

Law No. 31/86, of August 29, 1986
(in force as from November 29, 1986)*

CHAPTER I

Article 1.
(Arbitration agreement)

1. Any dispute relating to disposable rights, that has not been exclusively submitted by a special act to a court or to compulsory arbitration, may be submitted by the parties for decision by arbitrators.
2. The subject matter of an arbitration agreement may be a present dispute, even if it has been submitted to a court (submission agreement), or any future dispute arising from a given juridical, contractual or non-contractual relationship (arbitration clause).
3. The parties may agree to consider as included in the concept of dispute, besides matters of strictly contentious nature, any other matters, such as those related to the need of making precise, completing, updating or even reviewing the contract or legal relationship which is at the origin of the arbitration agreement.
4. State and any other public legal entity may conclude arbitration agreements if authorised to do so by a special act or if the subject matter of the arbitration agreement regards a private law relationship.

Article 2.
(Requirements of the agreement; revocation)

1. The arbitration agreement shall be concluded in writing.
2. An arbitration agreement included either in a document signed by the parties or coming out with exchange of letters, telexes, telegrams or other mean of telecommunication of which there is a written proof, is considered as concluded in writing, whether those documents contain the agreement directly, or refer to a document in which the agreement is included.
3. The subject matter of the dispute shall be stated precisely in the submission agreement; the legal relationship to which the dispute refers shall be specified in the arbitration clause.
4. The arbitration agreement may be revoked by a document signed by the parties before the arbitral award is rendered.

* Unofficial translation

Article 3.
(Voidness of the agreement)

An arbitration agreement concluded in breach of the provisions of Article 1(1) and(4) and Article 2(1) and (2) shall be void.

Article 4.
(Lapse of the agreement)

1. The submission agreement shall lapse and the arbitration clause shall cease to have effect regarding the dispute under consideration:

- a) when one of the arbitrators dies, refuses to accept his mandate or becomes permanently unable to perform it, or when his appointment ceases to have effect, and he is not replaced in accordance with the provisions of Article 13;
- b) when a majority of votes is not attained in the case the tribunal is composed of more than one arbitrator;
- c) when the award is not rendered within the time limit established in accordance with the provisions of Article 19.

2. Unless otherwise agreed by the parties, arbitration agreement shall not lapse and action before the arbitral tribunal shall not become extinct by reason of death or extinction of a party.

Article 5.
(Costs)

The fees of the arbitrators and other intervenients in the proceedings, as well as their apportionment between the parties, shall be fixed in the arbitration agreement or in a document subsequently signed by the parties, unless such matters are provided for in the arbitration rules to which the parties have referred according to the provision of Article 15.

CHAPTER II
THE ARBITRATORS AND THE ARBITRAL TRIBUNAL

Article 6.
(Composition of tribunal)

1. The tribunal may be composed of a sole or of an uneven number of arbitrators.

2. Unless the number of arbitrators comes out the arbitration agreement or a subsequent document signed by the parties, the tribunal shall be composed of three arbitrators.

Article 7.
(Appointment of arbitrators)

1. The parties shall, in the arbitration agreement or in a subsequent written document signed by them, either appoint the arbitrator or arbitrators who will compose the arbitral tribunal, or determine the method for their appointment.

2. If the parties have neither appointed the arbitrator or arbitrators or determined the method of their appointment, and failing them to agree on such appointment, shall each party appoint one arbitrator, unless they agree that each party shall appoint more than one arbitrator in equal number, and shall the arbitrators thus appointed agree upon the arbitrator who will complete the arbitral tribunal.

Article 8.
(Arbitrators: qualifications)

Arbitrators must be natural persons enjoying full legal capacity.

Article 9.
(Freedom to accept; withdrawal from office)

1. No one may be compelled to act as an arbitrator; but if the charge has been accepted, a withdrawal from office shall only be lawful when based on a supervening impossibility for the appointee to perform his function.

2. The charge is deemed to be accepted whenever the appointee shows the intent to act as an arbitrator or does not state in a written document, addressed to any of the parties within the first ten days subsequent to the notice of the appointment, that he does not wish to perform such function.

3. The arbitrator who, having accepted the appointment, unjustifiably withdraws from office, shall be liable for the damages he has caused.

