

969.

Pursuant to Article 95 item 3 of the Constitution of Montenegro, I hereby adopt

**DECREE
ON THE PROMULGATION OF THE LAW ON ARBITRATION**

I hereby promulgate the **Law on Arbitration** adopted by the 25th Parliament of Montenegro, at the ninth sitting of the first ordinary (spring) session in 2015, on 31 July 2015.

No 01-753/2

Podgorica, 10 August 2015

President of Montenegro
Filip Vujanović m.p.

Pursuant to Article 82 paragraph 1 item 2 of the Constitution of Montenegro and Amendment IV paragraph 1 to the Constitution of Montenegro, the 25th Parliament of Montenegro, at the ninth sitting of the first ordinary (spring) session in 2015, on 31 July 2015, has adopted

LAW ON ARBITRATION

I. BASIC PROVISIONS

Subject matter

Article 1

This Law shall regulate arbitration, the recognition and enforcement of arbitral awards, and jurisdiction and procedure of courts in relation to arbitration.

Arbitration

Article 2

Arbitration shall mean conduct of arbitral proceedings before an arbitral tribunal for the resolution of a dispute in which the parties are natural persons with domicile or habitual residence in Montenegro, and/or legal persons established under Montenegrin law (domestic arbitration), as well

as of a dispute with an international element in which one of the parties is a natural person with domicile or habitual residence in another State or a legal person established under a foreign law whose seat is in another State (international arbitration).

A legal person within the meaning of paragraph 1 of this Article shall mean a public authority, state administration body, other legal person exercising public powers, local self-government body, company, public enterprise, public institution, non-governmental organization, investment fund or other fund, as well as other association or organization which within its operations continuously or occasionally gains or obtains assets and manages them.

Habitual residence referred to in paragraph 1 of this Article shall mean habitual residence within the meaning of the law governing private international law.

Scope of application

Article 3

Arbitration shall be conducted in accordance with this Law unless otherwise is provided for in a separate law.

Arbitration may not be conducted when other law prescribes that certain disputes may not be submitted to arbitration.

Definitions

Article 4

Arbitral tribunal may be composed of one arbitrator (sole arbitrator) or more arbitrators (panel of arbitrators).

Arbitrator shall mean a sole arbitrator or a member of a panel of an arbitral tribunal and/or its presiding arbitrator.

Arbitral tribunal may be administered by an arbitral institution which has been designated for such tasks under a piece of legislation or which has been registered for the performance of such tasks.

Extent of court intervention

Article 5

In matters related to arbitration, no court shall intervene except where so provided in this Law.

Court competent for certain functions of arbitration assistance

Article 6

When this Law prescribes that a court shall be competent for decision on the appointment of arbitrators, objection as to the lack of jurisdiction of the arbitral tribunal, service of the award, determination of the application for setting aside an arbitral award and the application for recognition of a foreign arbitral award or interim measure, the Commercial Court in Podgorica shall have the jurisdiction.

When this Law lays down that legal assistance in taking evidence and service of a foreign arbitral award shall be provided by a court, the competent court shall be the court having subject-matter jurisdiction for provision of legal assistance requested, while the court in the territory of which a certain action is to be undertaken shall have territorial jurisdiction.

Waiver of right to object

Article 7

If a party who knows or ought to have known that any provision of this Law from which the parties may derogate or any requirement under the arbitration agreement has not been complied with proceeds with the arbitration without stating his objection to such non-compliance without undue delay or, if a time-limit is provided therefor, within such period of time, shall be deemed to have waived his right to make such an objection.

Receipt of written communications

Article 8

Unless otherwise agreed by the parties, any written communication is deemed to have been served on the day when it is delivered to the party to the mailing address at which he regularly receives mail or to another person authorized to receive written communications (hereinafter referred to as the “addressee”).

If the addressee has not expressly identified the mailing address or if the address cannot be identified from the circumstances of the case, the mailing address shall be the address of the seat, domicile or habitual residence or the address stated in the contract referred to in Article 9 paragraph 2 hereof or in the arbitration agreement.

If none of the places referred to in paragraph 2 of this Article is known, a written communication shall be deemed to have been served on the day its delivery to the addressee has been attempted to the last-known mailing address, provided that it was properly delivered by registered letter with return receipt or any other means which provides a confirmation of the attempt to deliver it.

It shall be deemed that the delivery was made if the addressee on whom service is to be made in accordance with paragraphs 1 and 3 of this Article refuses to receive the written communication.

The provision of paragraph 1 of this Article shall not apply to communications served in court proceedings.

II. ARBITRATION AGREEMENT

Definition and form of the agreement

Article 9

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 legal relationship, whether contractual or not.

