 may sell them by any appropriate means if there has been an unreasonable delay by the other party in taking possession of the goods or in taking them back or in paying the price or the cost of preservation, provided that reasonable notice of the intention to sell has been given to the other party.

(2) If the goods are subject to rapid deterioration or their preservation would involve unreasonable expense, a party who is bound to preserve the goods in accordance with article 85 or 86 must take reasonable measures to sell them. To the extent possible he must give notice to the other party of his intention to sell.

(3) A party selling the goods has the right to retain out of the proceeds of sale an amount equal to the reasonable expenses of preserving the goods and of selling them. He must account to the other party for the balance.

PART IV. FINAL PROVISIONS

Article 89

The Secretary-General of the United Nations is hereby designated as the depositary for this Convention.

Article 90

This Convention does not prevail over any international agreement which has already been or may be entered into and which contains provisions

concerning the matters governed by this Convention, provided that the parties have their places of business in States parties to such agreement.

Article 91

(1) This Convention is open for signature at the concluding meeting of the United Nations Conference on Contracts for the International Sale of Goods and will remain open for signature by all States at the Headquarters of the United Nations, New York until 30 September 1981.

(2) This Convention is subject to ratification, acceptance or approval by the signatory States.

(3) This Convention is open for accession by all States which are not signatory States as from the date it is open for signature.

(4) Instruments of ratification, acceptance, approval and accession are to be deposited with the Secretary-General of the United Nations.

Article 92

(1) A Contracting State may declare at the time of signature, ratification, acceptance, approval or accession that it will not be bound by Part II of this Convention or that it will not be bound by Part III of this Convention.

(2) A Contracting State which makes a declaration in accordance with the preceding paragraph in respect of Part II or Part III of this Convention is not to be considered a Contracting State within paragraph (1) of article 1 of this Convention in respect of matters governed by the Part to which the declaration applies.

Article 93

(1) If a Contracting State has two or more territorial units in which, according to its constitution, different systems of law are applicable in relation to the matters dealt with in this Convention, it may, at the time of signature, ratification, acceptance, approval or accession, declare that this Convention is to extend to all its territorial units or only to one or more of them, and may amend its declaration by submitting another declaration at any time.

(2) These declarations are to be notified to the depositary and are to state expressly the territorial units to which the Convention extends.

(3) If, by virtue of a declaration under this article, this Convention extends to one or more but not all of the territorial units of a Contracting State, and if the place of business of a party is located in that State, this place of business, for the purposes of this Convention, is considered not to be in a Contracting State, unless it is in a territorial unit to which the Convention extends.

(4) If a Contracting State makes no declaration under paragraph (1) of this article, the Convention is to extend to all territorial units of that State.

Article 94

(1) Two or more Contracting States which have the same or closely related legal rules on matters governed by this Convention may at any time declare that the Convention is not to apply to contracts of sale or to their formation where the parties have their places of business in those States. Such declarations may be made jointly or by reciprocal unilateral declarations.

(2) A Contracting State which has the same or closely related legal rules on matters governed by this Convention as one or more non-Contracting States may at any time declare that the Convention is not to apply to contracts of sale or to their formation where the parties have their places of business in those States.

(3) If a State which is the object of a declaration under the preceding paragraph subsequently becomes a Contracting State, the declaration made will, as from the date on which the Convention enters into force in respect of the new Contracting State, have the effect of a declaration made under paragraph (1), provided that the new Contracting State joins in such declaration or makes a reciprocal unilateral declaration.

Article 95

Any State may declare at the time of the deposit of its instrument of ratification, acceptance, approval or accession that it will not be bound by subparagraph (1)*(b)* of article 1 of this Convention.

Article 96

A Contracting State whose legislation requires contracts of sale to be concluded in or evidenced by writing may at any time make a declaration in accordance with article 12 that any provision of article 11, article 29, or Part II of this Convention, that allows a contract of sale or its modification or termination by agreement or any offer, acceptance, or other indication of intention to be made in any form other than in writing, does not apply where any party has his place of business in that State.

Article 97

(1) Declarations made under this Convention at the time of signature are subject to confirmation upon ratification, acceptance or approval.

(2) Declarations and confirmations of declarations are to be in writing and be formally notified to the depositary.

(3) A declaration takes effect simultaneously with the entry into force of this Convention in respect of the State concerned. However, a declaration of which the depositary receives formal notification after such entry into force takes effect on the first day of the month following the expiration of six months after the date of its receipt by the depositary. Reciprocal unilateral declarations under article 94 take effect on the first day of the month following the expiration of six months after the receipt of the latest declaration by the depositary.

(4) Any State which makes a declaration under this Convention may withdraw it at any time by a formal notification in writing addressed to the depositary. Such withdrawal is to take effect on the first day of the month following the expiration of six months after the date of the receipt of the notification by the depositary.

(5) A withdrawal of a declaration made under article 94 renders inoperative, as from the date on which the withdrawal takes effect, any reciprocal declaration made by another State under that article.

Article 98

No reservations are permitted except those expressly authorized in this Convention.

Article 99

(1) This Convention enters into force, subject to the provisions of paragraph (6) of this article, on the first day of the month following the expiration of twelve months after the date of deposit of the tenth instrument of ratification, acceptance, approval or accession, including an instrument which contains a declaration made under article 92.

(2) When a State ratifies, accepts, approves or accedes to this Convention after the deposit of the tenth instrument of ratification, acceptance, approval or accession, this Convention, with the exception of the Part excluded, enters into force in respect of that State, subject to the provisions of paragraph (6) of this article, on the first day of the month following the expiration of twelve months after the date of the deposit of its instrument of ratification, acceptance, approval or accession.

(3) A State which ratifies, accepts, approves or accedes to this Convention and is a party to either or both the Convention relating to a Uniform Law on the Formation of Contracts for the International Sale of Goods done at The Hague on 1 July 1964 (1964 Hague Formation Convention) and the Convention relating to a Uniform Law on the International Sale of Goods done at The Hague on 1 July 1964 (1964 Hague Sales Convention) shall at the same time denounce, as the case may be, either or both the 1964 Hague Sales Convention and the 1964 Hague Formation Convention by notifying the Government of the Netherlands to that effect.

(4) A State party to the 1964 Hague Sales Convention which ratifies, accepts, approves or accedes to the present Convention and declares or has declared under article 92 that it will not be bound by Part II of this Convention shall at the time of ratification, acceptance, approval or accession denounce the 1964 Hague Sales Convention by notifying the Government of the Netherlands to that effect.

(5) A State party to the 1964 Hague Formation Convention which ratifies, accepts, approves or accedes to the present Convention and declares or has declared under article 92 that it will not be bound by Part III of this Convention shall at the time of ratification, acceptance, approval or accession denounce the 1964 Hague Formation Convention by notifying the Government of the Netherlands to that effect.

(6) For the purpose of this article, ratifications, acceptances, approvals and accessions in respect of this Convention by States parties to the 1964 Hague Formation Convention or to the 1964 Hague Sales Convention shall not be effective until such denunciations as may be required on the part

of those States in respect of the latter two Conventions have themselves become effective. The depositary of this Convention shall consult with the Government of the Netherlands, as the depositary of the 1964 Conventions, so as to ensure necessary coordination in this respect.

Article 100

(1) This Convention applies to the formation of a contract only when the proposal for concluding the contract is made on or after the date when the Convention enters into force in respect of the Contracting States referred to in subparagraph (1)*(a)* or the Contracting State referred to in subparagraph (1)*(b)* of article 1.

(2) This Convention applies only to contracts concluded on or after the date when the Convention enters into force in respect of the Contracting States referred to in subparagraph (1)*(a)* or the Contracting State referred to in subparagraph (1)*(b)* of article 1.

Article 101

(1) A Contracting State may denounce this Convention, or Part II or Part III of the Convention, by a formal notification in writing addressed to the depositary.

(2) The denunciation takes effect on the first day of the month following the expiration of twelve months after the notification is received by the depositary. Where a longer period for the denunciation to take effect is specified in the notification, the denunciation takes effect upon the expiration of such longer period after the notification is received by the depositary.

DONE at Vienna, this day of eleventh day of April, one thousand nine hundred and eighty, in a single original, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic.

IN WITNESS WHEREOF the undersigned plenipotentiaries, being duly authorized by their respective Governments, have signed this Convention.

II. Explanatory Note by the UNCITRAL Secretariat on the United Nations Convention on Contracts for the International Sale of Goods

This note has been prepared by the Secretariat of the United Nations Commission on International Trade Law for informational purposes; it is not an official commentary on the Convention.

Introduction

1. The United Nations Convention on Contracts for the International Sale of Goods provides a uniform text of law for international sales of goods. The Convention was prepared by the United Nations Commission on International Trade Law (UNCITRAL) and adopted by a diplomatic conference on 11 April 1980.

2. Preparation of a uniform law for the international sale of goods began in 1930 at the International Institute for the Unification of Private Law (UNIDROIT) in Rome. After a long interruption in the work as a result of the Second World War, the draft was submitted to a diplomatic conference in The Hague in 1964, which adopted two conventions, one on the international sale of goods and the other on the formation of contracts for the international sale of goods.

3. Almost immediately upon the adoption of the two conventions there was widespread criticism of their provisions as reflecting primarily the legal traditions and economic realities of continental Western Europe, which was the region that had most actively contributed to their preparation. As a result, one of the first tasks undertaken by UNCITRAL on its organization in 1968 was to enquire of States whether or not they intended to adhere to those conventions and the reasons for their positions. In the light of the responses received, UNCITRAL decided to study the two conventions to ascertain which modifications might render them capable of wider acceptance by countries of different legal, social and economic systems. The result of this study was the adoption by diplomatic conference on 11 April 1980 of the

United Nations Convention on Contracts for the International Sale of Goods, which combines the subject matter of the two prior conventions.

4. UNCITRAL's success in preparing a Convention with wider acceptability is evidenced by the fact that the original eleven States for which the Convention came into force on 1 January 1988 included States from every geographical region, every stage of economic development and every major legal, social and economic system. The original eleven States were: Argentina, China, Egypt, France, Hungary, Italy, Lesotho, Syria, United States, Yugoslavia and Zambia.

5. As of 1 September 2010, 76 States are parties to the Convention. The current updated status of the Convention is available on the UNCITRAL website.[1] Authoritative information on the status of the Convention, as well as on related declarations, including with respect to territorial application and succession of States, may be found on the United Nations Treaty Collection on the Internet.[2]

6. The Convention is divided into four parts. Part One deals with the scope of application of the Convention and the general provisions. Part Two contains the rules governing the formation of contracts for the international sale of goods. Part Three deals with the substantive rights and obligations of buyer and seller arising from the contract. Part Four contains the final clauses of the Convention concerning such matters as how and when it comes into force, the reservations and declarations that are permitted and the application of the Convention to international sales where both States concerned have the same or similar law on the subject.

Part One. Scope of application and general provisions

A. Scope of application

7. The articles on scope of application indicate both what is covered by the Convention and what is not covered. The Convention applies to contracts of sale of goods between parties whose places of business are in different States and either both of those States are Contracting States or the rules of private international law lead to the law of a Contracting State. A few States have availed themselves of the authorization in article 95 to declare that they would apply the Convention only in the former and not in the latter of these two situations. As the Convention becomes more widely adopted, the

[1] www.uncitral.org/uncitral/en/uncitral_texts/sale_goods/1980CISG_status.html.
[2] http://treaties.un.org/.

practical significance of such a declaration will diminish. Finally, the Convention may also apply as the law applicable to the contract if so chosen by the parties. In that case, the operation of the Convention will be subject to any limits on contractual stipulations set by the otherwise applicable law.

