

# LAW ON ARBITRATION\*

## Part One – GENERAL PROVISIONS

### *Scope of application*

#### *Article 1*

This Law governs:

- 1) domestic arbitration,
- 3) recognition and enforcement of arbitral awards, and
- 2) court jurisdiction and procedure regarding arbitration from subparagraph 1 of this Article and in other cases provided by this Law.

### *Definitions and rules of interpretation*

#### *Article 2*

- (1) For the purposes of this Law:
  - 1) **'arbitration'** means any arbitration, whether or not administered by an arbitration institution,
  - 2) **'domestic arbitration'** means arbitration that has place in the territory of the Republic of Croatia,
  - 3) **'arbitral tribunal'** is a private body that draws its mandate to arbitrate from the agreement of the parties,
  - 4) **'arbitral institution'** means a legal entity or a part of a legal entity that organizes and administers the activities of arbitral tribunals,
  - 5) **'arbitrator'** means a sole arbitrator or a presiding arbitrator, or a member of a panel of arbitrators,
  - 6) **'dispute without an international element'** means a dispute in which both parties are natural persons with domicile or habitual residence in Croatia, or legal persons established under the law of the Republic of Croatia, unless the dispute meets the requirements of subparagraph 7 of this paragraph,
  - 7) **'dispute with an international element'** means a dispute in which at least one party is a natural person with domicile or habitual residence abroad, or a legal person established under foreign law,
  - 8) **'award'** means a decision on the merits of the dispute,
  - 9) **'final award'** means an award on the basis and the amount of an individual claim,
  - 10) **'court'** means a body of the state judicial power,
  - 11) **'mediator (conciliator)'** means a person that conducts a separate conciliation procedure on the basis of a written agreement between the parties.
- (2) Where a provision of this Law refers to an agreement or possibility of agreement between the parties on a certain issue or in any other way refers to an agreement of the parties, such agreement includes any arbitration rules contained or referred to in that agreement.
- (3) The provisions of this Law that refer to the statement of claim also apply to the counter-claim and the provisions that refer to the statement of defense also apply to the reply to the counter-claim, save for the provisions of this Law on default of a party (Article 24, paragraph 1) and withdrawal of the statement of claim (Article 32, paragraph 1, subparagraph 1).

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\* This is a provisional translation of the Croatian Law on Arbitration prepared by Dr. Alan Uzelac. The Law was published in Off. Gaz. 88/2001 of October 11, 2001 and came into force on October 19, 2001.

## **Part Two – ARBITRATION IN THE REPUBLIC OF CROATIA**

### **Chapter One – General provisions**

#### *Arbitrability*

##### *Article 3*

- (1) Parties may agree on domestic arbitration for the settlement of disputes regarding rights of which they may freely dispose.
- (2) In disputes with an international element, parties may also agree on arbitration outside the territory of the Republic of Croatia, unless it is provided by law that such a dispute may be subject only to the jurisdiction of a court in the Republic of Croatia.
- (3) Parties may agree to submit the disputes referred to in paragraph 1 of this article to arbitration, regardless of whether or not the arbitration is administered by an arbitral institution.

#### *Receipt of written communications*

##### *Article 4*

- (1) Unless otherwise agreed by the parties, any written communication shall be deemed to have been delivered on the day when it is delivered to the mailing address of the addressee or to the person designated to receive written communications.
- (2) Mailing address is the address at which the addressee regularly receives mail. If the addressee has not expressly defined any other address or if the circumstances of the case do not indicate otherwise, the mailing address shall be the address of the seat or the branch office of the addressee, his habitual residence or the address referred to in the main contract or in the arbitration agreement.
- (3) If none of the addresses referred to in paragraph 2 of this article is known, a written communication shall be deemed to have been served on the day when its delivery has been attempted to the last known address, provided it has been properly forwarded by registered mail with return receipt or in any other way that can provide evidence of attempted delivery.
- (4) A written communication shall be deemed to have been served if the addressee to whom delivery was attempted in the above described manner refuses to receive it.
- (5) Provisions of paragraph 1 of this article shall not apply to delivery of communications in court proceedings.

#### *Waiver of the right to object*

##### *Article 5*

A party who knew or should have known 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 proceeded with the arbitration without stating his objection to such non-compliance without undue delay or, if a time limit is provided therefore, within such period of time, shall be deemed to have waived his right to object.

