

INTERNATIONAL COMMERCIAL ARBITRATION ACT OF IRAN

International Commercial Arbitration Act*¹ (Passed 17 September 1997)

CHAPTER I. GENERAL PROVISIONS

Article 1. Definitions and rules of interpretation

The terms employed in this Act are defined as follows:

(a) “arbitration” means out-of-court resolution of disputes between the parties by a natural or juridical person or persons agreed upon by the parties or appointed;

(b) arbitration is international if at the time of conclusion of the arbitration agreement, one of the parties to the agreement is not a national of Iran under Iranian law;

(c) “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 one or a number of defined legal relationships, whether contractual or not. An arbitration agreement may be in the form of an arbitration clause in a contract or a separate agreement;

(d) “arbitrator” may refer to a sole arbitrator, or a panel of arbitrators;

(e) “court” in this Act means a court in the judicial system of the Islamic Republic of Iran;

(f) where a provision of this Act refers to an existing agreement between the parties, or to an agreement subsequently reached between them, such agreement includes the arbitration rules referred to in that agreement.

Article 2. Scope of application

1. Arbitration of disputes in international commercial relationships including purchase and sale of goods and services, transportation, insurance, financing, consultancy services, investments, technical cooperation, representation, commission agency, contract work and other similar activities shall be conducted in accordance with the provisions of this Act.

2. All persons having the capacity to bring an action may submit their international commercial disputes to arbitration in accordance with the provisions of this Act, whether or not those disputes have been brought before judicial authorities; where a

*© Ameli Arbitration, trans.; k.ameli@ameliarbitration.com

¹ Official Journal of I.R. Iran 15335 (20 Oct. 1997) (28.07.1376) in Persian; Iranian Parliament, available online at:

<http://rc.majlis.ir/fa/law/show/92959?keyword=قانون%20داوری%20تجاری%20بین%20المللی>

dispute is already pending before a court the parties may agree to submit it to arbitration irrespective of the stage of the proceedings.

Article 3. Notification of written communications and notices

In the absence of an agreement between the parties as to the manner and authority for notification of written communications related to arbitration, the following shall apply, as the case may be:

(a) in institutional arbitration, the manner and authority for notification of written communications related to arbitration shall be subject to the rules of the relevant institution;

(b) the arbitrator may, on his own initiative, specify the manner and authority for notification of written communications related to arbitration, and send them accordingly;

(c) the party requesting referral to arbitration may send its request to the other party by means of registered letter, fax, telex and telegram, legal notice, and the like. Such request is deemed to have been notified where:

(1) its receipt by the addressee can be established;

(2) the addressee has taken an action in accordance with the substance of the request;

(3) the addressee has duly responded either in the negative or in the affirmative;

Article 4. Commencement of arbitral proceedings

(a) Unless otherwise agreed by the parties, arbitration commences when the request for arbitration has been notified to the respondent in accordance with the provision of article 3 under this Act.

(b) Unless otherwise agreed by the parties, the request for arbitration shall contain the following points:

(1) a request that the dispute be referred to arbitration;

(2) names and addresses of the parties;

(3) stating the claim and relief sought

(4) the arbitration clause or the arbitration agreement

The request for arbitration may contain information about the number of arbitrators, and a procedure of appointing them in accordance with the provisions of Chapter III of this Act. The request may also contain information about the agreements, contracts or events that have given rise to the dispute.

Article 5. Waiver of right to object

A party who knows that any non-mandatory provision of this Act or [non-]derogatable provisions of the arbitration agreement has not been complied with and yet proceeds with the arbitration without stating his objection to such non-compliance without due 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 6. The Supervisory Authority

1. Performance of the functions specified in Article 9, Articles 11 (3) and (4), Article 13 (3), Article 14 (1), Article 16 (3), Article 33, and Article 35 of this Act are entrusted to the public court in the provincial capital where the place of arbitration is located. Where, and for as long as, the place of arbitration has not been designated, such functions will be performed by Tehran Public Court.

Decisions of the respective court in the above-referenced instances shall be binding and not subject to appeal.

2. In institutional arbitrations, functions specified in Article 11 (2) and (3), Article 13(3), and Article 14 (1) will be performed by the respective arbitral institution.