An arbitration agreement may be concluded in the form of a separate agreement or in the form of an arbitration clause as an integral part of a contract between the parties on a legal transaction between them.

The arbitration agreement shall be concluded in writing.

An arbitration agreement has been concluded in writing if:

1) it is contained in documents signed by the parties or has been concluded in an exchange of messages by means of communication which provide a written record of the agreement of the parties, whether or not those messages have been signed by the parties;

2) after an orally concluded arbitration agreement one party sends to the other party a notice in writing referring to a previously concluded oral agreement and the other party fails to object to the contents of the received notice in a timely manner, which is considered to constitute acceptance of the offer according to the usages of the trade;

3) the parties in a written contract make a reference to another document containing an arbitration agreement (general terms of business, general terms for conclusion of legal transaction,

text of another agreement etc.) provided that the purpose of such reference is to make the arbitration agreement an integral part of the main contract;

4) a bill of lading contains an express reference to an arbitration clause in a charter party;

5) the claimant initiates arbitral proceedings in writing, and the respondent expressly accepts arbitration and agrees to it in writing or in the statement made on the record at the hearing or takes part in arbitral proceedings and does not deny the existence of the arbitration agreement or fails to object to the jurisdiction of the arbitral tribunal before raising issues related to the substance of the dispute.

Arbitration agreement and claim before court

Article 10

If the parties have agreed to submit a dispute to arbitration, the court before which the same matter between the same parties was brought shall upon a party's objection declare its lack of jurisdiction, annul all actions taken in the proceedings and refuse to rule on the statement of claim, unless it finds that the arbitration agreement is null and void, inoperative or incapable of being performed.

A party may raise the objection referred to in paragraph 1 of this Article not later than in the statement of defence.

Arbitration agreement and interim measures by court

Article 11

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

III. COMPOSITION OF ARBITRAL TRIBUNAL

Number of arbitrators

Article 12

The number of arbitrators of an arbitral tribunal shall be determined by the parties.

If the arbitration agreement provides for more than one arbitrator, there must be an odd number of arbitrators.

If the parties fail to determine the number of arbitrators, arbitral tribunal shall be composed of three arbitrators.

Appointment of arbitrators

Article 13

Any natural person having a capacity to contract may act as an arbitrator, regardless of his nationality.

The parties are free to agree on a procedure of appointing the arbitrator or arbitrators, and if they fail to reach such agreement the arbitrator or arbitrators shall be appointed in accordance with this Law.

If a dispute is to be resolved by a sole arbitrator, he shall be appointed by mutual agreement of the parties within thirty days from the date when one party invites the other party to jointly appoint the arbitrator.

If a sole arbitrator has not been appointed by mutual agreement of the parties, the appointment shall be made by a legal or a natural person designated by the parties under the agreement (hereinafter referred to as the “appointing authority”), and if they have not designated appointing authority or if the appointing authority fails to appoint a sole arbitrator, decision on appointment shall be made by the court referred to in Article 6 paragraph 1 hereof.

If the arbitration rules adopted by an arbitral institution provide for a mechanism for choosing or designating an appointing authority, the appointing authority shall be designated in accordance with those rules.

If a dispute is resolved by three arbitrators, each party shall appoint one arbitrator within thirty days from the date of an invitation to do so from the other party. If the requested party fails to appoint an arbitrator within the set time limit, the arbitrator shall be appointed by the appointing authority, and if the appointing authority has not been designated or if it fails to appoint the arbitrator, decision on appointment shall be made by the court referred to in Article 6 paragraph 1 hereof.

The presiding arbitrator of a panel of an arbitral tribunal (hereinafter referred to as the “presiding arbitrator”) shall be chosen by the appointed arbitrators within thirty days from the date of their appointment. If the arbitrators fail to choose the presiding arbitrator within the set time limit, he shall be appointed by the appointing authority, and if the appointing authority has not been

designated or if it fails to appoint the presiding arbitrator, decision on appointment shall be made by the court referred to in Article 6 paragraph 1 hereof.

The court decision referred to in paragraphs 4, 6 and 7 of this Article shall be subject to no appeal.

In case a panel of arbitrators is composed of more than three arbitrators, arbitrators shall be appointed in accordance with paragraphs 5 and 6 of this Article, in a way that each party shall appoint an equal number of arbitrators.

Rights and duties of arbitrators

Article 14

The arbitrator must give the statement on acceptance of his appointment in writing. Such statement shall also be deemed given when the arbitrator signs the arbitration agreement concluded by the parties.

An arbitrator shall undertake actions in the arbitral proceedings in a timely manner and ensure that any delay in the proceedings is avoided.

