

# LAW ON ARBITRATION OF SLOVENIA\*

## CHAPTER I GENERAL PROVISIONS

### Article 1

#### Scope of Application of the Law

(1) This Law applies to arbitrations that have their seat in the Republic of Slovenia irrespective of whether the parties to the proceedings are domestic or foreign persons (hereinafter: domestic arbitration).

(2) The provisions of articles 11, 12 and 31 of this Law apply also where the seat of arbitration is abroad (hereinafter: foreign arbitration) or has not yet been determined.

(3) Until the seat of arbitration has been determined, the Court in the Republic of Slovenia has jurisdiction to decide matters referred to in subparagraphs 2, 3 and 4 of paragraph (1) of article 9, provided that one of the parties has its permanent or temporary residence in the Republic of Slovenia.

(4) The recognition and enforcement of arbitral awards and interim measures issued by foreign arbitrations are governed by articles 42 and 43 of this Law.

### Article 2

#### International Origin and General Principles

(1) In the interpretation of the provisions of this Law, regard is to be had to the need to promote uniformity in the application of the UNCITRAL Model Law on International Commercial Arbitration and to the principle of good faith.

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

### Article 3

#### Meaning of Terms and Interpretation of Provisions

(1) The two terms below as used in this Law have the following meaning:

- “Arbitration” means any form of arbitral proceedings whether or not the proceedings are carried out in the context of a permanent or temporary body;
- “Arbitral tribunal” means a sole arbitrator or a panel of arbitrators.

(2) Except for article 32 of this Law, the freedom of the parties to determine a certain issue includes their right to authorize a third party or an institution to make that determination.

(3) Where a provision of this Law refers to an agreement of the parties, such agreement includes any arbitration rules if the parties refer to them in their agreement.

(4) Except for subparagraph 1 of article 29 and subparagraph 1 of paragraph (2) of article 36 of this Law, provisions of this Law referring to a statement of claim or a statement of defence apply also to a counterclaim and a defence to a counterclaim.

### Article 4

#### Subject of and Parties to Arbitration

(1) The subject of an arbitration agreement may be any claim involving an economic interest. Other claims may be the subject of an arbitration agree-

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ment only to the extent that the parties are permitted to settle them.

(2) An arbitration agreement may be entered into by any natural or legal person, which includes the Republic of Slovenia and other persons of public law.

#### **Article 5** **Agreement Conferring Jurisdiction to Foreign Arbitration**

Citizens of the Republic of Slovenia and legal persons having their seat in the Republic of Slovenia may agree to submit their disputes to a foreign arbitration except where the dispute is subject to the exclusive jurisdiction of a court in the Republic of Slovenia.

#### **Article 6** **Receipt of Written Communications**

(1) Unless otherwise agreed by the parties:

1. Any written communication in the arbitration proceedings is deemed to have been received if it is delivered to the addressee personally or if it is delivered at its place of business, habitual residence or mailing address; if such delivery cannot be effected after making a reasonable inquiry, a written communication is deemed to have been received if it is sent to the addressee's last-known place of business, habitual residence or mailing address by registered letter or any other means which provides a record of the attempt to deliver it;

2. The communication is deemed to have been received on the day it is delivered in one of the ways referred to in the preceding subparagraph.

(2) The provisions of the preceding paragraph do not apply to the delivery of notices in court proceedings.

#### **Article 7** **Waiver of Right to Object**

If any provision of this Law from which the parties may derogate or any requirement under the arbitration agreement has not been complied with

in the arbitral proceedings, and yet a party who knows or ought to have known about such non-compliance proceeds with the arbitration without stating its objection without undue delay or, if a time-limit is provided therefor, within such period of time, the party shall be deemed to have waived its right to object.

#### **Article 8** **Extent of Court Intervention**

In matters governed by this Law, a court may intervene only in cases where it is so provided in this Law.