CHAPTER II. ARBITRATION AGREEMENT

Article 7. Form of arbitration agreement

The arbitration agreement shall be in writing and signed by the parties in a document; or demonstrated in an exchange of letters, telex, telegrams or other means of communication provide a record of the agreement; or in an exchange of statements of claim or [defense] in which the existence of the agreement is alleged by one party and in effect accepted by another. Reference in a written contract to a document containing an arbitration clause shall also constitute an independent arbitration agreement.

Article 8. Arbitration agreement and substantive claim before the court

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 before the end of the first court hearing, refer the parties to arbitration unless it finds that the agreement is null and void, inoperative or incapable of being performed.

Bringing an action before the court shall not preclude commencement or continuation of the arbitral proceedings or making an award.

Article 9. Arbitration agreement and interim measures by court

A party may request, before or during arbitral proceedings, from the president of the court specified in Article 6 of this Act, an attachment order or interim measure of protection.

CHAPTER III. COMPOSITION OF ARBITRAL TRIBUNAL

Article 10. Number of arbitrators

The parties are free to determine the number of arbitrators. Failing such determination, the arbitral tribunal shall be composed of three arbitrators.

Article 11. Appointment of arbitrators

(1) The parties are free to agree on a procedure of appointing the arbitrator, subject to, and in accordance with, the provisions of paragraphs (3) and (4) below. As long as a dispute has not arisen, an Iranian party may not undertake in any way, to refer resolution of a dispute, should it arise, to arbitration by one or more persons who have the same nationality as that of the other party.

(2) Failing such agreement, the following procedure shall apply:

(a) for the purpose of appointment of the arbitral tribunal, each party shall appoint its arbitrator, and the two arbitrators thus appointed shall appoint the presiding arbitrator. If a party fails to appoint its arbitrator within thirty days of the commencement of arbitration, or obtain his acceptance; or if the arbitrators appointed by the parties fail, within thirty days of their appointment, to agree on the appointment of the presiding arbitrator, or fail to obtain his acceptance, appointment of the arbitrator of the declining party or appointment of the presiding arbitrator shall be made, upon the request of one of the parties, as the case may be, in accordance with the provisions of Article 6 of this Act;

(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 authority specified in Article 6;

(3) where, under an appointment procedure agreed upon by the parties, a party fails to act as required under such procedure; or the parties or the party-appointed arbitrators are unable to reach an agreement; or the third party, whether a natural or juridical person, fails to perform any function entrusted to it under such procedure,

any party may request the authority specified in Article 6 to take the necessary decision, unless the parties agree otherwise;

(4) in appointing an “arbitrator,” the appointing authority shall have due regard to any qualifications required of the “arbitrator” by the agreement of the parties and take into consideration the independence and impartiality of the “arbitrator.” In any case, the appointing authority shall appoint the presiding arbitrator from among the nationals of a third country and the arbitrator for the party who has declined to appoint one shall not have the nationality of the opposite party;

(5) where the parties have committed themselves in the arbitration agreement to appoint a specific person or persons in case a dispute arises between them, but the person(s) agreed upon prove unwilling or unable to act as arbitrator, the arbitration agreement shall become inoperative unless the parties agree on arbitration by some other person(s), or agree on a different procedure.

(6) In arbitrations involving more than two parties, the arbitral tribunal shall be appointed in the following manner, unless the parties agree otherwise:

(a) the claimant shall appoint one arbitrator, and where there is more than one claimant, the claimants shall jointly appoint one arbitrator. The arbitrator for the respondent or respondents also shall be appointed in the same manner. Should the claimants or respondents fail to agree on their own arbitrator, the arbitrator for the respective parties (claimants or respondents) shall be appointed by the authority specified in Article 6 of this Act;

(b) the presiding arbitrator shall be appointed by the party-appointed arbitrators. Failing such agreement, the presiding arbitrator shall be appointed by the authority specified in Article 6 of this Act;

(c) where there is a controversy as to the position of one or more parties as claimant or respondent in the case, an arbitral tribunal composed of three arbitrators shall be appointed by the authority specified in Article 6 of this Act;

(d) other instances in multi-party arbitrations including challenge of an arbitrator, or failure to act shall be governed by the same provisions as applicable in two-party arbitrations.