8. The final clauses make two additional restrictions on the territorial scope of application that will be relevant to a few States. One applies only if a State is a party to another international agreement that contains provisions concerning matters governed by this Convention; the other permits States that have the same or similar domestic law of sales to declare that the Convention does not apply between them.

9. Contracts of sale are distinguished from contracts for services in two respects by article 3. A contract for the supply of goods to be manufactured or produced is considered to be a sale unless the party who orders the goods undertakes to supply a substantial part of the materials necessary for their manufacture or production. When the preponderant part of the obligations of the party who furnishes the goods consists in the supply of labour or other services, the Convention does not apply.

10. The Convention contains a list of types of sales that are excluded from the Convention, either because of the purpose of the sale (goods bought for personal, family or household use), the nature of the sale (sale by auction, on execution or otherwise by law) or the nature of the goods (stocks, shares, investment securities, negotiable instruments, money, ships, vessels, hovercraft, aircraft or electricity). In many States some or all of such sales are governed by special rules reflecting their special nature.

11. Several articles make clear that the subject matter of the Convention is restricted to formation of the contract and the rights and duties of the buyer and seller arising from such a contract. In particular, the Convention is not concerned with the validity of the contract, the effect which the contract may have on the property in the goods sold or the liability of the seller for death or personal injury caused by the goods to any person.

B. Party autonomy

12. The basic principle of contractual freedom in the international sale of goods is recognized by the provision that permits the parties to exclude the application of this Convention or derogate from or vary the effect of any of its provisions. This exclusion will occur, for example, if parties choose the law of a non-contracting State or the substantive domestic law of a contracting State as the law applicable to the contract. Derogation from the Convention

will occur whenever a provision in the contract provides a different rule from that found in the Convention.

C. Interpretation of the Convention

13. This Convention for the unification of the law governing the international sale of goods will better fulfil its purpose if it is interpreted in a consistent manner in all legal systems. Great care was taken in its preparation to make it as clear and easy to understand as possible. Nevertheless, disputes will arise as to its meaning and application. When this occurs, all parties, including domestic courts and arbitral tribunals, are admonished to observe its international character and to promote uniformity in its application and the observance of good faith in international trade. In particular, when a question concerning a matter governed by this Convention is not expressly settled in it, the question is to be settled in conformity with the general principles on which the Convention is based. Only in the absence of such principles should the matter be settled in conformity with the law applicable by virtue of the rules of private international law.

D. Interpretation of the contract; usages

14. The Convention contains provisions on the manner in which statements and conduct of a party are to be interpreted in the context of the formation of the contract or its implementation. Usages agreed to by the parties, practices they have established between themselves and usages of which the parties knew or ought to have known and which are widely known to, and regularly observed by, parties to contracts of the type involved in the particular trade concerned may all be binding on the parties to the contract of sale.

E. Form of the contract

15. The Convention does not subject the contract of sale to any requirement as to form. In particular, article 11 provides that no written agreement is necessary for the conclusion of the contract. However, if the contract is in writing and it contains a provision requiring any modification or termination by agreement to be in writing, article 29 provides that the contract may not be otherwise modified or terminated by agreement. The only exception is that a party may be precluded by his conduct from asserting such a provision to the extent that the other person has relied on that conduct.

16. In order to accommodate those States whose legislation requires contracts of sale to be concluded in or evidenced by writing, article 96 entitles those

States to declare that neither article 11 not the exception to article 29 applies where any party to the contract has his place of business in that State.

Part Two. Formation of the contract

17. Part Two of the Convention deals with a number of questions that arise in the formation of the contract by the exchange of an offer and an acceptance. When the formation of the contract takes place in this manner, the contract is concluded when the acceptance of the offer becomes effective.

18. In order for a proposal for concluding a contract to constitute an offer, it must be addressed to one or more specific persons and it must be sufficiently definite. For the proposal to be sufficiently definite, it must indicate the goods and expressly or implicitly fix or make provisions for determining the quantity and the price.

19. The Convention takes a middle position between the doctrine of the revocability of the offer until acceptance and its general irrevocability for some period of time. The general rule is that an offer may be revoked. However, the revocation must reach the offeree before he has dispatched an acceptance. Moreover, an offer cannot be revoked if it indicates that it is irrevocable, which it may do by stating a fixed time for acceptance or otherwise. Furthermore, an offer may not be revoked if it was reasonable for the offeree to rely on the offer as being irrevocable and the offeree has acted in reliance on the offer.

20. Acceptance of an offer may be made by means of a statement or other conduct of the offeree indicating assent to the offer that is communicated to the offeror. However, in some cases the acceptance may consist of performing an act, such as dispatch of the goods or payment of the price. Such an act would normally be effective as an acceptance the moment the act was performed.

21. A frequent problem in contract formation, perhaps especially in regard to contracts of sale of goods, arises out of a reply to an offer that purports to be an acceptance but contains additional or different terms. Under the Convention, if the additional or different terms do not materially alter the terms of the offer, the reply constitutes an acceptance, unless the offeror without undue delay objects to those terms. If he does not object, the terms of the contract are the terms of the offer with the modifications contained in the acceptance.

22. If the additional or different terms do materially alter the terms of the contract, the reply constitutes a counter-offer that must in turn be accepted

for a contract to be concluded. Additional or different terms relating, among other things, to the price, payment, quality and quantity of the goods, place and time of delivery, extent of one party's liability to the other or settlement of disputes are considered to alter the terms of the offer materially.

Part Three. Sale of goods

A. Obligations of the seller

23. The general obligations of the seller are to deliver the goods, hand over any documents relating to them and transfer the property in the goods, as required by the contract and this Convention. The Convention provides supplementary rules for use in the absence of contractual agreement as to when, where and how the seller must perform these obligations.

24. The Convention provides a number of rules that implement the seller's obligations in respect of the quality of the goods. In general, the seller must deliver goods that are of the quantity, quality and description required by the contract and that are contained or packaged in the manner required by the contract. One set of rules of particular importance in international sales of goods involves the seller's obligation to deliver goods that are free from any right or claim of a third party, including rights based on industrial property or other intellectual property.

25. In connection with the seller's obligations in regard to the quality of the goods, the Convention contains provisions on the buyer's obligation to inspect the goods. He must give notice of any lack of conformity with the contract within a reasonable time after he has discovered it or ought to have discovered it, and at the latest two years from the date on which the goods were actually handed over to the buyer, unless this time limit is inconsistent with a contractual period of guarantee.

B. Obligations of the buyer

26. The general obligations of the buyer are to pay the price for the goods and take delivery of them as required by the contract and the Convention. The Convention provides supplementary rules for use in the absence of contractual agreement as to how the price is to be determined and where and when the buyer should perform his obligations to pay the price.

C. Remedies for breach of contract

27. The remedies of the buyer for breach of contract by the seller are set forth in connection with the obligations of the seller and the remedies of the seller are set forth in connection with the obligations of the buyer. This makes it easier to use and understand the Convention.

28. The general pattern of remedies is the same in both cases. If all the required conditions are fulfilled, the aggrieved party may require performance of the other party's obligations, claim damages or avoid the contract. The buyer also has the right to reduce the price where the goods delivered do not conform with the contract.

29. Among the more important limitations on the right of an aggrieved party to claim a remedy is the concept of fundamental breach. For a breach of contract to be fundamental, it must result in such detriment to the other party as substantially to deprive him of what he is entitled to expect under the contract, unless the result was neither foreseen by the party in breach nor foreseeable by a reasonable person of the same kind in the same circumstances. A buyer can require the delivery of substitute goods only if the goods delivered were not in conformity with the contract and the lack of conformity constituted a fundamental breach of contract. The existence of a fundamental breach is one of the two circumstances that justifies a declaration of avoidance of a contract by the aggrieved party; the other circumstance being that, in the case of non-delivery of the goods by the seller or non-payment of the price or failure to take delivery by the buyer, the party in breach fails to perform within a reasonable period of time fixed by the aggrieved party.

30. Other remedies may be restricted by special circumstances. For example, if the goods do not conform with the contract, the buyer may require the seller to remedy the lack of conformity by repair, unless this is unreasonable having regard to all the circumstances. A party cannot recover damages that he could have mitigated by taking the proper measures. A party may be exempted from paying damages by virtue of an impediment beyond his control.

D. Passing of risk

31. Determining the exact moment when the risk of loss or damage to the goods passes from the seller to the buyer is of great importance in contracts for the international sale of goods. Parties may regulate the issue in their contract either by an express provision or by the use of a trade term such as, for example, an INCOTERM. The effect of the choice of such a term

would be to amend the corresponding provisions of the CISG accordingly. However, for the frequent case where the contract does not contain such a provision, the Convention sets forth a complete set of rules.

32. The two special situations contemplated by the Convention are when the contract of sale involves carriage of the goods and when the goods are sold while in transit. In all other cases the risk passes to the buyer when he takes over the goods or from the time when the goods are placed at his disposal and he commits a breach of contract by failing to take delivery, whichever comes first. In the frequent case when the contract relates to goods that are not then identified, they must be identified to the contract before they can be considered to be placed at the disposal of the buyer and the risk of their loss can be considered to have passed to him.

E. Suspension of performance and anticipatory breach

33. The Convention contains special rules for the situation in which, prior to the date on which performance is due, it becomes apparent that one of the parties will not perform a substantial part of his obligations or will commit a fundamental breach of contract. A distinction is drawn between those cases in which the other party may suspend his own performance of the contract but the contract remains in existence awaiting future events and those cases in which he may declare the contract avoided.

F. Exemption from liability to pay damages

34. When a party fails to perform any of his obligations due to an impediment beyond his control that he could not reasonably have been expected to take into account at the time of the conclusion of the contract and that he could not have avoided or overcome, he is exempted from the consequences of his failure to perform, including the payment of damages. This exemption may also apply if the failure is due to the failure of a third person whom he has engaged to perform the whole or a part of the contract. However, he is subject to any other remedy, including reduction of the price, if the goods were defective in some way.

G. Preservation of the goods

35. The Convention imposes on both parties the duty to preserve any goods in their possession belonging to the other party. Such a duty is of even greater importance in an international sale of goods where the other party is from a

foreign country and may not have agents in the country where the goods are located. Under certain circumstances the party in possession of the goods may sell them, or may even be required to sell them. A party selling the goods has the right to retain out of the proceeds of sale an amount equal to the reasonable expenses of preserving the goods and of selling them and must account to the other party for the balance.

Part Four. Final clauses

36. The final clauses contain the usual provisions relating to the Secretary-General as depositary and providing that the Convention is subject to ratification, acceptance or approval by those States that signed it by 30 September 1981, that it is open to accession by all States that are not signatory States and that the text is equally authentic in Arabic, Chinese, English, French, Russian and Spanish.

37. The Convention permits a certain number of declarations. Those relative to scope of application and the requirement as to a written contract have been mentioned above. There is a special declaration for States that have different systems of law governing contracts of sale in different parts of their territory. Finally, a State may declare that it will not be bound by Part II on formation of contracts or Part III on the rights and obligations of the buyer and seller. This latter declaration was included as part of the decision to combine into one convention the subject matter of the two 1964 Hague Conventions.