#### **Article 9** **Court Jurisdiction and Procedure**

(1) The District Court in Ljubljana has jurisdiction to decide:

1. The admissibility or inadmissibility of arbitral proceedings (paragraph (3) of article 11);
2. The appointment of an arbitrator (paragraphs (3) and (4) of article 14);
3. Challenge of an arbitrator (paragraph (3) of article 16);
4. Termination of the mandate of an arbitrator (paragraph (1) of article 17);
5. Jurisdiction of the arbitral tribunal (paragraph (3) of article 19);
6. Setting aside of the arbitral award (paragraph (2) of article 40);
7. Declaration of enforceability of domestic awards (article 41) and the recognition of foreign awards (article 42).

(2) The Court takes its decisions pursuant to the rules on noncontentious civil proceedings, whereas the decisions on the issues referred to in subparagraphs 1, 5 and 6 of the preceding paragraph are taken pursuant to the rules on contentious civil proceedings. Before issuing its decision, the Court shall give the opposing party an opportunity of presenting its case. At the request of a party, those proceedings may be closed to the public, if a justified interest therefor is shown.

(3) An appeal against a decision of the Court is decided by the Supreme Court of the Republic of Slovenia. No extraordinary recourse against a decision is admissible.

## **CHAPTER II ARBITRATION AGREEMENT**

### **Article 10 Definition and Form of Arbitration Agreement**

(1) "Arbitration agreement" is an agreement by the parties to submit to arbitration all or certain disputes which have arisen or which may arise between them in respect of a defined contractual or noncontractual legal relationship. An arbitration agreement may be in the form of an arbitration clause in a contract or in the form of a separate agreement.

(2) The arbitration agreement shall be in writing. An arbitration agreement is in writing if it is contained in a document signed by the parties or in an exchange of letters, facsimile messages, telegrams, electronic mail or other means of communication or recording of data which provide a record of the arbitration agreement that is accessible and suitable for subsequent reference.

(3) An arbitration agreement is in writing also if it is contained in a document transmitted by one party to the other or by a third person to both parties and, if no objection was raised in good time, the contents of such document are considered to be part of the contract in accordance with common usage.

(4) Where a contract refers to another document containing an arbitration clause (general contract conditions, wording of another contract and similar), the arbitration agreement is valid, provided that the contract has been entered into in accordance with paragraphs (2) and (3) of this article and the reference is such as to make the arbitration clause part of the contract.

(5) An arbitration agreement is valid also if the bill of lading contains an express reference to an arbitration clause in a charter party.

(6) An arbitration agreement is validly entered into also if the claimant brings an action before an

arbitration and the respondent does not raise a plea that the arbitral tribunal does not have jurisdiction at the latest in the statement of defence.

### **Article 11 Arbitration Agreement and Substantive Claim Before Court**

(1) When an action is brought before a court in a matter which is the subject of an arbitration agreement, the court, at the request of the respondent, shall declare that it has no jurisdiction, invalidate any actions taken in the proceedings and dismiss the action without prejudice, unless the court finds that the arbitration agreement does not exist, is null and void, ceased to be valid or is incapable of being performed.

(2) The request referred to in the preceding paragraph may be raised by the respondent at the latest in the statement of defence submitted to the court.

(3) Prior to the constitution of the arbitral tribunal, an action may be brought before the court for the determination whether or not arbitration is admissible, in particular on the grounds referred to in paragraph (1) of this article.

(4) Where an action referred to in paragraph (1) or (3) of this article has been brought, arbitral proceedings may nevertheless be commenced or continued, and the arbitral tribunal may make the award while the issue is pending before the court.

### **Article 12 Arbitration Agreement and Interim Measures by Court**

It is not incompatible with an arbitration agreement for a court to grant, at the request of a party, before or during arbitral proceedings an interim measure of protection relating to the subject matter of the arbitration. This applies also in the case of arbitral proceedings abroad.

## **CHAPTER III COMPOSITION OF ARBITRAL TRIBUNAL**

### **Article 13**

#### **Number of Arbitrators**

- (1) The parties are free to determine the number of arbitrators.
- (2) Failing such determination, the number of arbitrators shall be three.