Article 12. Grounds for challenge

(1) 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 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.

(2) 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.

Article 13. Challenge procedure

- (1) The parties are free to agree on a procedure for challenging an “arbitrator.”
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 circumstances referred to in paragraph 1 of Article 13, send a written statement of the reasons for the challenge to the “arbitrator.” Unless the challenged “arbitrator” withdraws from his office or the other party agrees to the challenge, the “arbitrator” shall decide on the challenge.
- (3) If a challenge made under the procedure of paragraph (1) and paragraph (2) of this Article is not successful, the party challenging the “arbitrator” may request, within 30 days after having received notice of the decision rejecting the challenge, the authority specified in Article 6 to examine and decide the challenge; while such a request is pending, the “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. Otherwise, if a controversy remains concerning any of these grounds, any party may request the authority specified in Article 6 to decide on the termination of the mandate of the “arbitrator.”
- (2) If 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 the grounds for challenge, failure or impossibility to act.

Article 15. Appointment of substitute arbitrator

Where the mandate of an “arbitrator” terminates under Article 13 or Article 14, or because of his withdrawal from office, 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 THE “ARBITRATOR”

Article 16. Ruling on jurisdiction

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

(2) A plea that the “arbitrator” does not have jurisdiction shall be raised not later than the submission of the statement of defense. 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 “arbitrator” is exceeding the scope of his authority shall be raised as soon as the matter alleged to be beyond the scope of his authority is raised in the arbitral proceedings. The “arbitrator” may, in either case, admit a later plea if he considers the delay justified.

(3) Where there is an objection to the jurisdiction of the “arbitrator” or to the existence or validity of arbitration agreement, the “arbitrator” shall rule on the matter as a preliminary question, and before addressing the merits of the claim, unless otherwise agreed by the parties. The plea that the “arbitrator” is exceeding the scope of his authority, the cause of which arises in the course of the arbitral proceedings, may be decided in the award on the merits. If the “arbitrator” rules as a preliminary question that he has jurisdiction, any party may request, within thirty days after having received notice of that ruling, the court specified in Article 6 to examine and decide the matter. While such a request is pending before the court, the “arbitrator” may continue the arbitral proceedings and make an award.

Article 17. Power of “arbitrator” to order interim measures

Unless otherwise agreed by the parties, the “arbitrator” may, at the request of a party, order any party to take such interim measures of protection in respect of the subject-matter in dispute, which may require prompt disposition. The “arbitrator” may require the requesting party to provide appropriate security in connection with such measure. In either case, if the other party provides security which would be proportionate to the subject-matter of the dispute, the “arbitrator” shall terminate the interim measure.

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 adequate opportunity of presenting his claim, defense or evidence.

Article 19. Determination of rules of procedure

(1) Subject to the mandatory provisions of this Act, the parties are free to agree on the procedure to be followed in conducting the proceedings.

(2) Failing such agreement, the “arbitrator” may, subject to compliance with the provisions of this Act, conduct the arbitration in such a manner as he considers appropriate. The “arbitrator” shall have the power to determine the 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 “arbitrator” having regard to the circumstances of the case, including convenience of access by the parties.

(2) The “arbitrator” may, unless otherwise agreed by the parties, meet at any place they consider appropriate for consultation among the members, for hearing witnesses and experts of the parties, or for inspection of goods, other property or documents.

Article 21. Language

The parties are free to agree on the language or languages to be used in the arbitral proceedings. Failing such agreement, the “arbitrator” shall determine the language or languages to be used in the proceedings. The parties’ agreement, or determination by the “arbitrator” on the subject shall apply to any written statement by a party, any hearing, and any award or communication by the “arbitrator.”

Article 22. Statements of claim and defense

(1) Within the period of time agreed by the parties or determined by the “arbitrator”, the claimant shall state the obligations or other grounds on the basis of which he considers himself entitled, the points at issue, and the relief or remedy sought, and the respondent shall state his defense in respect of these particulars within the period of time agreed by the parties or determined by the “arbitrator.”

The parties may submit with their statements of claim and defense all documents they consider to be relevant or may add a list of documents or other evidence they will submit subsequently.

