

## **German Code of Civil Procedure (Excerpt)** **with Amendments as Foreseen by the** **Draft Bill for the Modernisation of Arbitration Law**

### **Book 10. Arbitral proceedings**

#### **Division 1. General provisions**

##### **Section 1025. Scope of application**

(1) The provisions of the present Book are to be applied if the place of arbitration as defined in section 1043 (1) is located in Germany.

(2) The provisions of ~~sections 1032, 1033 and 1050~~ [sections 1032, 1033, 1041 \(2\) to \(4\) sentence 1 and section 1050](#) are to be applied also in those cases in which the place of arbitration is located abroad or has not yet been determined.

(3) For as long as the place of arbitration has not yet been determined, the German courts are competent for exercising the court tasks designated in sections 1034, 1035, 1037 and 1038 if the respondent or claimant has their seat or place of abode in Germany.

(4) Sections 1061 to 1065 apply to the recognition and enforcement of foreign arbitral awards.

##### **Section 1026. Extent of court intervention in arbitral proceedings**

In matters governed by sections 1025 to 1061, a court may intervene only insofar as provided for by the present Book.

##### **Section 1027. Loss of the right to object**

<sup>1</sup>If a provision of the present Book, from which the parties may derogate, or a requirement agreed for the arbitral proceedings has not been complied with, a party that has failed to object to this non-compliance without undue delay, or within a time-limit set for such objections, may not thereafter file an objection. <sup>2</sup>This does not apply in cases in which the party was not aware of the non-compliance.

##### **Section 1028. Receipt of written communications in cases of unknown whereabouts**

(1) If the whereabouts of a party or of a person authorised to receive written communications are unknown, then unless otherwise agreed by the parties, such communications are considered to have been received on the day on which they could have been received at the addressee's last known postal address, place of business or last known place of abode if mailed properly by registered letter with return receipt requested, or by any other means providing proof of delivery.

(2) Subsection (1) is not to be applied to communications in court proceedings.

#### **Division 2. Arbitration agreement**

##### **Section 1029. Definition**

(1) 'Arbitration agreement' means an agreement by the parties to submit to arbitration all or certain disputes which have arisen or which may arise between them in future in respect of a defined legal relationship, whether contractual or non-contractual in nature.

(2) An arbitration agreement may be concluded in the form of a separate agreement (separate arbitration agreement) or in the form of a clause in a contract (arbitration clause).

##### **Section 1030. Arbitrability**

(1) <sup>1</sup>Any claim involving property rights ("*vermögensrechtlicher Anspruch*") may become the subject matter of an arbitration agreement. <sup>2</sup>An arbitration agreement regarding claims not involving property rights has legal effect insofar as the parties are entitled to settle regarding the object of the dispute.

(2) <sup>1</sup>An arbitration agreement regarding legal disputes relating to the existence of a tenancy relationship for residential spaces in Germany is ineffective. <sup>2</sup>This does not apply insofar as the residential premises concerned are of the type defined in section 549 (2) nos. 1 to 3 of the Civil Code.

(3) Legislative provisions not contained in the present Book, according to which disputes may not be submitted to arbitration or may be submitted to arbitration only subject to defined prerequisites, remain unaffected.

### Section 1031. Form of the arbitration agreement

(1) The arbitration agreement must be set out either in a document signed by the parties, or in letters, telefax copies, telegrams or other forms of communication exchanged between them that ensure documentary proof of the agreement.

(2) The form required by subsection (1) is considered to have been complied with also if the arbitration agreement is contained in a document transmitted by one party to the other party, or by a third party to both parties, and if, in the event of an opposition having been raised late, the content of that document is regarded, in keeping with common usage, to constitute the substance of an agreement.

(3) Where a contract that is in compliance with the requirements as to form set out in subsection (1) or (2) makes reference to a document containing an arbitration clause, this constitutes an arbitration agreement, provided that the reference is such as to make said clause a part of the contract.

(4) ~~repealed~~ [<sup>1</sup>Compliance with the form stipulated in subsection \(1\) is not required if the arbitration agreement is a commercial transaction for all parties. <sup>2</sup>If the arbitration agreement was concluded without any form requirements being observed, then any party may demand that the other party provide it with a confirmation in text form of the arbitration agreement's substance.](#)

(5) <sup>1</sup>Arbitration agreements to which a consumer is a party must form part of a record personally signed by the parties. <sup>2</sup>The written form required by sentence 1 may be replaced by the electronic form defined by section 126a of the Civil Code. <sup>3</sup>The record or electronic document may not contain agreements other than those relating to the arbitral proceedings; this does not apply where the agreement is recorded by a notary.

(6) Any failure to comply with formal requirements is remedied by a plea being made on the merits of the matter in the arbitral proceedings.

### Section 1032. Arbitration agreement and action brought before a court

(1) Where an action is brought before a court in a matter that is the subject of an arbitration agreement, the court is to dismiss the action as inadmissible, provided that the respondent has raised a corresponding objection prior to commencement of the hearing on the merits of the case, unless the court finds that the arbitration agreement is null and void, ineffective or incapable of being performed.

(2) <sup>1</sup>Until the arbitral tribunal has been formed, a request may be filed with the court to have it determine the admissibility or inadmissibility of arbitral proceedings. [<sup>2</sup>Upon request, the court decides, in connection with its decision according to sentence 1, also on the existence or the validity of the arbitration agreement.](#)

(3) Where proceedings as referred to in subsection (1) or (2) are pending, arbitral proceedings nevertheless may be initiated or continued and an award may be made.