### **Article 14**

#### **Appointment of Arbitrators**

- (1) Unless otherwise agreed by the parties, the citizenship of the arbitrator shall not be an obstacle to his or her appointment.
- (2) The parties are free to agree on the procedure of appointing the arbitrators, subject to paragraphs (4) and (5) of this article.
- (3) 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; if a party fails to appoint the arbitrator within thirty days of receipt of a request to do so from the other party, or if the two arbitrators fail to agree on the third arbitrator within thirty days of their appointment, the appointment shall be made, upon request of a party, by the Court;
  2. In an arbitration with a sole arbitrator, if the parties are unable to agree on the arbitrator, he or she shall be appointed, upon request of a party, by the Court.
- (4) Where, under the appointment procedure agreed upon by the parties,
  1. a party fails to act as required under such procedure, or
  2. the parties, or the two arbitrators, are unable to reach an agreement expected 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 Court to take the necessary measure, unless the agreement on the appointment procedure provides other means for securing the appointment.

(5) A decision on a matter entrusted by paragraph (3) or (4) of this article to the Court shall be subject to no appeal. The Court, 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. The Court may appoint an arbitrator of a citizenship other than the citizenships of the parties, if this is necessary to ensure the independence and impartiality of the arbitral tribunal.

### **Article 15**

#### **Grounds for Challenge**

- (1) When a person is approached in connection with his or her possible appointment as an arbitrator, he or she shall disclose any circumstances likely to give rise to justifiable doubts as to his or her impartiality and independence. An arbitrator, from the time of his or her 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 the arbitrator.
- (2) An arbitrator may be challenged only if circumstances exist that give rise to justifiable doubts as to his or her impartiality and independence, or if he or she does not possess qualifications agreed to by the parties. A party may challenge an arbitrator appointed by it, or in whose appointment it has participated, only for reasons of which it becomes aware after the appointment has been made.

### **Article 16**

#### **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 circumstance referred to in paragraph (2) of

article 15 of this Law, send a written statement of the reasons for the challenge to the arbitral tribunal. Unless the challenged arbitrator withdraws from his or her office or the other party agrees to the challenge, the challenge shall be decided by the full arbitral tribunal, including the challenged arbitrator.

(3) If a challenge is not successful, the challenging party may request, within thirty days after having received notice of the decision rejecting the challenge, the Court to decide on the challenge. The Court's decision shall be subject to no appeal. While such a request is pending, the arbitral tribunal, including the challenged arbitrator, may continue the arbitral proceedings and make an award.

#### **Article 17** **Failure or Impossibility to Act**

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

(2) If, under the preceding paragraph or paragraph (2) of article 16, an arbitrator withdraws from his or her office or a party agrees to the termination of the mandate of an arbitrator, this does not imply acceptance of the validity of any ground referred to in the preceding paragraph or paragraph (2) of article 15 of this Law.

#### **Article 18** **Appointment of Substitute Arbitrator**

Where the mandate of an arbitrator terminates, a substitute arbitrator shall be appointed according to the rules that were applicable to the appointment of the arbitrator being replaced.

## **CHAPTER IV** **JURISDICTION OF ARBITRAL TRIBUNAL**

### **Article 19** **Competence of Arbitral Tribunal to Rule on its Jurisdiction**

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

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

(3) In principle, the arbitral tribunal rules on a plea referred to in the preceding paragraph in a separate decision. If the arbitral tribunal rules in a separate decision that it has jurisdiction, any party may request, within thirty days after having received notice of that ruling, the Court to decide the matter. The judicial proceedings in that matter are urgent. While such judicial proceedings are pending, the arbitral tribunal may continue the arbitral proceedings and make an award.

### **Article 20** **Interim Measures Ordered by Arbitral Tribunal**

(1) Unless otherwise agreed by the parties, the arbitral tribunal may, at the request of a party, at any time before the issuance of the final award, grant against the other party an interim measure it considers appropriate having regard to the subject matter of the dispute, after giving that other party an opportunity to present its case with respect to

the request. The arbitral tribunal may require any party to provide appropriate security in connection with the measure.