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

Article 23. Hearings and [written] proceedings

(1) The “arbitrator” shall decide whether to hold oral hearings for the presentation of evidence and oral argument. However, if a party so requests at an appropriate stage of the proceedings, such hearings shall be held, unless the parties have agreed otherwise.

(2) The “arbitrator” shall give sufficient advance notice of any hearing or of any meeting for the purposes of inspection of goods, other property or documents.

(3) All statements, documents or other information supplied to the “arbitrator” by one party, shall be communicated to the other party. Also, any expert report, valuation report or other document on which the “arbitrator” may rely in making his decision shall be communicated to the parties.

Article 24. Default of a party

(1) If the claimant fails to communicate his request for arbitration without showing cause, the “arbitrator” shall declare the request null and void.

(2) If the respondent fails to communicate his statement of defense without showing cause, the “arbitrator” shall continue the proceedings without treating such failure in itself as an admission by the respondent of the claimant’s allegations.

(3) If any party fails to appear at a hearing or to produce documentary evidence, the “arbitrator” may continue the proceedings and make the award on the evidence before it.

Article 25. Referral to expert

Unless otherwise agreed by the parties, the “arbitrator” may, if he considers it necessary, refer an issue to an expert, and require a party to give the expert any relevant information, or to provide access to any relevant documents, goods or other property for his inspection.

If a party so requests or if the “arbitrator” considers it necessary, the expert shall, after delivery of his written report, participate in a hearing and answer the questions put to him. The parties also may present expert witnesses in order to testify on the points at issue.

Article 26. Third party intervention

Where a third party alleges an independent right for himself in the subject-matter of the arbitration, or considers himself to have an interest in one of the parties prevailing, may intervene in the arbitration while the arbitral proceedings are not yet terminated, provided that he consents to the arbitral agreement, arbitration rules, and the “arbitrator,” and further that his intervention is not objected to by any party.

CHAPTER VI. TERMINATION OF PROCEEDINGS AND MAKING OF AWARD

Article 27. Applicable law

(1) The “arbitrator” 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, however expressed, as directly referring to the substantive law of that State. Conflict of law rules shall not be subject to such designation, unless otherwise agreed by the parties.

(2) In the absence of such designation by the parties, the “arbitrator” shall decide the substance of dispute in accordance with the law which it considers appropriate based on the conflict of law rules.

(3) The “arbitrator” shall decide *ex aequo et bono*, or as *amicable compositeur*, only if the parties have expressly authorized it to do so.

(4) In all cases, the “arbitrator” shall decide in accordance with the terms of the contract and shall take into account the usage of trade applicable to the relevant issue.

Article 28. Settlement

If, during arbitral proceedings, the parties resolve their dispute by settlement, the “arbitrator” shall order termination of the proceedings, and if requested by a party and

not objected to by the other party, record the settlement in the form of an arbitral award on agreed terms in accordance with the provisions of Article 30 of this Act.

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.

Article 30. 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 signature of the majority of all the members of the arbitral tribunal shall suffice, provided that the reason for any omitted signature is stated.

(2) The award shall state all 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 28 of this Law.

(3) The award shall state its date and the place of arbitration as determined in accordance with the provisions of paragraph 1 of Article 20.

(4) After the award is made, a copy shall be notified to each party.

Article 31. Termination of proceedings

The arbitral proceedings are terminated by the final award or by an order of the “arbitrator” when:

(1) the claimant withdraws his claim, unless the respondent objects thereto and the “arbitrator” recognizes a legitimate and justifiable interest on his part in obtaining a final settlement of the dispute;

(2) the “arbitrator” finds that the continuation of the proceedings has for any other reason become unnecessary or impossible;

(3) the parties agree on the termination of the proceedings.

Article 32. Correction and interpretation of award; additional award

(1) The “arbitrator” may, on his own initiative, or upon the request of a party, correct in the award any errors in computation, any clerical or typographical errors or any errors of similar nature, or to clarify any ambiguity therein. Such a request by a party shall be made within thirty days of notification of the award, with notice to the other party. Within thirty days of the receipt of request, and where the “arbitrator” himself has become aware of such error or ambiguity, within thirty days of date of the award, the “arbitrator” will decide regarding correction or interpretation of the award.