### **Chapter Two – ARBITRATION AGREEMENT**

#### *Arbitration agreement - definition, form and applicable law*

##### *Article 6*

- (1) An arbitration agreement is an agreement of the parties to submit to arbitration all or certain disputes that have arisen or that may arise in the future between them in respect of a defined legal relationship of a contractual or non-contractual nature. An arbitration

agreement may be concluded in the form of an arbitration clause in a contract or in the form of a separate arbitration agreement.

- (2) The arbitration agreement shall be in writing. An agreement is in writing if it is contained in documents signed by the parties or in an exchange of letters, telex, faxes, telegrams or other means of telecommunication that provide a record of the agreement, whether signed by the parties or not.
- (3) It is considered that an arbitration agreement shall be deemed to be concluded in writing if:
  - 1) it is contained in one party's written offer, or if a third party transmitted to both parties such an offer, provided that against such offer no objection was timely raised, and such failure to object, according to usages in transactions of the same nature, may be considered to constitute acceptance of the offer,
  - 2) after an orally concluded arbitration agreement, a party communicates to the other a written communication, referring to the arbitration agreement concluded earlier orally, and the other party fails to object timely, and such failure, according to usages in transactions of the same nature, may be considered to constitute acceptance of the offer.
- (4) The reference in a contract to a document containing an arbitration clause (general terms of a contract, text of other agreement or similar) constitutes an arbitration agreement provided that the reference is such as to make that clause part of the contract.
- (5) An arbitration agreement may also be concluded by the issuance of a bill of lading, if the bill of lading contains an express reference to an arbitration clause in a charter party.
- (6) Notwithstanding the provisions of Arts. 1-5 of this Law, if a dispute has arisen or could arise out of a consumer contract, the arbitration agreement must be contained in a separate document signed by both parties. In such a document no agreements may be contained other than those referring to the arbitral proceedings, except if the document was drawn up by a notary public.
- (7) The law applicable to the validity of an arbitration agreement *ratione materiae* is the law designated by the parties. If the parties failed to designate such applicable law, the applicable law will be the law applicable to the substance of the dispute or the law of the Republic of Croatia.
- (8) An arbitration agreement shall be deemed to be valid if the claimant files the statement of claim to arbitration and the respondent fails to object to the jurisdiction of the arbitral tribunal at the latest in his statement of defense in which he raised issues related to the substance of the dispute.

#### *Capacity of the parties*

##### *Article 7*

- (1) Capacity of natural and legal persons and other entities to conclude an arbitration agreement and be parties to an arbitration dispute is governed by the law that is applicable to them.
- (2) Citizens of the Republic of Croatia and legal persons of Croatian Law, including the Republic of Croatia and units of local and regional self-government, may conclude arbitration agreements and be parties to arbitration.

#### *Power of attorney for the conclusion of an arbitration agreement*

##### *Article 8*

If the validity of a power of attorney is governed by Croatian law, the authority to conclude the main contract implies an authority to conclude an arbitration agreement.

## Chapter Three – ARBITRAL TRIBUNAL

### *Number of arbitrators*

#### *Article 9*

If the parties have not agreed otherwise, three arbitrators shall be appointed.

### *Appointment of arbitrators*

#### *Article 10*

- (1) No person shall be precluded by reason of his nationality from acting as an arbitrator, unless otherwise agreed by the parties.
- (2) Judges of Croatian courts may only be appointed as presiding arbitrators or as sole arbitrators.
- (3) Parties are free to agree on the procedure of appointing the arbitrator or arbitrators, subject to the provisions of paragraphs 4 and 5 of this article.
- (4) Failing such agreement,
  - 1) in an arbitration with three arbitrators, each party shall appoint one arbitrator, and the two arbitrators thus appointed shall appoint the third arbitrator as presiding arbitrator. If a party fails to appoint an arbitrator or fails to inform the other party of this appointment within thirty days of the notice of appointment by the other party accompanied by a request to appoint an arbitrator, or if two arbitrators fail to agree on the third arbitrator within thirty days of the appointment of the last appointed of them, the appointment of the arbitrator shall be made, upon request of a party, by the appointing authority specified in Article 43, paragraph 3 of this Law;
  - 2) in an arbitration with a sole arbitrator, if the parties fail to agree on the arbitrator, such arbitrator shall be appointed, upon request of a party, by the appointing authority specified in Article 43, paragraph 3 of this Law.
- (5) Where, under an appointment procedure agreed by the parties,
  - 1) a party fails to act as required under such procedure, or
  - 2) the parties or arbitrators are unable to reach an agreement required of them under such procedure, or
  - 3) a third party, including an institution, fails to perform any function entrusted to it under such procedure,
 any party may request the appointment authority specified in Article 43, paragraph 3 of this Law to take the necessary measure, unless the agreement on the appointment procedure provides other means for securing the appointment.
- (6) The appointing authority specified in Article 43, paragraph 3 of this Law, 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 a dispute with an international element, in the case of a sole or presiding arbitrator, shall take into account as well the advisability of appointing an arbitrator of a nationality other than those of the parties.
- (7) A decision on a matter that is, pursuant to paragraphs 3 or 4 of this article entrusted to the appointing authority specified in Article 43, paragraph 3 of this Law, shall not be subject to appeal.