(2) Exceptionally, the arbitral tribunal may, if it considers it urgent, grant an interim measure before giving the other party the opportunity to present its case with respect to the request. Such a measure shall be binding on the parties, but shall not be subject to enforcement by a court.

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

(4) If the party fails to comply with the interim order issued by the arbitral tribunal, the court shall permit, at the request of the other party, the enforcement of the measure in accordance with article 43 of this Law, unless a request for the issuance of such an interim measure has already been made before the court.

## **CHAPTER V CONDUCT OF ARBITRAL PROCEEDINGS**

### **Article 21 Equal Treatment of Parties**

The parties shall be treated with equality. Each party shall be given a full opportunity of presenting its case.

### **Article 22 Representatives**

(1) The parties may be represented in arbitral proceedings by a natural person from this country or a foreign country who has the capacity to enter into transactions. Local or foreign companies of legal practitioners may also act as representatives.

(2) The right of parties referred to in the preceding paragraph may not be derogated from.

### **Article 23 Rules of Procedure**

(1) Subject to the provisions of this Law that cannot be derogated from, the parties are free to agree on the rules of procedure.

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

### **Article 24 Seat of Arbitration**

(1) The parties are free to agree on the seat of arbitration. Failing such agreement, the seat of arbitration shall be determined by the arbitral tribunal having regard to the circumstances of the case, in particular the convenience of the parties.

(2) Notwithstanding the provisions of paragraph (1) of this article, the arbitral tribunal may, unless otherwise agreed by the parties, meet at any place it considers appropriate for consultation among its members, for hearing witnesses, experts or the parties, or for inspection of goods, other property or documents.

### **Article 25 Commencement of Arbitral Proceedings**

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

### **Article 26 Language of Arbitral Proceedings**

(1) The parties are free to agree on the language or languages to be used in the arbitral proceedings. Failing such agreement, the arbitral tribunal shall determine the language to be used in the proceedings. This agreement or determination, unless otherwise specified therein, shall apply to any written submission or statement by a party, any hearing and any award, decision or other communication by the arbitral tribunal.

(2) The arbitral tribunal may order that any documentary evidence shall be accompanied by a translation into the language of the arbitral proceedings.

(3) Unless otherwise agreed by the parties, until the determination of the language of the proceedings, the statement of claim and other submissions may be made in the language of the main contract, of the arbitration agreement or in the Slovenian language.

#### **Article 27**

##### **Statements of Claim and Defence**

(1) Unless otherwise agreed by the parties, the claimant shall, within the period of time agreed by the parties or determined by the arbitral tribunal, state a definite claim, the facts supporting the claim, the points at issue, and the respondent shall state its defence in respect of these particulars. 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 its claim or defence during the course of the arbitral proceedings, unless the arbitral tribunal considers it inappropriate to allow such amendment having regard to the delay in making it.

#### **Article 28**

##### **Hearings and Written Proceedings**

(1) Subject to any contrary agreement by the parties, the arbitral tribunal shall decide whether to hold oral hearings or whether the proceedings shall be conducted on the basis of documents and other materials. However, unless the parties have agreed otherwise, the arbitral tribunal shall hold oral hearings at an appropriate stage of the proceedings, if so requested by a party.

(2) The parties shall be given sufficient advance notice of any hearing and of any meeting of the arbitral tribunal for the purposes of taking evidence.

(3) All statements, documents or other information supplied to the arbitral tribunal by one party shall be communicated to the other parties. Also any expert report or evidentiary document on which

the arbitral tribunal may rely in making its decision shall be communicated to the parties.

#### **Article 29**

##### **Default of a Party**

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

1. the claimant fails to communicate its statement of claim in accordance with paragraph (1) of article 27 of this Law, the arbitral tribunal shall terminate the proceedings;
2. the respondent fails to communicate its statement of defence in accordance with paragraph (1) of article 27 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, the arbitral tribunal may continue the proceedings and make the award on the evidence before it.