An arbitrator has the right to reimbursement of expenses and a fee for work performed unless he has waived those rights expressly in writing. The parties shall be jointly and severally liable for the payment of such expenses and fee.

If the arbitrator has determined the amount of his expenses and fee, his decision shall not be binding upon the parties if they do not accept it.

If the parties do not accept the amount of expenses and fee referred to in paragraph 4 of this Article, decision on arbitrator's expenses and fee shall be made, on a proposal from the arbitrator or a party, by the arbitral institution or the appointing authority and such decision shall be an enforceable instrument.

Grounds for Challenge of Arbitrators

Article 15

A person proposed to be appointed as an arbitrator shall disclose any circumstances likely to give rise to justifiable doubts as to his independence or impartiality.

An arbitrator, from the time of his appointment and throughout the arbitral proceedings, shall without delay disclose the circumstances referred to in paragraph 1 of this Article to the parties unless they have already been clearly informed of them by him.

An arbitrator may be challenged only if circumstances exist that give rise to justifiable doubts as to his independence or impartiality, or if an arbitrator does not possess required qualifications agreed to by the parties.

A party may challenge an arbitrator appointed by him, or in whose appointment he has participated, only if the ground for challenge occurred or if the party becomes aware of it after the arbitrator has been appointed.

Challenge procedure

Article 16

The parties are free to agree on a procedure for challenging an arbitrator.

If the parties fail to agree on a procedure for challenging an arbitrator, a party may, within fifteen days from the date of becoming aware of the appointment of an arbitrator or of becoming aware of any grounds for challenge, submit a written request for the challenge of an arbitrator to the arbitral tribunal.

Unless the challenged arbitrator withdraws from his office or the other party agrees to the request for challenge, the arbitral tribunal, including the challenged arbitrator, shall decide on the challenge without delay.

If the parties do not agree on challenging an arbitrator or if the arbitral tribunal rejects the request for challenging an arbitrator, the challenging party may submit such request to the court referred to in Article 6 paragraph 1 hereof, within thirty days from the date of receipt of the decision rejecting the challenge. The decision by the court on the request for challenging an arbitrator shall be subject to no appeal.

The arbitral tribunal may continue the arbitral proceedings and make an arbitral award even if the procedure upon the request for challenging an arbitrator is pending.

Arbitrator's failure or impossibility to perform arbitrator's duties

Article 17

If an arbitrator becomes *de jure* or *de facto* unable to perform his functions, his mandate terminates if he withdraws from his office or if the parties agree on the termination of his mandate.

Unless otherwise agreed by the parties in an arbitration agreement, during the course of arbitral proceedings they may agree on the termination of the mandate of an arbitrator who fails to perform his functions or performs his functions with undue delay.

If the parties fail to agree on the termination of the mandate of an arbitrator, the party which considers that an arbitrator is no longer able to perform his functions or does not undertake actions in the arbitral proceedings in a timely manner, may request the appointing authority or the court referred to in Article 6 paragraph 1 hereof to decide on the termination of the mandate of an arbitrator.

If an arbitrator withdraws from his office or the parties agreed on the termination of the mandate of an arbitrator, this does not imply that the arbitrator accepted or that the parties established the validity of any ground for the termination of the mandate of an arbitrator.

The court decision referred to in paragraph 3 of this Article shall be subject to no appeal.

Appointment of substitute arbitrator

Article 18

Where the mandate of an arbitrator terminates under Articles 15 and 17 hereof or for any other reason, a substitute arbitrator shall be appointed according to the provisions of this Law that are applicable to the appointment of an arbitrator.

IV. JURISDICTION OF ARBITRAL TRIBUNAL

Competence of arbitral tribunal to rule on its jurisdiction

Article 19

The jurisdiction of the arbitral tribunal shall be determined by the agreement between the parties.

The arbitral tribunal shall have regard to its own jurisdiction, including any objection with respect to the existence or validity of the arbitration agreement.

If the arbitration agreement has been concluded in the form of an arbitration clause referred to in Article 9 paragraph 2 hereof, that clause shall be treated independently of the other terms of the contract when ruling on an objection with respect to the existence or validity of the arbitration agreement.

A decision by the arbitral tribunal that the contract containing an arbitration clause is null and void shall not entail the invalidity of that clause.

Plea as to the lack of jurisdiction and exceeding the scope of authority

Article 20

A plea that the arbitral tribunal does not have jurisdiction shall be raised by the respondent not later than the submission of the statement of defence in which the respondent raised issues related to the substance of the dispute.

A plea that the arbitral tribunal is exceeding the scope of its authority shall be raised by the party as soon as the matter alleged to be beyond the scope of its authority is raised during the arbitral proceedings.