### *Rights and duties of arbitrators*

#### *Article 11*

- (1) An arbitrator must accept his appointment in writing. Such acceptance may be made by signing the arbitration agreement.
- (2) An arbitrator must conduct the arbitration with due expeditiousness and undertake measures on time in order to avoid any delay of the proceedings.

- (3) Unless agreed otherwise, the parties may discharge by their consent an arbitrator that fails to perform his duties, or does not perform them in a timely manner.
- (4) An arbitrator has the right to reimbursement of expenses and a fee for the work completed, unless he has waived these rights in writing. The parties shall be jointly and severally liable for the payment of such expenses and fees.
- (5) If an arbitrator has determined the amount of his own expenses and fees, his decision does not bind the parties unless they accept it. If the parties do not accept this decision, the expenses and fees will be determined, upon request of an arbitrator or of a party, by the authority specified in Article 43, paragraph 3 of this Law. The decision made by such authority is a title for enforcement against the parties to the arbitral dispute.

#### *Challenge of arbitrators*

##### *Article 12*

- (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 independence or impartiality. 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 been previously informed of them by him.
- (2) An arbitrator may be challenged only if circumstances exist that give rise to justifiable doubts as to his independence or impartiality, or if the arbitrator does not possess qualifications agreed to by the parties or if he fails to fulfill his duties specified in Article 11, paragraph 2 of this Law.
- (3) A party may challenge an arbitrator appointed by him, or in whose appointment he has participated, only for reasons that occurred after the appointment or reasons of which he becomes aware after the appointment has been made.
- (4) The parties are free to agree on a procedure for challenging an arbitrator, subject to the provisions of paragraph 7 of this article.
- (5) Failing such agreement, a party who intends to challenge an arbitrator shall, within fifteen days after becoming aware of the appointment of the arbitrator or after becoming aware of any circumstances referred to in paragraph 2 of this article, send a written statement of the reasons for the challenge to the arbitral tribunal.
- (6) Unless the challenged arbitrator withdraws from his office or the other party agrees to the challenge, the arbitral court, including the arbitrator subject to the challenge, shall promptly decide on the challenge.
- (7) If a challenge under the procedure specified in paragraphs 4 and 6 of this article is not successful, the challenging party may, within thirty days after having received notice of the decision rejecting the challenge, or if the arbitral tribunal does not decide on the challenge within thirty days after the challenge was made, in a further thirty days from the moment of the expiration of the first thirty days, request from the appointing authority specified in Article 43, paragraph 3 of this Law to decide on the challenge. While such a request is pending, the arbitral tribunal, including the challenged arbitrator, may continue the arbitral proceedings and make an award.

#### *Failure to perform arbitrator's duties*

##### *Article 13*

- (1) If an arbitrator becomes *de iure* or *de facto* unable to perform his functions, and he withdraws from his office or the parties agree on the termination, his mandate shall be terminated. If a controversy remains concerning any of the grounds, any party may request the authority specified in Article 43, paragraph 3 of this Law to decide on the termination of the mandate.
- (2) If under this article or Article 12, paragraph 6, an arbitrator withdraws from his office or parties agree to terminate his mandate, this does not imply existence of any ground referred to in this article or Article 12, paragraph 2 of this Law.

*Appointment of substitute arbitrator*

*Article 14*

Where the mandate of an arbitrator terminates under Articles 12 or 13 of this Law, 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.