#### **Article 30**

##### **Expert Appointed by Arbitral Tribunal**

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

1. may appoint one or more experts to report to it on specific issues to be determined by the arbitral tribunal;
2. may require a party to give the expert any relevant information or to produce, or to provide access to, any relevant documents, goods or other property for his or her inspection.

(2) Unless otherwise agreed by the parties, if a party so requests or if the arbitral tribunal considers it necessary, the expert shall, after delivery of his or her written or oral report, participate in a hearing where the parties have the opportunity to put questions to him or her and to present expert witnesses in order to testify on the points at issue.

#### **Article 31**

##### **Court Assistance in Taking Evidence**

(1) The arbitral tribunal or a party with the approval of the arbitral tribunal may request from a

competent court to assist in taking evidence or to take another action that the arbitral tribunal is not empowered to carry out. If the court executes the request, it does so according to its rules of procedure. The arbitrators are entitled to participate in any judicial taking of evidence and to ask questions.

(2) Actions of court assistance referred to in the preceding paragraph shall be executed by the court that has territorial and subject matter jurisdiction. The actions shall be executed according to the general rules governing assistance between courts.

## **CHAPTER VI MAKING OF AWARD AND TERMINATION OF PROCEEDINGS**

### **Article 32 Rules Applicable to Substance of Dispute**

(1) The arbitral tribunal shall decide the dispute in accordance with such rules of law as are chosen by the parties as applicable to the substance of the dispute. Any designation of the law or legal system of a given State shall be construed, unless otherwise expressly agreed by the parties, as directly referring to the substantive law of that State and not to its conflict of laws rules.

(2) Failing any designation by the parties, the arbitral tribunal shall apply the rules of law which it considers applicable.

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

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

### **Article 33 Decision-making by Panel of Arbitrators**

Any decision of the panel of arbitrators shall be made, unless otherwise agreed by the parties, by a majority of its members. However, questions of procedure may be decided by a presiding arbitrator, if so authorized by the parties or all members of the arbitral tribunal.

### **Article 34 Settlement**

(1) If, during arbitral proceedings, the parties settle the dispute, the arbitral tribunal shall terminate the proceedings. If requested by the parties, the settlement shall be recorded in the form of an arbitral award on agreed terms, except if the content of the settlement is in conflict with the public policy of the Republic of Slovenia.

(2) An award on agreed terms shall be made in accordance with the provisions of article 35 of this Law and shall state that it is an award. Such an award has the same effect as any other award on the merits of the case.

### **Article 35 Form and Contents of Award**

(1) The award shall be made in writing. It shall be signed by the arbitrators. In arbitral proceedings with more than one arbitrator, the signatures of the majority of all members of the arbitral tribunal shall suffice, provided that the reason for the failure of an arbitrator to sign is stated.

(2) The award shall state the reasons upon which it is based, unless the parties have agreed that reasons are not necessary or the award is an award on agreed terms under article 34 of this Law.

(3) The award shall state its date and the seat of arbitration as determined in accordance with article 24 of this Law. If the seat of arbitration has not been determined during the proceedings, the place of making the award shall be deemed to be the seat of arbitration.

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

### **Article 36 Termination of Proceedings**

(1) The arbitral proceedings are terminated by the final award or by an order of the arbitral tribunal in accordance with paragraph (2) of this article.

(2) The arbitral tribunal shall issue an order for the termination of the arbitral proceedings when:

1. the claimant withdraws its claim, unless the respondent objects thereto and the arbitral

tribunal recognizes a legitimate interest on its part in obtaining a final settlement of the dispute; or

2. the parties agree on the termination of the proceedings; or

3. the arbitral tribunal finds that the continuation of the proceedings has for any other reason become unnecessary or impossible.

(3) The mandate of the arbitral tribunal terminates with the termination of the arbitral proceedings, except as provided in article 37, article 39 and paragraph (5) of article 40 of this Law.