### Section 1033. Arbitration agreement and interim measures by a court

It is not incompatible with an arbitration agreement for a court to order, before or after arbitral proceedings have commenced and upon request by a party, an interim measure or measure of protection concerning the subject matter of the dispute submitted to arbitration.

## Division 3. Formation of the arbitral tribunal

### Section 1034. Composition of the arbitral tribunal

(1) <sup>1</sup>The parties are free to agree on the number of arbitrators. <sup>2</sup>Absent such agreement, the number of arbitrators is three.

(2) <sup>1</sup>If the arbitration agreement grants preponderant rights to one party with regard to the composition of the arbitral tribunal, thus placing the other party at a disadvantage, the latter party may request that the court appoint the arbitrator or arbitrators in derogation from the appointment or appointments already made or in derogation from the appointment procedure agreed. <sup>2</sup>The application is to be made no later than the expiry of two weeks after the party has become aware of the composition of the arbitral tribunal. <sup>3</sup>Section 1032 (3) applies accordingly.

### Section 1035. Appointment of arbitrators

(1) The parties are free to agree on a procedure for appointing the arbitrator or arbitrators.

(2) Unless otherwise agreed by the parties, a party is bound by the appointment of an arbitrator made as soon as the other party has received notice of the appointment.

(3) <sup>1</sup>Absent an agreement made by the parties regarding the appointment of arbitrators, the court will appoint a sole arbitrator upon request by one party if the parties are unable to come to an arrangement regarding the appointment of the arbitrator. <sup>2</sup>In arbitral proceedings with three arbitrators, each party appoints one arbitrator; the two arbitrators thus appointed will appoint the third arbitrator, who will act as presiding arbitrator. <sup>3</sup>If a party has not appointed the arbitrator within one month of having received a request to do so from the other party, or if the two arbitrators are unable to agree upon the third arbitrator within one month of their appointment, then the court is to appoint the third arbitrator upon request of a party.

(4) <sup>1</sup>Unless they have agreed otherwise, joined parties are to jointly make the appointment of an arbitrator that is incumbent on them. <sup>2</sup>If an arbitrator is not so jointly appointed within one month following receipt of a corresponding request to do so from the other party, then the court is to appoint the arbitrator upon request of that party. <sup>3</sup>In such event, the court may also, after having heard the other party, assume the task of appointing an arbitrator that is incumbent on that other party. <sup>4</sup>The mandate of the arbitrator already appointed ends upon the appointment under sentence 3 being made.

~~(45)~~ Where the parties have agreed on an appointment procedure, and one party fails to act as required under such procedure, or where the parties or the two arbitrators are unable to reach an agreement in keeping with such procedure, or where a third party fails to perform any function conferred upon it under such procedure, each party may request that the court order the necessary measures, unless the agreed appointment procedure provides other means of securing the appointment.

~~(56)~~ <sup>1</sup>In appointing an arbitrator, the court is to have due regard to all prerequisites stipulated with regard to the arbitrator by the agreement of the parties and is to take account of all factors ensuring the appointment of an independent and impartial arbitrator. <sup>2</sup>In appointing a sole arbitrator or a third arbitrator, the court also is to consider whether the appointment of an arbitrator of a nationality other than those of the parties may serve the intended purpose.

### **Section 1036. Challenge of an arbitrator**

(1) <sup>1</sup>A person who is approached in connection with a possible appointment as an arbitrator is to disclose any and all circumstances likely to give rise to doubts as to their impartiality or independence. <sup>2</sup>Arbitrators are under obligation, also after they have been appointed and until the arbitral proceedings have come to an end, to disclose such circumstances to the parties without undue delay unless they have already so informed the parties previously.

(2) <sup>1</sup>An arbitrator may be challenged only if circumstances exist that give rise to justifiable doubts as to their impartiality or independence, or if they do not meet the prerequisites agreed to by the parties. <sup>2</sup>A party may challenge an arbitrator whom they have themselves appointed, or in the appointment of whom the party has participated, solely for reasons of which the party became aware only after the appointment was made.

### **Section 1037. Challenge procedure**

(1) Subject to the provisions made in subsection (3), the parties are free to agree on a procedure for challenging an arbitrator.

(2) <sup>1</sup>Absent such agreement, the party intending to challenge an arbitrator is to submit to the arbitral tribunal, within two weeks of having become aware of the composition of the arbitral tribunal or of any circumstance as referred to in section 1036 (2), a written statement of the reasons for challenging the arbitrator. <sup>2</sup>If the challenged arbitrator does not withdraw from office or if the other party does not agree to the challenge, then the arbitral tribunal decides on the challenge.

(3) <sup>1</sup>If the challenge under the procedure agreed by the parties or under the procedure set out in subsection (2) is not successful, then the challenging party may request, within one month of having become aware of the decision rejecting the challenge, that the court decide on the challenge; the parties may agree on a different time-limit. <sup>2</sup>While such a request is pending, the arbitral tribunal, including the challenged arbitrator, may continue the arbitral proceedings and may make an award.

### **Section 1038. Failure or impossibility to act**

(1) <sup>1</sup>Where an arbitrator is unable, whether de jure or de facto, to perform their functions or fails to perform their functions within a reasonable time for other reasons, their mandate will end upon their withdrawal from office or upon the parties agreeing to terminate the mandate. <sup>2</sup>Where the arbitrator

does not withdraw from office, or where the parties are unable to agree on the termination of the mandate, each of the parties may request that the court decide on the termination of the arbitrator's mandate.