(2) A party may, with notice to the other party, request the “arbitrator” to make an additional award as to claims presented in the tribunal proceedings but omitted from the award. If the “arbitrator” considers the request to be justified, he shall make the additional award within sixty days. The “arbitrator” may, if necessary, extend the period of time within which he shall make an additional award.

(3) Provisions of Article 30 in respect of correction, interpretation and additional award shall apply.

CHAPTER VII. RECOURSE AGAINST AWARD

Article 33. Application for setting aside an arbitral award

(1) An arbitral award may be set aside by the court specified in Article 6 upon the application of a party when:

(a) a party to the arbitration lacked capacity;

(b) the arbitration agreement is not valid under the law to which the parties have subjected it, or where the applicable law is silent, the agreement is clearly in conflict with Iranian law;

(c) the provisions of this Act in respect of giving notices of the appointment of an arbitrator or request for submission to arbitration have not been complied with;

(d) the party making the application for setting aside the award, has failed, for reasons beyond his power, to present his evidence and documents;

(e) in making the award, the “arbitrator” has acted beyond the scope of his authority. If the matters submitted to arbitration can be separated, only that part of the award which has been made beyond the “arbitrator’s” scope of authority may be set aside;

(f) the composition of the arbitral tribunal, or the arbitral procedure was not in accordance with the arbitration agreement; or where the agreement is silent, or non-existent, the composition of the arbitral tribunal, or the arbitral procedure was contrary to the rules contained in this Act;

(g) the arbitral award includes the supporting and effective opinion of the arbitrator whose challenge has been accepted by the authority specified in Article 6;

(h) the arbitral award has relied on evidence or document the forgery of which has been established pursuant to a final judgment;

(i) after the award is made, a document is found that evidences the rightfulness of the objecting party, and it is established that the other party has withheld such document or has caused it to be withheld;

(2) In respect of instances specified in sub-paragraphs (h) and (i) of this Article, the party who has suffered prejudice as a result of the forged document or of its being withheld may, prior to applying for setting aside the award, request a re-hearing from the “arbitrator,” unless the parties agree otherwise.

(3) The application for setting aside the award under the provisions of paragraph (1) of this Article shall be submitted to the court specified in Article 6 within three months of notification of the award, including correction or interpretation of the award, or an additional award, otherwise the application shall be inadmissible.

Article 34. Nullity of award

An arbitral award shall be deemed null and void and unenforceable where:

(1) the principal subject-matter of the dispute is not capable of settlement by arbitration under Iranian law;

(2) the terms of the award would be contrary to the public policy or good morals of the State, or to the mandatory provisions of this Act;

(3) the arbitral award made in respect of immovable property located in Iran is in conflict with the mandatory laws of the Islamic Republic of Iran or with the contents of valid official documents, unless the “arbitrator” has been authorized to act as *amiable compositeur* regarding the latter issue.

CHAPTER VIII AWARDS

RECOGNITION AND ENFORCEMENT OF

Article 35. Enforcement

(1) Except for instances specified in Articles 33 and 34 of this Act, arbitral awards made in accordance with the provisions of this Act shall be recognized as binding and

enforceable after notification thereof and, upon application in writing to the court specified in Article 6, enforcement procedures in connection with court judgments shall be put into effect.

(2) Where a party requests the court specified in Article 6 of this Act to set aside an arbitral award, while the other party requests for its recognition or enforcement, the court may, on the application of the party requesting recognition or enforcement of the award, order the other party to provide appropriate security.

CHAPTER IX OTHER PROVISIONS

Article 36. Other provisions

(1) Arbitration of international commercial disputes under this Act are excluded from the arbitration rules contained in the Civil Procedure Code and other laws and regulations.

(2) This Act shall have no effect on other laws of the Islamic Republic of Iran under which specified disputes are not capable of referral to arbitration.

(3) Where the treaties and agreements between the Government of the Islamic Republic of Iran and other States provide different procedures and conditions for the arbitrations specified in this Act, those procedures and conditions shall govern.

Date of enactment by the Islamic Parliament (Majlis): 26 Shahrivar 1376 [17 September 1997]

Date of confirmation by the Guardians Council: 9 Mehr 1376 [1st October 1997]