Complementary texts

38. The United Nations Convention on Contracts for the International Sale of Goods is complemented by the United Nations Convention on the Limitation Period in the International Sale of Goods, 1974, as amended by a Protocol in 1980 (the Limitation Convention). The Limitation Convention establishes uniform rules governing the period of time within which a party under a contract for the international sale of goods must commence legal proceedings against another party to assert a claim arising from the contract or relating to its breach, termination or validity. The amending Protocol of 1980 ensures that the scope of application of the Limitation Convention is identical to the one of the United Nations Convention on Contracts for the International Sale of Goods.

39. The United Nations Convention on Contracts for the International Sale of Goods is also complemented, with respect to the use of electronic communications,

by the United Nations Convention on the Use of Electronic Communications in International Contracts, 2005 (the Electronic Communications Convention). The Electronic Communications Convention aims at facilitating the use of electronic communications in international trade by assuring that contracts concluded and other communications exchanged electronically are as valid and enforceable as their traditional paper-based equivalents. The Electronic Communications Convention may help to avoid misinterpretation of the CISG that might occur, for example, when a State has lodged a declaration mandating the use of the traditional written form for contracts for the international sale of goods. It may also promote the understanding that the "communication" and/or "writing" under the CISG should be construed so as to include electronic communications. The Electronic Communications Convention is an enabling treaty whose effect is to remove those formal obstacles by establishing the requirements for functional equivalence between electronic and traditional written form.

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UNIDROIT PRINCIPLES OF INTERNATIONAL COMMERCIAL CONTRACTS 2016

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UNIDROIT PRINCIPLES OF INTERNATIONAL COMMERCIAL CONTRACTS 2016

PREAMBLE
(Purpose of the Principles)

These Principles set forth general rules for international commercial contracts.

They shall be applied when the parties have agreed that their contract be governed by them.(*)

They may be applied when the parties have agreed that their contract be governed by general principles of law, the *lex mercatoria* or the like.

They may be applied when the parties have not chosen any law to govern their contract.

They may be used to interpret or supplement international uniform law instruments.

They may be used to interpret or supplement domestic law.

They may serve as a model for national and international legislators.

CHAPTER 1 — GENERAL PROVISIONS

ARTICLE 1.1
(Freedom of contract)

The parties are free to enter into a contract and to determine its content.

ARTICLE 1.2
(No form required)

Nothing in these Principles requires a contract, statement or any other act to be made in or evidenced by a particular form. It may be proved by any means, including witnesses.

ARTICLE 1.3
(Binding character of contract)

A contract validly entered into is binding upon the parties. It can only be modified or terminated in accordance with its terms or by agreement or as otherwise provided in these Principles.

ARTICLE 1.4
(Mandatory rules)

Nothing in these Principles shall restrict the application of mandatory rules, whether of national, international or supranational origin, which are applicable in accordance with the relevant rules of private international law.

ARTICLE 1.5
(Exclusion or modification by the parties)

The parties may exclude the application of these Principles or derogate from or vary the effect of any of their provisions, except as otherwise provided in the Principles.

(*) Parties wishing to provide that their agreement be governed by the Principles might use one of the *Model Clauses for the use of the UNIDROIT Principles of International Commercial Contracts* (see http://www.unidroit.org/instruments/commercial-contracts/upicc-model-clauses).

ARTICLE 1.6
(Interpretation and supplementation of the Principles)

(1) In the interpretation of these Principles, regard is to be had to their international character and to their purposes including the need to promote uniformity in their application.

(2) Issues within the scope of these Principles but not expressly settled by them are as far as possible to be settled in accordance with their underlying general principles.

ARTICLE 1.7
(Good faith and fair dealing)

(1) Each party must act in accordance with good faith and fair dealing in international trade.

(2) The parties may not exclude or limit this duty.

ARTICLE 1.8
(Inconsistent behaviour)

A party cannot act inconsistently with an understanding it has caused the other party to have and upon which that other party reasonably has acted in reliance to its detriment.

ARTICLE 1.9
(Usages and practices)

(1) The parties are bound by any usage to which they have agreed and by any practices which they have established between themselves.

(2) The parties are bound by a usage that is widely known to and regularly observed in international trade by parties in the particular trade concerned except where the application of such a usage would be unreasonable.

ARTICLE 1.10
(Notice)

(1) Where notice is required it may be given by any means appropriate to the circumstances.

(2) A notice is effective when it reaches the person to whom it is given.

(3) For the purpose of paragraph (2) a notice "reaches" a person when given to that person orally or delivered at that person's place of business or mailing address.

(4) For the purpose of this Article "notice" includes a declaration, demand, request or any other communication of intention.

ARTICLE 1.11
(Definitions)

In these Principles

– "court" includes an arbitral tribunal;

– where a party has more than one place of business the relevant "place of business" is that which has the closest relationship to the contract and its performance, having regard to the circumstances known to or contemplated by the parties at any time before or at the conclusion of the contract;

– "long-term contract" refers to a contract which is to be performed over a period of time and which normally involves, to a varying degree, complexity of the transaction and an ongoing relationship between the parties;

– "obligor" refers to the party who is to perform an obligation and "obligee" refers to the party who is entitled to performance of that obligation;

– "writing" means any mode of communication that preserves a record of the information contained therein and is capable of being reproduced in tangible form.

ARTICLE 1.12
(Computation of time set by parties)

(1) Official holidays or non-business days occurring during a period set by parties for an act to be performed are included in calculating the period.

(2) However, if the last day of the period is an official holiday or a non-business day at the place of business of the party to perform the act, the period is extended until the first business day which follows, unless the circumstances indicate otherwise.

(3) The relevant time zone is that of the place of business of the party setting the time, unless the circumstances indicate otherwise.

CHAPTER 2 — FORMATION AND AUTHORITY OF AGENTS

SECTION 1: FORMATION

ARTICLE 2.1.1
(Manner of formation)

A contract may be concluded either by the acceptance of an offer or by conduct of the parties that is sufficient to show agreement.

ARTICLE 2.1.2
(Definition of offer)

A proposal for concluding a contract constitutes an offer if it is sufficiently definite and indicates the intention of the offeror to be bound in case of acceptance.

ARTICLE 2.1.3
(Withdrawal of offer)

(1) An offer becomes effective when it reaches the offeree.

(2) An offer, even if it is irrevocable, may be withdrawn if the withdrawal reaches the offeree before or at the same time as the offer.

ARTICLE 2.1.4
(Revocation of offer)

(1) Until a contract is concluded an offer may be revoked if the revocation reaches the offeree before it has dispatched an acceptance.

(2) However, an offer cannot be revoked

(a) if it indicates, whether by stating a fixed time for acceptance or otherwise, that it is irrevocable; or

(b) if it was reasonable for the offeree to rely on the offer as being irrevocable and the offeree has acted in reliance on the offer.

ARTICLE 2.1.5
(Rejection of offer)

An offer is terminated when a rejection reaches the offeror.

ARTICLE 2.1.6
(Mode of acceptance)

(1) A statement made by or other conduct of the offeree indicating assent to an offer is an acceptance. Silence or inactivity does not in itself amount to acceptance.

(2) An acceptance of an offer becomes effective when the indication of assent reaches the offeror.

(3) However, if, by virtue of the offer or as a result of practices which the parties have established between themselves or of usage, the offeree may indicate assent by

performing an act without notice to the offeror, the acceptance is effective when the act is performed.

ARTICLE 2.1.7
(Time of acceptance)

An offer must be accepted within the time the offeror has fixed or, if no time is fixed, within a reasonable time having regard to the circumstances, including the rapidity of the means of communication employed by the offeror. An oral offer must be accepted immediately unless the circumstances indicate otherwise.

ARTICLE 2.1.8
(Acceptance within a fixed period of time)

A period of acceptance fixed by the offeror begins to run from the time that the offer is dispatched. A time indicated in the offer is deemed to be the time of dispatch unless the circumstances indicate otherwise.

ARTICLE 2.1.9
(Late acceptance. Delay in transmission)

(1) A late acceptance is nevertheless effective as an acceptance if without undue delay the offeror so informs the offeree or gives notice to that effect.

(2) If a communication containing a late acceptance shows that it has been sent in such circumstances that if its transmission had been normal it would have reached the offeror in due time, the late acceptance is effective as an acceptance unless, without undue delay, the offeror informs the offeree that it considers the offer as having lapsed.

ARTICLE 2.1.10
(Withdrawal of acceptance)

An acceptance may be withdrawn if the withdrawal reaches the offeror before or at the same time as the acceptance would have become effective.

ARTICLE 2.1.11
(Modified acceptance)

(1) A reply to an offer which purports to be an acceptance but contains additions, limitations or other modifications is a rejection of the offer and constitutes a counter-offer.

(2) However, a reply to an offer which purports to be an acceptance but contains additional or different terms which do not materially alter the terms of the offer constitutes an acceptance, unless the offeror, without undue delay, objects to the discrepancy. If the offeror does not object, the terms of the contract are the terms of the offer with the modifications contained in the acceptance.

ARTICLE 2.1.12
(Writings in confirmation)

If a writing which is sent within a reasonable time after the conclusion of the contract and which purports to be a confirmation of the contract contains additional or different terms, such terms become part of the contract, unless they materially alter the contract or the recipient, without undue delay, objects to the discrepancy.

ARTICLE 2.1.13
(Conclusion of contract dependent on agreement on specific matters or in a particular form)

Where in the course of negotiations one of the parties insists that the contract is not concluded until there is agreement on specific matters or in a particular form, no contract is concluded before agreement is reached on those matters or in that form.

ARTICLE 2.1.14
(Contract with terms deliberately left open)

(1) If the parties intend to conclude a contract, the fact that they intentionally leave a term to be agreed upon in further negotiations or to be determined by one of the parties or by a third person does not prevent a contract from coming into existence.

(2) The existence of the contract is not affected by the fact that subsequently

(a) the parties reach no agreement on the term;

(b) the party who is to determine the term does not do so; or

(c) the third person does not determine the term,

provided that there is an alternative means of rendering the term definite that is reasonable in the circumstances, having regard to the intention of the parties.

ARTICLE 2.1.15
(Negotiations in bad faith)

(1) A party is free to negotiate and is not liable for failure to reach an agreement.

(2) However, a party who negotiates or breaks off negotiations in bad faith is liable for the losses caused to the other party.

(3) It is bad faith, in particular, for a party to enter into or continue negotiations when intending not to reach an agreement with the other party.

ARTICLE 2.1.16
(Duty of confidentiality)

Where information is given as confidential by one party in the course of negotiations, the other party is under a duty not to disclose that information or to use it improperly for its own purposes, whether or not a contract is subsequently concluded. Where appropriate, the remedy for breach of that duty may include compensation based on the benefit received by the other party.

ARTICLE 2.1.17
(Merger clauses)

A contract in writing which contains a clause indicating that the writing completely embodies the terms on which the parties have agreed cannot be contradicted or supplemented by evidence of prior statements or agreements. However, such statements or agreements may be used to interpret the writing.

ARTICLE 2.1.18
(Modification in a particular form)

A contract in writing which contains a clause requiring any modification or termination by agreement to be in a particular form may not be otherwise modified or terminated. However, a party may be precluded by its conduct from asserting such a clause to the extent that the other party has reasonably acted in reliance on that conduct.

ARTICLE 2.1.19
(Contracting under standard terms)

(1) Where one party or both parties use standard terms in concluding a contract, the general rules on formation apply, subject to Articles 2.1.20 - 2.1.22.

(2) Standard terms are provisions which are prepared in advance for general and repeated use by one party and which are actually used without negotiation with the other party.

ARTICLE 2.1.20
(Surprising terms)

(1) No term contained in standard terms which is of such a character that the other party could not reasonably have expected it, is effective unless it has been expressly accepted by that party.