### **Article 37**

#### **Correction and Interpretation of Award; Additional Award**

(1) Within thirty days of receipt of the award, unless another period of time has been agreed upon by the parties, any party may request the arbitral tribunal:

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

2. if so agreed by the parties, to give an interpretation of a specific point or part of the award;

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

(2) The arbitral tribunal shall give notice to the other party about a request referred to in the preceding paragraph and give it an opportunity to comment on it. If the arbitral tribunal considers the request to be justified, it shall make the correction of the award or give the interpretation within thirty days of receipt of the request or issue an additional award within sixty days of receipt of the request.

(3) The arbitral tribunal may correct any such error in the award on its own initiative within thirty days of the date of the award.

(4) The arbitral tribunal may extend, if necessary, the period of time within which it shall make a correction, interpretation or an additional award.

(5) The provisions of article 35 of this Law shall apply to a correction or interpretation of the award or to an additional award. The correction or interpretation shall form part of the award.

### **Article 38**

#### **Legal Effect of Arbitral Award**

An arbitral award has the effect as regards the parties of a final and binding court judgment.

### **Article 39**

#### **Decision Concerning Costs of Proceedings**

(1) Unless otherwise agreed by the parties, the arbitral tribunal, at the request of a party, shall decide, in the award or in the order for the termination of the proceedings, which party[,] and in what amount[,] shall compensate the other party for the costs of the proceedings, including the costs for legal representation and the arbitrators' fees, and [which party shall] bear its own costs. The arbitral tribunal does so at its discretion, taking into consideration the circumstances of the case and the outcome of the proceedings.

(2) If the costs of the proceedings have not been fixed by the arbitral tribunal or if they can only be fixed after the arbitral proceedings have been terminated, the arbitral tribunal shall issue at the request of a party a separate award about the costs.

## **CHAPTER VII**

### **RECOURSE AGAINST AWARD**

#### **Article 40**

##### **Application for Setting Aside of Award**

(1) Recourse to the Court against an arbitral award may be made only by an application for setting aside in accordance with paragraphs (2) and (3) of this article. The parties may not waive this right in advance.

(2) An arbitral award may be set aside by the Court only if:

1. The party making the application furnishes proof that:

- a party to the arbitration agreement referred to in article 10 was under some in-

capacity to conclude such an agreement or that the said agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the Slovenian law; or

- the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present its case; or
- the award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or contains decisions on matters beyond the scope of the submission to arbitration, provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, only that part of the award which contains decisions on matters not submitted to arbitration may be set aside; or
- the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless such agreement was in conflict with a provision of this Law from which the parties cannot derogate, or, failing such agreement, was not in accordance with this Law; or

2. The Court finds ex officio that:

- the subject-matter of the dispute is not capable of settlement by arbitration (article 4);
- the award is in conflict with the public policy of the Republic of Slovenia.

(3) An application for setting aside may be made within three months from the date on which the party making that application has received the award. If a request had been made under the provisions of article 37 of this Law, the time period for the application shall be extended up to the maximum of thirty days from the date of receipt of the decision of the arbitral tribunal in that matter.

(4) An arbitral award shall not be set aside because of lack of jurisdiction of the arbitral tribunal, if the

Court has already decided this issue on the basis of paragraph (3) of article 11 or paragraph (3) of article 19 of this Law.

(5) The Court may, if requested by a party and if it considers it appropriate, suspend the setting-aside proceedings for a determined period of time in order to give the arbitral tribunal an opportunity to resume the arbitral proceedings or to take such other action as in the arbitral tribunal's opinion may eliminate the grounds for setting aside.

(6) The setting aside of the arbitral award does not affect the validity of the arbitration agreement on which the arbitration was based.

## **CHAPTER VIII RECOGNITION AND ENFORCEMENT OF ARBITRAL AWARDS AND INTERIM MEASURES ISSUED BY ARBITRAL TRIBUNAL**

### **Article 41 Domestic Arbitral Awards**

(1) An arbitral award issued in a domestic arbitration may be enforced when the Court referred to in paragraph (1) of article 9 of this Law has declared it enforceable.