*Jurisdiction of arbitral tribunal*

*Article 15*

- (1) The arbitral tribunal may rule on its own jurisdiction, including any objections with respect to the existence or the validity of the arbitration agreement. For that purpose, an arbitration clause that 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 iure* 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 defense in which the respondent raised issues related to the substance of the dispute. 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 made 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 43, paragraph 1 of this Law to decide the matter. While such a request is pending, the arbitral tribunal may continue the arbitral proceedings and make an award.
- (4) The court proceedings from paragraph 3 of this Article shall be urgent.

*Interim measures in arbitral proceedings*

*Article 16*

- (1) Unless otherwise agreed by the parties, the arbitral tribunal may, at the request of a party, order any party to take such interim measures of protection as the arbitral tribunal may consider necessary in respect of the subject-matter of the dispute. The arbitral tribunal may require any party to provide appropriate security in connection with such measure.
- (2) If a party to which interim measures relate does not agree to undertake them voluntarily, the party that made the motion for such measures may request their enforcement before the competent court

**Chapter Four – ARBITRAL PROCEEDINGS**

*Equal treatment of parties*

*Article 17*

- (1) The parties to proceedings before an arbitral tribunal shall be treated equally.
- (2) The parties shall have the right to respond to statements and claims of their adversary.
- (3) For the purpose of compliance with the provisions of paragraphs 1 and 2 of this article, arbitrators shall, to the extent necessary and possible, attempt to disclose to the parties their opinions and give appropriate explanations in order to evaluate all relevant factual and legal issues.

*Rules of procedure*

*Article 18*

- (1) Subject to the provisions of this Law, parties are free to agree, directly or by reference to any established set of rules, a statute or in other appropriate manner, the procedure to be followed by the arbitral tribunal in the conduct of 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 rules of procedure either directly or by reference to a set of rules, a statute or in other appropriate manner, and the power to determine the admissibility, relevance and weight of any evidence.

*Place of arbitration*

*Article 19*

- (1) The parties are free to agree on the place of arbitration.
- (2) Failing such agreement, the place of arbitration will be determined by the arbitral tribunal having regard to the circumstances of the case, including the convenience for the parties.
- (3) If the place of arbitration is not determined pursuant to paragraphs 1 and 2 of this article, the place of arbitration shall be deemed to be the place designated in the award as the place where the award was made.
- (4) Notwithstanding the provisions of paragraph 1 and 2 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 or documents.

*Commencement of arbitral proceedings*

*Article 20*

Unless otherwise agreed by the parties, the arbitral proceedings commence:

- (1) if the arbitral proceedings are organized and administered by an arbitral institution - on the date when such institution receives the claim;
- (2) in any other event (*ad hoc* arbitration) - on the date on which a notification of the appointment of an arbitrator or a proposal for appointing a sole arbitrator, accompanied by an invitation to appoint the other arbitrator or declare whether he accepts the proposed sole arbitrator, and the statement of claim that submits the dispute to arbitration is received by the respondent

*Language*

*Article 21.*

- (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 by the arbitral tribunal, 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 translation into the language or languages agreed upon by the parties or determined by the arbitral tribunal.
- (3) Until the language of the proceedings has been determined, a claim, a defense and other deeds can be submitted in the language of the main contract, of the arbitration agreement or in the Croatian language.
- (4) If neither parties nor arbitrators can reach an agreement on the language of arbitration, the language of arbitration shall be the Croatian language.

*Statements of claim and defense*

*Article 22*

- (1) Unless otherwise agreed by the parties, the claimant shall in his statement of claim state the facts supporting his claim, the points at issue and relief or remedy sought, and the respondent shall in his statement of defense state his defense in respect of the claimant's statements, proposals and claims. 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 defense 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.

*Hearings and written proceedings*

*Article 23*

- (1) Subject to any contrary agreement by the parties, the arbitral tribunal shall decide whether to schedule and hold oral hearings for the presentation of evidence or for oral argument, or whether the proceedings shall be conducted on the basis of documents.
- (2) 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.
- (3) The parties shall be given sufficient advance notice of any hearing and of any meeting of the arbitral tribunal for the purpose of inspection of goods, other property or documents.
- (4) All statements, documents or other information supplied to the arbitral tribunal by one party shall be communicated to the other party. Any expert report or evidentiary document on which the arbitral tribunal may rely in making its decision shall be communicated to each of the parties.
- (5) Unless otherwise agreed by the parties, the arbitral proceedings are not public.