(2) In determining whether a term is of such a character regard shall be had to its content, language and presentation.

ARTICLE 2.1.21
(Conflict between standard terms and non-standard terms)

In case of conflict between a standard term and a term which is not a standard term the latter prevails.

ARTICLE 2.1.22
(Battle of forms)

Where both parties use standard terms and reach agreement except on those terms, a contract is concluded on the basis of the agreed terms and of any standard terms which are common in substance unless one party clearly indicates in advance, or later and without undue delay informs the other party, that it does not intend to be bound by such a contract.

SECTION 2: AUTHORITY OF AGENTS

ARTICLE 2.2.1
(Scope of the Section)

(1) This Section governs the authority of a person ("the agent") to affect the legal relations of another person ("the principal") by or with respect to a contract with a third party, whether the agent acts in its own name or in that of the principal.

(2) It governs only the relations between the principal or the agent on the one hand, and the third party on the other.

(3) It does not govern an agent's authority conferred by law or the authority of an agent appointed by a public or judicial authority.

ARTICLE 2.2.2
(Establishment and scope of the authority of the agent)

(1) The principal's grant of authority to an agent may be express or implied.

(2) The agent has authority to perform all acts necessary in the circumstances to achieve the purposes for which the authority was granted.

ARTICLE 2.2.3
(Agency disclosed)

(1) Where an agent acts within the scope of its authority and the third party knew or ought to have known that the agent was acting as an agent, the acts of the agent shall directly affect the legal relations between the principal and the third party and no legal relation is created between the agent and the third party.

(2) However, the acts of the agent shall affect only the relations between the agent and the third party, where the agent with the consent of the principal undertakes to become the party to the contract.

ARTICLE 2.2.4
(Agency undisclosed)

(1) Where an agent acts within the scope of its authority and the third party neither knew nor ought to have known that the agent was acting as an agent, the acts of the agent shall affect only the relations between the agent and the third party.

(2) However, where such an agent, when contracting with the third party on behalf of a business, represents itself to be the owner of that business, the third party, upon discovery of the real owner of the business, may exercise also against the latter the rights it has against the agent.

ARTICLE 2.2.5
(Agent acting without or exceeding its authority)

(1) Where an agent acts without authority or exceeds its authority, its acts do not affect the legal relations between the principal and the third party.

(2) However, where the principal causes the third party reasonably to believe that the agent has authority to act on behalf of the principal and that the agent is acting within the scope of that authority, the principal may not invoke against the third party the lack of authority of the agent.

ARTICLE 2.2.6
(Liability of agent acting without or exceeding its authority)

(1) An agent that acts without authority or exceeds its authority is, failing ratification by the principal, liable for damages that will place the third party in the same position as if the agent had acted with authority and not exceeded its authority.

(2) However, the agent is not liable if the third party knew or ought to have known that the agent had no authority or was exceeding its authority.

ARTICLE 2.2.7
(Conflict of interests)

(1) If a contract concluded by an agent involves the agent in a conflict of interests with the principal of which the third party knew or ought to have known, the principal may avoid the contract. The right to avoid is subject to Articles 3.2.9 and 3.2.11 to 3.2.15.

(2) However, the principal may not avoid the contract

(a) if the principal had consented to, or knew or ought to have known of, the agent's involvement in the conflict of interests; or

(b) if the agent had disclosed the conflict of interests to the principal and the latter had not objected within a reasonable time.

ARTICLE 2.2.8
(Sub-agency)

An agent has implied authority to appoint a sub-agent to perform acts which it is not reasonable to expect the agent to perform itself. The rules of this Section apply to the sub-agency.

ARTICLE 2.2.9
(Ratification)

(1) An act by an agent that acts without authority or exceeds its authority may be ratified by the principal. On ratification the act produces the same effects as if it had initially been carried out with authority.

(2) The third party may by notice to the principal specify a reasonable period of time for ratification. If the principal does not ratify within that period of time it can no longer do so.

(3) If, at the time of the agent's act, the third party neither knew nor ought to have known of the lack of authority, it may, at any time before ratification, by notice to the principal indicate its refusal to become bound by a ratification.

ARTICLE 2.2.10
(Termination of authority)

(1) Termination of authority is not effective in relation to the third party unless the third party knew or ought to have known of it.

(2) Notwithstanding the termination of its authority, an agent remains authorised to perform the acts that are necessary to prevent harm to the principal's interests.

CHAPTER 3 — VALIDITY

SECTION 1: GENERAL PROVISIONS

ARTICLE 3.1.1
(Matters not covered)

This Chapter does not deal with lack of capacity.

ARTICLE 3.1.2
(Validity of mere agreement)

A contract is concluded, modified or terminated by the mere agreement of the parties, without any further requirement.

ARTICLE 3.1.3
(Initial impossibility)

(1) The mere fact that at the time of the conclusion of the contract the performance of the obligation assumed was impossible does not affect the validity of the contract.

(2) The mere fact that at the time of the conclusion of the contract a party was not entitled to dispose of the assets to which the contract relates does not affect the validity of the contract.

ARTICLE 3.1.4
(Mandatory character of the provisions)

The provisions on fraud, threat, gross disparity and illegality contained in this Chapter are mandatory.

SECTION 2: GROUNDS FOR AVOIDANCE

ARTICLE 3.2.1
(Definition of mistake)

Mistake is an erroneous assumption relating to facts or to law existing when the contract was concluded.

ARTICLE 3.2.2
(Relevant mistake)

(1) A party may only avoid the contract for mistake if, when the contract was concluded, the mistake was of such importance that a reasonable person in the same situation as the party in error would only have concluded the contract on materially different terms or would not have concluded it at all if the true state of affairs had been known, and

(a) the other party made the same mistake, or caused the mistake, or knew or ought to have known of the mistake and it was contrary to reasonable commercial standards of fair dealing to leave the mistaken party in error; or

(b) the other party had not at the time of avoidance reasonably acted in reliance on the contract.

(2) However, a party may not avoid the contract if

(a) it was grossly negligent in committing the mistake; or

(b) the mistake relates to a matter in regard to which the risk of mistake was assumed or, having regard to the circumstances, should be borne by the mistaken party.

ARTICLE 3.2.3

(Error in expression or transmission)

An error occurring in the expression or transmission of a declaration is considered to be a mistake of the person from whom the declaration emanated.

ARTICLE 3.2.4

(Remedies for non-performance)

A party is not entitled to avoid the contract on the ground of mistake if the circumstances on which that party relies afford, or could have afforded, a remedy for non-performance.

ARTICLE 3.2.5

(Fraud)

A party may avoid the contract when it has been led to conclude the contract by the other party's fraudulent representation, including language or practices, or fraudulent non-disclosure of circumstances which, according to reasonable commercial standards of fair dealing, the latter party should have disclosed.

ARTICLE 3.2.6

(Threat)

A party may avoid the contract when it has been led to conclude the contract by the other party's unjustified threat which, having regard to the circumstances, is so imminent and serious as to leave the first party no reasonable alternative. In particular, a threat is unjustified if the act or omission with which a party has been threatened is wrongful in itself, or it is wrongful to use it as a means to obtain the conclusion of the contract.

ARTICLE 3.2.7

(Gross disparity)

(1) A party may avoid the contract or an individual term of it if, at the time of the conclusion of the contract, the contract or term unjustifiably gave the other party an excessive advantage. Regard is to be had, among other factors, to

(a) the fact that the other party has taken unfair advantage of the first party's dependence, economic distress or urgent needs, or of its improvidence, ignorance, inexperience or lack of bargaining skill, and

(b) the nature and purpose of the contract.

(2) Upon the request of the party entitled to avoidance, a court may adapt the contract or term in order to make it accord with reasonable commercial standards of fair dealing.

(3) A court may also adapt the contract or term upon the request of the party receiving notice of avoidance, provided that that party informs the other party of its request promptly after receiving such notice and before the other party has reasonably acted in reliance on it. Article 3.2.10(2) applies accordingly.

ARTICLE 3.2.8
(Third persons)

(1) Where fraud, threat, gross disparity or a party's mistake is imputable to, or is known or ought to be known by, a third person for whose acts the other party is responsible, the contract may be avoided under the same conditions as if the behaviour or knowledge had been that of the party itself.

(2) Where fraud, threat or gross disparity is imputable to a third person for whose acts the other party is not responsible, the contract may be avoided if that party knew or ought to have known of the fraud, threat or disparity, or has not at the time of avoidance reasonably acted in reliance on the contract.

ARTICLE 3.2.9
(Confirmation)

If the party entitled to avoid the contract expressly or impliedly confirms the contract after the period of time for giving notice of avoidance has begun to run, avoidance of the contract is excluded.

ARTICLE 3.2.10
(Loss of right to avoid)

(1) If a party is entitled to avoid the contract for mistake but the other party declares itself willing to perform or performs the contract as it was understood by the party entitled to avoidance, the contract is considered to have been concluded as the latter party understood it. The other party must make such a declaration or render such performance promptly after having been informed of the manner in which the party entitled to avoidance had understood the contract and before that party has reasonably acted in reliance on a notice of avoidance.

(2) After such a declaration or performance the right to avoidance is lost and any earlier notice of avoidance is ineffective.

ARTICLE 3.2.11
(Notice of avoidance)

The right of a party to avoid the contract is exercised by notice to the other party.

ARTICLE 3.2.12
(Time limits)

(1) Notice of avoidance shall be given within a reasonable time, having regard to the circumstances, after the avoiding party knew or could not have been unaware of the relevant facts or became capable of acting freely.

(2) Where an individual term of the contract may be avoided by a party under Article 3.2.7, the period of time for giving notice of avoidance begins to run when that term is asserted by the other party.

ARTICLE 3.2.13
(Partial avoidance)

Where a ground of avoidance affects only individual terms of the contract, the effect of avoidance is limited to those terms unless, having regard to the circumstances, it is unreasonable to uphold the remaining contract.

ARTICLE 3.2.14
(Retroactive effect of avoidance)

Avoidance takes effect retroactively.

ARTICLE 3.2.15
(Restitution)

(1) On avoidance either party may claim restitution of whatever it has supplied under the contract, or the part of it avoided, provided that the party concurrently makes restitution of whatever it has received under the contract, or the part of it avoided.

(2) If restitution in kind is not possible or appropriate, an allowance has to be made in money whenever reasonable.

(3) The recipient of the performance does not have to make an allowance in money if the impossibility to make restitution in kind is attributable to the other party.

(4) Compensation may be claimed for expenses reasonably required to preserve or maintain the performance received.

ARTICLE 3.2.16
(Damages)

Irrespective of whether or not the contract has been avoided, the party who knew or ought to have known of the ground for avoidance is liable for damages so as to put the other party in the same position in which it would have been if it had not concluded the contract.

ARTICLE 3.2.17
(Unilateral declarations)

The provisions of this Chapter apply with appropriate adaptations to any communication of intention addressed by one party to the other.

SECTION 3: ILLEGALITY

ARTICLE 3.3.1
(Contracts infringing mandatory rules)

(1) Where a contract infringes a mandatory rule, whether of national, international or supranational origin, applicable under Article 1.4 of these Principles, the effects of that infringement upon the contract are the effects, if any, expressly prescribed by that mandatory rule.

(2) Where the mandatory rule does not expressly prescribe the effects of an infringement upon a contract, the parties have the right to exercise such remedies under the contract as in the circumstances are reasonable.