A party is not precluded from raising a plea referred to in paragraph 1 of this Article by the fact that he has appointed, or participated in the appointment of, an arbitrator.

The arbitral tribunal may in cases referred to in paragraphs 1 and 2 of this Article admit a later plea if it considers the delay justified.

The arbitral tribunal may rule on a plea either as a preliminary question or in an award on the merits.

If the arbitral tribunal rules on a plea as a preliminary question, any party may request, within thirty days from the date of service of that ruling, the court referred to in Article 6 paragraph 1 hereof to decide the matter. The court decision shall be subject to no appeal.

While the court proceedings for pleas referred to in paragraphs 1 and 2 of this Article are pending, the arbitral tribunal may continue the proceedings and make decision resolving the dispute (hereinafter referred to as the “arbitral award”).

V. INTERIM MEASURES

Power of arbitral tribunal to order interim measures

Article 21

Unless otherwise agreed by the parties, the arbitral tribunal may, at the request of a party, order an interim measure.

An interim measure shall be ordered in the form of an award or in another form. By interim measure, at any time prior to the issuance of a final arbitral award, the arbitral tribunal orders a party to:

- 1) Maintain or restore the status quo pending determination of the dispute;
- 2) Take action that would prevent, or refrain from taking action that is likely to cause, current or future harm or prejudice to the arbitral process itself;
- 3) Preserve assets out of which the obligations imposed in the arbitral award may subsequently be enforced; or

- 4) Preserve evidence that may be relevant to the resolution of the dispute.

Conditions for granting interim measures

Article 22

The party requesting an interim measure under Article 21 paragraph 2 items 1, 2 and 3 hereof, shall satisfy the arbitral tribunal that:

- 1) Harm not adequately reparable is likely to result if an interim measure is not ordered, and such harm substantially outweighs the harm to result to the party against whom the interim measure is ordered; and
- 2) There is a possibility that the party requesting an interim measure will succeed on the merits of the claim, where such possibility shall not affect the discretion of the arbitral tribunal in making any subsequent determination.

With regard to a request for an interim measure under Article 21 paragraph 2 item 4 hereof, the requirements in paragraph 1 of this Article shall apply only to the extent the arbitral tribunal considers appropriate.

Modification, suspension and termination of interim measure

Article 23

The arbitral tribunal may modify, suspend or decide to terminate an interim measure, upon application of any party.

The arbitral tribunal may modify, suspend or decide to terminate an interim measure, in exceptional circumstances and upon prior notice to the parties, on the arbitral tribunal's own initiative.

Provision of security

Article 24

The arbitral tribunal may, by a decision, impose an obligation on the party requesting an interim measure to provide appropriate security.

Disclosure

Article 25

The arbitral tribunal may require the parties promptly to disclose any change in the facts on the basis of which the interim measure was requested or ordered.

Costs and damages

Article 26

The party requesting an interim measure shall be liable for any costs and damages caused by the measure to the other party if the arbitral tribunal later determines that, in the circumstances, the measure should not have been granted.

The arbitral tribunal may award the costs and damages referred to in paragraph 1 of this Article at any point during the proceedings.

Recognition and enforcement of interim measures

Article 27

An interim measure ordered by an arbitral tribunal, irrespective of the country in which it was ordered, shall be recognized as binding and enforced on the basis of the decision of the court referred to in Article 6 paragraph 1 hereof, upon application of the parties, except in the case referred to in Article 28 hereof.

An interim measure referred to in paragraph 1 of this Article shall not be enforced if the arbitral tribunal decides to modify, suspend or terminate the interim measure.

The party who is seeking or has obtained recognition or enforcement of an interim measure shall promptly inform the court of any modification, suspension or termination of that interim measure.

The court before which recognition or enforcement of an interim measure is sought may, if it considers it necessary, order the requesting party to provide appropriate security if the arbitral tribunal has not already made a determination with respect to security or where necessary to protect the rights of third parties.

Grounds for refusing recognition and enforcement of an interim measure

Article 28

Recognition and enforcement of an interim measure may be refused at the request of the party against whom it has been ordered if the court is satisfied that:

- 1) Such refusal is warranted on the grounds set forth in Article 52 paragraph 1 items 1 to 4 hereof;
- 2) The arbitral tribunal's decision referred to in Article 24 hereof has not been complied with; or
- 3) The interim measure has terminated or has been suspended by the arbitral tribunal or by the court of the State in which the arbitration takes place, where the court is so empowered, or of the State under the law of which that interim measure was ordered.