Article 10.
(Challenge of arbitrators)

1. The provisions of the law of civil procedure regarding the challenge of judges shall apply to the challenge of arbitrators who have not been appointed by agreement of parties.

2. A party may not challenge the arbitrator appointed by it, unless one of the grounds of challenge mentioned in the previous paragraph supervenes.

Article 11.
(Constitution of the tribunal)

1. The party wishing to refer a dispute to the arbitral tribunal shall notify the other party of that fact.
2. Notice for arbitration shall be performed by registered mail with acknowledgement of receipt.
3. The notice shall refer to the arbitration agreement and specify the subject matter of the dispute, if it has not yet been done in the arbitration agreement.
4. Whenever the parties are entitled to appoint one or more arbitrators, shall the notice include the appointment of the arbitrator or arbitrators by the party wishing to commence the arbitral proceeding, as well as an invitation addressed to the other party to appoint the arbitrator or arbitrators whom that party may appoint.
5. Should a sole arbitrator be appointed by both parties, shall the notice indicate the proposed arbitrator and include an invitation addressed to the other party to accept the proposal.
6. Should one or more arbitrators be appointed by a third person, that person shall be notified to make such appointment if it has not yet done so, and to inform the parties.

Article 12.
(Appointment of arbitrators and specification of the subject matter of the dispute by the court)

1. Whenever an arbitrator or arbitrators have not been appointed according to the provisions of the previous articles, such appointment shall be made by the president of the Court of Appeal at the place of arbitration or, if that place has not yet been established, at the residence of the applicant.
2. The appointment may be requested, in such cases as mentioned in Article 11(4) and (5), one month from the notification mentioned in Article 11 (1), and in such case as mentioned in Article 7 (2), one month from the appointment of the last of the arbitrators who have been empowered to make such decision.
3. The appointments made in accordance with the provisions of the previous paragraph may not be appealed.
4. If, within the time limit mentioned in paragraph 2, the parties do not reach an agreement regarding the specification of the subject matter of the dispute, the court shall decide. This decision may be appealed.

5. If the arbitration agreement is manifestly void, the court shall declare that the appointment of the arbitrators and the specification of subject matter of the dispute shall not take place.

Article 13.
(Replacement of arbitrators)

If any of the arbitrators dies, withdraws from office, becomes permanently unable to perform his functions or if his appointment ceases to be in effect, he shall be replaced according to the rules applicable to the appointment, appropriately adapted.

Article 14.
(Chairman of the arbitral tribunal)

1. If the tribunal is composed of more than one arbitrator, shall the arbitrators choose the chairman among themselves, unless the parties have agreed otherwise in a document signed before the acceptance by the first arbitrator.

2. If the appointment of the chairman is not possible according to the procedure established in the previous paragraph, such choice shall be made by the president of the Court of Appeal.

3. Unless otherwise agreed, the chairman of the arbitral tribunal shall be empowered to prepare the proceedings, to direct the taking of evidence, to conduct the hearings and to coordinate the debates.

Chapter III
THE ARBITRAL PROCEEDINGS

Article 15.
(Rules of procedure)

1. The parties may agree, either in the arbitration agreement or in a subsequent written document concluded before the acceptance by the first arbitrator, on the rules of procedure to be followed in the arbitration, as well as on the place of arbitration.

2. The parties may also agree regarding the matters mentioned in the previous paragraph by choosing the arbitration rules of one of entities mentioned in Article 38 or by electing one of those entities to organise the arbitration.

3. Failing the parties to agree on the rules of procedure or on the place of arbitration, such decision shall be made by the arbitrators.

Article 16.
(Basic principles to be observed in the proceedings)

The following basic principles shall be observed, in any case, in the arbitral proceedings:

- a) the parties shall be treated equally;
- b) the respondent shall be summoned to present defence;
- c) in all stages of the proceedings the adversary system shall be observed;
- d) both parties shall be given an opportunity to present their case, either orally or in writing, before the final award is rendered.

Article 17.
(Representation of parties)

The parties may choose the persons who will represent or assist them before the tribunal.