(3) In determining what is reasonable regard is to be had in particular to:

(a) the purpose of the rule which has been infringed;

(b) the category of persons for whose protection the rule exists;

(c) any sanction that may be imposed under the rule infringed;

(d) the seriousness of the infringement;

(e) whether one or both parties knew or ought to have known of the infringement;

(f) whether the performance of the contract necessitates the infringement; and

(g) the parties' reasonable expectations.

ARTICLE 3.3.2
(Restitution)

(1) Where there has been performance under a contract infringing a mandatory rule under Article 3.3.1, restitution may be granted where this would be reasonable in the circumstances.

(2) In determining what is reasonable, regard is to be had, with the appropriate adaptations, to the criteria referred to in Article 3.3.1(3).

(3) If restitution is granted, the rules set out in Article 3.2.15 apply with appropriate adaptations.

CHAPTER 4 — INTERPRETATION

ARTICLE 4.1
(Intention of the parties)

(1) A contract shall be interpreted according to the common intention of the parties.

(2) If such an intention cannot be established, the contract shall be interpreted according to the meaning that reasonable persons of the same kind as the parties would give to it in the same circumstances.

ARTICLE 4.2
(Interpretation of statements and other conduct)

(1) The statements and other conduct of a party shall be interpreted according to that party's intention if the other party knew or could not have been unaware of that intention.

(2) If the preceding paragraph is not applicable, such statements and other conduct shall be interpreted according to the meaning that a reasonable person of the same kind as the other party would give to it in the same circumstances.

ARTICLE 4.3
(Relevant circumstances)

In applying Articles 4.1 and 4.2, regard shall be had to all the circumstances, including

(a) preliminary negotiations between the parties;
(b) practices which the parties have established between themselves;
(c) the conduct of the parties subsequent to the conclusion of the contract;
(d) the nature and purpose of the contract;
(e) the meaning commonly given to terms and expressions in the trade concerned;
(f) usages.

ARTICLE 4.4
(Reference to contract or statement as a whole)

Terms and expressions shall be interpreted in the light of the whole contract or statement in which they appear.

ARTICLE 4.5
(All terms to be given effect)

Contract terms shall be interpreted so as to give effect to all the terms rather than to deprive some of them of effect.

ARTICLE 4.6
(Contra proferentem rule)

If contract terms supplied by one party are unclear, an interpretation against that party is preferred.

ARTICLE 4.7
(Linguistic discrepancies)

Where a contract is drawn up in two or more language versions which are equally authoritative there is, in case of discrepancy between the versions, a preference for the interpretation according to a version in which the contract was originally drawn up.

ARTICLE 4.8
(Supplying an omitted term)

(1) Where the parties to a contract have not agreed with respect to a term which is important for a determination of their rights and duties, a term which is appropriate in the circumstances shall be supplied.

(2) In determining what is an appropriate term regard shall be had, among other factors, to

(a) the intention of the parties;
(b) the nature and purpose of the contract;
(c) good faith and fair dealing;
(d) reasonableness.

CHAPTER 5 — CONTENT AND THIRD PARTY RIGHTS

SECTION 1: CONTENT

ARTICLE 5.1.1
(Express and implied obligations)

The contractual obligations of the parties may be express or implied.

ARTICLE 5.1.2
(Implied obligations)

Implied obligations stem from

(a) the nature and purpose of the contract;
(b) practices established between the parties and usages;
(c) good faith and fair dealing;
(d) reasonableness.

ARTICLE 5.1.3
(Co-operation between the parties)

Each party shall cooperate with the other party when such co-operation may reasonably be expected for the performance of that party's obligations.

ARTICLE 5.1.4
(Duty to achieve a specific result.
Duty of best efforts)

(1) To the extent that an obligation of a party involves a duty to achieve a specific result, that party is bound to achieve that result.

(2) To the extent that an obligation of a party involves a duty of best efforts in the performance of an activity, that party is bound to make such efforts as would be made by a reasonable person of the same kind in the same circumstances.

ARTICLE 5.1.5
(Determination of kind of duty involved)

In determining the extent to which an obligation of a party involves a duty of best efforts in the performance of an activity or a duty to achieve a specific result, regard shall be had, among other factors, to

(a) the way in which the obligation is expressed in the contract;
(b) the contractual price and other terms of the contract;
(c) the degree of risk normally involved in achieving the expected result;
(d) the ability of the other party to influence the performance of the obligation.

ARTICLE 5.1.6
(Determination of quality of performance)

Where the quality of performance is neither fixed by, nor determinable from, the contract a party is bound to render a performance of a quality that is reasonable and not less than average in the circumstances.

ARTICLE 5.1.7
(Price determination)

(1) Where a contract does not fix or make provision for determining the price, the parties are considered, in the absence of any indication to the contrary, to have made reference to the price generally charged at the time of the conclusion of the contract for such performance in comparable circumstances in the trade concerned or, if no such price is available, to a reasonable price.

(2) Where the price is to be determined by one party and that determination is manifestly unreasonable, a reasonable price shall be substituted notwithstanding any contract term to the contrary.

(3) Where the price is to be fixed by one party or a third person, and that party or third person does not do so, the price shall be a reasonable price.

(4) Where the price is to be fixed by reference to factors which do not exist or have ceased to exist or to be accessible, the nearest equivalent factor shall be treated as a substitute.

ARTICLE 5.1.8
(Termination of a contract for an indefinite period)

A contract for an indefinite period may be terminated by either party by giving notice a reasonable time in advance. As to the effects of termination in general, and as to restitution, the provisions in Articles 7.3.5 and 7.3.7 apply.

ARTICLE 5.1.9
(Release by agreement)

(1) An obligee may release its right by agreement with the obligor.

(2) An offer to release a right gratuitously shall be deemed accepted if the obligor does not reject the offer without delay after having become aware of it.

SECTION 2: THIRD PARTY RIGHTS

ARTICLE 5.2.1
(Contracts in favour of third parties)

(1) The parties (the "promisor" and the "promisee") may confer by express or implied agreement a right on a third party (the "beneficiary").

(2) The existence and content of the beneficiary's right against the promisor are determined by the agreement of the parties and are subject to any conditions or other limitations under the agreement.

ARTICLE 5.2.2
(Third party identifiable)

The beneficiary must be identifiable with adequate certainty by the contract but need not be in existence at the time the contract is made.

ARTICLE 5.2.3
(Exclusion and limitation clauses)

The conferment of rights in the beneficiary includes the right to invoke a clause in the contract which excludes or limits the liability of the beneficiary.

ARTICLE 5.2.4
(Defences)

The promisor may assert against the beneficiary all defences which the promisor could assert against the promisee.

ARTICLE 5.2.5
(Revocation)

The parties may modify or revoke the rights conferred by the contract on the beneficiary until the beneficiary has accepted them or reasonably acted in reliance on them.

ARTICLE 5.2.6
(Renunciation)

The beneficiary may renounce a right conferred on it.

SECTION 3: CONDITIONS

ARTICLE 5.3.1
(Types of condition)

A contract or a contractual obligation may be made conditional upon the occurrence of a future uncertain event, so that the contract or the contractual obligation only takes effect if the event occurs (suspensive condition) or comes to an end if the event occurs (resolutive condition).

ARTICLE 5.3.2
(Effect of conditions)

Unless the parties otherwise agree:

(a) the relevant contract or contractual obligation takes effect upon fulfilment of a suspensive condition;

(b) the relevant contract or contractual obligation comes to an end upon fulfilment of a resolutive condition.

ARTICLE 5.3.3
(Interference with conditions)

(1) If fulfilment of a condition is prevented by a party, contrary to the duty of good faith and fair dealing or the duty of co-operation, that party may not rely on the non-fulfilment of the condition.

(2) If fulfilment of a condition is brought about by a party, contrary to the duty of good faith and fair dealing or the duty of co-operation, that party may not rely on the fulfilment of the condition.

ARTICLE 5.3.4
(Duty to preserve rights)

Pending fulfilment of a condition, a party may not, contrary to the duty to act in accordance with good faith and fair dealing, act so as to prejudice the other party's rights in case of fulfilment of the condition.

ARTICLE 5.3.5
(Restitution in case of fulfilment of a resolutive condition)

(1) On fulfilment of a resolutive condition, the rules on restitution set out in Articles 7.3.6 and 7.3.7 apply with appropriate adaptations.

(2) If the parties have agreed that the resolutive condition is to operate retroactively, the rules on restitution set out in Article 3.2.15 apply with appropriate adaptations.

CHAPTER 6 — PERFORMANCE

SECTION 1: PERFORMANCE IN GENERAL

ARTICLE 6.1.1
(Time of performance)

A party must perform its obligations:

(a) if a time is fixed by or determinable from the contract, at that time;

(b) if a period of time is fixed by or determinable from the contract, at any time within that period unless circumstances indicate that the other party is to choose a time;

(c) in any other case, within a reasonable time after the conclusion of the contract.

ARTICLE 6.1.2
(Performance at one time or in instalments)

In cases under Article 6.1.1(b) or (c), a party must perform its obligations at one time if that performance can be rendered at one time and the circumstances do not indicate otherwise.

ARTICLE 6.1.3
(Partial performance)

(1) The obligee may reject an offer to perform in part at the time performance is due, whether or not such offer is coupled with an assurance as to the balance of the performance, unless the obligee has no legitimate interest in so doing.

(2) Additional expenses caused to the obligee by partial performance are to be borne by the obligor without prejudice to any other remedy.

ARTICLE 6.1.4
(Order of performance)

(1) To the extent that the performances of the parties can be rendered simultaneously, the parties are bound to render them simultaneously unless the circumstances indicate otherwise.

(2) To the extent that the performance of only one party requires a period of time, that party is bound to render its performance first, unless the circumstances indicate otherwise.

ARTICLE 6.1.5
(Earlier performance)

(1) The obligee may reject an earlier performance unless it has no legitimate interest in so doing.

(2) Acceptance by a party of an earlier performance does not affect the time for the performance of its own obligations if that time has been fixed irrespective of the performance of the other party's obligations.

(3) Additional expenses caused to the obligee by earlier performance are to be borne by the obligor, without prejudice to any other remedy.

ARTICLE 6.1.6
(Place of performance)

(1) If the place of performance is neither fixed by, nor determinable from, the contract, a party is to perform:

(a) a monetary obligation, at the obligee's place of business;
(b) any other obligation, at its own place of business.

(2) A party must bear any increase in the expenses incidental to performance which is caused by a change in its place of business subsequent to the conclusion of the contract.

ARTICLE 6.1.7
(Payment by cheque or other instrument)

(1) Payment may be made in any form used in the ordinary course of business at the place for payment.

(2) However, an obligee who accepts, either by virtue of paragraph (1) or voluntarily, a cheque, any other order to pay or a promise to pay, is presumed to do so only on condition that it will be honoured.

ARTICLE 6.1.8
(Payment by funds transfer)

(1) Unless the obligee has indicated a particular account, payment may be made by a transfer to any of the financial institutions in which the obligee has made it known that it has an account.

(2) In case of payment by a transfer the obligation of the obligor is discharged when the transfer to the obligee's financial institution becomes effective.

ARTICLE 6.1.9
(Currency of payment)

(1) If a monetary obligation is expressed in a currency other than that of the place for payment, it may be paid by the obligor in the currency of the place for payment unless
(a) that currency is not freely convertible; or
(b) the parties have agreed that payment should be made only in the currency in which the monetary obligation is expressed.

(2) If it is impossible for the obligor to make payment in the currency in which the monetary obligation is expressed, the obligee may require payment in the currency of the place for payment, even in the case referred to in paragraph (1)(b).