(2) The Court shall refuse a request for a declaration of enforceability of a domestic arbitral award if one of the grounds for setting aside an award referred to in subparagraph 2 of paragraph (2) of article 40 of this Law exists. Any such ground for setting aside shall not be taken into account if, at the time of the request for a declaration of the enforceability of the arbitral award, a request for setting aside the award based on that ground has already been refused by a final and binding court decision.

### **Article 42 Foreign Arbitral Awards**

(1) An arbitral award issued in a foreign arbitration (hereinafter: foreign arbitral award) produces effects when it has been recognized by the Court referred to in paragraph (1) of article 9 of this Law.

(2) The recognition and enforcement of foreign arbitral awards is governed by the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, done on 10 June 1958 in New York (the Official Gazette of the Socialist Federal Republic of Yugoslavia, International Agreements no. 11/81, and the Official Gazette of the Republic of Slovenia, International Agreements nos. 9/92, 3/93, 9/93, 5/99, 9/08).

(3) An arbitration agreement is deemed to have been entered into in accordance with the form prescribed by the Convention referred to in the preceding paragraph if it meets the requirements of article 10 of this Law.

(4) For the purposes of the recognition of a foreign arbitral award pursuant to paragraph (2) of this article, it suffices that the party requesting recognition presents an original arbitral award or its copy. Upon request of the Court, the party shall supply also an original or a certified copy of the arbitration agreement.

#### **Article 43 Enforcement of Interim Measures**

(1) The recognition of an interim measure issued by a domestic or foreign arbitration shall be decided by the court having jurisdiction pursuant to the rules governing the enforcement and securing of claims.

(2) The court shall refuse a request for the enforcement of an interim measure on the grounds referred to in paragraph (2) of article 41 or article 42 of this Law. Such a request may be refused also if the party against whom the enforcement has been sought establishes that the arbitral tribunal's decision with respect to the provision of security in connection with the interim measure has not been complied with or that the arbitral tribunal modified, suspended or terminated the interim measure.

(3) The enforcement of an interim measure shall be refused also if the court finds *ex officio* that it is impossible to enforce the interim measure. Instead, the court may at the request of the party appropriately reformulate the interim measure to the extent necessary for the purposes of enforcing

the measure, provided the substance of the measure is thereby not essentially modified.

(4) The party who is seeking or has obtained enforcement of an interim measure issued by an arbitral tribunal shall promptly inform the court of any termination, suspension or modification of that interim measure.

(5) At the request of a party, the court may terminate or modify its order for the enforcement of an interim measure.

(6) The court that is deciding on a request for the enforcement of an interim measure may, if it considers it proper, order the requesting party to provide appropriate security if the arbitral tribunal has not already taken a decision with respect to security or if such an order is necessary to protect the rights of third persons.

### **CHAPTER IX CONSUMER DISPUTES**

#### **Article 44 Competent Court**

Where the subject matter of an arbitration is a dispute between a commercial enterprise and a consumer in the sense of the Law governing the protection of consumers, the competence of the court to decide issues referred to in paragraph (1) of article 9 of this Law shall be determined on the basis of general rules governing court competence.

#### **Article 45 Arbitration Agreement**

(1) An arbitration agreement between a commercial enterprise and a consumer may be concluded only with respect to a dispute that has already arisen.

(2) An arbitration agreement between a commercial enterprise and a consumer has to be contained in a separate document hand-signed by the consumer.

(3) An arbitration agreement between a commercial enterprise and a consumer has to specify the seat of arbitration. The arbitral tribunal may hold

oral hearings or take evidence at another place only if the consumer agrees thereto or if taking evidence at the seat of arbitration would give rise to disproportionate difficulties.

(4) An arbitration agreement between a commercial enterprise and a consumer who has a permanent or temporary residence in the Republic of Slovenia or who habitually works in the Republic of Slovenia, but who, neither at the time of the conclusion of the arbitration agreement nor at the time of the submission of the statement of claim, has a permanent or temporary residence or habitually works in the state where the arbitration has its seat, is binding only if it is invoked by the consumer.