Recognition and enforcement of an interim measure may also be refused if the court finds that:

- 1) The interim measure is incompatible with the powers conferred upon the court in accordance with the legislation of Montenegro, unless the court decides, for the purposes of enforcing the interim measure, to modify that interim measure, in accordance with the legislation, without modifying its substance; or
- 2) There is any of the grounds set forth in Article 52 paragraph 2 items 1 or 2 hereof.

Determination made by the court on any ground in paragraphs 1 and 2 of this Article shall be effective only for the purposes of the application to recognize and enforce the interim measure. The court where recognition and enforcement of an interim measure is sought shall not, in making that determination, undertake a review of the substance of the interim measure.

Court-ordered interim measures

Article 29

When ordering an interim measure in arbitration proceedings, the court shall act in accordance with the rules of procedure of enforcement and security, irrespective of whether the seat

of an arbitral tribunal is in the territory of Montenegro, while taking into consideration the specific features of international arbitration.

VI. CONDUCT OF ARBITRAL PROCEEDINGS

Equal treatment of parties

Article 30

The parties shall be treated equally in the proceedings before an arbitral tribunal.

Arbitral tribunal shall give an opportunity to each party to present its case and evidence and to respond to actions and proposals of the opposing party.

Determination of rules of procedure

Article 31

Subject to this Law, the parties are free to agree on the procedure to be followed by the arbitral tribunal in conducting the proceedings or to refer to specific rules of arbitration.

If the parties fail to agree on the rules of arbitration proceedings, the arbitral tribunal may, subject to this Law, conduct the arbitration proceedings in such manner as it considers appropriate.

The power conferred upon the arbitral tribunal referred to in paragraph 2 of this Article includes the power to determine the admissibility, relevance and weight of any proposed and adduced evidence.

Place of arbitration

Article 32

The parties are free to agree on the place of arbitration.

If the parties failed to agree on the place of arbitration, the place of arbitration shall be determined by the arbitral tribunal having regard to the circumstances of the case, including the convenience of the parties.

If the parties agreed to entrust the arbitral institution to organise arbitration, the place of arbitration shall be determined according to the rules of that arbitral institution.

If the place of arbitration has not been determined in accordance with paragraphs 1, 2 and 3 of this Article, the place of arbitration shall be deemed to be the place designated in the arbitral award as the place where the arbitral award was made.

Notwithstanding paragraphs 1 and 2 of this Article, the arbitral tribunal may, unless otherwise agreed by the parties, meet at any place it considers appropriate for deliberations among arbitrators, for hearing witnesses, experts or the parties, or for inspection of goods, other property or documents.

Commencement of arbitral proceedings

Article 33

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

- 1) if the arbitration is conducted before an arbitral tribunal administered by an arbitral institution - on the date on which such arbitral institution receives the notification of arbitration;
- 2) in case of an *ad hoc* arbitration – on the date on which the respondent receives a notification that the opposing party appointed an arbitrator or proposed a sole arbitrator, accompanied by an invitation to appoint the other arbitrator or declare whether he accepts the proposed sole arbitrator.

Language to be used in the proceedings

Article 34

The parties are free to agree on the language or languages to be used in the arbitral proceedings; failing such agreement, the arbitral tribunal shall determine the language or languages to be used in the arbitral proceedings.

The agreement of the parties or determination by the arbitral tribunal on the language or languages to be used in the arbitral proceedings (hereinafter referred to as the “language of arbitration”), unless otherwise specified therein, shall apply to any written statement by a party, any hearing and any award, decision or other communication by the arbitral tribunal.

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

Until the language of arbitration has been determined, the statement of claim, defence and other statements can be submitted in the language of the contract referred to in Article 9 paragraph 2 hereof, the language of the arbitration agreement or in the Montenegrin language.

If the parties have not reached an agreement on the language of arbitration and the arbitral tribunal has not determined the language of arbitration, the language of arbitration in international arbitration shall be the English language.

Statements of claim and defence

Article 35

Unless the parties have otherwise agreed, the claimant shall state in the statement of claim the facts supporting his claim, the points at issue and the relief or remedy sought, and the respondent shall state in his statement of defence his defence in respect of the claimant's allegations, proposals and claims.

The parties may submit with their statements referred to in paragraph 1 of this Article documents they consider to be relevant or may add a reference to the documents or other evidence they intend to submit.

If the claimant submitted the request for arbitration prior to submitting his statement of claim, the statement of claim shall be submitted within the period of time mutually agreed by the parties, or, failing such agreement, within the period of time determined by the arbitral tribunal.

Unless otherwise agreed by the parties, either party may amend or supplement his claim or defence during the course of the proceedings, unless the arbitral tribunal considers it inappropriate to allow such amendment or supplement for the purpose of the efficiency of the proceedings.