*Default of a party*

*Article 24*

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

- 1) the claimant fails to communicate his statement of claim in accordance with Article 22, paragraph 1 of this Law, the arbitral tribunal shall terminate the proceedings;
- 2) the respondent fails to communicate his statement of defense in accordance with Article 22, paragraph 1 of this Law, the arbitral tribunal shall continue the proceedings without treating such failure in itself as an admission of the claimant's allegations;
- 3) any party fails to appear at a hearing or to produce documentary evidence within the time limit provided for their production, the arbitral tribunal may continue the proceedings and make the award on the evidence before it.

*Witnesses*

*Article 25*

- (1) As a rule, witnesses shall be examined in oral hearings.
- (2) Subject to their consent, witnesses may be examined outside oral hearings; the arbitral tribunal can also request witnesses to answer questions in writing within a certain period of time.
- (3) Witnesses shall be examined without taking an oath.

*Experts*

*Article 26*

- (1) Unless otherwise agreed by the parties, the arbitral tribunal:
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- (3) An award on agreed terms shall be made in accordance with the provisions of Article 30 of this Law and shall have legal force and effects of the award (Article 31 of this Law).

*Award*

*Article 30*

- (1) Unless otherwise agreed by the parties, an arbitral tribunal is authorized to make partial and interim awards. A partial award is deemed to be an independent award.
- (2) The award shall be made in the place of arbitration (Article 19 of this Law).
- (3) The award shall be made in writing. It shall state the reasons upon which it is based, unless the parties have agreed that no reasons are to be given or if the award is an award on agreed terms under Article 29 of this Law.
- (4) The date when the award was made and place where it was made shall be stated in the award pursuant to Article 19, paragraphs 1 and 2 of this Law and paragraph 2 of this article.
- (5) The original of the award and all copies thereof shall be signed by the sole arbitrator or all members of the panel of arbitrators. The award shall be valid even if some arbitrators failed to sign it, provided that it was signed by the majority of all members of the arbitral tribunal, and that the omission of a signature or signatures is stated in the award.
- (6) The awards made in an institutional arbitration shall be served upon the parties by the arbitral institution. In all other cases, the service of the award to the parties shall be made by the arbitral tribunal.
- (7) Unless otherwise agreed by the parties, the service of the award shall be made pursuant to provisions of Article 4 of this Law. If both parties so request, service of the award may be carried out by the court designated in Article 43, paragraph 5 or by a notary public.

*Legal effect of the award*

*Article 31*

The award of the arbitral tribunal shall have, in respect of the parties, the force of a final judgment (*res iudicata*), unless the parties have expressly agreed that the award may be contested by an arbitral tribunal of a higher instance.

*Termination of the proceedings*

*Article 32*

- (1) The arbitral proceedings are terminated by the final award or by an order of the arbitral tribunal, if:
  - 1) 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 award in the dispute;
  - 2) the parties agree on the termination of the proceedings;
  - 3) the arbitral tribunal finds that the continuation of the proceedings has for any other reason become unnecessary or impossible.
- (2) The mandate of the arbitral tribunal terminates with the termination of the arbitral proceedings, subject to the provisions of the articles 33, 34, 35(3), 36(4) and 37 of this Law. In such cases, the tribunal's mandate will be terminated when the respective decision is rendered.

*Additional award*

*Article 33*

- (1) Unless otherwise agreed by the parties, each party may, within thirty days of the receipt of the award, and with notice to the other party, request the arbitral tribunal to make an

additional award as to claims presented in the arbitral proceedings but omitted from the award.

- (2) If the arbitral tribunal considers the request to be justified, it shall make the additional award.
- (3) The provisions of article 30 of this Law shall apply to such an additional award.

*Correction and interpretation of award*

*Article 34*

- (1) Within thirty days of receipt of the award, unless another period of time has been agreed by the parties:
  - 1) a party, upon the notice to the other party, may request the arbitral tribunal to correct any errors in the computation of the award, any clerical or typographical errors or any error of similar nature;
  - 2) 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.
- (2) If the arbitral tribunal considers the request to be justified, it shall make the correction or give the interpretation, which shall form part of the award.
- (3) The arbitral tribunal may correct any error of the type referred to in paragraph 1, subparagraph 1 of this article on its own initiative within thirty days of the date of the award.
- (4) The provisions of article 30 of this Law shall also apply to a correction or interpretation of an award.