(3) Payment in the currency of the place for payment is to be made according to the applicable rate of exchange prevailing there when payment is due.

(4) However, if the obligor has not paid at the time when payment is due, the obligee may require payment according to the applicable rate of exchange prevailing either when payment is due or at the time of actual payment.

ARTICLE 6.1.10
(Currency not expressed)

Where a monetary obligation is not expressed in a particular currency, payment must be made in the currency of the place where payment is to be made.

ARTICLE 6.1.11
(Costs of performance)

Each party shall bear the costs of performance of its obligations.

ARTICLE 6.1.12
(Imputation of payments)

(1) An obligor owing several monetary obligations to the same obligee may specify at the time of payment the debt to which it intends the payment to be applied.

However, the payment discharges first any expenses, then interest due and finally the principal.

(2) If the obligor makes no such specification, the obligee may, within a reasonable time after payment, declare to the obligor the obligation to which it imputes the payment, provided that the obligation is due and undisputed.

(3) In the absence of imputation under paragraphs (1) or (2), payment is imputed to that obligation which satisfies one of the following criteria in the order indicated:

(a) an obligation which is due or which is the first to fall due;

(b) the obligation for which the obligee has least security;

(c) the obligation which is the most burdensome for the obligor;

(d) the obligation which has arisen first.

If none of the preceding criteria applies, payment is imputed to all the obligations proportionally.

ARTICLE 6.1.13
(Imputation of non-monetary obligations)

Article 6.1.12 applies with appropriate adaptations to the imputation of performance of non-monetary obligations.

ARTICLE 6.1.14
(Application for public permission)

Where the law of a State requires a public permission affecting the validity of the contract or its performance and neither that law nor the circumstances indicate otherwise

(a) if only one party has its place of business in that State, that party shall take the measures necessary to obtain the permission;

(b) in any other case the party whose performance requires permission shall take the necessary measures.

ARTICLE 6.1.15
(Procedure in applying for permission)

(1) The party required to take the measures necessary to obtain the permission shall do so without undue delay and shall bear any expenses incurred.

(2) That party shall whenever appropriate give the other party notice of the grant or refusal of such permission without undue delay.

ARTICLE 6.1.16
(Permission neither granted nor refused)

(1) If, notwithstanding the fact that the party responsible has taken all measures required, permission is neither granted nor refused within an agreed period or, where no period has been agreed, within a reasonable time from the conclusion of the contract, either party is entitled to terminate the contract.

(2) Where the permission affects some terms only, paragraph (1) does not apply if, having regard to the circumstances, it is reasonable to uphold the remaining contract even if the permission is refused.

ARTICLE 6.1.17
(Permission refused)

(1) The refusal of a permission affecting the validity of the contract renders the contract void. If the refusal affects the validity of some terms only, only such terms are void if, having regard to the circumstances, it is reasonable to uphold the remaining contract.

(2) Where the refusal of a permission renders the performance of the contract impossible in whole or in part, the rules on non-performance apply.

SECTION 2: HARDSHIP

ARTICLE 6.2.1
(Contract to be observed)

Where the performance of a contract becomes more onerous for one of the parties, that party is nevertheless bound to perform its obligations subject to the following provisions on hardship.

ARTICLE 6.2.2
(Definition of hardship)

There is hardship where the occurrence of events fundamentally alters the equilibrium of the contract either because the cost of a party's performance has increased or because the value of the performance a party receives has diminished, and

(a) the events occur or become known to the disadvantaged party after the conclusion of the contract;

(b) the events could not reasonably have been taken into account by the disadvantaged party at the time of the conclusion of the contract;

(c) the events are beyond the control of the disadvantaged party; and

(d) the risk of the events was not assumed by the disadvantaged party.

ARTICLE 6.2.3
(Effects of hardship)

(1) In case of hardship the disadvantaged party is entitled to request renegotiations. The request shall be made without undue delay and shall indicate the grounds on which it is based.

(2) The request for renegotiation does not in itself entitle the disadvantaged party to withhold performance.

(3) Upon failure to reach agreement within a reasonable time either party may resort to the court.

(4) If the court finds hardship it may, if reasonable,

(a) terminate the contract at a date and on terms to be fixed, or

(b) adapt the contract with a view to restoring its equilibrium.

CHAPTER 7 — NON-PERFORMANCE

SECTION 1: NON-PERFORMANCE IN GENERAL

ARTICLE 7.1.1
(Non-performance defined)

Non-performance is failure by a party to perform any of its obligations under the contract, including defective performance or late performance.

ARTICLE 7.1.2
(Interference by the other party)

A party may not rely on the non-performance of the other party to the extent that such non-performance was caused by the first party's act or omission or by another event for which the first party bears the risk.

ARTICLE 7.1.3
(Withholding performance)

(1) Where the parties are to perform simultaneously, either party may withhold performance until the other party tenders its performance.

(2) Where the parties are to perform consecutively, the party that is to perform later may withhold its performance until the first party has performed.

ARTICLE 7.1.4
(Cure by non-performing party)

(1) The non-performing party may, at its own expense, cure any non-performance, provided that

(a) without undue delay, it gives notice indicating the proposed manner and timing of the cure;

(b) cure is appropriate in the circumstances;

(c) the aggrieved party has no legitimate interest in refusing cure; and

(d) cure is effected promptly.

(2) The right to cure is not precluded by notice of termination.

(3) Upon effective notice of cure, rights of the aggrieved party that are inconsistent with the non-performing party's performance are suspended until the time for cure has expired.

(4) The aggrieved party may withhold performance pending cure.

(5) Notwithstanding cure, the aggrieved party retains the right to claim damages for delay as well as for any harm caused or not prevented by the cure.

ARTICLE 7.1.5
(Additional period for performance)

(1) In a case of non-performance the aggrieved party may by notice to the other party allow an additional period of time for performance.

(2) During the additional period the aggrieved party may withhold performance of its own reciprocal obligations and may claim damages but may not resort to any other remedy. If it receives notice from the other party that the latter will not perform within that period, or if upon expiry of that period due performance has not been made, the aggrieved party may resort to any of the remedies that may be available under this Chapter.

(3) Where in a case of delay in performance which is not fundamental the aggrieved party has given notice allowing an additional period of time of reasonable length, it may terminate the contract at the end of that period. If the additional period allowed is not of reasonable length it shall be extended to a reasonable length. The aggrieved party may in its notice provide that if the other party fails to perform within the period allowed by the notice the contract shall automatically terminate.

(4) Paragraph (3) does not apply where the obligation which has not been performed is only a minor part of the contractual obligation of the non-performing party.

ARTICLE 7.1.6
(Exemption clauses)

A clause which limits or excludes one party's liability for non-performance or which permits one party to render performance substantially different from what the other party reasonably expected may not be invoked if it would be grossly unfair to do so, having regard to the purpose of the contract.

ARTICLE 7.1.7
(Force majeure)

(1) Non-performance by a party is excused if that party proves that the non-performance was due to an impediment beyond its control and that it could not reasonably be expected to have taken the impediment into account at the time of the conclusion of the contract or to have avoided or overcome it or its consequences.

(2) When the impediment is only temporary, the excuse shall have effect for such period as is reasonable having regard to the effect of the impediment on the performance of the contract.

(3) The party who fails to perform must give notice to the other party of the impediment and its effect on its ability to perform. If the notice is not received by the other party within a reasonable time after the party who fails to perform knew or ought to have known of the impediment, it is liable for damages resulting from such non-receipt.

(4) Nothing in this Article prevents a party from exercising a right to terminate the contract or to withhold performance or request interest on money due.

SECTION 2: RIGHT TO PERFORMANCE

ARTICLE 7.2.1
(Performance of monetary obligation)

Where a party who is obliged to pay money does not do so, the other party may require payment.

ARTICLE 7.2.2
(Performance of non-monetary obligation)

Where a party who owes an obligation other than one to pay money does not perform, the other party may require performance, unless

(a) performance is impossible in law or in fact;

(b) performance or, where relevant, enforcement is unreasonably burdensome or expensive;

(c) the party entitled to performance may reasonably obtain performance from another source;

(d) performance is of an exclusively personal character; or

(e) the party entitled to performance does not require performance within a reasonable time after it has, or ought to have, become aware of the non-performance.

ARTICLE 7.2.3
(Repair and replacement of defective performance)

The right to performance includes in appropriate cases the right to require repair, replacement, or other cure of defective performance. The provisions of Articles 7.2.1 and 7.2.2 apply accordingly.

ARTICLE 7.2.4
(Judicial penalty)

(1) Where the court orders a party to perform, it may also direct that this party pay a penalty if it does not comply with the order.

(2) The penalty shall be paid to the aggrieved party unless mandatory provisions of the law of the forum provide otherwise. Payment of the penalty to the aggrieved party does not exclude any claim for damages.

ARTICLE 7.2.5
(Change of remedy)

(1) An aggrieved party who has required performance of a non-monetary obligation and who has not received performance within a period fixed or otherwise within a reasonable period of time may invoke any other remedy.

(2) Where the decision of a court for performance of a non-monetary obligation cannot be enforced, the aggrieved party may invoke any other remedy.

SECTION 3: TERMINATION

ARTICLE 7.3.1
(Right to terminate the contract)

(1) A party may terminate the contract where the failure of the other party to perform an obligation under the contract amounts to a fundamental non-performance.

(2) In determining whether a failure to perform an obligation amounts to a fundamental non-performance regard shall be had, in particular, to whether

(a) the non-performance substantially deprives the aggrieved party of what it was entitled to expect under the contract unless the other party did not foresee and could not reasonably have foreseen such result;

(b) strict compliance with the obligation which has not been performed is of essence under the contract;

(c) the non-performance is intentional or reckless;

(d) the non-performance gives the aggrieved party reason to believe that it cannot rely on the other party's future performance;

(e) the non-performing party will suffer disproportionate loss as a result of the preparation or performance if the contract is terminated.

(3) In the case of delay the aggrieved party may also terminate the contract if the other party fails to perform before the time allowed it under Article 7.1.5 has expired.

ARTICLE 7.3.2
(Notice of termination)

(1) The right of a party to terminate the contract is exercised by notice to the other party.

(2) If performance has been offered late or otherwise does not conform to the contract the aggrieved party will lose its right to terminate the contract unless it gives notice to the other party within a reasonable time after it has or ought to have become aware of the offer or of the non-conforming performance.

ARTICLE 7.3.3
(Anticipatory non-performance)

Where prior to the date for performance by one of the parties it is clear that there will be a fundamental non-performance by that party, the other party may terminate the contract.

ARTICLE 7.3.4
(Adequate assurance of due performance)

A party who reasonably believes that there will be a fundamental non-performance by the other party may demand adequate assurance of due performance and may meanwhile withhold its own performance. Where this assurance is not provided within a reasonable time the party demanding it may terminate the contract.

ARTICLE 7.3.5
(Effects of termination in general)

(1) Termination of the contract releases both parties from their obligation to effect and to receive future performance.

(2) Termination does not preclude a claim for damages for non-performance.

(3) Termination does not affect any provision in the contract for the settlement of disputes or any other term of the contract which is to operate even after termination.

ARTICLE 7.3.6
(Restitution with respect to contracts to be performed at one time)

(1) On termination of a contract to be performed at one time either party may claim restitution of whatever it has supplied under the contract, provided that such party concurrently makes restitution of whatever it has received under the contract.

(2) If restitution in kind is not possible or appropriate, an allowance has to be made in money whenever reasonable.

(3) The recipient of the performance does not have to make an allowance in money if the impossibility to make restitution in kind is attributable to the other party.