(2) Where an arbitrator withdraws from office in the cases set out in subsection (1) or section 1037 (2), or where a party consents to terminating the arbitrator's mandate, this does not imply acceptance of the validity of any grounds for withdrawal set out in subsection (1) or section 1036 (2).

### **Section 1039. Appointment of a substitute arbitrator**

(1) <sup>1</sup>Where the mandate of an arbitrator ends as provided for by sections 1037 or 1038, or due to their having withdrawn from office for any other reason, or because their mandate is revoked by agreement of the parties, a substitute arbitrator is to be appointed. <sup>2</sup>The appointment is to be carried out in accordance with the rules that were applicable to the appointment of the arbitrator being replaced.

(2) The parties are free to agree otherwise.

## **Division 4. Jurisdiction of the arbitral tribunal**

### **Section 1040. Competence of the arbitral tribunal to rule on its jurisdiction**

(1) <sup>1</sup>The arbitral tribunal may rule on its own jurisdiction and in this context on the existence or the validity of the arbitration agreement. <sup>2</sup>For that purpose, an arbitration clause is to be treated as an agreement independent of the other terms of the contract.

(2) <sup>1</sup>The objection as to the arbitral tribunal lacking jurisdiction is to be raised no later than by the submission of the statement of defence. <sup>2</sup>A party is not precluded from raising such an objection by the fact that the party has appointed an arbitrator or has participated in the arbitrator's appointment. <sup>3</sup>The objection that the arbitral tribunal is exceeding the scope of its authority is to be raised as soon as the matter regarding which this allegation is being made is addressed in the course of the arbitral proceedings. <sup>4</sup>In either case, the arbitral tribunal may admit a later objection if the party raising it submits sufficient cause excusing the delay.

(3) <sup>1</sup>Where the arbitral tribunal considers that it has jurisdiction, its decision on an objection raised pursuant to subsection (2) generally takes the form of an interlocutory decision. <sup>2</sup>In this case, either party may request a court decision within one month of having received the written notice of the interlocutory decision. <sup>3</sup>While such a request is pending, the arbitral tribunal may continue the arbitral proceedings and may make an award.

(4) <sup>1</sup>If the arbitral tribunal considers itself to lack jurisdiction, then as a rule, it will decide on an objection in accordance with subsection (2) by procedural award. <sup>2</sup>A procedural award may be set aside in accordance with section 1059 also if the party filing the application shows sufficient cause that the arbitral tribunal wrongly considered itself to lack jurisdiction.

### **Section 1041. Measures of temporary relief**

(1) <sup>1</sup>Unless otherwise agreed by the parties, the arbitral tribunal may order, at the request of a party, such interim measures or measures of protection as it considers necessary in respect of the subject matter of the dispute. <sup>2</sup>The arbitral tribunal may require either party to provide reasonable security in connection with such a measure.

~~(2) <sup>1</sup>On request by a party, the court may permit the enforcement of a measure pursuant to subsection (1), unless an application for a corresponding measure of temporary relief has already been filed with a court. <sup>2</sup>It may recast the order if this is necessary for the enforcement of the measure.~~

~~(2) <sup>1</sup>Upon request by a party, the court is to permit the enforcement of a measure pursuant to subsection (1). <sup>2</sup>It may recast the measure under subsection (1) if this is necessary for it to be enforced, and may permit its enforcement in this recast version. <sup>3</sup>The application to permit enforcement is to be dismissed only~~

~~1. if, in accordingly applying section 1059 (2), one of the grounds for setting aside the arbitral award is given.~~

~~2. if an application for a corresponding interim measure already has been filed with a domestic court.~~

~~3. if the arbitral tribunal's requirement as to the provision of security has not been complied with or~~

~~4. if the interim measure has been terminated or suspended by the arbitral tribunal.~~

~~<sup>4</sup>In the cases provided for by sentence 3, the court will terminate the interim measure if the place of arbitration is located in the Federal Republic of Germany; otherwise, the court will declare that the measure is not to be recognised domestically. <sup>5</sup>The court may make the permission of enforcement dependent on security being provided even if the arbitral tribunal has not required reasonable security~~

to be provided. <sup>6</sup>Section 1064 (1) and (3) is to be applied accordingly; in all other regards, allegations as to fact are to be demonstrated to the satisfaction of the court.

(3) On request, the court may set aside or amend the order pursuant to subsection (2).

(4) <sup>1</sup>Where a measure ordered pursuant to subsection (1) proves to have been unjustified from the outset, the party that has obtained its enforcement is under obligation to compensate the opposing party for the damage the latter has suffered as a result of the measure being enforced or as a result of their having provided security in order to avert the enforcement. <sup>2</sup>The claim may be asserted in the pending arbitral proceedings.

## **Division 5. Conduct of the arbitral proceedings**

### **Section 1042. General rules of procedure**

(1) <sup>1</sup>The parties are to be accorded equal treatment. <sup>2</sup>Each party is to be given an effective and fair legal hearing.

(2) Attorneys may not be precluded from acting as attorneys-in-fact.

(3) In all other cases, the parties are free to establish rules for the procedure themselves or to refer to an existing set of arbitration rules, in each case subject to the mandatory provisions of the present Book.

(4) <sup>1</sup>Absent an agreement by the parties, and in the event the present Book has remained silent in this regard, the arbitral tribunal lays down the rules of procedure at its sole discretion. <sup>2</sup>The arbitral tribunal is entitled to decide on the admissibility of taking evidence, to take evidence and to freely assess the evidence.