*Decision on costs*

*Article 35*

- (1) Upon a request by a party, the arbitral tribunal shall determine in the award or an order for the termination of the arbitral proceedings which party and in which proportion has to reimburse the other party the necessary costs of arbitration, including expenses of party representation and the fees of arbitrators, and/or has to bear its own expenses.
- (2) The arbitral tribunal shall decide on the costs of the proceedings according to its free evaluation, taking into account all circumstances of the case, especially the outcome of the dispute.
- (3) If the arbitral tribunal fails to decide on costs of proceedings, or if such decision is possible only after termination of the arbitral proceedings, the arbitral tribunal will make a separate award on the costs of proceedings.

**Chapter Six – LEGAL REMEDY AGAINST THE AWARD**

*Application for setting aside*

*Article 36*

- (1) An arbitral award may be contested by an application for setting aside in accordance with the provisions of this article. Recourse against an interim award may be made only in an application to set aside the award in which the claim in respect of which the interim award was made was finally settled. No other legal remedies in court jurisdiction are permitted.
- (2) An arbitral award may be set aside by the court specified in Article 43, paragraph 1 of this Law only if:
  - 1) the party making the application furnishes proof that:
    - a) there was no agreement to arbitrate pursuant to Article 6 of this Law, or such agreement was not valid;
    - b) a party to the arbitration agreement was incapable of concluding the arbitration agreement or to be a party to an arbitration dispute (Article 7) or that a party was not duly represented;

- c) the party making the application for setting aside was not given proper notice of the commencement of the arbitral proceedings or was otherwise unable to present his case before the arbitral tribunal;
  - d) 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 decision on matters submitted to arbitration can be separated from those not so submitted, only that part of the award that contains decisions on matters not submitted to arbitration may be set aside; or
  - e) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with this Law or a permissible agreement of the parties and that fact could have influenced the content of the award; or
  - f) the award has no reasons or has not been signed in accordance with the provisions of Article 30, paragraphs 3 and 5 of this Law; or
- 2) the court finds, even if a party has not raised these grounds, that:
- a) the subject matter of the dispute is not capable of settlement by arbitration under the laws of the Republic of Croatia; or
  - b) the award is in conflict with the public policy of the Republic of Croatia.
- (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 received the award or, if the application is made in a case under Arts. 33 or 34 of this Law, from the date on which the party making that application received the decision of the arbitral tribunal on either of the requests referred to in those articles.
- (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 actions as in the arbitral tribunal's opinion could eliminate the grounds for setting aside.
- (5) If the parties in a dispute expressly so agree in the arbitration agreement, an application against the arbitral award may also be made on the grounds that the party applying for setting aside found new facts or has the opportunity to present new evidence on the basis of which an award more favorable to him could have been made if these facts would have been known or evidence produced in the hearings that preceded the making of the challenged award. This ground may be raised only if the applying party could not have used them in the arbitration proceedings for reasons that were not his fault.
- (6) The parties cannot derogate in advance their right to contest the award by an application for setting aside.

*Arbitration agreement after setting aside the award*

*Article 37*

- (1) If an award made on the basis of a valid arbitration agreement not specifying the names of the arbitrators, has been set aside on the grounds other than those related to existence or validity of the arbitration agreement, such arbitration agreement shall be a valid legal basis for new arbitration in the same dispute. In case of doubt, upon request by a party, the court may issue a separate ruling to this effect.
- (2) Upon a request by a party, when the court asked to set aside an award finds it possible and appropriate, it shall, after setting aside, refer the case to the arbitral tribunal for reconsideration.
- (3) In all other cases, a new arbitration in the same dispute shall be possible if the parties conclude a new arbitration agreement after the setting aside of the award.

## **Part Three – RECOGNITION AND ENFORCEMENT OF THE AWARDS**

### *Nationality of the award*

#### *Article 38*

The award of an arbitral tribunal shall have the nationality of the country in which the place of arbitration is situated (Article 19 of this Law).