#### **Article 46** **Language of Arbitral Proceedings**

Notwithstanding the provision of article 26 of this Law, the arbitral proceedings in a consumer dispute shall be conducted in the Slovenian language, except if the parties expressly agree otherwise.

#### **Article 47** **Recourse Against Arbitral Award**

The court may set aside an arbitral award not only on the grounds referred to in article 40 of this Law, but also if the party who has raised the recourse against the award establishes that in the arbitral proceedings involving a consumer:

1. There was a violation of mandatory provisions from which the parties cannot derogate even in a relationship involving an international element; or
2. There is a ground on the basis of which, pursuant to the rules of civil procedure, it would be possible to set aside a judgment and order a retrial; in such a case, the time period for raising a claim for the setting aside of the arbitral award is the period within which, pursuant to the rules of civil procedure, it is possible to request the setting aside of a judgment and a retrial.

## **CHAPTER X** **EMPLOYMENT DISPUTES**

### **Article 48** **Competent Court**

Where an employment dispute, as defined by the Law governing the procedure in Employment Courts, is the subject of the arbitration, the issues referred to in paragraph (1) of article 9 of this Law shall be decided by the Employment Court that would have had territorial jurisdiction in the dispute if the case had not been submitted to arbitration.

### **Article 49** **Application Mutatis Mutandis**

The provisions of paragraphs (2), (3) and (4) of article 45 and articles 46 and 47 of this Law apply mutatis mutandis to arbitrations involving individual employment disputes.

## **CHAPTER XI** **TRANSITIONAL AND FINAL PROVISIONS**

### **Article 50** **Applicability of Law**

- (1) The validity of arbitration agreements concluded before the entry into force of this Law shall be determined pursuant to the legislation applicable before the entry into force of this Law.
- (2) Unless otherwise agreed by the parties, the provisions of this Law do not apply to the arbitral proceedings that commenced before the entry into force of this Law.
- (3) The proceedings that are pending before the courts on the day of the entry into force of this Law shall be continued pursuant to the legislation applicable before the entry into force of this Law.

### **Article 51** **Repeal and Amendment of Other Legislation**

- (1) On the day of the entry into force of this Law, the following statutory provisions shall be repealed:

- Chapter 31: Arbitration procedures of the Law of Civil Procedure (Official Gazette of the Republic of Slovenia no. 73/07 – officially consolidated text);
- Subchapter 2 of Chapter IV, 2. Recognition and enforcement of foreign arbitral awards of the Law on Private International Law and Procedure (Official Gazette of the Republic of Slovenia no. 56/99) and paragraph (2) of article 1, the title of subchapter 3 in chapter IV, 3. Procedure for the recognition and enforcement of foreign judicial decisions and arbitral awards, as well as articles 108 to 111 of the same Law insofar as they refer to the recognition and enforcement of arbitral awards;
- Article 11 of the Law on Employment and Social Courts (Official Gazette of the Republic of Slovenia no. 2/04 and 10/04 – corrigendum);
- Paragraph (3) of article 205 of the Law on Employment Relations (Official Gazette of the Republic of Slovenia, nos. 42/02, 79/06, 46/07 and 103/07);
- Paragraph (2) of article 19 of the Law on Electronic Commerce (Official Gazette of the Republic of Slovenia no. 61/06);
- Paragraph (5) of article 20 of the Law on Collective Bargaining (Official Gazette of the Republic of Slovenia no. 43/06); and
- Article 105 of the Law on the Participation of Employees in Management (Official Gazette of the Republic of Slovenia no. 42/07 – officially consolidated text).

(2) In article 18 of the Law on Enforcement and Securing of Claims (Official Gazette of the Republic of Slovenia no. 3/07 – officially consolidated text in no. 93/07), the word “or arbitration” is to be deleted after the word “court”.

## **Article 52**

### **Entry Into Force**

This Law enters into force three months after its publication in the Official Gazette of the Republic of Slovenia.