Hearings and written proceedings

Article 36

Unless otherwise agreed by the parties, the arbitral tribunal shall decide whether to hold oral hearings, or whether the arbitral proceedings shall be conducted on the basis of documents and other materials.

Unless the parties have agreed that no oral hearings shall be held, the arbitral tribunal shall hold such hearings, if so requested by a party.

The parties shall be given sufficient advance notice of any oral hearing and of any meeting of the arbitral tribunal for the purposes of inspection of goods, other property or documents.

All statements, documents or other information supplied to the arbitral tribunal by one party shall be communicated to the other party.

Any evidentiary expert report or evidentiary document on which the arbitral tribunal may rely in making its decision shall be communicated to the parties.

Unless otherwise agreed by the parties, arbitral proceedings shall be closed to the public.

Default of a party

Article 37

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

1) the claimant fails to communicate his statement of claim in accordance with Article 35 hereof, the arbitral tribunal shall terminate the proceedings;

2) the respondent fails to communicate his statement of defence in accordance with Article 35 hereof, the arbitral tribunal shall continue the proceedings without treating such failure in itself as an admission of the claimant's allegations;

3) one of the parties fails to appear at a hearing or to produce documentary evidence within the set time limit, the arbitral tribunal may continue the proceedings and make the award based on the outcome of proceedings and on the evidence submitted.

Experts

Article 38

Unless otherwise agreed by the parties, the arbitral tribunal may:

1) appoint one or more experts to report to it on specific issues to be determined by the arbitral tribunal;

2) 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 inspection.

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 written or oral report, participate in an oral hearing where the parties have the opportunity to put questions to him and to present other expert witnesses in order to testify on the points at issue.

The provisions of Articles 15 and 16 hereof on challenging an arbitrator shall apply *mutatis mutandis* to challenging an expert.

Court assistance in taking evidence

Article 39

The arbitral tribunal or a party with the approval of the arbitral tribunal may request from the competent court referred to in Article 6 paragraph 2 hereof legal assistance in taking evidence that the arbitral tribunal itself could not take.

In the case referred to in paragraph 1 of this Article, the requested court shall take evidence within its competence and according to the law governing taking evidence before that court.

The arbitrators may participate in the procedure of taking evidence before the court referred to in paragraph 2 of this Article.

VII. MAKING OF ARBITRAL AWARD AND TERMINATION OF ARBITRAL PROCEEDINGS

Applicable law

Article 40

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 reference to the law or legal system of a given State shall be construed, unless otherwise agreed by the parties, as directly referring to the substantive law of that State and not to its conflict of laws rules.

Failing any designation of the applicable law by the parties, the arbitral tribunal shall apply the law determined by the conflict of laws rules which it considers applicable.

The arbitral tribunal shall decide the dispute *ex aequo et bono* only if the parties have expressly authorized it to do so.

When making decision, the arbitral tribunal shall decide in accordance with the provisions of the arbitration agreement and shall take into account the usages of the trade applicable to the transaction in relation to which the dispute to be resolved by arbitration arose.

Decision-making by panel of arbitrators

Article 41

Unless otherwise agreed by the parties, a panel of arbitrators shall make any decision by a majority of all arbitrators.

If an arbitral award cannot be made in the manner referred to in paragraph 1 above, the panel of arbitrators shall continue deliberations on each opinion presented and if after repeated deliberations the arbitral award still cannot be made in the manner referred to in paragraph 1 above, the arbitral award shall be made by the presiding arbitrator.

Questions of procedure may be decided by a presiding arbitrator alone, if so authorized by the parties or all members of the panel of arbitrators.

The panel of arbitrators may entrust one of its members to undertake certain evidence-taking activities.

Settlement

Article 42

If, during arbitral proceedings, the parties settle the dispute, the arbitral tribunal shall terminate the proceedings and, if so requested by the parties, record the settlement in the form of an arbitral award on agreed terms which shall state that it is an arbitral award.

An award on agreed terms shall be made in accordance with Article 43 hereof.

The award referred to in paragraph 2 of this Article has the effect of an arbitral award resolving the dispute.

The arbitral tribunal shall not make an award on agreed terms if it finds that the content of the settlement is in conflict with the public policy of Montenegro.

Form and contents of arbitral award

Article 43

The arbitral tribunal shall make the arbitral award by which it shall resolve all requests of the parties.

The arbitral tribunal may make a partial or interim award.

The arbitral award shall be made in writing and shall be signed by the members of the panel of arbitrators or the sole arbitrator.