### **Section 1043. Place of arbitration**

(1) <sup>1</sup>The parties are free to agree on the place of arbitration. <sup>2</sup>Absent such agreement, the arbitral tribunal will determine the place of arbitration. <sup>3</sup>In this context, the arbitral tribunal is to have regard to the circumstances of the case including the convenience of the parties.

(2) Unless otherwise agreed by the parties, the arbitral tribunal may convene at any place it considers appropriate, notwithstanding the provisions made in subsection (1), to hold a hearing for oral argument, to examine witnesses or to hear experts or the parties, to pursue deliberations amongst its members, to inspect objects, or to review documents.

### **Section 1044. Commencement of the arbitral proceedings**

<sup>1</sup>Unless otherwise agreed by the parties, the arbitral proceedings in respect of a particular dispute commence on the date on which the respondent has received the request for that dispute to be referred to arbitration. <sup>2</sup>The request must designate the parties as well as the subject matter in dispute, and must include a reference to the arbitration agreement.

### **Section 1045. Language of the proceedings**

(1) <sup>1</sup>The parties are free to agree on the language or languages to be used in the arbitral proceedings. <sup>2</sup>Absent such agreement, the arbitral tribunal determines the language or languages of the proceedings. <sup>3</sup>The agreement by the parties or the determination by the arbitral tribunal governs, unless otherwise provided for therein, the written declarations submitted by a party, the hearings for oral argument, arbitral awards, other decisions and other communications by the arbitral tribunal.

(2) The arbitral tribunal may order that any documentary evidence must be accompanied by a translation into the language or languages that the parties have agreed on or that the arbitral tribunal has determined.

### **Section 1046. Statement of claim and statement of defence**

(1) <sup>1</sup>Within the time-limit agreed by the parties or set by the arbitral tribunal, the claimant is to state the claim and the facts supporting the claim, and the respondent is to state their defence in their regard. <sup>2</sup>In this context, the parties may submit all documents they consider to be relevant, or they may designate any other evidence of which they intend to avail themselves.

(2) Unless otherwise agreed by the parties, each of them may amend or supplement their claim or the means of attack or defence in the course of the arbitral proceedings; this does not apply if the arbitral tribunal does not allow such amendments or supplementations to be made because they were filed late without sufficient cause excusing the delay having been submitted.

(3) Subsections (1) and (2) apply accordingly to any countersuits that may be brought.

## Section 1047. Hearing for oral argument; written proceedings

(1) <sup>1</sup>Subject to an agreement by the parties, the arbitral tribunal decides whether the matter is to be dealt with in oral hearings, or whether the proceedings are to be conducted on the basis of documents and other documentary materials. <sup>2</sup>Where the parties have not ruled out a hearing for oral argument, the arbitral tribunal is to hold such a hearing, on request by a party, at an appropriate stage of the proceedings.

~~(2) The parties are to be given sufficient advance notice of any hearing and any meeting of the arbitral tribunal arranged for the purpose of taking evidence.~~

~~(2) <sup>1</sup>The arbitral tribunal may also arrange the hearing for oral argument, upon having heard the parties, such that image and sound transmission are used (video hearing). <sup>2</sup>Sentence 1 does not apply if the parties have agreed otherwise.~~

~~(3) The parties shall be given sufficient advance notice of any hearing and any meeting of the arbitral tribunal arranged for the purpose of taking evidence as well as of the fact that they are to be held as a video hearing.~~

~~(34) All written pleadings, documents and other communications submitted to the arbitral tribunal by one party are to be communicated to the other party; expert reports and other written evidence on which the arbitral tribunal may rely in making its decision are to be communicated to both parties.~~

## Section 1048. Default of a party

(1) Where the claimant fails to submit their statement of claim in accordance with section 1046 (1), the arbitral tribunal will terminate the proceedings.

(2) Where the respondent fails to submit a statement of defence in accordance with section 1046 (1), the arbitral tribunal will continue the proceedings without treating such failure to comply with procedural rules, in and of itself, as an acknowledgment of the claimant's allegations.

(3) Where a party fails to make an appearance at a hearing for oral argument, or if it fails to produce documentary evidence within a time-limit that has been set, the arbitral tribunal may continue the proceedings and may make the award based on the insights gained thus far

(4) <sup>1</sup>Where the arbitral tribunal is satisfied that a party has provided sufficient cause excusing their default, such default will not be taken into account. <sup>2</sup>In all other cases, the parties may agree otherwise as concerns the consequences of default.

## Section 1049. Expert appointed by the arbitral tribunal

(1) <sup>1</sup>Unless otherwise agreed by the parties, the arbitral tribunal may appoint one or several experts to report to it on specific issues to be determined by the arbitral tribunal. <sup>2</sup>Furthermore, the arbitral tribunal may require a party to provide the expert with any relevant information, or to produce or to provide access to, for inspection by the expert, any and all of the documents or objects of relevance to the proceedings.

(2) <sup>1</sup>Unless otherwise agreed by the parties, then on request by a party or if the arbitral tribunal considers this necessary, the expert is to participate in a hearing for oral argument after delivering the written or oral report. <sup>2</sup>At the hearing, the parties have the opportunity to put questions to the expert and to present experts of their own to testify on the points at issue.

(3) Sections 1036, 1037 (1) and (2) apply accordingly to the experts appointed by the arbitral tribunal.