### *Enforcement of the domestic award*

#### *Article 39*

- (1) The court shall enforce a domestic award, unless it establishes the existence of grounds for setting aside provided by Article 36 paragraph 2, subparagraph 2 of this Law.
- (2) The court shall not take into account those grounds for setting aside provided by Article 36 paragraph 2, subparagraph 2 for which an application for setting aside was already finally rejected.
- (3) If an issue arises in court proceedings relating to the existence of a right or legal relation and such an issue was already finally decided in a dispositive part of a domestic award, upon a request by a party and within the boundaries of the final decision, the court shall be bound by the decision on this issue contained in the dispositive part, unless it establishes the existence of a ground for setting aside referred to in Article 36 paragraph 2 subparagraph 2 of this Law with respect to this part of the arbitral award.
- (4) If a party to an arbitral dispute has a legal interest in a determination that no reasons for setting aside referred to in Article 36 paragraph 2 subparagraph 2 of this Law exist, it may request a decision on this issue from the court referred to in Article 43. of this Law.

### *Recognition and enforcement of a foreign award*

#### *Article 40*

- (1) A foreign award shall be recognized as binding and shall be enforced in the Republic of Croatia unless the court establishes, upon a request by the opposing party, the existence of a ground referred to in Article 36, paragraph 2, subparagraph 1 of this Law, or if it finds that 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.
- (2) Recognition and enforcement of a foreign award shall be refused if the court finds that:
  - a) the subject-matter of the dispute is not capable of settlement by arbitration under the law of the Republic of Croatia.
  - b) the recognition or enforcement of the award would be contrary to the public policy of the Republic of Croatia.

## **Part Four – COURT PROCEDURE**

### **Chapter One – GENERAL PROVISIONS**

#### *Court intervention*

#### *Article 41*

- (1) No court shall intervene in matters governed by this law, except where it is so provided in this Law.
- (2) Court proceedings shall be governed by the rules of non-contentious procedure, except upon applications for setting aside the award.

*Arbitration agreement and a claim on the merits submitted to a court of law in the same matter*

*Article 42*

- (1) If the parties have agreed to submit a dispute to arbitration, the court before which the same matter between the same parties was brought shall upon respondent's objection declare its lack of jurisdiction, annul all actions taken in the proceedings and refuse to rule on the statement of claim, unless it finds that the arbitration agreement is null and void (Article 6), inoperative or incapable of being performed.
- (2) The respondent may raise the objection referred to in paragraph 1 of this article no later than at the preparatory hearing or, if no preparatory hearing is held, at the main hearing before the end of the presentation of the statement of defense.
- (3) Where an action referred in paragraph 1 of this article has been brought to the court, arbitral proceedings may nevertheless be commenced or continued if they were already commenced, and an award may be made while the issue is still pending before the court.

*Court jurisdiction*

*Article 43*

- (1) The Commercial Court in Zagreb shall have the jurisdiction to rule on the jurisdiction of the arbitral tribunal (Article 15, paragraph 3), deposition of the award (Article 46), application for setting aside (Article 36) and petitions for recognition and granting the enforcement of the award (Articles 39 and 40), in the cases from the *ratione causae* competence of the commercial courts. In other cases, the County Court in Zagreb shall have jurisdiction.
- (2) A court competent *ratione causae* designated by a separate law shall be competent to carry out the enforcement of the award.
- (3) Unless the parties have agreed that some or all of the assisting activities are to be performed by an arbitral institution or some other appointing authority, the activities provided in Article 10, paragraph 4 to 7, Article 12, paragraphs 3 and 4, Article 14, paragraph 7 and Article 15 of this Law shall be performed by the president of the court designated by paragraph 1 of this article or a judge authorized by him.
- (4) Activities of the president of the court referred to in paragraph 3 of this article shall not be construed as activities in a court or administrative procedure.
- (5) Legal assistance in the taking of evidence (Article 45) and the service of the awards (Article 30, paragraph 6) shall be rendered by a court competent *ratione causae* that has territorial jurisdiction according to the place where the particular activity has to be undertaken.
- (6) The provisions of this article shall not affect the application of the provisions of the Law on Enforcement on the jurisdiction for the ordering and enforcement of provisional measures.

*Interim court measures of protection of claims*

*Article 44*

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

*Legal assistance in taking evidence*

*Article 45*

- (1) The arbitral tribunal, or a party with the approval of the arbitral tribunal, may request legal assistance from a competent court in taking evidence that the arbitral tribunal itself could not take.

- (2) The procedure for taking evidence is governed by the provisions on taking evidence before a judge commissioned by a rogatory letter.
- (3) The arbitrators are entitled to participate in the procedure of taking evidence before a commissioned judge and put questions to persons being examined.