(4) Compensation may be claimed for expenses reasonably required to preserve or maintain the performance received.

ARTICLE 7.3.7
(Restitution with respect to long-term contracts)

(1) On termination of a long-term contract restitution can only be claimed for the period after termination has taken effect, provided the contract is divisible.

(2) As far as restitution has to be made, the provisions of Article 7.3.6 apply.

SECTION 4: DAMAGES

ARTICLE 7.4.1
(Right to damages)

Any non-performance gives the aggrieved party a right to damages either exclusively or in conjunction with any other remedies except where the non-performance is excused under these Principles.

ARTICLE 7.4.2
(Full compensation)

(1) The aggrieved party is entitled to full compensation for harm sustained as a result of the non-performance. Such harm includes both any loss which it suffered and any gain of which it was deprived, taking into account any gain to the aggrieved party resulting from its avoidance of cost or harm.

(2) Such harm may be non-pecuniary and includes, for instance, physical suffering or emotional distress.

ARTICLE 7.4.3
(Certainty of harm)

(1) Compensation is due only for harm, including future harm, that is established with a reasonable degree of certainty.

(2) Compensation may be due for the loss of a chance in proportion to the probability of its occurrence.

(3) Where the amount of damages cannot be established with a sufficient degree of certainty, the assessment is at the discretion of the court.

ARTICLE 7.4.4
(Foreseeability of harm)

The non-performing party is liable only for harm which it foresaw or could reasonably have foreseen at the time of the conclusion of the contract as being likely to result from its non-performance.

ARTICLE 7.4.5

(Proof of harm in case of replacement transaction)

Where the aggrieved party has terminated the contract and has made a replacement transaction within a reasonable time and in a reasonable manner it may recover the difference between the contract price and the price of the replacement transaction as well as damages for any further harm.

ARTICLE 7.4.6

(Proof of harm by current price)

(1) Where the aggrieved party has terminated the contract and has not made a replacement transaction but there is a current price for the performance contracted for, it may recover the difference between the contract price and the price current at the time the contract is terminated as well as damages for any further harm.

(2) Current price is the price generally charged for goods delivered or services rendered in comparable circumstances at the place where the contract should have been performed or, if there is no current price at that place, the current price at such other place that appears reasonable to take as a reference.

ARTICLE 7.4.7

(Harm due in part to aggrieved party)

Where the harm is due in part to an act or omission of the aggrieved party or to another event for which that party bears the risk, the amount of damages shall be reduced to the extent that these factors have contributed to the harm, having regard to the conduct of each of the parties.

ARTICLE 7.4.8

(Mitigation of harm)

(1) The non-performing party is not liable for harm suffered by the aggrieved party to the extent that the harm could have been reduced by the latter party's taking reasonable steps.

(2) The aggrieved party is entitled to recover any expenses reasonably incurred in attempting to reduce the harm.

ARTICLE 7.4.9

(Interest for failure to pay money)

(1) If a party does not pay a sum of money when it falls due the aggrieved party is entitled to interest upon that sum from the time when payment is due to the time of payment whether or not the non-payment is excused.

(2) The rate of interest shall be the average bank short-term lending rate to prime borrowers prevailing for the currency of payment at the place for payment, or where no such rate exists at that place, then the same rate in the State of the currency of payment. In the absence of such a rate at either place the rate of interest shall be the appropriate rate fixed by the law of the State of the currency of payment.

(3) The aggrieved party is entitled to additional damages if the non-payment caused it a greater harm.

ARTICLE 7.4.10

(Interest on damages)

Unless otherwise agreed, interest on damages for non-performance of non-monetary obligations accrues as from the time of non-performance.

ARTICLE 7.4.11
(Manner of monetary redress)

(1) Damages are to be paid in a lump sum. However, they may be payable in instalments where the nature of the harm makes this appropriate.

(2) Damages to be paid in instalments may be indexed.

ARTICLE 7.4.12
(Currency in which to assess damages)

Damages are to be assessed either in the currency in which the monetary obligation was expressed or in the currency in which the harm was suffered, whichever is more appropriate.

ARTICLE 7.4.13
(Agreed payment for non-performance)

(1) Where the contract provides that a party who does not perform is to pay a specified sum to the aggrieved party for such non-performance, the aggrieved party is entitled to that sum irrespective of its actual harm.

(2) However, notwithstanding any agreement to the contrary the specified sum may be reduced to a reasonable amount where it is grossly excessive in relation to the harm resulting from the non-performance and to the other circumstances.

CHAPTER 8 — SET-OFF

ARTICLE 8.1
(Conditions of set-off)

(1) Where two parties owe each other money or other performances of the same kind, either of them ("the first party") may set off its obligation against that of its obligee ("the other party") if at the time of set-off,

(a) the first party is entitled to perform its obligation;

(b) the other party's obligation is ascertained as to its existence and amount and performance is due.

(2) If the obligations of both parties arise from the same contract, the first party may also set off its obligation against an obligation of the other party which is not ascertained as to its existence or to its amount.

ARTICLE 8.2
(Foreign currency set-off)

Where the obligations are to pay money in different currencies, the right of set-off may be exercised, provided that both currencies are freely convertible and the parties have not agreed that the first party shall pay only in a specified currency.

ARTICLE 8.3
(Set-off by notice)

The right of set-off is exercised by notice to the other party.

ARTICLE 8.4
(Content of notice)

(1) The notice must specify the obligations to which it relates.

(2) If the notice does not specify the obligation against which set-off is exercised, the other party may, within a reasonable time, declare to the first party the obligation to which set-off relates. If no such declaration is made, the set-off will relate to all the obligations proportionally.

ARTICLE 8.5
(Effect of set-off)

(1) Set-off discharges the obligations.

(2) If obligations differ in amount, set-off discharges the obligations up to the amount of the lesser obligation.

(3) Set-off takes effect as from the time of notice.

CHAPTER 9 — ASSIGNMENT OF RIGHTS, TRANSFER OF OBLIGATIONS, ASSIGNMENT OF CONTRACTS

SECTION 1: ASSIGNMENT OF RIGHTS

ARTICLE 9.1.1
(Definitions)

"Assignment of a right" means the transfer by agreement from one person (the "assignor") to another person (the "assignee"), including transfer by way of security, of the assignor's right to payment of a monetary sum or other performance from a third person ("the obligor").

ARTICLE 9.1.2
(Exclusions)

This Section does not apply to transfers made under the special rules governing the transfers:

(a) of instruments such as negotiable instruments, documents of title or financial instruments, or

(b) of rights in the course of transferring a business.

ARTICLE 9.1.3
(Assignability of non-monetary rights)

A right to non-monetary performance may be assigned only if the assignment does not render the obligation significantly more burdensome.

ARTICLE 9.1.4
(Partial assignment)

(1) A right to the payment of a monetary sum may be assigned partially.

(2) A right to other performance may be assigned partially only if it is divisible, and the assignment does not render the obligation significantly more burdensome.

ARTICLE 9.1.5
(Future rights)

A future right is deemed to be transferred at the time of the agreement, provided the right, when it comes into existence, can be identified as the right to which the assignment relates.

ARTICLE 9.1.6
(Rights assigned without individual specification)

A number of rights may be assigned without individual specification, provided such rights can be identified as rights to which the assignment relates at the time of the assignment or when they come into existence.

ARTICLE 9.1.7

(Agreement between assignor and assignee sufficient)

(1) A right is assigned by mere agreement between the assignor and the assignee, without notice to the obligor.

(2) The consent of the obligor is not required unless the obligation in the circumstances is of an essentially personal character.

ARTICLE 9.1.8

(Obligor's additional costs)

The obligor has a right to be compensated by the assignor or the assignee for any additional costs caused by the assignment.

ARTICLE 9.1.9

(Non-assignment clauses)

(1) The assignment of a right to the payment of a monetary sum is effective notwithstanding an agreement between the assignor and the obligor limiting or prohibiting such an assignment. However, the assignor may be liable to the obligor for breach of contract.

(2) The assignment of a right to other performance is ineffective if it is contrary to an agreement between the assignor and the obligor limiting or prohibiting the assignment. Nevertheless, the assignment is effective if the assignee, at the time of the assignment, neither knew nor ought to have known of the agreement. The assignor may then be liable to the obligor for breach of contract.

ARTICLE 9.1.10

(Notice to the obligor)

(1) Until the obligor receives a notice of the assignment from either the assignor or the assignee, it is discharged by paying the assignor.

(2) After the obligor receives such a notice, it is discharged only by paying the assignee.

ARTICLE 9.1.11

(Successive assignments)

If the same right has been assigned by the same assignor to two or more successive assignees, the obligor is discharged by paying according to the order in which the notices were received.

ARTICLE 9.1.12

(Adequate proof of assignment)

(1) If notice of the assignment is given by the assignee, the obligor may request the assignee to provide within a reasonable time adequate proof that the assignment has been made.

(2) Until adequate proof is provided, the obligor may withhold payment.

(3) Unless adequate proof is provided, notice is not effective.

(4) Adequate proof includes, but is not limited to, any writing emanating from the assignor and indicating that the assignment has taken place.

ARTICLE 9.1.13

(Defences and rights of set-off)

(1) The obligor may assert against the assignee all defences that the obligor could assert against the assignor.

(2) The obligor may exercise against the assignee any right of set-off available to the obligor against the assignor up to the time notice of assignment was received.

ARTICLE 9.1.14
(Rights related to the right assigned)

The assignment of a right transfers to the assignee:

(a) all the assignor's rights to payment or other performance under the contract in respect of the right assigned, and

(b) all rights securing performance of the right assigned.

ARTICLE 9.1.15
(Undertakings of the assignor)

The assignor undertakes towards the assignee, except as otherwise disclosed to the assignee, that:

(a) the assigned right exists at the time of the assignment, unless the right is a future right;

(b) the assignor is entitled to assign the right;

(c) the right has not been previously assigned to another assignee, and it is free from any right or claim from a third party;

(d) the obligor does not have any defences;

(e) neither the obligor nor the assignor has given notice of set-off concerning the assigned right and will not give any such notice;

(f) the assignor will reimburse the assignee for any payment received from the obligor before notice of the assignment was given.

SECTION 2: TRANSFER OF OBLIGATIONS

ARTICLE 9.2.1
(Modes of transfer)

An obligation to pay money or render other performance may be transferred from one person (the "original obligor") to another person (the "new obligor") either

(a) by an agreement between the original obligor and the new obligor subject to Article 9.2.3, or

(b) by an agreement between the obligee and the new obligor, by which the new obligor assumes the obligation.

ARTICLE 9.2.2
(Exclusion)

This Section does not apply to transfers of obligations made under the special rules governing transfers of obligations in the course of transferring a business.

ARTICLE 9.2.3
(Requirement of obligee's consent to transfer)

The transfer of an obligation by an agreement between the original obligor and the new obligor requires the consent of the obligee.

ARTICLE 9.2.4
(Advance consent of obligee)

(1) The obligee may give its consent in advance.

(2) If the obligee has given its consent in advance, the transfer of the obligation becomes effective when a notice of the transfer is given to the obligee or when the obligee acknowledges it.

ARTICLE 9.2.5
(Discharge of original obligor)

(1) The obligee may discharge the original obligor.

(2) The obligee may also retain the original obligor as an obligor in case the new obligor does not perform properly.

(3) Otherwise the original obligor and the new obligor are jointly and severally liable.

ARTICLE 9.2.6

(Third party performance)

(1) Without the obligee's consent, the obligor may contract with another person that this person will perform the obligation in place of the obligor, unless the obligation in the circumstances has an essentially personal character.