If the arbitral award has been made by a panel of arbitrators, the signatures of the majority of all members of the panel of arbitrators shall suffice, provided that reasons for any omitted signature of members of the panel of arbitrators are stated.

The arbitral award shall state the reasons upon which it is based, unless the parties have agreed that no reasons are to be given or the award is an award on agreed terms.

The arbitral award shall state the date when it was made and the place where it was made.

Termination of proceedings

Article 44

The arbitral proceedings are terminated by the final arbitral award.

The arbitral proceedings may also be terminated by an order of the arbitral tribunal when:

- 1) the claimant withdraws his claim, unless the respondent objects thereto and the arbitral tribunal recognizes a legitimate interest on the respondent's part in obtaining a final arbitral award;
- 2) the parties agree on the termination of the proceedings;
- 3) the arbitral tribunal finds that the continuation of the arbitral proceedings has become unnecessary or impossible; or
- 4) the arbitral proceedings have been terminated in accordance with this Law.

Correction and interpretation of award; additional award

Article 45

On the request from a party, the arbitral tribunal shall make language-related and technical corrections in the award made or give specific interpretation of such award.

On the request from a party, the arbitral tribunal shall make an additional award as to claims presented in the arbitral proceedings but not decided in the arbitral award.

The party may submit the requests referred to in paragraphs 1 and 2 of this Article within thirty days from the date of receipt of the award at the latest.

If the arbitral tribunal considers the request referred to in paragraph 1 of this Article to be justified, it shall make the correction or give the interpretation of the award.

The arbitral tribunal may, on its own initiative, correct any language-related and technical error within thirty days from the date on which the award was made.

The decision on correction, interpretation and additional award shall form part of the arbitral award it relates to.

Enforceability of arbitral award

Article 46

An arbitral award made by an arbitral tribunal in the territory of Montenegro shall have the force and effect of an enforceable document.

The arbitral award referred to in paragraph 1 of this Article shall be enforced in accordance with the law governing the procedure of enforcement and security.

VIII. SETTING ASIDE ARBITRAL AWARD

Application for setting aside

Article 47

An arbitral award may be contested by an application for setting aside and no other legal remedies shall be permitted.

The court referred to in Article 6 paragraph 1 hereof shall have jurisdiction for ruling on an application for setting aside arbitral award.

Grounds for setting aside

Article 48

An arbitral award may be set aside if the party making the application furnishes proof that:

1) the arbitration agreement was not concluded or is not valid under the law designated by mutual agreement of the parties or under the law of Montenegro, unless otherwise agreed by the parties;

2) the party to the proceedings did not have the capacity to conclude the arbitration agreement and to be a party to the dispute or a party was not duly represented;

3) the party making the application was not given proper notice of the initiation of the arbitral proceedings or was otherwise unlawfully unable to present his case before the arbitral tribunal;

4) the award deals with a dispute not contemplated by the arbitration agreement or contains decisions on matters beyond the scope of the arbitration agreement, provided that only the part of the award on matters not submitted to arbitration may be set aside if that part of the award can be separated from the decision on matters submitted to arbitration;

5) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with this Law or a permissible agreement of the parties, and that fact could have affected the content of the arbitral award; or

6) the award does not contain the statement of reasons or has not been signed.

The court shall also set aside an arbitral award if it finds that:

1) the subject-matter of the dispute is not capable of settlement by arbitration under the legislation of Montenegro; or

2) the award is in conflict with the public policy of Montenegro.

An application for setting aside arbitral award may be made within three months from the date on which the award had been served on the party.

The parties may not waive their right to make an application for setting aside arbitral award.

Consequences of setting aside arbitral award

Article 49

New arbitral proceedings between the same parties in relation to the same matter may be conducted only on the basis of a new arbitration agreement.

By way of exception from paragraph 1 of this Article, if the court set aside an arbitral award on the grounds other than those related to the existence and validity of the arbitration agreement not specifying the names of the arbitrators, such agreement is still binding upon the parties until they agree otherwise.

On the request from a party, the court to which an application for setting aside arbitral award was made may remand the case to the arbitral tribunal for reconsideration.

In case of doubt between the parties as to the ground for setting aside arbitral award, the court may rule thereon on the request from a party.

IX. RECOGNITION AND ENFORCEMENT OF FOREIGN ARBITRAL AWARD

Recognition and enforcement of foreign arbitral award

Article 50

Foreign arbitral award shall mean the award made by an arbitral tribunal whose place is outside Montenegro and shall be considered to be the award of the State in which it was made.