*Authentication and deposition of the award*

*Article 46*

- (1) The parties may agree whether and how the award shall be authenticated and deposited.
- (2) If the agreement referred to in paragraph 1 of this article refers to authentication and deposition with a court, the court shall complete the authentication and deposition pursuant to rules for rendering legal assistance to arbitral tribunals.
- (3) If parties so agree, the court shall transmit the transcripts of the award that was deposited in the court to a party or parties to arbitral proceedings.

**Chapter Two – PROCEDURE OF RECOGNITION AND ENFORCEMENT**

*Documents to be attached to a petition for recognition and enforcement*

*Article 47*

- (1) The party seeking recognition and enforcement of an award or relying upon an award in proceedings shall, together with his petition in writing, supply the original award or a duly certified copy thereof.
- (2) A party seeking recognition or enforcement of a foreign award, or relying on such award shall also supply, in addition to his petition in writing, the original arbitration agreement or a duly certified copy thereof.
- (3) If the award or agreement referred to in paragraphs 1 and 2 of this article were not made in the Croatian language, the party shall also supply a duly certified translation thereof into the Croatian language.

*Adjournment of proceedings for recognition and enforcement of a foreign award*

*Article 48*

If proceedings for the setting aside of an award or for the suspension of a foreign award have commenced before a competent court, the court requested to recognize or enforce the award may, if it considers it appropriate, adjourn its decision until the termination of the proceedings for setting aside or suspension and may, upon the motion of the party seeking the recognition or enforcement of the award, order the other party to provide appropriate security.

*Decision on claims for recognition and enforcement*

*Article 49*

- (1) While ruling on claims for recognition or enforcement, the court shall confine itself to determining whether the requirements referred to in Arts. 39, 40, 47 and 48 of this Law have been met, and if it considers it necessary, it may seek an explanation from the arbitral tribunal that rendered the award, from the parties, or from a court or a notary public or other person with which the award was deposited pursuant to an agreement referred to in Article 46, paragraph 1 of this Law.
- (2) The court shall provide an opportunity to the opposing party to be heard in the proceedings where recognition of the award is the main issue.
- (3) The court shall provide an opportunity to the opposing party to be heard with regard to a claim for enforcement on the basis of an award unless this would jeopardize the successful implementation of enforcement.
- (4) A decision on recognition and/or enforcement shall contain grounds for the decision.

- (5) An appeal against a decision rendered in the proceedings where recognition is the main issue may be submitted to the Supreme Court of the Republic of Croatia within 15 days from the service of the decision on recognition.

## **Part Five – TRANSITORY AND FINAL PROVISIONS**

### *Repealing of particular laws*

#### *Article 50*

By enactment of this Law, the provisions of the following Laws shall be repealed:

- Articles 468a to 487 of the Code of Civil Procedure, adopted as a Law of the Republic of Croatia by an Adoption Act (“Off. Gaz.”, no. 53/91);
- Articles 97 to 100 of the Conflicts of Laws Act, adopted as a Law of the Republic of Croatia by an Adoption Act (“Off. Gaz.”, no. 53/91);
- Article 1(2) and Articles 101-109 of the Conflicts of Laws Act, adopted as a Law of the Republic of Croatia by an Adoption Act (“Off. Gaz.”, no. 53/91), as far as they are concerned with the procedure of recognition and enforcement of foreign arbitral awards;
- Article 91, paragraph 4 of the Law on Obligations, adopted as a Law of the Republic of Croatia by an Adoption Act (“Off. Gaz.”, no. 53/91, 73/91, 111/93, 3/94, 7/96, 91/96 and 112/99), as far as it regulates the authority to conclude an arbitration agreement.

### *Entry into force*

#### *Article 51*

- (1) Effectiveness of arbitration agreements concluded prior to the coming into force of this Law shall be governed by the legislation previously in force.
- (2) Pending arbitration proceedings that have not been completed at the time of the coming into force of this Law shall be conducted according to legislation previously in force. Settlements already made will be replaced, upon a joint proposal of the parties, by the arbitral award referred to in Article 29 of this Law. Parties may agree on the application of the new Law to pending proceedings.
- (3) Judicial proceedings pending at the time of coming into force of this Law shall continue under regulations previously in force.

#### *Article 52*

This Law shall come into force on the eighth day following its publication in the “Official Gazette” of the Republic of Croatia.