(2) The obligee retains its claim against the obligor.

ARTICLE 9.2.7

(Defences and rights of set-off)

(1) The new obligor may assert against the obligee all defences which the original obligor could assert against the obligee.

(2) The new obligor may not exercise against the obligee any right of set-off available to the original obligor against the obligee.

ARTICLE 9.2.8

(Rights related to the obligation transferred)

(1) The obligee may assert against the new obligor all its rights to payment or other performance under the contract in respect of the obligation transferred.

(2) If the original obligor is discharged under Article 9.2.5(1), a security granted by any person other than the new obligor for the performance of the obligation is discharged, unless that other person agrees that it should continue to be available to the obligee.

(3) Discharge of the original obligor also extends to any security of the original obligor given to the obligee for the performance of the obligation, unless the security is over an asset which is transferred as part of a transaction between the original obligor and the new obligor.

SECTION 3: ASSIGNMENT OF CONTRACTS

ARTICLE 9.3.1

(Definitions)

"Assignment of a contract" means the transfer by agreement from one person (the "assignor") to another person (the "assignee") of the assignor's rights and obligations arising out of a contract with another person (the "other party").

ARTICLE 9.3.2

(Exclusion)

This Section does not apply to the assignment of contracts made under the special rules governing transfers of contracts in the course of transferring a business.

ARTICLE 9.3.3

(Requirement of consent of the other party)

The assignment of a contract requires the consent of the other party.

ARTICLE 9.3.4

(Advance consent of the other party)

(1) The other party may give its consent in advance.

(2) If the other party has given its consent in advance, the assignment of the contract becomes effective when a notice of the assignment is given to the other party or when the other party acknowledges it.

ARTICLE 9.3.5

(Discharge of the assignor)

(1) The other party may discharge the assignor.

(2) The other party may also retain the assignor as an obligor in case the assignee does not perform properly.

(3) Otherwise the assignor and the assignee are jointly and severally liable.

ARTICLE 9.3.6

(Defences and rights of set-off)

(1) To the extent that the assignment of a contract involves an assignment of rights, Article 9.1.13 applies accordingly.

(2) To the extent that the assignment of a contract involves a transfer of obligations, Article 9.2.7 applies accordingly.

ARTICLE 9.3.7

(Rights transferred with the contract)

(1) To the extent that the assignment of a contract involves an assignment of rights, Article 9.1.14 applies accordingly.

(2) To the extent that the assignment of a contract involves a transfer of obligations, Article 9.2.8 applies accordingly.

CHAPTER 10 — LIMITATION PERIODS

ARTICLE 10.1

(Scope of the Chapter)

(1) The exercise of rights governed by the Principles is barred by the expiration of a period of time, referred to as "limitation period", according to the rules of this Chapter.

(2) This Chapter does not govern the time within which one party is required under the Principles, as a condition for the acquisition or exercise of its right, to give notice to the other party or to perform any act other than the institution of legal proceedings.

ARTICLE 10.2

(Limitation periods)

(1) The general limitation period is three years beginning on the day after the day the obligee knows or ought to know the facts as a result of which the obligee's right can be exercised.

(2) In any event, the maximum limitation period is ten years beginning on the day after the day the right can be exercised.

ARTICLE 10.3

(Modification of limitation periods by the parties)

(1) The parties may modify the limitation periods.

(2) However they may not

(a) shorten the general limitation period to less than one year;

(b) shorten the maximum limitation period to less than four years;

(c) extend the maximum limitation period to more than fifteen years.

ARTICLE 10.4

(New limitation period by acknowledgement)

(1) Where the obligor before the expiration of the general limitation period acknowledges the right of the obligee, a new general limitation period begins on the day after the day of the acknowledgement.

(2) The maximum limitation period does not begin to run again, but may be exceeded by the beginning of a new general limitation period under Article 10.2(1).

ARTICLE 10.5

(Suspension by judicial proceedings)

(1) The running of the limitation period is suspended

(a) when the obligee performs any act, by commencing judicial proceedings or in judicial proceedings already instituted, that is recognised by the law of the court as asserting the obligee's right against the obligor;

(b) in the case of the obligor's insolvency when the obligee has asserted its rights in the insolvency proceedings; or

(c) in the case of proceedings for dissolution of the entity which is the obligor when the obligee has asserted its rights in the dissolution proceedings.

(2) Suspension lasts until a final decision has been issued or until the proceedings have been otherwise terminated.

ARTICLE 10.6

(Suspension by arbitral proceedings)

(1) The running of the limitation period is suspended when the obligee performs any act, by commencing arbitral proceedings or in arbitral proceedings already instituted, that is recognised by the law of the arbitral tribunal as asserting the obligee's right against the obligor. In the absence of regulations for arbitral proceedings or provisions determining the exact date of the commencement of arbitral proceedings, the proceedings are deemed to commence on the date on which a request that the right in dispute should be adjudicated reaches the obligor.

(2) Suspension lasts until a binding decision has been issued or until the proceedings have been otherwise terminated.

ARTICLE 10.7

(Alternative dispute resolution)

The provisions of Articles 10.5 and 10.6 apply with appropriate modifications to other proceedings whereby the parties request a third person to assist them in their attempt to reach an amicable settlement of their dispute.

ARTICLE 10.8

(Suspension in case of force majeure, death or incapacity)

(1) Where the obligee has been prevented by an impediment that is beyond its control and that it could neither avoid nor overcome, from causing a limitation period to cease to run under the preceding Articles, the general limitation period is suspended so as not to expire before one year after the relevant impediment has ceased to exist.

(2) Where the impediment consists of the incapacity or death of the obligee or obligor, suspension ceases when a representative for the incapacitated or deceased party or its estate has been appointed or a successor has inherited the respective party's position. The additional one-year period under paragraph (1) applies accordingly.

ARTICLE 10.9

(Effects of expiration of limitation period)

(1) The expiration of the limitation period does not extinguish the right.

(2) For the expiration of the limitation period to have effect, the obligor must assert it as a defence.

(3) A right may still be relied on as a defence even though the expiration of the limitation period for that right has been asserted.

ARTICLE 10.10
(Right of set-off)

The obligee may exercise the right of set-off until the obligor has asserted the expiration of the limitation period.

ARTICLE 10.11
(Restitution)

Where there has been performance in order to discharge an obligation, there is no right of restitution merely because the limitation period has expired.

CHAPTER 11 — PLURALITY OF OBLIGORS AND OF OBLIGEES

SECTION 1: PLURALITY OF OBLIGORS

ARTICLE 11.1.1
(Definitions)

When several obligors are bound by the same obligation towards an obligee:

(a) the obligations are joint and several when each obligor is bound for the whole obligation;

(b) the obligations are separate when each obligor is bound only for its share.

ARTICLE 11.1.2
(Presumption of joint and several obligations)

When several obligors are bound by the same obligation towards an obligee, they are presumed to be jointly and severally bound, unless the circumstances indicate otherwise.

ARTICLE 11.1.3
(Obligee's rights against joint and several obligors)

When obligors are jointly and severally bound, the obligee may require performance from any one of them, until full performance has been received.

ARTICLE 11.1.4
(Availability of defences and rights of set-off)

A joint and several obligor against whom a claim is made by the obligee may assert all the defences and rights of set-off that are personal to it or that are common to all the co-obligors, but may not assert defences or rights of set-off that are personal to one or several of the other co-obligors.

ARTICLE 11.1.5
(Effect of performance or set-off)

Performance or set-off by a joint and several obligor or set-off by the obligee against one joint and several obligor discharges the other obligors in relation to the obligee to the extent of the performance or set-off.

ARTICLE 11.1.6
(Effect of release or settlement)

(1) Release of one joint and several obligor, or settlement with one joint and several obligor, discharges all the other obligors for the share of the released or settling obligor, unless the circumstances indicate otherwise.

(2) When the other obligors are discharged for the share of the released obligor, they no longer have a contributory claim against the released obligor under Article 11.1.10.

ARTICLE 11.1.7
(Effect of expiration or suspension of limitation period)

(1) Expiration of the limitation period of the obligee's rights against one joint and several obligor does not affect:

(a) the obligations to the obligee of the other joint and several obligors; or

(b) the rights of recourse between the joint and several obligors under Article 11.1.10.

(2) If the obligee initiates proceedings under Articles 10.5, 10.6 or 10.7 against one joint and several obligor, the running of the limitation period is also suspended against the other joint and several obligors.

ARTICLE 11.1.8
(Effect of judgment)

(1) A decision by a court as to the liability to the obligee of one joint and several obligor does not affect:

(a) the obligations to the obligee of the other joint and several obligors; or

(b) the rights of recourse between the joint and several obligors under Article 11.1.10.

(2) However, the other joint and several obligors may rely on such a decision, except if it was based on grounds personal to the obligor concerned. In such a case, the rights of recourse between the joint and several obligors under Article 11.1.10 are affected accordingly.

ARTICLE 11.1.9
(Apportionment among joint and several obligors)

As among themselves, joint and several obligors are bound in equal shares, unless the circumstances indicate otherwise.

ARTICLE 11.1.10
(Extent of contributory claim)

A joint and several obligor who has performed more than its share may claim the excess from any of the other obligors to the extent of each obligor's unperformed share.

ARTICLE 11.1.11
(Rights of the obligee)

(1) A joint and several obligor to whom Article 11.1.10 applies may also exercise the rights of the obligee, including all rights securing their performance, to recover the excess from all or any of the other obligors to the extent of each obligor's unperformed share.

(2) An obligee who has not received full performance retains its rights against the co-obligors to the extent of the unperformed part, with precedence over co-obligors exercising contributory claims.

ARTICLE 11.1.12
(Defences in contributory claims)

A joint and several obligor against whom a claim is made by the co-obligor who has performed the obligation:

(a) may raise any common defences and rights of set-off that were available to be asserted by the co-obligor against the obligee ;

(b) may assert defences which are personal to itself ;

(c) may not assert defences and rights of set-off which are personal to one or several of the other co-obligors.

ARTICLE 11.1.13
(Inability to recover)

If a joint and several obligor who has performed more than that obligor's share is unable, despite all reasonable efforts, to recover contribution from another joint and several obligor, the share of the others, including the one who has performed, is increased proportionally.

SECTION 2: PLURALITY OF OBLIGEES

ARTICLE 11.2.1
(Definitions)

When several obligees can claim performance of the same obligation from an obligor:

(a) the claims are separate when each obligee can only claim its share;

(b) the claims are joint and several when each obligee can claim the whole performance;

(c) the claims are joint when all obligees have to claim performance together.

ARTICLE 11.2.2
(Effects of joint and several claims)

Full performance of an obligation in favour of one of the joint and several obligees discharges the obligor towards the other obligees.

ARTICLE 11.2.3
(Availability of defences against joint and several obligees)

(1) The obligor may assert against any of the joint and several obligees all the defences and rights of set-off that are personal to its relationship to that obligee or that it can assert against all the co-obligees, but may not assert defences and rights of set-off that are personal to its relationship to one or several of the other co-obligees.

(2) The provisions of Articles 11.1.5, 11.1.6, 11.1.7 and 11.1.8 apply, with appropriate adaptations, to joint and several claims.

ARTICLE 11.2.4
(Allocation between joint and several obligees)

(1) As among themselves, joint and several obligees are entitled to equal shares, unless the circumstances indicate otherwise.

(2) An obligee who has received more than its share must transfer the excess to the other obligees to the extent of their respective shares.