## Section 1050. Court assistance in taking evidence and other judicial acts

<sup>1</sup>The arbitral tribunal or, with the approval of the arbitral tribunal, a party may request that a court provide assistance in taking evidence or by performing any other judicial acts for which the arbitral tribunal is not authorised. <sup>2</sup>Unless it regards the request to be inadmissible, the court deals with such request in accordance with its procedural rules for the taking of evidence or any other judicial acts. <sup>3</sup>The arbitrators are entitled to participate in the court hearing at which evidence is taken and to ask questions.

## Division 6. Arbitral award and termination of the proceedings

### Section 1051. Applicable law

(1) <sup>1</sup>The arbitral tribunal is to decide on the dispute in accordance with the legislative provisions the parties have designated as being applicable to the substance of the legal dispute. <sup>2</sup>Unless the parties expressly have agreed otherwise, the designation of the laws or the legal system of a given state is to

be understood as directly referring to the rules of substantive law of that state, and not to its conflict of laws rules.

(2) Absent a designation of the applicable legislative provisions by the parties, the arbitral tribunal is to apply the law of that state with which the subject matter of the proceedings is most closely connected.

(3) <sup>1</sup>The arbitral tribunal is to take its decision based on a consideration of what is fair and equitable only if the parties have expressly authorised it to do so. <sup>2</sup>The authorisation may be granted up until the time the arbitral tribunal takes such decision.

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

## Section 1052. Decision by a panel of arbitrators

(1) Unless otherwise agreed by the parties, any decision of the arbitral tribunal taken in arbitral proceedings with more than one arbitrator is to be made by a majority of the votes cast by all of its members.

(2) <sup>1</sup>If an arbitrator refuses to participate in a vote, then unless otherwise agreed by the parties, the other arbitrators may decide on the matter without the arbitrator refusing to participate in the vote. <sup>2</sup>The parties are to be given advance notice of the intention to vote on the arbitral award without the refusing arbitrator. <sup>3</sup>In the case of other decisions, the parties are to be informed of the refusal to participate in the vote after the decision has been taken.

(3) The presiding arbitrator may decide on individual questions of procedure alone if so authorised by the parties or the other members of the arbitral tribunal.

## Section 1053. Settlement

(1) <sup>1</sup>Where the parties settle the dispute in the course of the arbitral proceedings, the arbitral tribunal will terminate the proceedings. <sup>2</sup>On request by the parties, the arbitral tribunal will record the settlement in the form of an arbitral award on agreed terms, provided that the substance of the settlement does not violate public policy (ordre public).

(2) <sup>1</sup>An arbitral award on agreed terms is to be made in accordance with the provisions of section 1054 and must state that it is an arbitral award. <sup>2</sup>Such an arbitral award has the same effect as any other arbitral award on the merits of the case.

(3) Insofar as declarations must be recorded by a notary in order to be effective, this requirement is replaced, in the case of an arbitral award on agreed terms, by recording the declarations of the parties in the arbitral award.

(4) <sup>1</sup>Provided the parties consent to this being done, an arbitral award on agreed terms may also be declared enforceable by a notary having their official seat in the district of the court competent for the declaration of enforceability stipulated by section 1062 (1) and (2). <sup>2</sup>The notary will refuse to make such a declaration of enforceability where the prerequisites of subsection (1) sentence 2 have not been met.

## Section 1054. Form and content of the arbitral award

(1) <sup>1</sup>The arbitral award is to be made in writing and is to be signed by the arbitrator or arbitrators. <sup>2</sup>In arbitral proceedings with more than one arbitrator, the signatures of the majority of all members of the arbitral tribunal will suffice, provided that the reason for any missing signature is stated.

[\(2\) Unless a party raises an objection, the arbitral award also may be part, in derogation from subsection \(1\) sentence 1, of an electronic document that sets out, at the end of the arbitral award, the names of the members making up the arbitral tribunal and that has been signed by each member using their qualified electronic signature.](#)

[\(23\)](#) The arbitral award is to state the reasons upon which it is based unless the parties have agreed that no reasons need be provided, or unless the arbitral award is an award on agreed terms as defined in section 1053.

[\(34\)](#) <sup>1</sup>The arbitral award is to state the date on which it was made and the place of arbitration determined in accordance with section 1043 (1). <sup>2</sup>The arbitral award is considered to have been made on that date and at that place.

[\(45\)](#) A counterpart of the arbitral award signed by the arbitrators [or corresponding to the form provided for in subsection \(2\)](#) is to be delivered to each of the parties.

## **Section 1054a. Concurring or dissenting opinion**

(1) An arbitrator may put in writing, as a concurring or dissenting opinion, the views they have stated in the deliberations of the arbitral tribunal that deviate from the arbitral award or from the reasons upon which it is based, unless the parties agree otherwise.

(2) Where an arbitrator intends to submit a concurring or dissenting opinion, they are to inform the other arbitrators of this fact as soon as the status reached in the deliberations allows.

(3) <sup>1</sup>The concurring or dissenting opinion does not constitute a part of the arbitral award. <sup>2</sup>It is to be set out in writing and is to be signed by the arbitrator. <sup>3</sup>Section 1054 (2) to (5) applies accordingly.

## **Section 1054b. Publication**

(1) <sup>1</sup>With the consent of the parties, the arbitral tribunal may publish the arbitral award and, if applicable, any concurring or dissenting opinions, as a whole or in part, in anonymised or pseudonymised form, or it may initiate such a publication. <sup>2</sup>Consent is deemed to have been given by a party unless it has raised an objection within one month of having received the request for consent from the arbitral tribunal, provided that this consequence previously was indicated to the party.