Jurisdiction and proceedings for recognition and enforcement

Article 51

Foreign arbitral award shall be recognised as binding and enforced in Montenegro unless the court finds, upon the objection by the opposing party,

1) the existence of a ground referred to in Article 52 hereof;

- 2) that the award has not yet become binding on the parties; or
- 3) that it has been set aside or suspended by a court of the country in which, or under the law of which, that award was made.

The recognition and enforcement of a foreign arbitral award shall be determined by the court referred to in Article 6 paragraph 1 hereof.

The proceedings for recognition and enforcement shall be initiated upon a petition of a party accompanied by:

- 1) the original arbitral award or a certified copy thereof;
- 2) the original arbitration agreement or document on the acceptance of arbitration or a certified copy thereof;
- 3) certified translation of a foreign arbitral award and arbitration agreement into the Montenegrin language or into the language officially used before the competent court.

Grounds for refusing recognition and enforcement

Article 52

Recognition and enforcement of a foreign arbitral award may be refused, on a motion from the party against whom it is invoked, only if that party furnishes proof that:

- 1) arbitration agreement is not valid under the law to which the parties have subjected it or under the law of the country where the award was made;
- 2) he was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case;
- 3) the award deals with a dispute not contemplated by the arbitration agreement or it contains decisions on matters beyond the scope of that agreement, provided that the recognition and enforcement of that award may be partially refused if it is found that the part of the award which contains decisions on matters beyond the scope of the arbitration agreement can be separated from the remaining part of the award,;
- 4) the arbitral tribunal or the arbitral procedure was not in accordance with the arbitration agreement or, failing such agreement, was not in accordance with the law of the country where the arbitration took place; or
- 5) the award has not yet become binding on the parties or has been set aside or suspended by a court of the country in which, or under the law of which, that award was made.

The court shall refuse recognition and enforcement of an arbitral award if it finds that:

- 1) the subject-matter of the dispute is not capable of settlement by arbitration under the law of Montenegro; or
- 2) the effects of the arbitral award would be contrary to the public policy of Montenegro.

Consequences of the proceedings for setting aside arbitral award commenced abroad

Article 53

The court referred to in Article 6 paragraph 1 hereof may, if it considers it necessary, decide to adjourn its decision on recognition and enforcement of a foreign arbitral award if the proceedings for setting aside or suspension of such award commenced in the country in which, or under the law of which, that award was made, until the termination of such proceedings.

When taking decision referred to in paragraph 1 of this Article, the court referred to in Article 6 paragraph 1 hereof may, on the application of a party, order the opposing party to provide appropriate security.

If the opposing party does not provide appropriate security referred to in paragraph 2 of this Article, the court referred to in Article 6 paragraph 1 hereof shall not take a decision to adjourn decision on recognition and enforcement of a foreign arbitral award.

Decision on recognition and enforcement of the award

Article 54

When ruling on petition for recognition or enforcement of a foreign arbitral award, the court shall confine itself to determining whether the requirements laid down in this Law have been met, and if it considers it necessary, it may seek an explanation from the arbitral tribunal that rendered the award, from the parties, and from a court or a notary or other person with which the award was deposited.

The court shall give an opportunity to the opposing party to be heard with regard to a petition for recognition in the proceedings for recognition of a foreign arbitral award, and on the main issue.

The court shall give an opportunity to the opposing party to be heard with regard to a petition for enforcement of an arbitral award unless this would jeopardize the successful implementation of enforcement sought.

A decision on recognition and enforcement of an arbitral award shall contain statement of reasons.

An appeal against a decision rendered in the proceedings for recognition may be submitted to the Appellate Court of Montenegro within fifteen days from the date of service of the decision on recognition.

X. TRANSITIONAL AND FINAL PROVISIONS

Commenced proceedings

Article 55

Proceedings commenced under the Civil Procedure Law (Official Gazette of the Republic of Montenegro 22/04, 28/05 and 76/06) and the Law on Private International Law (Official Gazette of Montenegro 1/14 and 14/14) which have not been terminated until entry into force of this Law shall be finalized under the provisions of this Law.

Repeal of the laws

Article 56

PART FOUR of the Civil Procedure Law (Official Gazette of the Republic of Montenegro 22/04, 28/05 and 76/06), Title XIII and the provisions of Title XIV relating to the proceedings for recognition and enforcement of foreign arbitral awards of the Law on Private International Law (Official Gazette of Montenegro 1/14 and 14/14) shall be repealed on the day of entry into force of this Law.

Entry into force

Article 57

This Law shall enter into force on the eighth day following that of its publication in the *Official Gazette of Montenegro*.

No 23-1/15-7/4
EPA 811 XXV
Podgorica, 31 July 2015

The 25th Parliament of Montenegro
President of the Parliament
Ranko Krivokapić m.p.