Article 18.
(Evidence)

1. Any evidence accepted by the law of civil procedure may be submitted to the arbitral tribunal.
2. If one of the parties or a third person refuses the necessary cooperation in the taking of evidence, a party may, with the permission of the arbitral tribunal, request a judicial court to take the evidence and to send the results to the tribunal.

CHAPTER IV
THE ARBITRAL AWARD

Article 19.
(Time limit to the award to be rendered)

1. The parties may, in the arbitration agreement or in a subsequent written document, concluded before the acceptance by the first arbitrator, determine the time limit within which the arbitral tribunal shall render the award, or the method to determine such time limit.
2. Failing such agreement of the parties, the time limit to render the award shall be six months.
3. Unless otherwise agreed by the parties, the time limit mentioned in paragraphs 1 and 2 shall be counted from the day when the last appointment of an arbitrator has been made.

4. The time limit to render the award may, by written agreement of the parties, be extended up to twice its original duration.

5. The arbitrators who unjustifiably obstruct the rendering of the award within the determined time limit shall be liable for the damages they have caused.

Article 20.
(Deliberation)

1. When the tribunal is composed of more of one arbitrator, the award shall be given by a majority decision, taken in a deliberation in which all arbitrators must participate, unless the parties have demanded a qualified majority in the arbitration agreement or in a subsequent written document, concluded before the acceptance by the first arbitrator.

2. The parties may also agree that, failing the necessary majority, the chairman shall decide, or that the dispute shall be decided according to his vote.

3. In case the necessary majority is not achieved solely due to differences regarding the sum of money to be paid by the losing party, that issue shall be decided according to the chairman's vote, unless the parties agreed otherwise.

Article 21.
(Award on the tribunal's own jurisdiction)

1. The arbitral tribunal may decide upon its own jurisdiction, even if, for that purpose, it has to decide on the existence, the validity or the effectiveness of the arbitration agreement or of the contract of which it forms a part or on the applicability of the said agreement.

2. The nullity of contract of which the arbitration agreement forms a part shall not entail the nullity of the arbitration agreement, unless it is proved that the contract would not have been concluded without the said agreement.

3. A plea that the arbitral tribunal does not have jurisdiction may only be raised until the moment of the submission of the statement of defence on the merits of the dispute, or jointly with it.

4. The award by the arbitral tribunal which declares that it has jurisdiction may only be examined by a court after the award on the merits of dispute has been rendered and in the proceedings mentioned in Articles 27 and 31.

Article 22.
(Applicable law; resort to equity)

The arbitrators shall decide in accordance with the law, unless the parties have, in the arbitration agreement or in a document signed before the acceptance by the first arbitrator, authorised them to decide according to equity.

Article 23.
(Contents of the award)

1. The final award of the arbitral tribunal shall be made in writing and it shall contain:

- a) the identity of the parties;
- b) a reference to the arbitration agreement;
- c) the subject matter of the dispute;
- d) the identity of the arbitrators;
- e) the place of arbitration and the place and the date on which the award was rendered;
- f) the signature of the arbitrators;
- g) a mention of the arbitrators who could not or were not willing to sign the award.

2. The award shall be signed at least by the majority of the arbitrators and shall include the appropriately identified dissenting opinions.

3. The award shall state the reasons upon which it is based.

4. The award shall contain a decision on the costs of proceedings and on their apportionment among the parties.

Article 24.
(Notification and deposit of the award)

1. The chairman of the tribunal shall order the award to be served to each party, being a copy of it sent by registered mail to each of them.

2. The original of the award shall be deposited with the registry of the court of the place of arbitration, unless the parties have, in the arbitration agreement or in a subsequent written document, relieved the tribunal of the necessity of such deposit, or, in the case of institutional arbitration, if its rules foresee another form of deposit.

3. The chairman of the arbitral tribunal shall notify the parties of the deposit.

Article 25.
(Termination of arbitrators' power)

The arbitrators' jurisdictional power shall terminate upon the notification of the deposit of the award that has settled the dispute or, if the tribunal has been relieved of the necessity of such deposit, upon the notification of the award to the parties.

Article 26.
(Force of res judicata and enforceability)

1. After it has been notified to the parties and, if necessary, deposited with the court as provided in Article 24, the arbitral award shall acquire the force of res judicata from the moment it is no longer capable of being appealed.