(2) The parties are free to make arrangements in derogation from subsection (1).

(3) Any further-reaching requirements for the publication of arbitral awards that result from other legal provisions remain unaffected.

## **Section 1055. Effects of the arbitral award**

Amongst the parties, the arbitral award has the effect of a final and binding judgment handed down by a court.

## **Section 1056. Termination of the arbitral proceedings**

(1) The arbitral proceedings are terminated by the final award, or by an order by the arbitral tribunal in accordance with subsection (2).

(2) The arbitral tribunal issues an order declaring the termination of the arbitral proceedings if:

1. the claimant:
  - a) fails to submit the statement of claim pursuant to section 1046 (1) and no case defined in section 1048 (4) is given; or
  - b) withdraws the claim, unless the respondent raises an opposition thereto and the arbitral tribunal recognises a legitimate interest on the part of the respondent in conclusively resolving the dispute; or
2. the parties agree on the termination of the proceedings; or
3. the parties no longer pursue the arbitral proceedings in spite of the arbitral tribunal having called on them to do so, or the continuation of the proceedings has become impossible for other reasons.

(3) Subject to the provisions of section 1057 (2) and of sections 1058, 1059 (4), the mandate of the arbitral tribunal ends upon the termination of the arbitral proceedings.

## **Section 1057. Decision on costs**

(1) <sup>1</sup>Unless otherwise agreed by the parties, the arbitral tribunal is to decide, in its arbitral award, on the share of the costs of the arbitral proceedings that each of the parties is to bear, including the costs incurred by the parties that were necessary to properly pursue their claim or defence. <sup>2</sup>In this context, the arbitral tribunal will decide at its discretion while taking account of the circumstances of the individual case, in particular the outcome of the proceedings.

(2) <sup>1</sup>Insofar as the costs of the arbitral proceedings are fixed, the arbitral tribunal is to also decide on the amount to be borne by each party. <sup>2</sup>If the costs have not been determined, or should it be possible to determine them only after termination of the arbitral proceedings, the arbitral tribunal will rule on the matter by separate award.

## **Section 1058. Correction, interpretation and supplementation of the arbitral award**

(1) Each of the parties may request that the arbitral tribunal:

1. correct in the arbitral award any errors in computation, any clerical or typographical errors or any errors of a similar nature;
2. give an interpretation of specific parts of the arbitral award;
3. make a supplementary arbitral award as to those claims that, although they had been asserted in the arbitral proceedings, were not addressed by the arbitral award.



(2) Unless the parties have agreed on a different time-limit, the request is to be made within one month of the arbitral award having been received.

(3) As a rule, the arbitral tribunal is to decide on the correction or interpretation of the arbitral award within one month, and on the supplementation of the arbitral award within two months.

(4) The arbitral tribunal may correct the arbitral award also without a request being made.

(5) Section 1054 is to be applied to the correction, interpretation or supplementation of the arbitral award.

## Division 7. Legal remedies against the arbitral award

### Section 1059. Application to have an arbitral award set aside

(1) <sup>1</sup>The only remedy available against an arbitral award is an application to have it set aside by a court pursuant to subsections (2) and (3). <sup>2</sup>[Section 1040 \(4\) sentence 2 and section 1059a remain unaffected.](#)

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

1. the party filing the application shows sufficient cause that:

- a) one of the parties concluding the arbitration agreement pursuant to sections 1029 and 1031 did not have the capacity to do so pursuant to the laws personally relevant to such party, or that the arbitration agreement is not valid under the laws to which the parties have subjected it or, if the parties have not made any determinations in this regard, that it is invalid under German law; or that
- b) the party filing the application had not been given proper notice of the appointment of an arbitrator or of the arbitral proceedings, or that the party filing the application was otherwise unable to assert the means of attack or defence available to them; or that
- c) the arbitral award deals with a dispute not contemplated by the separate arbitration agreement or not covered by the terms of the arbitration clause, or that it contains decisions that are beyond the scope of the arbitration agreement; however, where it is possible to separate that part of the arbitral award relating to points at issue that had been submitted to arbitration from the part relating to points at issue that had not so been submitted to arbitration, only the latter part of the arbitral award may be set aside; or that
- d) the formation of the arbitral tribunal or the arbitral proceedings was not in accordance with a provision of the present Book or with an admissible agreement in place between the parties, and that this presumably has had an effect on the arbitral award; or if

2. the court finds that

- a) the subject matter of the dispute is not capable of settlement by arbitration under German law; or
- b) the recognition or enforcement of the arbitral award will lead to a result that is contrary to public policy (ordre public).

(3) <sup>1</sup>Unless the parties agree otherwise, the application for setting aside the arbitral award must be filed with the court within a period of three months. <sup>2</sup>This period begins on the day on which the party filing the application has received the arbitral award. <sup>3</sup>[If, at this point in time, proceedings designated in section 1062 \(1\) number 2 are pending, then the period begins on the day on which the decision terminating the proceedings has become final and binding or on which the proceedings have come to an end for another reason.](#) <sup>4</sup>In cases in which an application has been filed in accordance with section 1058, the period is extended by not more than one month following receipt of the decision regarding said application. <sup>5</sup>The application for setting aside the arbitral award no longer may be filed once a German court has declared the arbitral award to be enforceable.

(4) Where an application for setting aside the arbitral award has been filed, the court may, where appropriate and so requested by a party, set aside the arbitral award and remand the matter to the arbitral tribunal.

(5) In cases of doubt, setting aside the arbitral award will result in the arbitration agreement once again entering into force where the subject matter of the dispute is concerned.

### [Section 1059a. Request for retrial of the case](#)

(1) <sup>1</sup>[If it is no longer admissible to file an application to have an arbitral award set aside as provided for in section 1059, then, upon request, the arbitral award may be set aside by a court if the party filing the request shows sufficient cause that the prerequisites for an action for retrial of the case defined in section 580 are given.](#) <sup>2</sup>[Section 581 is not to be applied.](#)

[\(2\) A request for retrial of the case is admissible only if the party filing the request was unable, through no fault of their own, to assert the cause for retrial of the case in earlier proceedings, in particular in proceedings for setting aside an arbitral award as provided for in section 1059.](#)

[\(3\) <sup>1</sup>The request is to be filed within a statutory period of one month. <sup>2</sup>Section 586 \(2\) and \(4\) is to be applied accordingly.](#)

[\(4\) Where the court sets aside the arbitral award after said award has been declared enforceable, it is to concurrently set aside the declaration of enforceability.](#)

[\(5\) Section 1059 \(4\) and \(5\) applies accordingly.](#)

## Chapter 8. Prerequisites for the recognition and enforcement of arbitral awards

### Section 1060. Domestic arbitral awards

(1) Compulsory enforcement of the arbitral award may be pursued after the award has been declared enforceable.

(2) <sup>1</sup>The application for a declaration of enforceability is to be denied, and the arbitral award is to be set aside, if one of the grounds for setting aside designated in section 1059 (2) is given. <sup>2</sup>Grounds for setting aside are not to be taken into account insofar as, at the time the application for a declaration of enforceability is served, an application for setting aside based on such grounds has been denied, and such decision has become final and binding. <sup>3</sup>Grounds for setting aside pursuant to section 1059 (2) no. 1 are not to be taken into account even if the periods set by 1059 (3) have expired without the party opposing the application having filed an application for setting aside the arbitral award. [<sup>4</sup>Section 1059 \(4\) and \(5\) applies accordingly.](#)

### Section 1061. Foreign arbitral awards

(1) <sup>1</sup>The recognition and enforcement of foreign arbitral awards is governed by the Convention on the recognition and enforcement of foreign arbitral awards of 10 June 1958 (published in Federal Law Gazette 1961 II p. 121). <sup>2</sup>The provisions of other treaties concerning the recognition and enforcement of arbitral awards remain unaffected hereby.

(2) Where the declaration of enforceability is to be denied, the court will establish in a declaratory ruling that the arbitral award is not to be recognised in Germany.

(3) Where, after having been declared enforceable, the arbitral award is set aside abroad, an application may be filed seeking to have repealed the declaration of enforceability.

## Division 9. Court proceedings

### Section 1062. Competence

(1) The higher regional court designated in the arbitration agreement or, if no such designation was made, the higher regional court in the district of which the place of arbitration is located, is competent for decisions on applications regarding:

1. the appointment of an arbitrator (sections 1034, 1035), the challenge of an arbitrator (section 1037) or the termination of an arbitrator's mandate (section 1038);
2. the determination of the admissibility or inadmissibility of arbitral proceedings (section 1032) or regarding the decision of an arbitral tribunal by which the latter has confirmed its jurisdiction in an interlocutory decision (section 1040);
3. the enforcement, setting aside or amendment of orders providing for interim measures or measures of protection by the arbitral tribunal (section 1041);
4. ~~the setting aside (section 1059)~~ [the setting aside \(sections 1059, 1059a\)](#) or the declaration of enforceability of the arbitral award (sections 1060 et seq.), or the setting aside of the declaration of enforceability (section 1061).

(2) If the cases provided for by subsection (1) no. 2 first alternative, no. 3 or no. 4 are given, but there is no place of arbitration in Germany, then that higher regional court has competence in the district of which the party opposing the application has their seat or place of abode, or in which assets of the party opposing the application are located or in which the object being laid claim to by the request for arbitral proceedings or affected by the measure is located; as an alternative, the higher regional court of Berlin will be competent.

(3) In the cases provided for by section 1025 (3), that higher regional court has competence in the district of which the claimant or the respondent has their seat or place of abode.

(4) That local court has competence for providing assistance in taking evidence and other judicial acts (section 1050) in the district of which the judicial act is to be performed.

(5) <sup>1</sup>Where several higher regional courts exist in a *Land*, the *Land* government is authorized to assign, by statutory instrument, competence to a specific higher regional court or to the supreme court established by the *Land* for its territory; the *Land* government may confer such authority, by statutory instrument, upon the *Land* department of justice. <sup>2</sup>[Where a commercial court has been instituted with a higher regional court or supreme court of a Land on the basis of a statutory instrument in accordance with section 119b \(1\) of the Courts Constitution Act \(Gerichtsverfassungsgesetz – GVG\), the Land government may assign, by statutory instrument, jurisdiction also to the commercial court; the Land government may confer such authority, by statutory instrument, upon the Land department of justice.](#) <sup>3</sup>Two or more *Länder* may agree that one higher regional court is to have competence across the *Land* boundaries. <sup>4</sup>[If several Länder have instituted a joint commercial court at a higher regional court or a supreme court of a Land, they may also agree that the commercial court is to have jurisdiction.](#)

## Section 1063. General provisions

(1) <sup>1</sup>The court decides by court order. <sup>2</sup>Prior to the decision, the opposing party is to be heard.