2. The arbitral award shall be enforced on the same terms as a judgement of a Court of First Instance.

CHAPTER V
CHALLENGE OF THE ARBITRAL AWARD

Article 27.
(Setting aside of the award)

1. The arbitral award may only be set aside by a court on one of the following grounds:

a) the dispute is not capable of settlement by arbitration;

b) the award was rendered by a tribunal which did not have jurisdiction or which has been irregularly constituted;

c) a breach, occurred during the proceedings, of any one of the principles mentioned in Article 16, having decisive influence on the arbitrator's decision;

d) a breach of any of the provisions of Article 23(1)(f)(2) and (3) occurred;

e) the tribunal has dealt with matters beyond its mandate or it has omitted to decide in respect of matters it should have decided.

2. The ground for setting aside mentioned in subparagraph (b) of the previous paragraph may not be invoked by a party who, having known of it during the arbitral proceedings, did not raise it in due time.

3. When an appeal against the arbitral award is possible, if it has been lodged, the above-mentioned grounds for setting aside may only be examined in the appeal.

Article 28.
(Right to apply for setting aside; time limit)

1. The right to apply for setting aside the arbitral award may not be excluded.

2. An application for setting aside may only be made within a period of one month from the day of service of the arbitral award.

Article 29.
(Appeals)

1. Unless the parties have waived the right to appeal, the same appeal that would be admissible regarding a judgement of a Court of First Instance may be lodged with the Court of Appeal against the arbitral award.

2. Permission given to arbitrators to decide according to equity constitutes a waiver of the right to appeal.

CHAPTER VI
ENFORCEMENT OF THE ARBITRAL AWARD

Article 30.
(Enforcement of the award)

The proceeding for the enforcement of the arbitral award shall take place at the Court of First Instance and shall follow the conditions established by the law of civil procedure.

Article 31.
(Request for refusal of enforcement)

The grounds for setting aside may be invoked in a request for refusal of enforcement, even if the time limit for the application for setting aside has lapsed.

CHAPTER VII
INTERNATIONAL ARBITRATION

Article 32.
(Concept of international arbitration)

Arbitration is considered international whenever interests of international trade are at stake.

Article 33.
(Applicable law)

1. The parties may choose the law to be applied by the arbitrators, unless they have authorised them to decide according to equity.
2. Failing such choice, the tribunal shall apply the most appropriate law to the dispute.

Article 34.
(Appeals)

The award of the arbitral tribunal in an international arbitration may not be appealed, unless the parties have agreed on the possibility of an appeal and ruled its terms.

Article 35.
(Amiable composition)

The arbitral tribunal may assume the power to settle the dispute appealing to the parties to compromise on the balance of the interests at stake.

CHAPTER VIII
FINAL PROVISIONS

Article 36.
(Amendments to the Code of Civil Procedure)

The following provisions of the Code of Civil Procedure are hereby amended and substituted as following:

Article 90

[...]

1.....

2. Enforcement of an arbitral award rendered in Portuguese territory shall take place at the Court of First Instance of the place of arbitration.

Article 814.
(Enforcement based on arbitral award)

1. The grounds for a request for refusal of enforcement of an arbitral award are not only those mentioned in the previous

article, but also those on which the setting aside of such an award may be based.

2. The court shall refuse *ex officio* the request for enforcement when it ascertains that the dispute could not be decided by arbitrators, either because it is exclusively submitted by special law to a court or to compulsory arbitration or because it refers to a non-disposable right.

Article 37.
(Territorial scope of application)

This act shall apply to arbitrations taking place in Portuguese territory.

Article 38.
(Institutional arbitration)

The Government shall determine, by decree law, rules regarding the granting of capacity to certain entities to administer voluntary, institutional arbitration. Shall in each case be ruled a specification of the general or specialised nature of such arbitrations. The decree law shall rule the re-examination and possible revocation, whenever justified, of the permits to be granted.

Article 39.
(Repealed law)

1. Decree Law no. 243/84 of 17 July is repealed.
2. Article 55 of the Code of Judicial Costs is repealed.
3. Title I of Book IV, “ On the voluntary arbitral tribunal”, of the Code of Civil Procedure, is repealed.

Article 40.
(Entry into force)

This act shall enter into force three months after its publication.