(2) The court is to order a hearing for oral argument to be held if an application for setting aside the arbitral award has been filed or if, in deciding on an application for recognition of the arbitral award or for declaration of its enforceability, grounds for setting aside in terms of section 1059 (2) are to be considered.

(3) <sup>1</sup>[The On application in urgent cases, the](#) presiding judge of the division for civil matters may issue an order, without having previously heard the opposing party, to the effect that the party filing the application may pursue compulsory enforcement based on the arbitral award or may enforce the interim measures, or measures of protection, ordered by the arbitral tribunal pursuant to section 1041 up until a decision has been handed down regarding the application. <sup>2</sup>Compulsory enforcement based on the arbitral award may not extend beyond measures of protection. <sup>3</sup>The party opposing the application is authorised to avert compulsory enforcement by providing security in that amount in which the party filing the application may pursue compulsory enforcement.

(4) For as long as no hearing for oral argument has been ordered, applications may be filed and declarations may be recorded with the registry for the files of the court.

### Section 1063a. Proceedings before the commercial courts in arbitration-related matters

(1) <sup>1</sup>[In derogation from section 184 of the Courts Constitution Act, the proceedings designated in section 1062 \(1\) will be conducted before a commercial court in English in their entirety](#)

1. [if, on the basis of a statutory instrument according to section 184a \(1\) sentence 1 number 2 of the Courts Constitution Act, proceedings are conducted in English before said commercial court that relate to selected fields of disputes listed in section 119b \(1\) sentence 1 of the Courts Constitution Act and](#)

2. [if the parties expressly or tacitly have agreed on this language or if the respondent, represented by counsel, makes a plea in the statement of defence in this language without raising an objection.](#)

<sup>2</sup>[The court orders defined in section 1063 \(1\) sentence 1 that are made in English are to be translated into German; the translation is to be inseparably attached to the court order.](#) <sup>3</sup>[Sections 615, 616 and 617 \(2\) as well as \(3\) sentence 2 of the present Code and section 184a \(3\) sentence 1 numbers 1 to 3 of the Courts Constitution Act apply accordingly.](#)

(2) [If, in proceedings designated in section 1062 \(1\), the language of the court is German or if, as provided for in subsection \(1\) sentence 1, it is English, then the parties are free to make submissions to the commercial court also in the respective other language insofar as they expressly or tacitly have agreed on this, unless a party raises an objection thereto without undue delay.](#)

(3) <sup>1</sup>[The court order issued by a commercial court under section 1063 \(1\) sentence 1 is to be published.](#) <sup>2</sup>[A court order written in English is to be published together with its translation into German.](#)

(4) [Sections 621 and 622 are to be applied accordingly if the proceedings designated in section 1062 \(1\) are conducted before a commercial court.](#)

### Section 1063b. Submission of documents written in English in German-language proceedings

(1) [Any English-language document that has been prepared or submitted in arbitral proceedings may be submitted by the parties, in proceedings designated in section 1062 \(1\) and \(4\) that are being conducted in the German language, also in English.](#)

(2) [A direction from the court as provided for in section 142 \(3\) may be issued only if there is a special need, in the individual case, for a translation to be submitted.](#)

## **Section 1064. Particularities regarding the declaration of arbitral awards as enforceable**

(1) <sup>1</sup>The arbitral award, or a certified copy of same, is to be produced together with the application for a declaration of enforceability of an arbitral award. <sup>2</sup>The certification may also be performed by counsel authorised to represent the party before the court. <sup>3</sup>[Where the arbitral award has been made in the form provided for in section 1054 \(2\), it suffices for it to be transmitted as an electronic document.](#)

(2) The court order declaring the arbitral award enforceable is to be declared provisionally enforceable.

(3) Subsections (1) and (2) are to be applied to foreign arbitral awards, unless otherwise provided for in treaties.

## **Section 1065. Appellate remedies**

(1) <sup>1</sup>The complaint on points of law is the available remedy against the decisions set out in section 1062 (1) nos. 2 and 4. <sup>2</sup>In all other cases, the decisions handed down in the proceedings designated in section 1062 (1) are incontestable.

(2) <sup>1</sup>The complaint on points of law may also be based on the fact that the decision is based on a violation of a treaty. <sup>2</sup>Sections 707, 717 apply accordingly.

(3) <sup>1</sup>[The Federal Court of Justice will conduct proceedings on complaints on points of law in the English language if](#)

[1. proceedings under the terms of section 1063a \(1\) sentence 1, have been conducted previously,](#)

[2. this has been applied for in the notice of complaint on points of law and](#)

[3. the Federal Court of Justice complies with the application.](#)

<sup>2</sup>[Where an application under sentence 1 number 2 is filed, section 618 applies accordingly.](#) <sup>3</sup>[If the Federal Court of Justice consents to the proceedings being conducted in English, then section 1063a \(2\) applies accordingly, and section 184a \(3\) sentence 1 numbers 1 to 3 of the Courts Constitution Act applies accordingly subject to the proviso that section 142 \(3\) continues to be applicable.](#) <sup>4</sup>[Section 184b \(2\) of the Courts Constitution Act applies accordingly.](#)

(4) [The court order under section 577 \(6\) sentence 1 made in English is to be translated into German; the translation is to be inseparably attached to the court order.](#)

## **Division 10. Arbitral tribunals not established by agreement**

### **Section 1066. Corresponding application of the provisions of Book 10**

The provisions of the present Book apply accordingly to the arbitral tribunals established, in a manner permissible under statute, by last wills or other directions not based on an agreement.